

Whitefish Water and Sewer Impact Fee Problems

Revised April, 2023

The City of Whitefish MT has systematically overcharged residents, developers, and builders when they apply for building permits. The City charges impact fees for new construction and dwelling upgrades. Impact fees help Whitefish pay for infrastructure expansion, specifically for projects that increase capacity as Whitefish grows.

Impact fees are collected for both water and sewer infrastructure as well as other City projects. Montana Statute 7-6-1601-1604 places specific limitations on the calculation of these fees, the projects that can be used in these calculations and the maximum allowable fees that can be collected.

Policy Guide on Impact Fees

In its Policy Guide on impact fees, the *American Planning Association* (a membership organization of professional city planners) imposes eleven impact fee standards which are largely embodied in the Montana Statute referenced above. Among these are the following (Note 17):

- All impact fees must be rationally linked (the “rational nexus”) to an impact created by the development upon which the fees are imposed and to the demonstrated need for related capital improvements pursuant to a capital improvement plan and program.
- Some benefit must accrue to the development as a result of the payment of the fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development.
- Funds received from the imposition of impact fees must be segregated from general funds and used solely for the purpose for which the specific fee is established.
- Fees collected must be encumbered or expended within a reasonable timeframe to ensure that the needed capital improvements are in fact implemented.
- Any fee cannot exceed the cost of the improvements to which it is attributed, and credit must be given for outside funding sources.
- Impact fees cannot be used to cover normal operation and maintenance or personnel costs and must be used only for capital improvements.

- Provision must be made for refunds for projects that are not constructed.

The purpose of these standards is obvious—they prevent local governments from abusing their power to impose such fees and ensure fairness to all concerned.

But Whitefish repeatedly violated the Montana Statutes and the above standards during both the calculation and collection of impact fees. Whitefish manipulated costs and included non-existent or non-qualifying projects in calculating these fees. Whitefish then employed an incompatible collections chart that raised fees even further. In the end, Whitefish succeeded in doubling the impact fees recommended by an outside consultant.

Total Water and Sewer Impact Fees Collected By Year

- **FY 2015-2017 \$467,000 (avg)**
- **FY 2018 - \$488,000 (prior to fee increase)**
- **FY 2019 - \$820,000 (partial year with fee increase)**
- **FY 2020 - \$1,568,000 (first full year of fee increase)**
- **FY 2021 - \$1,662,000**

During FY 2020, Whitefish overcharged its residents and builders approximately **\$675,000** in residential water and sewer impact fees alone. Non-residential projects were likewise overcharged during this period. The average overcharge per new single family resident was over **\$4,000**.

HISTORY

July 2007, HDR Engineering produces the first Whitefish Impact Fee study, following Montana Statute 7-6-16. It recommended maximum water and sewer impact fees of **\$3295** for a typical new single family residence with a 5/8” water meter (Page 5-6). It also built a collection chart based on the same 5/8” meter.

August 27, 2018. FCS Group produces an Impact Fee Update using a FY 2019 Capital Improvement Plan (CIP). A \$4M sewer project, not included in the CIP, is added. Max sewer impact fee increases 80%, max water impact fee declines 50%. The Update calculates the max water and sewer impact fees the city can collect (**\$4311**) for a typical new single family residence with a 3/4” meter (page 6). City Manager inserts old HDR collection charts (based on a 5/8” meter) into the Update.

Nov 5, 2018. City Manager creates a new “emergency” CIP that adds \$10M to two water projects for the express purpose of raising water impact fees. (Note 9)

Nov 6, 2018. City Manager uses the newly created CIP to nearly triple the water impact fees in an Addendum to “Impact Fee Update”. The result is a 41% increase (**\$6097**) in maximum water and sewer impact fees recommended by FCS. City manager again uses the old collections chart based on a 5/8” meter. She omits identifying the increase in water treatment plant capacity in calculations, resulting in much higher fees than allowed by law.

Nov 13, 2018. City Manager produces a Staff Report that redefines the maximum water and sewer impact fees for a typical new single family residence. This results in yet another 33% increase in water and sewer fees to **\$8094**, invalidating the previous maximum fees calculated in the FCS Study and her own Addendum. The Staff Report produces invalid collection charts reflecting these changes.

2018. Public Works Department alters its impact fee assessment program that overstates fixture counts and understates max allowable fixtures per meter size. This results in higher impact fees and forces installation of larger meters than required, raising water and sewer rates.

Jan 1, 2019. Whitefish City Council passes Resolution 18-44 which raises sewer impact fees per Whitefish Staff Report and partially raises water impact fees.

July 15, 2019. Whitefish City Council passes Resolution 19-15 which raises water impact fees as recommended by City manager.

Jan 1, 2019 - present. Public Works Department employs the defective collection charts and its own defective program that overcharges virtually every residential and non-residential building permit applicant.

After Sept, 2019, Whitefish water and sewer impact fees charged to a typical new homeowner are **\$8094**. This amount is nearly double the equivalent fees charged by Kalispell and Bozeman. Both cities recalculated their impact fees in 2018 and 2019 as well and use a ¾ inch meter for calculating and collecting impact fees. Bozeman charges a typical new resident **\$4474** while Kalispell charges all its new residential homeowners a flat fee of **\$4799**. (Note 8)

Daily Interlake Reports Large Increases in FY 2019 Impact Fee Collections

After less than one year of impact fee collections, the city realized a significant windfall in impact fees. According to the Daily Interlake, *Whitefish Impact-Fee Revenue Increases, Dec 16, 2019*:

“Whitefish collected roughly a half-million dollars more in impact fees in fiscal year 2019 than it did the previous year — a total of nearly \$1.3 million this fiscal year compared to about \$700,000 last year.

Total building permits stayed the same for the year at about 250, but increases in the fees effective on Jan. 1, 2019, appears to have upped the total collections.”

Impact fees are imposed in many areas including water, sewer, parks, etc. The biggest increases came in the water and sewer impact fees collected. According to the same article:

“The water impact fee revenue total was 188% of budget and the wastewater impact fee revenue was 224% of budget.

The city increased its impact fees on Jan. 1, 2019, and then this fall increased the water portion of the fee beginning in September. The impact fee total for an average single-family home is \$9,944” according to the City manager. Of this, approximately \$8500 was for water and sewer.

But the **maximum allowable** limit for water and sewer impact fees for a typical new single-family home is \$6097, as calculated in the 2018 FCS Impact Fee Update and the later Addendum to the “Impact Fee Update”.

Note: This increase in fee collection is even more dramatic considering the sewer impact fee was only in place for half of this fiscal year and no portion of the water fee increase was in effect from Jan 1, 2019. Of the \$9944 total impact fee collected from a typical new single-family home, \$8500 was from water and sewer impact fees (Note 1).

PUBLIC WORKS CHANGED IMPACT FEE CALCULATION PROGRAM

Fixture Units (bathtubs, sinks, toilets, etc.) are used by the Public Works Department to compute Impact Fees for both water and sewer. Sometime during or after 2018, the Public Works Department deliberately changed the program that calculates fixture units for all projects (residential and commercial).

Prior to 2019, the program used by the Department **DID NOT** conform to the 2012, 2015, or 2018 Uniform Plumbing Code (UPC). The Department used fixture unit weights much different than those defined in the UPC. This was identified by reviewing several home builder impact fee billing statements.

The Department changed this program sometime AFTER 2018, and it followed more closely the 2018 UPC in all but a few key areas. It still does not conform to the 2018 UPC. Fixture categories (Shower vs Bathtub) were deliberately mislabeled, resulting in certain lower cost fixtures (showers) being placed in higher

cost categories (baths). The differences subtly overstated a project's water fixture unit count, which in turn inflated water and sewer impact fees. This same program understates the max number of fixture units allowed per meter size, forcing applicants to install larger meters than necessary. (Note 12)

This program violates 2018 Uniform Plumbing Code standards. This resulted in overcharges in impact fees for both water and sewer for new homeowners and homeowners building additions.

(Further details: *Whitefish Fixture Unit and Meter Sizing Problems.docx*)

Update: *On July 9, 2021 the Montana State Department of Labor and Industry which oversees the Uniform Plumbing Code (UPC) was contacted and presented this report. The Department wrote Whitefish requesting an explanation of the issue identified in this report as it relates to the 2018 UPC.*

July 21, 2021: the Whitefish City Manager acknowledges that their fixture count program had an error as outlined in this report and is overcharging customers. She said the city is fixing this program and auditing prior year applications. On Sept 20, 2021, the City Manager confirmed the issue at a City Council meeting but downplayed the amount overcharged and stated that the City would not audit applications until 2022. (Note 10)

CITY COLLECTION PROGRAM INFLATES IMPACT FEES

To understand the Whitefish impact fee collection problems, it is important to study the prior impact fee report that generated the collection charts used by Whitefish.

2007 HDR IMPACT FEE STUDY

In 2007, Whitefish contracted HDR Engineering to produce an impact fee study titled *Impact Fees for Water, Wastewater and Stormwater Utility Systems*. In this report are the water and wastewater charts used in the 2018 FCS Study collection and all subsequent charts used by Whitefish to collect impact fees. Unlike the 2018 FCS Update, the 2007 HDR Study describes its collection methods in detail. Two charts show the **calculation** of maximum allowable impact fees and the **collection** chart based on meter size / fixture count. These both match. (Note 11)

The existing charges and the maximum allowable impact fees for a new single-family residential connection (5/8-inch meter) with 20 fixture units are presented in Table ES-1. (Additional water surcharges for the Suncrest and Upper Grouse Mountain areas apply.) Customers with larger meters and increased demands on the system pay fees proportionate to their needs, as described in the report. The allowable 5% administrative charge for each fee is listed separately, and is included in the maximum allowable fees shown.

Table ES-1			
Existing and Maximum Allowable Base Impact Fees			5/8-inch Meter
Utility	Existing PIF	5% Administrative Charge	Maximum Allowable Impact Fees
Water	\$1,039	\$78	\$1,641
Wastewater	1,658	79	1,654
Stormwater	<u>0</u>	<u>10</u>	<u>210</u>
Total	\$2,697	\$167	\$3,505

This chart shows that the impact fees were developed for a typical family residence with a 5/8” meter. The chart below shows how collections match this meter size:

Table 5-5				
City of Whitefish				
Net Allowable Water Impact Fee By Meter Size and Fixtures				
Meter Size	Weighting Factor	Number of Fixture Units	Cost per Fixture	Base Fee
5/8"		0 - 20		\$1,641
3/4"	1.00	21 - 35	\$54.70	1,641
1"	1.50	36 - 65	54.70	2,462
1-1/2"	2.50	66 - 180	35.67	4,103
2"	5.00	181 - 360	27.35	8,205
3"	8.00	361 - 800	26.11	13,128
4"	15.00	801 - 1800	16.41	24,615
6"	25.00	1801 - 4600	14.65	41,025

The impact fees for the larger meter sizes are determined by applying the base charge for that size meter and multiplying the excess fixture units, above the maximum level allowed for the next lower meter size, times the cost per fixture. The weighting factors are determined based on the American Water Works Association (AWWA) average sustained flow rate for 5/8-inch meter for the type and size of meter. For example, the capacity that a 2-inch meter has is equivalent to the capacity of eight single-family homes (i.e., a 5/8-inch customer). The weighting factor of 5.0 is applied to 2-inch meters to allow the remainder of the charge (above the base charge) to be determined by the additional fixture units above the level that a 1/1/2-inch meter could have.

In this report, all customers with a 5/8” meter pay one flat fee - \$1641 (the calculated maximum allowable water fee) which satisfies Montana statutes for the customers in this meter group. Customers with larger meters pay a progressively higher fee based on meter size and fixture units. (Note 4).

2018 FCS IMPACT FEE UPDATE

The FCS Group produced an *August 17, 2018 Impact Fee Update* which used the 2018 Capital Improvement Plan and other data provided by Whitefish to calculate new maximum allowable water and sewer impact fees. The report calculated a max water impact fee of \$1108 and a max sewer impact fee of \$3223 (Page 6). Other impact fees were calculated as well. (Numbers do not include the 5% admin fee).

The FCS Update maximum defensible fees are based on a typical new single-family residence (1 ERU) with a 3/4” water meter (Note 5). The 2007 HDR Study on page 5-6 gives a comprehensive definition of a Maximum Allowable Fee and states that the City cannot charge more than this amount without violating Montana law.

A single residence or commercial dwelling with a meter larger than 3/4” would be a multiple of an ERU. It can be assessed a higher impact fee than the maximum defensible fee if the fees charged are proportional to 1 ERU (Note 6) (Note 14).

Collections Chart Used By City Does Not Fit 2018 Impact Fee Study

The FCS Update only calculated the max allowable impact fees. According to the Whitefish City Manager, the City did NOT contract with FCS to develop a collections plan. The following statement appears in the Update:

“It is recommended that the City retain its current water/wastewater impact fee charge procedure”

This is misleading because it appears that the FCS Update is “recommending” the city use its *existing collection* method when in fact it is City officials making this recommendation. A chart is contained in this report that shows how impact fees are being collected based on fixture units and meter sizes within a dwelling. *This chart was copied from the 2007 HDR Impact Fee Study which in turn copied it from a Plant Investment Fee chart that had not been updated since 1999* (Note 11). The FCS max impact fees (for a 3/4” meter) were simply placed in the old chart by City manager (for a 5/8” meter) and the costs per fixture unit were derived from

these numbers. This chart was inserted in the FCS Update and was not part of the formal Update, as admitted by the City Manager.

This chart is incompatible with the 2018 FCS Update maximum fee calculations and does not satisfy Montana statutes. The chart is shown below:

Table IV-5: Summary of Updated Sewer Impact Fee by Meter Size

Meter Size (inches)	Weighting Factor	Base Impact Fee	Base # of Fixture Units	Additional Cost per Fixture Unit Above Base
5/8	1.0	\$3,384	-	
3/4	1.0	\$3,384	21	\$112.80
1	1.5	\$5,076	36	\$112.80
1.5	2.5	\$8,460	66	\$73.56
4	15.0	\$50,758	801	\$33.84
6	25.0	\$84,597	1,801	\$30.21

This chart was originally developed for a typical single family residence (1 ERU) with a 5/8” meter (See Table 5-5 under the 2007 HDR Study above). However, the 2018 FCS impact fees were calculated for a typical single family residence that has a 3/4” meter which represents 1 ERU (See Table II-1 below).

A simple test of this chart shows its incompatibility with the FCS Study. When using this chart to calculate sewer fees for a typical new single family home with a 3/4” meter and 27 sewer fixture units, the problem becomes apparent. Whitefish would charge this resident \$4061* vs the maximum allowable fee of \$3384 shown below. There is obviously a problem with the City’s collection chart above.

*difference between Base # Fixture units (21) and typical new home fixture units (27) multiplied by Addition Cost (112.80) plus Base Impact Fee (3384) for 3/4” meter.

Table II-1. Total Impact Fees for a New Single Family Residence (dwelling unit)*

	Water	Wastewater	Stormwater	City Hall/ General	ESC/Fire	Parks/Trails	Police	Streets	Total
Whitefish (current)	\$1,641	\$1,654	\$210	\$771	\$814	\$29 + \$442	\$0	\$0	\$5,561
Whitefish (new maximum defensible)	\$1,163	\$3,384	\$181	\$47	\$446	\$134 + \$2,579	\$0	\$0	\$7,934
Missoula	\$2,000	\$2,100	\$0	\$270	\$128	\$480	\$23	\$1,359	\$6,360
Bozeman	\$2,547	\$1,179	\$0	\$0	382	\$0	\$0	\$5,037	\$9,145
Kalispell	\$2,567	\$5,757	\$1,121	\$0	\$483	\$0	\$41	\$0	\$9,969

***charges for water and sewer assume base rate for a ¾ inch meter.**

A new collection chart should have been developed by Whitefish Staff that matches the 2018 FCS Update for both water and sewer impact fees.

NOVEMBER 6, 2018 ADDENDUM TO “IMPACT FEE UPDATE”

A few months after the 2018 Impact Fee Update was published, Whitefish Staff produced a November 6, 2018, Addendum to "Impact Fee Update" that increased the water impact fee. They did this by significantly expanding the projected costs of certain City water projects in a new “emergency” CIP produced by the City Manager that added **\$10,000,000** to the cost of existing water projects used to calculate impact fees (Note 9). The “emergency” appears to be the need to raise water impact fees (Staff Report, Oct 29, 2018) prior to approval from City Council. The **Water Treatment Plant Expansion** and the **South Reservoir** project costs were significantly increased by \$5,000,000 each. The Staff Report gave no explanation for the increase and simply stated that the reader should contact City staff for further inquiries (Note 15).

FCS Update Water Impact Fee Project List

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%	-

Addendum To FCS Update

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%	

The Addendum’s maximum defensible water impact fee **calculations** appear to follow Montana law and use the same method as the FCS Study. The justification for this Addendum is questionable (Note 9).

The Addendum produced a maximum allowable water impact fee of **\$2874** (\$3018 less \$144 admin fee). The Addendum did not change the sewer impact fee. The maximum defensible impact fee for both water and sewer increased from **\$4311** (as recommended by FCS) to **\$6097**. The Addendum includes the following chart:

Meter Size (inches)	Weighting Factor	Base Impact Fee	Base # of Fixture Units	Additional Cost per Fixture Unit Above Base
5/8	1.0	\$0.00		\$143.70
3/4	1.0	\$2,874	20	\$95.80
1	1.5	\$4,311	35	\$95.80
1.5	2.5	\$7,185	65	\$62.48
2	5.0	\$14,370	180	\$47.90
3	8.0	\$22,992	360	\$45.72
4	15.0	\$43,110	800	\$28.74
6	25.0	\$71,850	1800	\$25.67

The chart above is designed for a typical new single family home that has a 5/8”

meter. The FCS study (Page 6) clearly states that the typical new single family residence has a 3/4” meter. By using this chart and all subsequent charts derived from it, the City is charging residents up to 50% more than the maximum allowable fee.

To test the validity of this chart, use the typical single family resident numbers again (3/4” and 33 water fixture units) and calculate the charge imposed on an applicant with this profile. Whitefish would charge this resident \$4325 vs the max allowable fee of \$3018 (includes 5% admin fee) which exceeds the max legal fee by \$1307.

NOVEMBER 13, 2018 STAFF REPORT EXPANDS MAXIMUM FEES

On November 13, 2018 a Staff Report was produced by Whitefish that defines the maximum allowable water and sewer impact fees as **\$8094** rather than **\$6097**. In this report, Staff states the following: *“Below is a summary of the current impact fees, maximum impact fees and the recommended impact fees included in the Resolution for a new single family detached residence.”*

Whitefish Impact Fees	Current	Maximum	Recommended
Water*	\$2,241	\$4,119	\$2,241
Wastewater*	1,943	3,975	3,975
Stormwater	200	172	172
City Hall	734	47	47

This chart invalidates all the analysis and calculations done in the FCS Update and subsequent Addendum. Staff used a 5/8” base meter chart taken from the 2007 HDR Study to create a new chart by simply inserting the maximum fees from the 2018 FCS Update. (It was modified to make the 5/8” meter charge progressive). All water and wastewater fees are up to 50% higher than the maximum allowable fees. Rather than correct the defective collection charts, City manager decided to compound the error by declaring new maximum fees to fit the defective chart.

Every new residential permit applicant paid at least **\$2097** in excess fees. Non-residential excess fees were much greater. These overcharges are a direct violation of Montana Statute 7-6-1603.

Resolution 18-44 Sewer Impact Fee Chart

F. The impact fee rate for wastewater (sewer) shall be:

Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
5/8	1.00	\$ 0.00	0	\$ 161.15
3/4	1.00	\$ 3,223.00	20	\$ 107.47
1	1.50	\$ 4,834.00	35	\$ 107.47
1-1/2	2.50	\$ 8,058.00	65	\$ 70.06
2	5.00	\$ 16,115.00	180	\$ 53.72
3	8.00	\$ 25,784.00	360	\$ 51.28
4	15.00	\$ 48,345.00	800	\$ 32.23
6	25.00	\$ 80,575.00	1,800	\$ 28.78

Using the above chart taken from Resolution 18-44, ALL permit applications with 3/4" meters would pay impact fees greater than \$3223. If the HDR chart had been properly adapted to a 3/4" base meter, these permit applicants would pay a fee less than \$3223 (See Models below).

There are multiple problems with this chart. To make it compatible with previous charts (based on 5/8" meters), this chart needs to be modified as follows:

1. Eliminate 5/8" meter.
2. Base impact fee for a 3/4" meter should 0 (as is the 5/8" above) with a progressive Additional Cost per fixture unit cost of \$92.09 until \$3223 fee is computed at fixture unit 35 (\$82.64 if computed at 39).
3. The **Base Impact Fee** for a 1" meter should be the maximum allowable fee for the 3/4" meter (\$3223). Fees for higher meters should likewise be adjusted in this manner. This conforms to the technique used to create the HDR charts.
4. The Current Weighting Factors were calculated based on AWWA flow rates for different meters. The factors in the current chart were created using a 5/8" meter as the base meter, when in fact this chart should use a 3/4" meter base which represents 1 ERU. The maximum allowable impact fees were calculated for a 3/4" meter (Page 6, 2018 FCS Update). Factors are used to

calculate Base Impact Fees for each higher meter size plus the Additional Cost per Fixture Unit.

This process is described in detail in the 2007 HDR impact Study, Table 5-5 above.

A unique chart should have been created using the logic and techniques defined in the HDR Study, but with a ¾” meter base. All subsequent meter size base fees should likewise be tested to ensure they meet Montana statute requirements. The Resolution 18-44 and 19-15 charts are not compatible with the 2018 FCS Update.

The City Council adopted the maximum sewer fee included in this Report but chose not to impose the full water impact fee increase in Jan 2019. What was collected, however, exceeded the maximum allowable for both water and sewer. Council adopted the maximum water impact fee in Sept, 2019. (Note 2)

MODEL REPLICATES 2007 CHART AND DUPLICATES 2018 PROBLEM

A program was developed to replicate the 2007 HDR chart and duplicate the 2018 chart used for sewer fee collections. The model, using an Excel spreadsheet, replicates the HDR sewer impact fee collection chart shown in Table 5-5 in a previous section of this report.

Once developed, this model only requires one entry - the maximum allowable fee as the Base Impact Fee in the base meter size (in this case, 5/8”) row. Subsequent meter Base Impact Fees are calculated as well as the Additional Cost per Fixture Units.

2007 HDR Sewer Impact Fee Chart

The calculations in this model come directly from the detailed explanation provided at the bottom of Table 5-5 in the 2007 HDR Study.

2007 HDR Sewer Impact Fee (Table 5-5)

Maximum Allowable Sewer Impact Fees By Meter Size and Fixtures				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
5/8		\$1,641	0	
3/4	1.00	\$1,641	21	\$54.70
1	1.50	\$2,462	36	\$54.70
1-1/2	2.50	\$4,103	66	\$35.67
2	5.00	\$8,205	181	\$27.35
3	8.00	\$13,128	361	\$26.11
4	15.00	\$24,615	801	\$16.41
6	25.00	\$41,025	1801	\$14.65

2018 FCS Impact Fee Update Sewer Impact Fee

Using the model above, the Sewer impact fee as defined in the FCS Study is duplicated:

2018 FCS Update (Table IV-5)

Maximum Allowable Sewer Impact Fees By Meter Size and Fixtures				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
5/8		\$3,384	0	
3/4	1.00	\$3,384	21	\$112.80
1	1.50	\$5,076	36	\$112.80
1-1/2	2.50	\$8,460	66	\$73.57
2	5.00	\$16,920	181	\$56.40
3	8.00	\$27,072	361	\$53.84
4	15.00	\$50,760	801	\$33.84
6	25.00	\$84,600	1801	\$14.65

The chart is inaccurate because the 2018 FCS impact fees were calculated for a typical new single-family home with a 3/4" meter whereas the original HDR chart is designed for a typical new single-family residence with a 5/8" meter. The calculated fees from this chart are overstated and don't satisfy Montana statutes.

In this chart, the 3/4" meter fees start at the maximum defensible fee (\$3223) and increase with additional fixture units. This exceeds the maximum allowable fee limits and violates Montana statutes.

Resolution 18-44 Sewer Impact Fee Model

The next model duplicates the sewer impact fee chart contained in Resolution 18-44 which sets impact fees in Jan 2019. Whitefish staff modified the above chart by making the 5/8” meter fees progressive rather than flat. The model was changed to reflect this.

The following chart is produced by this model:

Resolution 18-44 Sewer Impact Fee

Maximum Allowable Sewer Impact Fees By Meter Size and Fixtures				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
5/8		\$0	0	\$161.15
3/4	1.00	\$3,223	20	\$107.43
1	1.50	\$4,835	35	\$107.43
1-1/2	2.50	\$8,058	65	\$70.07
2	5.00	\$16,115	180	\$53.72
3	8.00	\$25,784	360	\$51.28
4	15.00	\$48,345	800	\$32.23
6	25.00	\$80,575	1800	\$28.78

The next chart was created to match the FCS Update with a 3/4” base meter. It was designed using the techniques specified in the HDR 2007 Study. It uses the latest 2018 UPC fixture counts and uses AWWA Current Weighting Factors with a base 3/4” meter (Note 6):

Corrected Sewer Impact Fee Collection Chart

3/4" Base Meter Size with 3/4" Max Impact Fee				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
3/4	1.00	\$0		\$82.64
1	1.00	\$3,223	39	\$55.09
1-1/2	1.67	\$5,371	78	\$73.59
2	3.33	\$10,743	151	\$29.43
3	5.33	\$17,189	370	\$34.90
4	10.00	\$32,230	801	\$21.49
6	16.67	\$53,717	1801	\$19.19

1. This chart matches the 2018 FCS Update maximum allowable fee.
2. Based on a typical new single-family residence with a ¾” meter (1 ERU)
3. Current Weighting Factors are normalized for a ¾” meter (Note 6)
4. Base Number Of Fixture Units updated to 2018 UPC
5. Follows techniques employed in the 2007 HDR Study
6. Adopts Staff change making ¾” meter fees progressive
7. Satisfies Montana laws.

(See: *Whitefish Collection Chart Impact Fee Problems (Detailed).docx*)

PHANTOM PROJECTS INCLUDED IN SEWER IMPACT FEE

Two projects contributed to the high impact fees collected since Jan 1, 2019. One water project was included in the FCS Update, but the cost was dramatically increased after the FCS Update was published. A Solar Array project that was never approved by the City Council was included in the original 2018 FCS Update. Both projects were included for the sole purpose of increasing impact fees.

SOUTH RESERVOIR PHANTOM PROJECT

Listed in the FCS water impact fee capital project table is a **\$3,500,000** South Water Reservoir project. 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 2018 CIP this project is listed as being funded primarily with impact fees and shows construction completed in FY 2020.

On Oct 29, 2018, City Manager increased this project’s listed cost by \$5M to raise water impact fees. Virtually no money had been spent previously on this project. In the 2019 Emergency CIP, this project is listed at **\$8,400,000**.

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%	

In the FY 2020 CIP, the project is listed at \$7.6M with a completion date of FY 2023. In the FY 2021 CIP, the project is again listed with a cost of \$7M with a completion date of FY 2025. In the latest CIP, the project is listed with a different

description at \$7M with a completion date of FY 2026. Virtually no money has been spent on this project and the completion continues to be moved back to the latest possible date to remain in the CIP.

In a meeting with Whitefish officials on August 30, 2021, the City Manager stated that this project was “redefined” as a water storage facility within city limits to increase water pressure for South Whitefish. This project corrects a deficiency in the water system and does not increase capacity as required by Montana Statute to be included in impact fees. No start or completion date or engineering cost estimate was provided or published by the City. This \$8.5M project is not described anywhere on the Whitefish Public Works website.

Project Does Not Meet State Requirements

According to the 2018 Impact Fee Update (page 2) and Montana statute 7-6-1603, for a project to be included in Impact Fee calculations, it must meet the following criteria:

“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)).”

The South Reservoir project certainly does not increase capacity and is being developed to correct an existing deficiency (low water pressure). Other Whitefish areas (Grouse Mountain, Suncrest, etc.) have similar deficiencies such as low water pressure. Residents in these areas are assessed additional impact fee charges and water rate surcharges to cover the costs of additional infrastructure to remedy these deficiencies. Whitefish residents outside this area or new residents are not charged impact fees to cover these costs. (Note 13)

Whitefish continues to collect impact fees, however, on this project. City residents and builders are paying significantly higher water impact fees when applying for building permits. This amounts to at least **\$1,312** per new residence, or 47% of the current water impact fee.

PHANTOM SOLAR PROJECT RAISES SEWER IMPACT FEES

To calculate sewer impact fees, the 2018 Impact Fee Update study lists projects (both current and future) that must meet Montana Statute requirements. On page 15, in chart IV-3, appears project labeled “Solar Array” with a 2018 date and cost of **\$4,000,000**. This is the second most expensive project used for sewer impact fee calculations. This item represents nearly 19% of Improvement Fees. It represents nearly 13% of *Total* and *Charge per ERU (CPE)* listed on page 16, Table IV-4. It adds at least \$430 to every home permit in Whitefish.

Table IV-3: Wastewater Improvement Fee Cost Basis

Capital Project	Year	Current Cost (Uninflated)	% Utility-Funded	% Allocable to Growth	Amount In Cost Basis
WWTP Improvements – Design	2018	\$ 1,000,000	100.0%	27.0%	\$ 270,000
WWTP Improvements	2019	17,725,000	95.0%	27.0%	4,428,000
Manhole & Pipe Rehab	2018	250,000	100.0%	0.0%	-
Flathead Ave. Sewer	2018	100,000	100.0%	100.0%	100,000
Sewer Main Upgrade N of Hospital – Greenwood to Columbia	2018	125,000	100.0%	0.0%	-
Piping – Future Capacity Enhancements	2019	400,000	100.0%	30.0%	120,000
Whitefish Urban Project – US 93 – Design & Construct	2021	200,000	100.0%	0.0%	-
Cow Creek Sewer Extension	2022	880,000	100.0%	28.41%	250,000
Generator (Emergency Power) & Access Improvements	2018	110,000	100.0%	0.0%	-
Glenwood Lift Station	2018	15,000	100.0%	0.0%	-
Houston Point Lift Station	2019	100,000	100.0%	0.0%	-
Emergency Services Center / Public Works Expansion	2018	20,000	100.0%	0.0%	-
Solar Array	2018	4,000,000	100.0%	27.0%	1,080,000
Less: Existing Wastewater Impact Fee Fund Balance					(494,905)
Total		\$24,475,000			\$5,753,095

Solar Array Project Not Even Studied until Late 2019

A reference to this project was found in the Whitefish Climate Action Plan (CAP) which listed a project to convert traditional energy used at the Wastewater Treatment Plant to solar. In 2017, the Public Works Director met with members of CAP where this project was discussed, as documented in their minutes. There is no record of this project in FY 2017-2021 Capital Improvement Programs which violates Whitefish Ordinance 10-2-10 and Montana Statute 7-6-1602(2)(k). There is no reference to it on the Department’s website as a present or past project. Yet it

is included in the 2018 Impact Fee Update with a \$4,000,000 cost and a 2018 project date.

The Whitefish Planning Department was contacted about this project. The project had been discussed several years ago, according to a spokesperson. A feasibility study was conducted in late 2019 which did not produce promising results. The payback period was too long. After this study was published, Whitefish had no plan to proceed with this project.

The *Solar PV Feasibility Study, 11/30/19* suggested a portion of City land near the Whitefish Water Treatment Plant be used to build a Solar Array. The cost estimate was \$881,647 but the savings would only be \$31,831 a year, with a payback of 27.7 years. The spokesperson said this project was presented to the City Council but not approved. It is unlikely to ever move forward, according to the spokesperson and if it was resurrected, it would probably be funded by donations or private capital, NOT by Public Works funds.

The project was studied but never included in any capital improvement plan or budgeted, yet it was listed in the Impact Fee Update as a 2018 project.

Project Does Not Meet State Requirements

According to the 2018 Impact Fee Update (page 2) and Montana statute 7-6-1603, for a project to be included in Impact Fee calculations, it must meet one of two criteria:

1. *“Montana Code allows for a government entity to ‘recoup costs of excess capacity in existing capital facilities’ (7-6-1603 (3)).”* The solar array project certainly does not represent excess capacity and is not part of any existing facility and as such does not meet this criterion.
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.”* The project adds nothing to capacity, nor is it needed to increase capacity. It replaces one form of inexpensive energy (mostly hydro-electric) with expensive energy (solar) with limited return.

The Solar Array project meets none of the criteria necessary to be included in Whitefish impact fees. If anything, it falls into the category of operation or maintenance expense, which is specifically excluded from impact fee consideration by Montana statute (7-6-1602).

Impact Fees Still Reflect Cost of This Phantom Project

This unapproved, unfunded and unimplemented project produced significant sewer impact fee overcharges and continues to do so.

This project should never have been placed in the 2018 Impact Fee Update. The Flathead Electric Community Solar group in Kalispell was contacted and asked about general solar feasibility for major projects in the Whitefish and Kalispell area. This group researches and installs solar panels throughout the Flathead Valley and manages several solar array projects located between Whitefish and Kalispell. The spokesperson candidly admitted that “*there is just not enough sunshine to make it economically feasible*” and she confirmed the study’s findings that solar projects in our area simply have “*too long of a payback period*”.

Refunds Not Issued, Violating City Ordinance

This project did not satisfy Montana Statute (7-6-1602) and further, the city decided not to construct the Solar Array. City Ordinance 10-2-8 Refunds (A) states:

“If the City fails to collect or spend the impact fees in accordance with this chapter, or in accordance with Montana Code Annotated section 7-6-1602, the City shall refund any impact fees collected to the current owner of the property on which impact fees have been paid.”

The Department instead opted to use these funds for other projects, in violation of Montana law and City Ordinance. (Note 7)

City Continues To Charge Residents for This Project

Residents continue to be charged significantly more in sewer impact fees while the City does nothing to correct this problem. The overcharge is estimated to exceed \$200,000 for the last 3 years for just residential applicants alone. This is a violation of Montana statute 7-6-1602 (5).

(Further details: *Whitefish Wastewater (Solar) Impact Fee Problems.docx*)

ADDED EXPENSE, NO CAPACITY INCREASE

The Whitefish City Manager made a significant omission when she recalculated water impacts fees in 2018. Earlier that year, Whitefish contracted FCS to produce an update to its impact fees. After FCS published its report, Whitefish increased

the water impact fees by adding \$10M to the water projects, including \$5M for the water treatment plant expansion.

But the City Manager failed to show any increase in capacity at the water treatment plant in her calculations, resulting in much higher impact fees. The FY 2020 Capital Improvement Plan (CIP), published just a few months later, showed a capacity increase from 5.5 mgd (million gallons per day) in the FCS study to 8 mgd.

Simply stated, The City Manager added a significant cost (\$10M) to the impact fee calculation without adding the appropriate benefit of this expenditure (2.5 mgd water treatment capacity increase). By omitting the benefit, the \$10M was shared by fewer residents and developers when they were charged water impact fees.

This failure cost every new homeowner in Whitefish at least **\$1654** in overcharges. Resident’s building additions were also affected along with commercial developers.

Here is the step by step process that demonstrates this problem.

- August 2018, FCS produces Impact Fee Update which includes water impact fee calculations. FY 2019 CIP includes \$5M to expand water treatment plant.

#	Project Name	Description & Justification	Total Cost
<i>Treatment/Supply</i>			
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

- FCS, from information provided by Whitefish determined that the \$5M is spent to increase capacity of current water treatment plant from 3.5 mgd to 5.5 mgd. Using this number and the demand per ERU (Equivalent Residential Unit) numbers provided by City, FCS calculates the number of new homes this increased capacity will support (2,747, page 7, FCS) which appears below.

ERU Calculation Explanation

III.A. SYSTEM CAPACITY & CUSTOMER BASE

The Water Impact Fee calculation expresses the customer base in terms of Equivalent Residential Units (ERUs), recognizing the potential demand that each meter imposes on the City’s water system. 2018 customer data provided by the City, indicates that the City currently serves 4,644 ERUs. Table ES-1 of the City’s 2006 Water Master Plan provides a planned capacity of **5.5 million gallons per day** (MGD). Data provided by the city indicates that the current Maximum Daily Demand on the system is 3.46 (MGD). The average ERU within the city thus consumes 744 gallons per day (3,460,000 / 4,644 ERUs). Assuming this remains constant, the future supported capacity of the system will be 7,391 ERUs, leaving **2,747 ERUs** in remaining planned capacity.

The water impact fee (as calculated by FCS) is \$1163 which is the maximum fee the City can charge. It uses 2,747 ERUs to calculate these fees.

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

- Oct 2018, City Manager simply adds \$10M to a new CIP including an additional \$5M for the water treatment plant expansion, which is now \$10M. CIP does not contain a description change from original FY 2019 CIP and does not explain what the additional \$5M is for.

#	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

- Nov 6, 2018 City Manager creates the Addendum to FCS Update in which she increases the water impact fee total cost by the \$10M she added to the CIP. This includes an additional \$5M for the water treatment plant, raising it to \$10M.

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%	
Whitefish Urban Project - US 93 - Design & Construct	2022	1,000,000	100.0%	0.0%	
Armory Road Watermain Railroad Crossing	TBD	TBD	100.0%	0.0%	
Flathead Watermain Extension	2019	190,000	100.0%	37.2%	\$70,680
Suncrest Conversion Pumping Station	2019	75,000	100.0%	0.0%	
Whitefish Lake Pump Station	TBD	TBD	100.0%	0.0%	
Lower Grouse Pumps	2019	15,000	100.0%	0.0%	
Less: Existing Water Impact Fee Fund Balance					(\$1,052,163)
Total		\$21,280,000			\$7,659,317

The City Manager does not show any increase in capacity in the water treatment plant and does not re-calculate the additional number of new homes this will support, keeping the 2,747 number from the FCS Update in her calculation. The water impact fee is increased to \$3018 (page 2, Addendum). She effectively increases total costs without increasing the Growth in ERUs that will result from this increased spending.

Addendum Water Impact Fee Calculation

Water Impact Fee Calculation	Reimbursement Fee	Improvement Fee	Administrative Fee	Total
Total Costs	\$235,699	\$7,659,317	5%	\$7,859,016
Growth in ERUs	2747	2747		2747
Charge per ERU	\$86	\$2,788	\$144	\$3,018

- Several months later, the FY 2020 CIP lists water projects, including the same \$10M cost for increasing capacity at the water treatment plant. However, the new description states “Expand water treatment plant to 8 mgd” among other things.

#	Project Name	Description & Justification	Total Cost
		<u>Treatment/Supply</u>	
T1	South Water Storage & Production	Variety of projects to increase water capacity in South Whitefish including groundwater production and/or additional storage south of HWY 40 - Assumes \$400K spent in FY19.	\$ 7,600,000
T2	Water Treatment Plant Expansion	Variety of projects to increase current water production and treatment capacity (Expand water treatment plant to 8 MGD, upgrade Whitefish Lake pumping station, extend Whitefish Lake intake line).	\$ 10,000,000

The City Manager failed to include this statement in her interim CIP and failed to adjust the Growth in ERUs that would result from the City spending an additional \$5M on the water treatment plant. This omission resulted in a significant overcharge to new residents in Whitefish.

City Needs To Recalculate Water Impact Fees

Using the new capacity of 8 mgd confirmed above, the number of new homes supported MUST be re-calculated.

Using the method described in the **ERU Calculation Explanation** above, substitute 8 mgd for the 5.5 mgd and divide by the 744 gpd consumed by 1 ERU, leaving 10,753 total ERUs that the water treatment plant can support. Subtract the current number of ERUs in the city (4644), leaving 6048, which is the future capacity.

Now substitute 6048 for the 2747 in the chart identified as **Addendum Water Impact Fee Calculation**. Using this number would reduce the max water impact fee from \$3018 to \$1364. More new residents will be sharing the increased cost, resulting in lower impact fees.

The average overcharge for each new home built in Whitefish after Jan 2019 is **\$1654**. Note: this fee includes \$8.5M for the phantom South Reservoir project referenced above. Removing this project increases this overcharge significantly.

(Further details: **Whitefish Water (WTP) Impact Fee Problems.docx**)

FY 2020 RESIDENTIAL OVERCHARGE ESTIMATES

Without having all the actual data that was requested from the City, it is impossible to precisely project how much the City overcharged its residents and builders. From the information that was provided, a reasonable estimate of these charges can be made. For FY 2020, the total number of permits processed by the City for each

category of buildings is known. Models were created to estimate the overcharges strictly for residential units (single family homes, townhomes, etc.) for this year.

These overcharges identified in this report would ALSO affect commercial buildings and additions which are NOT included in the estimates below.

FY 2020 Estimated Overcharge Created By Fixture Count Program Error

Most information required to make this estimate is known. One of the key factors that is unknown is the average number of fixtures in each residential unit affected by this program error. For this model, one fixture per residential unit is assumed to be affected. If less than one, the estimate will be high:

Whitefish MT Impact Fee Fixture Unit Program Error			
Residential Permits (New and Remodels)			
No. of residential permits	244		
Average No. Fixtures Overcharged	1		
Year	2020		
	Water	Sewer	
Typical Single Family Fixture Units	33	27	
As Calculated By Program w/error	35	29	
Cost Per Fixture Unit	95.8	10747	
Overcharge	192	215	
Total Overcharge + 5% admin fee			427
Total annual overcharge	\$ 104,188.00		

FY 2020 Estimated Overcharge Created By Impact Fee Collection Method

This model is based on the stated number of water and fixture units for a typical new residential unit built in FY 2020. The City uses an older estimate of 33 water fixture units and 27 sewer fixture units, but this information has not been updated in some time. If these numbers are higher, the overcharges would be actually higher.

Whitefish MT Impact Fee Overcharge Calculation			
	New Residential Units		
No. of new residential permits	132		
Year	2020		
	Water	Sewer	
Maximum Allowed	2874	3223	
Base Impact Fee	2874	3223	
Base Fixture Units	20	20	
Typical Residential Fixture Units	33	27	
Charge Per Fixture Unit	95.8	107.47	
Total Charge	4119	3975	
Overcharge	1245	752	
Total Overcharge + 5% admin fee			2097
Total annual overcharge	\$ 276,804.00		

Note: *These estimates are for smaller 3/4” metered homes. As meter size increases, the impact fee overcharges increase significantly more than the estimates listed above.*

FY 2020 Solar / South Reservoir Projects Estimated Overcharge

The Solar Array project represented roughly 13% of the total costs that can be allocated to the sewer impact fee, so the Base Fee and Charge per Fixture Unit that should have been charged are known. Likewise, the South Reservoir project represents 47% of the water impact fees. This overcharge affected both new residential units and remodels / additions. The overcharge also affects non-residential construction and would be proportionately much higher because these projects typically have larger meter sizes. This calculation uses the current collection chart used by the City today. When combined with the corrected chart, the total overcharges are less.

Whitefish MT Impact Fee Solar and South Reservoir Overcharge Calculation				
Residential Units				
No. of new residential unit permits	132			
No. of residential remodel / addition units	112			
Year	2020			
	Water	Sewer		
Base Impact Fee	2874	3223		
Corrected Base Impact Fee	1562	2813		
Base Fixture Units	20	20		
Typical New Residential Fixture Units	33	27		
Average No. Fixture Units for remodels / additions	10	10		
Charge Per Fixture Unit	95.8	107.47		
Corrected Charge Per Fixture Unit	50.8	93.77		
Overcharge Per Fixture Unit	45	13.7		
Total Overcharge New Residential Unit	1897	505.9		
Total Overcharge Remodel/Addition Unit	450	137		
Total Annual Overcharge + 5% admin fee	\$ 402,073.00			

Total Residential Estimated Overcharges

Because there is an overlap in overcharges, total FY 2020 estimated residential overcharge amounts to approximately **\$675,000**.

CORRECTED 2018 WHITEFISH COLLECTION CHARTS

After correcting the problems identified in this report, new collection charts should be created for both the water and wastewater impact fees.

Correct Water Impact Fee Collection Chart

Whitefish Water Impact Fees				
3/4" Flat Water Fee, Progressive Fee For Larger Meters				
3/4" Base Meter Size with 3/4" Max Impact Fee				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
3/4	1.00	\$1,108		
1	1.00	\$1,108	36	\$24.62
1-1/2	1.67	\$1,847	66	\$16.06
2	3.33	\$3,693	181	\$12.31
3	5.33	\$5,909	361	\$11.75
4	10.00	\$11,080	801	\$7.39
6	16.67	\$18,467	1801	\$7.39

The above chart has been modified as described below:

1. Base meter size is a 3/4 inch meter with Weighting Factors adjusted accordingly.
2. Chart replicates the Whitefish PIF and 2007 HDR Impact Fee Study collection charts.
3. Maximum allowable water impact fee is calculated using the 2018 FCS Group impact fee on page 11. Changes introduced by Whitefish after this update was published were removed due to the numerous errors and omissions by the City. The Maximum 3/4 inch meter wastewater impact fee remains at \$1108.

Correct Wastewater Impact Fee Collection Chart

Whitefish Wastewater Impact Fees				
3/4" Flat Water Fee, Progressive Fee For Larger Meters				
3/4" Base Meter Size with 3/4" Max Impact Fee				
Meter Size (Inches)	Current Weighting Factor	Base Impact Fee	Base Number of Fixture Units	Additional Cost Per Fixture Unit Above Base
3/4	1.00	\$2,813		
1	1.00	\$2,813	36	\$62.50
1-1/2	1.67	\$4,688	66	\$40.77
2	3.33	\$9,377	181	\$31.26
3	5.33	\$15,003	361	\$29.83
4	10.00	\$28,130	801	\$18.75
6	16.67	\$46,883	1801	\$18.75

The above chart has been modified as described below:

4. Base meter size is a 3/4 inch meter with Weighting Factors adjusted accordingly.
5. Chart replicates the Whitefish PIF and 2007 HDR Impact Fee Study collection charts.
6. Maximum allowable impact fee is calculated using the 2018 FCS Group impact fees on page 16. The maximum wastewater impact fee is reduced by recalculating this number, removing the Solar Array project. Maximum 3/4 inch wastewater impact fee is \$2813.

NOTES:

1. Impact Fees for a new single family home are \$9944 according to the City Manager. Fixed impact fees were \$1444 that year, leaving \$8500 for water and sewer impact fees.
2. Whitefish Staff appear to erroneously define the new maximum legal fees by setting the **Base Impact Fee** to the calculated maximum allowable fee and then adding the difference between the Base Fee parameters (3/4" 20 wfu and 20 sfu) and a **Typical Single Family** parameter (3/4" 33 wfu and 27 sfu) and multiplying by the fixture unit costs. This logic is flawed. Staff is mixing calculations with collections. Maximum impact fees are calculated in the 2018 FCS Study. Maximum fees don't change based on collections method. The collections method needs to adapt to the calculated maximum fees, not the other way around.
3. The **Charge per ERU** for sewer is calculated to be \$3,348 on page 16 in the *2018 Impact Fee Study*. However, this number was transposed to \$3,384 in the rate table on the same page (Table IV-5). The **Base Impact Fee** should be **\$3348** in this table and the **Additional Cost per Fixture Unit above Base** should be **\$111.60**. The \$3384 is incorrectly referenced in several other places within this Study. This number was further reduced by the 5% Admin Fee and was listed in *Resolutions 18-44 and 19-15* as \$3223 when it should have been \$3207. **Cost per Fixture Unit** should be \$106.90 instead of \$107.47.
4. The 2007 HDR Study discusses different techniques for collecting impact fees using meter size. As noted in this study, most cities simply use a flat fee per meter size, as is done in the first category of the Whitefish collection chart. The 5/8" meter has one flat fee, regardless of fixture units. For subsequent meter sizes, Whitefish uses a base fee plus a fixture unit count multiplied by a cost factor.
5. The 2007 HDR study defines 1 ERU as a typical new single-family residence with a **5/8" water meter** (Table ES-1). The FCS Update states that 1 ERU equates to a typical single-family residence. Page 6 contains a table that defines the "new maximum defensible" rates. Title of Table II-1 states "Total Impact Fees for a New Single Family Residence (dwelling unit)". The bottom of this table states "* charges for water and sewer assume base rate for a **3/4 inch meter**". The Nov 13 2018 Staff Report states that a new single-family residence has a **3/4" meter** (with 33 water and 27 sewer fixtures). The FCS 2018 FCS page 5 "*The maximum defensible fee per this impact fee update would result in an overall fee increase from \$5,561 (current) to \$7,934 (proposed) for a typical new single family detached*"

home". The 2007 HDR Study states that 1 ERU consumes 328 gpd (gallons per day) (page 5-3). The 2018 FCS Update states 1 ERU consumes 744 gpd (page 7). The water demand profiles for 1 ERU in the 2 studies are significantly different – 2007 HDR ERU is 5/8" meter, 2018 FCS ERU is 3/4" meter.

6. Using AWWA flow rate analysis, charts are available that show the relative difference among meter sizes. With a 3/4" meter representing 1 ERU, the next size meter (1") represents 1.67 ERU's, etc. ERU (equivalent residential unit) = EDU (equivalent dwelling unit)

Under the meter equivalent approach, the impact fees for water service would be based on rated meter capacity information published by AWWA (e.g., in the M6 manual entitled *Water Meters*), summarized as follows:

**Equivalent Residential Units by Meter Size
for City Water System**

Meter Size	Rated Capacity (gallons per minute) [1]	EDU Factor [2]
3/4"	30	1.00
1"	50	1.67
1-1/2"	100	3.33
2"	160	5.33
3"	300	10.00
4"	500	16.67
6"	1,000	33.33
8"	1,600	53.33
10"	2,300	76.67
12"	4,300	143.33

[1] Amounts based on water meter data published by AWWA.

[2] Amounts calculated by dividing the rated capacity (gallons per minute) for each meter size by the rated capacity for the smallest-sized 3/4" meter.

7. In an email dated July 21, 2021 copied the Whitefish Mayor and City Attorney among others, the City Manager states that the Solar Array project was eliminated from the City's adopted Capital Improvement Plans (CIP). There is no record of this project in any CIP from FY 2017 through FY 2021. According to the Manager, the collected fees were kept by the city and used to fund other projects, but no Addendum was created that recalculates new sewer impact fees. This was never presented to the Impact Fee Committee or approved by City Council.
8. *Kalispell MT Impact Fees, June 1 2020*, lists Single Family Residence water and sewer impact fees as \$1900 and \$2879 respectively. *Bozeman MT Impact Fees, 2021 Impact Fee Schedule*, by Henry Thomas, lists water and wastewater impact fees for typical home (1800 – 2000 sqft.) of \$2793 and \$1683 respectively. A 3/4" meter represents 1 ERU in both studies.

9. An interim Capital Improvements Plan was produced by the City Manager on Oct 29, 2018. In the introduction to this update, the Manager states that the changes to the Plan play an *“important role in supporting the need for and calculation of the maximum defensible amount of impact fees”*. Two changes were made to increase water impact fees. First was the expansion of the water treatment capacity. This already had \$5M budgeted to increase water production from 4 mgd to 5.5 mgd. \$5M was added to this project for FY 2023 for a total of \$10M. The capacity (5.5 mgd) was not increased in the Interim CIP, even after the addition of \$5M. However, in the FY 2020 CIP, capacity is increased to 8 mgd using the same \$10M. The second change was for the expansion of a South Reservoir project and again \$5M was added to the out years of this project – FY 2021. This project already had \$3.5M allocated and was now increased to \$8.5M. As of today, less than \$1M has been “presumably” spent and as of the FY 2022 CIP, nothing further will be spent until FY 2024 – FY 2026.
10. Email from City Manager, 21 July, 2018 4:51PM to myself, City Mayor, City Attorney and others states: *“The program used to calculate the number of fixtures did in fact have an error. There was no malicious or fraudulent intent behind that error/change. Our program has been corrected and now follows the 2018 Plumbing Code to determine the number of fixtures in a building. We are in the process of auditing building permits that may have been impacted by that error during the past year.”*
11. The 2007 HDR report (Page 5-2) states that the collection charts were derived from a 1999 chart used by Whitefish to collect *Plant Investment Fees (PIF)* for both sewer and water. Charts from both reports list 5/8” meters as 1 ERU.
12. City program miscalculated fixture unit counts for my home when I applied for a building permit. The max fixtures for a ¾” meter was determined to be 33 by the same program. 2018 UPC chart shows 39.
13. HDR Study, page 5-7 states: *“Customers connecting in certain areas of the City must pay an additional charge for specific facilities that benefit only those areas of town. These surcharges are described below”*. Upper Grouse Mountain residents pay 1.5396 times normal impact fees to cover the cost of a special pumping station that increases water pressure in their higher elevation.
14. *“an EDU (ERU) is representative of the average capacity required to service a typical individually metered single-family residential account”*. Bozeman MT Impact Fees, 2021 Impact Fee Schedule, page 2-3.
15. In Spring, 2019, the State DEQ issued a warning and restriction on the City that their current water treatment capacity (3.5 mgd) was insufficient and

that the City needed to halt all new connections. A waiver was issued but the City needed to increase capacity. The City eventually spent \$10M on expanding capacity at its plant, doubled its pump capacity from Whitefish Lake, and increased capacity of wastewater expulsion. The plant facility capacity increased to 8 mgd, although it would need to add 2 new filters (at a reduced cost) to reach this capacity. None of this was reflected in a new ERU calculation, thus overstating the cost per ERU. In the Nov 6 Addendum, the City added \$5M of **cost** to the water impact fee calculation without adding more ERUs that would be sharing this cost.

16. Oct 12, 10:23AM message from Neil Dezort from Whitefish Public Works stated that the normal capacity of the new WWTP is 2.07 gpd, with a peak demand capacity of 6.06 mgd.

17. American Planning Association. APA Policy Guide on Impact Fees. <https://www.planning.org/policy/guides/adopted/impactfees.htm>

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MY BACKGROUND

US Air Force Academy graduate with a degree in computer science. Served in the Air Force managing air defense computer systems. Earned 2 graduate degrees, one in computer science and the other business. Currently own a computer software company and have developed numerous complex applications for businesses and government.