

**MINUTES OF THE REGULAR MEETING OF THE
BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS
FOR FEBRUARY 2, 2005**

Chief Executive Babb called the Regular Meeting of the Council of Commissioners to order Wednesday, February 2, 2005 in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana.

ROLL CALL

11 present, 1 absent. Commissioner Dunlap was excused.

PRAYER

Commissioner Fay led the commissioners in prayer.

**APPROVAL OF THE MINUTES OF THE
REGULAR MEETING OF JANUARY 19, 2005**

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to approve the Minutes of the Regular Meeting of January 19, 2005.

ITEMS NOT ADDRESSED ON THE AGENDA

None

PUBLIC COMMENT ON ANY PUBLIC MATTER

None

CHIEF EXECUTIVE’S REPORT

Chief Executive Babb reported that the community is moving forward with the Community and Cultural Interpretative Center with the convention center and facilities to go along with that. We are in the midst of a feasibility study to make sure the site analysis is done so we can support the buildings. Also a need analysis with the business community. The URA has pledged up to five million dollars plus so this would be a very good project for Butte-Silver Bow.

He also wanted to report on some of the outreach that has been done along with the Chamber of Commerce and Local Development Corporation. On Tuesday

they went over to Helena on a bus trip to show off the new murals on the side of the bus. We took our Legislative delegation out to lunch and then we sat in our meeting with the House and the Senate to show that Butte is interested with what's happening with the State. We are starting to do some serious networking with other people in the state and show them that Butte is open for business. On Tuesday he also testified along with Shag Miller for the Airport authority. There was a House hearing and they were talking about a bill that would do away with the appointments of the Airport Authority and would make that an elected position. That is something that we oppose and I did testify on that.

We've also been working with the Montana Association of Counties and Montana League of Cities so that we do have a presence there. I visited with Commissioner Frasz today and he is planning to go to MACO's winter program and so we will have representation there and I would encourage all commissioners to be involved in any of the Montana League of Cities and Towns and also MACO.

One of the things we did this morning, down at the Board of Health. Safeway in southwest Montana has raised \$8,000 in their store for the Cervical and Breast Cancer Program so that we can do screening of women 50 and over that are disadvantaged. We gave them an award this morning.

We have two commissioners that have gone off of boards and our office has prepared certificates that we want to give to these commissioners. The first one is Mike Sheehy who has gone off the Fire Advisory Committee. He offered a certificate to Mr. Sheehy. The other commissioner that has gone off the Southwest Mental Health Board is Charlie O'Leary. He too received a certificate.

SECTION I

PUBLIC HEARING

FOR THE PURPOSE OF SOLICITING COMMENTS REGARDING AN APPLICATION FROM BASIN CREEK POWER SERVICES, LLC FOR A LETTER OF CREDIT GUARANTEED BY THE HARD-ROCK MINE TRUST RESERVE ACCOUNT TO ASSIST IN OBTAINING FINANCING TO ENSURE THE START OF CONSTRUCTION IN MARCH 2005 OF THE BASIN CREEK PROJECT. **Proof of publication was noted and placed on file.** (Communication No. 05-24 being held in Committee of the Whole.)

Danette Gleason, Assistant Finance and Budget Director, came to the microphone. She told the commissioners County Attorney Bob McCarthy, J. R. Richardson and Mr. Williams, the president of Basin Creek Power met last week and got more comfortable with the project. On Monday, Mr. Williams had set up a conference call with CIT Capital Finance, which is the long-term financing party, and we were assured that the project is definitely going to go through.

Chief Executive Babb opened the public hearing at 7:30 PM and called for proponents. Mr. Jim Williams, President of Basin Creek Power Services came

forward and told the commissioners that the only step left to securing full financing was the signing of the papers. He expects that to be done in 3-4 weeks. It is a more than 35 million dollar capital investment. They want to have it on line for next winter's heating season. It will be benefit to the ratepayers by taking care of their short-term peaking requirements.

Also speaking as a proponent was Jim Smitham, Interim Executive Director of the .Butte Local Development . He was in support of the project. It will create permanent jobs, good construction jobs.

There being no there proponents, Chief executive Babb then called for opponents. On the third and final call, there being no opponents, he called the public hearing closed at 7:40 PM.

SECTION II

PRESENTATION

1. 05-55 Joe Lee, Commissioner District #2, requesting Superfund presentation by Montana Department of Environmental Quality

Commissioner Lee said he invited a representative of the Montana Department of Environmental Quality, Mr. Joe Griffin, to give a presentation regarding the Butte Priority Soils and how they relate to the proposed plan of EPA.

Joe Griffin, Department of Environmental Quality's Project Officer for Butte Priority Soils, stated that they are almost in perfect alignment with what Butte-Silver Bow has put in their preferred solution. He said he would speak to the caps, the house dust and the Parrot tailings. Their feeling on caps on the Butte Hill is that is it widely used and they think that development can still occur there. He doesn't believe he has seen any failures in caps. It's probably not the perfect answer. But, if you started digging them up you wouldn't know where to stop because this is a highly mineralized hill. They believe you should try to reproduce the native vegetation on a cap, especially if it's going to be an open space. The proposed plan recommends this.

On the problem of attic dust, he supports the plan to continue the county health department program for testing houses and removing contaminated dust and soils when necessary. You have to rely on the science of risk assessment. There are no extraordinary risks to this if you are not in prolonged contact with attic dust. DEQ believes there should be an on-going health evaluation or health-tracking program that goes forward with this. That's in the proposed solution that Butte-Silver Bow wrote.

On the Parrot Tailings, they don't feel that the studies were complete. Unless they were willing to postpone the decision the decision, DEQ would prefer to take the more conservative route and just remove the Parrot, also the diggings east and

the north side tailings. They prefer Alternative 5B and do not advocate tearing down the Civic Center and Albertson's shopping.

There were several commissioners that had questions for Mr. Griffin and then Commissioner Lee moved to place Communication No. 05-55 on file. The motion was seconded by Commissioner O'Leary and carried with a unanimous verbal vote.

SECTION III CONSENT AGENDA

- A.**
1. COMMITTEE OF THE WHOLE MEETING REPORT
 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 3. JUDICIARY COMMITTEE MEETING REPORT
 4. PUBLIC WORKS COMMITTEE MEETING REPORT
 5. PERSONNEL COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any segregation. Commissioner O'Leary made a "friendly amendment" to Communication No. 05-49 to change the recommendation from "refer to Finance and Budget Committee" to "concur and place on file".

It was then moved by Commissioner O'Leary, seconded by Commissioner Bury and carried with a unanimous verbal vote for adoption of the Consent Agenda, Section A, 1 through 5 and Section B, 1 through 28.

SECTION IV COMMUNICATIONS TO BE READ AND ACTED UPON

1. 05-57 David B. Coleman, Commissioner District 8, requesting time on 2/2/05 agenda to discuss correspondence being drafted regarding Butte Priority Soils Project.

Commissioner Coleman asked that Communication No. 05-57 be held in abeyance pending the receipt of the term paper and other outcomes before we determine if this is the direction we want to go.

2. 05-68 Dave. B. Coleman, Commissioner District No. 8, requesting time on 2/2/05 agenda to make a presentation about an issue at hand concerning the membership of the Local Workforce Investment

Board.

Commissioner Coleman stated this is a mostly an informational point about the Workforce Investment Act. It was put into place in 1998. The state of Montana is separated into two parts. One is called the Balance of State. The other is the Concentrated Employment Program Area of which Butte-Silver Bow and its neighboring counties are a part of. He went on to explain how it works.

Commissioner Coleman moved to place Communication No. 05-68 on file. The motion was seconded by Commissioner O'Leary and carried by a unanimous verbal vote.

- 3.. 05-76 Jim Williams, President, requesting suspension of rules and seeking immediate approval of the Basin Creek Minor Subdivision.

Commissioner O'Leary said this is slightly redundant because we already have 05-72 which was from Russ Connole, which did the exact same thing and approved the sub-division and we just passed that in the Consent Agenda. We need not take any action on this. We can simply place it on file and he so moved. It was seconded Commissioner Bury and carried by a unanimous verbal vote.

4. 05-77 Paul Babb, Chief Executive, requesting concurrence in appointment of Steven Jaksha, Ryan McCarthy and Curtis Kindt as entry-level firefighters.

Chief Executive Babb asked for Council concurrence in this appointment. These are the top three candidates that were selected by me and the Fire Commission.

Commissioner O'Leary moved to concur with the request in Communication No. 05-77 and place on file. The motion was seconded by Commissioner Bury.

On the question, Commissioner Sheehy asked if there was a time frame on these appointments. Chief Executive Babb asked the County Attorney to respond to that. He stated that these are appointments and there is no time frame. Danette Gleason came to the microphone and told the commissioners that when the appointments were brought to her attention, they weren't immediate appointments. There is no vacant position at this time. Chief Executive Babb stated that we do not now have any openings at this time. Fire Chief Miller is in the process where there will be one vacancy to make sure that we have budget

authority. We are going to appoint all three of those and as vacancies come open we will fill those vacancies. He called on Tim Clark, Personnel Director. Mr. Clark said each year there is a testing process that anybody that wants to be a firefighter in the State of Montana has to go through that testing consortium process. That is a written test and then a rigorous physical test and then they present to the community a list of names that have passed those two tests who have expressed an interest in applying for Butte-Silver Bow. The fire commission takes those names and interviews those individuals and develops a list of eligible candidates. We don't make a heck of a lot of appointments to the Fire Department. We have a great number of local individuals who take that test with the hope of becoming a firefighter somewhere in Montana. They sit on eligibility list for a year and we never make an appointment and so they go back the next year and take the test again and hope they score high enough to where we will consider them for an appointment. We haven't made an appointment to the Fire Department since 2002. We have one opening within the Department now that's left for a vacancy. It's my understanding there may be two other openings in the near future. What this is, it's a conditional appointment and it's conditioned upon the fact that there would be openings within the Department and it's conditional upon them passing several phases of the testing process that are left. And there are four phases that are left. You have to pass a physical by a doctor, a functional capacity assessment, a psychological exam and there's one other one. We've checked with the consortium and they are in agreement that we can do this and that these people will not have to go back and test again. As these openings would occur, we would come back to you with the actual appointment.

He later explained that in his letter to the Chief Executive he explained that the appointments would have to be made conditional upon those individuals passing the testing that are left and that the appointment themselves would depend upon them passing the tests and that there be vacancies. I recommended that we wait until that happened before we made the actual appointment.

Jeff Miller, Director of Fire Services for Butte-Silver Bow said his understanding of this was that we currently have one vacancy and we are anticipating two other vacancies in the foreseeable future and his assumption was that these appointments would be made with the condition that all these requirements are met and then these candidates would fill these positions as they came open.

Chief Executive said that after all that has been said we will have conditional approval as the vacancies come open. We will appoint per the ordinance. Commissioner O'Leary asked the County Attorney if we can do a conditional appointment at this time. He replied there is nothing in the ordinance that says that can be done. You can approve a list of qualified candidates. There are still some things that remain to be done, but the appointment of a firefighter is a final appointment and from the time the appointment is approved, the probationary period starts to run. So this is not an appointment.

Commissioner Sheehy made a substitute motion to approve the list of firefighters and hold in abeyance until the jobs come forward. Commissioner Kerns seconded the motion. The motion carried with a unanimous verbal vote.

Fire Chief Jeff Miller then introduced the three candidates Curtis Kindt, Ryan McCarthy and Steven Jaksha.

The Council then recessed at 9:00 PM. The Council reconvened at 9:10 PM with a roll call vote of 11 present and 1 absent. Commissioner Mulcahy had left the chambers.

It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to place Communication No. 05-77 on file.

SECTION V

ORDINANCES AND RESOLUTIONS REFERRED TO JUDICIARY

Commissioner O'Leary segregated Council Resolution No. 05-9 and move to Section VII.

1. COUNCIL RESOLUTION NO. 05-5

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW DEPARTMENT OF PUBLIC WORKS, WATER UTILITY DIVISION FROM THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, OFFICE OF DOMESTIC PREPAREDNESS (ODP) FOR THE WAR SUPPLEMENT CRITICAL INFRASTRUCTURE FOR SECURITY ENHANCEMENT FOR THE BIG HOLE WATER TREATMENT PLANT TO

BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL RESOLUTION NO. 05-6

A RESOLUTION URGENTLY REQUESTING THE GOVERNOR OF MONTANA, BRIAN SCHWEITZER, AND THE MONTANA STATE LEGISLATURE TO TAKE THE NECESSARY STEPS TO PROTECT BOTH THE HEALTH AND SAFETY OF THE MONTANA CATTLE HERDS AND MONTANA BEEF CONSUMERS FROM ACTIONS BY THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) TO RELAX THE UNITED STATES IMPORT RESTRICTIONS FOR COUNTRIES KNOWN TO BE AFFECTED BY BOVINE SPONGIFORM ENCEPHALOPATHY (BSE) DISEASE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

3. COUNCIL RESOLUTION NO. 05-8

A RESOLUTION PROTECTING THE CIVIL LIBERTIES OF THE CITIZENS AND VISITORS OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, MONTANA BY CALLING UPON FEDERAL, STATE AND LOCAL OFFICIALS, AGENCIES AND INSTITUTIONS TO AFFIRM AND UPHOLD CIVIL RIGHTS AND CIVIL LIBERTIES AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

4. COUNCIL RESOLUTION NO. 05-9

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE BASIN CREEK POWER MINOR SUBDIVISION – SUMMARY REVIEW OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

5. COUNCIL RESOLUTION NO. 05-10

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE VIGILANTE ESTATES NO. 3 MINOR SUBDIVISION – SUMMARY REVIEW OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION VI

ORDINANCES – 2ND READING

1. COUNCIL BILL NO. 05-3 ORDINANCE NO. 05-3

AN ORDINANCE PROVIDING FOR THE REAPPORTIONMENT OF THE COUNCIL OF COMMISSIONER DISTRICTS BASED UPON THE 2000 DECENNIAL UNITED STATES CENSUS; REPEALING A PORTION OF BUTTE-SILVER BOW ORDINANCE NO. 052 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O’Leary to amend Council Bill No. 05-3, Ordinance No. 05-3, page 9 line 4 from the bottom. The language a distance of 279 feet more or less to be placed before the word addition. Second amendment – page 10, line 6 and 7 the term a distance of 2,027 feet more or less to be placed at the bottom of page 5 before the words along said township lines and lastly, the third amendment, the page 14, third line from the bottom to insert the word to before the words the south line of section 25. Commissioner Bury seconded the motion and it carried by a roll call vote of 10 yeas, 0 nay and 1 absent. The next motion by Commissioner O’Leary is to move that Council Bill No. 05-3, Ordinance No. 05-3 be moved to final reading and passed having been deemed fully read at length. The motion was seconded by Commissioner Bury and carried by a roll call vote of 10 yeas, 0 nays and 1 absent.

SECTION VII

ORDINANCES AND RESOLUTIONS – FINAL PASSAGE

1. COUNCIL BILL NO. 05-2 ORDINANCE NO. 05-2

AN ORDINANCE AMENDING SECTION 1 OF BUTTE-SILVER BOW ORDINANCE NO. 283 AND CHAPTER 10.52 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “PARKING”; AMENDING SECTION 10.52.1030, B-SB MC AND ENTITLED “MONTANA TECH RESIDENTIAL PARKING PROGRAM”; AMENDING SECTION 10.52.1030(A), B-SB MC TO RESTRICT PARKING ON BOTH SIDES OF THE 1100 BLOCK OF WEST GRANITE STREET, THE 1100 BLOCK OF WEST BROADWAY STREET, THE 1100 BLOCK WEST PARK STREET, THE NORTH SIDE OF THE 1200 BLOCK OF WEST PARK STREET, THE 1200 BLOCK OF WEST QUARTZ STREET AND THE 1200 BLOCK OF WEST COPPER STREET AND PROVIDING OR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a roll call vote of 10 yeas, 0 nays and 1 absent to place Council Bill No. 05-2, Ordinance No. 05-2 on final reading and passed having been deemed fully read at length.

2. COUNCIL RESOLUTION NO. 05-3

A RESOLUTION APPROVING A GRANT OF EASEMENT TO THE GREENWAY SERVICE DISTRICT, A MONTANA MULTI-JURISDICTIONAL SERVICE DISTRICT, ON PROPERTY OWNED BY BUTTE-SILVER BOW COMPRISED OF APPROXIMATELY 4.26 ACRES OF PROPERTY LOCATED IN TRACT 1 OF CERTIFICATE OF SURVEY 767-A, LYING SOUTH OF OLD HIGHWAY 10, SUCH PROPERTY REFERRED TO AS THE ROCKER DEPOT, IN THE NORTHWEST-QUARTER OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., BUTTE-SILVER BOW COUNTY, MONTANA, WITH SUCH EASEMENT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE ROCKER DEPOT TRAILHEAD FACILITY AND NECESSARY APPURTENANCES TO SERVE THE SILVER BOW CREEK GREENWAY; FINDING THE NECESSARY FACTS FOR THIS RESOLUTION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a roll call vote of 10 yeas, 0 nays and 1 absent to place Council Resolution No. 05-3 on final reading and passed having been deemed fully read at length.

3. COUNCIL RESOLUTION NO. 05-4

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF COLORADO STREET IN AND ADJACENT O BLOCKS 48 AND 49 OF THE VALLEY ADDITION TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN. It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a roll call vote of 10 yeas, 0 nays and 1 absent to place Council Resolution No. 05-4 on final reading and passed having been deemed fully read at length.

**SECTION VII ORDINANCES AND RESOLUTIONS –
SUSPENSION OF THE RULES FOR FINAL PASSAGE**

It was moved by Commissioner O'Leary, seconded by Commissioner Bury, and carried by a roll call vote of 10 yeas, 0 nays and 1 absent to suspend the rules for the purpose of passing Council Bill No. 05-7 and Council Resolution No. 05-9 by waiving subsection 7 of rule XXXVI, of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.

1. COUNCIL RESOLUTION NO. 05-7

A RESOLUTION PLEDGING RESERVE FUNDS FROM THE HARD-ROCK MINE TRUST RESERVE ACCOUNT TO BASIN CREEK POWER SERVICES, LLC FOR A LETTER OF CREDIT TO ASSIST IN OBTAINING FINANCING TO ENSURE THE START OF THE CONSTRUCTION IN MARCH 2005 OF THE BASIN CREEK PROJECT (PROJECT); PROVIDING FOR USE OF HARD-ROCK MINE TRUST RESERVE ACCOUNTS FUNDS TO PROMOTE DIVERSIFICATION AND DEVELOPMENT OF THE ECONOMIC BASE WITHIN THE JURISDICTION OF THE CITY-COUNTY OF BUTTE-SILVER BOW, IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN SECTION 7-6-2225, MCA AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

Commissioner O'Leary said he had a list of 15 amendments to this resolution. He asked the County Attorney to speak to the amendments. County Attorney Bob McCarthy said that Mrs. Gleason and himself took the names of the entities, the financing company, the builder of the generators, etc. from the letter that was accompanying it. The names weren't exactly right. Most of the amendments deal with using the correct names. Danette Gleason also explained the letter of credit. The Letter of Credit will be for \$750,000 up to 90 days. It is just a bridge financing. The letter of credit will probably only be out there for about 35 days. CIT Capital Financing is the long-term financier on the project. Mr. McCarthy said the amendments are mostly clerical.

It was then moved by Commissioner O'Leary to amend Council Resolution No. 05-7 according to the document attached to the resolution entitled "Amendment No. 1 effective February 2, 2005" proposed by Commissioner O'Leary. The motion was seconded by Commissioner Bury and carried by a roll call of 10 yeas, 0 nays and 1 absent.

It was then moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a roll call vote of 9 yeas, 1 nay and 1 absent (Commissioner Sheehy voting nay) to place Council Resolution No. 05-7 be passed on final passage as amended having been deemed fully read at length.

It was then moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a roll call vote of 10 yeas and 9 nays to place Resolution No. 05-9 be placed on final reading and passed having been deemed fully read at length.

ADJOURN

Commissioner O'Leary reminded the commissioners that the Fire Advisory meeting will be next Tuesday, February 8th.

There being no further business to come before the Council, it was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 9:30 PM

APPROVED BY THE COUNCIL OF COMMISSIONERS THIS 16TH DAY OF FEBRUARY, 2005

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER