GOVERNMENT REVIEW STUDY COMMISSION
COUNCIL CONFERENCE ROOM
418 EAST SECOND STREET
WEDNESDAY, JUNE 4, 2025
5:30 PM

1) Call to Order

2) Communications from the Public - (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The presiding officer has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

3) Meeting Decorum and Comments from the Chairman

4) Old Business
   a) Survey Responses
   b) Conversation with Dan

5) New Business
   a) Vote on six items to present to the public, to narrow down to three
   b) Nominate one person to finish the tentative report with Chairman McDowell by June 6th
   c) Scheduling:
      1) Meeting within one week to vote on the Tentative Report
      2) Schedule a Public Hearing to adopt the Report
      3) Schedule supplemental meetings

6) Public Comment

7) Communication to or from Study Commissioners
   a) Letter from Jenny Paatalo – public submission of evidence regarding improper Impact Fees and Request for Review

8) Next meeting: TBD

9) Adjournment

The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.

- We are responsible for respectful and courteous dialogue and participation.

- We respect diverse opinions as a means to find solutions based on common ground.

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

- We value informed decision-making and take personal responsibility to educate and be educated.

- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.

- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.

- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09
February 20, 2007

PARLIAMENTARY MOTIONS GUIDE

Based on Robert's Rules of Order Newly Nevised (11th Edition) and www.jimslaughter.com

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

PRIVILEDGED MOTIONS

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Adjourn	I move to **adjourn**	No	Yes	No	No	Majority	Yes
Take a break	I move to **recess** for	No	Yes	No	Yes	Majority	No
Register complaint	I rise to a **question of priviledge**	Yes	No	No	No	None	No
Orders of the day	I call for the **orders of the day**	Yes	No	No	No	None	No

SUBSIDIARY MOTIONS

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Lay aside temporarily	I move to **lay the question on the table**	Yes	Yes	No	No	Majority	Negative vote only
Close debate	I move the previous question	No	Yes	No	No	2/3	Yes
Limit / extend debate	I move that **debate be limited to...**	No	Yes	No	Yes	2/3	Yes
Postpone to a certain time	I move to **postpone** the motion to...	No	Yes	Yes	Yes	Majority	Yes
Refer to a committee	I move to **refer** the motion to...	No	Yes	Yes	Yes	Majority	Yes
Amend a motion	I move to **amend** the motion by...	No	Yes	Yes	Yes	Majority	Yes
Kill main motion	I move that the motion be **postponed indefinitely**	No	Yes	Yes	No	Majority	Affirmative vote only

MAIN MOTIONS

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Bring business to motion	**I move that (or "to")...**	No	Yes	Yes	Yes	Majority	Yes

No order of precedence. Arise incidentally and decided immediately.

INCIDENTAL MOTIONS

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Enforce rules	**Point of order**	Yes	No	No	No	None	No
Submit matter to assembly	I **appeal** from the decision of the chair	Yes	Yes	Varies	No	Majority	Yes
Suspend rules	I move to **suspend the rules** which...	No	Yes	No	No	2/3	No
Avoid main motion altogether	I **object to the consideration** of the question	Yes	No	No	No	2/3	Negative vote only
Divide motion / question	I move to **divide the question**	No	Yes	No	Yes	Majority	No
Demand rising vote	I call for a **division**	Yes	No	No	No	None	No
Paliamentary law question	**Parliamentary inquiry**	Yes (if urgent)	No	No	No	None	No
Request information	A **point of information,** please.	Yes (if urgent)	No	No	No	None	No

No order of precedence. Introduce only when nothing else pending.

RENEWAL MOTIONS

YOU WANT TO:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?	RECONSIDER?
Take matter from table	I move to **take from the table...**	No	Yes	No	No	Majority	No
Cancel or change previous action	I move to **rescind / amend** the motion...	No	Yes	Yes	Yes	2/3 or majority w/notice	Negative vote only
Reconsider motion	I move to **reconsider** the vote on...	No	Yes	Varies	No	Majority	No

Formal Public Submission and Request for Action

To: Whitefish Local Government Review Commission

Re: Public Submission of Evidence Regarding Improper Impact Fees and Request for Review

Date: 23 May, 2025

Dear Members of the Local Government Review Commission,

This letter serves as a formal, public submission of evidence, testimony, and documentation regarding the systemic and potentially unlawful overcharging of water and sewer impact fees by the City of Whitefish from 2018 through 2028. This information is submitted pursuant to Montana's constitutional and statutory guarantees of public participation and transparency, specifically under Article II, Sections 8 and 9 of the Montana Constitution, and Montana Code Annotated § 2-3-103 and § 7-3-175.

The impact fees imposed by the City between 2019 and 2023 were litigated through a Class Action lawsuit, resulting in refunds issued to nearly 450 property owners, affecting approximately 700 households and businesses. Our estimate (and that of the Class Action attorneys) of the damages suffered by Whitefish residents was approximately $4,000,000, although the property owners settled for considerably less. The problems we identified with the 2024-2028 TischlerBise impact fees are more serious and have the potential of affecting even more property owners and households in the City. The damages are estimated to exceed $6,000,000.

We are submitting these documents for your review with the intention of exposing these problems with Whitefish fees. Our only interest is that the City investigate these problems and correct them so that Whitefish property owners are treated fairly and have the confidence that the City is operating within both State laws and within the 5th Amendment of the US Constitution (Takings Clause).

You have indicated that the documents previously provided were not considered because they were not made part of the public record. To address this, we now submit this material as a formal 'Public Petition and Request for Investigation and Recommendation.'

The materials include: (1) a detailed investigative report outlining over $10 million in estimated unlawful fees; (2) supporting documents, including emails, consultant reports, and financial calculations; and (3) a proposed corrective course of action consistent with the Review Commission's duty to recommend changes to the structure and operation of the local government.

Montana citizens are guaranteed the right to observe deliberations of public bodies and to participate in decisions affecting them. MCA § 2-3-103 explicitly provides that all meetings and actions of public bodies must permit and consider public input. Further, MCA § 7-3-175 requires your commission to conduct a comprehensive review of government operation and to consider public input and evidence in issuing its recommendations.

We respectfully request that the Commission accept this submission into the public record, review the documents now formally designated as public, and initiate action consistent with your oversight mandate. Failure to review such material not only undermines the spirit of open government but may constitute a denial of public participation rights protected by Montana law.

We are hopeful that the Commission will honor its duty to the citizens of Whitefish by acting on this formal submission. We welcome the opportunity to present these findings publicly and to work collaboratively toward reform that benefits all stakeholders.

Our submission includes Summary and Detailed descriptions of the FCS and TischlerBise impact fee problems. Also included is a document that links to 3 videos we prepared demonstrating these problems. All of these documents are supported by City documents as well as emails, depositions and documents provided to the Class Action attorneys. Because of the volume of these documents, we can provide any specific information upon request.

Sincerely,

Bill Burg, burgs.ski@bresnan.net 818 324 6114
Paul Gillman, pgaz@yahoo.com, 602 717 3142
Jennifer Paatalo, jkkbpaat@gmail.com, 406 780 1721

On Behalf of Concerned Citizens and Property Owners of Whitefish

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 ¾" 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 - 2023. 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	0	10	210
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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" meters would pay impact fees greater than $3223. If the HDR chart had been properly adapted to a ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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 ¾" 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
		Treatment/Supply	
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
		Treatment/Supply	
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
		Treatment/Supply	
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	$ 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 Prcgram 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 **¾ inch meter**". The Nov 13 2018 Staff Report states that a new single-family residence has a **¾" 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 ¾" meter.
6. Using AWWA flow rate analysis, charts are available that show the relative difference among meter sizes. With a ¾" 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/" 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 re-calculates 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 ¾" 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.

2018 Whitefish Montana Impact Fee Overcharges

Summary of Water and Sewer Impact Fee Problems

2018 FCS IMPACT FEE PROBLEMS

In 2018, Whitefish consultant FCS created an Impact Fee Update for Whitefish MT. This update made specific recommendations among these, the maximum allowable water and sewer impact fees the City could. Although we found certain problems with the original report, the majority of these problems were created by the City Manager after the final FCS report was published in Aug, 2018.

1. Double Counted Fixture Units. Responsible party***: Unknown Whitefish employee***. The City management ignored the 2018 Uniform Plumbing Code (UPC) when an unidentified employee double charged certain fixture units and oversized water meters required for a dwelling. City management claimed it was an "accident" that it couldn't read and use simple fixture and meter sizing charts (page 146 and 147 of the 2018 UPC). Initially the City Manager claimed this only affected a handful of residents. Hundreds of homeowners, developers and residents were overcharged. The City only admitted to this "accident" after we contacted the Montana Department of Labor and Industry who in turn asked the City to explain this error. In the Class Action, the City agreed to pay over $200K in refunds to hundreds of property owners.

> *Fixture unit counts are incorrectly calculated, and meter sizes improperly determined. Standalone shower fixture units are double counted. City fails to comply with City Ordinance and use UPC (Uniform Plumbing Code) standards when determining fixture units and size of water meters.* ***Whitefish Fixture Unit and Meter Sizing Problems.docx*** *Est. Cost To Avg. Resident* ***$427.***

2. Phantom Solar Project. Responsible Party: ***FCS and City Manager***. Whitefish deliberately padded the costs used in the ***2018 FCS Group Impact Fee Update*** wastewater fee. One projects did not meet the minimum guidelines established by Montana Statutes and City Ordinances which govern the calculation of impact fees. This project was the ***$4 Million Solar Array*** listed as a sewer project that was never approved by the City Council, was never budgeted and never included in any Capital Improvement Plan (*as required by law*). This exact statement was affirmed by the City Public Works Director in an email exchange with FCS. Despite this, the City Manager and FCS knowingly included this project in the FCS report and the City Council voted to charge all new Whitefish homeowners for this unapproved and ill-conceived phantom project. However, just one year later the City Council failed to approve funding for this very project. The City Manager ignored Montana statutes and City ordinances and refused to issue refunds to the residents who had been overcharged. Whitefish continued to charge new and some existing homeowners for this phantom project. In a email to myself, the Mayor and City Attorney in July, 2021, The City Manager misrepresented that the Council had previously approved this project. She rationalized that the new treatment plant costs offset the $4 million. This ***imaginary*** re-calculation, however, failed to account for the additional capacity that these new costs added to the wastewater project. Recognizing this additional capacity would actually have resulted in a REDUCTION of sewer impact fees if the manager had been fiscally responsible, followed the law and performed a ***real*** impact fee re-calculation.

> ***$4 Million Solar Array*** *Included in Wastewater impact fee calculations was never budgeted, analyzed, or approved by Council. It was never included in any Whitefish CIP nor was it ever built. When the project was later determined to be infeasible and rejected by City Council, fees were not refunded. Project was not removed from impact fee collections. Instead, City Manager claims new costs of new wastewater treatment plant offset this $4M. No increased capacity that resulted from these new costs were reflected in the imaginary recalculation done by the City Manager.* ***Whitefish Wastewater (Solar) Impact Fee Problems.docx*** *Est. Cost To Avg. Resident* ***$430.***

3. Padded Water Project Costs. Responsible Party: ***City Manager / Public Works Director***. Within days after the publication of the 2018 FCS Update, Two City officials padded the costs used to calculate water impact fees by adding $10 Million of new, undocumented costs. This was documented in several emails. *This was done for the sole purpose of increasing water impact fees***.** The *FY 2019 Capital Improvement Plan* (CIP) had just been published weeks before and did NOT include these costs. City management used this $10 Million to recalculate water impact fees but OMITTED the benefits these costs provided in its re-calculations. This included the increased capacity (2 mgd water production) added to its Water Treatment Plant resulting from these expenditures. This increased capacity was documented in the 2020 CIP, but ignored in the City Manager's recalculations. By ignoring the increase in capacity in its calculations, the City deliberately and significantly raised the impact fees imposed on its residents. If the additional plant capacity would result in far more new homes being supported by the water treatment facility. This would reduce the amount of impact fees each individual new resident should have to pay. Instead, City management failed the citizens of Whitefish by imposing higher water impact fees. These water impact fees were nearly three times the maximum allowed by law, as calculated by the independent consulting group, FCS.

> *Additional $5 Million added to Water Treatment impact Fee calculation without any documentation showing increased capacity.* ***Whitefish Water (WTP) Impact Fee Problems.docx*** *Est. Cost To Avg. Resident* ***$1630.***

> ***South Water Reservoir*** *project needs further investigation. Additional $5M added by City Manager and Public Works Director with no documentation. Project changes names and details and appears to be nothing more than an impact fee generator. Years of Capital Improvement Plans include this project, yet it has no specific published engineering study supporting it along with the $3.5 million cost or timeframe at the time impact fees were calculated by FCS and later increased by City Manager to $8.5 million.. Impact fees collected for this project appear to be diverted to other City projects that do not qualify as impact fee programs.* ***Whitefish Water (South Reservoir) Impact Fee Problem.docx****. Est. Cost To Avg. Resident* ***$1312.***

4. Faulty Collection Charts. Responsible Party: ***City Manager***. Whitefish chose to use a collection chart developed nearly 20 years ago that was incompatible with the current 2018 FCS Update. City Management deliberately inserted the maximum allowable fees computed by their consultant into a collection chart designed for a different base meter. By doing so, the City charged its residents much higher fees than allowed by law. No internal controls were in place to question this error. The use of this faulty chart was deemed acceptable to City management and its contractor without the basic understanding of how the older chart was designed. Even when their own Staff Report showed they were overcharging residents, the City Manager attempted to cover up this fact by *redefining the maximum allowable rates*.

> *Collection Chart created by City Manager and used by City is not compatible with 2018 Impact Fee Update resulting in significant overcharges.* ***Whitefish Collection Chart Impact Fee Problems (Overview).docx,.*** *Est. Cost To Avg. Resident* ***$2000.***

5. Conflicting Water Demand Reports. Responsible Party: ***Unknown City Employee***. The FCS Impact Fee Update used water usage demand that was twice the calculated water demand of the prior two and subsequent impact fee report. The FCS demand was also twice the demand of what was submitted by the City to the Montana Department of Environmental Quality. These two conflicting reports were used and submitted to the state agency within months of each other. The importance of this statistic is that water demand is directly proportional to impact fees – higher the demand, higher the impact fee.

> ***Water Demand Statistic Problem.*** *This problem was discovered by Plaintiff attorneys during* ***Beck et al****. Class Action. The City Manager and Public Works Director produced through their consultants two different individual water usage statistics that conflict. The higher Demand produced by FCS and used by the City Manager resulted in higher impact fees. Lower Demand produced by AE2S was submitted to the Department*

of Environmental Quality. If the DEQ report water demand statistic had been used to calculate Whitefish impact fees, they would have been roughly half of what the City charged. Both conflicting statistics were produced during same time period. ***Whitefish Conflicting Water Demand Reports.docx***

Each of these identified problems is supported by a detailed report. A full report is titled ***Whitefish Impact Fee Problems, January 2022***. Besides the above items, during the course of the lawsuit and investigation, we found numerous other smaller accounting problems including transposed numbers used to calculate fees, adjustments made to the water and sewer collection charts (between FCS report submission and final charts approved by Council), as well as accounting gimmicks that would not pass GAAP (Generally Accepted Accounting Principles). In all there were 12 discrepancies and errors discovered. **ALL OF THESE ERRORS WERE IN FAVOR OF THE CITY**.

NO CONTROLS IN PLACE

In 2018, during the development of the impact fees imposed on Whitefish property owners starting in 2019, the City Director of Finance, Dana Smith, was also the acting City Manager. For unknown reasons, the City Manager was not actively participating in most City functions. Smith also was actively involved in the development and calculation of impact fees along with their paid consultant, FCS Group. From emails, we found that she was overriding other City officials and the Consultant in discussions about project inclusion in the 2018 impact fees. In effect, Smith maintained 3 different roles in the 2018 impact fees. From emails and City documents, most of the problems we discovered with these fees were the result of direct actions taken by Smith.

When we uncovered these problems, we submitted them in writing to the City Manager and City Council in 2021. At the Council meeting where our report was submitted in Sept 2021, the City Manager downplayed the significance of the errors we documented and misrepresented and downplayed her role in the impact fees she was primarily responsible for. The Council rejected our recommendation that an independent firm audit these fees and correct them. From start to finish, the City Manager was responsible for the calculation and imposition of these unlawful fees. She controlled the process by a) developing the problematic fees, b) as City Manager, pushing these fees through the City administration, c) as Director of Finance, promoting them through the Impact Fee Committee, and finally as City Manager, presenting and recommending these fees to the City Council. The 2018 impact fees were approved by the Council in Dec, 2018. There were no active controls over this one person.

After this meeting, we (Bill Burg, myself, and William Halama) actively recruited developers and homeowners and one of the major developers contacted his attorney who launched a Class Action lawsuit. We affirm that if not for the actions of the City Manager and apparent violations of state law, we would not have initiated this lawsuit.

Analysis of 2024 TischlerBise / Whitefish Impact Fees

Revised December, 2024

TischlerBise (TB) performed an Impact Fee Update (Service Area Report) for the City of Whitefish that was approved by the City Council on Oct 16th, 2023. The report was written by Colin McAweeney of TischlerBise Inc. The report has numerous errors that conflict with the enabling Montana statute 7-6-1602, specifically failing to calculate impact fees properly and proportionately.

The TischlerBise report provides insufficient documentation on projects used to compute fees. They simply took information provided by the City and put this into their calculation programs without independent analysis. It is impossible to determine if the City was mixing both impact fee eligible projects and those that do not qualify when determining project costs and calculating impact fees.

One error stands out, however, and it affects nearly 68% of the 2024 impact fees, specifically the wastewater and water impact fees.

WASTEWATER IMPACT FEES

Background

In late 2018, the Montana Department of Environment Quality submitted a report to Whitefish showing that the City's wastewater treatment plant was polluting the Whitefish River. The City had two options: fix the aging plant or install a new plant. The City opted to build a new plant and awarded a contract to Swank Enterprises for $20M in early 2020. One of the benefits of installing a new plant was the increased capacity that this plant would provide, meaning more homes and businesses could be served by this plant. Wastewater plant capacity increased from roughly 1.25 mgd (million gallons per day) to 2.25 mgd, according to Whitefish officials and TischlerBise.

Since the new plant was built to fix a deficiency, impact fees cannot normally be calculated using the full $20M cost. However, MT law does allow a portion of this cost to be eligible for impact fees since capacity was increased.

In late 2022, in the middle of an impact fee Class Action lawsuit, Whitefish contracted TischlerBise to produce its 2024 impact fee update, including its wastewater impact fee. Based on City emails, the initial fee calculated by TischlerBise was approximately $700, which was based solely on the new plant. TischlerBise and City officials decided this fee was too low, so the cost of a small new piping project was added to the fee calculation. The City had used this same project for calculating impact fees in the prior 2018 impact fee update. Using data provided by the City, TischlerBise calculated a new fee which increased only $34 because the piping project cost was so small. However, TischlerBise and the City deliberately altered the data used to compute the piping fee and the wastewater impact fee incredibly rose to over $4000! **The new data was inappropriate for impact fee calculations because of incompatible dimensions.** As public works and impact fee professionals, both the City Public Works Director and the TischlerBise consultant should have known the data used to calculate wastewater and water fees was WRONG. TischlerBise combined the two calculations of the plant and piping impact fees into one to mask this problem. As a result of this flawed calculation, Whitefish property owners are now overpaying by more than $3300 each in wastewater impact fees. Over the course of the 5 year

TischlerBise report, the City is projected to collect over $4,000,000 for a project that by law the City can only collect $177,000, in violation of both state law and property owner's Constitutional rights.

The same problem exists with the water fee and is analyzed at the bottom of this report. **Note***: calculations are based upon the latest credits assigned both water and wastewater, not those in place at the time TB produced its interim reports. This had minimal effect on the overall report results*. *Information below comes from TischlerBise emails and the final report calculations submitted to the City.*

Summary

- In Jan 2023, Colin McAweeney from TischlerBise calculates wastewater impact fee using only one project, the Wastewater Treatment Plant (WWTP). In an email he states this impact fee is a "very small amount", (just **$696** per unit using his methodology). He asks Whitefish Public Works Director Craig Workman for more projects to boost the fee.
- Workman adds a small sewer piping project with a cost attributable to development of just $178K. Workman says this project expands sewer collection capacity by **1 MGD** (million gallons per day).
- This same Piping project was included in the 2018 Impact Fee Update that cost each development unit only **$68**.
- McAweeney recalculated Impact fee using both projects resulting in just **$730** per development unit, adding only **$34** for the small piping project.
- McAweeney asks Workman for new piping project capacity before submitting his final recommendation. Workman changes the capacity of the small piping project from **1 MGD** to just **10K Gallons.** Workman changes the dimension of piping capacity from flow rate GPD (gallons per day) to simply static volumetric GALLONS (how many gallons stored in a pipe).
- Using gallons (volumetric) vs MGD (flow rate) is inconsistent with other TischlerBise impact fee calculations for other cities, i.e. Buckeye AZ, 2020 (Note 12) where the collection fees are calculated using flow capacity measured in MGD.
- McAweeney recalculates impact fee now at **$4041,** with **$3345** from the small piping project alone, a 100 fold increase from the original **$34**.
- Cost attributed to $178K small piping is **$39.95 per gallon**, 3 times greater than **$13.33 per gpd** cost of treatment plant itself. Capacity dimension (gallon) is "inconsistent" with demand (gpd) in impact fee equation, yielding a meaningless impact fee ($4041).
- Two projects (WWTP and Piping) are combined into one calculation, masking the problem.
- Breaking apart the calculation into the two projects exposes problem.
- Projected fees collected for small piping project are estimated to exceed $4M in just 5 years. By law the most Whitefish can collect is $178K.

Legal Issues

A recent US Supreme Court ruling (*Sheetz vs County of El Dorado*) has affirmed that impact fees that are not fair and proportionate may violate the rights of property owners (5th Amendment "Takings Clause").

There are several Montana statutes violated by Whitefish and its consultant, TischlerBise.

1. MCA 7-6-1602 (5) "*The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of*

new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles."

2. MCA 7-6-1602 (7a) "*The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development*."
3. MCA 7-6-1602 (7b) "*The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development.*"

Demonstrate The Problem

The first objective of this report is to demonstrate the problem with the wastewater impact fees charged by Whitefish.

The TB report recommends the City charge each new home $4041 in wastewater impact fees. *This is the single highest component of the $11,697 impact fees imposed on a typical new home*. TischlerBise uses just two projects to compute this fee. One is listed as a $26.67M Wastewater Treatment Plant (WWTP). Using the TB methodology of computing impact fees, the maximum amount the City of Whitefish can charge for just the wastewater treatment plant impact fee is $696 (Chart A).

The second project is an afterthought and is simply described as "C2 Piping - Future Capacity Enhancements" and costs the City only $400K to construct. According to the TischlerBise report, on page 57, only $177,765 of this $400K can be used to calculate impact fees because this project is correcting an existing deficiency in the Wastewater collection system. *The cost should actually be less since the City has already collected approximately $85K in impact fees for this project the previous 5 years (Note 2*). No description is provided for this project in the TischlerBise report but Whitefish Public Works describe it as a maintenance project replacing 1/3 mile of old sewer piping along Spokane Ave. The project had been listed in a Whitefish Wastewater CIP (Capital Improvements Program) since at least FY 2010 and was used to calculate impact fees in the 2018 FCS Impact Fee Update as well.

Of the **$4041** wastewater impact fees charged each new homeowner, **$3,344** is attributable to the C2 Piping project (Chart A). This same project was included in the 2018 FCS Impact Fee Update and cost each new homeowner just **$68** (Note 2). $3,344 is unreasonable and fails the rational nexus test for an impact fee. For example, assuming 250 units (ERUs) built annually (Note 8) during the span of this five year update, the city would collect **$4,180,000** in impact fees to pay for a simple **$177,765** project!

As a result, a typical new home built in Whitefish will be overcharged $3,311 in impact fees (See Corrected Wastewater Impact Fee chart on page 8). Commercial buildings and remodeled existing homes will likewise be overcharged by the City.

There is no rational nexus that the City and TischlerBise can justify to defend this excessive fee for such a small project. The City is in violation of MCA 7-6-1602 (5) "*The amount of each impact fee imposed must be based upon the actual cost of public facility*". Charging fees 20 times more than the cost of a project in just 5 years clearly does not meet this requirement.

The Source Of The Problem

The next objective of this report is to identify the source of the wastewater impact fee problem.

TischlerBise consultant Colin McAweeney drafted a preliminary impact fee update and determined that Whitefish would only see a "small amount (of) funding from impact fees" for its new WWTP. This was stated in an email on January 31, 2023 to Whitefish Public Works Director, Craig Workman.

Using McAweeney's own calculation, this small amount of funding turned out to be $696 per typical new home. (Chart A).

McAweeney asked Workman if there were other projects that TischlerBise might use to raise these fees. Workman provided a new project to add to the wastewater fee calculations called the C2 Piping project that was constructed to "Enhance Capacity" of a short stretch of sewer piping along Spokane Ave in Whitefish. This project had already been used to collect impact fees in 2018.

Gallons vs Gallons Per Day (Dimensional Inconsistencies)

In his report, McAweeney either carelessly or deliberately interchanges gallons vs gallons per day without considering the mathematical consequences. Gallons is a static (volumetric) dimension. GPD (gallons per day) is a dynamic (flow rate) dimension. Industrial piping capacity is defined in terms of flow rate (Note 11). For example, an 8" PVC pipe has a peak flow rate of approximately 2MGD (Note 10). 2 million gallons can flow through an 8" pipe during a 24 hour period. These distinct and different measurement dimensions cannot be used interchangeably in mathematical equations, yet McAweeney does this in numerous places in his report. For example, when calculating the impact fee for the WWTP, he defines the plant capacity as gallons, i.e. 2 million gallons. But the capacity of a WWTP is how many gallons per day (2 MGD) that can be processed (Note 11), not how many gallons are contained in the plant. He likewise refers to the demand placed on the WWTP by an individual household as 184 gallons, when in fact it is clearly measured in terms of 184 gallons per day per his own calculations in his report. By mixing gallons and gpd in his equations, the results of these calculations become meaningless. Here is an example when comparing the calculation for the WWTP and Piping impact fees, as originally calculated versus the final calculation:

Using flow rate capacity:

WWTP $3.78 (cost gpd) x 184 (gpd) = $696
Piping $0.19 (**cost gpd**) x 184 (gpd) = $34 (dimensions match producing consistent result)

vs using volumetric capacity:

WWTP $3.78 (cost gpd) x 184 (gpd) = $696
Piping $18.18 (**cost gallon**) x 184 (gpd) = 3345??? (dimension of the cost doesn't match the dimension of the demand, producing a meaningless result).

McAweeney appears to be deliberately masking calculations errors using dimensional inconsistencies.

Emails Show Confusion or Collusion between TischlerBise and Whitefish Officials

On Jan 31, 2023, McAweeney wrote an email to Workman that included the following:

- **Wastewater**
  - *We discussed possibly adding more projects or adjusting the growth-related portion of the projects in the CIP to expand the impact fee analysis. Currently, there* is just one project in the CIP with ***a very small amount funding from impact fee,*** *has that changed?* ***Workman response - We could easily attribute "C2 Piping Future Capacity Enhancements" to impact fees.***

McAweeney is warning Workman in this email that the wastewater impact fee is very small and asking Workman for more projects to beef up this fee. The "just one" project available for impact fee calculations is the WWTP itself. McAweeney is also asking Workman to change the CIP to accommodate the expansion of fees. Impact fees are supposed to be calculated from an existing CIP. McAweeney is asking Workman to manipulate the CIP instead to accommodate impact fees increases. Using McAweeney's own impact fee calculations, the "very small amount" was **$696** (Chart A) that represents the maximum amount the City can charge in wastewater impact fees before Workman added the C2 Piping project.

The C2 Piping project replaces an aging 8" sewer line with a new 12" sewer line. An 8" sewer line has a rated capacity of 2.304 MGD (million gallons per day) and a 12" sewer has a rated capacity of 6.768 MGD (Note 10). The capacity increase by replacing an 8" sewer line with a 12" sewer line is therefore 4.464 MGD. The capacity of the WWTP which is fed by this sewer line is between 2MGD (as defined by McAweeney in his report) and 6 MGD, so upgrading the piping is justified based on these capacities.

On Feb 8, 2023, Workman wrote an email to McAweeney including the following:

> *Colin, This is the best tracking sheet I could find for the water plant project. Sorry, it's not nearly as helpful as the tracking sheet for the WWTP. Regarding new gallons, I would use 2 MGD for water (from 4 MGD to 6 MGD) and* ***1 MGD for wastewater (from 1.25 MGD to 2.25 MGD).***

Workman informed McAweeney that the capacity increase for the C2 Piping project is 1 MGD (see email on Feb 24 below). He refers to this as "new gallons" (again, misstating the dimension). Workman, just like McAweeney, confuses gallons vs gallons per day in the same sentence. The purpose of the new Piping is to enhance future flow capacity which is measured in terms of MGD. Although this is less than the difference between the 8" and 12" piping rated capacity (4MGD), it is consistent with prior impact fees calculated by FCS which used the WWTP capacity increase for collection (piping) capacity. The dimension (**MGD**) is consistent with the impact fee calculation which uses the ERU demand of 184 **gpd** in the impact fee equation.

On Feb 24, 2023, McAweeney emailed Workman with the following:

> *"Before next week's meeting I wanted to send along draft fee results. Before that I want to confirm the capacity (gallons) of the* ***distribution projects*** *we're including in the impact fee analysis. You mentioned that they were 2 MGD for water (from 4 MGD to 6 MGD) and* ***1 MGD for wastewater (from 1.25 MGD to 2.25 MGD****). Those are very similar to the plant capacity, so just want to make sure wires didn't get crossed."*

McAweeney repeats what Workman provided him on Feb 8th. McAweeney consistently refers to capacity as (gallons), but the capacity of piping is measured in terms of (million gallons per day), which appears correctly in his next sentence where he refers to the wastewater piping capacity as "1 MGD". ***Sewer pipes collect and transport sewage and are not used to store sewage***. Piping capacity must be defined in terms

of gallons per time unit such as gallons per minute or gallons per day, per utility consultant Brent Campbell (Note 4). The above numbers are consistent with how both collection (sewer) and distribution (water) capacity is defined and consistent with the prior 2018 FCS impact fee update (Note 5). They are also dimensionally consistent (Note 6) with the peak demand of a typical residence which is defined in terms of gallons per day (184) as well. Workman provided these numbers on Feb 8th and McAweeney wanted a confirmation. Using this capacity number (1 MGD), the wastewater impact fee increased very little from McAweeney's previous calculation (Chart B below), $696 to $730. For such a small project, this small increase is reasonable.

During this entire sequence, Workman and McAweeney define piping capacity in terms of gallons per day, i.e., how many gallons of sewage can be transported through piping to the WWTP per day. McAweeney recalculated the wastewater impact fees using the capacity data provided by Workman, 1 MGD. Using this data and the TischlerBise methodology, the maximum wastewater impact fee that the City could charge is **$730** (Chart B). It is uncertain whether this number was presented at the meeting referenced in McAweeney's last email.

Workman and McAweeney Switch Data

Between Feb 24th and March 2nd, a data switch occurred. No written record was provided to explain why McAweeney and Workman decided to switch data (both the values and dimensions).

On March 2, 2023, Workman provided McAweeney the following chart in an email. Workman NOW provides McAweeney with the volumetric storage capacity of a pipe, not the dynamic flow rate. These numbers have different dimensions. Volumetric capacity is incompatible with the impact fee calculations performed by McAweeney.

Wastewater Collection

C2 Piping - Future Capacity Enhancements

Project Name	Existing Diameter (inches)	Proposed Diameter (inches)	Total Unit Volume (gal/ft)	Increased Unit Volume (gal/ft)	Project Length (feet)	Total Volume (gallons)	Increased Volume (gallons)
Spokane Ave	8	12	5.9	3.3	1,730	10,164	5,647

McAweeney switches the collection piping capacity (**1 MGD**) to volumetric (storage) capacity (**10,164 gallons**) for the C2 Piping project**.** This is inconsistent with other TischlerBise impact fee calculations for other cities, i.e. Buckeye AZ, 2020 (Note 12) where the collection fees are calculated using flow capacity measured in **MGD**. ***But sewer pipes do not store sewage***. McAweeney used this number as the piping capacity in his calculations. The dimensional difference between these 2 numbers is obvious along with the huge difference in quantities. There is only one explanation for this error – to SIGNIFICANTLY increase impact fees.

On page 57 of the TischlerBise report, the following calculation is shown:

Cost Analysis

Wastewater Collection Projects	
Total Costs	$400,000
Gallons Added to System	10,164
Capital Cost per Gallon	**$39.35**

Here are the calculations that McAweeney subsequently performed (above):

Cost = $400,000 / 10,164 = $39.35 per **gallon**

By using the volumetric capacity rather than flow capacity, McAweeney calculates a totally **unreasonable** Cost for the Piping project. The City did not replace aging 8" sewer pipes for 12" piping so that it could store more sewage. $39.35 is a totally unrealistic number for cost of this capacity increase used to calculate impact fees.

Adjusting the $39.35 cost / gallon with credits and adding admin fees results in $18.18 per **gallon** (see TischlerBise Chart, page 6). **184 gpd** represents the "demand" per household (amount of sewage placed into the sewer lines **per day** per typical household). McAweeney calculates the wastewater impact fee attributed to this project:

Impact fee = $18.18 per **gallon** X 184 **gpd** = 3,345 ???

3,345 HAS NO DIMENSION because the dimensions of the elements in this formula are incompatible. Therefore, the result is invalid.

Note the dimensional difference between the elements in this formula (gallons vs gpd) and the incredibly high cost of the small Piping project, $39.35 per **gallon**, vs the cost of the actual wastewater treatment plant, $13.33 per **gpd** (see TischlerBise Chart). **This should have immediately raised a red flag**. A small $178K project was assigned a cost nearly 3 times that of the entire $27M WWTP.

The dimensionally inconsistent data (**gallon** vs **gpd**) renders this equation and results meaningless. Using the apples and oranges idiom, the above equation is like multiplying the cost of apples by number of oranges and the result is just as ambiguous.

Engineering consultant Brent Campbell, who has expertise in municipal public works systems, determined that the TischlerBise water and wastewater calculations were flawed. Mr. Campbell wrote a report analyzing the TischlerBise impact fee update, stating that TischlerBise used data that was "*dimensionally inconsistent*" (Note 6) when calculating water and wastewater impact fees (Note 7). The Brent Campbell report was submitted to the City of Whitefish through their attorneys.

The original number provided by Workman (1 MGD) was both consistent with prior impact fee updates and dimensionally consistent (cost per gpd multiplied by gpd) with the impact fee formula. The "future enhanced capacity" for the Wastewater Collection project was 1 MGD as originally stated by Workman.

Note, *this report does not endorse or claim that 1 MGD is the correct Piping project capacity, only that this number is dimensionally consistent and is a reasonable capacity number relative to WWTP capacity. Actual increased capacity is over 4 MGD as calculated above.*

Future enhanced capacity = 1 MGD

Using this capacity, the following Impact Fee would be correctly calculated.

Cost = $400,000 / 1,000,000 = **$0.40** per gpd

Adjusting the cost / gpd and adding admin fees results in $.19 per gpd (per TischlerBise Chart).

Impact fee = $0.19 per **gpd** X 184 **gpd** = **$35**

Note that the dimensions in this formula are consistent and therefore the result of this calculation is valid.

TischlerBise Calculations

Using the two projects described above, TischlerBise simply adds the two net costs and then multiplies these by ERU (Equivalent Residential Unit) demand (184 gpd). By combining the two projects, the problem with McAweeney's numbers is masked. This calculation is flawed because TischlerBise is adding two net costs with different dimensions (plant cost is $gpd and piping is $gallons), again invalidating the impact fee calculation.

In Chart A below, the two projects can be separated and an individual impact fee component is calculated for each project. The WWTP is the entire wastewater processing system. With a $26.667M cost, it has a net cost per gpd of $3.78 (plus 5%) which is multiplied by 184 gpd, resulting in an impact fee of **$696.** Using the incorrect capacity identified by Workman in March, the net cost of the PIPING project is $17.31 **per gallon**. This number (plus 5% admin fee) is multiplied by 184 gpd resulting in the impact fee for this project of **$3345**.

To put **$3345** in perspective, the 2018 FCS Update calculated the impact fee for this identical Piping project at **$68** (Note 2). Using the FCS and HDR methods with 2023 data results in an impact fee for this project of only **$33** (Note 3). The impact fee using piping capacity of 1 MGD is $**35** (Chart B).

TischlerBise Chart on Page 60

Components	Cost per Gallon
Distribution Projects	$39.35
Wastewater Treatment Plant	$13.33
Gross Total	**$52.68**
Credit for Other Distribution Revenues (56%)	**($22.04)**
Credit for Other WWTP Revenues (73%)	**($9.73)**
Administrative Fee (5%)	**$1.05**
Net Total	**$21.96**
Peak Average Gallons per EDU	**184**
Capital Cost per EDU	**$4,041**

TischlerBise combined the WWTP and Distribution (Piping) projects into one chart to mask the error in its calculations. Chart A below re-creates the TischlerBise chart above, breaking down the single column into the two projects. The last 3 columns and 2 rows were added for analysis purposes. Since only two projects are used to calculate wastewater impact fees (the WWTP and the Piping projects), it is easy to separate them to isolate the problem. In Chart A, the Capital Cost per EDU is the same for both the original and separated charts ($4041).

Chart A - Wastewater Impact Fee Components
TischlerBise Report

Wastewater Impact Fee Calculations		Individual Component Contribution		
Components	Cost per Gallon	PIPING	WWTP	Totals Check
Distribution Projects (PIPING)	$39.35	$39.35		$39.35
Wastewater Treatment Plant (WWTP)	$13.33		$13.33	$13.33
Gross Total	$52.68	$39.35	$13.33	$52.68
Credit for Other Distribution Revenues (56%)	($22.04)	($22.04)		($22.04)
Credit for Other WWTP Revenues (73%)	($9.73)		($9.73)	($9.73)
Administrative Fee (5%)	$1.05	$0.87	$0.18	$1.05
Net Total	$21.96	$18.18	$3.78	$21.96
Peak Average Gallons per EDU	184	184	184	184
Capital Cost per EDU	$4,041	$3,345	$696	$4,041
Project Eligible Cost	$7,377,855	$177,765	$7,200,090	
Fees Collected (5 Years @ 250 ERUs a year)	$5,051,250	$4,181,400	$870,000	$5,051,250

The impact fee for the $27M WWTP is **$696.** The capacity value used by TischlerBise in its calculation for the WWTP impact fee was 2 MGD (the daily processing capacity of the WTTP), even though it is incorrectly listed as gallons. *The calculation that produces this number uses dimensionally consistent data* ***(cost per gallon per day*** *times* ***gallons per day)*****.**

Using historical Whitefish building data, 250 ERUs is **projected** for the annual number of residential and commercial building equivalent units that are charged impact fees (Note 8). The small Piping project has a cost of only $177,765 but generates an incredible **$4,180,000** in the 5 year span of this report. Over the life of this project (20 years), the impact fees would exceed **$16.5M**!

The total fee charged each new single family home is beyond excessive, is unreasonable and does not represent the fair and proportionate share of the wastewater facility. ***This is a violation of Montana statute 7-6-1602(5)***. No one at TischlerBise or Whitefish caught this problem. The source of the wastewater impact fee problem is **invalid capacity data** provided by Whitefish and used by TB to calculate these fees.

Correct Wastewater Impact Fees

The next part of this report fixes the invalid TB report calculations and collection charts using the correct capacity data provided by Whitefish originally on page 5. This is a simple process.

In the Tischler report, using the original capacity data provided by Workman, the increase in capacity from the $400,000 Piping project is **1 MGD**. This is substituted for 10,164 gallons on page 57 of the Tischler report calculations. Using the corrected value, the cost per gallon/day of collecting wastewater through the new piping is just **$.40** (as previously calculated above). This is computed by simply dividing the total cost of the Piping project ($400,000) by the capacity increase (**1 MGD**).

Piping Project Cost Analysis	
Wastewater Collection Projects	
Total Costs	$ 400,000
Gallons Added To System	1000000
Capital Cost per Gallon / day	$ 0.40

Here are the calculations that McAweeney performed using the original data above):

Cost = $400,000 / 1,000,000 = **$0.40** per gpd

NOTE THE DIMENSION. The new cost number $0.40 per gpd is substituted in Chart A for the invalid $39.95 cost per gallon producing the following Chart B.

Chart B - Wastewater Impact Fee Components
Using Correct Piping Total Capacity

Wastewater Impact Fee Calculations		Individual Component Contribution		
Components	Cost per Gallon	PIPING	WWTP	Totals Check
Distribution Projects (PIPING)	$0.40	**$0.40**		$0.40
Wastewater Treatment Plant (WWTP)	$13.33		$13.33	$13.33
Gross Total	$13.73	$0.40	$13.33	$13.73
Credit for Other Distribution Revenues (56%)	($0.22)	($0.22)		($0.22)
Credit for Other WWTP Revenues (73%)	($9.73)		($9.73)	($9.73)
Administrative Fee (5%)	$0.19	$0.01	$0.18	$0.19
Net Total	$3.97	$0.19	$3.78	$3.97
Peak Average Gallons per EDU	184	184	184	184
Capital Cost per EDU	**$730**	**$35**	**$696**	**$730**
Project Eligible Cost	$7,377,855	$177,765	$7,200,090	
Fees Collected (5 Years @ 250 ERUs a year)	$912,500	$43,700	$870,000	$912,500

Chart B shows a significantly reduced Wastewater Impact Fee of just **$730** per EDU vs **$4041** calculated using the wrong capacity for the Piping project. Note the WWTP impact fee remains at $696. Also note that the amount of impact fees collected in 5 years is $43,700 and over the life of the project (20 years) is $174,800. This is very close to the original cost of this project, $177,765. This confirms that the calculation method using the **1 MGD** demand is correct.

Comparison of Collection Charts

The following shows the old and new collection charts. The old chart is from the TischlerBise update and is found on Page 60:

Original TischlerBise Wastewater Collection Chart

Meter Size (inches)	AWWA Capacity (gal)	Weighting Factor	Maximum Supportable Fee	Current Base Fee	Increase/ (Decrease)
3/4	30	1.00	$4,041	$3,223	$818
1	50	1.67	$6,748	$4,834	$1,914
1 1/2	100	3.33	$13,457	$8,058	$5,399
2	160	5.33	$21,539	$16,115	$5,424
3	300	10.00	$40,410	$25,784	$14,626
4	500	16.67	$67,363	$48,345	$19,018
6	1,000	33.33	$134,687	$80,575	$54,112

By simply making one correction to the Piping project using the City's own capacity number with the correct dimension, the following collection chart would result:

Corrected Wastewater Collection Chart

Meter Size (inches)	AWWA Capacity (gpm)	Weighting Factor	Maximum Supportable Fee	2018 Base Fee	Increase/ (Decrease)	TischlerBise Base Fee	Tischler Overcharge
3/4	30	1	$730	$3,223	-$2,493	$4,041	$3,311
1	50	1.67	$1,219	$4,834	-$3,615	$6,748	$5,529
1 1/2	100	3.33	$2,431	$8,058	-$5,627	$13,457	$11,026
2	160	5.33	$3,891	$16,115	-$12,224	$21,539	$17,648
3	300	10	$7,300	$25,784	-$18,484	$40,410	$33,110
4	500	16.67	$12,169	$48,345	-$36,176	$67,363	$55,194
6	1,000	33.33	$24,331	$80,575	-$56,244	$134,687	$110,356

WATER IMPACT FEES

Water Impact Fees are calculated incorrectly because of the same error introduced by TischlerBise and the Whitefish Public Works Director.

The TischlerBise report recommends the City charge each new home $3903 in water impact fees. *This is the second highest component of the $11,697 impact fees imposed on a typical new home*. The same error found in the Wastewater Impact Fee calculation appears in the Water Impact Fee calculation with the Cast Iron Water Main project. In this calculation, McAweeney uses the volumetric capacity (static gallons) of two water main replacement projects rather than the flow rate capacity (gpd). Brent Campbell pointed this out in his 21 July 2023 report, Page 4, Exhibit C (Note 4):

> "In Figure 54 on page 49 TB shows values for "Total Gallons" which presumably is for water storage. **In my opinion there is no rational nexus to benefit for water storage in a cast iron water replacement project**. This storage number is then added to the storage capacity of the South Water Storage & production project to get a total "gallons added to the system" presumably gallons of storage capacity. The total cost of the two projects is then divided by this number to obtain a "capital cost per gallon" of $17.31. **This appears to be a calculation of the capital cost to store water for the customer, not a cost to deliver water to the customer**. This value is then used in the calculation of the base impact fee for water contained in Figure 56 by applying this cost per gallon to the peak average water usage in gallons per day per EDU."

On page 54 of the TischlerBise Impact Fee Update, the following calculation chart is used to create the current **$3903** water impact fees for Whitefish:

Components	Cost per Gallon
Distribution Projects	$17.31
Water Treatment Plant	$5.50
Gross Total	**$22.81**
Credit for Distribution Projects (48%)	**($8.31)**
Credit for Treatment Plan (23%)	**($1.27)**
Administrative Fee (5%)	**$0.66**
Net Total	**$13.89**
Peak Average Gallons per EDU	**281**
Capital Cost per EDU	**$3,903**

Note the $17.31 Cost per Gallon listed above for the Distribution Projects. This is very high number, similar to the problem identified in the wastewater impact fee calculation. Here is the original TischlerBise cost per gallon calculation on page 51:

Cost Analysis

Water Distribution Projects	
Total Cost	$18,450,000
Gallons Added to System	1,066,096
Capital Cost per Gallon	**$17.31**

The **Gallons Added To System** number is comprised of two capacity quantities used by Tischler - 1,000,000 gallons or gpd (Note 9) for the South Water Storage and Production and **66,096** gallons for the Cast Iron Water Mains. The 66,096 number is the static (volumetric capacity) of water main piping. This is the same type of capacity used incorrectly by TischlerBise in the Wastewater impact fee error introduced above. This is incorrect, as noted by Brent Campbell, and should not be used to calculate costs per gpd. Water distribution capacity should only be measured in gallons per day to be dimensionally consistent with the demand (281) which is measured in terms of gpd. These dimensionally inconsistent numbers are added to obtain 1,066,096 "Gallons Added to System".

Emails between TischlerBise and Whitefish Officials

Here is the email exchange where the capacity for the water distribution projects are initially confirmed:

On Feb 8, 2023, Workman wrote to McAweeney

> *Colin, This is the best tracking sheet I could find for the water plant project. Sorry, it's not nearly as helpful as the tracking sheet for the WWTP. Regarding new gallons, I would* ***use 2 MGD for water (from 4 MGD to 6 MGD)*** *and 1 MGD for wastewater (from 1.25 MGD to 2.25 MGD).*

On Feb 24, 2023, McAweeney wrote to Workman:

> *"Before next week's meeting I wanted to send along draft fee results. Before that I want to confirm the capacity (gallons) of the* ***distribution projects*** *we're including in the impact fee analysis. You mentioned that they were* ***2 MGD for water (from 4 MGD to 6 MGD)*** *and 1 MGD for wastewater (from 1.25 MGD to 2.25 MGD). Those are very similar to the plant capacity, so just want to make sure wires didn't get crossed."*

The 2 MGD per day capacity of the distribution projects (Cast Iron Water Mains) is confirmed both by Workman and McAweeney back in February, 2023.

But later, Craig Workman, after prodding from McAweeney provided the following capacity number for the Cast Iron Water Main project.

On March 2, 2023 Workman wrote to McAweeney and provided the following chart:

Water Distribution

D1 Cast Iron Water Main Replacement

Project Name	Existing Diameter (inches)	Proposed Diameter (inches)	Total Unit Volume (gal/ft)	Increased Unit Volume (gal/ft)	Project Length (feet)	Total Volume (gallons)	Increased Volume (gallons)
Spokane Ave	6	18	13.2	11.8	3,600	47,589	42,301
O'Brien Ave.	12	18	13.2	7.3	1,400	18,507	10,282
					Total =	66,096	52,583

Workman completely changed the capacity defined for the water piping projects. Just as he did with the wastewater capacity, he submitted numbers that were dimensionally inconsistent with the water impact fee equation which is now multiplying (cost / gallon) times (gallons / day). The value changed significantly as well from 2,000,000 gpd to only 66,096 gallons. The results of the water impact fee are therefore rendered meaningless.

Correct Water Impact Fees

Calculating the correct water impact fee using the TischlerBise method but with the correct Cast Iron Water Main capacity is a simple process. In the Tischler report, using the original Tischler calculation charts and data provided by Workman shown in the above emails, the increase in capacity for the Water Main project originally provided by Workman is **2 MGD,** not the 66,096 gallons used by McAweeney as provided by Workman.

Corrected Cost Analysis Chart

Cost Analysis	
Water Distribution Projects	
Total Costs	$ 18,450,000
Gallons Added To System	3,000,000
Capital Cost per Gallon	$ 6.15

2 MGD is substituted for 66,096 gallons on page 51 of the TischlerBise calculations and added to the South Water capacity of 1 MGD (Note 9) resulting in a "Gallons Added To System" of 3,000,000 gpd above. The cost per gallon/day of the water distribution systems is now **$6.15**. Substituting this number for $17.31 in the original Tischlerbise water impact fee calculation chart results in the following chart:

Chart C - Water Impact Fee Components
Using Correct Cast Iron Water Main Capacity

TischlerBise Water Impact Fee Calculations			Component Breakdown		
Components	Cost per Gallon		Distribution Projects	WTP	Totals Check
Distribution Projects	$6.15		$6.15		$6.15
Water Treatment Plant (WTP)	$5.50			$5.50	$5.50
Gross Total	$11.65		$6.15	$5.50	$11.65
Credit for Distrib. Non-Impact (48%)	($2.95)		($2.95)		($2.95)
Credit for Other WTP Revenues (23%)	($1.27)			($1.27)	($1.27)
Administrative Fee (5%)	$0.37		$0.16	$0.21	$0.37
Net Total	$7.80		$3.36	$4.45	$7.80
Peak Average Gallons per EDU	281		281	281	281
Capital Cost per EDU	$2,193		$944	$1,250	$2,193

Chart C shows a reduced Water Impact Fee **$2,193** per EDU vs **$3,903** calculated using the wrong capacity for the Cast Iron Water Main project. For a base ¾" water meter, the overcharge is **$1,711**.

Comparison of Collection Charts

The following shows the old and new collection charts. The old chart is from the TischlerBise update and is found on Page 54:

Original TischlerBise Water Collection Chart

Meter Size (inches)	AWWA Capacity (gal)	Weighting Factor	Maximum Supportable Fee	Current Base Fee	Increase/ (Decrease)
3/4	30	1.00	$3,903	$2,874	$1,029
1	50	1.67	$6,518	$4,311	$2,207
1 1/2	100	3.33	$12,997	$7,185	$5,812
2	160	5.33	$20,803	$14,370	$6,433
3	300	10.00	$39,030	$22,992	$16,038
4	500	16.67	$65,063	$43,110	$21,953
6	1,000	33.33	$130,087	$71,850	$58,237

Corrected Water Collection Chart

Meter Size (inches)	AWWA Capacity (gpm)	Weighting Factor	Maximum Supportable Fee	2018 Base Fee	Increase/ (Decrease)	TischlerBise Base Fee	Tischler Overcharge
3/4	30	1	$2,192	$2,874	-$682	$3,903	$1,711
1	50	1.67	$3,661	$4,311	-$650	$6,518	$2,857
1 1/2	100	3.33	$7,299	$7,185	$114	$12,997	$5,698
2	160	5.33	$11,683	$14,370	-$2,687	$20,803	$9,120
3	300	10	$21,920	$22,992	-$1,072	$39,030	$17,110
4	500	16.67	$36,541	$43,110	-$6,569	$65,063	$28,522
6	1,000	33.33	$73,059	$71,850	$1,209	$130,087	$57,028

Note the significantly reduced impact fees (column 4) over the full scale of meter sizes and the extent that property owners would be overcharged in the last (red) column.

Combined Charts

Meter Size (inches)	Weighting Factor	Correct Water Fee	Correct WW Fee	Total Correct Fees	Whitefish Water Fee	Whitefish WW Fee	Total Fees	Whitefish Overcharge
3/4	1	$2,192	$730	$2,922	$3,903	$4,041	$7,944	$5,022
1	1.67	$3,661	$1,219	$4,880	$6,518	$6,748	$13,266	$8,387
1 1/2	3.33	$7,299	$2,431	$9,730	$12,997	$13,457	$26,454	$16,723
2	5.33	$11,683	$3,891	$15,574	$20,803	$21,539	$42,342	$26,767
3	10	$21,920	$7,300	$29,220	$39,030	$40,410	$79,440	$50,220
4	16.67	$36,541	$12,169	$48,710	$65,063	$67,363	$132,426	$83,717
6	33.33	$73,059	$24,331	$97,390	$130,087	$134,687	$264,774	$167,383

ADDITIONAL TISCHLERBISE IMPACT FEE STUDY ERRORS

The basic method used by TischlerBise for calculating impact fees is flawed because it fails to account for many of the factors that are required by statute MCA 7-6-1602.

Missing Line Item Project Costs

Line item projects and costs used to determine the Capital cost of the Wastewater Treatment Plant (WWTP) are missing. The City Manager used the actual construction cost to build the new WWTP ($19.8M). However, she added other costs to arrive at $26.7M with little supporting documentation.

Of the projects listed in this document, very few if any of these costs appear to qualify for use in impact fee calculations. Per MCA 7-6-1602, only capital expenses for projects with a lifespan of at least 10 years can be used to calculate impact fees that are required by new development. Yet there is no supporting documentation that any of these additional costs meet this criteria.

Questionable City Hall Expansion Fees

TischlerBise added expansion of the City Hall as a major component of new impact fees for 2024. However, this project is loosely defined and the City admits that it will not likely expand City Hall for at least 10 years. In the past, the construction of this project was funded through various grants and resort taxes. None of this is reflected in the "costs" used by TischlerBise. Therefore, ***level of service*** varies significantly between the original construction of the City Hall and the cost allocated to Development. TischlerBise used a very simplistic cost analysis to arrive at a very expensive costing model imposed on new Development. Prior impact fees imposed during the last two impact fee cycles (5 years) are considerably less than the new fees imposed on Development.

Missing Credits

TischlerBise likewise provided little to no documentation in its report about the percentage allocation to development for each project used to calculate impact fees. No credits appear for external financing nor do any credits appear for previously collected impact fees.

For the past 5 years, the City has collected $millions of impact fees for the WTP and the WWTP along with the South Water Reservoir project. Yet none of these fees are reflected as credits against the cost of these projects when calculating new fees. MCA 7-6-1602 specifically mentions that these prior fees must be accounted for when computing future impact fees. TischlerBise clearly violated the law by not doing so.

Inflated Costs (Pending Litigation)

The costs of certain projects such as the South Water Storage and Production are highly inflated and are currently being litigated. The use of this project in the TischlerBise report is highly questionable until this issue is resolved. As mentioned in Note 9, this project is so loosely defined that it could be either a water production project, water distribution project, or a water storage project. It is impossible for TischlerBise to categorize this with certainty as a water distribution project in their report.

Accounting Error WTP Capacity (Pending Litigation)

The Water Treatment Plant (WTP) capacity used to calculate water impact fees is also subject of current litigation. The City and TischlerBise are using 6 MGD as the capacity of the water production system, yet the new plant has a capacity of 8 MGD, along with the water source expansion, and the expanded expulsion of waste into the sewer. This is explicitly described in the City's Capital Improvement Plans. AE2S recommended all 8 MGD be made available, yet the City only turned on 6. Using GAAP accounting, the 8 MGD capacity needs to be accounted for when allocating costs to new development.

Missing Ineligible Projects

Tischler also failed to list water and wastewater capital projects that CANNOT be used in impact fee calculations as required by Montana statute. Without this information, it is impossible to accurately and legally assess impact fees. It is apparent that TischlerBise provided none of this information in its analysis and calculation of fees.

City Was Provided Ample Warning Of These Errors

Brent Campbell, an engineering consultant and expert in municipal public works systems, produced a report describing errors in the TischlerBise impact fee update. This report was presented to the City's Attorneys, yet the City administrators and politicians appear to have ignored the serious errors discovered in the TischlerBise impact fee calculations.

On Oct 16th, 2023, an Open Letter describing problems with the TischlerBise update was sent to the Mayor and City Council. At this Council meeting, errors were verbally presented to the City outlining the problems presented in this Open Letter. Prior to the meeting, two Council members were contacted requesting meetings to discuss these problems. Both meetings were declined. The Council rejected the recommendations in this Open Letter and unanimously approved the TischlerBise update with all of the errors intact. The warnings projected over $5000 per new home in City overcharges. The Whitefish politicians refused to perform any due diligence by investigating these claims. They simply asked for the opinion of the City Manager, Dana Smith, who in turn did not understand or investigate these claims. She in turn recommended the City ignore most of these claims, after obtaining a mostly non-responsive letter from TischlerBise.

After the Oct 2023 Council meeting, the Mayor and 3 Council members wrote an inflammatory OP-ED in the local media demeaning the Open Letter contents and the author of this letter, in an obvious attempt to diminish the credibility of both.

NOTES

1. The Piping impact fee problem stems from the wrong capacity number (10,164 gallons, on page 57) provided by the Public Works Director Craig Workman and used by TischlerBise. No explanation is given in this report for why this particular capacity (volumetric) was used. Since this very small number is used in the denominator of the impact fee calculation formula, the resultant cost per gpd of $39.35 is excessively high along with the resulting impact fee.

The difference between the capacity of the new 12" sewer pipe and the old 8" pipe is one measure of the additional capacity of the wastewater collection (distribution) Piping project. This was 6.768 mgd – 2.304 mgd = 4.464 mgd. TischlerBise, however, used the total volumetric capacity of the Piping project which is a meaningless number when used in the impact fee calculation because its equation used dimensionally inconsistent data (cost per gallon times gpd). Mr. McAweeney is using the wrong capacity and confusing dimensions in his report and does not understand what data (dimensions and value) should be used in this calculation. He relied exclusively on data provided by Craig Workman, who also did not appear to understand what data was needed by McAweeney.

The 2018 FCS report, pages 8 & 13, uses the actual Treatment Plant (both water and sewer) capacities in its Distribution and Collection impact fee calculations. In the TischlerBise update, Using the 1.0 mgd WWTP capacity increase and the 2.0 mgd WTP capacity increase would be dimensionally consistent with the FCS report when computing impact fees. In the Tischler report, if this capacity was used to compute wastewater impact fees, the capacity would be $.40 per gpd for each typical new home. This is calculated by dividing the cost of the Piping project ($400,000) by the Collection (Distribution) system capacity increase identified as 1.0 mgd. Because this was the number identified by Workman initially, it was chosen as the actual capacity used in the calculations of this report.

2. In 2018, FCS used a different method than TischlerBise in its Impact Fee update. FCS added all of the net costs associated with the wastewater impact fee eligible projects and after adjustments and offsets, calculated the impact fee by dividing this Total Cost by the #ERUs (typical new homes) that can be served using the existing and future capacity of the wastewater treatment plant. The Piping project net cost was simply removed from the Total Cost and the impact fee was recalculated. The difference between the original 2018 impact fee and the new fee was **$68.** Using this fee and the estimated 1250 ERUs of construction in the previous 5 years, the City of Whitefish has already collected approximately **$85,000** in impact fees for this Piping project which should be subtracted from the $178,000 eligible cost of this project. TischlerBise did not account for this credit.

3. The methods used by both FCS and HDR (2007 HDR Impact Fee Report) for calculating wastewater impact fees are similar. Total cost is divided by #ERUs. Using 2023 TischlerBise WWTP increased capacity (1.0 mgd) and demand per ERU (184 gpd), #ERUs can be calculated (750000 / 184) = 5435. Dividing the impact fee eligible cost for the Piping project ($177,765) by #ERUs (4076) determines the maximum allowable impact fee per ERU. The result is **$33**.

4. 21 July, 2023, EXPERT WITNESS REPORT, BAC Consulting, author Brent Campbell. Mr. Campbell has 36 years of experience as a professional engineer with expertise in municipal public works systems, consultant, and CEO. In 2005, Mr. Campbell served in an advisory role to the state of Montana during the development of the original state enabling legislation, MCA 7-6-1601-1604. Mr. Campbell has been retained by the attorneys for the plaintiffs in the "Beck et al vs the City of Whitefish" Class Action lawsuit.

5. *2018 FCS Impact Fee Update.* On page 13, FCS uses the same capacity for both the Treatment plant and wastewater collections, referred to as the Collection plant.

6. *"Dimensionally Inconsistent"* is a physics term that describes a calculation where the elements in an equation have mismatched dimensions. For example, adding numbers with different dimensions like **Gallons** vs **Gallons/Day** would be dimensionally inconsistent and produce meaningless results. *Lumenlearning.com* – University Physics Volume 1, 1.4 Dimensional Analysis.

7. *Brent Campbell report dated 21 July, 2023:* In his analysis, Mr. Campbell discusses the TischlerBise Impact Fee report. On page 5, Exhibit C, when discussing the TischlerBise impact fee update and the wastewater calculation, he states:

> "Figure 59 also shows a value of "total gallons" for Future Piping Capacity Enhancement projects to derive a "total gallons added to the system." The discussion included in the water section above applies here as well (*See page 9 for this discussion*). **Rational nexus and rough proportionality for a pipe capacity would be measured in a quantity per unit of time, for example, gallons per day which would be dimensionally**

consistent with wastewater production values of 184 gallons per day per EDU." (*EDU, Equivalent Dwelling Unit, is equivalent to ERU*).

8. The 250 number of units (ERUs) used in the calculation of $4,180,000 estimate starts with TischlerBise numbers. In the TischlerBise Impact Fee Update, Figure 70, Appendix A, identifies an average of 206 new single homes and condos that were built in Whitefish each year during the prior 5 years. A new home may represent a multiple of ERUs which could increase the total number of ERUs. Commercial permits and associated new ERUs were not included in the 206 number and need to be added. Home additions and remodels, which add ERUs, were not counted either. Therefore 250 ERUs is a conservative and supportable estimate.

9. South Water Storage and Production: This project is listed in the Whitefish Capital Improvement Plans for nearly 20 years under various names and descriptions including a storage reservoir, a new well system, piping projects that increase capacity, etc. TischlerBise listed this project under the Distribution projects along with several Cast Iron Water Main projects. Distribution systems define capacity in terms of MGD, million gallons per day. It is unclear why TischlerBise mixes a storage project with 1 M gallons of storage capacity with other distribution projects. Since it is so loosely defined, the 1 MGD capacity is assumed. A storage tank capacity is in gallons and would not be consistent with water demand (gpd) whereas well production or piping capacity is defined in MGD and would be consistent with water demand (gpd). Using the simple gallons (storage) dimension in the impact fee calculation would produce a meaningless result since using demand in gpd times a cost / gallon is a dimensionally inconsistent calculation.

10. Water Purification Systems Inc., Updated Nov 16 2022, *Pipe Size and Flow Rate: Calculating Water Capacity in GPM or GPH.* Maximum flow must be converted from gpm to gpd by multiplying the gpm number by 1440 (24h x 60m).

Water Flow Capacity in Steel Pipes

Pipe Size	Maximum Flow (gal/min)	Velocity (ft/s)	Head Loss (ft/100 ft)
2"	45	4.3	3.9
2-1/2"	75	5.0	4.1
3"	130	5.6	3.9
4"	260	6.6	4.0
6"	800	8.9	4.0
8"	1,600	10.3	3.8
10"	3,000	12.2	4.0
12"	4,700	13.4	4.0
14"	6,000	14.2	4.0
16"	8,000	14.5	3.5
18"	10,000	14.3	3.0
20"	12,000	13.8	2.4
24"	18,000	14.4	2.1

11. Wastewater Treatment Plant Master Plan. *Chapter 4 Capacity Analysis*

12. *Buckeye LUA IIP and Fees*, TischlerBise Jan 7, 2020, page 110 "2. *Treatment is $12.26 per gallon ($36,790,000/**3.0 MGD**); Collection is $4.07 per gallon ($12,210,000/**3.0 MGD**)"*

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Co-author of SB 142
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2024 Whitefish Impact Fee Overcharges

$6 Million Mistake or Fraud

The City of Whitefish MT adopted 2024 impact fees recommended by new consultant TischlerBise Inc. City politicians ignored a professional opinion that some of the fee calculations were invalid and that Whitefish was grossly and unlawfully overcharging water and sewer impact fees. This overcharge amounts to more than $5000 for a single family home. Whitefish implemented these fees while the City was in the middle of a Class Action lawsuit, accused of inflating prior water and sewer impact fees since 2019. The City is violating not only state laws but is assaulting residents' Constitutional rights (5th Amendment, takings clause) as recently affirmed by the SCOTUS.

Summary of 2024 Impact Fee Overcharges

Property owners are being overcharged at least **$5022** as shown in red in the chart below. The overcharges are much greater for larger dwellings. The fees shown in green are calculated using data originally provided by Whitefish officials to its consultant, TischlerBise Inc. But emails show TischlerBise coaching Whitefish to change this data, otherwise impact fees would be "*very small*". Whitefish obliged and switched data that was neither appropriate nor consistent with impact fee calculations, according to an outside, professional engineer. Using this invalid data, TischlerBise calculated inflated and unlawful impact fees, shown in the blue column.

Whitefish Overcharges – 2024 Comparison of Impact Fees

Meter Size (inches)	Weighting Factor	Correct Water Fee	Correct WW Fee	Total Correct Fees	Whitefish Water Fee	Whitefish WW Fee	Total Fees	Whitefish Overcharge
3/4	1	$2,192	$730	$2,922	$3,903	$4,041	$7,944	$5,022
1	1.67	$3,661	$1,219	$4,880	$6,518	$6,748	$13,266	$8,387
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3	10	$21,920	$7,300	$29,220	$39,030	$40,410	$79,440	$50,220
4	16.67	$36,541	$12,169	$48,710	$65,063	$67,363	$132,426	$83,717
6	33.33	$73,059	$24,331	$97,390	$130,087	$134,687	$264,774	$167,383

The TischlerBise fees were approved by the City Council in Oct, 2023, despite the Council being warned that the fees were not calculated correctly. City politicians are accused of violating Montana law MCA 7-6-1602 (5) "*The amount of each impact fee imposed must be based upon the actual cost of public facility*". By our estimates using the last 5 years of building permit data, the City will **overcharge** Whitefish property owners **$6,277,500** in unlawful water and sewer impact fees between 2024 – 2028.

How Do We Know The City's Impact Fees Are Invalid?

Here's an example of just the wastewater impact fee calculations. From City emails and the 2023 TischlerBise Impact Fee report, we tracked how TischlerBise conspired with Whitefish to inflate what should have been **$730** to its current **$4041** wastewater impact fee. Our conclusions are supported by a professional public utility engineer.

1. **Initial Fee "Very Small"**: Based on an email exchange, when TischlerBise initially calculated the Whitefish wastewater impact fee, only one project, the $27M wastewater treatment plant, was used in its calculation. Using TischlerBise's own calculations, this fee was only **$696**. TischlerBise warned Whitefish in an email that this fee was "very small" and asked a City official to manipulate data to increase this fee.
2. **Recalculation:** Whitefish obliged and added a small piping project that replaced an aging sewer pipe. This project cost the City **$400K** and increased flow capacity by **1 MGD** (million gallons per day) per a

Whitefish email. TischlerBise performed a new recalculation and the result was still small. We did the same and calculated a new impact fee of just **$730,** representing a reasonable **$34** added for such a small project.

3. **Whitefish Changes Data Resulting In Huge Increase:** Because the fee increase was so small, TischlerBise again prodded the City into changing the capacity data of the piping project before presenting its final results. Whitefish changed the capacity from 1 **MGD** flow rate (which is the typical way capacity is measured) to **10K gallons** which is non-typical static storage. TischlerBise recalculated the impact fee to be **$4041** which represented a 100 fold increase of **$3345** (from $34) for the small piping project! TischlerBise masked this huge increase by combining the two projects (plant and piping) into one calculation, knowingly and erroneously mixing data dimensions (gallons vs gallons per day).
4. **Analysis**: The original capacity provided to TischlerBise (1 MGD) was numerically and dimensionally appropriate. The revised capacity provided by Whitefish was inappropriate for calculating impact fees. A professional engineer stated that the new capacity was ***dimensionally inconsistent*** (gallons vs gallons per day) and should NOT have been used to calculate impact fees**.** The 2018 FCS impact fee report used flow capacity (gpd) in its calculations for the same project. TischlerBise, in two other impact fee reports for Buckeye, AZ and Hamilton, MT, used flow capacity (gpd) in their calculations for collection piping projects.
5. **Comparison**: In the prior Whitefish 2018 impact fee report, this same project fee was only **$68 per unit,** more in line with the **$34** calculated using the correct capacity. Compare this with the **$3345** the City is currently charging! Using prior building permit data and the new inflated impact fee, Whitefish will collect excess fees of more than **$4 Million** in 5 years for a project that only cost the City **$400K** to build**.** It is unlawful for the City to demand such a huge impact fee for such a small piping project.
6. **Conclusion:** TischlerBise and the City either deliberately used invalid data to overcharge Whitefish property owners or acted incompetently when calculating new fees. Neither the City nor TischlerBise performed any form of quality review of this calculation, which would have exposed this error.

This summary highlights the extraordinary efforts by TischlerBise and Whitefish to inflate impact fees. The same error was uncovered with water impact fees.

City Politicians Ignore Warnings

The Whitefish City Manager, Mayor and City Council are complicit in this overcharge. They were warned that the TischlerBise report was flawed and that the new fees assessed property owners in Whitefish were seriously inflated. Whitefish politicians and the City Manager ignored warnings, refused to perform an *independent* review, and accepted the flawed TischlerBise report without questioning its validity.

Whitefish Has A History Of Inflating Impact Fees

In 2022, Whitefish property owners filed a Class Action suit against the City claiming it was charging unlawful impact fees. Approximately 450 property owners were overcharged fees between 2019 through 2023. A Federal Court in Missoula certified this Class Action against Whitefish on Constitutional grounds which was affirmed by a recent US Supreme Court ruling. This ruling requires impact fees to be directly related and proportionate to the costs borne by a city. ***Just after this ruling, Whitefish and its consultant, the FCS Group, entered into an agreement with these property owners to pay $1.4M to settle their claims in this Class Action***.

Contact Us For Further Information

The above analysis is detailed in a report entitled **Analysis of 2024 Whitefish Impact Fees** , which is available upon request. Join our Facebook group, ***Whitefish Town Square***, or contact us at **ImpactFeeAbuses@yahoo.com** for more information. Paul Gillman, Whitefish MT

Impact Fee Videos

Three videos have been produced that outline the history and problems found with the Whitefish Impact Fees.

1. Whitefish Impact Fee Abuses. The video describes how problems were identified by two whistleblowers in Whitefish and how the City Manager and Council responded to their report. A Class Action lawsuit was filed, certified and settled. Video also describes one of the problems with the new TischlerBise impact fees implemented in 2024 by Whitefish. These fees were outside the scope of the Class Action.
2. Whitefish Whitewash. This video demonstrates the City's false representations to the general public, City Council and Mayor when the City Attorney recommended the City accept the Class Action lawsuit settlement offer.
3. TischlerBise / Whitefish 2024 Impact Fees. This video goes into detail on the problems encountered with the new 2024 Whitefish Impact Fees demonstrating the manipulation of data used to calculate these overcharges.