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COMMUNITY WATER PROBLEMS AS A FACTOR IN  
MUNICIPAL INCORPORATION IN MONTANA

By

Michael Courtney Nash

B. A. University of Montana, 1967

Presented in partial fulfillment of the requirements for the degree of

Master of Arts

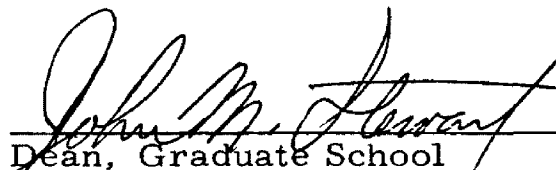
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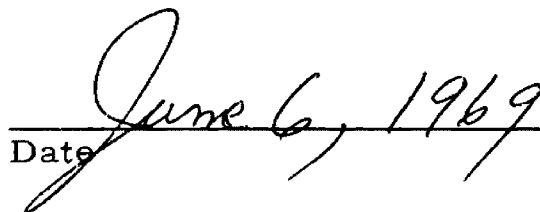
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# CHAPTER I

## THE EVOLUTION OF MUNICIPAL INCORPORATION AND WATER STATUTES IN MONTANA

Municipalities are incorporated places; they are given corporate powers under law. They function under the terms of a charter of incorporation provided either by the state legislature or by the local community itself. Montana does not grant to its cities the authority to draft their own charters establishing the form of government under which they will operate and specifying the powers and duties of local officials. Rather, the state provides for the forms and powers of the governments of its municipalities through the acts of the state legislature. How then have the statutory enactments of the legislature regarding municipal incorporation evolved in Montana? Also, how have local water problems and the need for community water supplies been linked with municipal incorporation in Montana?

The earliest legislation of the Montana Territorial Legislative Assembly relating to municipal incorporation did not clearly distinguish between incorporated and unincorporated communities. That is, the early Montana legislators accepted the existence of incorporated

communities, when in fact, they had not yet provided the authority whereby a community could incorporate. It was not until 1881, seventeen years after the Territory of Montana was created, that the legislature clearly and specifically addressed the distinction between incorporated and unincorporated communities.

The earliest law providing for the incorporation of Montana communities was the "Organic Act of the Territory of Montana" enacted by the United States Congress on May 26, 1864, which served as the Territorial Constitution. Section 6 of the act provided that "the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States . . . "<sup>1</sup> Several municipalities were incorporated by special acts of the Territorial Legislative Assembly under this authority: Virginia City (1864), Helena (1873), Bozeman (1874), Butte (1879), Billings (1885), Fort Benton (1885), Dillon (1885), and Missoula (1885). However, the overwhelming majority of Montana communities have been incorporated under the general laws of municipal incorporation.

The earliest general law respecting municipal organizations was "An act relating to Counties and County Officers," passed by the First Legislative Assembly on February 9, 1865. This act provided that "The Board of County Commissioners of each county, shall have

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<sup>1</sup> 13 U.S. Statutes at Large 88, Act of May 26, 1864.



power at any meeting: . . . to set off, organize and change the boundaries of townships in their respective counties, designate and give names to them, and to fix the time and place of holding the election therein."<sup>2</sup> However, the boards of county commissioners were not given carte blanche authority to go about creating townships. The act further stipulated that "The board of county commissioners shall not set off or organize any new township unless a petition be first presented to the board, signed by at least fifty citizens resident therein."<sup>3</sup> Thus, this earliest general statute, which applied to townships, implied two basic requirements which were to become a part of all subsequent legislation on the matter of municipal incorporation: (1) that the proposed township be initiated, by petition, by the townsmen themselves, and (2) that a minimum number of people reside in the place to be organized. It should be noted that this early legislation had little effect upon later municipalization of the state in that Montana never adopted the township as a division of county government. However, as noted above, the two basic requirements for the formation of a township were carried over as requirements for the formation of cities and towns.

In 1872 the Seventh Legislative Assembly again attempted to make it possible for citizens clustered together to create some form of

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<sup>2</sup>1864 Mont. Laws, p. 501, s. 14.

<sup>3</sup>1864 Mont. Laws, p. 502, s. 18.

local government. This act provided that:

Whenever the citizens of any town located, or that may hereafter be located, upon the public lands of the United States, shall desire to obtain title to the town site thus occupied by them, it shall be lawful for the corporate authorities of such town, or if the same be unincorporated, then for the judge of the probate court of the county in which such town is located, whenever such desire of the citizens is certified to such incorporate authorities, or judge of the probate court, as the case may be, by a petition signed by a majority of the resident property holders of such town, to enter, at the proper land office, so much of the land that such town may be entitled to under the provisions of the act of congress entitled, "An act for the relief of the inhabitants of cities and town upon the public lands," approved March 2, 1867, as may be actually necessary for the purposes of said town, in trust for the several use and benefit of the occupants thereof, according to their respective interests.<sup>4</sup>

The first general municipal incorporation act was enacted by the Twelfth Legislative Assembly on February 17, 1881. This statute, "An Act to provide for municipal corporations in the Territory of Montana," provided that, "any part of any county within this Territory, not less than one square mile in area, and not included in any incorporated town and city, . . . which shall have a resident population of not less than three hundred persons to every square mile thereof, may . . . become incorporated as a town . . . with the ordinary powers of municipal corporations. . . ." <sup>5</sup> The procedures by which a community could become incorporated were spelled out in several following sections. The area to be incorporated must be surveyed, a census of the population

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<sup>4</sup>1871-72 Mont. Laws, c. LVII, s. 1.

<sup>5</sup>1881 Mont. Laws, p. 13, s. 1.

must be taken and both must be filed with a public person for public examination. A petition signed by at least five taxpayers who are residents of the territory must then be filed with the district court of the county. Following public hearings on the matter an election shall be held. If a majority of the qualified electors cast affirmative votes, the town shall be incorporated. While this act of 1881 laid the formal, legal structure enabling communities to incorporate, none took advantage of its provision. The only incorporated communities in Montana prior to 1887 were those incorporated by special act of the Territorial Legislative Assembly.

On March 10, 1887, the Fifteenth Legislative Assembly enacted "An Act relating to the formation of municipal incorporations" which superseded the general municipal incorporation act of February 17, 1881. The present body of municipal incorporation law in Montana is primarily the Act of March 10, 1887, modified by subsequent legislative amendments. That is, the current law is a somewhat modernized version of the 1887 act. Sections 1 to 126 of the Act of 1887, inclusive, corresponded to Sections 315 to 440, inclusive, of the Fifth Division, General Laws, Compiled Statutes of Montana, 1887. Section 1 (315) of the Act of 1887 provided that, "Whenever the inhabitants of any part of a county shall desire to be organized into a city or incorporated town, they may apply by petition in writing, signed by not less than one hundred qualified electors . . . to the board of county commissioners of

the county in which the territory is situated. . . . No corporation shall be formed unless the number of inhabitants is three hundred or upwards." <sup>6</sup> This section was re-enacted as Section 4720 of the Political Codes of 1895, again re-enacted as Section 3208 of the Revised Codes of 1907, amended as Chapter 56, section 1, 1909 Laws of Montana, and re-enacted as Section 4961 of the Revised Codes of Montana 1921. The 1909 amendment reduced the number of required petition signers from one hundred to fifty, thus presumably making incorporation easier. This is currently the status of the evolution of municipal incorporation law in Montana.

Under the provisions of the Act of 1887 which required one hundred petition signers, thirty-two cities and towns were incorporated; under the more permissive provisions of the amended Act of 1909 which required only fifty petition signers, fifty-two cities and towns were incorporated. This dramatic increase in the number of incorporated communities may have been a function of the legislature's desire to facilitate incorporation procedures by reducing the number of required petition signers necessary to institute incorporation proceedings. It was also a function of the population growth of the state. Between the years 1880 and 1910, the population in the cities and towns increased from 11,957 to 167,863. The decennial census of 1920 showed the municipal population to be 259,666, but by 1930 the cities and towns had actually lost population, the total in that year being 250,915.

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<sup>6</sup>1887 Compiled Statutes of Montana, Fifth Div., c. XXII, s. 315.

TABLE 1  
MUNICIPAL POPULATION DATA

	Municipal Population	Municipal Incorporations during Previous Decade
1880	11, 957	3 <sup>a</sup>
1890	53, 483	14 <sup>b</sup>
1900	99, 290	5
1910	167, 863	34
1920	259, 666	24
1930	250, 915	2
1940	283, 702	2
1950	329, 925	2
1960	398, 445	2

<sup>a</sup>Includes Virginia City, incorporated by special legislative act in 1864, plus Bozeman and Butte, also incorporated by special legislative act.

<sup>b</sup>Five of these communities--Billings, Dillon, Fort Benton, Helena and Missoula--were incorporated by special legislative act.

Also, municipal incorporation may have been related to the phenomenon of "county busting" and the attendant competition between populated places seeking the economic and political status of county seat. Probably the dynamic increase in municipal incorporations following 1909 was a product of all three factors.

Statutory and case law regarding the legal status of county seats evolved in a curious and mixed process. On March 6, 1911, the Twelfth Legislative Assembly approved the Leighton Act, designed to facilitate the creation of new counties in Montana. In respect to the creation of county seats the Leighton Act provided that "There shall also be printed upon said ballot the words 'for the county seat,' and the names of all cities or towns which may have filed with the County Clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat."<sup>7</sup> On March 21, 1913, the Thirteenth Legislative Assembly amended portions of the Leighton Act, but left untouched Section 3 which pertained to county seats.<sup>8</sup>

Later that same year the Montana Supreme Court held in State ex rel. Powers v. Dale that an unincorporated town was eligible to become a candidate for county seat of a county proposed to be

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<sup>7</sup>1911 Mont. Laws, c. 112, s. 3.

<sup>8</sup>1913 Mont. Laws, c. 133, s. 3.

created under the Leighton Act of 1911.<sup>9</sup>

During the following legislative session, the Fourteenth Legislative Assembly repealed the Leighton Act of 1911. The new act provided that, "There shall also be printed upon said ballot the words, 'For the county seat,' and the names of all cities or towns which may have been incorporated under the laws of the State for a period of one year preceding the day of the filing and presentation of the original petition . . . " may be eligible to become the county seat.<sup>10</sup>

Thus, since the Montana Supreme Court had held in 1913 that the Leighton Act of 1911 and its amendment of 1913 did not require that a city or town be incorporated in order that it might become a candidate for county seat, the Legislative Assembly wrote this requirement into law. But this was not quite the end of the story, for on March 21, 1919, the Sixteenth Legislative Assembly amended the law of 1915 which had required that cities or towns wishing to become a county seat must be incorporated places. It was stipulated that "There shall also be printed upon said ballot the words, 'For the county seat,' and the names of all cities or towns which may have filed with the County Clerk a petition . . . " might once again become candidates for the county seat.<sup>11</sup>

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<sup>9</sup>47 Mont. 227, 131 Pac. 670 (1913).

<sup>10</sup>1915 Mont. Laws, c. 139, s. 3, emphasis added.

<sup>11</sup>1919 Mont. Laws, c. 226, s. 3, emphasis added.

The final chapter in this evolutionary process was written during the Extraordinary Session of the Sixteenth Legislative Assembly. On August 11, 1919, the legislature approved an act providing "That no city, town or village shall become the temporary or permanent county seat of any county organized under the provisions of Chapter 226 of the Session Laws of the Sixteenth Legislative Assembly, unless such city or town shall have been incorporated in the manner provided by law."<sup>12</sup> This provision requiring that a county seat be an incorporated place was re-enacted as Section 4392, Revised Codes of Montana 1921 and Section 16-503, Revised Codes of Montana 1947.

Montana became a territory of the United States in 1864 and attained statehood in 1889. During this twenty-five year period fifteen communities were incorporated by eight special acts of the Territorial Legislative Assembly. Seven others incorporated under their own initiative, under the authority of the Act of 1887, which superseded the first general municipal incorporation act of 1881, just two years before statehood. Of these seven communities, three incorporated in 1889, the year Montana became a state; three incorporated in 1888 and the other incorporated in 1887.

In the ten-year period following statehood, only seven more communities incorporated. Thus by the beginning of the twentieth

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<sup>12</sup>1919 Mont. Laws, Ex. Sess., c. 16, s. 1-B.



century only twenty-two communities in Montana were incorporated. By 1910 thirty-four additional communities had incorporated, and by 1920 twenty-four more communities were incorporated. Thus, by 1920, eighty of the current 126 incorporated cities and towns had been incorporated.

Following the passage of the Act of March 9, 1915, which required that a place be incorporated if it wished to become a candidate for county seat, and the repeal of the Act by Extraordinary Session of the Sixteenth Legislative Assembly on August 11, 1919, fourteen cities and towns were incorporated in Montana. All but one of these communities, Lima, are east of the Continental Divide. Seven of them are located in Sheridan, Roosevelt, Daniels, Valley and Phillips counties in northeastern Montana. The remaining six communities are spread evenly among Hill, Chouteau, Fergus, Petroleum, Custer and Fallon counties. Of these fourteen communities only three--Scobey, Daniels County; Winnett, Petroleum County; and Wolf Point, Roosevelt County--were destined to become county seats. The significance of this boom in municipal incorporation during a four-year period can probably be linked to the great influx of immigrants into Montana during the same general period of time. As noted above in Table 1, the municipal census of 1920 revealed the greatest growth in 1911-1920 of any decennium, before or after.

Since the earliest Territorial days the Montana Legislative

Assembly has provided ample incentive for populated places to seek to incorporate in order that social services might be undertaken by the municipality-to-be. During the same session in which the First Territorial Legislative Assembly enacted a primitive law regarding townships in Montana, it also provided the machinery whereby incorporated communities could obtain services, particularly domestic water supplies, required by the townspeople. The legislature, by special act, incorporated Virginia City on December 30, 1864. That act provided that "The city shall have the power and authority to levy and collect taxes, for city purposes, upon all taxable property, real, mixed and personal, . . ." for the following purposes: "to provide the city with water, erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets."<sup>13</sup> On January 27, 1865, the Assembly passed another special act establishing a private water company owned and operated by A. M. Holter, O. Narelius and J. P. Oleson. This newly created water company was "authorized and empowered to bring and convey into Virginia City, in Madison County, a supply of water for the use of the inhabitants thereof . . ."<sup>14</sup> Thus it would appear that the Legislative Assembly was motivated by two influences. On the one hand it gave the newly incorporated town of

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<sup>13</sup>1864 Mont. Laws, p. 544, s. 1; p. 545, s. 8.

<sup>14</sup>1864 Mont. Laws, p. 608, s. 4.

Virginia City the authority to tax for the purpose of creating a municipally-owned water system; then it created a private water company for Virginia City less than one month after it incorporated the town. Be this as it may, contained within the charters of all of the cities and towns incorporated by special act of the legislature was the authority "to provide the city with water, erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets." Of the eight communities to be incorporated by specific legislative franchise, three communities--Virginia City, Bozeman and Butte--were incorporated prior to the enactment of the first general municipal incorporation act of 1881.

Under the authority granted to municipalities in the first general municipal incorporation act of February 17, 1881, the Legislative Assembly provided that "the town council shall have power by ordinance, bylaw, resolution or vote: . . . to receive, purchase or hold for the use of the town any estate, real or personal, and to sell and convey the same." Further, the town council was granted the authority " . . . to establish and open drains, canals or sewers, or alter, widen or straighten water sources."<sup>15</sup> Thus, in the first general municipal incorporation act of 1881, the legislature offered unincorporated towns a method by which they could obtain communal water supplies: incorporation.

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<sup>15</sup>1881 Mont. Laws, s. 1.

The Act of March 10, 1887, which superseded the Act of 1881, provided that, "Cities and towns organized as prescribed by this act shall be bodies politic, and corporate, and may . . . acquire and hold real, personal and mixed property, for municipal purposes."<sup>16</sup> The legislature further provided that, "The city council shall have the power to condemn and appropriate private property for . . . establishing . . . any sewer, waterway, or for any other public use . . . "<sup>17</sup> These two grants of legislative authority certainly offered an incentive to a community to incorporate in order that the public needs of its citizens might be satisfied.

The Constitution of the State of Montana, ratified October 1, 1889, specified that "No city, town, township or school district shall be allowed to become indebted in any manner . . . in the aggregate exceeding three (3) per centum of the value of the taxable property therein, . . . provided, however, that the Legislative Assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality . . . "<sup>18</sup> Eight years later the 1895 legislature enacted this constitutional

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<sup>16</sup>1887 Compiled Statutes of Montana, Fifth Div., c. XXII, s. 323.

<sup>17</sup>Ibid., s. 419.

<sup>18</sup>Mont. Constitution (1889), Art. XIII, s. 6.

limitation regarding public indebtedness of municipalities in a statute.

On March 6, 1931, the Legislative Assembly exercised its constitutional option to increase the permissible debt limit for municipalities. The new act provided that incorporated municipalities, for the purpose of "procuring a water supply or constructing or acquiring a water system," could incur an additional indebtedness, "not exceeding ten per centum (10%) over and above the three per centum (3%)" previously authorized.<sup>19</sup>

At the general election on November 7, 1950, the voters of Montana amended the Constitution to increase municipal debt limits for community water supplies. The amendment provided a new debt limit of five per cent of the value of the taxable property within a community rather than the previous three per cent, when the question of a community water system was being considered.

During the Assembly session of 1951, the Thirty-second Legislature acted upon its constitutional authority by providing that, "No city or town shall issue bonds for any purpose in an amount which . . . will exceed five per centum (5%) of the value of the taxable property therein," except that for the purpose of "procuring a water supply or constructing or acquiring a water system" an incorporated community may incur an additional indebtedness which "shall not exceed ten

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<sup>19</sup>1931 Mont. Laws, c. 160, s. 3.

per centum (10%) over and above the five per centum (5%)" constitutionally provided for.<sup>20</sup>

In summary, the development of Montana municipal incorporation law had its beginning in the "Organic Act of the Territory of Montana," 1864. Under this authority the Territorial Legislative Assembly incorporated eight communities by special acts. In 1865 the Territorial Legislature first began to provide a vehicle by which populated places might organize themselves by providing for the creation of townships. Though the township was never used in Montana, the requirements for local initiative and minimum population were established. The Seventh Legislative Assembly, 1872, made a halting attempt to further the municipalization of Montana but no communities were organized under the authority provided in that year. In 1881 the first general municipal incorporation act was passed. Again, no communities were incorporated under this act. Then in 1887 the Fifteenth Legislative Assembly enacted legislation which is the nucleus of Montana's present body of municipal incorporation law. The last significant amendment to this statute was enacted in 1909, reducing the number of required petitioners for incorporation from one hundred to fifty. The greatest bulk of incorporation proceedings occurred in the years following the amendment of 1909.

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<sup>20</sup>1951 Mont. Laws, c. 116, s. 1.

## CHAPTER II

### HISTORICAL EXAMINATION: WHEN AND WHY MONTANA COMMUNITIES HAVE SOUGHT TO INCORPORATE

The data and the conclusions contained in this chapter are grounded upon three sources: (1) personal interviews with Claiborne W. Brinck, Director of the Division of Environmental Sanitation, Montana State Board of Health, and W. A. Clarkson, also of the Division of Environmental Sanitation; (2) a questionnaire sent to the mayor of each incorporated city or town in Montana; and (3) follow-up telephone interviews with municipal officials of selected incorporated cities and towns in Montana.

The questionnaire employed in the survey of incorporated municipalities was open-ended with respect to the significant question regarding the reasons for incorporation. It was designed to elicit statements about the reasons why Montana communities have incorporated, that is, what services and/or facilities incorporation was expected to furnish. All responses to this question were volunteered by the respondents without any guiding references to municipal water supplies in the questionnaire. The questionnaire form is in the Appendix.

Of the 126 incorporated cities and towns which were questioned, 82 responded, representing 66 per cent of the total. In Montana there are 9 cities of the First Class (population exceeding 10,000); all 9 responded to the questionnaire. There are 5 cities of the Second Class (population 5,000-10,000), and they all responded to the questionnaire. There are 41 cities of the Third Class (population 1,000-5,000) and 34 of these communities responded to the questionnaire, representing 83 per cent of the total. Finally, there are 71 towns (population 300-1,000) in Montana. Communities with a population of 1,000-2,500 may, by resolution adopted by the town council, be either a city of the Third Class or a town. Five Montana towns (Boulder, Browning, Eureka, Philipsburg and Thompson Falls) have populations in excess of 1,000 which would qualify them to become cities of the Third Class; however, they have opted to remain legally classified as towns. Of the 71 towns in Montana, 34 responded to the questionnaire, representing 48 per cent of the total.

Of the 82 cities and towns which responded to the questionnaire, only 58 indicated reasons for the incorporation of their community. These respondents represent 46 per cent of all the incorporated communities in Montana. However, Mr. Brinck at the State Board of Health was able to validate many of the returns; further, he was able to pinpoint the primary reason for incorporation in ten other communities which did not respond to the questionnaire. His



information was based upon intimate professional knowledge of the problems faced by Montana communities with respect to acquisition of water facilities.

While the questionnaire and Mr. Brinck's information suggest a general pattern of reasons for municipal incorporation, no firsthand information on reasons for incorporation was available for 54 per cent of the incorporated municipalities.

Finally, it should be noted that of the 126 incorporated cities and towns in Montana, the date of incorporation was available for only 90 of them, representing 71 per cent of the total. Tentative conclusions regarding municipal incorporation in Montana are presented here, with recognition that the supporting data are incomplete. Nevertheless, the results of the survey are sufficiently suggestive that the burden of disproof may be said to lie with the critic.

As might be expected, given the statutory linkage between incorporation and authority to establish community water supply that has existed since early days, the acquisition of a municipal water supply and system has been the primary service desired by communities seeking to incorporate.

The following table presents the results of the questionnaire survey. The numbers following the city listing indicate the order of importance assigned by the respondents to the reasons for incorporation.

TABLE 2

## THE DATE AND REASONS FOR INCORPORATION OF MUNICIPALITIES IN MONTANA

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve-ments <sup>a</sup>	Tax	Home Rule
Alberton <sup>b</sup>	Mineral	..	..	..	1	..	..	..	..	..
Anaconda	Deer Lodge	1888	2	2	..	..	..	..	1	..
Bainville	Roosevelt	..	..	..	..	..	..	..	..	..
Baker	Fallon	1911	..	..	..	..	..	..	..	..
Bearcreek	Carbon	1905	..	..	1	..	2	..	..	..
Belgrade	Gallatin	1906	..	..	..	..	..	..	..	..
Belt	Cascade	1907	..	..	..	..	..	..	..	..
Big Sandy	Chouteau	1915	..	..	1	2	..	..	..	..
Big Timber	Sweet Grass	1902	..	1	..	..	2	3	..	..
Billings	Yellowstone	1885	..	..	..	..	..	1	..	..
Boulder	Jefferson	1911	..	..	..	..	..	..	..	..
Bozeman	Gallatin	1874	..	..	..	..	..	..	..	..
Bridger	Carbon	1907	..	1	..	..	..	..	..	2
Broadus <sup>b</sup>	Powder River	..	..	..	1	..	..	..	..	..
Broadview	Yellowstone	..	..	..	..	..	..	..	..	..
Brockton	Roosevelt	..	..	..	..	..	..	..	..	..

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve- ments <sup>a</sup>	Tax	Home Rule
Browning	Glacier	..	..	..	..	..	..	..	..	..
Butte	Silver Bow	1879	..	..	..	..	..	..	..	..
Cascade	Cascade	..	..	..	..	..	..	..	..	..
Chester	Liberty	1910	..	..	1	..	..	..	..	..
Chinook	Blaine	1901	..	..	1	..	2	..	..	..
Choteau	Teton	1913	1	..	1	2	..	2	..	3
Circle <sup>b</sup>	McCone	..	..	..	1	..	..	..	..	..
Clyde Park	Park	..	..	..	..	..	..	..	..	..
Columbia Falls	Flathead	1909	..	2	1	..	..	..	..	..
Columbus	Stillwater	1907	..	..	..	..	..	..	..	..
Conrad	Pondera	1909	..	..	1	..	..	..	..	..
Culbertson	Roosevelt	1909	..	..	1	..	2	..	..	..
Cut Bank	Glacier	1911	..	..	..	..	..	..	..	..
Darby <sup>b</sup>	Ravalli	..	..	..	1	..	..	..	..	..
Deer Lodge	Powell	1889	2	2	..	..	..	..	..	1
Denton	Fergus	1915	..	..	..	..	..	..	..	1
Dillon	Beaverhead	1885	..	..	..	..	..	..	..	..
Dodson	Phillips	..	..	..	..	..	..	..	..	..

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve- ments <sup>a</sup>	Tax	Home Rule
Drummond <sup>b</sup>	Granite	1945	2	4	1	3	1	..	..	5
Dutton	Teton	1935	..	..	1	2	..	3	..	..
East Helena	Lewis and Clark	..	..	..	..	..	..	..	..	..
Ekalaka	Carter	1914	..	..	..	..	..	..	..	1 <sup>c</sup>
Ennis	Madison	1956	..	3	1	2	..	..	..	..
Eureka	Lincoln	1907	..	..	..	..	..	..	..	..
Fairfield	Teton	1940	..	..	1	..	..	..	..	..
Fairview	Richland	1914	..	..	..	..	..	..	..	1
Flaxville	Daniels	1955	..	..	1	2	..	..	..	..
Forsyth	Rosebud	1908	..	..	..	..	..	..	..	..
Fort Benton	Chouteau	1885	2	1	..	..	..	..	..	..
Froid <sup>b</sup>	Roosevelt	1915	..	..	1	..	1	..	..	..
Fromberg	Carbon	1912	..	2	1	3	..	..	..	..
Geraldine	Chouteau	..	..	..	..	..	..	..	..	..
Glasgow	Valley	1902	..	..	..	..	1	2	..	..
Glendive	Dawson	1902	3	2	1	..	..	..	..	..
Grass Range	Fergus	..	..	..	..	..	..	..	..	..
Great Falls	Cascade	1888	..	..	1	..	..	..	..	..

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve- ments <sup>a</sup>	Tax	Home Rule
Hamilton	Ravalli	1894	..	..	..	..	..	..	..	1
Hardin	Big Horn	1911	..	..	..	..	..	..	..	..
Harlem	Blaine	1910	..	1	..	..	..	..	..	..
Havre	Hill	1893	..	1	2	2	..	3	..	..
Helena	Lewis and Clark	1881	..	..	..	..	..	..	..	..
Hingham	Hill	1918	..	..	..	..	..	..	..	1
Hobson	Judith Basin	..	..	..	..	..	..	..	..	..
Hot Springs	Sanders	1929	2	..	1	3	3	3	..	..
Hysham	Treasure	..	..	..	..	..	..	..	..	..
Ismay	Custer	1916	..	1	..	..	3	2	4	..
Joliet	Carbon	1906	..	1	..	..	..	..	..	..
Jordon <sup>b</sup>	Garfield	..	..	..	1	..	..	..	..	..
Judith Gap	Wheatland	..	..	..	..	..	..	..	..	..
Kalispell	Flathead	1892	..	2	..	..	..	..	..	1
Kevin <sup>b</sup>	Toole	..	..	..	1	..	..	..	..	..
Laurel	Yellowstone	1908	..	..	..	..	..	..	..	..
Levina	Golden Valley	1920	..	4	..	..	..	3	2	1
Lewistown	Fergus	1901	..	..	..	..	..	..	..	..

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve-ments <sup>a</sup>	Tax	Home Rule
Libby	Lincoln	1909	..	..	..	..	..	..	..	..
Lima	Beaverhead	1917	..	..	1	..	2	..	..	..
Livingston	Park	1889	1	2	..	..	..	..	..	..
Lodge Grass	Big Horn	1927	..	1	..	..	2	3	3	..
Malta	Phillips	1909	..	..	..	..	..	..	..	..
Manhattan	Gallatin	..	..	..	..	..	..	..	..	..
Medicine Lake	Sheridan	1915	..	..	1	..	..	..	..	..
Miles City	Custer	1887	1	2	5	6	4	3	..	..
Missoula	Missoula	1885	..	..	..	..	..	..	..	..
Moore	Fergus	1910	..	..	..	..	..	..	..	..
Nashua	Valley	1918	..	..	..	..	..	..	..	1
Neihart <sup>b</sup>	Cascade	..	..	..	1	..	..	..	..	..
Opheim <sup>b</sup>	Valley	..	..	..	1	..	..	..	..	..
Outlook	Sheridan	1916	1	2	1	1	1	..	..	3
Philipsburg	Granite	1890	..	2	..	..	..	..	..	1
Plains	Sanders	1907	..	1	..	..	..	..	..	..
Plentywood	Sheridan	1912	1	..	2	3	..	..	..	..
Plevna	Fallon	1916	..	..	..	..	..	..	..	..

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve-ments <sup>a</sup>	Tax	Home Rule
Polson	Lake	1910	..	..	..	..	..	..	..	..
Poplar	Roosevelt	..	..	..	..	..	..	..	..	..
Rexford <sup>d</sup>	Lincoln	1966	..	..	..	..	..	..	..	..
Red Lodge	Carbon	1889	..	..	..	..	..	..	..	..
Richey	Dawson	..	..	..	..	..	..	..	..	..
Ronan	Lake	..	..	..	..	..	..	..	..	..
Roundup	Musselshell	1909	..	..	..	..	..	..	..	..
Ryegate	Golden Valley	..	..	..	..	..	..	..	..	..
Saco	Phillips	1918	..	..	..	..	..	..	..	1
Scobey	Daniels	1917	..	..	..	..	..	..	..	..
Shelby	Toole	1910	..	..	1	..	..	..	..	..
Sheridan	Madison	..	..	..	..	..	..	..	..	..
Sidney	Richland	1911	..	..	..	..	..	..	..	..
Stanford	Judith Basin	..	..	..	..	..	..	..	..	..
Stevensville	Ravalli	1899	..	..	..	..	..	..	..	1 <sup>c</sup>
St. Ignatius	Lake	..	..	..	..	..	..	..	..	..
Sunburst	Toole	..	..	..	..	..	..	..	..	..
Superior	Mineral	1948	..	..	..	..	..	..	..	1

TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve- ments <sup>a</sup>	Tax	Home Rule
Terry	Prairie	1910	..	..	..	..	..	..	..	1
Thompson Falls	Sanders	1910	..	..	1	..	..	..	..	..
Three Forks	Gallatin	1910	..	..	..	..	..	..	..	..
Townsend	Broadwater	1895	..	..	..	..	..	..	..	1
Troy	Lincoln	..	..	..	..	..	..	..	..	..
Twin Bridges	Madison	1902	..	..	..	..	..	..	..	..
Valier	Pondera	..	..	..	..	..	..	..	..	..
Virginia City	Madison	1864	..	..	..	..	..	..	..	..
Walkerville	Silver Bow	1890	..	..	..	..	..	..	..	..
Westby <sup>b</sup>	Sheridan	..	..	..	1	..	..	..	..	..
West Yellowstone	Gallatin	1966	..	1	..	..	..	2	..	3
Whitefish	Flathead	1905	..	..	..	..	..	..	..	..
Whitehall	Jefferson	1904	..	..	..	..	..	..	..	..
White Sulphur Springs	Meagher	1888	..	..	..	..	..	2	3	1
Wibaux	Wibaux	1910	..	..	..	..	..	..	..	..



TABLE 2--Continued

City/Town	County	Date of Incorporation	Reasons for Incorporation							
			Fire	Police	Water	Sewer	Electricity	Improve-ments <sup>a</sup>	Tax	Home Rule
Winifred	Fergus	..	..	..	..	..	..	..	..	..
Winnett	Petroleum	1916	..	1	3	3	..	2	..	..
Wolf Point	Roosevelt	1918	..	..	1	1	..	2	..	..

<sup>a</sup>Improvements. This is a rather compendious category, including such items as the installation and repair of sidewalks and curbs, park beautification, street and alley maintenance, and general city-wide improvements.

<sup>b</sup>Source of Information: Claiborne W. Brinck, Director of the Division of Environmental Sanitation, Montana State Board of Health, Helena, Montana.

<sup>c</sup>Ekalaka and Stevensville both reported that they incorporated in order to acquire the County Seat. Ekalaka was successful; Stevensville was not.

<sup>d</sup>Rexford incorporated to negotiate with the Army Corps of Engineers for relocating the present town of Rexford above the water level of Libby Dam.

A brief summary of the replies of the 58 respondents follows.

Percentage figures have been rounded to the nearest whole number.

Communities incorporated in order to obtain:

Fire protection . . . . .	17%
Police protection . . . . .	41%
Water supply and system . . . . .	64%
Sewer system . . . . .	24%
Electricity (street lighting system) . . . . .	22%
Improvements . . . . .	26%
Broader tax base . . . . .	9%
Home rule (local self-government) . . . . .	35%

Twenty-six of the 58 cities and towns which responded to this questionnaire indicated that the desire to obtain a water system was an overriding factor influencing the campaign to incorporate. Eleven additional communities which did not respond to the questionnaire also fall within this category, according to information supplied by Mr. Brinck of the State Board of Health.<sup>21</sup> This means that 37 of the 58 municipalities, or 64 per cent of the communities for which incorporation data is available incorporated in order that the community might obtain a municipal water supply. Thirty-three of the 37 respondents in this category, or 89 per cent, reported that the acquisition of a water supply or system was the primary service sought by incorporation.

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<sup>21</sup>Personal interview with Claiborne W. Brinck, Director of the Division of Environmental Sanitation, State Board of Health, May 6, 1968.

## CHAPTER III

### THE RURAL SPECIAL IMPROVEMENT DISTRICT AND THE STATE WATER RESOURCES BOARD

By 1915, when the rural special improvement district was introduced into Montana as a device by which unincorporated communities might procure municipal-type services and facilities, approximately 75 per cent of all current municipalities had been incorporated.

The first statute relating to rural improvement districts was enacted by the Fourteenth Legislative Assembly on March 8, 1915. It established two basic requirements which all subsequent legislation relating to rural improvement districts has contained: (1) that the board of county commissioners is responsible for ordering and creating the special districts, and (2) that a minimum of 60 per cent of the affected freeholders must petition the board of county commissioners before such special district may be created. The law of 1915 provided that "the Boards of County Commissioners of the several counties throughout the State are given jurisdiction and power . . . to create and establish special improvement districts in thickly populated localities outside the limits of incorporated towns and cities, for the

purpose of constructing sanitary and storm sewers, installing lights and such other special improvements, that may be petitioned for by Sixty Per Cent (60%) of the freeholders affected by the same."<sup>22</sup>

In 1917 the statute was amended to add authority for the creation of "water works plants" and the requirement of freeholder approval for creation of special improvement districts was clarified.<sup>23</sup> In 1919 the statute was further amended to authorize maintenance of sewer, water and light works.<sup>24</sup> In 1929 the statute was again amended to specify that the procurement of a water system was possible by means of a rural improvement district.<sup>25</sup> In February 1961 the Thirty-seventh Legislative Assembly again amended the basic 1915 law. This amendment provided for "devices intended to protect the safety of the public from open ditches carrying irrigation or other water."<sup>26</sup> In 1969 the legislature further amended the statutes governing irrigation ditches to authorize creation by counties and municipalities of special improvement districts to fence or otherwise protect irrigation ditches as a safety measure. The legislation shifted

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<sup>22</sup>1915 Mont. Laws, c. 123, s. 1.

<sup>23</sup>1917 Mont. Laws, c. 156.

<sup>24</sup>1919 Mont. Laws, c. 67, s. 1.

<sup>25</sup>1929 Mont. Laws, c. 133, s. 1.

<sup>26</sup>1961 Mont. Laws, c. 30, s. 1.

the cost of such protection from owners of the ditch to property owners within the improvement district.<sup>27</sup>

The law regarding rural improvement districts in Montana now (1969) provides that "Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the free holders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for."<sup>28</sup>

Thus since 1915 the Montana Legislative Assembly has provided an alternative to municipal incorporation by which heavily populated localities outside the limits of incorporated towns and cities might secure municipal-type facilities. However, it has also been demonstrated that the creation of a rural improvement district is more difficult than incorporation. Incorporation proceedings may be

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<sup>27</sup>1969 Mont. Laws., c. 304, 306.

<sup>28</sup>Rev. Codes Mont. (1947), s. 16-1601.

initiated by submitting a petition, signed by fifty citizens of the place to be incorporated, to the board of county commissioners of the county within which the place is located. After the petition is filed and a census is taken demonstrating that at least 300 people live in the area to be incorporated, the board of county commissioners must call an election of all the qualified electors residing in the described territory. A simple majority of the votes cast in the election will carry the issue to incorporate. After the city or town has incorporated, it is then empowered to issue bonds for the purpose of "securing a supply of water for the use of a city or town or its inhabitants."<sup>29</sup>

On the other hand, the creation of a rural improvement district requires that a petition signed by at least 60 per cent of the affected freeholders must be submitted to the board of county commissioners. Even after such a petition has been filed, nothing in the statute requires the board of county commissioners to "order and create" the special improvement district petitioned for. The final decision whether a rural improvement district will be created rests with the board of county commissioners. In fact, many of those towns which responded to the questionnaire by indicating that "home rule" or local government was a primary reason for incorporation also indicated that their local county commissioners were not always sympathetic to their expressed needs. This unsympathetic attitude of county

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<sup>29</sup>Rev. Codes Mont. (1947), s. 11-981.

commissioners to the needs of rural communities also was reported by Mr. Claiborne W. Brinck of the Montana State Board of Health. He said that it was his impression that in the past certain boards of county commissioners have often been unresponsive to the expressed desires of rural communities to create rural improvement districts. His only explanation for this apparent indifference was one of personalities. Based upon the information gathered from the questionnaire and from Mr. Brinck, it is the tentative conclusion of this study that the reluctance of some boards of county commissioners to establish rural improvement districts has impelled small rural communities to seek incorporation in order to obtain community water systems.<sup>30</sup>

The State Water Resources Board was created in 1933 by the Twenty-third Legislative Assembly in order that Montana might work closely with the Federal Public Works Administration and the Work Projects Administration. Toward that end, a 1935 amendment to the Act of 1933 which had created the Water Resources Board spelled out the role designed for the Water Resources Board. The 1935 amendment provided that "Because of the inability of thousands of citizens throughout the state to find employment and support themselves and their families in the present depression, and because of serious crop failures resulting from unprecedented drought conditions, it is necessary

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<sup>30</sup>Personal interview with Claiborne W. Brinck, Director of the Division of Environmental Sanitation, State Board of Health, May 6, 1968.

to proceed immediately with the construction of the works authorized by this Act in order to create employment, assist the growing of crops and prevent irreparable injury to the people of the state so that the public peace, health and safety can be preserved immediately."<sup>31</sup>

Since 1933 the Board's major emphasis has been on development of irrigation projects, but from time to time it has assisted rural communities in the acquisition of potable water supplies. However this assistance has mainly taken the form of engineering and cost-estimate advice. Most financing for the construction of rural water facilities has been accomplished under other authority such as rural improvement districts, Farmer's Home Administration, and Housing and Home Finance Agency.

The Water Resources Board statute stipulated "that the public interest, welfare, convenience and necessity require the construction of a system of works . . . for the conservation, development, storage, distribution and utilization of water."<sup>32</sup> The legislature spelled out what projects could be included in the term "works" in Section 1 of the statute. By apparent oversight, the legislature failed to specify that construction of a municipal water system was a proper exercise of the Water Resources Board authority. This omission was soon remedied.

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<sup>31</sup>1935 Mont. Laws, c. 95, s. 8.

<sup>32</sup>1933 Mont. Laws, c. 35, s. 1.



In 1933 the city of Conrad requested that the Board assist them in renovating their water system which was no longer adequate to supply the needs of the town. The Federal Public Works Administration advised the city that funds could be made available to the Board for construction of the water supply line for the city, but that the Board's mandate had to be broadened to provide for construction of a municipal water supply.

In 1935 the Twenty-fourth Legislative Assembly amended the 1933 statute to provide that "the word 'works' shall be deemed to . . . embrace all means of conserving and distributing water, including reservoirs, dams, diversion canals, distributing canals, lateral ditches and pumping units, mains, pipelines and water works systems, and shall include . . . works for the purpose of irrigation, development of power, water of stock, supplying of water for public, domestic, industrial and other uses for fire protection."<sup>33</sup>

The Act of 1935 provided alternative methods for the financing of the construction of water systems in rural communities. The legislature stipulated that "the cost of such construction shall be paid wholly by means of or with the proceeds of revenue bonds . . . or of a grant to aid in financing such construction from the United States of America or any instrumentality or agency thereof and other funds

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<sup>33</sup>1935 Mont. Laws, c. 95, s. 1, emphasis added.

provided under the authority of this Act."<sup>34</sup>

The Water Resources Board has undertaken construction of only five rural community water systems--Absarokee, Brady, Charlo, Highwood and Noxon. The Board has participated in the construction of community water facilities for only three incorporated towns--Conrad, Joliet and Winnett. An explanation given for this lack of involvement with incorporated communities was that the state political culture militates against state government involvement in matters that are essentially local. The state should not do for its citizens those things which they are capable of doing for themselves.<sup>35</sup> However, this explanation seems to beg the question, in that the Board can do nothing until requested by the community to conduct an engineering study of the proposed water system. The bonds are then retired by payments made by the users of the water system, over a specified period of time. Further, it is difficult to understand the distinction between incorporated and unincorporated communities in need of water systems. Nevertheless, it has been the policy of the State Water Resources Board for nearly twenty years not to get involved in the financing and construction of water systems for incorporated communities.

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<sup>34</sup>1935 Mont. Laws, c. 95, s. 2.

<sup>35</sup>Personal interview with William D. Morton, Supervisor of Projects, Montana Water Resources Board, May 6, 1968.

### Sweetgrass

The small, unincorporated community of Sweetgrass exemplifies the problems faced by unincorporated Montana communities in their attempts to obtain community water supplies.

The town of Sweetgrass is located just south of the Canadian border in Toole County and serves as a customs-immigration station between the United States and Canada. Until 1961 the source of water for domestic and stock-water supplies had been relatively shallow wells augmented by water imported by tank cars from Lethbridge, Canada, fifty-two miles to the north. Both Sweetgrass and the adjacent town of Coutts in Alberta, Canada were supplied by water in this manner as neither community had a municipal water system.

As early as 1953 residents of both Sweetgrass and Coutts complained of gasoline contaminating their wells. In 1959 the United States Department of the Interior completed a geological survey and substantiated the claim that local well water was indeed being contaminated from an unidentified source of gasoline.

In 1958 the residents of Sweetgrass created a rural improvement district for a water and sewer system and a lighting system, and in 1959 the community of Sweetgrass obtained a planning grant for a water system from the Housing and Home Finance Agency of the Department of Health, Education and Welfare.

Inasmuch as the town of Coutts, Alberta shared the problem of obtaining uncontaminated potable water with the town of Sweetgrass, Montana, the international neighbors worked together to create a joint water system that would benefit the residents of both communities. By 1961 the Coutts-Sweetgrass Water System became a reality. Coutts draws its water from the Milk River six miles north of the community and brings the water to Coutts through a six-inch transmission line. At the international border Sweetgrass taps onto the Coutts water system, purchases water from the town of Coutts and distributes the water to the citizens of Sweetgrass through its own distribution system. Thus, in a state reputed for its great abundance of water and unashamedly suspicious of any plan designed to share that water with other, more arid regions of the United States, the town of Sweetgrass found a foreign neighbor willing to share its water with people in need of a source of potable water.

TABLE 3

UNINCORPORATED COMMUNITIES WITH PUBLIC WATER  
SUPPLIES--DATE OF ACQUISITION  
AND HOW FINANCED

Community	Year	How Financed					
		Water Resources Board	Public Works Administration Work Projects Administration	Rural Improvement District	Farmers' Home Administration	Housing and Home Finance Agency	Other
Absarokee	1954	x	..	..	..	..	..
Basin	1936	..	x	x	..	..	..
Brady	1948	x	..	..	..	..	..
Canyon Ferry	1948	..	..	..	..	..	Bureau of Reclamation
Charlo	1945	x	..	..	..	..	..
Cherry Creek	1958	..	..	x	..	..	..
Coffee Creek <sup>a</sup>	..	..	..	..	..	..	..
Coram <sup>a</sup>	1962	..	..	..	..	..	..
Evergreen	1968	..	..	x	..	..	..
Fort Peck	..	..	..	..	..	..	Corps of Engineers
Gardiner	1920	..	..	x	..	..	..
Geyser <sup>a</sup>	1935	..	..	x	..	..	..
	1940	..	x	..	..	..	..
Glacier, East	1938	..	x	x	..	..	..
Glacier, West	1966	..	..	..	x	..	..
Highwood	1945	x	..	..	..	..	..
Hinsdale	1916	..	..	x	..	..	..
Hill-Liberty County Water District <sup>a</sup>	..	..	..	..	x	..	..
Huntley <sup>a</sup>	1965	..	..	..	..	..	..
Musselshell	1919	..	..	x	..	..	..

TABLE 3--Continued

Community	Year	How Financed					
		Water Resources Board	Public Works Administration Work Projects Administration	Rural Improvement District	Farmers' Home Administration	Housing and Home Finance Agency	Other
Noxon	1939	x	x	..	..	..	..
Rapelje	1962	..	..	..	x	..	..
Ramsay <sup>a</sup>	..	..	..	..	..	..	..
Roberts <sup>a</sup>	1967	..	..	x	..	..	..
Round Butte	1956	..	..	..	x	..	..
Rudyard <sup>a</sup>	..	x	..	x	..	..	..
Sand Coulee	1960	..	..	..	..	..	..
Seeley Lake	1968	..	..	..	x	x	..
Square Butte <sup>a</sup>	..	..	..	..	..	..	..
Stockett <sup>a</sup>	..	..	..	..	..	..	..
Sweetgrass <sup>a</sup>	1961	..	..	..	..	..	..
Tracy <sup>a</sup>	..	..	..	..	..	..	..
Trout Creek <sup>a</sup>	1955	..	..	..	..	..	..
Vaughn	1937	..	..	x	..	..	..
Wilsall	1962	..	..	..	x	x	..
Worden	1956	..	..	..	x	..	..
Wyola <sup>a</sup>	..	..	..	..	..	..	..

<sup>a</sup>See Table 4 for additional information.

TABLE 4

UNINCORPORATED COMMUNITIES WITH PUBLIC WATER  
SUPPLIES IN MONTANA--1960 POPULATION,  
OWNERSHIP AND AUTHORIZATION

Community	1960 Popu- lation	Ownership	Authority and Date
Absarokee	600	Water Users' Assn.	State Water Resources Board--1954
Basin	300	Water Users' Assn.	R. I. D. with partial funding by Public Works Admin. --1936
Brady	180	Water Users' Assn.	State Water Resources Board--1948
Canyon Ferry	100	Bureau of Reclamation	Bureau of Reclamation-- 1948
Charlo	380	Water Users' Assn.	State Water Resources Board--1948
Cherry Creek	150	Water Users' Assn.	R. I. D. --1958
Coffee Creek	100	Water Users' Assn.	Originally part of the Hilger estate; records are unclear as to how the community came to own it.
Coram	200	Water Users' Assn.	G. N. R. R. sold the water supply to community in 1962.
Fort Peck	150	Corps of Engineers	Corps of Engineers
Gardiner	600	Park County Water Dist.	R. I. D. --1920

TABLE 4--Continued

Community	1960 Popu- lation	Ownership	Authority and Date
Geyser	300	Water Users' Assn.	R. I. D. for well--1935; W. P. A. improvements in 1940
Glacier, East	374	Glacier Park Co.	R. I. D. funded by W. P. A. in 1938
Glacier, West	..	Water Users' Assn.	Funded by Farmers' Home Admin. --1966
Highwood	200	Water Users' Assn.	State Water Resources Board--1945
Hinsdale	400	County Commis- sioners	First R. I. D. for water supply--1916
Hill-Liberty County	..	Water Users' Assn.	Bi-county water district funded by Farmers' Home Admin. serves Kremlin, Joplin, Inverness, Rudyard, Hingham and Gildford.
Huntley	250	Water Users' Assn.	Municipal well drilled in 1965. Nothing in records about financing or authority.
Musselshell	150	Municipal	Early R. I. D. for water supply--1919
Noxon	150	Water Users' Assn.	State Water Resources Board in conjunction with Work Projects Admin. --1939
Rapelje	100	Water Users' Assn.	Funded by Farmers' Home Admin. --1962



TABLE 4--Continued

Community	1960 Popu- lation	Ownership	Authority and Date
Ramsay	200	Water Users' Assn.	DuPont Power Co. sold the water utility to the community--no date.
Roberts	..	Water Users' Assn.	Water system in oper- ation when Public Health began sampling. R. I. D. for water main extension in 1967.
Round Butte	350	Water Users' Assn.	Funded by Farmers' Home Admin. --1956
Rudyard	600	Water Users' Assn.	Part of Hill-Liberty Co. Water District. Drilled municipal well in co- operation with State Water Resources Board. Water system financed by R. I. D.
Sand Coulee	300	Water Users' Assn.	Municipal well finished in 1960; financing unclear.
Square Butte	85	Water Users' Assn.	Water system in oper- ation when Public Health began sampling.
Stockett	400	Water Users' Assn.	Water system in oper- ation when Public Health began sampling.
Sweetgrass	..	Water Users' Assn. (inter- national)	See report, pp. 37-38.

TABLE 4--Continued

Community	1960 Popu- lation	Ownership	Authority and Date
Tracy	150	Water Users' Assn.	Water system in oper- ation when Public Health began sampling.
Trout Creek	100	Water Users' Assn.	Community organ. took over existing N. P. R. R. water facilities in 1955. Authorization unclear from Public Health records.
Vaughn	265	Water Users' Assn.	G. N. R. R. sold the water system to the community in 1937. Vaughn Water Co-op Assn. installed new well and pumping facilities in 1968, financed under the authority of R. I. D.
Wilsall	200	Water Users' Assn.	Planning grant for water system from Housing and Home Finance Agency (HEW) Aug. 1960. Farmers' Home Assn. loan for construction of system in 1962.
Worden	225	Water Users' Assn.	Farmers' Home Admin. loan for construction of water system granted in 1954. System completed in 1956.

TABLE 4--Continued

Community	1960 Popu- lation	Ownership	Authority and Date
Wyola	100	Water Users' Assn.	Water system in oper- ation when Public Health began sampling.
Evergreen	..	Water Users' Assn.	R. I. D. --1968
Seeley Lake	..	Water Users' Assn.	Planning grant for water system from Housing and Home Finance Agency, 1963. Farmers' Home Admin. loan for con- struction of system in 1968.

## CHAPTER IV

### A CASE STUDY OF THREE MONTANA MUNICIPALITIES: HOW WATER AND SEWER UTILITIES HAVE BEEN MANAGED IN RELATION TO GROWTH OF THE CITY

Montana's three largest cities--Great Falls, Billings and Missoula--provide interesting and illuminating contrasts regarding management of municipal utilities in relation to the pattern of growth of the community.<sup>36</sup> Great Falls, which owns both the water and sewer utilities, has for more than a decade made a conscious effort to manage its growth by requiring all populated areas outside of the city limits to annex in order to obtain water and sewer service. Billings, which also owns the water and sewer utilities, freely extended water service to unincorporated suburban users if they would pay the cost of installation. Recently that policy has been changed but fundamental disagreement exists within the city administration regarding this

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<sup>36</sup>The writer visited Great Falls in May, 1968 and Billings in June, 1968. The material for this chapter was gathered primarily by interviews with city officials and by examination of municipal records. Some additional information, particularly about early water supply arrangements in Great Falls and Billings, was drawn from files of Dr. Ellis Waldron prepared during his field investigations for the Upper Midwest Economic Study in 1961-62.

policy change. The third municipality to be considered here, Missoula, owns the sewer utility but not the water; that is owned and operated by the Montana Power Company. Therefore, any public policy in Missoula aimed at managing the growth of the city by controlling the extension of public utilities to unincorporated suburban users is limited by the private policy exercised by the Montana Power Company. Also, the ready availability of potable ground water in the area reduces the potential effectiveness of any future plans to limit the extension of water service to unincorporated suburban areas. This and other reasons, particularly the existence of many privately-owned, small-acreage agricultural subdivisions in unincorporated southwest Missoula, tend to make Missoula's past, present and future pattern of growth the most chaotic of these three cities.

A brief examination of the history and water policy of these three Montana cities will assist understanding of the problems faced by municipalities in efforts to control urban growth through the management of utilities policy.

### Great Falls

Great Falls is located at the confluence of the Sun River and the Missouri River in northcentral Montana. On October 3, 1888, an election for incorporation was held, and a majority of the votes were cast in favor of incorporation. Thus Great Falls became incorporated

as a city of the second class. On November 10, 1888, Paris Gibson was elected the first mayor of Great Falls. In May, 1896, Great Falls was advanced to a city of the first class, the city council having determined by census that the population was 11,269. By 1960 the population of Great Falls had risen to 55,357.

Ira Meyers organized the first community water system in Great Falls. His first effort failed when he was unsuccessful in obtaining financial backing from friends. In a second attempt Meyers proposed to organize a city government and then petition the city council for a water works franchise. He proposed to sell bonds in Chicago or New York in the amount of \$150,000 and build a modern water facility. Shortly after Paris Gibson was elected mayor in November, 1888, a twenty-year franchise was granted to Ira Meyers, T. E. Collins, and E. G. MaClay for a water system. Bonds in the amount of \$150,000 were sold in Chicago at seven per cent interest; by August, 1889, water was turned on in the new system.

In 1893 L. G. Phelps bought a controlling interest in the utility and operated it for about five years. In August, 1895, the city council passed an ordinance serving notice that it intended to buy out the franchise of the Great Falls Water Works. The city of Great Falls bought out the private water works of L. G. Phelps in August, 1898, following a special election which approved a bond issue of \$375,000 for that purpose. In November, 1898, a board of water commissioners,

independent of the city council, was organized. Since 1903 this board of water commissioners has been under the supervision of the mayor and the city council. The board consists of three commissioners appointed by the city council.

By 1950 the water utility served more than 8,800 domestic, commercial and industrial accounts. The dynamic population growth of the city of Great Falls between 1950 (39,214) and 1960 (55,357) is reflected in the increase in water-users' accounts. By 1960 the water utility was serving more than 14,000 accounts. However, the 1960 population (55,357) did not completely reflect the total number of water users in the Great Falls system since the city sells metered water to the Anaconda Company, which in turn supplies the water needs of the residents of the unincorporated community of Black Eagle. In addition to supplying the Anaconda Company with water, the city of Great Falls also sells metered water to Malmstrom Air Force Base under an agreement reached in 1943. Thus, the total population served by the Great Falls Water Department was estimated to have been approximately 65,000 in 1963. Current growth projections indicate that the water system for the city of Great Falls will have to supply a population in excess of 97,000 by 1985.

Great Falls has relatively few problems in annexation of unincorporated territory into the city. The city council and the planning board have been able to manage and control the growth of Great Falls by

stipulating when and under what circumstances the city will extend water and sewage facilities to areas outside the city. The Great Falls townsite at the time of incorporation was so large that the city was able to grow largely within its original corporate limits until about 1950. Moreover the subsoil below most of the area is blue shale to depths of several thousand feet so that it was virtually impossible to drill individual wells and to dig workable cesspools for private water and sewer facilities. The Missouri River furnished an almost unlimited supply of water which was quite free of minerals and relatively uncontaminated.<sup>37</sup>

In the earliest days before organization of a community water system, potable water was peddled from wagons. More recently residents of an unincorporated development situated on the heights above the city again resorted to trucking their water supply; since they were able to provide their own sewage disposal without experiencing health hazards, they have managed without annexation into the city. But the situation is regarded as exceptional and has not been widely emulated.

The policy since 1957 has been for the city council to require unincorporated areas to annex in order that they may obtain water and sewage facilities. It is further stipulated that unincorporated areas wishing to come into the city in order to obtain water must also use

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<sup>37</sup> Interview with Del Brick, Great Falls Water Works Superintendent, May 1968.



the city's sewer lines. The only exceptions to this policy of requiring annexation before water and sewer facilities will be extended to residents of unincorporated areas are Malmstrom Air Force Base and the Anaconda Copper Mining Company with its unincorporated "company town" of Black Eagle.

The Malmstrom Base became a customer of the Great Falls Water Department in 1943 on completion of a twelve-inch main to the Base at Second Avenue North and construction of a booster pumping station on that line near Forty-eighth Street. Water is purchased by the Base on a wholesale basis, then distributed through its own pumping system over the Base and to government housing on and adjacent to the Base. The population of government personnel was approximately 10,000 in 1963. There was a decrease in population of the Base following completion of the hardened Minuteman missile sites, and the population is now (1969) approximately 8,800. Under terms of the present service agreement, the Air Force advanced \$80,000 to the city to help defray the cost of constructing the service main. This advance is being repaid by an allowance to the Air Force of \$750 per month on charges to the Base for water used.

The Anaconda Company purchases metered water for its own use and for distribution and resale to the residents of Black Eagle, a residential area immediately west of the Anaconda Company. The population of Black Eagle has remained relatively constant at about

1,400 for more than a decade. The residents of Black Eagle have been getting their water from the Anaconda Company for more than forty years, and both they and successive city administrations seem satisfied with the arrangement. The city does not wish to annex the area because of health hazards, and a special improvement district necessary to bring the entire system up to city health standards would be very costly. Thus, at the present time the residents of Black Eagle do not wish to be annexed to the city and their desires have been shared by successive city administration.

Ninety per cent of the petitions for annexation to Great Falls come from single-owner developers who are required by ordinance to pay for the new water and sewer mains before their development can be annexed to the city. The minimum size of water pipe permitted, regardless of the area served, is eight inches. Where larger mains are required to serve future development beyond the requirements of the area requesting service, the water department will pay the additional cost of the larger mains. The water department recovers this cost before service is granted to the new area by requiring the water users of the benefited area to annex and to pay a prorated fee for the prior installation of the larger mains. After the area has been annexed and the property owners have paid their share of installation cost, they are permitted to tap into the water mains.

The remaining ten per cent of petitions for annexation originate

from contiguous suburban areas. Because of the obvious necessity for potable water and adequate sewage facilities and because of the near monopoly of potable water enjoyed by the city, very little protest over proposed annexation occurs in Great Falls. Also, the planning board and the city council will process a petition for annexation only when a clear majority of the affected residents indicate that they desire annexation.

This is not to suggest that annexation proceedings are never without controversy. In a few isolated instances the county health department has requested that certain residential areas contiguous to the city limits be annexed to the city in order that existing hazardous sewage problems be remedied by connections to city sewer lines. Problems have arisen because the residents affected by a forced annexation have not always experienced health problems stemming from water polluted by undrained sewage. However, this resistance to annexation has been mitigated by judicious education of the affected residents by the health department and the planning board.

Normally the Missouri River provides more than enough water to supply the needs of the residents of Great Falls. However, as is the case in most Montana communities, demand for water during the summer months often taxes the city's distribution facilities. A precarious summer balance between demand and supply is further aggravated by the fact that ninety-five per cent of the water users in

Great Falls enjoy a flat-rate, unmetered water supply. It is the contention of many civic leaders that this system of billing for water encourages the wasteful use of water for irrigation during the summer months. The city desires to change to metered service because the present rate is too low to provide the necessary funds for needed capital improvements. In 1956 a bond election was held to finance installation of meters on all services and for the construction of enlargements to the water system. That bond proposal was defeated, but the following year, 1957, the voters approved a proposal for a much larger bond issue based on providing capacity in the water system for a continuation of the high-demand flat-rate residential service. The Public Service Commission is presently studying a proposed rate increase for water users in Great Falls.

The procedures regulating the annexation of subdivisions presently employed by the Great Falls city-county planning board and the city council are designed to promote the orderly growth and development of the city.

The initial step requires that the owner/developer petition the council for annexation. Following tentative approval by the council, the city-county planning board assumes stewardship of the proposed annexation. The board requires that the area to be annexed be properly platted or surveyed, and that the plat meet all specifications set out in subdivision regulations. Next the owner/developer is required to pay

a plat fee. Then the request is sent to various committees to insure that it meets with their annexation requirements. After these requirements for annexation are received by the planning board, an annexation agreement is drafted. When the terms of this agreement are agreed upon by both parties, the city attorney checks the agreement.

After copies of this agreement are filed with all the necessary parties, the owner/developer is required to establish a financial guarantee to insure the accomplishment of the required improvements. When all these requirements have been satisfied, a resolution of annexation is submitted by the planning board to the city council. If all the property owners in the area proposed to be annexed have petitioned annexation in writing, the final reading of the annexation resolution can be taken the week following the first reading. If all the property owners have not petitioned annexation in writing, then notice of intention is published in the newspaper to allow for protest and the final reading must be deferred for at least twenty days.

### Billings

Billings is located in the southcentral portion of Montana on the Yellowstone River. According to the 1960 U. S. census the population was 52,851; by 1966 the population was estimated to be in excess of 70,000. The city is primarily residential although it serves as the shopping center for the surrounding agricultural area. It also has two

oil refineries, a sugar refinery and livestock and meat processing industries. The city has a railroad yard and servicing facilities where the Northern Pacific, Chicago, Burlington and Quincy, and Great Northern Railroads are serviced and water boarded on their travel to and from the Pacific Northwest.

Billings was incorporated by special act of the Territorial Legislative Assembly on March 10, 1885. Water was supplied to the residents of the Billings area by a private water company until 1915 when the city purchased the water system. By 1945 the ability of the water department to supply all the demands of water users in the Billings area was being severely taxed, and water was being rationed. In 1948 the city undertook to replace many old wooden mains with cast iron mains. In 1953 a \$2,450,000 bond issue for further expansion of the water facility was approved by the voters. Following this expansion of the water system, the rates were increased by an average of thirty per cent.

From the time of the purchase of the water system in 1915 until 1963 the city extended water service freely to suburban users if they would pay the cost of installation. A suburban rural improvement district could purchase and install an eight-inch main. If the city felt that a twelve-inch main was indicated to serve future growth, it paid the difference in cost between the eight- and twelve-inch main. Following installation the city furnished metered water to the area. In 1958

the city council adopted a requirement of waiver of protest to annexation for any new suburban area securing city water connections. The rural improvement district paid for the maintenance cost until the area was annexed; upon annexation the city assumed the maintenance costs. In 1963 the city council adopted a resolution involving a major water policy change. At that time, the council prohibited further extension of water and sanitary sewer facilities to suburban areas not already in a rural improvement district created to finance such service. An exception to this policy was made for the Billings Heights (Billings Bench) area northeast of the city. Billings and the residents of the Bench area had for many years prior to 1963 discussed the possibility of extending water supply to the unincorporated Bench area. In 1956 the city offered \$200,000 for water storage facilities in that area, but the proposal was declined. The residents of the Bench area had been reluctant to form the necessary rural improvement district to install water mains. The city of Billings and the residents of Billings Heights finally agreed, prior to the passage of the 1963 resolution prohibiting the extension of water facilities to suburban areas, to extend metered water and sewer facilities to the Bench area.

Because shallow ground water suitable for drinking purposes is available, Billings does not enjoy the monopoly of potable water held by Great Falls. That is to say, shallow ground water in the Billings area can be readily tapped by private well, although this water

is subject to contamination. Therefore Billings is somewhat handicapped in its ability to manipulate water policy in an attempt to control urban growth through annexation.

With regard to the policy of requiring annexation before water and sewage facilities will be extended by the municipality to the residents of an unincorporated area, a fundamental, philosophical difference has existed between Orien R. Gossett, the director of the Billings city-county planning board and Edward R. Waldo, the manager of the city water department. Mr. Gossett has supported the policy requiring annexation prior to the extension of water and sewer facilities. On the other hand, Mr. Waldo has contended that a municipality should not use these facilities to attempt the control of urban growth. He has argued that unincorporated territory around the city should develop naturally, with the benefit of municipal facilities such as water and sewer. Annexation of such development should follow when the taxable value of the development justified annexation. Mr. Waldo pointed out that many communities including Billings charge a higher rate for water to unincorporated developments than they do to city users.

In June, 1968, Mr. Waldo hinted that a suit might be brought against the city of Billings to force extension of water and sewage facilities to an area beyond the city limits, along Rimrock Road from the city limits to County Club Estates. Residents in that area contend that the city, by replacing a four-inch main with a twelve-inch main,



had indicated that it intended to serve an area other than that already served by the old four-inch main. The residents contend that upon the strength of this apparent indication of future intent by the city, they developed their present homes assuming that the city intended to extend water and sewer service to them without first requiring annexation to the city of Billings. Mr. Waldo said that if such a suit was brought against the city, he would have to testify on behalf of the residents bringing suit.

### Missoula

Missoula is county seat and the only incorporated city or town in Missoula County. The city was incorporated by special act of the Territorial Legislative Assembly on March 12, 1885. At the time of incorporation the population was approximately 3,000. Missoula advanced to a city of the second class in March, 1906, and to a city of the first class in February, 1911. By then the population had risen to approximately 13,000. According to the U.S. census figures for 1960, the population was 27,090; by 1968 the population of Missoula was estimated to be approximately 36,500 with over 50,100 people living within a five-mile radius of the courthouse.

The basic industry in Missoula, as in most of western Montana, is wood products. Such diversified forest products industries as pulp, plywood and prefabricated buildings are located in Missoula. The

headquarters offices of Region One of the U. S. Forest Service and the University of Montana are also located at Missoula.

Missoula is one of the three major cities in Montana which do not own and operate their water facility. The other two are Butte and Anaconda which are served by the Anaconda Company. Several factors have militated against municipal ownership of the water system in Missoula. The Montana Power Company supplies the city and the surrounding area with water from the Rattlesnake Lakes located north of Missoula. The Montana Power Company purchased the water utility from the Clark estate in the early 1920s and has been serving the residents of the area since that time. The policy of the company regarding the extension of water to users outside of the city limits has been very permissive. The company will extend water anywhere, to anyone, provided the user will pay for the installation of the mains. The company requires that new mains must be of sufficient size (determined by the company) to serve future users who might choose to locate in the area. As more new water users tap the main, the company refunds a share of the original installation cost of the main to the original users who paid for its installation.

Coupled with this permissive policy regarding the extension of water to unincorporated residential areas around Missoula is the readily accessible supply of ground water to be tapped by private well. Several major business establishments within the city are on private wells,

including the Elks Club, Eddy Bakers, F. W. Woolworth and the Florence Hotel. In addition to many private wells in the Missoula area, the Montana Power Company is putting in two sixteen-inch wells in suburban Missoula which will be operational by October, 1969. These wells, located on Garrett Street in the Rainbow Addition and Lincoln Street in the Reeley Addition, will go down approximately 300 feet to obtain soft water and they will have a pumping capacity of 4,500-5,000 gallons per minute.

Another problem complicating any proposed municipal ownership of the water utility is maintenance and future replacement of old wooden mains. At least two points of view exist with regard to these wooden mains. According to one of Missoula's aldermen, there are approximately twenty-seven miles of wooden mains running throughout the city. Many miles of these mains are located in alleys, below gas and electricity lines. The cost of replacing them would prove very expensive, perhaps even prohibitive. The city has encountered this problem with the installation of sanitary sewer mains.<sup>38</sup>

The other viewpoint, expressed by Mr. Frank Head, Supervisor of the water department of the Montana Power Company in Missoula, is that as of January 1, 1967, there were 65,091 feet or

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<sup>38</sup>Personal interview with Alderman James Nugent, July, 1968. As an employe of Montana Power Company, Mr. Nugent presumably had access to professional information about this problem.

approximately 12.3 miles of wooden main in the Missoula water distributive system. This represents approximately ten per cent of the total distribution system, in that the total footage as of January 1, 1967, was 631,528 feet. According to Mr. Head, the overwhelming majority of wooden mains was located under the streets of Missoula, not the alleys. He reported that less than five per cent of the 12.3 miles of wooden main was in alleys under gas and electricity lines. If Mr. Head is correct and the alderman mistaken, then approximately .615 miles of wooden water main lie under alleys.

Mr. Head said that for the past several years the Montana Power Company had been replacing some wooden main with cast iron main. The condition of this wooden main was generally quite satisfactory, after service of more than forty years. The primary reason for replacement was that the joints tend to leak, and the Power Company felt that when they had to tear up streets to repair the leakage, they should replace the main to avoid further maintenance problems with the wooden mains. Also, the danger of possible contamination of the water supply would be reduced.<sup>39</sup>

The existence of readily available ground water and of old wooden water mains in the Missoula water system constitute a problem which must be considered if the city were to buy the water utility from

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<sup>39</sup> Personal interview with Mr. Frank Head, August 8, 1968.

the Montana Power Company. Missoula's current mayor, Richard Shoup, believes that municipal acquisition of the water utility is desirable, despite these considerations, for two reasons: (1) the water company would be a revenue-producing utility for the city. Presently the city offers most of its services on a tax-supported basis. Revenue from a sewer-use fee has been dedicated to retire cost of a new municipal building. If the city were to own and operate the water utility revenue from that utility could be used to finance other municipal functions. (2) The water utility could be a useful tool to manage and control growth of the city. That is, the city could possibly enforce a water policy similar to the one in Great Falls, whereby water service would not be extended to any new subdivisions unless annexed, and unless the initial layout and construction of the subdivision met certain minimum city standards for curbs and gutters, streets, sidewalks, and parks.

One purpose of annexation is to increase the tax base of the city. Possessing limited annexation authority, a Montana city must offer the suburban resident more and better services than he currently enjoys, thereby overcoming opposition to increased taxes, or initiate a forced annexation which can be defeated by a majority of resident freeholders. Presently the only service Missoula can offer the suburbanite that he cannot obtain otherwise is sewage facilities.

Mayor Shoup recognized that the ready availability of potable

ground water in many parts of the Missoula area might make municipal ownership and control of water a less potent instrument to compel incorporation of individual properties than has been the case in Great Falls.

But by municipal ownership, he argued, the city could furnish an attractive package of water and sewer service to developers of large residential and industrial tracts, thereby gaining substantial control over future development at the urban fringe.

Mayor Shoup said the city is aware of the problem involved in the existence of wooden mains in the water distribution system. It is recognized that some, and eventually all, of the wooden mains will have to be replaced with cast iron main. The ultimate cost of such replacement would be reflected in the price the city would pay to purchase the water system.

Mayor Shoup said the city has some experience with the cost of replacement of mains. To meet state health department standards, some new sewer lines were placed at considerable depth in order to lie below existing water mains and the cost proved not to be prohibitive.<sup>40</sup>

Missoula owns and operates the only sewer system in the area, giving the city considerable bargaining power when annexation is being considered. Most suburban development in the past decade has

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<sup>40</sup> Personal interview with Mayor Richard Shoup, August 8, 1968.

been south and west of the city, where subsoil is characterized by a geological phenomenon known as "clay shelves" or "clay discs." Missoula rests in large measure on an alluvial fan, the "ribs" of which include clay which was carried out of the Pattee Canyon area. The dimensions of these "ribs" are generally obscure but they are to be found throughout all of south Missoula. While it is possible to obtain potable hard water at approximately 150 feet and soft water at 300 feet, the existence of these "clay discs" militates against adequate drainage fields for private cess pools. It is possible to drill through this clay shelf and locate a cess pool, but over time the clay subsoil structure contracts and seals off the cess pools. Thus the availability of a sewer system operated by the city is a considerable inducement to suburban residents to annex.

The difficulties inherent in attempting to maintain cess pools and septic tanks in southwest Missoula came to light in February, 1969. The unincorporated South Hills residential area, located south of 39th Street, is not served by the city sewer system. Robert Higgins, city health department sanitarian, told residents in the area that sewage from many individual septic tanks was backing up because the clay-laden subsurface prevented adequate underground seepage. According to Higgins, some of the nearly 2,000 septic tanks in the area were failing to the extent that they created health hazards. As a result of these failures, the Federal Housing Administration has refused to

insure mortgage loans for development of new houses south of Highwood Drive in the area where the clay content is most dense. FHA has suggested that should widespread sewage problems develop in this area, they might refuse to insure mortgages for houses resold in the future.

A special committee was appointed to study the South Hills area sewage problems in late February, 1969. The main emphasis has been to secure a planning grant from the Department of Housing and Urban Development to study the feasibility of placing a sewer in the area.

The city's position in this matter has been that it will extend sewer service to any dwellers in the area who agree to annexation. A Missoula alderman very active in matters of annexation has reported that many residents south of 34th Street desire to annex in order to use the city sewer system. However, he reported these same people would be no more inclined to annexation if the city owned the water utility.<sup>41</sup> That is to say, existence of a municipal sewer system would induce suburban residents to annex, given the difficulty of locating adequate cess pools. But a municipally-owned water utility would not seem so important to these same people because of the relative ease of securing potable ground water by private well.

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<sup>41</sup>Personal interview with Alderman James Nugent, July, 1968.



The city can offer sewer service to all of the residents in the incorporated suburban areas to the south and west of Missoula because of improvements to the existing sewer system accomplished in 1961. At that time the existing system was extended west on Third Street to Reserve Street, south on Reserve Street to 39th Street and east on 39th Street to Pattee Creek Drive. The policy regarding the extension of sewer facilities established by the sewer department and the city council is that the city will not extend sewer services beyond the city limits except to schools and hospitals. That is, the city requires that residents served by the sewer system must be annexed to the city prior to hook-up.

Another factor operating in favor of the city in matters of annexation is the cost of rural fire protection. The fire rating for residents within the city limits of Missoula is "5." The lowest possible rating obtainable by rural residents is "7" and that only when the individual lives within two miles of the rural fire department. Currently the people living in the Lincolnwood Addition in the Rattlesnake area are rated at "10," the costliest rating. One property owner in a suburban area which was annexed by the city vehemently opposed the annexation because of increased property tax, but found that the difference between the increase in property tax and the decrease in his fire insurance was \$39 to his advantage.<sup>42</sup> This illustrated the point that

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<sup>42</sup>Interview with the former Mayor H. R. Dix, May, 1968.

fire protection in unincorporated suburban areas is not an inexpensive consideration.

Finally, the Missoula board of county commissioners has made annexation more palatable to many unincorporated suburban dwellers. The board has constantly refused to assist rural residents with any improvements to their roads and streets. Thus, while the streets of Missoula may leave much to be desired, they often are better than those in the unincorporated suburban areas surrounding Missoula.

From the previous discussion it seems clear that at least the cities of Great Falls, Billings and Missoula regard municipally-owned utilities as a primary tool for managing their growth. The ownership and control of the water utility is generally thought to be the most effective tool for this purpose, although the relative importance attached to municipal ownership of the water utility is conditioned by the availability of potable ground water in the area. In Great Falls the municipally-owned water utility is of primary importance, given the unavailability of ground water which can be tapped by private well. The situation in Billings is slightly altered by the fact that ground water is, to a degree, available to those who would rather sink a private well than come into the city to obtain water service. In Missoula the ready availability of potable ground water tends to counteract the importance of a municipally-owned water utility.

It is interesting and perhaps revealing to note that of the three cities considered here, the one which does not own the water utility, Missoula, is the one which might reasonably be the least likely to benefit appreciably from public ownership of this all-important utility. The record supports the fact that Great Falls was incorporated in order to obtain water service. While the first water company in Great Falls was privately owned, the city very soon acquired that water company and has since used it quite successfully in managing its growth. Billings also acquired its water utility from a private concern early in its history, although it imposed less rigid controls upon the extension of water service than did Great Falls.

Missoula has never owned the water utility but such ownership has had significant advocacy. At the 1959 meeting of the Montana Municipal League, Stanton Aby, agent for Dain, Kalman and Co., Inc. of Minneapolis, which markets municipal bonds, told delegates that the cities should own their water systems in order successfully to manage urban growth. He specifically suggested that Missoula should purchase its water system from the Montana Power Company. Such a proposal was made but died for lack of support in the council.<sup>43</sup>

H. R. Dix, former mayor of Missoula, believed that municipal ownership of the water utility, coupled with sewer and garbage collection

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<sup>43</sup>Interview with Mrs. Thomas Payne, former alderman, May, 1968.

services, would be the best tools a city could have for managing its growth, but that a municipal water system would be the best single tool.<sup>44</sup>

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<sup>44</sup>Personal interview with H. R. Dix, June, 1968.

## CHAPTER V

### SUMMARY AND CONCLUSIONS

The primary thrust of this study has been to determine how local water problems and the need for community water supplies have been linked with municipal organization in Montana. A related question has been to examine the relationship of the rural special improvement district system and the state Water Resources Board to the organization of small unincorporated Montana communities in order that they might acquire local water systems. Finally, a case study involving the three largest Montana communities--Great Falls, Billings and Missoula--was conducted to ascertain how utility extension policies have been related to their urban growth.

The Legislative Assembly of Montana, since the earliest territorial days, has recognized the needs of Montana communities to acquire local water supplies and other municipal services. The primary emphasis of statutory provisions has been to require incorporation by communities as a precondition for development of community water supplies. From 1864 all municipal incorporation statutes, special or general, have authorized municipalities to acquire and operate water

utilities. Not until 1915 did the legislature authorize the rural special improvement district as an alternative means whereby unincorporated communities might acquire communal water facilities. It was eighteen years later, in 1933, that the state Water Resources Board was created to assist rural unincorporated communities in solving their water acquisition problems.

By 1915, when creation of rural improvement district was first authorized, 78 per cent of all Montana municipalities had been incorporated. Of these communities, 67 per cent had populations of less than 500 when they incorporated. That is to say, most incorporations occurred in quite small rural communities. Only 22 per cent of Montana municipalities have incorporated since 1915, when the legislature first provided an alternative to incorporation for small rural communities seeking community water supplies. In the years since rural special improvement districts were authorized, 36 rural communities have acquired water supplies through methods other than incorporation. Thirty-one per cent of those communities had a population sufficient to incorporate had they so desired. Had there been statutory provisions prior to 1915 making it possible for small rural communities to acquire water supplies without incorporating there might have been substantially fewer incorporated municipalities in Montana today. It is possible that because no alternative to incorporation was available before 1915 for communities seeking water supplies

and other municipal services, Montana statute law forced municipal-ization when it was not necessarily desirable.

Three major communities which did incorporate--two by special legislative action and one on its own initiative expressly to obtain a municipal water supply--were singled out for closer examination with respect to the question of adequacy and effectiveness of municipal control over urban growth. How had the policy regarding water and sewer utilities extension been linked to the process of annexation? Great Falls, Billings and Missoula each had handled this matter differently, perhaps because local geological factors had so dictated.

The city of Great Falls was incorporated by local initiative in 1888 in order to secure a municipal water supply. Even though Great Falls lies at the confluence of the Sun River and the Missouri River, potable ground water has been unavailable because blue shale underlies most of the city and surrounding area to depths of 2,000-3,000 feet. Not only has ground water been unavailable; operation of cess pools and septic tanks has been virtually impossible. The only alternative to a municipal water supply was the portage of water from the river to individual dwellers. This proved to be undesirable for several reasons, including the problem of storage. Therefore, a private water company was founded, and in 1895 the city purchased the utility. Because the original townsite was very large, it was not until the 1950s that growth

of Great Falls required extensive annexation. In 1957 the city council adopted a policy requiring unincorporated areas to annex before the city would extend water and sewer lines to them. By adhering strictly to this policy, Great Falls has been able to control its urban fringe quite effectively. However, it should be stated again that the primary reason for this level of control enjoyed by the city has been the unavailability of ground water in the Great Falls area. People wishing to develop unincorporated land had to agree to annex if they wished to obtain water and sewer service.

In the case of Billings, the situation has not been so simple. Potable ground water is available although it is subject to contamination. Therefore, a strict water extension policy (such as in Great Falls) was not initiated until 1963. At that time the Billings council adopted a resolution prohibiting further extension of water and sewer facilities to suburban areas not already in an established rural improvement district created to finance such extensions. However, the city has not in all cases strictly enforced this policy. The primary explanation offered for this permissiveness has been the availability of potable ground water in the Billings area. The city has been forced to recognize that suburban growth will continue, regardless of any water extension policy adopted by the city. Therefore, in limited instances, the city has extended service beyond the city limits without requiring annexation in the belief that by doing so the city will be in a more



favorable bargaining position to annex the area when property values have risen to a degree that would make annexation desirable from the city's point of view. That is, the city has sought to demonstrate good faith by providing water and sewer facilities to unincorporated developments, hoping that at some future time the residents will reciprocate by not opposing annexation initiated by the city.

Missoula's experience in managing urban growth has been considerably different from that of either Great Falls or Billings. In the first place, Missoula does not own the water utility. It is the property of the Montana Power Company. Secondly, potable ground water is readily available throughout the Missoula valley; therefore, even if Missoula did own the water utility it is not clear how effective a strong utilities extension policy such as practiced in Great Falls would be in managing urban growth.

However, Missoula is not without any tools suitable for manipulating growth. The city owns the only sewer facility in the area, which should afford it considerable control over new development in southwest suburban Missoula. This is the case because the subsoil structure throughout the Missoula valley south of the Clark Fork River is an alluvial fan, the ribs of which contain clay deposits. The clay is relatively impervious; therefore, drainage fields for septic tanks soon become saturated causing sewage to back up, creating substantial health problems. Residents in the South Hills area are currently

experiencing this problem. They are considering two alternative solutions: (1) to form a sewage district in order to build their own sewage treatment plant, or (2) to annex and connect to the city sewer system. Under current policy the city will extend sewer service beyond the city limits only to serve schools or hospitals.

Missoula's current mayor, Richard C. Shoup, thinks the city should obtain ownership of the water utility. Even though potable ground water is available, he believes that the cost of drilling wells to service sizeable new suburban developments is sufficiently great that the developer will prefer annexation to secure both water and sewer service. Whether this reasoning is valid remains to be tested, and the only way that it could be authoritatively tested would be by municipal acquisition of the water system.

## APPENDIX

UNIVERSITY OF MONTANA  
Bureau of Government Research  
Missoula, Montana

The Bureau of Government Research, University of Montana, is seeking information about the incorporation of Montana municipalities --when they were organized, and more particularly the primary reasons for their incorporation. Data filed with the Secretary of State is quite limited, and a search of newspapers is almost impossible to conduct.

So we ask your help to complete the information requested below. If you cannot furnish it, and know someone in the community who could, please put this form in the hands of that person. If dates furnished below are incorrect, please correct them.

A stamped return envelope is enclosed. Thank you for your help.

Michael Nash  
Research Assistant

City or Town:

Date of first incorporation:

Date(s) of change in classification:

Reasons for incorporation. Briefly, and in some order of importance, what services and/or facilities were most desired, to be gotten by incorporation?

Can you identify leaders (persons or groups) of the campaign for incorporation?

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