

**ORDINANCE OF BIG SKY COUNTY WATER AND SEWER DISTRICT NO. 363**

**ORDINANCE NO. 99-1001**

**AN ORDINANCE ESTABLISHING IMMUNITY, DEFENSE AND  
INDEMNIFICATION OF DISTRICT OFFICIALS AND EMPLOYEES  
FOR ANY AND ALL LIABILITY FOR CIVIL ACTIONS BASED  
UPON VIOLATIONS OF ARTICLE III, SECTION 17 OF THE  
MONTANA CONSTITUTION.**

WHEREAS, on November 3, 1998, Montana voters approved the implementation of Constitutional Initiative 75 (CI-75) which amended Article VIII of the Montana Constitution by adding Section 17;

WHEREAS, CI-75 requires a vote of the electorate on any new or increased tax imposed by a governmental unit and eliminates immunity for any public official or employee who violates the initiative;

WHEREAS, in light of the enactment of CI-75, considerable uncertainty exists as to the validity of Mont. Code Ann. § 2-9-305 which provides for immunity, defense and indemnification of public officers and employees civilly sued for actions taken during the course and scope of their employment;

WHEREAS, actual or threatened liability assessed against public officials or employees may discourage qualified individuals from future public service or employment with the Big Sky County Water and Sewer District No. 363 (District);

WHEREAS, although the applicability and interpretation of the civil liability provisions of CI-75 are unresolved, it is deemed essential by the District to protect its directors, officers and employees from civil liability and provide for immunity, defense and indemnification for such directors, officers and employees who are sued civilly for actions taken with respect to the application and interpretation of CI-75;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE BIG SKY COUNTY WATER AND SEWER DISTRICT NO. 363:

Section I. **Immunity, Defense, and Indemnification.** (1) Except as provided in subsection (3), the Big Sky County Water and Sewer District No. 363 hereby provides for immunity, defense and indemnification of any director, public officer, or employee of the District who is civilly sued for a violation of Article VIII, Section 17 of the Montana Constitution. In the event of such a civil action, the District shall defend the action on behalf of the director, officer, or employee and indemnify them for any liability resulting from any alleged violation of Article VIII, Section 17 of the Montana Constitution.

(2) The director, officer, or employee shall be indemnified by the District for any money judgments or legal expenses, including attorney fees either incurred by the director, officer or employee or award to the claimant, or both, which result from the civil action, unless the conduct of the director, officer or employee falls within the exclusions listed in subsection (3).

(3) A director, officer or employee will not be defended or indemnified if a judicial determination is made that:

(a) the conduct of the director, officer or employee was based upon fraud or malice, or otherwise did not arise out of the course and scope of employment with the District;

(b) the director, officer, or employee failed or refused to reasonably cooperate in the defense of the alleged violation of Section 17, Article VIII of the Montana Constitution; or

(c) the director, officer, or employee settled the claim without the consent of the District.

(3) Within 2 days of receipt of service of a summons and complaint against a director, officer, or employee that alleges a violation of Article VII, Section 17 of the Montana Constitution, the director, officer or employee must give written notice to the Manager and Chairman of the Board of Directors of the District, requesting that a defense to the action be provided by the District.

Passed and adopted by the Board of Directors of the Big Sky County Water & Sewer

District No. 363, State of Montana on the 19th day of January, 1999, by the following vote:

<u>✓</u>	<u>          </u>	<u>Wendell Ingraham</u>
YES	NO	WENDELL INGRAHAM, President
<u>✓</u>	<u>          </u>	<u>William Neece</u>
YES	NO	WILLIAM NEECE, Vice President
<u>✓</u>	<u>          </u>	<u>Dee Rothschild</u>
YES	NO	DEE ROTHSCILLER, Secretary
<u>✓</u>	<u>          </u>	<u>Paul A. Cronin</u>
YES	NO	PAUL A. CRONIN, Director
<u>X</u>	<u>          </u>	<u>John A. Crowther</u>
YES	NO	JACK CROWTHER, Director
<u>X</u>	<u>          </u>	<u>Stewart Peacock</u>
YES	NO	STEWART PEACOCK, Director
<u>X</u>	<u>          </u>	<u>Skip Radick</u>
YES	NO	SKIP RADICK, Director

Attest:

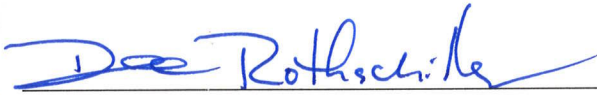
Dee Rothschild  
Dee Rothschilder, Secretary

1/19/99  
Date

[ S E A L ]

## CERTIFICATION

The undersigned, Dee Rothschiller, hereby certify that I am the Secretary of the Big Sky County Water & Sewer District No. 363, that the foregoing Ordinance 99-1001 was adopted at a duly convened meeting of the Board of Directors of the Big Sky County Water & Sewer District No. 363 on January 19, 1999.



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Dee Rothschiller, Secretary