

RESOLUTION 94-02

RESOLUTION AUTHORIZING BIG SKY COUNTY WATER AND SEWER DISTRICT NO. 363 TO ENTER INTO PROPERTY MANAGEMENT AGREEMENT WITH LONE MOUNTAIN SPRINGS, INC.

The undersigned Board of Directors of Big Sky County Water and Sewer District No. 363 (District), by their signatures affixed hereto, hereby consent to and approve the following action, waiving notice of formal meeting.

The undersigned have read and are familiar with all documents pertaining to the Management Agreement dated November 22, 1994, between Lone Mountain Springs, Inc. and Big Sky County Water and Sewer District No. 363, for the management of Lone Mountain Springs, Inc. by the District, and the terms, provisions and conditions of the Management Agreement, a copy of the Management Agreement being attached hereto as Exhibit "1". The undersigned hereby certify that the following is a Resolution passed at a meeting of the Board of Directors of Big Sky County Water and Sewer District No. 363, on December 20, 1994.

RESOLVED, that the Board of Directors of Big Sky County Water and Sewer District No. 363 hereby approves the terms, provisions, and conditions of the Management Agreement dated November 22, 1994 between Lone Mountain Springs, Inc. and Big Sky County Water and Sewer District No. 363 as set forth in that certain Management Agreement attached hereto as Exhibit "1", and the same is hereby approved by the Directors of Big Sky County Water and Sewer District No. 363, as executed by Bill Ogle for the President of this Board of Directors.

By their signatures hereto, the undersigned hereby acknowledge proper notice of this meeting, waive any deficiencies or defects herein, and approve the action herein taken.

DATED this 20th day of December, 1994.

Wayne O. Hill President

The foregoing is hereby certified to be a full, true, and complete copy of **RESOLUTION AUTHORIZING BIG SKY COUNTY WATER AND SEWER DISTRICT NO. 363 TO ENTER INTO PROPERTY MANAGEMENT AGREEMENT WITH LONE MOUNTAIN SPRINGS, INC.** passed at a meeting of the Board of Directors of Big Sky County Water and Sewer District No. 363 held on the 20th day of December, 1994.

W. D. Neece, Secretary

Recorded Vote:

Ayes: Directors Hill, Ogle, Meabon, Radick.

Abstentions: Directors Juel and Rothschiller

Absent: Director Neece

MANAGEMENT AGREEMENT

Date of Agreement:
November 22, 1994

PARTIES:

LONE MOUNTAIN SPRINGS, INC.

BIG SKY COUNTRY WATER AND
SEWER DISTRICT #363

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MANAGEMENT AGREEMENT

AGREEMENT made this ____ day of November, 1994, between LONE MOUNTAIN SPRINGS, INC., a private water company incorporated under laws of the State of Montana, with its principal place of business at Big Sky, Montana, hereinafter referred to as "LMS", and BIG SKY COUNTRY WATER AND SEWER DISTRICT #363, a political subdivision of the State of Montana, created pursuant to Mont. Code Ann. § 7-13-2301, et seq., hereinafter referred to as "WSD #363".

R E C I T A L S:

WHEREAS, LMS owns and operates a private water company which provides water for residential and commercial purposes within the Big Sky Recreational Area; and

WHEREAS, WSD #363 owns, operates and maintains the sewage collection and treatment facilities located within the Big Sky Recreational area; and

WHEREAS, LMS desires to engage WSD #363 to provide certain management services and WSD #363 desires to provide such services.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements herein contained, and other valuable consideration, the parties agree as follows:

1. DESCRIPTION OF SERVICES TO BE PROVIDED

WSD #363 shall provide the operational, maintenance and repair services provided by this Agreement. In so doing WSD #363 will perform its management services in an effort to produce a rate of return from the operation of LMS equal to or greater than allowed

by the Public Service Commission. The parties understand and agree that WSD #363 cannot and does not by this Agreement guarantee any rate of return while performing its management services.

A. OPERATIONAL SERVICES. WSD #363 shall provide such operational services as are generally required in the day-to-day operation of the LMS Water System, including but not limited to inspecting and installing water meters, repairs, testing water as needed or required and reading meters for purposes of preparing monthly bills. More specifically, WSD #363 shall provide the following services:

- (1) Billing and Collection Services. WSD #363 shall prepare and mail all monthly billing statements for water services provided to customers of LMS. WSD #363 shall also collect and deposit all revenues received from customers as provided in paragraph 1.A.(2). To assist WSD #363 with these services, LMS shall provide WSD #363, at no cost, its current customer list and computerized billing program.
- (2) Bank Accounts and Deposits. WSD #363 shall deposit all revenues from the customers of LMS into a dedicated joint bank account ("water account"), and shall not commingle the LMS revenues with any other funds or accounts of WSD #363. The water account shall be maintained at all times in a national or state member bank that is a member of the Federal deposit Insurance Corporation. From the revenues deposited in the water account, WSD #363 shall

be compensated as provided in paragraph 3 herein. After WSD #363 has been compensated, any balance of the monthly revenues remaining in the water account shall be remitted to LMS. The parties agree that the water account shall be a joint checking account requiring the signature of an authorized agent from both entities to negotiate checks.

(3) Delinquent Accounts. WSD #363 is authorized to use whatever methods it deems appropriate to enforce collection of delinquent accounts, including legal action. By entering into this Agreement LMS specifically authorizes WSD #363 to sue a delinquent customer on behalf of and in the name of LMS.

(4) Income and Expense Records. WSD #363 will keep all necessary books, accounts and records to reflect the revenues collected and the expenditures incurred in connection with the management and operation of the LMS water system as provided herein. The books, accounts, and records shall be maintained at offices of WSD #363 at Big Sky, Montana. WSD #363 shall, during regular business hours, make the books, accounts and records required to be maintained hereunder available to LMS or the representatives of LMS for examination and audit by appointment on reasonable notice. All such audits shall be at the expense of LMS. Within thirty (30) days, following termination of this Agreement, WSD #363 shall

deliver to LMS all books, accounts, and records pertaining to the LMS Water Company.

- (5) Reports to LMS. Within ten (10) days after the end of each month WSD #363 shall provide LMS with a statement of all billing statements mailed, revenues received, expenses paid, and a list of delinquent accounts, together with supporting vouchers for the respective month. Within thirty (30) days after the end of each calendar year, WSD #363 shall provide LMS with a detailed statement of revenues received and expenses paid during the calendar year.

- (b) Reports to Public Service Commission. WSD #363 shall prepare and submit to the Public Service Commission (PSC) any and all required reports related to the operation, maintenance and repair of the LMS facilities. Such reports shall be submitted to LMS for review at least fourteen (14) days prior to submittal to the PSC.

B. MAINTENANCE AND REPAIR SERVICES. WSD #363 shall provide such maintenance and repair services as are generally required in the day-to-day operation of the LMS Water System, including but not limited to responding to customer complaints for repairs and repairing the water collection and distribution facilities as provided herein. More specifically, WSD #363 shall provide the following services:

- (1) Repairs. WSD #363 shall do everything reasonably necessary for the proper management of the water system,

including periodic inspections, supervision of maintenance, and arranging for such improvements, alterations, and repairs as may be required for the continued operation of the LMS water system. Provided, however, that no improvements, alterations, or repair work costing more than ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), shall be made by WSD #363 without the prior written authorization of LMS. In case of an emergency that requires immediate repairs or alterations, if LMS is not readily available for consultation, WSD #363 shall use its discretion regarding same.

- (2) Extraordinary Repairs or Reconstruction. If it becomes necessary to make any extraordinary repairs or engage in any extensive reconstruction or rehabilitation of the LMS water system or any part thereof, WSD #363 shall proceed with such repairs or reconstruction only upon the prior written authorization of LMS. In the event such repairs or reconstruction require the employment of an independent contractor, then it shall be the sole responsibility of LMS to negotiate and finalize an agreement with such independent general contractor.

2. EMPLOYMENT OF PERSONNEL

WSD #363 shall employ, discharge and supervise all necessary experienced and qualified personnel to provide the services under this Agreement and shall be responsible for and in full control of the work of such personnel. LMS shall be solely responsible for

the employment and direction of any and all independent contractors employed to repair, reconstruct or rehabilitate the LMS water system as contemplated in Section 1(B)(1) of this Agreement.

3. COMPENSATION FOR SERVICES

LMS shall compensate WSD #363 for the services provided hereunder as follows:

A. EMPLOYEE EXPENSES. Employee expenses necessary to provide the services hereunder, including but not limited to an operator/engineer and an office administrator/bookkeeper, shall be billed monthly and paid from the water account. The employee expenses shall include, but not be limited to: wages, benefits, insurance, taxes, vehicle expenses and other costs associated with the direct employment of the employee. Initial compensation for the employee expenses shall be based upon the projected annual costs budgeted by WSD #363 for the fiscal year July 1, 1994 to June 30, 1995. LMS shall pay fifty percent (50%) of WSD #363 projected costs which are itemized as follows:

| | <u>Description</u> | <u>Total Budget</u> | <u>LMS Portion</u> |
|----|--------------------------|---------------------|--------------------|
| 1. | Sewer & Water Supervisor | \$ 35,000.00 | \$ 17,500.00 |
| 2. | Sewer & Water Operator | \$ 15,000.00 | \$ 7,500.00 |
| 3. | District Administrator | \$ 35,140.00 | \$ 12,000.00 |
| 4. | Employee Benefits @28% | \$ 21,560.00 | \$ 10,360.00 |
| 5. | Payroll Tax | <u>\$ 16,940.00</u> | <u>\$ 8,170.00</u> |
| | TOTAL | \$123,640.00 | \$ 55,500.00 |
| | | ===== | ===== |

The employee expenses shall be reviewed on or before June 1, 1995, and each successive year thereafter and adjusted up or down, if need be, based on actual expenses of the preceding year. If the

employee expenses need to be adjusted, such adjustment shall be in writing as an addendum to this Agreement.

Any additional employees hired to provide services hereunder shall be compensated at a rate mutually agreed upon in writing between the parties. The employees assigned by WSD #363 to perform services hereunder shall maintain accurate time and expense records for purposes of calculating the employee expenses. WSD #363 shall, during regular business hours, make the employee time and expense records available to LMS for inspection and audit, by appointment, on reasonable notice.

B. ADMINISTRATIVE FEE. In addition to the Employee expenses, an administrative fee in an amount equal to ten percent (10%) of the monthly bill for the Employee expenses, shall be billed monthly and paid from the water account.

C. MATERIALS AND SUPPLIES. Materials and supplies shall be billed monthly at cost, plus shipping and handling, and paid from the water account.

4. REPORTING AND COMPLIANCE RESPONSIBILITIES

The parties agree that any duty, obligation, responsibility or service not delegated to and assumed by WSD #363 pursuant to this Agreement shall remain with and continue to be the responsibility of LMS. The following are responsibilities retained by LMS.

However, it is the intent of the parties that WSD #363 shall assume all of the day-to-day operational, maintenance and repair responsibilities of LMS, thus, in that regard, WSD #363 shall provide information, assist in the preparation of applications for

license, permits, water rates, and any reports required to comply with any governmental agency, and perform any other task required in the performance of this Agreement.

A. FURNISHING OF INFORMATION. LMS shall promptly furnish WSD #363 all information, documents and records required to assist WSD #363 in providing the services hereunder, including but not limited to customer lists with current addresses, a current list of delinquent accounts, verification of current rate or rates to be charged which have been approved by the Public Service Commission, and all necessary computer software utilized in the preparation of customer bills. LMS and WSD #363 shall have a continuing mutual obligation to provide all information and assistance in providing the services to be rendered under this Agreement.

B. LICENSES AND PERMITS. LMS and WSD #363 shall be jointly responsible for maintaining any and all licenses, permits or other governmental authorization necessary for the continuing health, maintenance or operation of the LMS water system.

C. WATER RATES. LMS and WSD #363 shall be jointly responsible for dealing with the Montana Public Service Commission for the establishment of a water rate structure upon which customer bills will be based and submitting periodic or annual reports.

D. GOVERNMENTAL REPORTING REQUIREMENTS. LMS and WSD #363 shall be jointly responsible for the reporting of any information of any kind to the Public Service Commission or any other governmental agency related to the continuing health, maintenance or operation of the LMS water system.

E. TAXES. LMS shall be solely responsible for reporting its income from the operation of the LMS Water Company and paying its associated income taxes, and for payment of all personal property taxes or other governmental assessments associated with the health, maintenance and operation of the LMS water system.

F. LMS CORPORATE ACCOUNTS. LMS shall be solely responsible for maintaining its corporate books of account.

G. COMPLIANCE WITH LAWS. LMS and WSD #363 agree they shall comply with or abide by all rules, ordinances, or laws of any governmental agency pertaining to or regulating the continued health, maintenance and operation of the LMS water system.

H. OPERATIONAL POLICIES AND PROCEDURES. Any policy or procedure deemed by LMS to be necessary and proper to the proper maintenance and operation of the LMS water system shall be reduced to writing and formally submitted to WSD #363. Upon receipt of such written policy or procedure, WSD #363 shall abide thereby, unless such policy or procedure violates the law or any part of this agreement.

I. FIRE PROTECTION.

LMS shall be solely responsible for providing fire protection, if any, within the boundaries of the Sewer and Water District and nothing in this Agreement shall be construed as a delegation of this responsibility to WSD #363.

5. RELATIONSHIP OF PARTIES

The parties agree that this is a management contract and not a contract intended to create an employer/employee relationship,

nor in this Agreement to be construed as creating any kind of partnership or joint venture between the parties. LMS is interested only in the services to be rendered and the management and control of the employees and the performance of the services to be provided herein will be the sole responsibility of WSD #363 #363.

6. TERM OF CONTRACT

This Agreement shall commence on November 1, 1994, and continue month-to-month thereafter until terminated in accordance with the terms set forth in Section 7 of this Agreement.

7. TERMINATION

Either party may terminate this contract for any reason upon sixty (60) days' written notice to the other party. Termination shall be effective at the end of the calendar month during which the 60-day notice period runs. In the event LMS is unable to continue operation of its water company for whatever reason, including but not limited to, revocation of authority by Public Service Commission, bankruptcy, destruction of the water collection and/or distribution system by whatever means, or any other event that would make performance of this Agreement impossible, shall be grounds for immediate termination of this Agreement.

8. INSURANCE

WSD #363 shall carry and maintain throughout the period of this Agreement, liability, umbrella liability, and automobile insurance to protect both LMS and WSD #363 from all liability on

account of injury and damage done to persons or property during or in consequence of the performance of the services being rendered herein in the same amount carried and maintained for WSD #363. WSD #363 shall provide LMS with a coverage outline showing the various coverages and premiums. LMS agrees to pay and/or reimburse WSD #363 the cost of providing such liability insurance coverage.

9. MUTUAL INDEMNIFICATION

Except for the willful misconduct of either party, each party agrees to indemnify the other against all costs, expenses, attorney's fees, suits, liabilities, and damages from or connected with the performance of this Agreement or the exercise of any of the duties, obligations or powers herein or hereafter granted, except as specifically provided in paragraph 10.

10. LIABILITY OF WSD #363 TO LMS

WSD #363 shall not be liable for any damages caused by delay in rendering performance hereunder arising from any cause beyond the reasonable control of WSD #363. Furthermore, WSD #363 shall not be liable for breach of warranty express or implied, including without limitation any warranties of merchantability or fitness, in any respect to any performance pursuant to this Agreement. WSD #363 shall in no event be liable for any incidental, special or consequential damages, unless otherwise expressly agreed to in writing. In no event shall WSD #363's liability for any services performed hereunder exceed the amount of money paid by LMS to WSD #363 for the particular services rendered. Services performed

under any specific direction from LMS shall be considered to have been accepted by LMS unless written proof of claim is made to WSD #363 no later than thirty (30) days after the last day such services were performed by WSD #363.

11. PENDING LITIGATION

The parties acknowledge that they are presently engaged in litigation against each other in an action entitled Boyne USA, Inc. v. Rural Improvement District, No. DV-91-716 (Montana Eighteenth Judicial District Court, Gallatin County), and agree that the presence of this litigation has had no influence on their decision to enter into this Agreement. The parties agree further that if at any time either feels this litigation is interfering with or influencing the performance of this agreement then on proper notice this Agreement may be immediately terminated. In such event the sixty (60) day notice period shall not apply, however, the termination pursuant to this section shall be effective at the end of the month in which the termination notice is given.

12. COVENANT FOR FURTHER ASSURANCE

It is agreed and understood by and between the parties hereto, each with the other, their respective heirs, personal representatives, and successors-in-interest, that when and so often as may be necessary, the parties, their heirs, personal representatives, and successors-in-interest will execute, do such reasonable things, and give such assurances as may be reasonably required to perfect and effectuate the implied and express

covenants, warranties and conditions herein set forth, reserved, and contained to be kept and performed on the part of the parties hereto.

13. RETAINED RESPONSIBILITIES

It is understood and agreed by and between the parties that any duty, obligation, responsibility or service not delegated to and assumed by WSD #363 pursuant to and under the terms of this Agreement shall be retained by and continue to be the responsibility of LMS.

14. AUTHORITY OF PARTIES

Each party will provide, upon the execution of this Agreement, a Resolution properly enacted by that party authorizing the execution of this Agreement.

15. ASSIGNMENT

The parties agree that this Agreement shall not be assignable by either of the parties hereto.

16. INTEGRATION

It is agreed and understood by and between the parties hereto that this Agreement constitutes the entire Agreement and understanding by and between the parties hereto, and that this Agreement supersedes all prior and/or contemporaneous oral or written agreements and understandings of the parties which may conflict with the expressed terms, covenants and conditions herein set forth, reserved, and contained on the part of the parties to be

kept and performed. In this connection, no assertion, allegation, representation, covenant or condition not expressed in this Agreement shall affect, or be effective, to interpret the intent of the parties, modify or change this Agreement, or restrict the expressed provisions contained herein.

17. GENDER AND CAPTION

As used herein the masculine shall include the feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way supplement or limit any of the provisions of this Agreement.

18. ATTORNEY'S FEES

In the event it is necessary for any of the parties hereto to take any action to enforce the term and covenants of this Agreement, it is agreed that the prevailing party shall be entitled to the reasonable attorney's fee incurred by such party.

19. HEADINGS OF PARAGRAPHS

Headings of paragraphs in this instrument are for convenience only, and do not apply to or affect the construction of any of the terms thereof.

20. BINDING EFFECT

All of the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the heirs, assigns and personal representatives of the parties hereto.


21. MODIFICATION

This Agreement shall not be modified unless such modification is in writing and signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto signed this Agreement as of the day and year first above written.

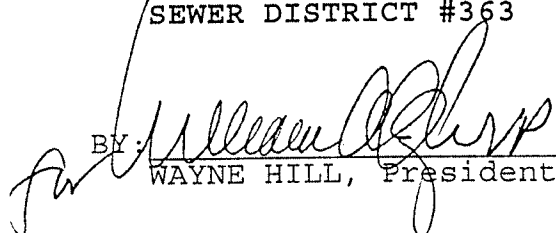
LONE MOUNTAIN SPRINGS, INC.

BY:


JOHN KIRCHER, President

BIG SKY COUNTRY WATER AND
SEWER DISTRICT #363

BY:


WAYNE HILL, President