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Power Asymmetries and Limits to Eminent Domain: The Case of Missoula Water's Municipalisation

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ABSTRACT: In 2017, the City of Missoula, Montana, in the western United States, successfully used its powers of eminent domain to take ownership of its water system from The Carlyle Group, a large international private equity firm. The Missoula case provides a lens to investigate the promises and pitfalls of eminent domain as a tool for (re)municipalisation. The case study focuses on the challenges of the eminent domain (or condemnation) process, including the assessment of fair market value. Information and power asymmetries make it difficult for public actors – the mayor, judge, and Public Services Commission (PSC) – to negotiate with private owners. Rising legal costs and increasing asset value make timing of essence, but the condemnation process is often protracted. The findings suggest that while municipalities may be able to use eminent domain to retake their water supply, it is no guarantee. Success depends on the nature of the state's eminent domain law, the ability to provide evidence of public value, the technical decisions of the PSC and the courts, and the political and financial support within the municipality for remunicipalisation and the eminent domain process. Increasing power asymmetries between municipalities and international private equity firms raise questions about the future of water regulation and, as costs escalate, about the ability of municipal governments to pursue eminent domain as part of a remunicipalisation strategy.

KEYWORDS: Remunicipalisation, eminent domain, private equity, water, United States

INTRODUCTION

Water privatisation is a hotly debated topic around the world (Hall et al., 2013; McDonald and Ruiters, 2012). Whether it involves outright sale or contracting out, water privatisation is often politically fraught. This is due not only to its symbolic value (Clifton et al., 2006), but also to the failure of privatisation to deliver cost savings (Bel et al., 2010). In the US, most drinking water remains publicly provided (Warner and Hefetz, 2012); however, the US has not been immune to global trends. As neo-liberalism rose in the 1980s, local governments began to experiment with contracting out water delivery (Hefetz and Warner, 2004). More recently, the 2008 financial crisis and other forms of fiscal stress have driven some local governments to explore outright sale or lease of their water systems (Food & Water Watch, 2010).

Private water management has failed to deliver on many of its promises of market efficiencies. This has been due to a lack of cost savings, inadequate competition, and high transaction costs (Bel et al., 2010). Public choice theory suggests that competition will result in cost savings, however, competition is usually absent in water service markets (Girth et al., 2012; Hefetz and Warner, 2012). Further, the private water service market is dominated by only a few companies with broad control over the market (Grant, 2013). Finally, because water infrastructure is highly asset specific, with contracts that are difficult to manage and monitor, water privatisation comes with high transaction costs (Megginson, 2005; Hefetz and Warner, 2012).

Due to these failures, the trend towards privatisation has begun to reverse in the US and across the globe (Hefetz and Warner, 2004, 2007; Pigeon et al., 2012; McDonald and Ruiters, 2012; Warner and Hefetz, 2012; McDonald, 2016; Warner, 2016). Cities are taking back ownership of their water systems in a process known as reverse privatisation, or 'remunicipalisation'. Remunicipalisation can take many forms, ranging from a clear reassertion of public ownership and control, to substitution by other corporatised management forms, to mere market management (McDonald, 2018; Voorn et al., 2019; Warner and Aldag, 2019). There is no comprehensive record of the number of remunicipalisation cases, but Kishimoto and Petitjean (2017) documented 267 such cases between 2000 and 2017, 63 of which were in the United States. Using national surveys of all cities across the US in 2002 and 2007, Warner and Hefetz (2012) found that 9 percent of city managers reported insourcing previous water system contracts. Food & Water Watch (2016) found there to be a slight increase in the proportion of people receiving water from publicly owned systems in the US between 2007 and 2014 (from 83 percent to 87 percent).

This trend could change. Under federal and state-driven austerity measures, cash-strapped local governments are increasingly looking for new sources of funding to help mitigate budget shortfalls and finance infrastructure projects. Private equity firms have begun to fill the gap. Water service provision is a particularly attractive industry for private equity firms as they see public water systems to be a sector of expanding strategic investment (Maxwell, 2006). However, there is only limited information with which to measure the specific impact thus far of private equity on the water industry. A concern is that it will lead to public value failure (Bozeman, 2002), as private equity seeks to maximise profits without regard to the broader values which public utilities typically address, such as conservation, equity of access and extension of service (Homsy and Warner 2018; Lindholst, 2019; Marie, 2016; Clifton et al., 2016).

This article explores the options a municipality has when it wants to remunicipalise its water system after it has been sold, or municipalise its water system in cases where the system was never publicly owned. In practice, municipalities have only two choices: they can either purchase their water utility from the private owner if it is interested in selling, or they can use eminent domain to force a sale. Eminent domain in the United States – also known as condemnation or taking – is a process by which a government entity takes private property for public use, with payment of 'just compensation'. Either option may be challenging, but condemnation through eminent domain is especially fraught with political, financial and legal obstacles which we explore in this case study. As the value of water continues to increase in an era of climate change and as private equity interest deepens, the hurdles for municipalities which want to (re)municipalise will also grow.

This research investigates the promises and pitfalls of using eminent domain for water (re)municipalisation. It examines the recent case of Missoula, Montana. Missoula municipalised its water supply using eminent domain in 2017 after a protracted legal battle with The Carlyle Group, one of the largest private equity firms in the world. This article sheds light on how the condemnation process works, and examines the actors, interests, legal barriers and opportunities that municipalities face. First, we explore the growing role of private equity in water provision; second, we discuss the limits to public service commission (PSC) regulation; third, we describe the process of eminent domain. With this as background we turn to the case of Missoula, which is an exemplary case because of the success of its eminent domain effort. We describe the actors and the processes used to build public support; we then explore the condemnation process and the critical role of the courts and the PSC in determining just compensation. Our findings suggest that when privatisation fails and when all other (re)municipalisation opportunities have been exhausted, eminent domain can be pursued – but it is no panacea. Regulatory capture and power asymmetries between private firms and municipalities threaten to constrain the ability of municipalities to make determinations about the future of their water.

THE GROWING ROLE OF PRIVATE EQUITY IN WATER PROVISION

Private equity refers to investment funds that are not publicly traded and whose exchange is not regulated. On their most basic level, private equity firms operate by raising a pool of capital (typically from wealthy individuals) and then combining that capital with additional borrowed capital to make investments in established companies for a specified amount of time (Demaria, 2010). In short, they purchase companies, manage them for a brief time, and then sell them.

Beginning in the early 2000s, private equity firms in need of a place to invest money turned to the water industry for two specific reasons. First, the water industry is perceived to have strong and consistent growth over time, which is an attractive trait for private equity investors, one which differentiates it from risky venture capital. Second, the water industry is fragmented, which affords private equity companies an opportunity to buy and consolidate businesses to build them into bigger and more valuable companies (Maxwell, 2006). After purchasing companies, the actions typically taken by private equity firms include identifying undervalued assets and fixing them to raise their value, consolidating companies, holding onto companies until market conditions are favourable for a sale, and forcing company management to be more responsive to shareholders by reducing operating costs. Finally, they develop an exit strategy, which increasingly includes selling companies to other private equity firms that are "hungry for investment opportunities" (Maxwell, 2006: 42). Rent extraction is a priority, as the physical assets of water infrastructure are used to create a source of financial flows (Loftus et al., 2018).

There is only limited information with which to measure the impact of private equity on the water industry thus far, however a Food & Water Watch (2012) report raised a set of initial concerns for municipalities, including that private equity firms frequently target annual returns of 12 to 15 percent, they usually flip assets within a decade, they are experts in evading taxes, and they restrict transparency and accountability. Given those concerns, the report recommends that local governments avoid making deals with private equity firms altogether.

LIMITS OF PUBLIC UTILITY COMMISSION REGULATION

Water utilities are natural monopolies and thus regulation, as a proxy for competition, is imperative, however the structurally complex nature of the US water industry makes regulation difficult. The industry is bifurcated in terms of public/private ownership and ranges widely in system size (Beecher and Kalmbach, 2013). In the US, in all but five states, privately owned water utilities are regulated by state public utility commissions (PUCs), and that is their primary focus though they sometimes also regulate aspects of publicly owned utilities (Homsy and Warner, 2018; Environmental Finance Center, 2017).

PUCs are a somewhat unique feature of the US government. They receive their powers from each state and are quasi-judicial administrative bodies with a technocratic structure. PUCs have a range of expert staff who are often advising politically selected (appointed or elected) commissioners (Jones, 2006). Additionally, a PUC's regulatory responsibilities vary considerably from state to state. Most PUCs follow a traditional rate base/rate-of-return (RBROR) methodology (Beecher and Kalmbach, 2013), thus focusing on regulating price and service quality.

One of the most significant challenges for regulation is that regulators can be 'captured' by the firms they are meant to discipline. Stigler (1971) first articulated this problem, which has since been expanded on and refined. One definition of 'strong' capture is that it is "the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interest of the regulated industry, by the intent and action of the industry itself" (Carpenter and Moss, 2014: 13). A variety of factors can create capture, but information and power asymmetries are particularly relevant to the regulation of water utilities.

Sclar (2000) points to the challenges governments face due to information asymmetries, especially when contracting highly asset-specific services. In fact, as Megginson (2005: 399) argues in his seminal work promoting privatisation,

> Are there any fee-for-service businesses that should not be privatized? Our answer is a cautious no, but there is one industry that has proved very difficult to transfer to private ownership in a way that yields unambiguous welfare improvement. That is water and sewerage provision.

According to economic theory, highly asset-specific services should not be privatised. In a 2010 national survey of 67 commonly provided local government services, US city managers ranked water and sewerage as the most asset-specific services of all (Hefetz and Warner, 2012). This may explain why the level of privatisation among US cities is so low (Warner and Hefetz, 2012).

Cities pursue privatisation to save costs and promote service efficiencies. The literature on privatisation of water, however, does not support the claim of cost savings (Bel et al., 2010). Studies of public sector contracting focus much attention on the high transaction costs, especially for asset-specific services (Brown and Potoski, 2003; Levin and Tadelis, 2010). High transaction costs resulting from problems with information asymmetries make adequate contract specification and monitoring difficult. Indeed, statistical analyses of privatisation reversals in the US are linked primarily to problems with lack of competition, high transaction costs, and lack of cost savings (Hefetz and Warner, 2004; Hefetz and Warner, 2007; Warner and Hefetz, 2012). Regulatory and contracting challenges in the water sector cause cities to consider insourcing which, according to Warner and Hefetz (2012), accounted for 9 percent of the cities that responded to national surveys in 2007 and 2012.

EMINENT DOMAIN AND WATER UTILITIES IN THE UNITED STATES

Cities seeking to repurchase their water supplies have two options: they can either purchase them if the owner is willing to sell, or they can 'take' them using eminent domain. There is no comprehensive list of municipalities that have successfully used eminent domain for (re)municipalisation in the US, but notable examples from the past decade include the Albuquerque Bernalillo County Water Utility Authority (NM), Fort Wayne (IN), San Lorenzo Valley Water District (CA), Cedar Lake (IN), Avondale (AZ), Tahoe City PUD (CA), Ascension Parish (LA), Ojai (CA) and – the subject of this research – Missoula, Montana (Grant, personal communication, 7 July 2017). Some eminent domain efforts have failed, for example that of Claremont, California, where the suit was lost to Golden State Water Company in 2017. As part of its settlement, the city was required to pay the company US$4.8 million in legal fees and agree not to file another condemnation case for 12 years (Bramlett, 2017). Finally, there are several ongoing efforts to (re)municipalise water utilities using eminent domain, including Apple Valley, California, which has recently initiated an effort to take its water supply back from Liberty Utilities, which also briefly owned Missoula's water.

The legal right of government to use eminent domain to take private property derives from the Takings Clause of the Fifth Amendment to the United States Constitution, which states, "nor shall private property be taken for public use, without just compensation". Those 12 words have been the subject of immense litigation, legislation and theoretical debate throughout modern American history. While state laws cannot be less restrictive than the Fifth Amendment, they can be more restrictive, thus eminent domain laws are highly variable between states. Definitions of 'public use', requirements about just compensation, and the general legal process can vary greatly.

At the federal level, the US Supreme Court interpreted the Takings Clause narrowly for many years, limiting the definition of takings to physical seizures of property. A series of landmark rulings have since expanded the concept of takings to include regulatory takings, but they have stopped short of requiring compensation for regulation that only partially diminishes the value of private property.

Private property rights advocates believe that these rulings do not go far enough. In his book *Takings: Private Property and the Power of Eminent Domain*, Epstein (1985) argued that landowners should be compensated for any loss of value caused by physical or regulatory appropriation. Epstein, an icon of the property rights movement, views private property as a natural right so fundamental that the state itself should be organised around individual, two-party transactions. The ability to regulate private property at all would be drastically undermined if this 'partial takings' interpretation were to take root. Homsy (2005) described potentially chilling impacts on land use in Oregon and Florida as partial takings moved from theory to reality under partial takings laws passed in those two states. Free trade agreements like the North American Free Trade Agreement (NAFTA) have significantly expanded definitions of property rights to include partial takings, including future profits, market share and market access (Warner, 2009). This has opened the door for international companies to use private NAFTA tribunals to pre-empt the ability of municipalities to exercise eminent domain, which happened in the Metalclad case in Potosi, Mexico. If a case were to be brought in the US, it could circumvent the US legal process (Gerbasi and Warner, 2007). The proposed new United States – Mexico – Canada Agreement maintains support for partial takings but reopens the possibility of adjudication in the public courts system.

This friction between private property rights and the public good is also evident in ongoing debates between broad and narrow interpretations of 'public use'. The most recent notable Supreme Court decision came in 2005, in *Kelo v. City of New London* (545 U.S. 469, 2005). In Kelo, the court held that private property could be taken for a "public purpose" in a case that transferred private property to other private property owners for the purpose of economic development. Kelo sparked a widespread political backslash, spurring 45 of 50 states to adopt reform laws aimed at restricting the powers of eminent domain (Somin, 2015). Property rights advocates like Somin (ibid: 2) decried "the contradiction between our supposed devotion to constitutional property rights and the federal court's reluctance to enforce them", arguing for a narrower definition of public use and a reversal of Kelo. However, Kelo has not been overturned and legislatures retain wide discretion in defining 'public use'.

The issue of just compensation has been subject to less debate. The US Supreme Court has held that takings require the payment of fair market value – and not the replacement cost – of condemned property. Still, some scholars argue that 'just' compensation is undercompensation. Again, Epstein (1985) posits that just compensation fails to account for the subjective value that people attach to their property above what is captured in the market value assessment. He believes that private property owners should also be compensated for the overall public gain made when the property is put towards a public use. Implementing these schemes for just compensation would undoubtedly drastically impact the ability of government to exercise the powers of eminent domain.

Finally, there are several debates about eminent domain procedure. Notably, Somin (2017: 58) questions "whether increasing the extent and complexity of procedural rules beyond the widely accepted minimum really provides meaningful protection for property owners". He believes that complex procedure can be a "double-edged sword" that increases the costs to property owners who want to use procedures to their fullest extent to challenge takings, while governments, by contrast, have a greater ability to endure legal procedures due to their access to taxpayer money.

THE CASE OF MISSOULA

Missoula's water utility (at the time named Mountain Water) was privately owned and operated for the entirety of the city's existence until 2017, though the city had tried unsuccessfully to municipalise its water supply in the early 1980s. Missoula's case is thus one of *municipalisation*, rather than *remunicipalisation*. As of 1979, Mountain Water, along with two sister utilities in California (Apple Valley and Southeast Los Angeles County) were owned together as a company called Park Water. In 1983, the city initiated its first attempt to take Mountain Water by eminent domain. It lost in court and in the process severely damaged its relationship with Park Water's owner, a Californian named Sam Wheeler.

Thus, when Sam Wheeler decided to retire and sell Park Water in 2011, he did not inform the City of Missoula, instead negotiating privately to sell the company to The Carlyle Group for US$102 million (Tobias, 2017). The City of Missoula subsequently offered to purchase the Mountain Water portion of the company and its associated water rights from Carlyle for $65 million (their estimate of the value of Missoula's portion of the company) but was rebuffed.

Many of Missoula's citizens opposed Carlyle's purchase of Mountain Water and its subsequent management of the utility. With broad support, the City of Missoula then filed a suit to take Mountain Water by eminent domain in 2014. *City of Missoula v. Mountain Water Company* was heard in Montana's Fourth Judicial District Court in June 2015. The City of Missoula won. After a preliminary condemnation order was issued, but before a second trial to determine just compensation, Carlyle sold Park Water – without Montana State Public Service Commission regulatory approval – to Liberty Utilities, a subsidiary of Algonquin Power & Utilities Corp. of Canada, for US$327 million (Erickson, 2015). The trial continued, with the case eventually making its way to the Montana Supreme Court. The City of Missoula prevailed, and Mountain Water (renamed Missoula Water) was transferred to city ownership for US$88.6 million in June of 2017 (Szpaller, 2016). The two California utilities continue to be owned by Liberty Utilities.

We selected Missoula as a case study for three reasons. First, it is one of the most recent successful municipalisation efforts in the US, providing an opportunity to conduct in-depth interviews with various actors involved in the municipalisation debate while it is still fresh in their minds. Second, it appears to be the first case of a municipality using eminent domain to take a water supply from a private equity firm. Third, the revolving door of ownership of Missoula's water – from Sam Wheeler, to The Carlyle Group, to Liberty Utilities/Algonquin, to the city – offers a window to examine four different kinds of actors as they relate to the municipalisation process.

We utilised several sources of information to uncover these dynamics. First, we conducted 13 interviews with present and former City of Missoula officials, including elected individuals, city staff, lawyers, and other organisations and individuals involved in the process. Interviews were recorded, and ranged from 30 to 90 minutes. Interviewees were identified through preliminary research as well as snowball sampling. We were not able to interview Carlyle or Liberty Utilities representatives, and thus have relied on publicly available documentation and accounts from other interviewees to gain insight into their role in the municipalisation debate. We also reviewed publicly available legal documents on the eminent domain suit, as well as numerous articles from the local newspaper, The Missoulian, which covered the issue in depth. Finally, we examined reports and studies provided by city officials which had been developed or commissioned during their municipalisation effort.

Missoula's successful use of eminent domain to municipalise its water provides important lessons for other cities in the United States. We begin our analysis with an examination of the process of building and maintaining the public support that is crucial to the outcome of (re)municipalisation efforts. We then turn to the eminent domain procedure, including determinations about public use and just compensation, as well as the speed of the legal process. Table 1 delineates the key processes, actors and questions that affected the outcome. Missoula's experience highlights the increasingly expensive and complex challenges for municipalities faced with similar dilemmas.

BUILDING AND MAINTAINING PUBLIC SUPPORT FOR MUNICIPALISATION BY CONDEMNATION

Missoula's elected officials, and particularly Mayor John Engen, supported municipalisation for years before the condemnation attempt. However, the city had a poor relationship with Sam Wheeler, owner of the water utility, due to the city's failed attempt to take the utility by eminent domain in the 1980s. Thus, when Wheeler decided to sell Park Water, he did not approach the city and instead negotiated the purchase directly with Carlyle. Mayor Engen initially saw Carlyle's involvement as a possible opportunity to eventually purchase Mountain Water.

Table 1. Key actors and processes in the (re)municipalisation debate.

	Key actors in the (re)municipalisation process					
(Re)municipalisation process	Elected officials and city staff	Employees of the private water company	Citizens	The judge	Private companies	State Public Utility Commission
Building and Maintaining Public Support	Do the mayor and city council support remunicipalisation?	Do the employees of the private water company want to (re)municipalise and become public employees?	Does citizen support ebb and flow?		Will the private company attempt to influence public support?	Is the PUC 'captured'?
Eminent Domain Procedure						
Public use determination (in Montana, 'more necessary' public use)				Does the judge believe public ownership is more necessary than private ownership?	Can the private company demonstrate that public ownership is not more necessary?	What documentation held by the PUC is available or private?
Just compensation	Can the city afford to pay for the utility and the legal fees?			Does the judge's opinion impact just compensation?	Will the private company successfully drive up the compensation price?	What documentation held by the PUC is available or private?
Speed of legal process	Will elected officials continue to support (re)municipalisation as costs rise with the unfolding process?	How will employees of the private water company be impacted by a prolonged legal process?	Will citizens continue to support (re)municipalisation over a long period of time?	Will the judge slow or speed the legal process?	Will the private company slow the legal process to drive up costs and drive down public support?	

Mayor Engen and most city council members supported municipalisation for several reasons. First, Missoula's water rates were the highest of the major cities in Montana (Power, 2014). Second, they knew that the physical infrastructure had a high leakage rate, but they did not have access to information on how extensive the problem was. Third, the city wanted better control over its long-term planning for physical development, which was hampered by the way that water lines were financed and extended under private control. Finally, the city's leadership did not believe that the Montana PSC was adequately regulating Mountain Water in the city's best interests. As the municipalisation effort continued, the mayor and city council members remained the biggest drivers of the process.

There was also significant citizen support for municipalisation. The city hired a consultant to conduct a survey to gauge public opinion, which found that 70 percent of active voters in Missoula supported the idea of the city purchasing Mountain Water at a fair price and operating it as a city-owned utility (Harstad Strategic Research, Inc.; 2014). There was also concern specifically about Carlyle. Karen Knudsen, director of the Clark Fork Coalition, a local non-profit dedicated to protecting and restoring the Clark Fork River Basin, remarked that "[i]t was the talk of the town" (K. Knudsen, Interview, 11 January 2018). As she explained,

> Pretty much everybody I saw was pretty riled up about this announcement. I mean, the Carlyle Group has a reputation for being involved in the defence industry and contracting in the realm of commodities, but water? People were concerned and alarmed that a global giant and a private investor would be coming into Missoula, Montana (…). This was a direction that could lead to some trouble down the road in terms of our water security and conservation that has been critically important to Western Montana over the years.

Missoula is a liberal college town with an educated populace. Knudsen's quote is indicative of a community that was aware of, and hesitant about, Carlyle's reputation and intentions from the outset. Other interviewees gave similar descriptions of the public response to Carlyle's arrival in Missoula, characterising public opposition as being about ending the flow of money to corporate owners in California and regaining control of their future. When pressed to explain further, former city council member Jason Wiener (Interview, 18 January 2018) said,

> Look, it fits with the political ethic of Montana more broadly, the suspicion of overweening, broad power (…). Because of Montana's history as a resource extraction state, there is already a very rich history of out-of-state national corporations coming in, stripping the place bare, and profits winding up in New York City or something like that. There was fertile ground for a narrative that the Carlyle Group was here to plunder.

This explanation illustrates the importance of the historical economic and political context of Montana. Corruption relating to the copper industry plagued Montana's politics in its early history (Malone et al., 2001), providing a backdrop for considerable scepticism when the public learned of Carlyle's intention to purchase Mountain Water.

Public opposition to Carlyle and support for city ownership of Mountain Water proved imperative throughout the municipalisation process. Members of the Clark Fork Coalition joined discussions with Mayor Engen and Carlyle's Robert Dove, expressing their concern about the possibility that Carlyle could bottle water from Missoula's watershed if they owned the system and its valuable water rights.

Despite scepticism about Carlyle, city leadership knew that Sam Wheeler would not sell Mountain Water to the city because of their historically poor relationship. Mayor Engen thus believed that a sale to Carlyle was their best chance to eventually own Mountain Water. In coordination with the Clark Fork Coalition, the city decided to support the sale under specific conditions, agreed to in a legally binding letter between the City of Missoula, the Clark Fork Coalition, and Carlyle. The major conditions of the letter were that: (a) Carlyle would consider in good faith any offer from the city to purchase Mountain Water; (b) water facilities in a local creek drainage would only be used as a backup supply for the Missoula community's needs; and (c) water would not be diverted outside Missoula for use elsewhere (Nelson, 2011). With this agreement in hand, Carlyle received approval from the state PSC to purchase Mountain

Water. Park Water Company, comprising Mountain Water and the two California utilities, was transferred to The Carlyle Group in December of 2011 for US$156 million, including US$54 million in debt, for a total of US$102 million (Tobias, 2017).

Mayor Engen, with the support of most city council members, moved forward with municipalisation plans, and offered US$65 million for Mountain Water (their assessment of the value of that portion of the Park Water Company) in October 2013 (Szpaller, 2015a). Carlyle rejected their offer, which spurred the city to begin plans to use eminent domain. On the decision to pursue condemnation, Mayor Engen (Interview, 8 January 2018) said that

> [i]t really felt like the only option. I mean we'd reached a point where I believed that it was critical for the city to acquire the system. It was not going to happen through negotiation, that became perfectly clear to me and so condemnation was really the only choice we had. It was condemnation or do nothing. And do nothing wasn't an acceptable choice for me.

The Carlyle Group and, later, Liberty Utilities both devoted resources to swaying public opinion, including newspaper advertisements, a Facebook page, and 'listening sessions' with city business leaders, but those efforts did not appear to significantly affect public support for municipalisation – support which proved to be indispensable as the legal battles dragged on.

However, support for municipalisation was not uniform. In fact, the most significant opposition to the city's plans came from Mountain Water employees, and particularly its management. One of the main reasons the city failed to win its condemnation attempt in the 1980s related to the city's proposed treatment of Mountain Water employees under municipal ownership. The city then argued that they would save money by cutting jobs and salaries, which became a focal point of the judge's decision against Missoula. While the city made significant adjustments to its strategy – this time offering substantial guarantees relating to the job security of Mountain Water employees – employees spoke vehemently against the city's plans during city council meetings and when other opportunities for public comment presented themselves. Interviewees indicated that Mountain Water's leadership and representatives from Carlyle and Liberty Utilities were making strong arguments to employees internally that city ownership would harm them.

A final factor was that the Montana PSC itself had a complicated relationship with the City of Missoula. The state is divided into five districts along county lines, with roughly the same total population in each district. Missoula is in District 4, which is made up of seven counties in the north-western part of the state. The commissioners are elected to four-year terms to represent their districts, and they are supported by a staff that includes attorneys, accountants, economists and rate analysts (State of Montana Public Service Commission, n.d.). Initially, the commission was a mix of Democrats and Republicans, and Missoula was represented by a Democrat; however, by 2012, all five members were Republicans. A city council member (Interview, 16 January 2018) indicated that the city and PSC had "no productive relationship going forward" from that point. Missoula's new representative, a Hamilton resident named Bob Lake, wrote about the municipalisation attempt in a guest column in The Missoulian:

> If this hypothetical sale fails to take place, Missoula's mayor has threatened to take drastic action. In an affront to private property rights, the mayor publicly alluded to the possible condemnation of Mountain Water if the Carlyle Group does not agree to a sale. History is not on the mayor's side with such an idea. A similar attempt was made in the 1980s, but the courts recognised the sanctity of private property rights and determined that using eminent domain for the takeover was not acceptable (Lake, 2013).

Clearly there was both support for, and opposition to, municipalising Mountain Water. City officials and city council members were primarily driven by a practical set of considerations about cost and efficiency. Citizen support was attributable, at least in part, to ideological opposition to private firms like The Carlyle Group that are perceived to exemplify corporate greed. Mountain Water employees opposed municipalisation due to their historically poor relationship with the city. The Montana PSC became

opposed to municipalisation when it transitioned to a Republican-dominated commission after the 2012 elections. All of this would become central to how the county judge weighed her decision about public ownership.

EMINENT DOMAIN PROCEDURE IN MONTANA

Montana state law concerning eminent domain is considerably more specific and constricted than the US Constitution. Before private property can be taken, condemners must show by a "preponderance of evidence" that the taking is required by the public interest, based on the following:

- The use to the which the property is to be applied is a use authorised by law;
- The taking is necessary to the use;
- If already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use; and
- An effort to obtain the property interest sought to be taken was made by submission of a final written offer prior to initiating condemnation proceedings, and the final written offer was rejected (Nowakowski, 2014).

Montana Code Annotated (Section 70-30-102) contains a list of allowed public uses, meaning the state legislature has retained the power to determine what is or is not a public use, rather than leaving that decision to the courts. One of the state's allowed uses for eminent domain is "water and water supply systems", which enabled Missoula to proceed with its case against Carlyle.

The above provisions mean that when private property is already being used for a public use such as a water supply system, the condemner must prove that the proposed use is "a more necessary public use". This was the central legal question in City of Missoula v. Mountain Water Company. The "more necessary" determination may exist to protect private property owners from arbitrary condemnations, but it also adds a substantial legal and financial hurdle for municipal governments who must make their case to a judge.

There are two main components to Montana's eminent domain process. First, there is a preliminary proceeding in a court sitting without a jury, to determine whether the previously described burden of proof is met. If the condemner prevails, the judge enters a preliminary condemnation order. Second, a hearing and judgment occurs to determine just compensation.

A summary of Judge Karen Townsend's main findings in favour of the City of Missoula is available in Table 2. Even so, it is difficult to assess from the judge's opinion exactly what led to her decision that public ownership was "more necessary". The "preponderance of evidence" speaks only to the weight of the more convincing evidence, which can loosely be thought of as a '50 percent plus one' rule. The city made arguments about the inherent differences between public and private ownership, as well as more factual ones based on evidence such as leakage rates and disinvestment. In return, Carlyle argued that Montana Public Service Commission oversight would be lost if the city owned Mountain Water, and that this PSC oversight was a substitute for competition.

A lawyer who represented the city (Interview, 10 January 2018) commented that, "We had that tangible evidence layered on top of the theory as to why a municipal government is better suited to manage an essential item like water". However, it seems that physical evidence was a fairly important component of Judge Townsend's decision, given that she cited many specific items relating to the condition of the system and its management in her findings of fact. When asked what the City of Missoula learned from its failed 1980s eminent domain case, the same lawyer (Interview, 10 January 2018) said:

Table 2. Summary list of benefits to be derived from city ownership, according to Judge Karen Townsend.

A.	Stability of ownership
B.	Prioritization of the Public Health, Safety, and Welfare of Missoula residents in the Management of the Water System
C.	Local control of a vital natural resource integral to public health safety and welfare by locally elected officials who are required to assure the public's right to participate in government before final decisions are made and to comply with statutory provisions governing the setting of rates
D.	Opportunities for public participation in planning decisions required for capital improvements needed to address leakage rate and deferred maintenance of key Water System assets and to maintain, expand, and upgrade an aging Water System
E.	Opportunities for cost savings when infrastructure is replaced at cost rather than cost plus a rate of return, reduced operating expenses by elimination of the Home Office Expense, reductions in other administrative expenses including taxes, costs of insurance, and by coordination with other City departments
F.	Benefits of coordination with other public health, safety, and welfare water related functions currently performed by the city including urban planning, wastewater treatment and disposal, management of stormwater run-off, transportation and fire safety
G.	Public support of municipal ownership
H.	Support of a majority of City's elected leadership
I.	City's access to capital through grants, bonds and loan programmes not available to the private sector
J.	The City's ability to manage and operate the Water System to assure long term access to a reliable, adequate supply of clean water for Missoula residents

Source: City of Missoula v. Mountain Water Company (2015)

> If you base your case purely on theory, on the theoretical political debate, on who is better, private versus public, then that is not enough. I think that's a real lesson for other communities who are looking at this issue, that you can't just rely on arguments. You need to really communicate to rate payers, who are the consumers of your product in your communities, the actual evidence of how they are being harmed by private ownership in their communities. And so we went beyond theory, although we had a lot of that in our case, to actual, tangible evidence of corporate wrongdoing that was having a direct impact on the water system and its future here in Missoula.

This suggests that physical evidence is indeed important, which raises a fundamental question: if municipalities must have tangible evidence of poor management of a water utility to prove that public ownership is 'more necessary', do they need to wait for things to fall apart before they can exercise eminent domain? If the weight of physical evidence does not convince a judge, would it be enough for a municipality to argue its case based on facts like tax status and long-term stability of ownership? It seems not.

Clearly, in Montana, the 'more necessary' requirement elevates the role of the court – specifically, of individual judges – in determining eminent domain cases. A city cannot simply determine that municipal ownership is a more necessary public use, it must prove its worthiness to a judge. Whether Judge Townsend was swayed by one argument or another is known only to her. When asked about the judge's decision, Mayor Engen (Interview, 8 January 2018) said:

> So there's never a certainty in court, right? We were blessed with a very intelligent, very competent, and very fair judge. But at no point did anyone take for granted that the other side couldn't present compelling

> arguments for the necessity of them continuing to own it. And the variable would change every day with whatever the latest brief from Carlyle or Mountain would be.

As implied by Mayor Engen's comment, a different judge could have resulted in a different outcome. Given that the 'more necessary' requirement is already quite broad, this raises a related question about who is best positioned to determine public necessity – an elected judge or locally elected representatives? The advantage of a judge making such a determination is that they are ostensibly unbiased, and accountable to the legal system rather than to any special interest; in reality, judges often have personal biases and worldviews that affect their interpretation of the law. By contrast, the advantage of locally elected representatives (the mayor and city council) making that determination is nearly the opposite: they are biased towards and directly accountable to ratepayers.

Ultimately, the state legislature's decision to elevate the power of judges in eminent domain proceedings by requiring that public ownership be 'more necessary' than private ownership may leave the fate of some condemnation proceedings uncertain, at least in Montana or where similar legal requirements exist. This will add to the hesitancy of municipalities to take large, powerful private companies to court.

JUST COMPENSATION: WHAT IS A WATER UTILITY WORTH?

Under Montana law, the preliminary condemnation hearing occurs before compensation is determined (Nowakowski, 2014). This would not be a concern for a municipality condemning a small property like a parcel of residential land, as land values are relatively easy to assess and there are many transactions from which to accurately estimate fair market value. Condemning a water utility is a different story. City council members working on the city's municipalisation effort were quite anxious that they might prevail in the preliminary condemnation trial only to be unable to afford the acquisition, leaving the city with millions in legal fees and nothing to show for their effort (Interview, 16 January 2018).

The city had good reason for concern. When Carlyle purchased Park Water Company for US$156 million in 2010, the city hired an independent consultant to estimate the value of the Mountain Water portion of the company. Based on several different methodologies, they estimated Mountain Water to have an implied value of between US$48.3 and US$56.6 million (City of Missoula, 2013). After the city offered US$65 million for Mountain Water, Carlyle's Robert Dove suggested that a more appropriate price would be US$120 million. During the preliminary condemnation hearing, Carlyle estimated Park Water Company as a whole to be worth US$220 million (Szpaller, 2015b). Later, Carlyle sold Park Water for US$327 million (Erickson, 2015). It is difficult to understand how the utility's market value could change so drastically in the span of less than six years, given that investment in the actual physical infrastructure was quite low.

The Montana legal process for determining fair market value offers very few clues. Montana statute requires compensation to be determined by a panel of three expert commissioners (Nowakowski, 2014). The city chose one commissioner, Carlyle chose a second, and they jointly appointed a third. Each side had an opportunity to present allegations and evidence to the commission and the district judge. Expert witnesses testified for each side using different valuation methods and assumptions about the state of the system. Carlyle argued that it was worth US$143 million based on an estimated US$222 million cost of installing an equivalent system, minus depreciation. The City of Missoula countered with a US$46 million estimate, noting the significantly impaired state of the physical infrastructure as well as the cost that Carlyle had paid for it just several years prior (Kidston, 2015). The commission then met privately to determine the fair market value and unanimously agreed on a final value of US$88.6 million. Joe Conner, one of the lead attorneys who represented Carlyle, lists this accomplishment on his firm's website, which reads, "Obtained judgment of $88.6 million plus attorney's fees – far above the condemner's proof at

trial of a $45 million value" (Conner, n.d.). Establishing fair market value by commission rather than by a specified valuation method raises uncertainties about final cost.

The commission process is further complicated by the fact that either party can appeal the commission's assessment, which would then trigger a jury trial in district court. Initially the City of Missoula intended to appeal the assessment but decided not to at the last moment. It felt too risky to launch a trial where jurors would be selected countywide and tasked with reassessing the expert commission's price. This may have been an advisable move by the city. Given the financial complexities of assessing a water utility, it is difficult to understand why a jury would be best positioned to make that determination. Also, while public support for municipalisation was very high in the City of Missoula itself, survey data on a countywide level did not exist. More conservative jurors opposed to eminent domain for political reasons could have drastically impacted the fair market value of the system.

While most interviewees for this study indicated that they were generally satisfied with the final cost of US$88.6 million, city officials felt that it was a compromise. What is the best way to determine a fair market value for water utilities? Each water utility is unique, and they are natural monopolies with complex physical infrastructure that can be difficult to inspect. Importantly, private companies are not inclined to share how they assess value, since in buying and selling utilities there is a strategic competitive advantage to keeping that information a trade secret. Since municipalities like Missoula rarely conduct such transactions, they have little information and thus are at a distinct disadvantage to companies like The Carlyle Group or Liberty Utilities that are experts in the market and have larger resources to draw on for legal advice.

Even with access to more accurate information, questions linger such as what just compensation should have looked like in the case of Missoula and Carlyle? Critics like Epstein (1985) have argued that the fair market value approach results in undercompensation, that it does not make the loser whole because it fails to account for the subjective value that people attach to private property. Epstein argued that property owners should be compensated above fair market value in order to be able to share in whatever public gains are to be had from the taking. The case of Mountain Water, however, begs the exact opposite questions: 1) if a private company owns and operates a service for a public use, and it in fact diminishes its value by neglect or mismanagement, should those public losses be reflected in the final compensation?; and 2) what about the subjective value that citizens attach to their water supply, or to the Clark Fork River that flows through downtown Missoula? Critics of the fair market value approach are silent on the point of private compensation for public value losses resulting from private action. If valuation includes public gains but not the cost of public losses, this will undermine the ability to protect public purpose in privately owned infrastructure.

The value of water utilities – and associated water rights – will only increase in the future no matter how just compensation is determined. This is especially true in an increasingly arid west where water is the new gold. Unless laws are changed, (re)municipalising privatised water could become more and more expensive and infeasible for communities that do not have public control of their most essential resource.

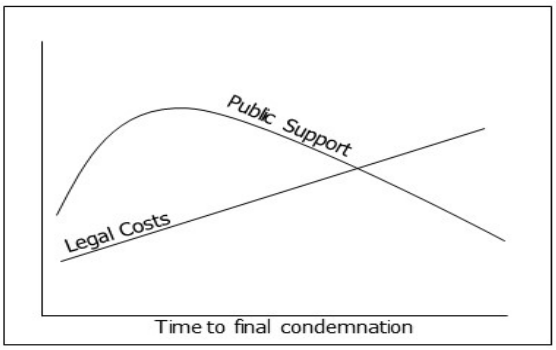
SPEED OF THE LEGAL PROCESS: HOW EXPEDITED TREATMENT ALLOWED THE CITY TO PREVAIL

Under Montana's eminent domain laws, the condemner must pay for necessary expenses of litigation if the condemnee ends up receiving an award in excess of the final written offer that was rejected (Nowakowski, 2014). Even before condemnation proceedings had begun, Robert Dove made it clear to the public that Carlyle would make things as expensive as possible for the City of Missoula. He said to The Missoulian, "We intend to hire the most qualified lawyers. Lawyers charge by the hour, so the longer the case drags on, the higher the overall cost is. We understand condemnation cases can take a long time, i.e.; four to five years, even longer" (Szpaller, 2014). Carlyle held true to this promise. A lawyer for the city (Interview, 10 January 2018) said:

> We had 30 lawyers from one law firm working on this case. We had five law firms that were opposing us. They try to simply bury you in paper and expense, and then they try to drive the cost up so high, and then all of this has to be made public because the cost of the effort itself is a matter of public inquiry, and then they try to say, "Look at how expensive it is, and you're gonna lose", to try to sway the public opinions and put pressure on public officials so they give up, so they don't pursue it.

Combined with other strategies like the listening sessions that Carlyle and Liberty employed to build opposition to eminent domain, it is easy to understand how water companies could work to erode support over time, as illustrated by Figure 1.

Figure 1. Public support for municipalisation over time.



Fortunately for the city, Montana statute specifically requires expedited treatment during the preliminary condemnation process. The law states that after the complaint is filed, "all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give the proceedings expeditious and priority consideration" (70-30-206, MCA). A lawyer for the city (Interview, 10 January 2018) considered this statute to have been one of the major reasons why the city was able to win its case. The statute provided a counterbalance to the immense financial and legal resources Carlyle had at its disposal to drag the case out.

Even so, the legal proceedings between Missoula and Carlyle were far more expensive and time consuming than the city had anticipated. Mayor Engen and city officials initially predicted US$400,000 in city legal fees (Wadley, 2014) but, in the end, that number ballooned to over US$9.2 million. The city also had to pay Carlyle's legal costs. Carlyle requested US$7.1 million, but Judge Townsend declared that the fees were not reasonable and necessary and ordered them reduced to US$3.9 million (Kato, 2018). None of these costs account for regular city staff time. Dale Bickell, the city's chief administrative officer, coordinated the staff working on municipalisation at the city. He estimated that 80 percent of his own work time was devoted to the effort, in addition to a huge amount of his staff's time (D. Bickell, Interview, 9 January 2018).

Clearly, municipalisation by eminent domain is incredibly time consuming and expensive, even with legal directives to expedite such proceedings. Private property rights advocates such as Somin (2017) have argued that elaborate procedural rules often have the 'benefit' of increasing the time and effort it takes to go through the condemnation process, but that "they also increase the costs of the condemnation process for those owners who actually try to use the procedures to their fullest extent". This theory assumes a world where private property owners have fewer resources than the government. The opposite was true in Missoula. In states without provisions to expedite the eminent domain process – or indeed where statutes are specifically designed to afford private property owners every chance to slow that process – firms will take advantage of the slowed-down timeline to erode public support.

POWER ASYMMETRIES AND THE FUTURE OF WATER REGULATION

Given the vast disparity in resources and power between the City of Missoula and The Carlyle Group, the latter of which advertises having US$195 billion in assets today (Carlyle, n.d.), it is remarkable the city managed to prevail in its municipalisation effort. It was only with determined city leadership, strong public support, a favourable judge, and an expedited legal process that Missoula was able to municipalise its water. Even then, it proved to be far more costly and difficult than the city expected. If powerful private equity firms continue to show interest in the water industry, then it is likely that the power asymmetries between firms and municipalities will continue to grow.

Carlyle's objective was to buy Mountain Water, extract money and raise its value, and then sell it to create profit for their shareholders. The purchase of Mountain Water fit perfectly with the state investment approach of Carlyle Infrastructure Partners (2018), which reads:

> CIP seeks to invest in infrastructure assets that demonstrate predictable sustainable cash flows underpinned by long-term contracts, attractive regulatory frameworks, defensive market positions or favorable supply and demand dynamics. CIP targets equity investments of $75-$150 million and prefers majority control or significant minority rights. Long-term risk adjusted returns are generated from a mix of current cash flows and capital appreciation.

The CIP group sought long-term assets with little risk and predictable returns for their shareholders. Regulated water utilities provide guaranteed equity, and in this case the approved rate of return for Mountain Water under the Montana PSC was 9.8 percent. However, long-term investment in Mountain Water was less than three years. It emerged during trial discovery that, despite Robert Dove's representations that Carlyle intended to be a long-term owner of Mountain Water, they had in fact planned from the beginning to 'exit' investment in Park Water within five years of acquisition, after building up Park Water's rate base and enterprise market value (Wilson, 2011). Given that Carlyle sold Park Water for more than twice its previous value, they certainly succeeded in meeting this goal.

The Carlyle Group was also expert at extracting money from Mountain Water during its short period of ownership. Mountain Water paid large administrative fees to its external owners which, in 2011, included "$1.3 million for salaries for California staff, $48,000 for 'travel and entertainment', a Board of Directors fee of $103,000, a 'Trustee's fee' of $108,000, another $257,000 for maintenance of California facilities and $28,722 for a regulatory commission expense" (City of Missoula v. Mountain Water Company, 2015). Carlyle also utilised a financial tool called an 'intercompany receivable' (essentially a monetary transfer between two divisions or subsidiaries of the same company), to reduce what its profit looked like on paper. A lawyer for the city (Interview, 10 January 2018) commented that,

> If you look at the books of Mountain Water Company, they never were profitable. On paper, what they provided to the PSC year after year showed a company that was barely getting by. And yet, when you dug deeper, you saw that that really wasn't accurate, that there was a list of ways in which a sophisticated corporation can extract money. You don't call it profit, but you extract money out of the system in order to line the pockets of remote investors. So while the company never showed a profit to the PSC, somehow the company was able to dividend, in the short period of Carlyle's ownership, more than $11 million in dividends. And that's just the start. So we had evidence that there was the payment of extremely excessive executive salaries, that there was the payment of large amounts for travel and entertainment, trustee fees, helicopter rides, expensive coffee makers, big screen TVs. The list was very, very long of items that simply would not be expenses if the system was operated by a municipal government.

The Montana PSC was unable to provide a check against Carlyle's profit-seeking behaviour. This was most apparent when Carlyle and Liberty decided to ignore the PSC altogether and consummate the sale of Mountain Water after Judge Townsend had already ordered a preliminary condemnation of the utility. The PSC did not have the authority to stop or reverse the sale. Eventually, they fined Liberty Utilities US$150,000 and reduced Mountain Water rates by US$1.1 million, declaring it "a victory for ratepayers"

(Johnson, 2016). Even after that, however, Liberty Utilities would have remained the owner of Mountain Water had it not been for the city's successful condemnation suit.

The purpose of regulating a natural monopoly is to stand in for competition in order to prevent exactly the kinds of abuses that occurred in Missoula. The PSC was outwitted and overpowered. It was captured, and even perhaps used as a tool against the community it was meant to protect. Public service commissions, whether in Montana or elsewhere in the United States, were originally created to regulate companies like the one owned by Sam Wheeler. It was feasible to assume that such a regulatory body could have enough political independence, financial resources and expertise to counterbalance the power of private companies. If Missoula's experience is any indication, that era could be ending.

The financial interests of private equity and the failure of regulation collided in Missoula. The stated objective of private equity firms is to make a profit for their shareholders, not to deliver water. When the narrow focus on providing returns does not align with the public interest, conflict will arise. This raises the question of whether regulating private equity firms is practical, or even possible. A substantial amount of financial and legal resources and industry expertise are needed to ensure accountability and meet adequate expectations for water delivery.

However, whether municipalities have the power to (re)municipalise when privatisation fails is highly situation specific. Missoula's experience highlights the importance of individual actors – the mayor, the judge, the firm – who are central to the success or failure of (re)municipalisation efforts. It also illustrates the importance of the legal process, especially around considerations of just compensation. As the value of water increases, will cities be able to afford to (re)municipalise when privatisation fails?

CONCLUSION

This case study of Missoula is a cautionary tale for what cities might expect when powerful private equity firms become involved in providing public services. As cash-strapped municipalities weigh their options for addressing budget shortfalls, they should pause to consider whether short-term financial gains will cost them long-term stability and control over their most precious resources. Private equity firms focus on providing returns for their shareholders, not on providing public goods.

The case study also provides insights into emerging theories on remunicipalisation. Returning water system assets to public ownership is legally, financially and politically difficult. The loss of public values can undermine the very claim needed to justify remunicipalisation through eminent domain, which is why maintaining public values in public utility operation is so critically important, as numerous scholars have noted (Lindholst, 2019; Marie, 2016; Clifton et al., 2016; McDonald, 2016). The increase in private value, especially when private equity is involved, can make repurchase unaffordable. How is a fair price determined? And who determines it? Whether it is the decision of a judge, a jury or the PSC, the process is prone to political and market influence that makes the outcome uncertain. The fact that water is a natural monopoly makes fair market price determination even more difficult and confirms Megginson's (2005) conclusion that water is one sector that should not be privatised. Power asymmetries place municipalities at a disadvantage at every stage of the negotiation. This extends far beyond the transaction costs of contract negotiation (Hefetz and Warner, 2004) and points to the need for a broader approach which looks at industrial organisation (Bel et al., 2010) and a public values framework that ensures that the wider array of public issues is considered (McDonald, 2016). The current regulatory governance structure for public utilities may not be up to the challenge of adequately overseeing the remunicipalisation process, in part because it is not sufficiently democratic. If remunicipalisation is to be a tool available for local governments, robust procedures must be in place. In the case of Missoula, too much hinged on the decisions of an individual judge.

In this case study, the Montana Public Service Commission was clearly not up to the challenge of overseeing private equity firms. The balance of power and resources was too unequal, and the

commission faced structural and political challenges that made it difficult for it to protect the citizens of Missoula. State public utility commissions need to be better funded, more structurally sound, and less susceptible to capture (Carpenter and Moss, 2014). Case studies are necessarily limited in their scope; further research investigating the power dynamics between PUCs and private equity firms is needed. Still, it is clear that substantial financial resources and political commitment at the state and federal level will be needed to match the growing power and complexity of private equity firms. Will there be a breaking point for water regulation in the US? Why should so many resources be devoted to regulating such firms if municipalities can provide those services without a profit motive?

Theoretically, we know that providing water publicly – which is the dominant paradigm now – is the best option as effective regulation of private firms is difficult (Megginson 2005). Missoula has only owned its water supply for a short time, but it is already possible to see how cities are driven by a different set of interests. The city planned to invest over US$6 million in the system in 2018 alone (J. Engen, Interview, 8 January 2018) and is doing so without needing to raise water rates (Friesen, 2017). Local officials – who are accountable to voters – are planning for long-term growth and the inevitable need to adapt to climate change in an increasingly arid west. These public values extend beyond basic water provision and are an important reason for growing interest in (re)municipalisation. The legal, economic and political costs of using eminent domain rise with time as the likelihood of success erodes. The worsening state of Missoula's water infrastructure was going to reach a breaking point, and if the city had not taken Carlyle to court when it did, it may have become too expensive to bear. Even with a statute requiring expedited review, the city faced exorbitant legal fees without any guarantee that it would prevail. The value of water utilities and water rights will only become more precious in the future, both to communities and to private interests.

Missoula's experience is at once ominous and hopeful. On the one hand, it seems to point to an inevitable collision between private equity firms and the public, whose interests are nearly diametrically opposed. On the other, it illustrates that local control of water can be a simple and powerful way to promote the public good. The challenge is getting there. Eminent domain is the primary tool with which municipalities can take control of their water when private owners refuse to sell, but there is no guarantee it will work. Other cities have failed where Missoula succeeded. Still, the events that transpired in Missoula show that David can beat Goliath.

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