

Revenue Bond Case

1) **What is the basis of the legal challenged filed by the Friends of the Reservoirs and others against the City Council's attempt to authorize water bonds in October 2003?**

The lawsuit filed October 7, 2003, in the Multnomah Circuit Court was brought by Friends of the Reservoirs, Citizens for Safe Affordable Water, and 12 named individuals. It seeks enforcement of Oregon's Uniform Revenue Bond Act (URBA). The URBA statute mandates that citizens have notice and an opportunity to refer to the electorate, local ordinances that authorize the issuance of revenue bonds. Specifically, IJRBA states that the City must publish a statement of the purpose for which the money will be spent and where the funds will come from to repay the revenue bonds.

For many years, the City provided adequate URBA notice. It would state, for example, that it was authorizing \$50 million to build the convention center and that the debt would be repaid from fees charged to users of the convention center. Citizens who disagreed with this expenditure of public funds had the opportunity to refer the bond measure to the voters.

In recent years, however, the City changed the content of its URBA ordinance notice to what even it agrees is a "blank check" notice. Thus, the City merely publishes notice that it wants a certain amount of money to spend for "public purposes" and intends to pay it back from "public monies." This notice is so vague that there is no way for any citizen to know how the City intends to spend the money. As a second step, the City then passes revenue bond ordinances for portions of the "blank check" monies, stating for what the money will be used. For example, "water system improvements" paid for by "increases in water rates." The City, however, declared these second ordinances "emergencies" so that the ordinances could not be referred to a vote of the electorate.

The City used this two-step process to authorize \$200 million in URBA bonds in December 2002 and another \$500 million in April 2003. In October 2003, the City then undertook the second step in the process. It authorized that a portion of the \$700 million in revenue bonds be issued to raise money for the purpose of burying the reservoirs. This second ordinance was declared an emergency so that it could not be referred to the electorate. As a consequence, Friends of the Reservoirs brought the lawsuit declaring that the URBA requirements of adequate notice and the URBA guarantee of the right to refer had been effectively denied to citizens who have been intensely concerned about the city's ill-conceived reservoir burial plans and the related \$200 million dollar filtration plant planned for Powell Butte Nature Park.

It should be noted that until the City authorized an “emergency” water revenue bond ordinance in October 2003, City officials had never acknowledged that revenue bond money would be used to pay for the reservoir burial plan. Website information as well as verbal and written communication always stated that these projects would be funded by rate increases, deferred projects and a federal grant that never materialized.

2) Does this case have broader implications than the reservoirs?

This is the first challenge to a Oregon municipal government’s interpretation of its URBA notice duty. The court’s determination of whether defendants provided adequate URBA notice will dictate the degree to which current and future taxpayer/ratepayers can affect the level of indebtedness they and their successors will incur and for what purposes. At present according to the city’s debt manager, “the City has just over \$2.1 billion in outstanding bonds and other debt obligations.” If the Friends prevail in this case, it will establish a precedent that local governments will be required to provide notice that is sufficient for citizens to determine whether their specific interests are at stake.

3) What actions has the City taken as a result of this case?

The City agreed not to issue any of the contested bonds until the case is decided. Because the case was not quickly resolved, in January 2004 the City proposed and authorized under the City charter, a new bond issuance including water revenue bonds for a smaller amount. In doing this, the City specifically stated the purposes of the bond proceeds, and categorically excluded any use of the bonds for Mt Tabor reservoirs replacement project. The Friends did not contest the issuance of these bonds.

The Water Bureau Budget was subsequently reduced by \$34 million during the Fall Budget Monitoring Process (BuMP) as reported by the Financial Planning Division of the Office of Management and Finance. Money to be spent on the Reservoir Demolition and Burial Project were removed from this quarter’s budget.

4) What is the current status of the revenue bond case?

Judge Litzenberger heard this case on November 5, 2003 and has since requested and received additional clarifications from City Attorney, Terrance Thatcher and Friends attorney, Susan Stoner. A ruling has not yet been issued and no information has been forthcoming about when the judge’s decision will be issued.