

October 31, 2011

Ms. Linda Meng
City Attorney
1221 SW 4th Ave, Rm. 430
Portland, OR 97204

Re: Anticipated Litigation Relating to Use of Water and Sewer Funds

Dear Ms. Meng:

I am enclosing a copy of a demand letter from my client, Citizens for Water Accountability, Trust and Reform, Inc. (WATR). As you will note, WATR intends to file an action against the City of Portland to enjoin any further non mission specific expenditures from the water and sewer funds, to seek an accounting, and to recover funds which have been unlawfully expended.

In that case, we will have significant discovery requests to make of the City. Therefore, this is to place you on notice that the City is not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on its computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data. This notice includes, but is not limited to, home computers and laptop computers, cell phones, texting devices, iPads, e-mail, voice mail, personal digital assistants, cookies, and cache files under the control of the City or its relevant employees. Additionally, this letter covers electronic data created subsequent to the date of this letter.

The City's failure to comply with this notice can result in severe sanctions being imposed by the Court for spoliation of evidence or potential evidence. ORCP 46B.

Through discovery we expect to obtain from the City and its relevant employees and agents, numerous documents, including files stored on their computers and their computer storage media. In order to avoid spoliation, they will need to provide the data requested on the original media. We will request that they do not reuse any media to provide this data.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, *even where a paper copy exists*, we will seek all documents in their electronic form along with information about those documents contained on the media. We also will seek paper printouts of only those documents which contain unique information after they were printed out (such as paper

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documents containing handwriting) along with any paper documents for which no corresponding electronic files exist.

Our discovery requests will ask for certain data on the hard disks, floppy disks, and backup media used in their computers, some of which data are not readily available to an ordinary computer user, such as "deleted" files and "file fragments." As you know, Courts have made it clear that all information available on electronic storage is discoverable, whether readily available ("active") or "deleted" but recoverable. *See, e.g., Easley, McCaleb & Assoc., Inc v. Perry*, No. E-2663 (Ga Super Ct 1994) ("deleted" files discoverable and expert allowed to retrieve all files); *Santiago v. Miles*, 121 FRD 636, 640 (WDNY 1988) (request for "raw information" allowed); *Gates Rubber Co. v. Banda Chemical Indus., Ltd.*, 167 FRD 90,112 (D Colo 1996) (suggesting mirror-image copy of everything on hard drive); *Northwest Airlines v. Local 2000*, Civil Docket Case No. 000cv8 (D Minn 2000) (ordering image-copying of home computer hard drives). As you may also know, although a user may "erase" or "delete" a file, all that is really erased is a reference to that file in a table on the hard disk; unless overwritten with new data, a "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing.

In order to assure their obligation to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'John DiLorenzo, Jr.', written over the printed name.

John DiLorenzo, Jr.

JAD:rmp
Enclosure

October 31, 2011

Mayor Sam Adams
City Hall
1221 SW 4th Avenue, Room 340
Portland, OR 97204

Commissioner Randy Leonard
City Hall
1221 SW 4th Avenue, Room 210
Portland, OR 97204

Commissioner Nick Fish
City Hall
1221 SW 4th Avenue, Room 240
Portland, OR 97204

Commissioner Amanda Fritz
City Hall
1221 SW 4th Avenue, Room 220
Portland, OR 97204

Commissioner Dan Saltzman
City Hall
1221 SW 4th Avenue, Room 230
Portland, OR 97201

Re: Non-Mission Expenditures from Portland's Water and Sewer Funds

Dear Mayor and Commissioners:

I represent Citizens for Water Accountability, Trust and Reform, Inc. (WATR). WATR is a not-for-profit organization whose board of directors is made of up concerned water and sewer rate payers within the City of Portland.

As you are well aware, the Oregonian and Portland Tribune newspapers have reported extensively over the last year and a half concerning expenditures which have been approved by the City from revenue raised by Water Bureau service fees on projects unrelated to providing water services to the residents of Portland. The Water Bureau supplies domestic water to residents of the Portland area and serves approximately 900,000 people. It is responsible for providing water to Portland residents by operating and maintaining the Bull Run storage facilities, the Columbia South Shore Well Field, and in-town distribution system. The Bureau of Environmental Services (BES) provides sewer service to Portland residential homes, as well as

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many commercial and industrial facilities. The budgets of the Water Bureau and BES are supported primarily by utility rates and fees. The City operates water and sewer utilities and is required by the City Charter to spend ratepayer money from water and sewer operations in a matter that bears a direct nexus with the water and sewer systems. For example, the City Charter authorizes the City to use water user fees only for the sinking fund requirements, operating expenses of the water works and plant and the Water Bureau and necessary and appropriate maintenance expenses. The Charter likewise only authorizes expenditures from the Sewage Disposal Fund for matters connected with the sewer or sewage disposal or treatment system.

A recent audit of the Water Bureau by the City Auditor revealed that spending by the Bureau on non-water related projects has been steadily increasing over the past five years. According to the audit “[w]hile the vast majority of spending is directly related to water and sewer services, the audit found that some spending of ratepayer money is not consistent with the planning, budget, and rate setting process, and it is not always clear how these items are directly related to providing water and sewer services.” Specifically, the Bureau has spent roughly four million dollars to “rebuild a headquarters for the Rose Festival, construct a model home promoting water conservation, improve a park in Clackamas County and operate new public restrooms.” These expenditures are only the latest publicized examples of non-water related spending by the Water Bureau. Furthermore, the Water Bureau has increased rates by 55% since June 2008 and anticipates raising rates another 14% next year. The group of concerned ratepayers who comprise WATR have identified many non-mission specific items, some of which have been reported by the press and many of which have gone with little public notice.

We believe the following non-mission specific expenditures have been made by the Portland Water Bureau. Please note that this is not an exclusive list. We are identifying others as we further our investigation:

1. Public financing of political campaigns.
2. Portland Loo Projects and maintenance.
3. Purchase of and renovation of Rose Festival building referenced at pages 2, 10 and 11 of the Auditor’s Report including the Mount Tabor maintenance yard land exchange for the Rose Festival Building referenced at page 10 of the Auditor’s Report.
4. Hiring of additional staff including former Bureau of Development Services employees to perform work unrelated to the water system (e.g. Rose Festival building renovations, Dodge Park renovations, etc.), referenced at page 2 of the Auditor’s Report.
5. Dodge Park master plan and park projects.
6. Construction, staffing and operation of the “Water House,” referenced at pages 2, 10 and 12 of the Auditor’s report.

7. Development and maintenance for hydro parks.
8. Powell Butte II project non-water related park amenities (new caretaker residence, amphitheater, etc.).
9. Greenstreets and other transfer payments to BES and other agencies.
10. Park Bureau decorative fountain modifications and maintenance referenced at page 9 of the Auditor's Report.
11. Costs associated with Rose Festival ships.
12. Utility relocation costs (normally paid for by project sponsors) for Street Car and light rail projects in excess of \$12 million.

The Bureau of Environmental Services has similarly expended funds from sewer fees which bear no nexus to the establishment and maintenance of the Portland sewer system. These include:

1. Public financing of political campaigns.
2. Park arborists and invasive species control expenses referenced at page 8 of the Auditor's Report.
3. Greenspace land acquisitions under the pretext of stormwater management.
4. Centennial Mills acquisition led by Portland Development Commission.
5. River planning activities identified at page 10 of City Auditor's report of March 30, 2011.

These are among some of the unrelated expenditures which continue to drain the water and sewer funds which are assessed to some but certainly not all residents of the City of Portland. Some of these expenditures may be laudable – but we believe they should have been paid for by the City's general funds – not by water and sewer rate payers to the exclusion of all others who benefit thereby.

With respect to the Water Fund, the Portland City Charter provides:

Money from the sale of water and charges related to water works or service shall be placed in the Water Fund. After deducting sinking fund requirements, operating expenses of the water works and plant and the Water Bureau***the [City] Council may transfer any excess in the Water Fund to the Water Construction Fund***[M]oney in the Water Fund or the Water Construction

Fund shall not be transferred to the General Fund of the City, nor to special funds unrelated to the water works, water system and the sinking funds for water bond debt service. [City Charter § 11-104] [emphasis added]

With regard to the sewer fund, the Portland City Charter also provides:

“For all purposes relating to design, construction, acquisition, operation, maintenance and contract requirements of sewage treatment or purification facilities and related facilities, the City may fix fees and charges for connection or use or both of sewers and sewage purification or disposal systems to be paid by property which is served or is capable of being served for use of the sewage disposal system.”***The City may enter into contracts relating to sewage disposal, treatment or purification or all such functions. The City may impose charges for sewage transportation, disposal, treatment or purification or any or all such functions, on property outside the City served through City facilities, at rates no less than those imposed for similar service inside the City to similar classifications.***Proceeds of such charges shall be placed in the Sewage Disposal Fund, and may be expended for any matter connected with the sewer or sewage disposal or treatment system of the City, and bonded debt and debt service related thereto.” [City Charter §11-302] [emphasis added]

The concerned citizens of WATR are quite incredulous that the City Council has had no definitive response to this issue even after numerous totally unrelated expenditures were reported over the last year and a half in the press. They believe that, absent a lawsuit, the City Council will be unwilling to take the type of corrective action which the citizenry is demanding.

This is to therefore provide you notice that the concerned citizens of WATR intend to file a lawsuit against the City of Portland which will seek the following remedies:

- (a) A declaratory judgment declaring that the unrelated non-mission specific expenditures violate provisions of the City Charter and are therefore unlawful;
- (b) An accounting by an independent auditor at the expense of the City to be appointed by and to act under the supervision of the Court to identify all unrelated non-mission specific expenditures which violate the Charter of provisions; and
- (c) An order from the Court requiring the City to reimburse the Water Fund and the Sewage Disposal Fund for all such unlawful expenditures identified by the Court and the independent auditor for the purpose of affording ratepayer relief.

October 31, 2011

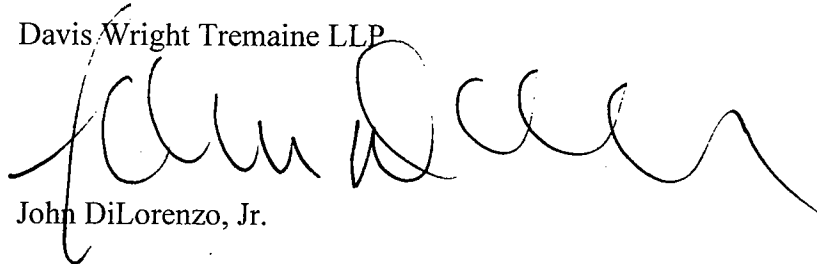
Page 5

WATR will commence litigation any time after November 15, 2011 unless the City Council takes immediate action to provide redress for these unauthorized expenditures and rectify its future policies.

Thank you for your time and attention to this matter.

Very truly yours

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "John DiLorenzo, Jr.", written over the printed name.

John DiLorenzo, Jr.

JAD:rmp

cc: Linda Meng, City Attorney
Lavonne Griffin-Valade, City Auditor