

**In the Circuit Court of the State of Oregon  
For the County of Multnomah**

LLOYD ANDERSON, PAIGE CRAFT, MILLARD  
CHRISTNER, and CITIZENS FOR WATER  
ACCOUNTABILITY, TRUST AND REFORM, Inc. an  
Oregon non-profit corporation

Plaintiff,

vs.

CITY OF PORTLAND, an Oregon Municipal  
Corporation,

Defendant.

Case No. **1112-15957**

**SUMMONS**

TO: City of Portland  
Linda Meng, City Attorney  
1221 SW 4th Avenue, Rm 430  
Portland OR 97204

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT.  
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "Answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have any attorney, proof of service upon the plaintiff.

If you have any questions you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636. <http://www.osbar.org>

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

\_\_\_\_\_  
Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

\_\_\_\_\_  
Attorney(s) for Plaintiff(s)

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4  
5 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
6 FOR THE COUNTY OF MULTNOMAH

7 LLOYD ANDERSON, PAIGE CRAFT, and CITIZENS FOR  
8 WATER ACCOUNTABILITY, TRUST AND  
9 REFORM, Inc. an Oregon non-profit  
corporation,

10 Plaintiffs,

11 v.

12 CITY OF PORTLAND, an Oregon Municipal  
13 Corporation,

14 Defendant.

Case No.

1112-15957

**COMPLAINT**

**Declaratory Relief, Money Had and  
Received, Unjust Enrichment, Equitable  
Accounting**

**NOT SUBJECT TO ARBITRATION**

15 For their complaint, plaintiffs allege:

16 **INTRODUCTION**

17 1.

18 This is an action by residents of Portland, Oregon against the City of Portland (the  
19 "City"), to which plaintiffs have paid fees for water and sewer services. Plaintiffs bring this  
20 action to obtain a declaration that the City is not authorized under the City Charter to spend or  
21 otherwise divert the fees paid by plaintiffs and other ratepayers for uses that are unrelated to the  
22 provision of sewer and water services. In addition, plaintiffs seek other relief, including an  
23 accounting, a court-appointed independent auditor to determine the extent of the City's  
24 unauthorized expenditures, and an order requiring that the City reimburse such amounts to the  
25 dedicated water and sewer funds to preserve such monies for authorized expenditures.  
26

## PARTIES AND GENERAL ALLEGATIONS

2.

Plaintiff Lloyd Anderson is a Portland resident and a subscriber of water and sewer services from his floating home association which passes along charges imposed by the City by and through the Portland Water Bureau ("PWB") and Bureau of Environmental Services ("BES"). Plaintiff Anderson has paid and continues to pay, through his association, charges for City water and sewer fees which have been increasing significantly in recent years. Plaintiff Anderson is a former Portland City Commissioner and, in such capacity, was previously charged with overseeing water and sewer functions currently undertaken by PWB and BES. Plaintiff Anderson has paid and continues to pay higher water and sewer rates because of the City's unauthorized misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.

3.

Plaintiff Paige Craford is a Portland resident and subscriber of water and sewer services provided by the City by and through the PWB and BES. Plaintiff Craford has paid and continues to pay directly to the City water and sewer fees, which have been increasing significantly in recent years. Plaintiff Craford has paid and continues to pay higher rates for water and sewer service because of the City's unauthorized misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.

4.

Plaintiff Millard Christner is a Portland resident and a subscriber of water and sewer services provided by the City by and through the PWB and BES. Plaintiff Christner has paid and

1 continues to pay to the City water and sewer fees for his residence and apartments which he  
2 owns. The fees have been increasing significantly in recent years. Plaintiff Christner has paid  
3 and continues to pay higher rates for water and sewer service because of the City's unauthorized  
4 misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.  
5

6 5.

7 Plaintiff Citizens for Water Accountability, Trust and Reform, Inc. (WATR) is a not-for-  
8 profit organization whose board of directors is made up of concerned Portland water and sewer  
9 ratepayers and whose purpose in supporting this litigation is to protect Portland water and sewer  
10 ratepayers.  
11

12 6.

13 Defendant City of Portland is an Oregon municipal corporation. The City, by and  
14 through PWB, provides water service to residential and commercial customers in the Portland  
15 area. The City, by and through BES, provides sewer service to residential and commercial  
16 customers in the Portland area. The budgets of PWB and BES are supported primarily by utility  
17 rates and fees. The City charges and collects water and sewer fees from its customers, including  
18 the plaintiffs who subscribe to these services.  
19

20 7.

21 With respect to monies received by the City for water services:  
22

23 Money from the sale of water and charges related to water works  
24 or service shall be placed in the Water Fund. After deducting  
25 [certain sinking fund requirements and operating and maintenance  
26 expenses,] 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.

Portland City Charter § 11-104 (emphasis added).

8.

With respect to monies received by the City for sewer services:

“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.”

Portland City Charter § 11-302 (emphasis added).

9.

The Portland City Auditor recently conducted an audit of PWB and BES and examined whether utility ratepayer money has been used for non-utility purposes. The audit revealed “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.”

10.

In contravention of the Portland City Charter, the City has used Water Fund monies (and/or other monies paid to the City by water ratepayers) for numerous purposes not related to

1 water services. Such unauthorized expenditures include, but are not necessarily limited to, the  
2 following:

- 3 a. Public financing of political campaigns.
- 4 b. Portland Loo Projects and maintenance.
- 5 c. Purchase of and renovation of Rose Festival building.
- 6 d. Hiring of additional staff including former Bureau of Development Services  
7 employees to perform work unrelated to the water system (e.g. Rose Festival building  
8 renovations, Dodge Park renovations, etc.).
- 9 e. Dodge Park master plan and park projects.
- 10 f. Construction, staffing and operation of a so-called "Water House."
- 11 g. Development and maintenance of hydro parks.
- 12 h. Powell Butte II project non-water related park amenities (new caretaker residence,  
13 amphitheater, etc.).
- 14 i. Green Streets and other transfer payments to BES and other agencies.
- 15 j. Park Bureau decorative fountain modifications and maintenance.
- 16 k. Costs associated with Rose Festival ships.
- 17 l. Utility relocation costs (normally paid for by project sponsors) for Street Car and  
18 light rail projects.

19 11.

20 Due at least in part to the unauthorized expenditures referenced in paragraph 10, above,  
21 the PWB has increased water rates by approximately 55% since June 2008 and anticipates  
22 raising rates another 14% in 2012. Such unauthorized expenditures have significantly  
23 diminished the Water Fund.  
24  
25  
26

12.

In contravention of the Portland City Charter, the City has used Sewage Disposal Fund monies (and/or other monies paid to the City by sewer ratepayers) for numerous purposes not related to sewer services. Such unauthorized expenditures include, but are not necessarily limited to, the following:

- a. Public financing of political campaigns.
- b. Park arborists and invasive species control expenses.
- c. Greenspace land acquisitions under the pretext of stormwater management.
- d. Centennial Mills acquisition led by Portland Development Commission.
- e. River planning activities.

13.

Due at least in part to the unauthorized expenditures referenced in paragraph 12, above, the BES has and will substantially increase sewer rates. Such unauthorized expenditures have significantly diminished the Sewage Disposal Fund.

14.

Counsel for plaintiffs previously made written demand upon the City to take immediate action to discontinue and provide redress for these unauthorized expenditures. The City has failed and refused to respond to such written demand or take corrective actions.

### **First Claim for Relief**

#### **(Declaratory Relief)**

15.

Plaintiffs reallege paragraphs 1 through 14 as if fully set forth herein.

16.

An actual controversy exists over whether the City has improperly expended sewer and water fees received by plaintiffs and other ratepayers on projects unrelated to providing water and sewer services.

17.

Plaintiffs are entitled to a declaration that the City has improperly expended monies from the Water Fund and Sewage Disposal Fund (and/or other monies received by plaintiffs and other ratepayers) and that any such future expenditures by the City are not authorized under the Portland City Charter.

**Second Claim for Relief**  
**(Money Had and Received)**

18.

Plaintiffs reallege paragraphs 1 through 17 as if fully set forth herein.

19.

Plaintiffs and other ratepayers paid monies to the City that were to be used exclusively for water and sewer purposes authorized by the Portland City Charter. The City received such monies but have used them for unauthorized purposes.

20.

The City has been unjustly enriched at the expense of plaintiffs and other ratepayers. The monies improperly diverted and/or expended by the City should, in equity and in good conscience, be reimbursed and repaid to the Water Fund and Sewage Disposal Fund so that such



monies can be used for authorized water and sewer purposes and/or to defray or reduce amounts improperly charged to plaintiffs and other ratepayers.

21.

Plaintiffs are entitled to the return to the Water Fund and Sewage Disposal Fund of all monies wrongfully expended therefrom by the City, as well as the imposition of a constructive trust on all monies improperly transferred or expended by the City from the Water Fund and Sewage Disposal Fund. Plaintiffs are also entitled to an order from the Court (a) requiring that the City provide an accounting of all monies expended from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present, and/or (b) appointing an independent auditor to conduct (at the City's expense) an audit of all expenditures from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present to identify all expenditures not related to the provision of water and sewer services (and the amounts thereof).

22.

Plaintiffs seek to preserve and recover amounts previously paid to the City by not only plaintiffs, but also by all other water and sewer ratepayers. Plaintiffs are therefore also entitled to an award against the City of all attorney fees and costs incurred herein under the common fund (and any related) doctrine.

**Third Claim for Relief**  
**(Unjust Enrichment)**

23.

Plaintiffs reallege paragraphs 1 through 17 as if fully set forth herein.

24.

1  
2 Plaintiffs and other ratepayers have conferred a benefit upon the City by paying  
3 substantial amounts to the City in water and sewer fees that were to be used exclusively for water  
4 and sewer purposes authorized by the Portland City Charter. The City, which billed and received  
5 such monies from plaintiffs and other ratepayers, is aware that it has received such benefit.

6  
25.

7  
8 It would be unjust to allow the City to retain this benefit because, among other reasons,  
9 plaintiffs and other ratepayers had a reasonable expectation that the water and sewer fees paid to  
10 the city would be used only for the water and sewer purposes authorized by the city charter.  
11 Justice requires that the City should reimburse and repay to the Water Fund and Sewage  
12 Disposal Fund all amounts the City has improperly diverted from such accounts and/or  
13 improperly expended on unauthorized purposes.

14  
15 26.

16 Plaintiffs are entitled to the return to the Water Fund and Sewage Disposal Fund of all  
17 monies wrongfully expended therefrom by the City, as well as the imposition of a constructive  
18 trust on all monies improperly transferred or expended by the City from the Water Fund and  
19 Sewage Disposal Fund. Plaintiffs are also entitled to an order from the Court (a) requiring that  
20 the City provide an accounting of all monies expended from the Water Fund and Sewage  
21 Disposal Fund from January 1, 2000 to present, and/or (b) appointing an independent auditor to  
22 conduct (at the City's expense) an audit of all expenditures from the Water Fund and Sewage  
23 Disposal Fund to determine all expenditures not related to the provision of water and sewer  
24 services (and the amounts thereof).

27.

Plaintiffs seek to preserve and recover amounts previously paid to the City by not only plaintiffs, but also by all other water and sewer ratepayers. Plaintiffs are therefore also entitled to an award against the City of all attorney fees and costs incurred herein under the common fund (and any related) doctrine.

**Fourth Claim for Relief**  
**(Equitable Accounting)**

28.

Plaintiffs reallege paragraphs 1 through 27 as if fully set forth herein.

29.

The City receives and holds water and sewer fees for the benefit of plaintiffs and other ratepayers. The City has diverted and expended water and sewer fees paid by plaintiffs and other ratepayers for unauthorized purposes not related to the provision of water and sewer services. The City owes plaintiffs an accounting as to all monies expended from the Water Fund and Sewage Disposal Fund but has failed and refused to provide that same despite demand.

30.

Plaintiffs have no adequate remedy at law. The accounts maintained by the City are particularly complex, and the amounts held (and improperly expended) by the City were supposed to be held in dedicated funds and used exclusively for the benefit of ratepayers and in furtherance of the provision of water and sewer services.

31.

The Court should require that the City provide an accounting of all monies expended from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present. The Court should also appoint an independent auditor to conduct (at the City's expense) an audit of all expenditures from the Water Fund and Sewage Disposal Fund to determine all expenditures not related to the provision of water and sewer services (and the amounts thereof). Plaintiffs also seek an order requiring the return to the Water Fund and Sewage Disposal Fund of all monies wrongfully expended therefrom by the City, and imposing a constructive trust on all monies improperly transferred or expended by the City from the Water Fund and Sewage Disposal Fund.

32.

Plaintiffs seek to preserve and recover amounts previously paid to the City by not only plaintiffs, but also by all other water and sewer ratepayers. Plaintiffs are therefore also entitled to an award against the City of all attorney fees and costs incurred herein under the common fund (and any related) doctrine.

WHEREFORE, plaintiffs pray for order and judgment as follows:

1. Declaring that the City's past and future expenditures of monies from the Water Fund and Sewage Disposal Fund (and/or other monies received by plaintiffs and other ratepayers) for purposes not related to the provision of water and sewer services are improper and unauthorized under the Portland City Charter;

2. Requiring that the City provide an accounting of all monies expended from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present, and appointing an independent auditor to conduct (at the City's expense) an audit of all expenditures from the

1 Water Fund and Sewage Disposal Fund to determine which expenditures are not related to the  
2 provision of water and sewer services (and the amounts thereof);

3 3. Requiring that the City reimburse and pay to the Water Fund and Sewage  
4 Disposal Fund all monies wrongfully expended therefrom, and imposing a constructive trust on  
5 all monies improperly transferred or expended by the City from the Water Fund and Sewage  
6 Disposal Fund;  
7

8 4. Awarding plaintiffs their reasonable attorney fees, costs and disbursements  
9 incurred herein; and  
10

11 5. Granting to plaintiffs such other, different or ancillary relief as the Court deems  
12 just and equitable.  
13

14 DATED this 6 day of December, 2011.

15 DAVIS WRIGHT TREMAINE LLP

16  
17  
18 By 

19 John DiLorenzo, Jr., OSB #802040  
20 Email: johndilorenzo@dwt.com  
21 Aaron K. Stuckey, OSB #954322  
22 Email: aaronstuckey@dwt.com  
23 Telephone: 503-241-2300  
24 Facsimile: 503-778-5299

25 Of Attorneys for Plaintiffs  
26