

Over \$127M in spending may add fuel to lawsuit asserting misuse of Portland funds

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Portland has so far spent \$45 million in sewer funds studying how to clean up the Portland Harbor Superfund sites, including the Siltronic, Arkema, Rhone Poulenc and Willbridge Terminal locations shown here. Critics say sewer customers should not bear the full cost. (Nick Fochtman, Portland Tribune photo)

By *Jim Redden*
The Portland Tribune

Portland's city attorney has compiled a detailed list of more than \$127 million in recent spending by the water and sewer bureaus that could be challenged by legal action to block misuse of ratepayers' dollars.

The largest items on the list include more than \$53 million transferred to the city general fund as utility fees, approximately \$45 million preparing for the Portland Harbor Superfund cleanup and more than \$16 million to purchase land for stormwater management.

The total is more than three times the amount of the items originally questioned by the [attorneys who filed the lawsuit in December](#). They are considering whether to expand their filing to include some or all of the additional items.

The lawsuit was filed in Multnomah County Circuit Court on behalf of a number of water and sewer customers. It claims the Portland Water Bureau and the Bureau of Environmental Services have been spending funds on projects and programs not directly related to their core missions, in violation of state laws and City Charter restrictions.

The water bureau operates the city's water supply system, including the Bull Run reservoir that provides most of the water for residents and businesses. BES operates the sewer system and runs programs to manage stormwater.

According to ratepayer attorney John DiLorenzo, the list in the original filing was based largely on information gleaned from news stories and an audit by

the city auditor's office that found non-critical mission spending by the water and sewer bureaus had increased during the past five years. The filing listed 31 items, including money spent on the former public campaign finance program, public toilets, the purchase and renovation of the Rose Festival headquarters, and land purchases for stormwater management.

DiLorenzo says he received information about other questionable programs after the lawsuit was filed. They included development charges for low-income housing projects and money spent by BES on the superfund process.

He filed a request in February for details on 34 additional projects and programs.

Deputy City Attorney Terence Thatcher responded with two memos on March 19 and 26 detailing the spending for all the requested items. Costs associated for the original items totaled just under \$52 million. Costs for the subsequent requests totaled about \$75 million.

The city attorney's office also has filed a motion to dismiss the suit with the court. It will be heard in May.

A list of projects

DiLorenzo admits that some of the questionable spending may be legal, even if it does not help fulfill the core missions of the water and sewer bureaus. For example, DiLorenzo believes the city is legally entitled to charge the bureaus a 5 percent utility fee, even though it is not required to.

That is the largest single item in the city attorney's memos. During the past 10 years, the fee has cost the water bureau nearly \$41 million and BES almost \$13 million.

DiLorenzo says that some of the other spending might also be justified. For example, he believes BES is probably responsible for at least some of the pollution in the Portland Harbor. But he believes other city agencies also bear some of the responsibility, and BES should not pay all of the city's cleanup cost, as it is doing.

"We're not saying 100 percent of the spending is illegal, but even if it's only 50 percent, it's still a lot of money," says DiLorenzo.

Thatcher defends much of the spending in his two memos. For example, he says BES is required by a permit issued by the Oregon Department of Environmental Quality to manage stormwater. A number of the programs listed in his memos are funded to meet the permit requirements, including two land acquisition programs operated by BES.

One of the acquisition programs operates in the Johnson Creek Flood Plan and has spent almost \$14.3 million on purchases. The other operates throughout the city and has spent about \$12.5 million on purchases.

According to the memo, the citywide program serves multiple purposes and has made some purchases with the assistance of Metro, Portland Parks and Recreation and the Trust for Public Land.

The years of spending for the items varied in Thatcher's memos. The longest period was 10 years for the utility fee payments. Only a few years of spending were detailed for a number of the other ones.

Here are some of the other large expenditures detailed in the memos:

- More than \$7 million spent by the water bureau to relocate its lines during MAX light-rail and Portland Streetcar construction projects. Thatcher says all utilities are typically required to relocate their facilities during such projects. DiLorenzo says the costs should have been paid by the project's sponsors.
 - More than \$11 million spent by BES on stormwater management projects in addition to the land acquisitions. Costs include money spent to control invasive plant species and run an eco-roof program.
 - More than \$3.6 million in water system development charge waivers to encourage low-income housing.
 - More than \$2 million in water funds to renovate Dodge Park, which is owned by the water bureau near its Sandy River Station maintenance facility.
 - More than \$3 million in water funds to create so-called hydro parks around storage tanks.
 - More than \$2.6 million in water funds to operate decorative fountains in Portland parks.
 - More than \$1.6 million transferred by BES to fund the Office of Healthy Rivers.
 - About \$1.5 million in water bureau funds to renovate the Yeon Building in Tom McCall Waterfront Park and lease it to the Rose Festival Association for \$200,000 during the next 25 years.
- Small budget items

Ironically, some of the items that have received the most press coverage are among the least expensive ones listed in Thatcher's memos. Both bureaus contributed only \$547,000 to the public campaign financing plan, and the water bureau reported spending about \$236,000 on the so-called Portland Loo project.

DiLorenzo says the dollar amounts are not important, however.

"If the bureaus aren't supposed to be spending money outside their core missions, it doesn't matter if it's \$1 or \$1 million," he says.

To back up his point, DiLorenzo says he expects to present the court with a June 2010 interoffice memo from the city's attorney's office that says the office has long instructed the water bureau and BES of constraints on their spending, especially when it comes to supporting programs that should be financed out of the unrestricted general fund.

"If the court agrees with the city attorney's office, we're going to demand that any illegal spending be reimbursed," says DiLorenzo.

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