

**OPPOSE
PROPOSAL**

PROPOSAL OF WATER BUREAU

FOR WASHINGTON PARK RESERVOIR DEMOLITION LU 14-249689 DZM

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
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✓ Last Mary Ann Schwab

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✓ Floy Tone	2204 ^{SE} 59 th PDX 97215	
✓ Charles Johnson	CF & SCW	
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✓ Steve Entwistle		

**SUPPORT
PROPOSAL**

PROPOSAL OF WATER BUREAU

FOR WASHINGTON PARK RESERVOIR DEMOLITION LU 14-249689 DZM

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see other list Charles JOHNSON	OF&SCW	

April 23rd, 2015

Dearest Mayor and City Commissioners,

My name is Daniel Berger, MD. I am a physician specializing in Emergency Medicine, actively serving the greater Portland community.

Thank you so much for listening to public testimony on this important matter. The number of folks present at this meeting speaks volumes to not only the level of concern of We The People, but also to a degree of lack of trust in these proceedings.

As with Mt Tabor park, the public feels their involvement to discuss the needs or alternatives for these projects have been avoided, allowing us only to engage in "what goes on top" conversations. PWB administrators have publically stated "designing and building is glamorous, maintenance is boring." That may be well and true, but that is the responsibility that comes with being true stewards of our public resources. In the process, PWB is selling out the soul of the city with overblown projects that are not needed, putting us further into deep, deep debt spending money we desperately need elsewhere and don't have in the first place, as well as jeopardizing the health of our citizens and our children for generations to come.

It is worth pointing out once again that the rushed deadline to complete this project was fabricated by the city. In a letter to MTNA chair Stephanie Stewart from Eric Winiacki, Drinking Water Enforcement Coordinator of the EPA, he reiterated that there is NO federal deadline to disconnect the reservoirs. The only federal deadline was to submit "a plan" by April 1st, 2001, and that was complied with a long time ago, albeit without public input. The City can submit a new timeline to the OHA, containing a more responsible and community-approved mitigation plan.

And, like Mt Tabor Park, there are significant land ownership laws that are being brushed aside in the haste to get these corporate

contracts underway. Both Mt Tabor and Washington Park consist of numerous different lots owned by either Portland Water Bureau (Ratepayers) or Portland Parks and Recreation (Taxpayers). Both projects have PWB doing work and building infrastructure on land owned by PPR. Yet, no transfers of deeds, consolidations, easements, or anything has been obtained or recorded. If PWB ratepayers intend to build projects on land owned by city taxpayers, it needs to compensate the public. This has been repeatedly brought to the attention of all parties by PWB's engineering surveyors, and the city's own legal council, but these facts seem to be ignored. To proceed with either project would be, in a word, ILLEGAL. It would be like digging a well on your neighbor's property. Therefore, on this basis alone, this application should be outright denied until these land ownership and deed issues are resolved.

I implore you, as fellow citizens, to be our heroes — uphold your pledge towards good governance in representing ^{the} will of the People, not our corporate contractors.

Thank you for your time and consideration in this very important matter.

Daniel R Berger, MD
6027 SE Main St

April 23, 2015

Portland City Council

Demolition of Historic Washington Park Reservoirs

Presentation by Commissioner Harris S. Matarazzo

Mr. Mayor and City Commissioners:

Thank you for this opportunity to address the Council. My name is Harris Matarazzo. I am a Portland Historic Landmarks Commissioner, and the only one of the four reviewing Commissioners to oppose the demolition of the historic Washington Park Reservoirs.

The purpose of my attendance today is to advise you that the Commission did not reach a consensus advisory opinion in this matter, as well as, in my own words, to briefly summarize my thoughts as a Commissioner. This is somewhat different than appearing before you as an “advocate”. My comments are confined to the record presented to the Landmarks Commission.

Split decisions are not typical for our members. Given this difference, if nothing else, ideally our testimony here today will promote a discussion about the value of our historic resources, especially the needs of those that are publicly owned and maintained, as well as the action necessary to protect them.

The issue before you is whether the Applicant, the Portland Water Bureau, has met its burden to justify the demolition of historic Washington Park Reservoirs 3 and 4. My April 17, 2015 correspondence to the Council delineates why I do not believe that the Applicant should prevail.

In my opinion, given that the Applicant has the proven capacity to meet the water needs of our City without use of the site, that the Reservoirs are among Portland's most historic resources, and that the proposal seeks to re-install a vessel within a known and active landslide zone, as well as in an established seismic area, in my opinion, the Applicant did not meet its burden to substantiate the need for demolition.

The most effective government leads by example. As a Commissioner, it is difficult for me to rationalize supporting the demolition of a significant public resource while, by City Code, having to deny an historic homeowner's request for a minor exterior residential modification. In so doing, a double standard is implied, which compromises the value of our public, and privately held, historic resources.

I am aware of the holding this Council made in the Demolition Review of the Kieran Building. It provides you with substantial discretion in establishing how to balance applicable comprehensive goals and policies when considering the demolition of an historic resource. As this Council knows, although this standard is different from the one we used, it does not mean that review is completely subjective, and without guidelines. It is a weighing process. Again, given that this historic resource is one of Portland's most significant, and for the reasons stated earlier, demolition could not be substantiated in my view. Instead, if needed, a more modern vessel could be constructed in a less

problematic location. The existing resource could then be taken off line, restored as an aesthetic destination, and the bowl reduced in depth to only a few feet.

Factually, the Kieran Building Demolition Review is distinguishable from the case now presented. At the time you considered that case, the Kieran Building had been significantly modified over many years, and had almost none of its historic character. It was also in substantial structural disrepair, having lost virtually all of its historic integrity. This is very different from the Reservoirs under consideration today, which are still fully functional.

Finally, in the not too distant past, this historic City Hall building faced possible replacement. The obstacles cited as impediments to its continued functioning included seismic concerns, as well as an obsolete and well worn infrastructure. As I recall, at that time, at least one of your members, Gretchen Kafoury, assisted in spearheading an effort to restore this marvelous structure, which is also one of Portland's most

significant historic resources. In later years, as a private citizen, Commissioner Kaufory gathered a number of us together to save the Simon Benson House, which is now a crown jewel at Portland State University. Until her involvement, the success of that project seemed impossible. Her spirit exemplified the best of who we are, with a “can do” determination, despite the odds, that is enviable. Her legacy will be long lived in this building, Portland State, and within our City.

Landmarks Commission decisions are merely advisory, and the Council is not bound by them. Although in the minority, I continue to believe that the Applicant failed to meet its burden, and respectfully disagree with my Commission colleagues that demolition of one of Portland’s most historic resources should be allowed under these circumstances.



City of Portland
Historic Landmarks Commission

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April 17, 2015

Hon. Charlie Hales, Mayor and Portland City Council Members
Portland City Hall
1221 SW 4th Avenue
Portland, OR 97204

RE:LU 14-249689 DM (PC#14-139549)
Demolition of Washington Park Reservoirs Nos. 3 and 4

Dear Mayor Hales and City Council Members:

On March 30, 2015, a majority of the four attending Portland Historic Landmarks Commission (PHLC) members voted to support the demolition of Washington Park Reservoirs 3 and 4, as well as the associated Weir Building. As the lone dissenting Commissioner, I was invited to explain my opinion in a document containing the majority decision, which was to be forwarded for your consideration. Unfortunately, my written comments were not included in the Commission's April 13, 2015 letter. That document was most recently provided to you on April 16, 2015. As PHLC is tasked to supply you with advice in historic resource demolition matters, the purpose of this correspondence is to provide the Council with the basis of my opinion, and in my own words.

As a result of my review of the written and oral evidence presented at the hearing, in my opinion, Applicant Portland Water Bureau (PWB) did not meet its burden to support the demolition of Reservoirs 3 and 4. This opinion is based upon the following:

- 1) “It is without question that the Washington Park Reservoirs, along with the Mt. Tabor Reservoirs, are among the City of Portland’s most significant historic resources.” (BDS staff report presented to PHLC, p.15);
- 2) The City of Portland has determined that it must comply with federal mandates to cover open reservoirs. As such, Reservoirs 3 and 4 shall be disconnected from Portland’s water distribution system. Federal law does not require “demolition” of the resource;
- 3) The Water Bureau (PWB) is tasked with the delivery of clean water to the residents of Portland, not in maintaining historic sites. (March 30, 2015 PHLC Hearing);
- 4) As evident in its name, the creation of the “Washington Park Reservoirs Historic District” was premised upon the existence of the reservoirs themselves. (March 30, 2015 PHLC Hearing) Demolition would significantly alter the area’s desired character;
- 5) The Reservoirs are located on a fault which runs through Portland’s West Hills. Upon demolition and removal of the historic resource, the Applicant will install a new water containment vessel within the same general location. Although it is anticipated that the replacement will have greater structural integrity than the existing resource, it too is unlikely to survive a significant seismic event. A resulting release of water, whether directly from the vessel or via the damaged, unmodified, water distribution network will occur. (March 30, 2015 PHLC Hearing) Under these circumstances, demolition of the historic resource in a known seismic area, in order to accommodate another, expensive, vulnerable replacement in the same location, seems ill–advised, and not supportive of the cited goals for removal;
- 6) Evidence presented indicated that the existing reservoirs are located in an active, although slow moving, landslide area. Because of this movement, which has occurred since construction in 1894, ongoing mitigation is required. However, this problem will not be solved if the

existing resource is removed. Upon its demolition, a buried replacement will be installed in the same location. This too will require continuing mitigation efforts. (BDS staff report, p. 18; PWB testimony);

- 7) Testimony received from the Water Bureau indicated that it periodically drains the Reservoirs for extended periods of time, and has the existing capacity to provide water to the City without them. The lengthy construction period to replace the historic resource is premised upon this capacity. As such, the Reservoirs could be disconnected and retained in place, while other non-seismic and active landslide sites, if needed, are either expanded or developed to provide for the City's water needs within new federal mandates. The historic resources could then be restored as an aesthetic destination within Washington Park. This could include the reduction of the depth of each bowl, allowing only a few feet of water to be retained;
- 8) Although originally constructed as both a utility and aesthetic destination for citizens, through longstanding neglect, the Reservoirs have deteriorated and are essentially no longer accessible by residents. The substantially deteriorated condition of the resource, resulting during the Applicant's many years of stewardship, is being cited as one reason to demolish it. (March 30, 2015 PHLC Hearing) However, no evidence was presented that once improved or restored, the Water Bureau would better maintain the remaining, non-demolished, historic artifacts;
- 9) The proposed demolition of Reservoirs 3 and 4 was described as a loss of only two of eleven contributing resources at the site. The Reservoirs however, are the primary resource, and comprise virtually the entire location. Given their status as "one of Portland's most significant historic resources" their demolition must be carefully considered. Similar to the ancient aqueducts of Rome and the Venetian canals, the Reservoirs were constructed to provide both beauty and utility. Destruction of the aqueducts (even though no longer used as a water source) or canals, for replacement by more modern systems, would be unthinkable. To remove the Reservoirs under the circumstances proposed, and leave mere small, associated, remnants or interpretive materials, would be inappropriate. In this context, the remaining objects would have little meaning.

Unlike the Portland Historic Landmarks Commission, Portland City Council has previously determined that it has substantial discretion in establishing how to balance applicable comprehensive plan goals and policies. (See LU 09-171259 DM/ Demolition Review of Kieran Building) Even if the Commission had such authority though, my opinion would remain unchanged. The best of government leads by example. Periodically, the Commission has to deny citizen requests to alter the exterior of their homes, even if the proposed modification appears relatively minor. In my opinion, to allow the Water Bureau to demolish one of the City's "most significant historic resources" under the circumstances presented is not warranted, and arguably demonstrates that government does not hold itself to the standards it sets for its citizens. In so doing, the value of our public, and privately held, historic resources are compromised.

While the Applicant's proposed replacement project is an attractive one, in my opinion it cannot justify approval of the requested demolition. The project, if approved, would be constructed in a known landslide zone and require ongoing maintenance. The existing reservoirs have been deemed as among Portland's most historic resources. The Water Bureau has the capacity to remove the resource from its delivery system. No evidence was presented to indicate that the non-demolished resources would be better maintained over time. In fact, the opposite view was better supported. Balancing the goal of the Applicant with the mandate of the Commission, I found the Applicant's proposal unpersuasive.

Thank you for your consideration of this minority view.

Very truly yours,

Harris S. Matarazzo, Commissioner
Portland Historic Landmarks Commission

HSM:mm

Questions regarding the reservoirs.

4/23/2015

The Honorable Steve Novick
To Honorary Whom it may Concern,

My name is Nic Clark. I served on the Washington Parks Reservoir Sounding Board.

In our meetings we discussed not demolishing the historic pump house, **dams 3 and 4**, and many other buildings. We agreed that the Weir Building would be demolished. We discussed, agreed and were led to believe that the water bureau's plans included preserving the majority of the historic elements that lend a mystical and hidden element to this City's Treasure.

Reservoir 4 is not filled or used. Reservoir 3 has not been used for weeks on end. **Why do you need to demolish them if they are not filled? If they are not used?**

I have recently been told that the new reservoir # 3 will only be 12-13 million gallons. That is less than the 16.4 million gallons that # 3 currently holds. Why spend the money if the water bureau doesn't fill it. Reservoir 4 will be decommissioned and never used again as a reservoir.

Can Builders engineer a tank to hold 12 million gallons and not crack at all? **Can the engineering firm guarantee it for 100 years? 50? 25? 10? 5?** If not, then why not engineer some floating slabs in the areas of the slide on reservoir #3?

Several problems exist with the open reservoir system. The chlorine evaporates to some degree faster when exposed to sunlight. Also, algae grows around the edge. There is more debris in the water from trees and the environment. Solution?

Engineer a solution. There exists pumps in swimming pools that clean. A system with a pump that would do several things. It would float around the reservoir, measure the ph regularly, equalize the ph. Perhaps it would also scrub or crawl across the surface while filtering the algae.

The Real Motive: Federal Government and the L2K mandate, and a combination of frustrating problems with managing the existing reservoirs. But, the truth is, having a brand new system is a relief when trying to manage the water of the system. Any manager of any water bureau would love such an opportunity to have a brand new system. We all love our new cars, kitchens. Interesting.

I have other ideas, and thoughts but only so much time.

Thanks,

Nic (503) 310-1717 Address: 815 SW Vista Ave. #305 Portland Oregon, 97205

To: Portland City Council
Re: Washington Park Reservoir Demolition LUR Review, April 23, 2015
Submitted by Floy Jones on behalf of Friends of the Reservoirs
2204 SE 59th Ave., Portland, OR 97215

Numerous supporting documents referenced in these comments have been submitted via separate e-mails.

The Friends of the Reservoirs strongly opposes the proposal to demolish Reservoir 3 and Reservoir 4 and the Weir buildings at Washington Park. Demolition is not required by the onerous EPA LT2 regulation nor is it necessary for any other reason. The Water Bureau's Demolition Land Use Review process has not met code regulations including the intended purpose to "ensure that there is opportunity for the community to fully consider alternatives to demolition". The Water Bureau has intentionally defied City Council Resolution 36237 that requires bringing stakeholders together to determine what action to take if a "risk mitigation" reservoir option is not available. Contrary to the Bureau of Development Service's (BDS) staff report, Land Use criteria is not met by this demolition plan. The **Portland Water Bureau's Cascade Design Professionals, Robert Dortignacq, 2010 Historic Structures Report**, which reaffirms that the reservoir structures are for the most part in good condition, was withheld from the Historic Landmark Commission. Landslide and earthquake concerns are overstated. Eliminating Portland's recently upgraded and well-functioning historic open reservoirs will create new and unique cancer-causing public health risks.

33.445.330 Demolition of Historic Resources in a Historic District

Historic Landmarks in a Historic District are subject to the regulations of Section 33.445.150. Demolition of other historic resources within a Historic District requires demolition review to ensure their historic value is considered. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

Documentation of reservoir infrastructure and other upgrades including the 2006 Council Resolution and press release submitted via separate e-mail communication. Ratepayers are presently financing the Washington Park reservoir upgrades (that included 2006 opening up of the reservoir sites to the public) completed between 2003 and 2010 (Black & Veatch contract #36297, Natt McDougal # 334785, HDR, and others) – with debt costs increasing over time - The Water Bureau long ago abandoned the better practice of pay-as-you go outlined for Mayor Katz in the Water Bureau's October 3, 2003 reservoir project letter.

EPA LT2 COMPLIANCE

There has been no meaningful public involvement process. The IRP Reservoir Resolution 36237 requires utilizing the city's adopted Principles of Good Public Involvement when taking action related to the open reservoirs- full consideration of alternatives to demolition which include installation of covers, UV "treatment at the outlet", disconnection and building storage elsewhere, and **the community supported option of reapplying for an Oregon Health Authority deferral while working with other communities to reinstate the "risk mitigation" option inexplicably removed from the final LT2 rule.**

The Portland Water Bureau can continue to use both of Washington Parks open reservoirs, Reservoirs 3 and 4, as part of the drinking water system and be in compliance with federal regulations if Portland installs reservoir covers on the already installed grill work.

Prior to construction of the new \$120 million Powell Butte II underground tank, Portland had an excess of in-town storage at Mt. Tabor and Washington Park as reported by the PWB to the Oregon Health Authority and the EPA - 50 million gallons of excessive storage - thus the Water Bureau has not been utilizing all of the storage at Washington Park (or at Mt. Tabor) while not being honest with the public about this fact. The issue of unneeded storage was discussed at the March 30, 2015 Historic Landmark Commission meeting where the lead engineer Teresa Elliot confirmed that there would be no storage at Washington Park for four years as the Water Bureau intends to demolish both of the reservoirs simultaneously. The follow-up question from a

Commissioner, "Why don't you build the storage that is clearly unneeded elsewhere?" The Water Bureau refused to answer, having already avoided affording the community it's right to fully consider alternatives, the Water Bureau refused to answer. Video and audio links provided separately.

RESERVOIR COVERS

In 2002/03 the Water Bureau, absent any public process or regulatory requirement, installed grill work for floating reservoir covers at the Washington Park reservoirs. The Water Bureau also installed a white liner on the upper Washington Park reservoir, which was intended to last 25 years as represented by an onsite PWB engineer at the time. In a February 19, 2003 Power Point to City Council referring to the "Washington Park Solution" of covers, the Water Bureau said that this "eliminated regulatory modification" and that the "historic structures are not affected" , "trees remain in place", and "roads remain open."The cover material (hypalon) intended to attach to the installed grill work was purchased by the Portland Water Bureau but never installed. When the 2004 *Independent Reservoir Panel* did not support "treating or covering" Portland's open reservoirs (the PWB's arguments failed to hold water) and City Council ordered the Water Bureau to terminate covering the Washington Park reservoirs, the Water Bureau attempted to sell the hypalon reservoir covers on eBay. According to the Oregonian's September 21, 2004 article the cost of the covers and hardware was \$398,000. " However, at the close of bidding on eBay Thursday, the highest offer for the whole package was a mere \$18,000 to an anonymous bidder." It was subsequently revealed that Water Bureau employees were the anonymous bidders. <http://www.wwdmag.com/portlands-water-bureau-lists-reservoir-covers-ebay-bids-itself-then-balks>

Commissioner Saltzman stopped the sale but the final disposition of those covers has remained hidden. The cover grill work has remained in place at the Washington Park Reservoirs 3 and 4. The estimated cost of replacement of the floating covers would be somewhere in the vicinity of \$1 million compared to the Water Bureau's plan for demolition and replacement that could reach \$100 million (current estimate \$80 million).

While covering the reservoirs was absolutely not supported years ago for many reasons including the fact that a "risk mitigation" option was included in the draft 2003 LT2 regulation, it is still not ideal. This option does meet regulatory requirements and would provide opportunity for the Congressional delegation to work in support of revising the poorly crafted LT2 rule such that "risk mitigation" is again a compliance option. In that the Water Bureau's self-imposed compliance deadline for Washington Park is 2020, the covers might never need be installed if the "risk mitigation" option is restored as has been requested by New York's water department, Rochester's water department and others. Oregon's Congressional delegation members have indicated that they would join forces with Senator Schumer and others to support rule revision if demolition/disconnection projects were placed on hold.

Or

"TREATMENT AT THE OUTLET"

The community has never had opportunity to fully consider the EPA LT2 "treatment at the outlet" compliance option. In 2004 the PWB made no argument to City Council that "treatment at the outlet" would be costly or otherwise difficult to install. Their February 19, 2004 PowerPoint to City Council presented at a Council hearing included "treatment at the outlet" as a viable option. MWH's Reservoir Study Contract 30491, a contract that was amended and extended nine times indicated that **"treatment at the outlet" was a viable option. Montgomery, Watson Harza Open Reservoir Study Tech Memorandum 2.7-Water Quality Evaluation, November 2001.**

Since then the costs of UV "treatment at the outlet" have dramatically declined. **Rochester** New York has two historic open reservoirs set in city parks. Rochester initially planned on building underground storage after learning of the EPA LT2 rule but in response to **strong community opposition** they investigated installing UV radiation bulbs and found that costs had dramatically dropped. Responsive to Senator Chuck Schumer's success in including revision of the EPA LT2 regulation as part of Obama's order to revise "onerous "regulations, Rochester sought and secured a 10-year deferral of reservoir projects until 2022. Rochester's deferral was supported by their Mayor and the Governor of New York supports rule revision.

Rochester is concurrently working in support of revising the EPA rule to avoid wasting money on "treatment at the outlet", a project that will provide no measurable public health benefit. In

recent years the Portland Water Bureau has said that they have only done a "back of the napkin" look at treatment at the outlet (documents supplied by the PWB confirm the lack of a comprehensive, independent examination of this option), thus this alternative to demolition has never been fully considered by the community.

Or

BUILDING STORAGE ELSEWHERE

The Water Bureau has not produced a recent alternative site analysis having submitted to BDS an out-of-date 13-year old analysis conducted by Joe Glicker and others with MWH Global. On March 30, 2015 a Historic Landmark Commissioner asked the obvious question of the Portland Water Bureau engineer Teresa Elliott, why would you demolish significant historic resources when it is clear that storage is not needed and digging will destabilize the land. The Water Bureau confirmed that the plan involved eliminating all storage at Washington Park for four years, but refused to respond to the inquiry regarding alternative siting of the unneeded storage.

While the 100-year 1996 flood did not destabilize the historical landslide that has been stable for years, onsite digging will cause problems. Links to both audio and video documentation of Water Bureau statements at the HLC meeting has been submitted for the record separately.

NO SCIENTIFIC BASIS FOR "TREATING OR COVERING"

Just as with demolition there is no scientific or on balance any reason for employing any LT2 compliance option beyond the lowest cost option. Scientific sampling of 7,000 liters from the open reservoir outlets as part of the American Water Works Association Research Foundation # 3021 study confirms, as did Portland's costly, intensive Bull Run EPA LT2 variance application study, the 100% absence of infectious *Cryptosporidium* in Portland's drinking water. Bacteria found in both covered and open reservoirs is treated with chlorine. Portland's bacteria detections are documented in the Oregon Health Authority online water system data (**copy of the recent 36 positives at the covered Nevada tank submitted via separate e-mail**). Subsequent to the 36 covered tank positives and the Water Bureau's failure to resolve the problem the Water Bureau simply stopped sampling at this site accepting the violation but leaving the public at risk. The public is unable to determine at the OHA site where the Water Bureau is not sampling.

Buried tanks do not prevent contamination as is evident by the break-in and contamination of a WB buried tank – Tabors buried Reservoir 7, where a bottle of Hydrochloric acid and other debris was tossed in after the breach. The public was not notified until limited exposure of the incident by watchdogs. Documentation submitted separately via e-mail.

By all accounts there will be no measurable public health benefit from either "treating or covering" open reservoirs. All EPA documented distribution storage tank public health problems have been with covered storage.

The compliance option with the broadest public support is to secure a deferral of reservoir projects while concurrently working in conjunction with Oregon's Congressional delegation, Senator Schumer and others to ensure reinstatement of the EPA LT2 "risk mitigation" compliance option.

SECURE A DEFERRAL

Friends of the Reservoirs has requested that our new Governor Kate Brown, head of the Oregon Health Authority (OHA), direct that bureau to approve a deferral of projects. If the Portland Water Bureau worked in support of, rather than against community interests, a deferral of projects minimally in line with Rochester's deferral could be approved by OHA. Previously, the Water Bureau failed to submit adequate supportive documentation to back up a deferral request, used a surrogate to send OHA a message that they wanted to pursue burial projects, and the City failed

to lobby OHA to support the deferral request.

LANDSLIDE & EARTHQUAKE RISK OVERSTATED

The community has had no opportunity to comprehensively examine the Water Bureau's overstated claim with regard to landslide risk. After a public presentation on Mt. Tabor geology in 2012, I spoke with a PSU geologist (and Water Bureau consultant) regarding the plans for the Washington Park reservoirs. He advised that as long as there was no digging at Washington Park there should be no serious threat of landslides based on historical study. PSU landslide analysis confirms little recent movement. **See graph showing diminished slippage, submitted separately.** Note that this information was withheld from BDS and the HLC. At the end of the 2004 *Independent Reservoir Panel* process the Water Bureau knew that they had failed to convince the Panel majority (a panel that excluded every single NA in the city and every single neighborhood coalition) to support their demolition/disconnection plans. In the final week of the long-running panel process an anonymous phone call was made (by a woman subsequently chastized publicly by Mayor Katz) to the Urban League panel member suggesting that the reservoirs were an earthquake threat. Friends of the Reservoirs spent hundreds of hours the following week researching Water Bureau consultant documents, PSU geology maps, Water Bureau documents, geological records and other information that showed that a serious earthquake was expected to cause only minor leaking at the reservoirs. Many of these documents have since been shared with Commissioner Amanda Fritz.

Research confirmed that the Water Bureau's backup source, the Columbia South Shore Well Field would likely be lost or severely damaged due to having been sited in a high liquefaction zone.

The Water Bureau has a well-documented history of overstating risks when intent on pushing costly and often controversial build projects over "boring" maintenance that protects assets and keeps rates low. The Federal Energy Regulatory System that regulated the small hydro plant located at the Mt. Tabor reservoirs (unaware for several years that the Water Bureau had taken Reservoir 6 offline since 2010 without notifying them) called out the PWB for overestimating inundation in the event of a catastrophic dam break event (**FERC letter documenting such submitted separately**). The Washington Park reservoirs like the Mt. Tabor reservoirs are very well built as documented in many Water Bureau documents including the 2010 Dortinacq Historic Structures Report thus are unlikely to completely fail even in a strong seismic event. And given the small size of the Washington Park reservoirs the inundation area would be small.

The Water Bureau advised the Historic Landmark Commission on March 30, 2015 that onsite digging could trigger a landslide.

System-wide leaking including the Washington Park reservoirs is limited as has been repeatedly reported by the PWB to their budget committee including when I was a member of that committee. The Washington Park reservoirs have not been leaking anywhere close to the leaking at the newly constructed costly \$121 million Powell Butte II tank, which was leaking as a result of massive number (3200) of cracks as reported by KOIN 6 TV investigators in 2014. KOIN's report came after their hard-fought public records requests subsequent to backroom industry discussion of the serious problem with the new tank, <http://koin.com/2014/05/20/powell-butte-ii-reservoir-design-contract-balloons/>. The new \$121 million Powell Butte II underground tank project was leaking enough to fill an Olympic sized pool every day. Note that the cozy CH2MHill design contract for that project when last checked was 45% over budget.

The Powell Butte tank Land Use decision acknowledged concerns with flooding of homes associated with a 50 million gallon underground tank, confirming that flooding risk is not eliminated with new *seismically* upgraded underground tank when compared with the substantively built open reservoirs.

The Portland Water Bureau has not met the requirements for compliance with Chapters 33.445 and 33.846

The Portland Water Bureau has **not** demonstrated that they considered the historic value of Portland's open reservoir resources when making their backroom and unsupported decision to demolish the Washington Park open reservoirs. As stated above the community was never

afforded the opportunity to fully consider the alternatives to demolition. The Water Bureau's selected so called "Sounding Board" does not represent broad-based community stakeholders, and does not fit the intent of City Council Reservoir Resolution 36237. **The PWB's "Sounding Board" was not established to "allow the community to fully consider alternatives to demolition", but for the Water Bureau and their army of consultants to focus the conversation about what happens after the demolition.** In 2002 the "What goes on top" process was exponentially lengthier with greater community involvement, but of a similar nature wherein the consultant Joe Glicker (then with MWH Global, now with CH2MHill) told the community the only thing they could talk about is what happens after the degradation of the open reservoir system. The "What goes on Top" committee ultimately challenged the Water Bureau's limiting of the scope of the community discussion.

Only a handful of people were aware of the Water Bureau's "Sounding Board" meetings. Private meetings with selected individuals is not a meaningful public process for meeting the City's adopted Principles of Good Public Involvement.

The Portland Water Bureau and their cozy revolving-door consultants have been trying for decades to force "fun" (as described in 2013 by Water Bureau engineer Stan Vanderberg at a wholesale customer water managers meeting) tank burial projects. In 2004 Water Bureau Administrator Mort Anoushirivani when asked at a public infrastructure meeting why the Water Bureau was spending so much money on revolving-door consultant studies while deferred maintenance (as referenced by a 2004 City Auditor report) was avoided, responded by saying "designing and building is glamorous and maintenance is boring."

The 2002 MWH Global/ PWB Reservoir burial Permitting Strategy document delineates tactics and strategies for thwarting community opposition to burying the reservoirs via manipulation of Land Use laws. **Document submitted separately via e-mail.**

When trying to force unsupported reservoir demolition and covering projects between 2001 and 2004, PWB PR staff including Tim Hall repeatedly told the public that the reservoirs were not historic resources. It was not the Water Bureau that worked to place the reservoirs on the National Register of Historic Places in 2004 but several members of the Friends of the Reservoirs that dedicated the better part of a year toward the effort. Friends of the Reservoirs is a Water Bureau watchdog organization with members representing both sides of the river that formed in response to 2001 line-item budget decisions to cover Washington Park reservoirs and demolish the Mt. Tabor reservoirs.

At a budget presentation in March 2015 the Portland Water Bureau failed to include the historic open reservoirs as Water Bureau assets, let alone as the significant water system assets they have been and remain today. Chet Orloff suggested in his June 2006 letter to Council supporting reservoir upgrades and opening up the reservoirs to the public (better alternative to demolition) that the Water Bureau install permanent exhibit boards that would "thoroughly inform citizens of, and deepen pride in these great assets", wrongly believing that the Water Bureau had abandoned "still born" plans to demolish. I was present at this Council hearing. **Orloff's letter, the 2006 Council Resolution and associated press release were submitted for the record in a separate e-mail.**

The Portland Water Bureau was the only utility in the entire nation that was secretly seated at the table serving on the EPA LT2 Federal Advisory Committee. They brought with them a revolving-door consultant, Joe Glicker, a former PWB engineer, whose associated global engineering firms have profited from the onerous one-size-fits-all regulation that by all accounts will provide no measurable public health benefit to systems like Portland's Bull Run open reservoir water system. A list of some of the contracts awarded to Glicker's associated corporations was provided to the HLC in the Mt. Tabor Disconnect LU case and has been provided City Council in the past. It was the Water Bureau in isolation and/or in backroom consultation with consultants who set the fast-track schedule for reservoir compliance. There is no deadline in the LT2 rule for reservoir compliance (**See e-mail from EPA Region 10 representative copied below**)

Demolition Criteria: Demolition of the resource has been evaluated against and, on balance, has been found supportive of the goals and policies of the Comprehensive Plan, and any relevant area plans

DEMOLITION DOES NOT MEET COMPREHENSIVE PLAN GOALS

GOAL 1: This goal is best met by installing "covers" or "treating at the outlet" or by an Oregon Health Authority deferral, an EPA waiver or a variance which is allowed by the Safe Drinking Water Act for "treatment techniques" such as the "treat or cover" EPA LT2 requirement- See additional comments above.

Goal not met by demolition

GOAL 2: The land around the reservoirs was opened up to the public in 2006 during daylight hours after extensive upgrades were completed including upgrading and reopening the grand entry staircase. Friends of the Reservoirs participated in the subsequent celebration which took place on the day Randy Leonard announced that his staffer David Shaff would be permanently appointed as Water Bureau director. **2006 Council Resolution, press release and other documentation provided separately.**

The value to the community will be significantly diminished not improved by demolition of the open reservoirs.

Goal not met by demolition

GOAL 3 NEIGHBORHOOD: The PWB specifically avoided opportunity for the public to fully consider options to avoid demolition. **See comments above and documentation provided separately.** It was public opposition to the lack of public process in 2001 that led to the 2004 "Independent Reservoir Panel" which after opportunity to consider all of the options (with much of the significant information provided the panel by the Friends of the Reservoirs), they could not support the Water Bureau's proposed demolition of the Tabor reservoirs and covering Washington Park reservoirs.

Additionally, the WB failed to notify stakeholders of meetings associated with this Washington Park reservoir demolition case, including conferences with the Historic Landmark Commission. In order to make significant participation including research difficult they brought this Demolition LU case forward over the Christmas holiday overlapping the Mt. Tabor LU process. See information above and below.

The Water Bureau failed to provide the Historic Landmark Commission the 2010 70-page Historic Structure Report that documents, as does the referenced MWH nine -year study report, that the reservoirs are in relatively good condition. See documentation and comments above and sent separately.

The Washington Park Reservoirs are significant, unique and irreplaceable community assets.

Goal not meet by demolition.

GOAL 6 TRANSPORTATION: The promenade around the reservoirs was opened up following costly upgrades in 2006 including the upgrade construction of the grand entry staircase, new wrought iron fencing, etc.. **See comments above and documentation 2006 Council Resolution, press release, Chet Orloff letter submitted separately.** **The significant value of the historic open** reservoirs by far supersedes the minimal night entry restrictions. Goal not met.

GOAL 8 ENVIRONMENT: The onerous EPA LT2 regulation is under review and revision. Landslide risk is overstated. See comments above and documentation submitted separately. Goal not met by demolition

GOAL 9: CITIZEN INVOLVEMENT – PUBLIC INVOLVEMENT AVOIDED; COUNCIL ORDINANCE REQUIRING PUBLIC INVOLVEMENT DEFIED There has been no citizen involvement in the decision-making process as required by the Independent Reservoir Review Panel **Ordinance # 36237** (attached for the record). A meaningful public process would have thoughtfully and publicly considered all EPA compliance options with all community stakeholders seated at the table. All stakeholders would have equal access to all pertinent information without having to deal with the Water Bureau's stonewalling public records requests or having to go to other utilities for factual information as has been the case over and over for decades. The Portland Water Bureau made all significant land use decisions backroom in **defiance of the reservoir City Council Ordinance # 36267** which required bringing community stakeholders together to determine what

action to take if the LT2 "risk mitigation" option could not be met. Friends of the Reservoirs was present when this ordinance was negotiated with Commissioner Saltzman in 2004. Mayor Potter was very supportive, insisting on inclusion of all community stakeholders in ANY future decisions/actions impacting the open reservoirs.

The relevant sections of the ordinance include but are not limited to: "BE IT FURTHER RESOLVED, that the City Council directs the Water Bureau to work with Portland Parks and Recreation, the Police Bureau and members of the public representing commercial and residential ratepayers, neighbors and stakeholders, to develop and submit to the appropriate state or federal regulator agency a risk mitigation proposal for the City's open finished drinking water reservoirs after the LT2ESWTR is promulgated in final form using a process consistent with the City's adopted Principles of Good Public Involvement"; and **BE IT FURTHER RESOLVED**utilizing meaningful public process consistent with the City's adopted Principles of Good Public Involvement, in future actions related to the open reservoirs. Inexplicably the EPA removed the "risk mitigation" option that was included in the draft 2003 regulation from the onerous and scientifically unsupported final LT2 rule released in 2006. Community stakeholders (including Friends of the Reservoirs) should have been brought together prior to the Portland Water Bureau's development of any reservoir compliance plan.

Friend of the Reservoirs has devoted tens of thousands of volunteer hours over the last 12 plus years working to protect the significant and well-functioning resources that are Portland's historic open reservoirs. We have worked with a broad base of community stakeholders including many neighborhood associations, neighborhood coalitions, public health organizations, businesses and business coalitions, environmental and social justice organizations - all of whom have written to City Council and/or the Congressional delegation in support of alternatives to the current reservoir plan. Over 30 community organizations have opposed the Water Bureau's burial and covering plans since 2002. At least 22 of these organizations have written to City Council, the Congressional delegation and/or testified in support of alternatives since 2010.

Forty (40) members of the public attended the Water Bureau's first public meeting (2014) related to the Washington Park demolition plans. No information was presented on any of the viable options that would avoid demolition. Overwhelmingly, everyone in attendance at this meeting save one opposed the Water Bureau's demolition plans. By design the Water Bureau has avoided providing opportunity for the community to fully consider alternatives to demolition. Just as in 2002 the Water Bureau wants to limit ratepayer discussion to what happens after the degradation of Portland's significant water system and community assets.

All other meetings were poorly attended as the community was not informed. See comments above.

Goal not met

GOAL 11 PUBLIC UTILITIES

Goal not met- See comments above addressing grill work and Water Bureau plan to go four years without any storage at Washington Park.

BDS and the Portland Water Bureau again incorrectly reports,

In addition, staff notes that the reservoirs are currently restricted from public access due to liability concerns. Significant ratepayer dollars were invested in opening up the Washington Park reservoirs to the public and upgrading the infrastructure (Mt. Tabor reservoirs have always been open to the public). **June 2006 Council Resolution, press release and letter from Historian Chet Orloff supporting the opening up of the reservoir sites to the public and budgeting for infrastructure upgrades submitted separately for the record.** This occurred after the finalization of the LT2 regulation.

GOAL URBAN DESIGN

Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations

By demolishing Reservoirs 3 and 4 and the Weir building that have served the city for more than 100 years and have been upgraded to provide safe water for another 50 years, the city is failing to preserve Portland's heritage, beauty, civic identity and its economic vitality is greatly diminished.

BDS staff report is incorrect. *Unfortunately, the overwhelming forces of nature have not been kind to these structures and the preservation of these facilities has been an ongoing challenge since*

before their initial completion. It is not nature that has been unkind but the Portland Water Bureau's focus on revolving-door consultant contracts and "fun" and "glamorous" build projects over deferred maintenance that have lead to deterioration. However, the **70-page 2010 Cascade Design Robert Dortignacq Washington Park Historic Structures Report** which the Water Bureau withheld from the HLC and BDS and City Council tells a different story. The Historic Structure report says that for the most part the reservoirs are in good condition which confirms the report from a 9-year MWH Global study of the reservoirs which is referenced in the Dortignacq report.

BDS also incorrectly reports the *continued preservation of the existing historic reservoirs, with the persistent landslide pressures continuing to compromise their structural stability, appears to be unsustainable in the long run.* **See Table C-1 Open Reservoir Facilities at Mt. Tabor and Washington park Schedule of Proposed Capital Facility Projects by Year which lists project to be completed over a 20 year period to keep the reservoirs safely operating for 50 years. Landslide stability is not noted as an issue in this document resulting from a nine-year study of the reservoirs.** It is unsustainable and bad governance to waste the significant and costly ratepayer investments made over the last 10 years, continually raising water rates and base charges, making Portland unaffordable for the middle class. **See Steve Novick's 2013 deferral request to the Oregon Health Authority submitted separately addressing the skyrocketing of rates.**

The goals of the Comprehensive Plan are not supported by this plan- see additional comments above.

Economic, Sustainability, Urban Design, Public Involvement, Neighborhood, Transportation and Public Health, Utility goals are not met with this demolition plan.

Significant investments in upgrades were made at the Washington Park reservoirs between 2003 and 2010. The significant costs associated with these consultant, design and construction contracts will be borne by the ratepayer over a 25 year period with those costs increasing over time. Many of the upgrades were designed to keep the reservoirs safely operating for 50 additional years. The majority middle class ratepayers cannot afford any further rate increases on top of rate increases that have been staggeringly high since 2004. The Water Bureau plans another 7% increase in water rates to be approved by Council May 2015.

The open reservoirs avoid new and unique public health risks associated with burying Portland's open reservoirs, for example cancer-causing Nitrification, a problem EPA has long scientifically documented with buried storage. EPA acknowledged in their Coliform Rule papers that they failed to address the Nitrification problem when promulgating the LT2 regulation. Radon, from Portland's secondary lower quality source, the Columbia South Shore Well Field, which presently vents through the open reservoirs, will not be able to vent adequately with the elimination of open reservoirs. Radon entering homes via water will permeate homes every time water is used for any purpose. Radon is the second leading cause of lung cancer in the United States.

The historic character of these resources cannot be replaced. The water system, the park, the surrounding neighborhoods and the City will be significantly harmed. On June 21, 2006 Historian, Park Board Member, the former chair of the Tabor "What goes on Top" committee, Chet Orloff ,wrote to Portland City Council praising them for reconsidering their earlier decisions on the open reservoirs. He additionally suggested "greater historical interpretation of the reservoirs with some permanent, on-site exhibit boards mounted adjacent to them, presenting information and images about the history of the reservoirs, the story of our great water system... to "more thoroughly inform citizens and deepen everyone's pride in, these great assets." The Water Bureau ignored Chet Orloff's suggestions, not wanting to promote the historic resources as the significant assets to our water system and city as they have been for over 100 years.

DENY THE PERMIT

City Council must protect Portland's open reservoir water system, Portland's water system pride and heritage and ratepayer's investment, and thus must deny this abominable demolition plan.

MITIGATION: Approval of any alteration to the open reservoirs, including the unconsidered options of installation of the floating covers to the grillwork or installation of UV radiation bulbs, disconnection should include a mitigation plan that requires completion within the next 3 years of

the short-term maintenance projects outlined in the **2010 Robert Dortignacq Washington Park Historic Structures Report** submitted for the record via separate electronic communication. All restoration and maintenance projects recommended in this Historic Structures Report should be mandated by City Council to be completed over a reasonable timeframe to support preservation.

Addendum

1.Documentation that there is no deadline in the LT2 rule for reservoir “treat or cover” compliance
From: Winiecki.Eric@epamail.epa.gov

Sent: Thursday, March 19, 2009 8:41 AM

To: stewartstclair@gmail.com

Subject: Fw: LT2 Rule Non-Compliance Penalties

Ms. Stewart,

Public water systems subject to the LT2 Rule uncovered reservoir requirements must have an approved schedule in place by April 1, 2009 for complying with the Rule. For systems that are not in compliance with the requirement on April 1, EPA can issue an administrative order to noncompliers. If a water system violates an administrative order, EPA can assess penalties up to \$37,500 per day of noncompliance. There is no specific deadline for installing reservoir covers... the requirement is to have an approved compliance schedule in place by April 1.

Eric Winiecki

Drinking Water Enforcement Coordinator

EPA Region 10(Note: Highlighting is ours)

April 23, 2016

414 TIME CERTAIN: 2:00 PM – Consider proposal of the City of Portland Water Bureau for Demolition Review and the Bureau of Development Services staff and Portland Historic Landmarks Commission recommendation of approval for the demolition of 1894 Reservoir #3, 1894 Reservoir #4 and the 1946 Weir Building, all contributing resources in the Washington Park Historic District at 2403 SW Jefferson St (Hearing introduced by Commissioner Fritz; LU 14-249689 DM) 3 hours requested

Good Afternoon Mayor and City Commissioner:

For the record my name is Mary Ann Schwab. I serve on the SE Uplift Board of Directors, working on the Comp Plan 2035, Street Fees, Housing Demolitions Regulations, and preserving beautiful sequoia trees, for a few examples. Today I speak to you as a private individual, however, as SE Uplift has not taken a stand on this particular issue. Today I am here specifically to address the lack of adequate outreach to the impacted neighborhood, and to ask you to table this process until real outreach has been done.

Saturday, March 28th, my friend and I rang doorbells, talked with homeowners, and hung door hangers on their neighbor's front doors.

The homeowners we spoke to were surprised to learn that 30,000 truck loads* would be rumbling in front of their houses over a four year period, in addition to the other construction challenges - public safety impacts, limited access to site for deliveries and materials removal, worker parking on narrow streets, noise issues (1,000 pile drivers) truck traffic, concrete/materials deliveries.

Why were the neighboring homeowners so poorly informed? The BDS public notification signs were placed along busy Burnside Street, hidden by berry vines, and one was at the entrance to the tennis court parking lot. Surely there were better places to place them - surely more neighbors would have read them if they had been placed next to the MAX/Tri-met bus stop or on the path toward the park's water fountain. But really, no one driving East on Burnside Street stops to read a legal posting. These signs came up pretty short of the City that Works truck with red lights flashing.

So, what might go wrong next? Cement trucks squeezing down heavily parked residential streets where students ride skateboards around blind corners...

Door hanger attached:

Save the Open Reservoirs and the Washington Historic Olmsted Landscape. Did you know that this proposed project would bring four years of construction and 30,000 trucks going up Jefferson/Burnside Streets and through you neighborhood? RES 3, mobilize/shoring/excavation 8,000 trucks, Res 3, MSE walls, 3, trucks, Res 3 Tank construction 7,000 trucks, Res 4 area construction 6,000 trucks and finally, Rest 3/4 visible features 6,000 trucks.

Due to the lack of adequate public outreach, I'm requesting this be tabled until a REAL OUTREACH has been concluded.

"We each have a duty to the land in which we live. We have all come from the earth. On death we return back to the ground. And in the cycle of life, everything that is born always is connected with water, Water is the giver of life."

-- Pierson Mitchell, Washat Religious Leader

A handwritten signature in cursive script, reading "Mary Ann Schwab". The signature is written in black ink and is positioned above the printed name.

Mary Ann Schwab, Community Advocate

605 SE 38th Avenue

Portland, OR 97214-3203

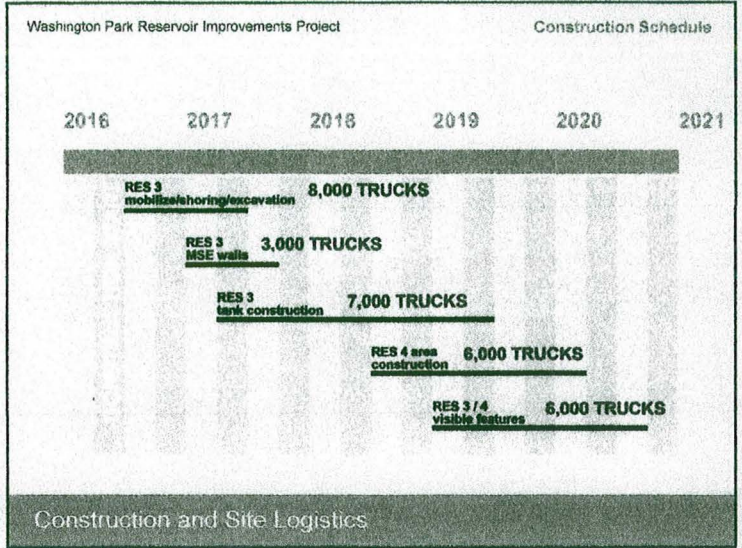
(503 236-3522

e33maschwab@gmail.com

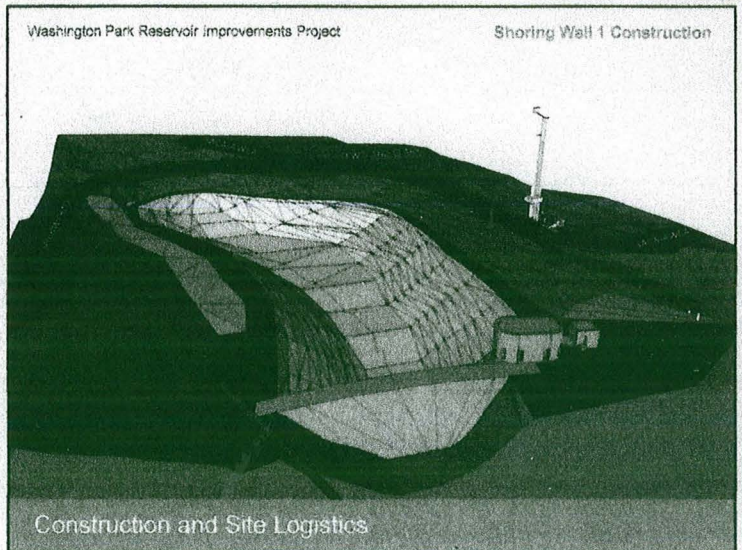
Schwab

Save the Open Reservoirs and the Washington Park Historic Olmsted Landscape

Did you know that this proposed project will bring four years of construction and 30,000 trucks going up Jefferson/Burnside Streets and through your neighborhood?



(Illustrations: Washington Park Improvements Project 10/29/2014)



New York has worked for their community, and received a reprieve from the EPA LT2 until 2028. NY is working with EPA for a Waiver as is New Jersey. Our city has instead moved forward on costly projects. We must insist our council ask for a Waiver, to be good stewards of our Bull Run Water System and parks. Read why Open Reservoirs need to remain fully functioning as a vital component of our water system:

www.bullrunwaiver.org

Washington Park is a crown jewel park of our city. What will happen to this historic park and your neighborhood?

Project cost: \$76 million.

Construction challenges: Public Safety, Limited access to site for deliveries and materials removal, worker parking, noise mitigation, truck traffic, concrete/materials deliveries.

Meetings to attend:

Historical Landmarks Commission

March 30 - 1:30pm - 1900 SW 4th Ave. 2nd fl.

City Council Hearing on Washington Park

Reservoirs Demolition April 23 - 2:00pm



Submitted by
Chris Kent
4/23/2015

Washington Park Reservoir Improvements Project Community Sounding Board

To: Historic Landmarks Commission

From: Washington Park Reservoir Improvements Project
Community Sounding Board Members

Date: January 27, 2014

Subject: Community Sounding Board Input on Washington Park Reservoir
concepts

The Community Sounding Board for the Washington Park Reservoir Improvements Project would like to express our support for the proposed concept for visible features for this project.

Over the past six months, our group has met seven times to advise the project team on community issues. Our Sounding Board is composed of park neighbors, park users, neighborhood association representatives, historic advocacy organizations, and staff from Portland Parks & Recreation. We have advised the team on the formation of Goals and Objectives (Attachment 1), helped brainstorm potential elements to be included in concept alternatives, and helped refine the concepts and identify the most viable alternatives.

Throughout the process, the Goals and Objectives have been used as a foundation to ensure the concepts reflect the values and priorities of the community. Based on these Goals and Objectives, the Community Sounding Board supports the **Cascades** concept for the upper reservoir area (Reservoir 3).

For the lower area (Reservoir 4), the preferences of our members were initially split fairly evenly between the **Lowland Habitat** and the **Reflecting Pool** concepts, although all participants expressed acceptance of either concept. We believe the subsequent **Hybrid** concept successfully blends the best of each of the previous concepts.

Beyond preferences for concepts, there are several themes that were consistently voiced by the sounding board:

- **Provide a large expanse of water** – This value has been consistently and almost universally raised throughout the process and through all forms of outreach and consultation.
- **Retain historic character** – Aside from the expanse of water, we value several historic aspects, including: *elements*, such as the fence and buildings; the tranquil *character*, and the *function* as part of the city's highly regarded water system.

- **Provide habitat** – Our group has also expressed interest in using this project as a means of addressing the city's goals for increasing native habitat.
- **Be responsible with ratepayers' money** – This value has been consistently raised through all forms of outreach. While we support the visible features design process and results, we want to ensure spending is kept within reason.

Specifically in regards to the proposed concepts, the Sounding Board recommends that **sections of new fencing be as low profile as possible** so as not to detract from the expanse of water and to allow for better views.

Finally, the Community Sounding Board supports the project's public process and the direction in which the design team is moving with the visible features of the project.

CSB Members

Charlie Clark – *Northwest Heights NA*

Nicolas Clark – *Neighbors West Northwest*

Terri Davis – *Portland Parks & Recreation*

Chris Kent – *Goose Hollow NA*

Annie Mahoney – *Historic Group Representative*

Dave Malcolm – *Sylvan-Highlands NA*

Eric Nagle – *Arlington Heights NA*

Bill Welch – *Northwest District Association*

Attachment 1:

Visible Features Goals and Objectives *Final Draft*

While the Purpose of the Project articulates the fundamental “*why*” of the project, the Goals and Objectives describe “*how*.” They identify what is important to consider in developing concepts for the visible features, and provide a framework for evaluating those concepts.

Be Good Stewards of Public Funds

- Ensure costs are focused on the greatest benefits to the community
- Spend public money prudently and limit impact on ratepayers
- Keep maintenance and operating costs low

Respect Historic Resources

- Minimize impacts to historic structures and features
- Maintain historic character of the site
- Honor the historic function of the Washington Park reservoirs in the context of the overall Portland water system

Be a Good Neighbor

- Reduce use of neighborhood parking by park visitors
- Avoid attraction of nuisance and illegal activities into the park and surrounding neighborhoods
- Enhance the quality of the park as an amenity for neighbors, as well as visitors
- Minimize construction impacts

Enhance Park Experience

- Provide public access to the area with opportunities for low-intensity recreation
- Retain the reflective and tranquil character of the site that is now created and heightened by the visual connection to an expanse of water.
- Enhance views into and from the area
- Provide people with ability to connect with nature in the city
- Maintain security of the park and water facilities
- Ensure the new visible features enhance current park uses and are compatible with future park uses

Support Sustainability

- Create sustainable landscapes that provide habitat for birds and other native wildlife
- Minimize climate change impacts due to construction, operations and maintenance.
- Promote wise use of our water resources through design, maintenance and education.



Via email to Hillary.Adam@portlandoregon.gov, confirmation copy by U.S. Mail

Hillary Adam
Land Use Services, Bureau of Development Services
RE: LU 14-249689
1900 SW Fourth Avenue, Suite 4500
Portland, OR 97201

Dear Ms. Adam,

The Arlington Heights Neighborhood Association (AHNA) is concerned about impacts to our neighborhood from the Water Bureau's proposed Washington Park Reservoir Improvement Project. Specifically, we have significant concerns about the routing of trucks through our neighborhood, and the closure of the Sacagawea Circle, which is one of only two entrances to the North End of Arlington Heights. We would like the Hearings Office to request that the Water Bureau mitigate truck traffic as much as possible, and ensure that the Sacagawea Circle remains open to neighborhood traffic as part of this Improvement Project.

On February 9, 2015, Lindsay Wochnick from the Water Bureau and Jerry Moore presented the plans for renovation of the Washington Park Reservoirs to AHNA. It is our understanding that construction is slated to begin summer 2016. The storage facility at Reservoir 3 will be completed at the end of 2019, and Reservoir 4 will be decommissioned by 2020. Most intense construction activity will occur in the first three years. We were informed that Sacagawea Circle would be completely closed to at least eastbound traffic (and possibly westbound traffic) for a minimum of nine to twelve continuous months during construction. The closure of Sacagawea Circle will result in major problems getting in and out of the Arlington Heights neighborhood for residents, Washington Park visitors, and commuters who use this route from Highway 26.

Sacagawea Circle is a main route for access to downtown, I-405 S, and I-5 S. Currently, West Burnside at Tichner is very congested during rush hour precluding right-hand (in-bound) turns on red and backing up traffic on Tichner. In addition, traffic is already "stop and go" on West Burnside at rush hour. Forcing ALL traffic from the Park and the Arlington Heights neighborhood to use the intersection at Burnside and Tichner is not acceptable. There are many events and concerts in Washington Park, especially during the summer. The closure of Sacagawea Circle will significantly increase neighborhood congestion during these events, because there will now only be one point of access (Tichner) to the Rose Garden, amphitheater and Japanese Garden. Furthermore, the Water Bureau plan will add to traffic congestion by

2257 NW Raleigh Street, Portland OR 97210

503.823.4288

board@arlingtonheightspdx.org

www.arlingtonheightspdx.org

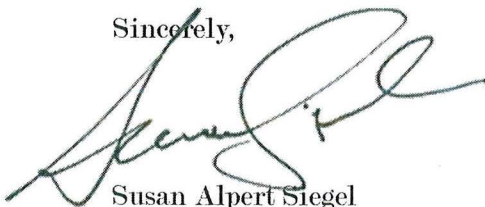


proposing that all of their trucks use the one available access point on Tichner (see below). AHNA has proposed several alternatives to the Water Bureau, including making the north half of Sacagawea Circle two way (by the use of signals, striping, and temporary widening) and reopening of Stearns Drive to one-way traffic. We would like to ensure that this concern is addressed as part of the Land Use Approval.

The Water Bureau proposes that all of their truck traffic access the site by Burnside via Tichner, Marconi, and Park. Even after efforts to reduce truck traffic (by using a conveyer for moving material from the upper to lower reservoir sites), the Water Bureau has acknowledged that there will be heavy trucks traversing the neighborhood, and has informed us the average rate will be one truck every 4-5 minutes throughout the day. This will cause considerable impact to residences along those roads in the form of noise, congestion, and vibration. AHNA would like consideration of more use of Hwy 26 via Kingston Drive, more use of Jefferson/Madison to access the site, and further consideration of alternatives for moving materials to the Reservoir 3 site from access via Jefferson (e.g., cranes, conveyers, concrete pumps, temporary roads) by the Water Bureau.

Please have the Water Bureau to allow two-way traffic on Sacagawea Circle, or provide another access point at the north end of Arlington Heights, as a condition for approval. Please also ensure that the routing of truck traffic is addressed before this application is approved. We appreciate your consideration. Please do not hesitate to contact me if you have any questions about these neighborhood impacts.

Sincerely,



Susan Alpert Siegel

President

2257 NW Raleigh Street, Portland OR 97210

503.823.4288

board@arlingtonheightspdx.org

www.arlingtonheightspdx.org



Hillary Adam
City of Portland, Land Use Services
1900 SW 4th Ave, Suite 5000
Portland, Oregon 97201

March 24, 2014⁵

Dear Ms. Adam:

The Arlington Heights Neighborhood Association would like this letter to be included as testimony in the record for the Historic Landmarks Commission hearing on Case File LU 14-249689 DM (PC# 14-139549), Demolition Review for Washington Park Reservoirs #3 and #4 and the Weir Building.

There has been concern expressed in our neighborhood that the historic preservation and restoration activities described in the attachments to the public notice are not sufficiently linked to the demolition approval. After carefully reviewing the notice and attached drawings, the Arlington Heights Neighborhood Association Board agrees.

Included in the notice is a *Service Bureau note* that states "If the Demolition Review is approved by Portland City Council, a Type 3 Land Use Review is still required, as well as building permit issuance for the new development, before a demolition permit will be released." This does not, however, link the approval to specific preservation and restoration activities.

The key elements of the notice relevant to our concerns are the Proposed Demolition drawing and the Preliminary Design Concept drawing. Both of these are marked "Preliminary" which makes it ambiguous as to whether they describe the activities that will actually take place. Developing a position on the proposed demolition is impossible for our Neighborhood Association unless specific (not "preliminary") plans are provided.

To remove this ambiguity, we request the following be required for approval:

A) Demolition of historic structures shall be limited to activities shown on, and listed in Sheet Keynotes of, the Proposed Demolition drawing included in the Historic Landmarks Commission hearing notice of February 27, 2015.

B) A demolition permit shall not be released unless the required building permit for new development includes all of the historic preservation and restoration activities shown on, and listed in the Sheet Keynotes of, the Preliminary Design Concept drawing in the Historic Landmarks Commission hearing notice of February 27, 2015.

2257 NW Raleigh Street, Portland OR 97210

503.823.4288

board@arlingtonheightspdx.org

www.arlingtonheightspdx.org



The Arlington Heights Neighborhood Association appreciates the efforts to which the Water Bureau has gone to include public input in the design process, and their efforts to preserve the historic character of Washington Park. We believe the requirements we request for approval of a demolition permit are reasonable and in keeping with the spirit of the project.

Thank you for your consideration.

Sincerely,

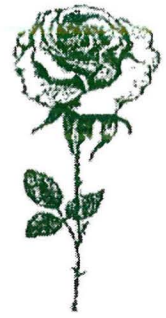
A handwritten signature in black ink, appearing to read "Susan Alpert Siegel".

Susan Alpert Siegel, Ph.D.

President, Arlington Heights Neighborhood Association



Arlington Heights Neighborhood Association



2257 NW Raleigh Street - Portland, Oregon 97210
Voice: 503-823-4288 - Coalition@nwnw.org
www.nwnw.org

December 16, 2013

Commissioner Nick Fish
Portland City Hall
1221 SW Fifth Ave., Room 240
Portland OR 97204

Re: Clean diesel specification for Washington Park Reservoir Improvement Project

Dear Commissioner Fish:

Over the past year, the Arlington Heights Neighborhood Association has engaged closely with the Water Bureau as it develops options for covering the reservoirs in Washington Park. Because the neighborhood is so close to the reservoirs, we have a keen interest in both the project design and the construction process. The Water Bureau's public outreach efforts for this project have been commendable, and we are hopeful that, whatever design option is ultimately selected, the project will enhance Washington Park.

We write to urge that the contract specifications for the project include a "clean diesel" provision, requiring that heavy equipment meet EPA Tier IV emissions standards. According to the Oregon Department of Environmental Quality's 2006 Portland Area Toxics Assessment, diesel particulate matter is "one of the top three sources of adverse health effects and cancer risk in the Portland area." DEQ found that these emissions pose a significant risk across the area. Studies show that diesel emissions create a cancer risk *seven times greater* than the combined risk of all 181 other air toxics tracked by EPA, and children and seniors are the most vulnerable to health effects of diesel pollution. DEQ has estimated that the annual public health and environmental cost of diesel emissions to Oregonians is up to \$2 billion.

Moreover, the main component of diesel particulate emissions is black carbon, which contributes significantly to global climate change, and which locally contributes to loss of snowpack in the Cascades, reducing stream flows and impairing water quality. Limiting these emissions would thus help achieve the 2009 Portland/Multnomah County Climate Action Plan's goal of reducing the city's contribution to climate change. Emissions from Tier IV-compliant diesel equipment are vastly cleaner than those from equipment that doesn't meet the standard.

Portland's Sustainable Procurement Policy, which Council adopted by Resolution 36814 on September 8, 2010, also supports a clean diesel specification. The Policy states:

The City recognizes that the types of products and services the City buys have inherent social, human health, environmental and economic impacts, and that the City should make procurement decisions that embody the City's commitment to sustainability.

Section 2.2 of the Policy requires that city employees incorporate "pollutant releases" and "toxicity" when writing specifications for procurement of services.

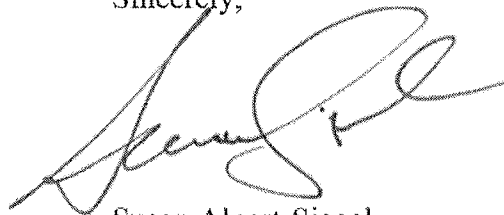
Similarly, Goal 8 of Portland's Comprehensive Plan and Policies, adopted in November 2011, calls for the city to "maintain and improve the quality of Portland's air."

Of course, these policies only have meaning if the city bureaus carry them out, as cities elsewhere in the country are doing. Chicago, Pittsburgh, and New York City all mandate use of Tier IV equipment in their publicly-funded construction projects. Such mandates are not difficult for contractors to meet. Diesel equipment sold since 2007 already meets Tier IV standards, and older equipment can be retrofitted to do so. In Portland, the Northwest District Association recently negotiated an agreement with C.E. John Company, the developer of the Con-way project, to use Tier IV construction equipment.

Finally, an important consideration is that this project will be carried out in Washington Park, a crown jewel of Portland's park system, and a major attraction for residents and visitors alike. If there's any place that deserves protection of its air quality, it's this green refuge.

For all of these reasons, we ask that you direct the Water Bureau to include a specification requiring Tier IV clean diesel equipment in the contract for the reservoir project.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Alpert-Siegel", written in a cursive style.

Susan Alpert-Siegel
Board President

Cc: Commissioner Amanda Fritz
David Shaff, Administrator, Water Bureau
Ty Kovach, Director of Maintenance and Construction
Teresa Elliott, Principal engineer

NEWTRADITIONAL ARCHITECTURE

*"All new things built with the idea of preserving the beauty of the city
and adding to it"*
A.E. Doyle, September 16, 1906

April 23, 2015

Portland City Council
Portland City Hall
1221 SW Fourth Avenue
Portland OR 97204

C: Hillary Adam, BDS

Re: Demolition Review for Washington Park Reservoirs
Washington Park,
LU 14-249689 DM (pc# 14-139549)

Dear Mayor Hales and Commissioners Fish, Fritz, Novick and Saltzman,

This written testimony strongly supports preserving the character of Reservoir 4 in the Washington Park Reservoirs Historic District.

I submit that approving the issuance of this permit for demolition runs counter to the intent of Title 33, Section 445.010: *"Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties."* It also runs counter to Approval Criterion 2.4 which requires evaluation in light of the Washington Park Reservoirs Historic District. The District Nomination of states that *"the most defining principle of Reservoirs 3 and 4 is the open expanse of water 40 feet deep. Because of the great depth and the towering firs that surround (them), the water is a rich, deep hue."*

Public purpose will be well served by maintaining integrity of the Washington Park Historic Reservoirs District, yet that integrity is threatened. Sensitive restoration and preservation of key elements is proposed, yet the central issue of demolishing Reservoir 4 remains.

This demolition does not set legal precedent. It does set precedent for the perception of value we bring to our publicly owned historic resources.

Improvement of public infrastructure is critical. Sometimes that improvement is surprising, and may not be evident. In order to maintain and enhance the character of both reservoirs and the district as a whole, I suggest that the council ask the applicant to return with a scheme for Reservoir 4 that enables it to hold water at historic levels.

Whether they are buildings, parks, or other public amenities, we should treat historic resources as we would any other resource, directly and as valuable precedent for successful future development. We should understand their extent and qualities, conserve them, and use them wisely to enhance our environment.

I ask you to deny the application for demolition of Reservoir 4. Please ensure that this precious resource is worthy of conservation for continued use to enhance the visual and atmospheric character historically intended for this portion of the park. The reflection of not just the wall and Pump House, but the sky and the depth of the water is more than a reminder of the past, but a continuity of critical public experience.

Thank you for your stewardship and forward thinking on behalf of us all.

Sincerely,



John R. Czarnecki, AIA
Past Chair of the Portland Historic Landmarks Commission

...attachments

"It is not simply to give the people of the city an opportunity for getting fresh air and exercise; ...It is not simply to make a place of amusement or for the gratification of curiosity, or for gaining knowledge. The main object and justification of the park is to produce a certain influence in the minds of people, and through this to make life in the city healthier and happier. "

Frederick Law Olmstead



Figure 11: Historic photo of Reservoir 4, ca. 1897

April 28, 2010 PORTLAND CITY ENGINEERING AND LAND USE PLANNING, WESTVALE HEIGHTS



Figure 22: Photo of Reservoir 4 from above showing the existing Reservoir 4 and the existing Reservoir 4 Dam. The view is from above at Sherwood Blvd. - EXISTING

The view from above shows the existing Reservoir 4 and the existing Reservoir 4 Dam. The view is from above at Sherwood Blvd. - EXISTING. The view is from above at Sherwood Blvd. - EXISTING. The view is from above at Sherwood Blvd. - EXISTING.

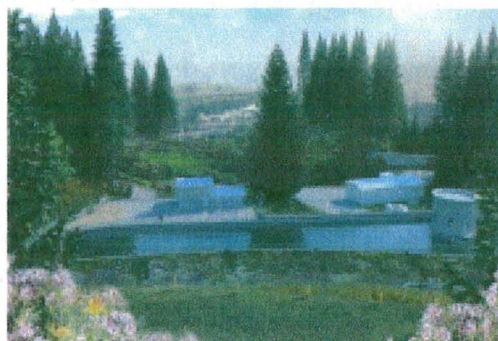
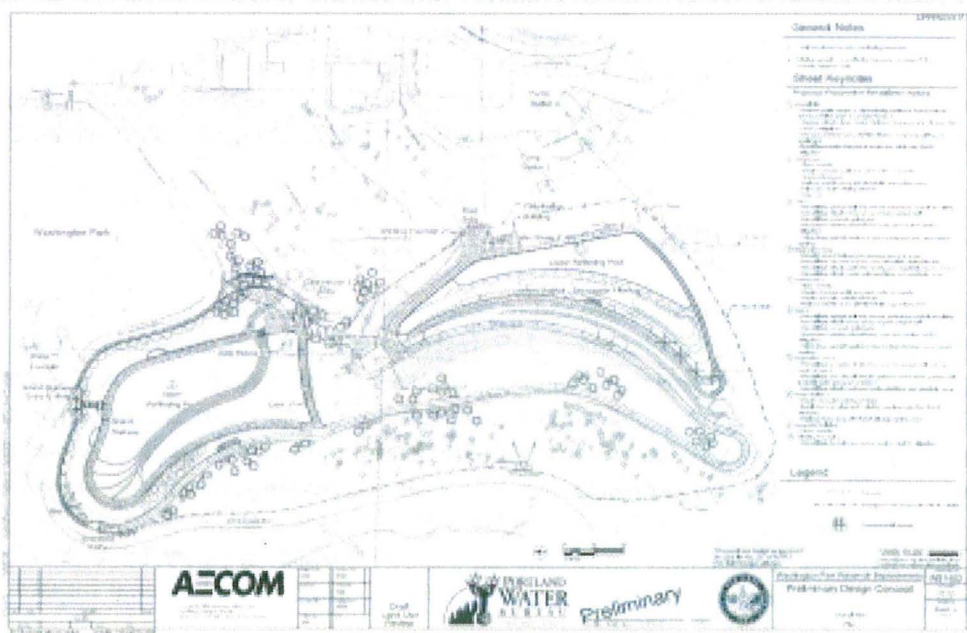


Figure 23: Photo of the proposed Lower Reflecting Pool from above showing the proposed Lower Reflecting Pool and the existing Reservoir 4 Dam. The view is from above at Sherwood Blvd. - PROPOSED

The view from above shows the proposed Lower Reflecting Pool and the existing Reservoir 4 Dam. The view is from above at Sherwood Blvd. - PROPOSED. The view is from above at Sherwood Blvd. - PROPOSED. The view is from above at Sherwood Blvd. - PROPOSED.



NPS Form 10-900a
(8-86)

OMB No. 1024-0018

United States Department of the Interior
National Park Service

NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET

Washington Park Reservoirs Historic District
City of Portland, Multnomah County, Oregon

Section 7 Page 7

Associated Landscaping at Washington Park Reservoirs Historic District

The most defining landscape principle of Reservoirs 3 and 4 is the open expanse of water, 49 feet deep and 40 feet deep, respectively. Because of the great depth and the due to the reflection of the towering fir trees that surround them, the water is a rich, deep hue. Situated in a natural deep ravine, their irregular shape, rusticated concrete structures and ornate wrought iron detailing of fences and lampposts, the reservoirs are a striking and elegant addition to the serene forest that makes up this end of Washington Park. From the high point on Southwest Murray at the northwest end of Reservoir 3, a striking view is provided of the water and all of the features of the reservoir. Reservoir 4 offers a grand vista from a point south along southwest Murray above the southwest side of the reservoir, of the City skyline, Mount Hood, and the watershed area, 50 miles to the east. A chain link fence encircles most of the site and a foot path traces the boundary of the fence. On the east side, the pathway follows a series of historic steps. In place for more than three decades, the fence is softened by the English ivy *Hedera helix* that makes for the primary ground cover surrounding the embankments. Other introduced ground covers include St. Johnswort *Hypericum calycinum* and periwinkle *Vinca major*. All trailing ground covers have been kept trimmed off the sidewalks and other structures, making a neat appearance, though the ivy has been allowed to cover original concrete planters and steps at Reservoir 3. The surrounding forest, not within the nominated boundaries, is composed primarily of Douglas fir *Pseudotsuga Menziesii*, western red cedar *Thuja plicata*, and big leaf maple *Acer macrophyllum* all predominating native tree species of the Pacific Northwest. Under story shrubs include other natives, evergreen Oregon grape *Mahonia aquifolium / nervosa*, rhododendrons *Rhododendron species*, and a variety of deciduous shrubs such as snowberry *Symphoricarpos albus*.

Summary Statement of Integrity

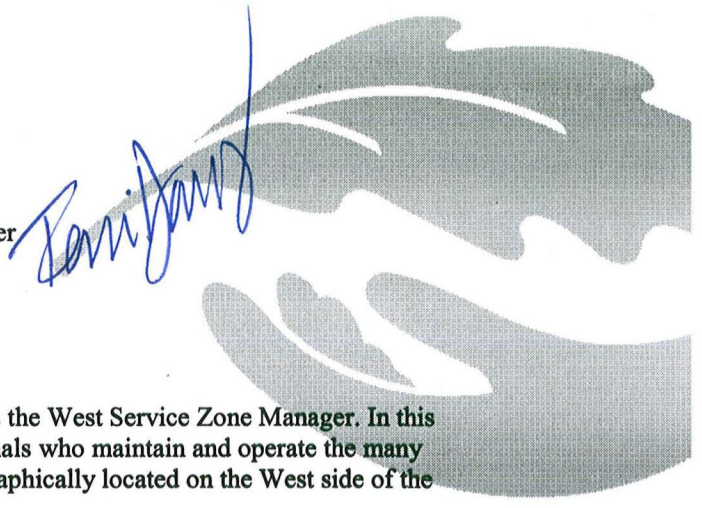
The Washington Park Reservoirs remain today largely intact and in as-built condition. While the basins have been relined numerous times, the character-defining elements such as deep open water, parapet walls, iron fences, lampposts, gatehouses and features exist today with minor modifications. These modern modifications have not been sensitive to the original architecture; full hollow-core metal doors replaced original wood doors in 1987, a gable roof (originally flat) now covers the Pump House and much of the original landscape elements are over grown. The 1980s era aluminum light fixtures surrounding the basins do not match the period, yet their illumination and reflection in the water after dark provides a connection with the original design that included light fixtures. The period lampposts should be refurbished and used to provide lighting. Newer buildings and structures are situated primarily in one area, limiting their visual impact on the historic resource.



PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland

DATE: April 23, 2015
TO: Portland City Council
FROM: Terri Davis, West Service Zone Manager
Portland Parks and Recreation
RE: Washington Park Reservoir Project



I work for and represent Portland Parks and Recreation as the West Service Zone Manager. In this role, I support and oversee an amazing team of professionals who maintain and operate the many developed parks, facilities and recreation programs geographically located on the West side of the Willamette River.

Portland Parks and Recreation not only values but relies upon the participation, input and feedback we consistently receive from the public to ensure that the programs we offer, parks we develop and maintain and facilities we operate are reflective of the communities we serve. We view these public stakeholders as partners in our shared management and stewardship of our parks and facilities. As other bureaus, organizations and agencies have assets that are located in our parks, we also work to ensure that any projects or development related to those assets not only meet Parks goals, but also transparently and genuinely include those shared public stakeholders in providing guidance and input in these projects.

I have been the representative for our bureau to that public process for this Water Bureau Reservoir Project. This project to date has included an extensive public process that closely aligns with our own goals for outreach and community involvement. This process has included: Stakeholder Interviews; Project Briefings to neighborhood associations and coalitions; Open House events; Virtual Open House options; Tabling at community events; Press Releases; Tours of the Washington Park Reservoirs; Informational mailers, Web based updates and blogs on the project; and 9 Community Sounding Board meetings, with time allocated for public input at each meeting.

I participated as a member of the Community Sounding Board, along with representatives of the surrounding neighborhood associations and coalitions, and a representative from the Historic Resources Committee. In these meetings, we represented our respective organizations, but worked together to provide input into the development of the visible features design of this Reservoir project. I have participated on many such committees, and can state that this process was very collaborative, respectful of differing views and responsive to the input provided by the Sounding Board Members and public comment.

As the process goes forward, a project manager from our bureau has been assigned to liaise between Portland Parks and Recreation and the Water Bureau. I appreciate the high level of public involvement that the Water Bureau has taken, and anticipate that this will continue going forward.

Administration

1120 S.W. 5th Ave., Suite 1302
Portland, OR 97204
Tel: (503) 823-7529 Fax: (503) 823-6007



www.PortlandParks.org
Amanda Fritz, Commissioner
Mike Abbaté, Director

Sustaining a healthy park and recreation system to make Portland a great place to live, work and play.

April 23, 2015

To: Portland City Council

Washington Park Reservoir Case File- LU-14-249689 DM

Demolition review for Washington Park

From- Testimony of Scott Fernandez M.Sc. Biology/ microbiology, chemistry

Mayor appointed- Portland Utility Review Board 2001-2008

Water Quality Advisory Committee 1995-2000

The historic value of the Washington Park open reservoirs is based on structure and engineering foresight as well as public health benefits of no illnesses for over 100 years.

There is time and scientific basis to save our historic reservoirs and community health; and ask for EPA LT2 waiver as New York City and New Jersey have requested for their open reservoirs. We ask for a community wide discussion when submitting our scientifically supported request for a waiver from EPA LT2 regulation.

Portland Water Bureau comments have been misleading and are corrected below.

Seismic vulnerability--

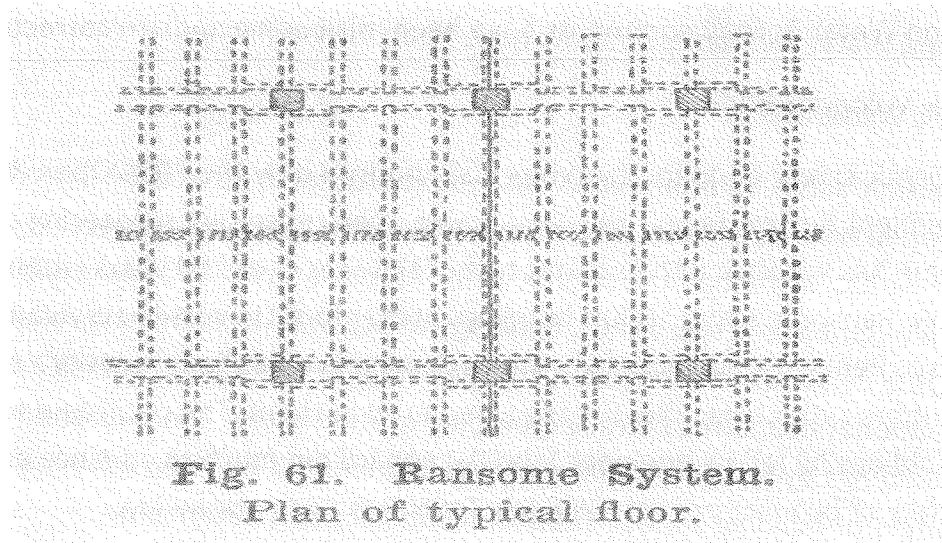
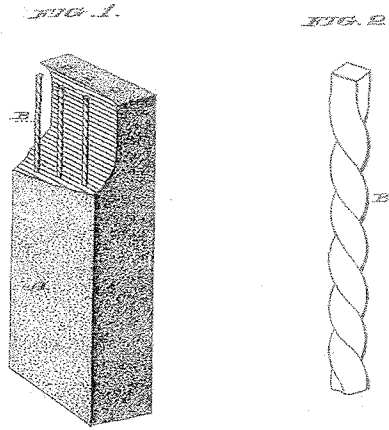
The seismic safety of open reservoirs was confirmed by the 2004 Open Reservoir Independent Review Panel. The remarkable open reservoir engineering of Ernest Ransome has withstood the seismic test of time for over 100 years without incident. As example-Ransome's two 1890's buildings at Stanford University survived the 1906 San Francisco Peninsula earthquake without damage; while the university's newer, conventional structures literally crumbled around them. The published analysis of these two buildings by fellow engineer John B. Leonard did much to advance engineering and the safety of building in post-1906 San Francisco and nationwide.

(No Model.)

E. L. RANSOME.
BUILDING CONSTRUCTION.

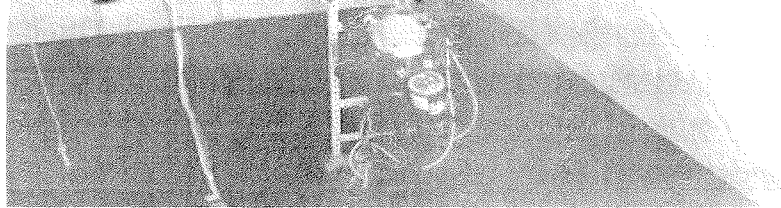
No. 305,226.

Patented Sept. 16, 1884.



Patented New Engineering Used in Open Reservoir Construction

**Photos: 50 million
gallons, 3,200 leaks**



PWB – First Weeks- Powell Butte Reservoir Engineering and Construction Defects

Aging infrastructure-

City of Portland Auditor’s Office- “Portland Water Bureau does not meet industry standards”. The Portland Water Bureau has not kept up with maintenance of the reservoirs as acknowledged by City of Portland Auditor reports in 2004, 2011, 2012. The open reservoirs can function for many more decades if maintained properly.

Open Reservoir Public Health and Engineering Assessments

“No waterborne disease outbreak or water quality incident of public significance has ever been recorded in connection with Portland's open reservoirs.”

Montgomery Watson Harza. Open Reservoir Study: Phase I Summary Report. City of Portland. January, 2002.

“All features in good condition. ...a detailed maintenance program could extend the useful life of the open reservoirs to the year 2050.”

Montgomery Watson Harza. Open Reservoir Study, Draft TM 5.7 Facilities Evaluation, City of Portland. August, 2001.

“All of the open reservoirs are historically significant, and thus are eligible for inclusion in the National Register of Historic Places and for local landmark status.”

Open Reservoir Study, Technical Memorandum, Montgomery Watson Harza, 2001.
Contracted by Portland Water Bureau (PWB)

“The reservoirs are historically significant as examples of early engineering, and serve as monuments to the social history of the City’s growth and development. They provide an early example of a planned landscape, including the views and vistas into and out of the landscape.”

Open Reservoir Study, Facilities Evaluation, City of Portland, 2001.

Landslides-

The Washington Park landslide was stabilized in the early years of reservoir construction by first utilizing pumps to draw down the water table; followed by digging tunnels along the slip surface to provide a network of interconnecting gravity drains. Being stabilized for decades, today the landslide creeps at only a fraction of an inch each year. It is not the catastrophic situation PWB wants us to believe exists. Engineering reports show 14/100 of an inch movement that is diminishing for the last few decades. The underground water mitigation programs have worked as they should, de-watering and impeding movement. The reservoirs have survived rain inundation from Christmas 1964, and more importantly the **100 year** “rain on snow” event lasting for many days in February 1996 all without landslide issue.

Table 1: Historical Slide Movements Since Reservoir Construction

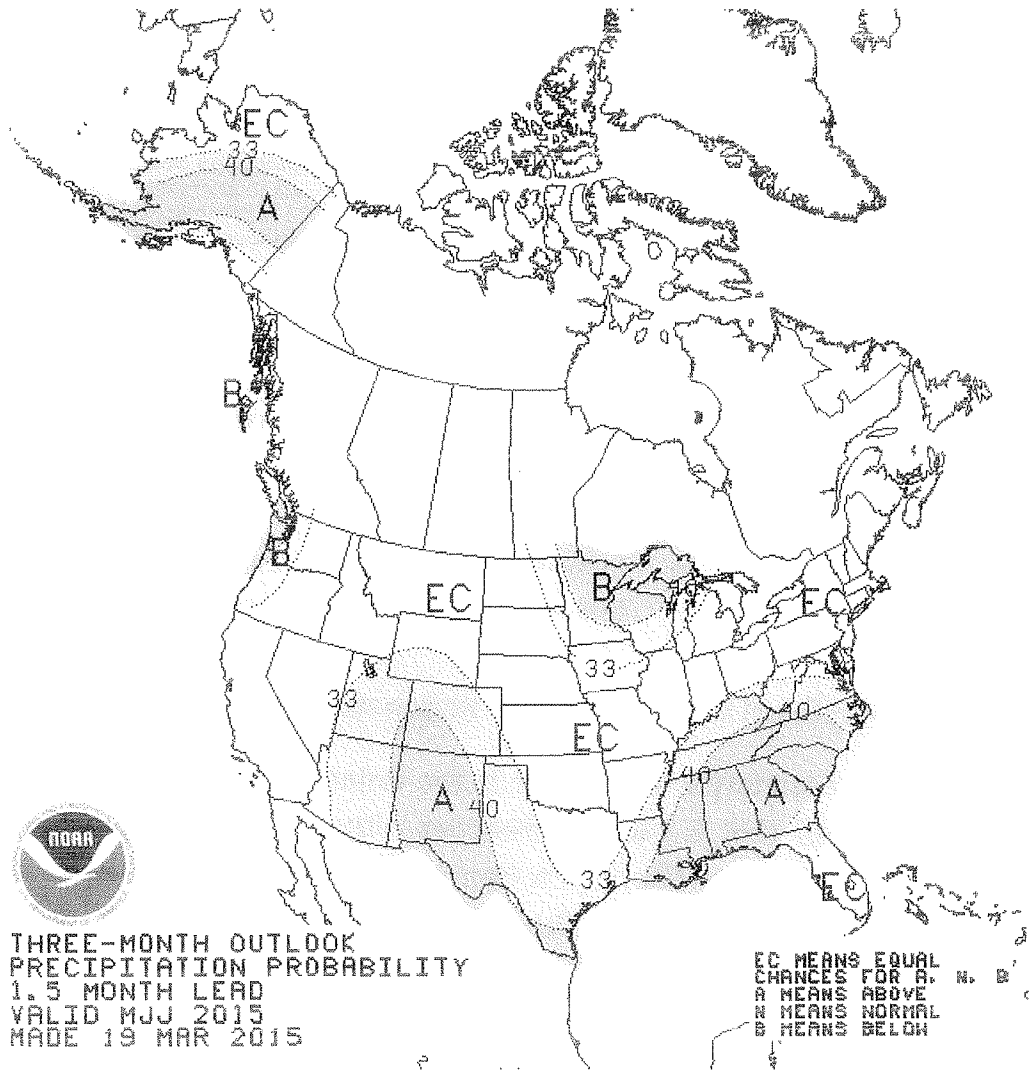
Date	Annual Rate of Movement	Description of Events
1893-1894	Unknown	Reservoirs constructed
1895-1896	15 inch/year	Water Bureau assessing cause of movements
1897-1898	1 1/2 inch/year	Pump dewatering of exploratory shafts reduces movement rate; focuses stabilization techniques on dewatering options
1899-1900	4 inch/year	Exploratory shafts completed; movement rates increase due to stoppage of dewatering pumps; survey grid installed
1901-1904	3 1/2 inch/year	Drainage tunnels constructed
1904-1906	1 1/2 inch/year	Movements increase; additional drainage tunnels are installed
1906-1916	1/2 inch/year	Detailed survey monitoring
1920-1970	1/2 inch/year	Continued survey monitoring
1975-1986	1/4 inch/year	Measurements obtained from 2 EDR casings
1987-2010	0.14 inch/year	Measurements obtained from 7 inclinometer casings

Public Health Benefits of Open Reservoirs- Radon removal

City of Portland secondary water source is the Columbia South Shore Well field (CSSW) groundwater that is highly radioactive with radon gas originating from uranium in the granite substrate. EPA is clear there is **“no safe level of exposure”** of radon and is the **“highest risk for cancer water contaminant”** they have registered. We need the open reservoirs to efficiently remove the gas as natural aeration of the water. Covered reservoirs cannot efficiently remove radon through their tiny vents. Radon gas kept in a closed and covered system without open reservoirs will end up in homes schools and work places; through our showers, toilets and washing machines generating 70% radon into the air leaving an additional 7 radioactive decay particles such as lead, polonium and bismuth.

Climate Change is producing less rain to depend on, moving us to use the CSSW radioactive groundwater as a supplemental source. Bull Run area will be drier (see NOAA) map. We need to retain open reservoirs in our system for historic value

and for public health. Covered reservoirs waste millions of dollars for public health problem that does not exist.



Submitted by- Scott Fernandez

1821 NE 65th

Portland, Oregon 97213



SAVE

the Open Reservoirs

Our open reservoirs at Mount Tabor and Washington Park protect us from radioactive Radon and other toxic gases using aerated fountains and waterfalls.

Covered reservoirs cannot protect us from Radon. Is it worth the risk to remove our open reservoirs?

Because of lower precipitation and climate changes in our mountains and at Bull Run* we will rely more than ever before on the Radon contaminated radioactive Columbia South Shore Wellfield (CSSW) as a secondary source of our drinking water.

If the open reservoirs are removed ...we will lose all protection from radioactive Radon gas and the radioactive Radon decay products shown here that will enter and contaminate air quality in schools, homes and workplaces.

Radon gas through your soil can be easily removed. Radon gas from your water generates many permanent radioactive decay products that will contaminate your air, clothes, floors and dust particles. Every time you drink a glass of water, take a shower or wash clothes..... you, your family, children, pets, and garden vegetables will bio accumulate more and more radioactive decay materials every day.

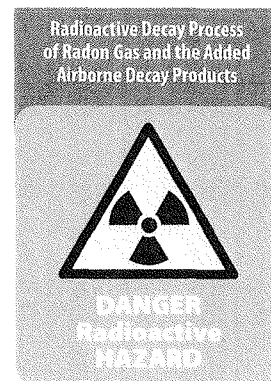
EPA is clear "there is no safe level of radioactive Radon" or Radon decay exposure. EPA recognizes "Radon is the highest risk cancer causing drinking water contaminant". Thousands of people die from Radon every year in the US.

EPA is reviewing the open reservoirs regulation through 2016. New York and New Jersey are working with EPA to keep their open reservoirs. We can too.

Keep our open reservoirs used for drinking water at Mount Tabor and Washington Park, saving over \$100 million in unnecessary disconnection and destruction that will increase our water bills for no public health benefit.

Open drinking water reservoirs..... for your safety and your health.

*US - National Oceanic and Atmospheric Administration (NOAA)



- Rn** Radon 222
- Po** Polonium 218
- Pb** Lead 214
- Bi** Bismuth 214
- Po** Polonium 214
- Pb** Lead 210
- Bi** Bismuth 210
- Po** Polonium 210
- Pb** Lead 206

► **Washington Park Reservoirs Demolition Hearing**
Please attend to **SAVE OPEN RESERVOIRS**
Portland City Council Chambers, City Hall
Thursday April 23, 2015 @ 2 PM

For more information see: www.bullrunwaiver.org
Contact us: bullrunwaiver@gmail.com
Citizens for Portland's Water 2015 ©

► Please write Portland City Council
Charlie Hales, mayor
1221 SW 4th Ave, Room 340, 97204
(503)823-4120
mayorhales@portlandoregon.gov
nick@portlandoregon.gov
amanda@portlandoregon.gov
novick@portlandoregon.gov
dan@portlandoregon.gov

April 22, 2015

To: Mayor Hales
Commissioner Fish
Commissioner Fritz
Commissioner Novick
Commissioner Saltzman

From: Annie Mahoney, AIA
7134 N. Oatman Ave.
Portland, OR 97217

Re: LU 14-249689 City Council Hearing 4/23/15
Washington Park Reservoir Improvements Project
Type 1V Demolition Permit Review

I am in support of the proposed work at the Washington Parks Reservoirs and in favor of the demolition of Reservoir #3 and #4 basins and the Weir building as proposed by the Portland Water Bureau.

As a member of the WPR Community Sounding Board my fellow board members and I met with the design team at public meetings nine times over the course of design. I personally came to the board as a practicing Architect with experience working on historic preservation projects. While we did ask questions regarding choice of site and necessity of the reservoirs, our task was focused on the design of the visible features of the project. The overwhelming direction from the advisory board was to keep as much as possible of the contributing structure and features. Additionally, we requested that interpretive programming on history and water conservation be included in the design.

I believe the Portland Water Bureau and the design team have listened and responded to the board and public comments while balancing issues of cost and constructability, and are meeting the applicable goals stated in the Comprehensive Plan. Including but not limited to:

Goal 3: Neighborhood. This project will create tourism with the interpretive programming and enhanced features and accessibility.

Goal 6: Transportation. The project will provide access for all citizens to the historic district.

Goal 8: Environment. Given the landslide and seismic considerations this is a matter of public safety. Removal of the reservoir basins is the responsible and right thing to do.

Goal 9: Citizen Involvement.

The team engaged stakeholders both local and city-wide at public meetings and open houses. I personally represented the viewpoint of historic preservation. The design team listened and responded to us at every step.

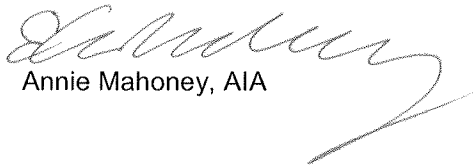
Goal 11: Public Facilities. It will increase public safety and enhance the park experience, providing a backdrop for a piece of Portland's history that is very important.

Goal 12: Urban Design. To visit Washington Park is to experience surprise and discovery. At every turn might be a hidden glen, a view of Mt. Hood, or a rose garden. Washington Park encompasses and provides many different types of experiences, except for a significant water feature. The reservoir project will provide a unique experience that has been unavailable since the 1970s.

If the Water Bureau is not allowed to proceed with this work what will become of these unique and vital elements of our history? Without the reservoir work there may be no impetus for any restoration of these important structures and they will fall further into disrepair and become a greater public hazard. An opportunity will be lost for the preservation of one of our greatest assets.

Even though the demolition of any historic structure is not preferred and should be avoided, it shouldn't be avoided at all cost. On balance it is affording the City an opportunity to create a safer utility, an amenity that is accessible to all citizens, and an enhanced resource for the history and culture of our city. This project will be a significant benefit to the public.

Thank you for your consideration in this matter.



Annie Mahoney, AIA

Item #414
Submitted 4/23/2015

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

CASE FILE: LU 14-249689 DM, Washington Park Reservoirs Demolition

Page 1 of 8

TO: City Council

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215

DATE: 4/15/2015

Dear Council Members:

Please close one of the most painful chapters in Portland's recent history, and resolve to save Portland's open reservoirs by the methods outlined in Friends of Reservoirs' April 19, 2015, letter (*submitted to this case record under separate cover*) and echoed by countless others who have testified on this matter over the years.

Portland's historic open-air reservoirs cannot safely be decommissioned or demolished because they provide an essential health benefit of aerating radon and disinfection byproducts, and of disinfecting light-sensitive microorganisms.

The reservoirs cannot lawfully be decommissioned or demolished because their intact, in-use status as the city's water storage are inherent to their listing on the Historic Register, and specifically named in their historic nominations; and applicant cannot meet its burden of proof that the stringent approval conditions for demolition of a historic resource have been met. Demolition will not withstand legal scrutiny.

The public, when it has been allowed input, has been overwhelmingly in favor of preserving these functional Portland icons. Only craven interests benefit from their loss. Why let that be City Council's legacy?

We advocates who testify before you in the reservoirs' defense have collectively devoted years of expert-level research to this cause. The Historic Landmarks Commission recently observed that we are the largest and most well researched group to have testified before it on a land use case. We have steadfastly offered ourselves, and our expertise, in a good-faith effort to find a regulatory compliance solution that safeguards our water quality and preserves our history. We are dedicated to serving the public, just as you are sworn to do.

Many viable alternatives to destruction are available; all that remains is for City Council to remove its largely self-imposed obstacles, and work with us instead of against us. Please do the right thing.

ARGUMENT IN OPPOSITION TO THE PROPOSED DEMOLITION/DISCONNECTION OF WASHINGTON PARK'S OPEN RESERVOIRS

The City of Portland, through its agent, the applicant Water Bureau, has not met its burden of proof under PCC 33.800.060, in the particulars set forth below.

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

CASE FILE: LU.14-249689.DM, Washington Park Reservoirs Demolition

Page 2 of 8

TO: City Council

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215

DATE: 4/15/2015

The City of Portland has also failed to fulfill multiple legal and regulatory requirements with regard to the proposed demolition, in the particulars set forth below, not least being public health and safety measures.

For these reasons, the application for demolition of Washington Park's reservoirs must be denied.

I. Failure to Comply with Public Health and Safety Regulations.

A. Radon and Other Drinking Water Contaminants. Once the open reservoirs at Mt. Tabor and Washington Park are taken off line, they will no longer serve the public health mitigation role they currently serve by providing open aeration and sunlight that protect the public from a variety of waterborne contaminants, not least being radon. This affects the whole city, not just neighbors.

Radon is a carcinogen known to contaminate the city's backup water source at the Columbia South Shore Well Field. See *2011 and 2012 Portland Water Quality Reports, submitted on 4/23/2015 by Katherin Kirkpatrick to the record in this case*. The EPA states that "there is no safe level of radon," which is estimated to cause over a hundred unnecessary deaths per year due to "ingesting radon in water" and "inhaling radon released to the indoor air from water." See, *Radiation Protection: Radon, EPA publication at <http://www.epa.gov/radiation/radionuclides/radon.html>, pp 5-6, also submitted by Katherin Kirkpatrick into the record this date*. Open aeration such as occurs in Portland's open reservoirs is designated by the EPA as the "best available technology" for removing radon from drinking water. *Risk Assessment of Radon in Drinking Water*, National Academy Press, Washington DC, 1999, p. 179.

Radon exposure increases with seismic activity of the type the City cites (erroneously) as justifying this demolition; see *discussion below in Section B.1*, thus making open aeration all the more important.

Other drinking water contaminants that are currently mitigated by the open reservoirs will also become more problematic once the open reservoirs are decommissioned. They include, but are not limited to, chloroform, nitrification byproducts, and light- and oxygen-sensitive microorganisms. *Scientific and Public Health Basis to Retain Open Reservoir Water System for the City of Portland, Oregon*, at <http://bullrunwaiver.org/wp-content/uploads/2014/05/waive2014.pdf>; entered into the record under separate cover by Katherin Kirkpatrick.

Such increased public health risks fall under the *Public Notification Rules of the US Environmental Protection Agency, as codified in 65 FR 25981, May 4, 2000, and 40 CFR Parts 9 and 141-143* and as incorporated into Oregon Administrative Rules by virtue of Oregon Health Authority primacy. Neither HLC nor City Council has the authority to bypass this fundamental safety requirement; indeed, Goal 1 of

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

CASE FILE: LU 14-249689 DM, Washington Park Reservoirs Demolition

Page 3 of 8

TO: City Council

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215

DATE: 4/15/2015

the Comprehensive Plan as cited by Applicant's agent Theresa Elliott requires that the City's work be coordinated with federal and state regulators. People have a right to know of their increased health risk. This condition has not been met, and thus the application for demolition must be denied.

B. Earthquakes, Landslides and Structural Stability. The City's demolition application completely fails to meet its burden under PCC 33.800.060 and the 2014 Oregon Structure Specialty Codes, in the following particulars, to prove that the proposed work is so structurally sound that it will decrease the earthquake and landslide risks in comparison to not demolishing the reservoirs. The application for demolition must therefore be denied.

1. Earthquakes. The scientific community has known since the 1960s that seismic activity raises the radon levels in groundwater--in fact, the association is so strong that groundwater radon levels are monitored as a seismic prognostic tool. In their 2009 review of 125 seismic radon-associated events, *Cicerone et al. reported in the journal Tectonophysics (476; 371-396; entered into the record by Katherin Kirkpatrick under separate cover)* that:

- groundwater radon levels increased in 83% of seismic events due to the outgassing of radon that was previously trapped within solid rock
- the amount of outgassing was not magnitude-dependent, meaning that even minor seismic events could trigger significant radon spikes
- the increases averaged 20% to 200% relative to baseline groundwater levels, but were documented to increase by as much as 1200% above baseline
- the groundwater radon spikes lasted as long as 200 days

Toxicity from radon exposure through drinking water is most problematic in the home near showers, dishwashers and washing machines (*Fitzgerald, et al., Env. Sci. Technol., 1/6/1997*); and the risk level is not adequately measured by periodic sampling of the type traditionally employed in Portland (*Talwani, et al., Journ. Geophys. Research, 6/10/1980*). Portland's open reservoirs protect us from this exposure.

The City and its agent Applicant have offered no credible evidence that demolition is necessary to protect the public from earthquakes; on the contrary, many in attendance today recall Dr. Scott Burns of Portland State University Department of Geology remarking, at a "Geology of Mt. Tabor" seminar, that the Washington Park reservoirs would be fine until someone tried digging around them. This was echoed by HLC Commissioner Harris Mattarazzo, who expressed astonishment that anyone concerned about earthquakes would proceed with heavy excavation around a site that has been stable for over 100 years. Clearly applicant has failed to meet its burden under 33.800.060 to prove that its proposed

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

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demolition work will be safe, structurally or health-wise, than the alternative of non-demolition; and its application must be denied.

a. **Backup Water Supply.** As testified by Jeff Boly in his 3/19/2015, letter to the Historic Landmarks Commission and the Bureau of Developmental Services in this case (*entered into the record by Katherin Kirkpatrick under separate cover*), if Portland were to actually experience the kind of severe earthquake cited as justification for this demolition, Portland's time-tested open reservoirs would likely be needed as an emergency backup source that the City cannot afford to be without, particularly in light of the known cracks and untested, questionable structural integrity of new underground tanks built in Portland (Powell Butte) and Seattle. This, coupled with the established unreliability of City agents in this case (*see, e.g., 12/1/2014 Testimony of Katherin Kirkpatrick in the Mt. Tabor HLC case, regarding the City's poor record of credibility regarding its reservoir plans; entered into the record under separate cover*), paints a doubtful picture as to Applicant's having given this issue its due consideration. Applicant has not met its burden of proof under 33.800.060 of its assertion that reservoir demolition will leave Portland better equipped for an earthquake than if the reservoirs were left intact and functioning; and its application must be denied.

2. **Landslides.** Witness Scott Fernandez, M.Sc., has submitted this day under separate cover documents obtained from the City's own records showing longstanding stability of the Washington Park reservoirs despite the park's landslide activity, due to ingenious mitigation measures that were taken early in the last century. The very thorough 2010 Historic Structures Report performed at the City's behest by Cascade Design (*and entered into this record under separate cover by witness Floy Jones*) found the reservoirs to be in remarkably good condition, and "not in a position of needing urgent repairs." Indeed, these City records suggest that the reservoirs and their drainage wells may be the most stable structures in the Washington Park landslide area. Applicant has not provided credible evidence to refute the City's own evidence that the site is structurally sound as is; and it has certainly not made a compelling case as to why the park's geology should fare better under its plan for massive hauling involving thousands of trucks, and underground excavation of the type that has performed poorly at Portland's Powell Butte and in Seattle. Applicant has not met its burden under 33.800.060 to prove demolition is better or safer than the alternative, and its application must be denied.

3. **Structural Stability.** Given the abundance of credible testimony shedding doubt on the credibility of City agents as witnesses, and the performance history of the City's contractors at Powell Butte and in Seattle, there is little reason to believe that behind-the-scenes due diligence has been carried out with regard to the structural requirements of the applicable 2014 Oregon Structural Specialty Codes. Given the risk already posed to the residents of Meadowcrest Farms Estates, and to

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

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the Johnson Creek watershed, by the thousands of cracks in the newly built Powell Butte tank, the City has a bad track record to overcome before it meets its burden of proof under 33.800.060 that its proposed project is safer and more structurally sound than the time-tested and recently inspected reservoirs that have been functioning without incident for a century.

II. Failure to Prove that Approval Conditions are Met

A. Failure to prove deprivation of economic use; and/or support of plan. As testified by witness Jeff Boly in his 3/19/2015 letter to the HLC (referred to above and submitted to this case record under separate cover), the Applicant fails abjectly to meet the approval criterion of proving that the intact preservation of these listed historic resources is an impediment to “all reasonable economic use of the site.” 33.846.080(C)(1). The only parties who stand to gain economically from this project are well-connected engineering contractors, who have already enjoyed enough benefit from their close ties to public officials and the resultant decade of costly reservoir consultations which have yet to result in a single health benefit to the public.

Further, demolition of a historic resource is, by definition, antithetical to the approval criterion of supporting the historic plan envisioned by the resource’s historic listing. Mr. Boly is right in asserting that the Application cannot withstand legal scrutiny on this approval condition, and must be denied.

B. Failure to consider alternatives. “Demolition review recognizes that historic resources are irreplaceable assets. PCC 33.846.080(A). “The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.” PCC 33.445.330. The community in this case is overwhelmingly in favor of alternatives to demolition, yet the City has not given them due consideration, as further discussed under *Public Process* below. The massive outpouring of community testimony against this demolition application is proof that the City has not listened, and thus cannot claim to have met its burden of proving under 33.800.060 that alternatives to demolition have been duly considered, let alone exhausted.

III. Failure to Carry Out Due Public Process

A. Failure to Heed Public Outcry. As testified by witnesses Floy Jones and Dee White (HLC testimonies dated 3/29/2015 and 3/30/2015, respectively, submitted into the record in this case under separate cover), the City’s own Independent Review Panel (“IRP”) recommended alternatives to decommissioning/demolition; and City Council adopted the IRP’s recommendations by way of Municipal Resolution 36237 (also attached to the above testimony and incorporated herein by reference).

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

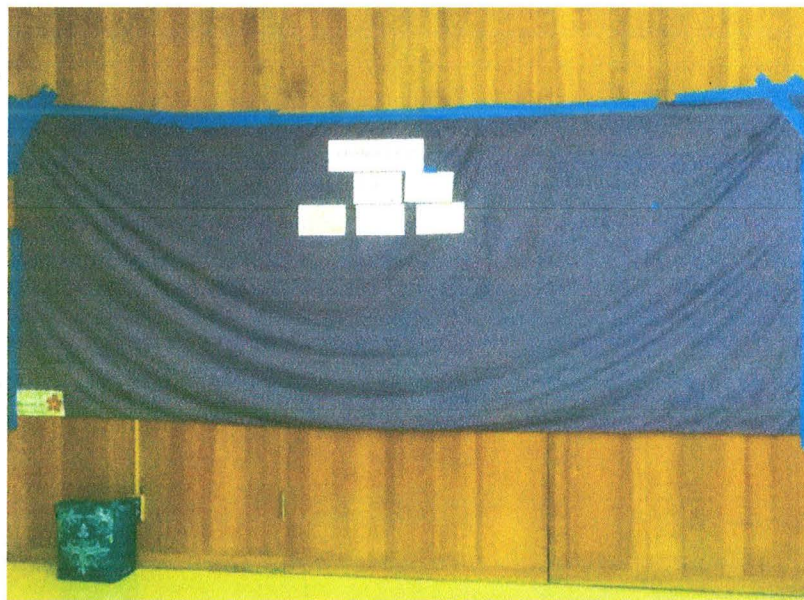
CASE FILE: LU 14-249689 DM, Washington Park Reservoirs Demolition
TO: City Council
FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215
DATE: 4/15/2015

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Further, on 12/9/2014, the City of Portland conducted a survey regarding the fate of Portland’s best known open reservoirs, and the vast majority of the 966 respondents (the largest showing of any such survey) specifically asked for the open reservoirs to be kept on-line and functioning as the City’s water storage utilities and radon mitigation measures—even though the City of Portland did not include such an option in the list of survey choices that it offered citizens to consider.

Despite a decade of obfuscation and misdirection by City of Portland, the citizenry has made its intentions clear, and has gone out of its way to independently research and present viable, low-cost, low-impact compliance strategies to the City, only to be rebuffed. The City has failed to meet its burden under 33.800.060 of proving that its proposed work has exhausted due public process per the zoning code and Goal 9 of its Comprehensive Plan. Its application must be denied.

B. The Opportunity Board. The Applicant’s Public Involvement Summary, submitted as part of the record in this case, is inaccurate. I attended the public outreach meeting described in that survey and by Ms. Jones in her 3/29 testimony above. We were met at the door by the City’s hired facilitator, told where to sit, told what questions we could and could not ask, and told what and when we could write on our assigned index cards for the opportunity board. The following is a photograph of that opportunity board at the end of the open house. It speaks volumes about the pointlessness of the City’s so-called public process. The Application must be denied until true public input is implemented.



TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

CASE FILE: LU 14-249689 DM, Washington Park Reservoirs Demolition

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TO: City Council

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215

DATE: 4/15/2015

C. This witness' outstanding Record Request. The Applicant in its Public Involvement Summary states that it has fulfilled public requests in relation to this land use case. This is false. Applicant neglects to mention *my own uniform public record request, dated 1/10/2015, and submitted to this case record under separate cover*. In that request, I asked for the single most relevant piece of evidence in the pending reservoir land use cases: the compliance agreement that the City of Portland has signed with the Oregon Health Authority setting decommissioning/demolition deadlines for the Mt. Tabor and Washington Park open reservoirs. The City has never honored my document request, despite multiple exchanges with City staff, and despite my making it clear that I wished to enter the document into evidence in these land use cases, given that it is the very foundation on which the City bases its claim that Portland must urgently destroy its open reservoirs. Given that such key piece of evidence is still missing, Applicant cannot claim to have met its burden under 33.800.060 of proving that the applied-for demolition is necessary and without alternative. The application must be denied.

IV. Failure to Prove Title, Ownership and Management. The application has not shown clear title and/or management rights to the property in question. PCC 33.730.060(C)(1) and (2) require an applicant to list all true owners of the properties impacted, and its interests relative to those owners; and to document all current and proposed uses of the properties impacted. Credible evidence has been supplied previously to City agents and is again being offered in this proceeding by witness Mark Bartlett, that the proposed work impacts land that is not owned and/or managed by Applicant Tom Carter or the bureau that he represents, but rather is owned and/or managed by Portland Parks and Recreation and zoned exclusively for park (i.e., non-utility) use. The application has failed to accurately distinguish both the true ownership of the various parcels impacted. The application has also failed to accurately delineate the current and proposed uses of those parcels, both in terms of the parcels under applicant Water Bureau's management and also in terms of the parcels currently under Portland Parks and Recreation management and zoned exclusively for park/recreational use. The work proposed in the application should not be allowed unless and until the requirements of PCC 33.730.060(C)(1) and (2) have been met.

V. Violation of Other Approval Criteria (Historic Review and Conditional Use). Concurrent with this Demolition Review, the City's proposal will also have to meet the approval criteria set forth under Type III Conditional Use and Historic Review (6/3/2014, *Land Use Planner Responses from planners Castlebury and Wallhood, included in the pre-application conference documentation of the record in this case*). The Applicant cannot meet those conditions, for many reasons, which will be delineated in the

TESTIMONY IN OPPOSITION TO THE PROPOSED DEMOLITION OF WASHINGTON PARK RESERVOIRS

CASE FILE: LU 14-249689 DM, Washington Park Reservoirs Demolition

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TO: City Council

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue, Portland, OR 97215

DATE: 4/15/2015

ensuing conditional use and historic review cases. However, one is particularly worth mentioning here, because it is perhaps the most germane to the issue of demolition review:

1. **Reversibility.** Under *PCC 33.846.060(G)(9)*, new additions and adjacent or related new constructions must be undertaken “in such a manner that if removed in the future the essential form and integrity of the historic resource and its environment would be unimpaired.” The Applicant obviously fails to meet this criteria, given that it proposes to permanently remove the historic resource from existence.

There is no excuse for demolishing an intact and functional historic resource. We should not even be having this discussion. Please call an end to this sad chapter in Portland’s history.

Sincerely,



Katherin Kirkpatrick
1319 SE 53rd Avenue
Portland, OR 97215
(503) 232-8663
samsa@pacifier.com

Submitted into the record of Council Hearing #414

LU-14-249689, Thursday 4/23/2015

by Katherin Kirkpatrick

- Katherin Kirkpatrick

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Comments for the record of Case File # LU 14-218444 HR

(City of Portland's Proposal to Disconnect Mt. Tabor Reservoirs 1, 5 and 6)

TO: BDS Staff and Historic Landmarks Commission

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue

DATE: 12/1/2014

I, the undersigned, request that the Commission deny the City of Portland's application to disconnect and/or otherwise harm Mt. Tabor's historic open reservoirs and related structures.

I have reason to believe the City is not willing or able to meet the approval criteria of retaining and preserving the historic character of the property, nor of avoiding removal or alteration of historic features and spaces that contribute to the property's historic significance.

In support of my opposition, I second the evidence submitted on November 20, 2014, by the Mt. Tabor Neighborhood Association (MTNA), and offer the following additional testimony based on (1) my own interactions with the City of Portland during twelve years of service as a Mt. Tabor community advocate, and (2) the attached documentation which I have collected during that service.

1. The City does not need to disconnect or otherwise decommission the historic reservoirs, but is motivated solely by its proven, longstanding intent to destroy the reservoirs

As testified by MTNA, the City of Portland has clearly demonstrated its intent to demolish, replace, and forever alter the historic character of Mt. Tabor's historic reservoirs since at least 2002, when it adopted a municipal resolution to that effect and a subsequent Land Use Determination (Attachment A) clearly aimed at "replacement of the open reservoirs at this site with buried tanks."

Further, the City tried to avoid due process by rushing this unpopular decision through a Type II process. When citizen activists challenged the inappropriate Type II classification, the City claimed to be exempt from its own land-use laws, by virtue of an obscure and unreported ruling, Buckman v. Out Front House, LUBA 98-128, 98-144, CA A107868. The City maintained this brash claim until I provided fellow activists with a copy of the Buckman ruling which I happened to have in my files, having served as a Buckman community volunteer before moving to Mt. Tabor. In point of fact, the ruling did not support the City's claim that it was above the law.

This would not be the last time that the City would employ creative tactics in its eagerness to demolish Mt. Tabor reservoirs. Instead, it would cast its efforts even wider, working with federal regulators to shape the LT2 regulation upon which it now relies, 12 years later, to justify its continuing fight to

Comments for the record of Case File # LU 14-218444 HR

(City of Portland's Proposal to Disconnect Mt. Tabor Reservoirs 1, 5 and 6)

TO: BDS Staff and Historic Landmarks Commission

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue

DATE: 12/1/2014

degrade Mt. Tabor's historic landmarks. The City saves face by claiming to have been "fighting LT2 since its inception" (Attachment B), but the record suggests otherwise.

2. The City's claim that "in order to comply with a federal drinking-water rule, the uncovered reservoirs must be physically disconnected," is untrue.

The entirety of the LT2 regulation on which the City bases its claim can be found in the Federal Register, Vol. 71, No. 3, published January 5, 2006, posted online at <http://www.gpo.gov/fdsys/pkg/FR-2006-01-05/pdf/06-4.pdf>. Nowhere does it require open reservoirs to be physically disconnected. The entirety of the Oregon State statute adopted by the Legislature when Oregon overtook jurisdiction over open reservoirs from the federal government on 6/22/2007, can be found in Oregon Revised Statute 448.135, posted online at <http://www.oregonlaws.org/ors/448.135>; and the legislative history summary for its predecessor, HB3469, is included as Attachment I to this testimony. Neither does this statute require open reservoirs to be physically disconnected. Insofar as such a requirement exists at all, it is solely as the invention of the Oregon Health Authority (OHA), which codified anti-open-reservoir provisions into Oregon's Administrative Rules without the authorization, and against the Legislature's clearly expressed legislative intent, that Oregon's rules "reached as far as, and no farther than, State law or federal law and regulations" (Attachment J). And it did so under the authorship of an administrator (Gail Shibley) who was immediately thereafter rewarded with a top political appointment as Mayor Hales' Chief of Staff. If the City is committed to stewardship of these irreplaceable historic resources, why does it reward those who bend the rules in order to ensure the resources' destruction?

3. The City has neglected legal avenues for protecting the historic reservoirs

The record shows that in 2011, the City was supplied with a detailed legal brief (Attachment C), paid for at activists' expense, in which a high-profile public policy law firm concluded that federal and state regulators had a weak basis on which to force the City's hand, and that the City would likely prevail if it were to zealously challenge state and federal authorities on behalf of preserving open reservoirs. The brief went on to outline specific strategies for doing so. The City has not followed these strategies. I have joined other activists in repeatedly asking Council members at public forums why they have not followed those strategies. They have not answered.

Comments for the record of Case File # LU 14-218444 HR

(City of Portland's Proposal to Disconnect Mt. Tabor Reservoirs 1, 5 and 6)

TO: BDS Staff and Historic Landmarks Commission

FROM: Katherin Kirkpatrick, 1319 SE 53rd Avenue

DATE: 12/1/2014

4. The City has worked at cross purposes, claiming publicly to protect the historic reservoirs while working behind the scenes to ensure their demolition on a rushed schedule

The record shows that in the summer of 2011, Portland Water Bureau Administrator David Shaff asked the OHA--i.e., the body that had taken the most egregious position regarding open reservoirs--for an extension of the City's reservoir demolition schedule. This was a strange request, given that City Council had imposed that schedule upon itself by municipal resolution in 2002 and had taken no obvious steps to overturn that resolution. The OHA responded to this strange request with a strange response (Attachment D), engaging the EPA in a tangential discussion as to the proper location at which to ask it for schedule extensions. OHA inquired whether EPA's 2016 rule review process might be the appropriate place to undo a schedule set by City Council resolution; and the puzzled EPA of course responded that it would not be the appropriate place, as such authority rested locally. The OHA then chided the City (Attachment E) for asking the state to intervene against a reservoir destruction plan which the City itself had "expressed a clear intent [to carry out] on numerous occasions" going at least as far back as the 2002 municipal resolution. In my own telephone communications with Oregon's congressional delegation, they too cited the City's self-imposed resolution as a barrier to their intervention; by what authority can the federal government undo a municipal resolution when the City that authored the resolution chooses not to?

I was thus stunned when the City issued its 6/3/2013 press release claiming to have exhausted all alternatives to demolishing the reservoirs--so stunned that I contacted the Mayor's Communications Director, Dana Haynes, (Attachment F), outlining for him the numerous strategies, in addition to those outlined in the 2011 Reed Smith brief, which activists' research suggested were still available to protect the historic reservoirs. I asked for documentary proof that those options were being pursued. No such proof was offered.

4. The City encourages deterioration of these historic resources, and employs that deterioration to justify its rush toward reservoir disconnection

As the testimony of MTNA makes clear, the City continues to allow the historic reservoirs to deteriorate. The City has even laid off security personnel, citing budgetary concerns. Yet security personnel could be re-hired for a fraction of the cost of the boil-water alerts that the City has issued when drunken malingers have urinated near the reservoirs. The City has frequently tried to foment panic about Mt. Tabor's open reservoirs, though independent testing by private citizens (verified by local media,

Comments for the record of Case File # LU 14-218444 HR

(City of Portland's Proposal to Disconnect Mt. Tabor Reservoirs 1, 5 and 6)

TO: BDS Staff and Historic Landmarks Commission

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DATE: 12/1/2014

Attachment G) has suggested that the Mt. Tabor boil-water alerts had no basis in fact. And while the City continues to leave Mt. Tabor unguarded and open to vandalism, it meanwhile downplays the very real threat posed by biofilms throughout its underground distribution system (Attachment H), threats that originate far from open reservoirs and thus do not support the City's anti-open-reservoir narrative.

5. The City refuses to answer for the inconsistencies between its destructive actions and its claims of stewardship

I have joined other activists in repeatedly asking the City to account for the above discrepancies in its historic reservoir policy. At public forums we have asked the Commissioners why they do not revoke the municipal resolution by which they mandated reservoir destruction and committed themselves to a rushed schedule for doing so. We have asked why City Council does not re-hire reservoir security, and perform long-overdue distribution system maintenance downstream where actual problems have been detected. We have asked why City Council does not challenge state and federal regulators to put health and historic preservation before the interests of Portland's engineering contractors. We have asked why the Mayor so richly rewarded the chief architect of the Oregon Health Authority's hostile stance toward Portland's historic open reservoirs, when he hired her as his Chief of Staff.

But we have received no answers.

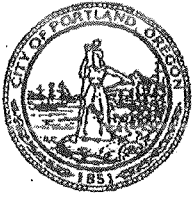
We predict that the Historic Landmarks Commission will get no answers either, when it finds in the coming months that the City of Portland has not made good on today's promise to preserve the reservoirs' historic character and protect the historic structures from damage.

Conclusion

The City's claim that it will steward and preserve the historic reservoirs is contradicted by more than a decade of public record. Please deny the City's application to alter Mt. Tabor's historic reservoirs; and instead do everything in your power to ensure that Portland's irreplaceable, healthful historic open water storage is defended in every possible venue, and by every lawful means possible.

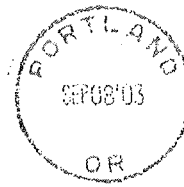
Thank you,

Katherin Kirkpatrick
1319 SE 53rd Avenue



CITY OF PORTLAND
BUREAU OF DEVELOPMENT SERVICES
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201
Land Use Review Notice Enclosed
Important Land Use Information

P524



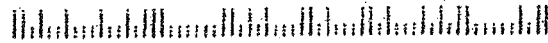
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LAND USE DETERMINATION
08-13-03
CASE FILE HARDY
1900 SW 4TH AVE #5000
PORTLAND OR 97201

97201+3379



Attachment A pg 1 of 5

PLEASE NOTE THAT DUE TO A PRINTING ERROR
IN THE EARLIER MAILING THAT RESULTED IN
MISSING PAGES, WE ARE RESENDING THIS
NOTICE OF USE DETERMINATION



**OFFICE OF CITY AUDITOR
CITY OF PORTLAND**

Gary Blackmer, City Auditor
Council/Contracts Division

Mailing Address:
1221 SW 4th Avenue, Room 140
Portland, Oregon 97204-1900
Email: kmoore-love@ci.portland.or.us
Phone: (503) 823-4086 Fax: (503) 823-4571

Date: September 3, 2003

To: Interested Person

From: Council Clerk

NOTICE OF USE DETERMINATION

On Wednesday, August 27, 2003, the City Council considered and adopted the attached Use Determination pursuant to ORS 227.160(2)(b) and 227.175 (11)-(12) regarding the use classification of the Mt. Tabor Park water reservoirs and proposed modifications to the reservoirs.

A copy of the Use Determination has been placed in the public registry, and may be viewed at the Development Services Center, 1900 SW Fourth Avenue, First Floor, Portland, Oregon 97201.

Owner: City of Portland
1120 SW Fifth Avenue
Portland, OR 97204

Representative: Mary Ellen Collentine
Portland Bureau of Water Works
1120 SW Fifth Avenue, Room 600
Portland, OR 97204

Site Address: Mt. Tabor Park, SE 60th Avenue and SE Salmon Street

Legal Description: Section 05, 1S 2E, TL 100, 190.28 acres; Section 05, 1S 2E, TL 400, 0.21 acres; Partition Plat 1997-85, Lot 2, New Plat 1997; East Lynne, TL 11000, Lots 1-5, Block 9; East Lynne, TL 10900, Lots 1-5, Block 9

Tax Account No.: R#99205-0130 (R332503), R#9205-2680 (R332679), R#64977-3380 (R239628), R#22500-0570 (R149581), R#22500-0590 (R149582)

State ID No.: 1S2E05 100, 1S2E05BC 400, 1S2E05CC 8702, 1S2E05BB 11000, 1S2E05BB 10900

Quarter Section: 3136, 3137, 3236 and 3237

AH A pg 2 of 5

Neighborhood: Mt. Tabor, contact Dave Hilts at 503-235-4361;
Within 1,000 feet of site: South Tabor, contact Bob Fredrikson at
503-775-4010

District Coalition: Southeast Uplift, contact Judith Gonzalez-Plascencia at 503-232-0010

Business District: Eighty-Second Avenue, contact Joel Grayson at 503-771-7929

Plan District: None

Zoning: OSc (Open Space with Environmental Conservation Overlay Zone)

This Order of Council is final. You may appeal this determination to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with LUBA as specified in the Oregon Revised Statute 197.830. LUBA's mailing address is: Public Utility Commission Building, 550 Capitol Street, Suite 235, Salem, OR 97310-2552. You may call LUBA at (503) 373-1265 for further information on filing an appeal.

Attachments:

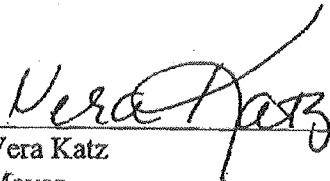
Order of Council
Bureau of Development Services' Recommended Use Determination
Bureau of Water Works' Request for Use Determination
Zoning Map

Att A pg 3 of 5

ORDER OF COUNCIL

On Wednesday, August 27, 2003, the City Council considered and hereby adopts the attached recommended Use Determination pursuant to ORS 227.160(2)(b) and 227.175 (11)-(12) regarding the use classification of the Mt. Tabor Park water reservoirs and proposed modifications to the reservoirs.

Dated: SEP 03 2003



Vera Katz
Mayor

Att A pg 4 of 5



CITY OF
PORTLAND, OREGON

BUREAU OF WATER WORKS

Dan Saltzman, Commissioner
Morteza Anoushiravani, P.E., Administrator
1120 SW 5th Avenue
Portland, Oregon 97204
Information (503) 823-7404
Fax (503) 823-6133
TDD (503) 823-6868

August 11, 2003

Ray Kerridge
Director, Bureau of Development Services
1900 SW 4th Avenue
Portland, OR 97201

Re: Buried Water Storage in Mount Tabor Park

Dear Mr. Kerridge:

An issue has been raised about the appropriate zoning use classification of the reservoirs at Mount Tabor and based on that classification, the land reviews, if any, that would apply to the replacement of the open reservoirs at this site with buried tanks. There also is a related issue as to whether this replacement work is considered a "demolition" or "alteration" under the zoning code. In order to assist us in proceeding with this work, the Water Bureau requests a use determination to clarify and respond to these issues. Please use the attached information to assist you in making this determination. If you have questions, please contact me at 823-7474. Thank you for your efforts.

Sincerely,

Mary Ellen Collentine, P.E.

cc: Rebecca Esau, BDS
Susan McKinney, BDS
Douglas Hardy, BDS
Jeff Joslin, BDS
Dennis Kessler, WB
Kathryn Beaumont, CAO
Pete Kasting, CAO

Attachment

An Equal Opportunity Employer

EXHIBIT 1

Attachment A pg 5 of 5



CITY OF

PORTLAND, OREGON

Charlie Hales, Mayor
Amanda Fritz, Commissioner
Nick Fish, Commissioner
Dan Saltzman, Commissioner
Steve Novick, Commissioner

MONDAY, JUNE 3, 2013 – The City of Portland has been turned down several times over the years in its request to avoid or delay complying with public health requirements regarding open drinking water reservoirs. In May 2013, the Oregon Health Authority refused our latest request for a delay.

Faced with no other legal options and with deadlines looming, the city will move forward to meet the compliance timeline.

In approving the 2013-14 budget, we will continue moving forward on a multi-year plan for Portland's drinking water reservoirs.

The Environmental Protection Agency rule – known as the Long Term 2 Enhanced Surface Water Treatment Rule, or LT2 – is an unfunded federal mandate to not use uncovered reservoirs to store finished drinking water in order to reduce the risk of exposure to contaminants.

The city has been fighting LT2 since its inception.

- In 2006, the city appealed the EPA rule in federal court and lost.
- In 2009, the city sought EPA guidance on how to obtain a variance, and was told no variance was possible.
- When the EPA later moved regulatory oversight to the Oregon Health Authority, the city again asked for a variance and was turned down.
- In 2011, the city asked the state if a variance was possible and was told it was not.
- Later in 2011, the city asked the state to suspend enforcement of the provision until federal regulatory review was completed, and was turned down.
- In 2012 and again in 2013, the city asked the state for a delay. The city was turned down each time.

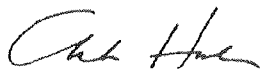
The reservoirs at Mount Tabor will be disconnected when new reservoirs, being constructed at Powell Butte and Kelly Butte, are completed. This is projected to take effect by December 31, 2015.

At Washington Park, one reservoir will be decommissioned and the other renovated and covered, gaining a reflecting pool similar to the current appearance atop the buried tank.

We are looking to the community to help us preserve these historic structures, and will conduct an inclusive public process to plan the future of our world-class parks. Recognizing the impact that compliance will have on rates, we will heighten scrutiny of all capital projects and contracts to keep rate increases as low as possible.

Att B pg 1 of 2

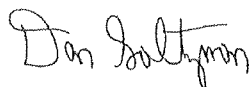
Portland is blessed with one of the best drinking water sources in the world. Therefore, the city will continue its strong advocacy in support of the Bull Run sourcewater treatment variance under a separate LT2 provision.



Charlie Hales
Mayor



Nick Fish
Commissioner



Dan Saltzman
Commissioner



Steve Novick
Commissioner

Att 6 pg 2 of 2



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May 16, 2011

Possible Variance and Schedule Modifications for the City of Portland Under the Long Term 2 Enhanced Surface Water Treatment Rule

Dear

Thank you for the opportunity to provide a legal opinion on several issues related to the Portland Water Bureau's (PWB) compliance with the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 Rule) adopted by the State of Oregon. Specifically, we analyzed the LT2 Rule's requirement that the City of Portland treat or cover its finished water storage facilities, the possibility of obtaining a variance from the requirement, and the possibility of modifying the approved schedule for LT2 Rule compliance.

Because the State of Oregon has primary enforcement authority for the LT2 Rule, state law guides our analysis. With respect to a possible variance, the relevant Oregon statute allows the Oregon Health Authority to grant a variance from requiring the use of a specific water treatment technique such as covering a water reservoir or treating water discharged from the reservoir if it determines that the treatment technique is not necessary to protect the public health based on the nature of the raw water source. To obtain a variance, it would be necessary to have the uncovered reservoir be considered to be part of the raw water source, and to show that the quality of the source (including the reservoir) did not require treatment. The term "raw water source" is not defined in the federal Safe Drinking Water Act (SDWA), federal regulations or state regulations. The term "uncovered finished water storage facility" is defined in the LT2 Rule as a reservoir "that will undergo no further treatment to reduce microbial pathogens..." Because the LT2 Rule requires additional treatment, the PWB could argue that its uncovered water reservoirs are a raw water source and not a finished water storage facility, and that a variance should be granted.

In addition, because the state statute provides the intent of the state legislature, the state statute that allows this variance should prevail over a state regulation that does not allow a variance.

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May 16, 2011

Page 2

To modify the compliance schedule, there are no specific federal or state statutory or regulatory provisions for adjusting an approved schedule. Similarly, there is no related guidance on point. However, implementing regulations for other aspects of the SDWA allow for modification of state-approved schedules such as a state-approved corrective action plans, and the City of Portland could use this as the basis for a modification under the LT2 Rule.

I. BACKGROUND

The U.S. Environmental Protection Agency (EPA) promulgated the LT2 Rule on January 5, 2006 (71 FR 653). The rule's purpose, as stated by EPA, is to reduce disease incidence associated with *Cryptosporidium* and other disease-causing microorganisms in drinking water. The rule requires water systems to conduct two rounds of source water sampling for *Cryptosporidium*, and based upon the data collected, upgrade or install additional control technologies in order to achieve a specific removal/inactivation rate. The rule also requires that all water systems using uncovered finished water storage facilities to either cover any uncovered finished water storage facility, or treat the discharge from the uncovered finished water storage facility to the distribution system to achieve inactivation and/or removal of at least 4-log virus, 3-log *Giardia lamblia*, and 2-log *Cryptosporidium*.

The City of New York, NY and the City of Portland are two large cities in the nation that continue to utilize uncovered finished water storage facilities. Because of the stringent controls on source water protection, both cities have historically been able to control pollutants in their drinking water, and neither city has experienced *Cryptosporidium* outbreaks in their drinking water systems. Because of the size of their finished water storage facilities, New York and Portland will have significant costs for compliance with the LT2 Rule.

We understand that the PWB is requesting a variance from the additional source water treatment requirements of the LT2 Rule. In the event the variance is not granted, the PWB has a compliance date of April 1, 2014 for the completion of capital improvements. At this time, the PWB does not intend to seek a variance from the requirement to cover its reservoirs. They have an approved compliance schedule, and currently plan to disconnect all open reservoirs by December 31, 2020.

II. VARIANCE PROVISIONS UNDER FEDERAL AND STATE LAW

EPA promulgated the LT2 Rule under the authority of the SDWA. See 42 U.S.C. § 300f *et. seq.* The State of Oregon has primacy to enforce the provisions of the federal rules under a grant from EPA, and the state promulgated the LT2 Rule requirements. See OAR 333-061-0032.

Under the SDWA, EPA has three options for issuing a variance, and the Oregon legislature has adopted a variance provision equivalent to one of them. The state variance provides, in relevant part, that:

- (2) The authority may grant variances from standards requiring the use of a specified water treatment technique if the authority:

AHC pg 2 of 5

- (a) Determines that the use of a specified water treatment technique is not necessary to protect the public health based on the nature of the raw water source for a public water system;
- (b) Has conditioned the variance as required by the federal Safe Drinking Water Act, 42 U.S.C. 300g-4;
- (c) Has announced its intent to grant a variance and has either:
 - (A) Held a public hearing in the area prior to granting the variance; or
 - (B) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the authority may grant the variance; and
- (d) Promptly notifies the administrator of the United States Environmental Protection Agency of any variance granted, as required by the federal Safe Drinking Water Act.

See ORS 448.135(2); see also 42 U.S.C. 300g-4(a)(1)(B).

Two other variance options that EPA could grant are not available to the PWB in seeking a variance from treating or covering the reservoir. One of the unavailable variances allows EPA to grant a variance to a public water system which, because of the characteristics of its raw water sources, cannot meet maximum contaminant levels set by a national primary drinking water regulation. See 42 U.S.C. 300g-4(a)(1)(A). This variance is not available because the PWB would be seeking a variance from a treatment technique (e.g., covering the reservoirs) and not a variance from the maximum contaminant levels.

The other unavailable variance authorizes the EPA to "grant a variance from any treatment technique requirement . . . upon a showing . . . that an alternative treatment technique . . . is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed." See 42 U.S.C. 300g-4(a)(3). The state has not adopted an equivalent variance provision because this variance was provided by federal statute exclusively to EPA.

We understand that EPA issued a letter to the City of Portland on December 16, 2009 in which they stated that two variance provisions of the SDWA, including the variance provision equivalent to the variance adopted by the state and discussed above, are not applicable to the requirement to cover the reservoirs. In particular, EPA stated that this variance provision is not applicable because the vulnerability of the uncovered reservoirs is unrelated to the nature of the raw water supply. Because the State of Oregon has been granted primacy to implement the provisions of the SDWA, EPA's determination in this letter is not binding. The state has the authority to make an independent determination regarding whether a variance should be granted.

In addition, the Oregon Drinking Water Program has also published a state regulation (OAR 333-061-0045(12)) which would prohibit a variance permitting the PWB to not cover their finished water storage facility. We believe this implementing regulation is inconsistent with the clear intention of

Attc pag 3 of 5

the state legislature requiring that a specific determination must be based upon the nature of the raw water source. A blanket prohibition against variances from a specified water treatment technique was not the intent of the legislature.¹

III. ARGUMENT FOR VARIANCE FROM THE STATE

With respect to a possible variance, the relevant Oregon statute allows the Oregon Health Authority to grant a variance from requiring the use of specific water treatment techniques if it determines that the treatment technique is not necessary to protect the public health based on the nature of the raw water source. *See* ORS 448.135(2). Both covering the reservoirs and treatment of the discharge from the reservoirs are considered water treatment techniques.

To obtain a variance, the PWB can argue that the uncovered reservoir is part of the raw water source, and show that the quality of the source (including the reservoir) did not require treatment. The term "raw water source" is not defined in the federal Safe Drinking Water Act (SDWA), federal regulations or state regulations. The term "uncovered finished water storage facility" is defined in the SDWA regulations as a reservoir "that will undergo no further treatment to reduce microbial pathogens..." *See* 40 CFR § 141.2. Because the LT2 Rule requires additional treatment, the PWB could argue that its uncovered water reservoirs are a raw water source and not a finished water storage facility, and that a variance should be granted.

In the event that the state does grant a variance, EPA has the authority to step in and attempt to revoke the variance, either through issuance of an order under the SDWA (42 U.S.C. 300g-3(g)) or by bringing a civil action in district court under the Act (42 U.S.C. 300g-3(b)). In either case, the PWB could contest this action and argue that a determination by the State of Oregon was within the authority granted to it by the SDWA. Even though a legal analysis of this scenario is beyond the scope of this letter, case law does indicate that the PWB would be likely to prevail. *See U.S. v. Massachusetts Water Resources Authority*, 256 F.3d 36 (1st Cir. 2001) (attached).

In addition to case law upholding a state variance determination, it appears unlikely that EPA would challenge the determination. During her February 2, 2011 testimony before the U.S. Senate Committee on Environment and Public Works, EPA Administrator Lisa Jackson stated that, if the State of Oregon grants a variance to the City of Portland, EPA would work to support the State and that "[EPA doesn't] expect that we would be working in opposition to [the State]."

IV. AN EXEMPTION IS NOT APPLICABLE

EPA allows public water systems to request exemptions from any treatment technique requirement, in accordance with 42 U.S.C. 300g-5. The exemption allows the public water system up to

¹ ORS 448.131 authorizes the state's Drinking Water Program to adopt administrative rules. With respect to the variance issue, the Drinking Water Program could at any time revise the current rule to make it consistent with the state statute. It would be required to follow public notice and comment procedures.

Attachment C pg 4 of 5

May 16, 2011

Page 5

three years beyond the otherwise applicable compliance date to bring the system into compliance with the treatment technique requirement. The exemption provision would not be applicable in this situation, however, as there is not an applicable compliance date for the requirement to treat or cover the reservoirs. Instead, the LT2 rule requires that the system must be installed in accordance with a State-approved schedule. Without an applicable compliance date, there is no basis for an exemption request.

At the same time, because there is not a federally-imposed compliance date to treat or cover the reservoirs, the City of Portland and the state can determine an appropriate compliance date.

V. ARGUMENT FOR MODIFYING THE STATE-APPROVED SCHEDULE

The PWB submitted a construction schedule to the EPA and the State of Oregon on March 25, 2009, and the schedule was approved on March 27, 2009. There are no specific provisions, either in the SDWA, or in the LT2 Rule, requiring adherence to a specific schedule. Furthermore, there is no guidance either from EPA or the State of Oregon on a procedure for adjusting an approved schedule, or identifying possible reasons a modification would be allowed or disallowed. However, because EPA implementing regulations for other aspects of the SDWA allow for modification of state-approved schedules, it is possible that modifications would be allowed under the LT2 Rule. See 40 CFR 141.403 (a)(5)(ii)(A), requiring that any subsequent modifications to a SDWA state-approved corrective action plan and schedule must also be approved by the State. Therefore, the PWB can use this as the basis for arguing for a modification of the current plan, and for additional time to achieve final compliance.

Please let us know if you have any questions.

Very truly yours,



David W. Wagner
Mark A. Mustian

Attc per 5/15



PUBLIC HEALTH DIVISION
Drinking Water Program

John A. Kitzhaber, MD, Governor

Oregon
Health
Authority

800 NE Oregon Street, #640
Portland, OR 97232-2162

Phone 971-673-0405

FAX 971-673-0694

TTY-Nonvoice 971-673-0375

December 9, 2011

David Shaff, Administrator
Portland Water Bureau
1120 SW 5th Avenue, Suite 600
Portland, OR 97204-1926

Dear David:

I am writing in response to your letter dated August 23, 2011, in which you ask for an "indefinite suspension" of the Bureau's compliance schedule to comply with the requirement to treat or cover the City's 5 uncovered reservoirs pending the recently announced EPA review of the LT2 rule. We responded to you on October 11 that we were anticipating guidance from EPA to state Primacy agencies on this issue.

Attached is the guidance we received from EPA headquarters. EPA states that their LT2 review is not a proper basis for amending an existing state-approved schedule to comply with the rule's finished drinking water storage facility requirement.

Sincerely,

Dave Leland, PE, Manager
Drinking Water Program

DEL:dw

Enclosure

ATTN pg 1 of 3

Received

DEC 13 2011

Portland Water Bureau
Administration

Leland David E

From: Shibley Gail R
Sent: Wednesday, December 07, 2011 12:53 PM
To: 'Dougherty.Cynthia@epamail.epa.gov'; gail.r.shibley@state.or.us
Cc: Bussell.Mike@epamail.epa.gov; Bergman.Ronald@epamail.epa.gov; Leland David E; Salis Karyl L (karyl.l.salis@state.or.us)
Subject: RE: LT2 regulation review and compliance schedules
Expires: Friday, June 15, 2012 12:00 AM

cynthia:

thank you for your note. I understand from your email below that epa's lt2 rule review is not a proper basis for amending an existing state-approved schedule to comply with the rule's finished drinking water storage facility requirement.

I very much appreciate the clarification of this important detail.

regards,
gail

Gail R. Shibley, J.D.
Administrator, Environmental Public Health Oregon Health Authority
<http://public.health.oregon.gov/HealthyEnvironments>
gail.r.shibley@state.or.us
V: 971/673-0403
F: 971/673-0456

"If you want to learn about the health of a population,
look at the air they breathe, the water they drink, and the places where they live."
Hippocrates

-----Original Message-----

From: Dougherty.Cynthia@epamail.epa.gov [mailto:Dougherty.Cynthia@epamail.epa.gov]
Sent: Wednesday, December 07, 2011 10:34 AM
To: gail.r.shibley@state.or.us
Cc: Bussell.Mike@epamail.epa.gov; Bergman.Ronald@epamail.epa.gov
Subject: LT2 regulation review and compliance schedules

Gail,

You asked me how the Agency's review of the Long Term 2 Enhanced Surface Water Treatment Rule would impact water systems' compliance requirements and schedules for covering their finished water reservoirs under that rule.

The requirements of the LT2 rule are still in effect. The LT2 rule is important for drinking water quality and public health protection, and the uncovered reservoir requirements protect against the potential for re-contamination of treated drinking water with disease-causing organisms, specifically Cryptosporidium, Giardia, and viruses.

AHD pg 2 of 3

The rule review process does not provide a basis to modify compliance obligations. However, there may be specific articulable facts that warrant compliance schedule adjustments. Many public water systems face multiple challenges as they manage, maintain, and operate their systems.

In addition, infrastructure construction projects may also present challenges. Primacy agencies can evaluate these system-specific issues when evaluating a request to adjust a compliance schedule. If a schedule adjustment is appropriate, the public water system should have robust interim measures in place to ensure public health protection, and those interim measures should remain in effect until that system comes into compliance with the rule.

Please let me know if you have additional questions.

Cynthia C. Dougherty
Director
Office of Ground Water and Drinking Water (4601M)
(202) 564-3750 - Phone
(202) 564-3753 - Fax

AHD pg 3 of 3



PUBLIC HEALTH DIVISION
Drinking Water Program
John A. Kitzhaber, MD, Governor

Health

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FAX 971-673-0694
TTY-Nonvoice 971-673-0375

May 17, 2012

David Shaff, Administrator
Portland Water Bureau
1120 SE 5th Avenue
Portland, OR 97204

Dear David:

This letter responds to your February 10, 2012 request for a delay to the Portland Water Bureau (PWB) compliance schedule for meeting the Long Term 2 Enhanced Surface Water Treatment Rule (LT2) requirements for uncovered finished water reservoirs. PWB must complete two projects to comply; PWB proposes delaying the eastside project 8.5 years and the westside project 5.5 years.

Background

LT2 and EPA

LT2 requires all public water systems that store treated ("finished") water in uncovered reservoirs to either cover the facilities or treat the effluent to achieve inactivation and/or removal of 99.99% of viruses, 99.9% of *Giardia* and 99% of *Cryptosporidium*. Water systems had to either meet this requirement or be on an approved compliance schedule no later than April 1, 2009.

PWB chose to provide covered reservoirs rather than treat the effluents of existing reservoirs and so notified the Environmental Protection Agency (EPA), the Primacy agency for the LT2 rule at the time. PWB would comply by constructing covered reservoirs and, upon completion, disconnecting PWB's five uncovered reservoirs. Further, PWB proposed dates for disconnecting the Mt. Tabor and Washington Park uncovered reservoirs to the EPA: the three reservoirs on Mt. Tabor would be disconnected by December 31, 2015, and the two in Washington Park would be disconnected by December 31, 2020.

On March 25, 2009, PWB submitted to EPA additional detail regarding interim milestone deadlines as part of PWB's proposed compliance schedule. The schedule reiterated the original completion dates proposed by PWB to no longer

Att E pg 1 of 5

rely on uncovered finished drinking water reservoirs. In a memo to Commissioner Leonard also dated March 25, 2009 (the date of PWB's proposed compliance schedule to EPA), PWB stated that the compliance schedule option being proposed by PWB to EPA "allows some projects to be built concurrently without interfering with operations and customer service." Two days later, EPA accepted and approved the schedule as submitted by PWB.

Thus, the completion dates which PWB is subject to are the dates PWB proposed to EPA.

Prior to LT2 requiring this action, PWB expressed its clear intent to cover its uncovered reservoirs on numerous occasions. For example, PWB wrote a letter to EPA September 18, 2002 describing proposed action to improve PWB's lead (Pb) control program, essential to minimize exposure to this potent neurotoxin. In this letter, PWB cited covering or replacing the existing uncovered reservoirs as the primary long-term strategy to reduce lead exposure through drinking water, and stated an anticipated date of July, 2006 for covering or replacing all uncovered reservoirs.

LT2 and OHA

On July 8, 2009, EPA granted the Oregon Health Authority (OHA) Interim Primacy for the LT2 rule, and OHA continues to have Interim Primacy over LT2.

As the lead enforcement agency, OHA has discretion under state statutes and rules to extend formal compliance schedules, and has done so on occasion at the request of water suppliers. If a water supplier requests an extension to an agreed-upon compliance schedule, OHA thoroughly reviews the request to determine if a delay is necessary and thus an extension is warranted under the circumstances.

More specifically, the water supplier must be able to demonstrate continuing, steady progress toward compliance, and that specific, unforeseen circumstances outside the water supplier's control have caused the delay. Examples of such circumstances have included delays in construction due to weather, contractors, equipment availability, supply delivery, or unexpected geologic conditions; delays in necessary state or federal project funding; and delays in permitting and approvals by other governmental agencies. In all cases, OHA re-evaluates interim public health risk and mitigation measures required in the compliance agreement to assure that public health is protected during the unavoidable delay.

Att E pg 2 of 5

Prior PWB Request

OHA followed the practice outlined above when, on June 8, 2010, PWB requested a modification from OHA of one of the interim milestone deadlines in the original LT2 compliance schedule. PWB's request included demonstration of continuing, steady progress towards compliance, and articulated the specific circumstances that caused the need for a delay. OHA approved this interim milestone modification on June 15, 2010. We noted then and do again today that PWB did not request any change to its ultimate compliance date, and the date of disconnecting the reservoirs from the water system remained unchanged.

Current PWB Request

PWB now requests a modification that results in project delays of 8.5 years and 5.5 years based on unchanged circumstances, and an apparent multi-year suspension of effort toward regulatory compliance. Figure 1 below is reproduced from PWB's current request to OHA:

	Fiscal Year Ending														
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Approved Schedule (March 27, 2009)															
Forest Butte Reservoir 2	C	C													
Kelly Butte Reservoir	D	C	C												
Open Reservoir Adjustments at Tabor	D	D	C	C											
Washington Park Reservoir 3	P	P	P/D	D	D	C	C	C							
Proposed Adjustment															
Forest Butte Reservoir 2	C	C	C	C											
Kelly Butte Reservoir	D						D	C	C	C					
Open Reservoir Adjustments at Tabor	D							D	D	D	D	C	C		
Washington Park Reservoir 3	P							D	D	D	D	C	C	C	C
Phases															
	P Planning										P/D Planning and Design				
	D Design, Permits, and Land Use										C Construction				

AHE pg 3 of 5

Figure 1. Time Line Showing Approved Schedule and Proposed Adjustment for Major Projects³

³ Small supporting system improvement and transfer station projects are shown in the detailed schedule available as Attachment B.

Benefits of Covered Reservoirs

EPA has long stated that storage of treated drinking water in uncovered reservoirs can lead to significant water quality degradation and increased health risks to consumers (See, e.g., Uncovered Finished Water Reservoirs Guidance Manual,

EPA, April 1999; Federal Register, January 5, 2006, pp 713-715). The LT2 requirement to cover or treat water from uncovered reservoirs is intended to protect against the potential for recontamination of treated water by disease-causing organisms such as viruses, *Giardia* and *Cryptosporidium*. Such recontamination can occur from a wide variety of sources, including bird and animal wastes, human activity, algal growth, insects and airborne deposition. Uncovered reservoirs have also been known to cause water quality degradation such as increases in turbidity, bacteria growth, particulates, disinfection by-products, taste and odor problems, and nitrification of chloraminated water. Over the years, a number of specific contamination incidents associated with Portland's uncovered reservoirs have been reported by PWB and the local media.

Nationally, most uncovered reservoirs were constructed between the late 1800s and the early 1940s. Since then, it has been the standard of practice within the drinking water industry to cover newly constructed finished drinking water reservoirs, as indicated in the Ten State Standards, US Public Health Service standards, American Water Works Association policy, EPA regulations, as well as Oregon construction standards. According to EPA's Uncovered Finished Water Reservoir Guidance Manual, 750 uncovered reservoirs were in use across the United States in the mid-1970s, with the number falling to approximately 300 by 1992. According to EPA, the number dropped to 81 by 2006. In 2012, only 38 uncovered reservoirs remain in the US, including 5 in Portland. Uncovered reservoir projects in two other Oregon communities are complete and a third Oregon community will complete its project this year.

Public Health and Security Co-Benefits

In addition to the risks associated with uncovered reservoirs identified above, there are also important co-benefits to covering or replacing uncovered reservoirs. Because uncovered reservoirs allow for atmospheric exchange with the water, the associated water chemistry changes can interfere with optimizing corrosion control treatment. This interference may result in higher concentrations of lead (Pb) in water at the tap. In addition, the chlorine on which PWB depends to treat its water can dissipate in uncovered reservoirs, depleting disinfectant residuals in the distribution system intended to protect against bacterial regrowth and recontamination. Finally, uncovered reservoirs present security risks for intentional contamination of or damage to the water supply.

AHE pg 4 of 5

Conclusion

PWB requests a delay in complying with the federal uncovered finished water reservoir requirement. However, PWB's request does not identify any specific circumstances not previously known to PWB when PWB a) proposed its compliance schedule in 2009, or b) proposed its interim milestone modification in 2010. Further, the proposed timing appears to reflect a suspension of effort to comply with the mandated regulation, rather than continuing, steady progress toward regulatory compliance.

Thus, PWB's compliance schedule approved by EPA on March 27, 2009, with the interim milestone modification approved by OHA on June 15, 2010, remains in effect.

We are mindful of the technical and economic challenges communities face in providing safe drinking water to their consumers. OHA remains committed to working with PWB as you work steadily to comply with regulatory requirements.

Sincerely,



Dave Leland, PE, Manager
Drinking Water Program

DEL:dw

Att E pg 5 of 5

July 17, 2013

Mr. Dana Haynes, Communications Director
Office of the Mayor, City of Portland
1221 S.W. 4th Avenue, Suite 340
Portland, OR 97204

RE: Your call of July 16, 2013
LT2 and Open Reservoir Burial

Dear Mr. Haynes:

Thank you for your call yesterday in response to my June 13, 2013, letter to the Mayor. In that letter I had expressed skepticism about the Mayor's June 3 statement that the City has "been fighting LT2 since its inception" and is "faced with no other legal options" than to decommission Portland's open reservoirs and replace them with buried tanks.

You have clarified to me the City of Portland's position, which I understand to be as follows:

- You indicated that the Mayor and City Council continue to oppose reservoir *burial* as a matter of principle.
- You indicated that the Mayor and City Council continue to oppose reservoir *treatment* as a matter of principle.
- You stated that the City of Portland chose the burial option, when it submitted its EPA-compliant schedule in 2009, solely because the EPA's November 6, 2007, ruling forced the City to choose either burial or post-treatment, and the City felt that burial was the less onerous and costly of these two options.
- You pointed out that the City of Portland has twice asked its LT2 enforcement agent, the Oregon Health Authority, for schedule extensions. You explained that the City made these requests pursuant to the EPA's recent announcement that it will reconsider the LT2 open reservoir coverage requirement by 2016; and pursuant to the two other open-reservoir cities (Rochester and New York City) being allowed to delay reservoir burial while LT2 is reconsidered. You stated that the OHA denied Portland's most recent request on April 29, 2013.
- You reiterated that The Mayor and City Council continue to oppose reservoir burial, but have proceeded with burial plans based solely on their contention that they have exhausted all other options.

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Accordingly, please provide me with copies of, or links to, the following documents (kindly let me know if there will be up-front copying charges):

1. With respect to the City's claim to have exhausted all alternatives to burial, please provide me with:
 - a. A copy of the City of Portland's timely appeal of the April 29, 2013 denial issued by OHA Drinking Water Program Manager David Leland, filed before the department, court or agency with authority to review and overturn Mr. Leland's decisions.
 - b. A copy of the City's appeal to said entity, showing that the City has (1) challenged Mr. Leland's insupportable contention that there is a "lack of change in the evidence and science around the public health risks"; (2) assiduously endorsed the testimony of its Water Bureau Administrator, David Shaff, that the City's current rushed burial schedule endangers public health and safety by interrupting water supply and leaving citizens vulnerable in case of emergency; and (3) cited its flagship participation in rigorous Cryptosporidium studies whose data earned Portland the only pre-treatment variance ever granted by the EPA, and whose data will also be used by the EPA when reviewing LT2's validity in 2016.
 - c. A copy of the City's appeal to said entity, showing that the City has (1) Challenged Mr. Leland's spurious claim that EPA's 2016 regulatory review is unlikely to result in "wholesale changes"; (2) submitted in contradiction to Mr. Leland's claim a copy of EPA Administrator Lisa Jackson's August 19, 2011, statement that in light of "new data and information,"..."the need to mandate a reservoir cover"..."warrant[s] further review"; (2) submitted in contradiction to Mr. Leland's claim a copy of EPA Acting Assistant Administrator Nancy Stoner's January 27, 2012, invitation to the City of Portland be considered for "compliance schedule adjustments," and to participate in a spring 2012 public meeting with the EPA to present "new information related to uncovered finished water reservoirs," in order for the EPA to "assess and analyze new data and information...to evaluate whether there are new or additional ways to manage risk"; and (3) submitted in contradiction to Mr. Leland's claim a copy of President Obama's Executive Order 13563, dated January 18, 2011, mandating that federal agencies review regulations "that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify...or repeal them in accordance with what has been learned."

Att F pg 2 of 5

- d. A copy of the section of the City's appeal to said entity, showing that the City has (1) challenged Mr. Leland's reliance for his decision on direct comparison between Portland and Rochester, New York; (2) cited EPA Administrator Lisa Jackson's August 19, 2011, letter referencing New York City's decades-long compliance schedule; and (3) asserted that there is no regulatory requirement that Portland's water system be identical to Rochester's, or New York City's, in order for Portland to merit equal protection under the law.
 - e. A copy of the docket in the above-referenced appeal, listing dates when concerned parties and agencies may attend hearings and offer testimony before the appropriate entity.
 - f. A copy of the testimony which the City of Portland submitted during its attendance at the spring 2012 public conference to which EPA Acting Assistant Administrator Nancy Stoner invited the City of Portland in her January 27, 2012, letter.
 - g. A copy of the communication(s) between the City of Portland and Senator Merkley, showing that the City has (1) challenged Senator Merkley's June 18, 2009, assertion that "it is very clear from my colleagues in the Senate that a legislative approach has very little chance for success"; (2) reminded Senator Merkley that he serves on the Senate Environmental and Public Works Committee, which controls funding to the EPA; (3) reminded Senator Merkley that his colleague on that committee is Senator Kirsten Gillibrand, whose political clout and connections to Senior Senator Charles Schumer were instrumental in obtaining the EPA's 2011 policy shift regarding LT2's open reservoir rules; and (4) unambiguously demanded that Senators Merkley and Gillibrand use their authority on the Environment and Public Works Committee, their budgetary power over the EPA, and the support of Congressman Blumenauer as pledged in his multiple communications on the subject, to ensure that Portland is provided with immediate legislative relief from LT2.
2. With respect to the City's claim to have chosen the least onerous and costly approach to LT2, please provide me with:
- a. A copy of the City of Portland's study/studies showing that post-treating the open reservoirs' contents as they leave the reservoirs is more onerous and expensive than the sum of (1) "\$440.1 million in outstanding debt"; plus (2) "hundreds of millions of dollars" in projected future expenditures; (3) plus "\$36.1 million" per year in debt service; as quoted from Commissioner Leonard's February 4, 2013, request to delay reservoir burial.

Att. F pg 3 of 5

- b. A detailed list of the other water users to which you referred, when you stated that post-treatment of open reservoirs would require construction of multiple, costly facilities because of "all the other users" who receive outflow from Portland's three open reservoirs.
 - c. A copy of the City of Portland's study/studies showing that costs associated with the City's current burial plans per item (a) above, are less than the \$1000-per-day maximum fine under 42 USC §300g-2 (which amounts to \$896,000 for the 896 days between now and the expected date of LT2's review) which the City would incur if it simply refused to comply with Mr. Leland's arbitrary and unreasonable demands.
3. In light of the numerous public allegations of fiscal mismanagement and conflicts of interest in the City's handling of Water Bureau contracts, please provide me with:
- a. Copies of the Mayor's public disclosures regarding his connections to the HDR firm, showing (1) his communications directing City officials to ensure that HDR did not benefit unfairly from the Mayor's potential conflicts of interest; and (2) the competitive bid documents comparing HDR's winning contract bids in comparison to those submitted by other firms.
 - b. Copies of City Hall's public disclosures regarding the potential conflicts of interest between all high-ranking City Hall and Portland Water Bureau principals whose spouses, and/or spouses' employers, received reservoir burial contracts and/or subcontracts.
 - c. Copies of the reservoir-related contracts awarded to HDR, MWH Global, CH2M Hill, and any other firms whose principals, or whose principals' spouses, work currently, or have recently worked, for the City of Portland; showing (1) the City's public announcements disclosing those potential conflicts of interest; (2) transcripts of the hearing(s) at which the public was informed of those conflicts of interest and allowed to object; and (3) the competitive bid documents showing these contractors' winning contract bids in comparison to those submitted by other firms.

AH F pg 4 of 5

As I mentioned, I am a Mt. Tabor resident on limited disability income, and am raising a child with health problems. My family cannot afford the financial burden of doubled water bills, nor the health risks should Portland compromise its pristine Bull Run watershed and its time-tested, incident-free open reservoirs.

I look forward to receiving the above documentation and sharing it with my friends, neighbors and community organizations.

Mr. Dana Haynes, Communications Director
July 17, 2013

Page 5 of 5

We will work tirelessly to ensure, in the words of Commissioner Leonard's February 4, 2013, letter to the Oregon Health Authority, that the City does not "proceed with the construction of these reservoir projects only to find out in 2016 that they are no longer mandated, [leaving] Portland ratepayers in debt for hundreds of millions of dollars...for a project that is not a public health priority."

And we will continue to hold the Mayor and City Council to their pledged opposition to LT2.

Sincerely,

181

cc: Concerned individuals and community groups

AH F pg 5 of 5



portlandwater.info

"Thirst was made for water, inquiry for truth."

Three Private Homes' Independent Testing Questions City's 5/23 Boil-Water Alert
 Posted Jun 17, 2014

Citations are coming soon! Meanwhile, browse our [chronologically organized outline of key documents and events](#) in the controversy surrounding Portland's municipal drinking water policy.

Email List

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Three Private Homes' Independent Testing Questions City's 5/23 Boil-Water Advisory

Portland Water Info has obtained documents showing that three private households near the open Mt. Tabor Reservoir had their tap water independently tested during the 5/23/2014 Boil Water Alert, and all samples tested negative for total coliform and E coli bacteria.

Lab Number	Sample Name	Method	Result	Analysis Date/ Time
4147003-01	bathub faucet			Sampled: 5/23/14 17:20
Microbiological Analysis				
+ Total Coliforms	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
+ E. coli	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
4147003-02	kitchen faucet			Sampled: 5/23/14 17:30
Microbiological Analysis				
+ Total Coliforms	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
+ E. coli	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
4147004-01	kitchen faucet			Sampled: 5/23/14 17:40
Microbiological Analysis				
+ Total Coliforms	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
+ E. coli	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
4147005-01	Bathroom tub faucet			Sampled: 5/23/14 18:15
Microbiological Analysis				
+ Total Coliforms	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
+ E. coli	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
4147005-02	Kitchen sink			Sampled: 5/23/14 18:05
Microbiological Analysis				
+ Total Coliforms	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05
+ E. coli	SM 9223B (coliert-18) 21st Ed.	Absent		5/24/14 14:05

Attachment G - p 1 of 4

Says one homeowner, "We feel we were lied to."

The three households, which include three children and two individuals with reduced immunity, became concerned when they were told by Portland Water Bureau on 5/23 that they may have been drinking contaminated water for three days. They decided to have their households' tap water tested independently, and the results all came back negative.

According to a group representative, "The City seems to have a habit of issuing boil-water notices over a weekend or holiday." (The City last issued a boil-water advisory on Saturday, 7/21/2012.) "And our neighborhood has a long history of being given conflicting information about our reservoir. Given the 30-hour testing window, weekend boil-water alerts seem almost tailor-made to prevent private citizens from being able independently verify whether our water is actually contaminated. This just raised too many red flags for us."

The home owners made special arrangements with an independent laboratory to do Saturday

testing of five samples collected on Friday. This included persuading a lab employee to work on his day off so that sample incubation could begin within 30 hours of specimen collection, as required by lab protocol.

"We had to drive across town in holiday traffic to get the sterile vials before closing time; coordinate testing among the different homes; then drive back across town to the lab's after-hours drop box. But it was the only way we could independently test the City's claim that the reservoir was sending us contaminated water. Of course we had to wait for the results, so we boiled our water like everyone else. But at least in the end we found out what really was--or in this case wasn't--in our water."

A representative from the laboratory in question confirmed that the facility performs total coliform and E coli testing for several local municipalities, though not for City of Portland, which does its own testing.

Concluded one home owner: "If the City put reservoir politics before the truth, that's not acceptable."

PortlandWater.info

Attachment G p 2 of 4

Monday, December 1st



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Water Bureau's May 23 Boil-Water Advisory Called Into Question by Citizen Group

July 1, 2014 10:35 am [0 comments](#) Views: 47

OP Ed By Katherin Kirkpatrick

A group of Mt. Tabor residents submitted their tap water for independent testing during the May 23, 2014, boil-water advisory, and all samples (five in total) tested negative for total coliform and E coli bacteria.

The Southeast Examiner has received copies of the reports confirming the negative results.

The residents, some of whom identify themselves as being at higher risk of waterborne illness due to age and health status, became concerned when the Portland Water Bureau informed them via robocall on May 23 that they may have been drinking contaminated water for several days.

As neighbors of the controversy embroiled Mt. Tabor open reservoirs, the group expressed skepticism of what they referred to as the Portland Water Bureau's "habit" of issuing boil-water advisories during holidays and weekends.

The current advisory came on a Friday afternoon and the last one occurred Saturday, July 21, 2012.

As one resident put it, "our neighborhood has a long history of being given conflicting information about our reservoir.

With their 30-hour testing window, weekend boil-water alerts seem almost tailor-made to prevent private citizens from independently verifying whether our water is actually contaminated as the City claims. This just raised too many red flags for us."

The group spent hours trying to locate an independent laboratory capable of testing household water over the holiday. Arrangements were eventually made with a facility in the West suburbs.

One homeowner drove for hours against holiday traffic to retrieve pre-treated vials, sterile gloves and alcohol swabs. The group then scrambled to collect five separate household samples according to the lab's specifications. Finally, the

Attachment G p 3 of 4

samples were driven back across town to an after-hours drop box.

Meanwhile, many group members continued to boil their water per Bureau instructions, as the test's incubation period meant that final results would not be available until well after the advisory ended.

According to one resident, "it was the only way we could independently test the City's claim that the reservoir was sending us contaminated water. At least in the end we found out what really was, or in this case wasn't, in our water."

A representative from the laboratory in question confirmed that the facility performs total coliform and E coli testing for local municipalities; though not for the City of Portland, which performs its own testing.

The incident did little to assuage the residents' doubts about the Portland Water Bureau's handling of the matter.

Said one resident, "If the City put reservoir politics before the truth, that's not acceptable."

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- 8+1 0

Author: [Nancy Tannler-Brewer](#)

Comments are closed

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Portland Weather

Today

Partly Cloudy
41°/30°

Monday

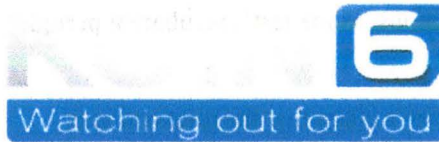
Ice Pellets
41°/34°

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Attachment G p 4 of 4



Coliform worries continue for Portland water

By Carla Castano and KOIN 6 News staff

Published: September 30, 2013, 12:50 pm



Attachment H pg 1 of 5

The Portland Water Bureau flushes a pipeline at 27th and Nevada. (KOIN 6 News)

PORTLAND, Ore. (KOIN) – Yet another water district has stopped pumping in some Portland water over continuing concerns (<http://www.koin.com/2013/09/26/sw-portland-water-test-results/>) about high levels of coliform bacteria.

The Portland Water Bureau is preparing a letter to be sent to **the 17,000 Southwest Portland households and businesses that were affected by this violation.** (<http://www.koin.com/2013/09/24/tigard-stops-taking-portland-water/>)

The Tualatin Valley Water District told KOIN Monday that it has joined the Tigard and Lake Grove water districts in temporarily halting some of its supply from the Portland Water Bureau.



TVWD serves about 200,000 customers in unincorporated portion of Washington County, and areas of Beaverton, Hillsboro and Tigard.



(<http://lintvkoin.files.wordpress.com/2013/09/coliform-questions-neighborhood-93013.jpg>)

More than 21,000 households in Southwest Portland, along with the Raleigh, West Slope and Valley View water districts are still being serviced by that water. PWB disclosed that it has received three more positive total coliform tests Monday — from the tank connected to this hydrant at SW 27th Avenue and Nevada Court. That tank has been testing positive for about two weeks now despite being flushed repeatedly. (KOIN 6 News)

PWB disclosed that it confirmed three more positive total coliform tests Monday from its tank at SW 27th Avenue and Nevada Court. That tank has been testing positive for about two weeks now despite being flushed repeatedly. More than 21,000 households in Southwest Portland, along with the Raleigh, West Slope and Valley View water districts are still being serviced by that water.

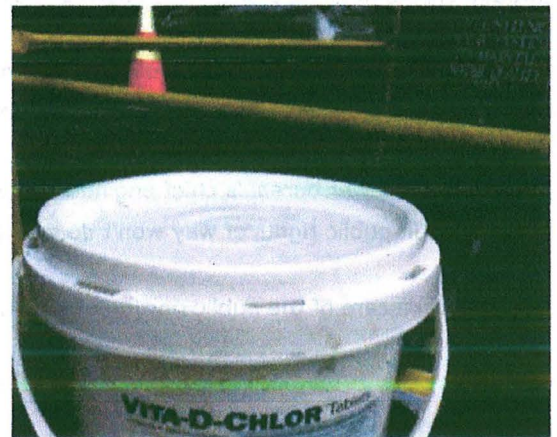
TVWD, Tigard and Lake Grove water districts have halted their supply from the impacted pipeline. TVWD is still receiving some Portland water, but neither Tigard nor Lake Grove are taking any water from Portland.

Total coliforms, a group of closely related bacteria (<http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/basicinformation.cfm>), can be an indicator of E. coli. However, PWB said all its E. coli tests have thus far been negative, and **ensures that the water from its Southwest Portland tank is safe to drink.** (<http://www.koin.com/2013/09/26/sw-portland-water-test-results/>)

In a statement released late Monday afternoon, PWB said:

“As a result of the detections for total coliforms in Southwest Portland, the Portland Water Bureau has been issued a Tier 2 violation by the state drinking water program. A Tier 2 notice is issued any time a water system provides water with levels of a contaminant that exceed standards but do not pose an immediate risk to human health . The regulatory standard for total coliforms is exceeded when more than 5% of all samples in a single month are positive for total coliforms. The Portland Water Bureau has exceeded 5% of the total coliforms taken during the month of September. In such violations, the water provider must notify its customers within 30 days of the violation. The Water Bureau is preparing a letter with the required notification that will be sent to the 17,000 Southwest Portland households and businesses that were affected by this violation.”

[lin_video src=http://eplayer.clipsyndicate.com/embed/player.js?aspect_ratio=16x9&auto_next=1&auto_start=0&div_id=videoplayer-1380600547&height=354&page_count=5&pf_id=9621&show_title=1&va_id=4392708&width=650&windows=2 service=syndicaster width=650 height=354 div_id=videoplayer-1380600547 type=script]



(<http://lintvkoin.files.wordpress.com/2013/09/water-cleaning-tablets-093013.jpg>)

The Portland Water Bureau flushes a pipeline at 27th and Nevada. They said they are only flushing it at this time and not using chlorine, Sept. 30, 2013 (KOIN 6 News)

Attachment H pg 2 of 5



Why Portland is footing bill to replace private sewer connections for West Hills but not the eastside

sewer_work.JPG

A contractor repairs a sewer connection in Northeast Portland. (Marv Bondarowicz/The Oregonian/file)

Brad Schmidt | bschmidt@oregonian.com By **Brad Schmidt | bschmidt@oregonian.com**

Email the author | Follow on Twitter

on May 12, 2014 at 6:30 PM, updated May 13, 2014 at 2:19 PM

Portland is spending an estimated \$1.25 million replacing sewer pipes on private property in the West Hills and may soon foot the bill for an additional \$2.85 million for more upgrades.

Nearly 320 homeowners have agreed to participate in a **pilot project** that covers the full cost of replacing the pipe that connects a home to the city's sewer system. Another 1,500 homes sit in high-priority westside areas that could become eligible for free replacements in the future.

Typically such costs are the responsibility of homeowners – an obligation many eastside residents learned the hard way in 2012 when the city started charging **\$5,100 per house to fix old pipes** that didn't meet current city code.

City officials say they hope the Southwest Portland project prevents rainwater from leaking into the sewer system through cracks in aging pipes, which during heavy rainstorms can cause raw sewage spills into Fanno Creek.

The **Bureau of Environmental Services** is also repairing or replacing larger main lines in Southwest Portland as part of a long-term project estimated to cost \$42.7 million.

Bill Ryan, the sewer bureau's chief engineer, said the city is doing the work for homeowners because simply improving sewer lines in public rights of way won't do enough to limit sewage spills.

"You can take care of the public portion of the sewer and solve (only) a small portion of the problem," Ryan said.

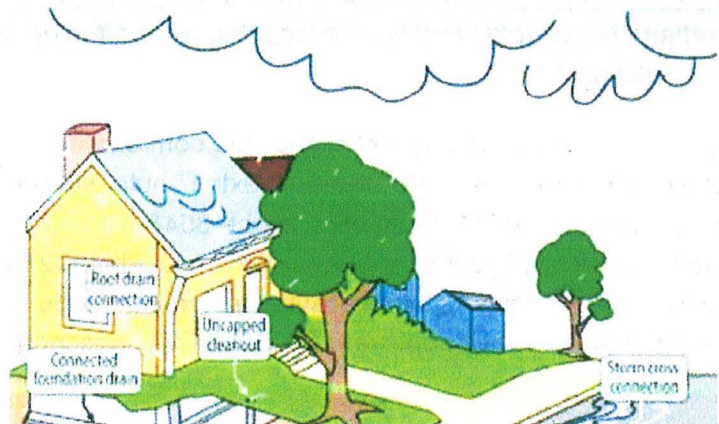
State demands a fix

Portland's sewer system in the West Hills is particularly susceptible to overflow issues during wet weather.

With its hilly terrain of clay and silt, westside ground can become saturated by rain. Water infiltrates pipes through cracks.

In 2011, the state **demanded a fix**.

Three times in three months, raw sewage spilled from a manhole near Southwest Dewitt Street and 25th Avenue, in the Hillsdale area. **Portland agreed**

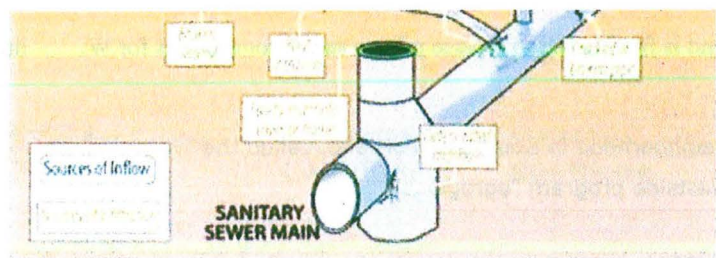


Attachment (pg 3 of 5)

meanwhile, the city can continue sending sewage into Fanno Creek during storms.

Portland **launched its pilot project hoping to make a dent** in the problem.

The city offered to complete the work for free in order to encourage participation, Ryan said. More than 80 percent of targeted homeowners have agreed to participate.



A diagram of how water inflow and infiltration gets into the sewer system. In Southwest Portland, officials are concerned about infiltration -- not inflow.

City of Portland

Another 1,500 homes are in top priority areas because they contribute to overflows at Fanno Creek or are in neighborhoods with high levels of water infiltration.

If the city keeps offering free replacements at a price of about \$2,200 each, total costs would be \$4.1 million, the city estimates.

All ratepayers would foot those costs, which would run about 6 cents a month for the typical customer – or one-tenth of one percent of the average bill. Of that, the pilot project represents 2 cents a month for the average customer.

The city estimates that repairing and replacing pipes to prevent water infiltration should be cheaper than increasing capacity with larger pipes or building a separate stormwater system.

"The upshot here is that by getting all of that stormwater that infiltrates in, whenever it rains, out of the sewer system, that is saving ratepayers lots of money," Ryan said.

Eastside residents upset

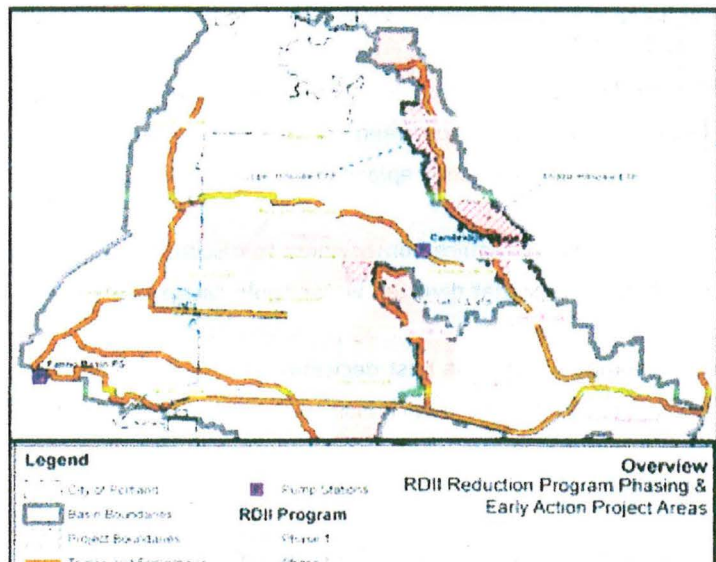
Not surprisingly, the program is drawing praise from residents in Southwest Portland who won't have to pay. But some eastside residents – on the hook for similar but not identical work – are frustrated.

Dick Loughney, who lives at the bottom of a hill just off Dosch Road in Southwest Portland, has signed up for the sewer bureau's pilot project.

The bureau is simply "fulfilling its obligations" to ratepayers who will ultimately cover the bill, Loughney said.

"I feel like I've been paying it forward," he said. "I'm not deluding myself into thinking the city is paying for it."

But Reuben Deumling, a resident of the Sunnyside



Attachment H pg 4 of 5

neighborhood in Southeast Portland, called the westside program "egregious."



City of Portland

In 2011, more than one hundred eastside residents received notice that they would be financially responsible for the entire cost of fixing sewer connections that violated code, some for pipes that were more than 100 years old.

These "nonconforming connections" included multiple homes sharing one pipe that feeds the sewer system, or private pipes running through other homeowners' properties. Officials **estimated about 2,300 improper connections citywide**, many in Portland's oldest eastside neighborhoods. The nonconforming sewer connections hinder redevelopment efforts.

The city never considered covering costs for fixing nonconforming sewers, Deumling said. He **helped negotiate a compromise** in 2012 where homeowners pay nearly \$5,100 and the city covers the rest, typically about \$8,000.

Regardless of whether sewers in Southwest Portland pose a health risk, Deumling said, the city should maintain a consistent policy.

"It doesn't seem logical," he said. "It seems like adding insult to injury."

City defends program

Ryan said the logic is simple: Preventing sewage spills, and avoiding more costly projects, benefits the entire community. Replacing nonconforming sewer connections benefits only the homeowner or future buyers.

"It goes back to who benefits," Ryan said.

Officials expect to track results from the pilot project this winter before making recommendations about whether to keep paying for private replacements.

Other options: an insurance fee charged to ratepayers, with proceeds covering a wide-range of issues beyond infiltration; cost-sharing between the city and homeowner; or requiring homeowners to pay, perhaps by mandating sewer-line inspections and replacement, if necessary, when a property is sold.

Officials also could require homeowners to disconnect foundation or gutter drains, although that option is considered a last resort for fear that diverted water could cause landslides.

"We're going to make the best decisions we can based on the data we get from the pilot," said Jim Blackwood, a policy director for Commissioner Nick Fish, who oversees the sewer bureau.

-- Brad Schmidt and Melissa Binder

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Attachment H 195 of 5

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action: Do Pass
Vote: 5 - 0 - 2
Yeas: Burley, Cannon, Macpherson, Smith G., Dingfelder
Nays: -
Exc.: Beyer, Jenson
Prepared By: Cat McGinnis, Administrator
Meeting Dates: 4/6, 4/20

WHAT THE MEASURE DOES: Authorizes the Department of Human Services (DHS) to grant variances from specified water treatment techniques when treatment is unnecessary for protecting public health. Requires DHS to announce its intent to grant the variance and either hold a public hearing or notify individual customers by mail or publish notice in the newspaper. Authorizes DHS to grant the variance if no hearing is requested within 10 days of the notice. Requires DHS to notify the US Environmental Protection Agency (EPA) of any variance granted, as required by the federal Safe Drinking Water Act.

ISSUES DISCUSSED:

- DHS primacy for Safe Drinking Water Act
- Cost to City of Portland if clean water variance not allowed

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The federal Safe Drinking Water Act (SDWA) authorizes states to issue two kinds of variances from US EPA drinking water rules. States may issue variances from drinking water standards when, due to the poor quality of all reasonably available raw water sources, water providers cannot meet the standards. Such variances may be issued only when several requirements are met, including imposition of a compliance schedule and regular notification to customers that their water does not meet standards. A second type of variance may be granted when, due to the high quality of raw water sources, SDWA treatment techniques are unnecessary for protecting public health. Oregon currently has enabling legislation to grant only the first type of variance.

pg 2 of 2
Attachment I

4/23/2007 11:43:00 AM

This summary has not been adopted or officially endorsed by action of the committee.

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass
Vote: 4 - 0 - 1
Yeas: Bates, Beyer, Prozanski, Avakian
Nays: 0
Exc.: Atkinson
Prepared By: Sue Marshall, Administrator
Meeting Dates: 5/24

WHAT THE MEASURE DOES: Authorizes the Department of Human Services to grant variances from specified water treatment techniques when treatment is unnecessary for protecting public health. Requires department to announce its intent to grant the variance and either hold a public hearing or notify individual customers by mail or publish notice in the newspaper. Authorizes department to grant a variance if no hearing is requested within 10 days of the notice. Requires department to notify the U.S. Environmental Protection Agency (EPA) of any variance granted, as required by the federal Safe Drinking Water Act.

ISSUES DISCUSSED:

- Department of Human Services primacy to administer Safe Drinking Water Act
- Cost to City of Portland if clean water variance not allowed
- High quality of Portland, Bend and Baker City drinking water sources

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The federal Safe Drinking Water Act authorizes states to issue two kinds of variances from EPA drinking water rules. States may issue variances from drinking water standards when, due to the poor quality of all reasonably available raw water sources, water providers cannot meet the standards. Such variances may be issued only when several requirements are met, including imposition of a compliance schedule and regular notification to customers that their water does not meet standards. A second type of variance may be granted when, due to the high quality of raw water sources, Safe Drinking Water Act treatment techniques are unnecessary for protecting public health. Oregon currently has enabling legislation to grant only the first type of variance.

Attachment I pg 2 of 2



OREGON PUBLIC HEALTH DIVISION
Environmental Public Health

John A. Kitzhaber, MD, Governor

Oregon
Health
Authority

800 NE Oregon St., Ste. 640
Portland, OR 97232-2162
Phone: 971-673-0400
Fax: 971-673-0456

June 16, 2011

The Honorable Ben Cannon
Oregon State House of Representatives
H-484 State Capitol
Salem, OR 97301

Dear Representative Cannon:

Thank you for your May 31, 2011 letter voicing concern that the regulation OHA adopted pursuant to the 2007 passage of HB 3469 does not comport with legislative intent. As you stated, the 2007 law provided conditions under which the State may issue a variance from a specific water treatment technique under Oregon's Drinking Water Quality Act (DWQA).

The DWQA and its implementing regulations must be no less stringent than the federal Safe Drinking Water Act (SDWA). The language in HB 3469 generally tracked the language in SDWA regarding variances; OHA's task was to ensure the implementing regulation similarly reached as far as, and no farther than, State law or federal law and regulations. If Oregon is more permissive than federal law or regulation, our State authority to oversee drinking water systems subject to federal law (Primacy) is at risk.

In proceeding through formal rulemaking on this matter, OHA considered the new law's plain language, its legislative history, and input from the US Environmental Protection Agency (EPA), who clearly stated in its final rule that public water systems must either cover each finished water reservoir or treat the discharge to inactivate or remove viruses, Giardia lamblia and Cryptosporidium. This "cover or treat" provision is thus the requirement with which Portland (and every other public water system subject to federal law) must comply.

I have enclosed a legal memorandum from the Oregon Department of Justice that provides more background and analysis, for your information and reference.

I appreciate the passion with which some argue that Portland should not cover its finished drinking water storage facilities. But it is inaccurate to state that Oregon's administrative rule does not comport with State statute. Even if it were true, however, the result for Portland would not change: There is no variance available under EPA's regulation and thus, to comply with Primacy, there can be no variance available under Oregon regulation.

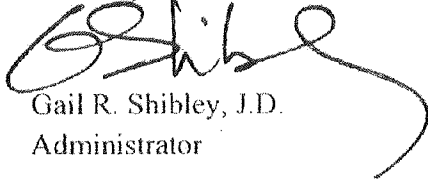
Page 1

Attachment J pg 1 of 2



Thank you again for writing. I very much respect and appreciate your leadership in protecting the health of Oregonians from environmental hazards.

Sincerely,



Gail R. Shibley, J.D.
Administrator

cc: Shannon O'Fallon, Senior Assistant Attorney General, Oregon Department of Justice
File

Attachment J pg 2 of 2