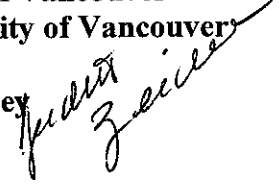


MEMORANDUM

TO: Christine Smith, Internal Auditor – City of Vancouver
Brian Carlson, Public Works Director – City of Vancouver

FROM: Judith Zeider, Chief Assistant City Attorney 

DATE: July 24, 2008

RE: City Water-Sewer Department, Program and Fund Integrated

Issue Raised and Brief Answer:

You advise that a representative from the Office of the State Auditor has questioned whether revenues from provision of water services may be used for construction of sewers through the City's Sewer Connection Incentive Program ("SCIP") or the Sewer Demand Response Projects program.

The Auditor's position is that revenues from provision of water services may only be used for projects directly related to provision of water services. The stated basis for this assertion is the general rule that one fund may not subsidize another.

In brief, the City has operated an integrated water-sewer utility with a single water-sewer fund since at least 1954. All water and sewer revenues by ordinance are deposited to the water-sewer fund. Thus, one fund is not subsidizing another. The revenues from the joint water-sewer fund have been used for the support of the integrated utility since 1954 without the auditor raising this issue.

The City has broad authority under state law to operate a sewerage system, which may include water, sewer, storm and surface water management components. Especially in light of the fact that City relies on a designated sole source aquifer for all of the drinking water for its customers, programs like SCIP and the Sewer Demand Response Projects program clearly benefit water customers by protecting their only source of drinking water from contamination.

Analysis:

The primary authority for cities to operate water-sewer systems is under the broad grant of authority of RCW 35.67.020. That section reads in pertinent part:

Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in

subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

Significantly, the statutory definition of "sewerage systems" in RCW 35.67.010 includes virtually every possible combination of water, sewer, and storm or surface water sewer services. "Sewerage systems" are defined to include:

- (1) Sanitary sewage collection, treatment, and/or disposal facilities and services, on-site or off-site sanitary sewerage facilities, inspection services and maintenance services for public or private on-site systems, or any other means of sewage treatment and disposal approved by the city;
- (2) Combined sanitary sewage disposal and storm or surface water sewers;
- (3) Storm or surface water sewers;
- (4) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;
- (5) *Combined water and sewerage systems;*
- (6) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a city or town;
- (7) Public restroom and sanitary facilities; and
- (8) *Any combination of or part of any or all of such facilities.*

The words "public utility" when used in this chapter has the same meaning as the words "system of sewerage." (Emphasis added).

Since at least 1954, the City has had an integrated water-sewer system with one department (Water-Sewer) managing both lines of business. VMC 14.04.010, adopted in 1954 as Section 1 of Ordinance M-144, established the department under the jurisdiction of the Department of Public Works.

The same 1954 ordinance established the joint water-sewer fund where the "charges, deposits, late fees, penalties and other moneys of whatever kind accruing to the benefit of the (water-sewer) department" are "deposited to the credit of the water-sewer fund." VMC 14.04.060, enacted in as Section 6 of Ordinance M-144. While water and sewer revenues are tracked for *rate setting purposes*, they have all been deposited into the same legal fund since 1954.

The long-standing structure of the department, of the water-sewer system, and of the water-sewer fund is a reflection of the water ecology of the region and of federal and state water management mandates:

- All of Vancouver's water supply comes from groundwater, specifically from City wells placed throughout the service area.
- All of the City's groundwater supply comes from the Troutdale Aquifer.
- The Troutdale Aquifer is relatively shallow, environmentally sensitive aquifer which extends on both sides of the Columbia River and has been designated a sole source aquifer. If the aquifer is compromised, the drinking water for the entire Vancouver water-sewer utility is at risk.¹
- As of 1997, approximately 7,900 septic systems existed in the Vancouver sewer service area. Over 7700 were still in service. The majority were over 25 years old and were reaching the end of their design life. System failures were increasing, and resulting in poorly treated wastewater surfacing, migrating to surface water or seeping in to the ground. The septic tanks served over 18,000 people and discharged over 1.35 million gallons of wastewater per day into the ground – the ground from which the Vancouver water service area derives its water supply.
- The SCIP program in particular was created in response to elevated nitrate levels found in the City's sole source aquifer. The Clark County Department of Health identified that Water Station #9 was approaching the alert level for nitrates and asked the City for a plan to improve and protect that drinking water source. The Sewer Connection Incentive Program is closely coordinated with the Health Department to target areas of failing septic system to protect the community health.
- Prevention of groundwater contamination by failing septic tanks reduces the need to construct water treatment facilities to make contaminated ground water potable for human consumption, and thus reduces the costs for providing drinking water for the public.
- The customer base for both water and sewer services are virtually identical. From 90% to 95% of City utility customers obtain *both* water and sewer services from the City.
- The interrelation between safe drinking water and wastewater management is recognized under federal, state and local law. By way of example, rather than an exhaustive list:
 - The Federal Clean Water Act requires clean up of surface water;
 - The Federal Safe Drinking Water Act requires wellhead protection;
 - The State Department of Health requires adequate wastewater systems for occupancy of buildings;

¹ This point was again recently raised by the United States Department of Ecology (DOE) in connection with plans to construct a new I-5 bridge across the Columbia River. The DOE expressed concern that bridge footings could penetrate the aquifer and allow contamination to enter the entire aquifer.

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- The City's Water – Sewer Ordinance (Title 14 VMC) reflects the integrated approach the City takes to water management by addressing everything from sewer and water hookups and rates to storm water control, water resources protection to erosion control.

Conclusion:

Use of the joint water-sewer fund monies to fund elimination of septic tanks and encourage connections to sewers is consistent with the City's 1954 ordinance and within the City's authority under state law. The SCIP program and Sewer Demand Response Projects directly benefit water customers (as well as sewer) by protecting the sole source of potable water for the community.

Feel free to provide this memorandum to the Auditor; and, if you have additional questions, please feel free to contact me.

Cc: Ted Gathe, City Attorney