

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

In the Matter of the Petition of John Brown,
Bob Cassidy, Rich Cunningham, Joann Ernst
and Ron Farmer, as Commissioners of the
EUGENE WATER & ELECTRIC BOARD,
an Oregon municipal corporation.

Case No.

VALIDATION PETITION
(Proceeding In Rem Pursuant to
ORS 33.710 and 33.720)

For the Judicial Examination and Judgment of
the Court as to the Validity of a Contract for
the Sale of Water.

PETITION

The governing body of the Eugene Water & Electric Board (EWEB) hereby petitions for judicial examination and judgment of the court for validation of EWEB's authority under the Eugene City Charter to execute and implement the Purchase of Surplus Water contract executed by EWEB for wholesale purchase of water by the City of Veneta, attached to this petition as Exhibit #1.

OREGON VALIDATION STATUTE

The Oregon Validation Statutes, ORS 33.710 to 33.720 provide for an in rem proceeding brought by a governing body, as defined in ORS 33.710, for the purpose of having judicial examination and judgment of the court as to the regularity and legality of the authorization of any contract and as to the validity of the contract. ORS 33.710(2)(d). The "res" constitutes the contract or resolution whose validity is brought into question. Jurisdiction is obtained through publication of notice to the municipal corporation and all electors, freeholders, taxpayers and

other interested persons. ORS 33.720. The statute directs the proceeding be tried forthwith, following practices and procedures of an action not triable by right to a jury, and judgment rendered as expeditiously as possible. ORS 33.720(1, 3).

JURISDICTION

This Petition is filed pursuant to ORS 33.710 and ORS 33.720 in the nature of a proceeding in rem. Jurisdiction and venue in this court is appropriate for the following reasons:

1. EWEB is a “municipal corporation” as defined by ORS 33.710(1)(b).
2. EWEB is located in Lane County.
3. Notification of this Petition will be published in Lane County as required by ORS 33.720(2), to establish jurisdiction.
4. Jurisdiction shall be complete within 10 days after the date of completing publication of the notice as provided in ORS 33.720(2).

BACKGROUND

5. The City of Veneta is a municipality of the State of Oregon which operates a water utility providing water service to its customers.
6. EWEB is a municipal utility of the State of Oregon formed pursuant to the City Charter of the City of Eugene (Eugene Charter).
7. Petitioners are the duly elected and acting Board of Commissioners of EWEB as of the time of filing of this Petition.
8. EWEB provides water service to approximately 50,000 customers, most of whom are within the city limits of Eugene. In addition to providing water service to its customers, EWEB currently holds wholesale contracts for sale of water to River Road Water District, Santa

Clara Water District, and Willamette Water Company. EWEB has historically had wholesale contracts for sale of water to Oakway Water District, Rainbow Water District, Bethel Water District, Glenwood Water District, College Crest Water District, and Hillcrest Water District. These Water Sales Agreements have benefitted, and continue to benefit, the citizens of Eugene by spreading and dividing the fixed overhead of the system over a wider rate base providing water supply at less cost and higher quality.

9. EWEB's water service to customers and water sales contracts endeavor to assure reliable sources of water over the next 100 years. EWEB's primary water resources are established by water permits filed with the State of Oregon. In order to secure and maintain adequate future water resources EWEB plans to obtain "partial certification" under one of its permits. Partial certification requires demonstration that 25% of the permit volume is put to beneficial use. Establishing beneficial use by wholesale water sales contracts are an important component to establish partial certification and assure water volume availability into the future for EWEB customers.

10. The City of Veneta has made application for funding to build a water transmission pipeline interconnection from EWEB to Veneta. In order for Veneta to obtain loan and grant funds, the City of Veneta must establish the ability to carry out the project. EWEB and Veneta have developed and approved the attached contract for wholesale Purchase of Surplus Water, attached hereto as Exhibit #1. Validation of the Purchase of Surplus Water contract is an essential component needed to proceed forward with the expenditure of public funds for a pipeline interconnection project. For Veneta to construct a pipeline interconnection involves an estimated expenditure of over \$16,000,000 in public funds.

11. As alleged herein, this petition raises important legal issues that would be efficiently and effectively resolved before a significant expenditure of public funds occurs to further implement the Purchase of Surplus Water contract.

PURCHASE OF SURPLUS WATER

12. On April 14th, 2010, EWEB executed the Purchase of Surplus Water contract with the City of Veneta. On April 16th, 2010, the City of Veneta executed the Purchase of Surplus Water contract.

13. EWEB has approved the contract as a wholesale purchase of water by another municipal water utility at a defined point of delivery. EWEB does not endeavor to provide “water service” to or establish any utility relationship with the retail customers of the City of Veneta.

14. EWEB has determined that it is in the best interest of EWEB Customers within the City of Eugene to enter into this contract with the City of Veneta for wholesale purchase of surplus water. The wholesale purchase of surplus water benefits EWEB retail customers by spreading and dividing the fixed overhead of the water utility system over a wider rate base and furthering EWEB’s plan to obtain partial certification of a water permit for purposes of securing permit water for the future.

15. The contract is only for surplus water and the contract does not obligate EWEB to provide water in excess of that which is surplus to water use within the City of Eugene. EWEB has determined surplus water is available in its municipal water system for sale on a wholesale basis to the City of Veneta.

AUTHORITY, VALIDITY, REGULARITY, LEGALITY

16. The regularity and legality of EWEB’s authority and validity of the Purchase of Surplus Water contract is established by the contract and the applicable law alleged herein.

17. EWEB’s execution and performance of the Purchase of Surplus Water contract is authorized by the Eugene Charter and Oregon statutes.

APPLICABLE LAW

18. Oregon statutes give cities the option and authority to acquire, own, and operate water utilities within and without their boundaries, for profit, and to use, sell and dispose of water within and without its boundaries. ORS 225.020 and 225.030.

19. The Eugene Charter grants EWEB authority to build, own, operate and maintain water works and water systems within and without its boundaries. Eugene Charter, Section 44 states, “The board shall maintain and operate the water utility and the electric utility of the city, subject to control by the council of extension of water service.” EWEB is not extending water service to the customers of the City of Veneta and therefore is not subject to the control by the city council in executing and implementing this Purchase of Surplus Water contract.

20. The Eugene Charter broadly confers all authority and powers of the state, as fully as if the charter specifically stated each of these powers. The Eugene Charter provides in relevant part:

The city has all powers that the constitution or laws of the United States or of this state expressly or impliedly grant or allow cities, as fully as if this charter specifically stated each of those powers. Charter, Chapter II, Section 4(2) (emphasis added).

The power conferred by ORS 225.030 “to sell, supply and dispose of water . . . within or

without the limits of the city” is an expressed grant of authority authorizing EWEB to sell wholesale surplus water.

21. ORS 190.030 to 190.110 authorize units of local government to enter into governmental agreements for performance of duties or exercise of powers conferred upon them.

JUSTICIABLE CONTROVERSY

22. A justiciable controversy is established by the in rem procedures spelled out in the Oregon validation statutes. Jurisdiction of the municipal corporation is obtained by publication of notice to the municipal corporation. ORS 33.720(2). Jurisdiction of the electors of the municipal corporation is obtained by publication of notice directed to all electors, freeholders, taxpayers or other interested persons. ORS 33.720(2). “Any person interested” may contest the validity of the contract by timely appearing before expiration of ten (10) days after the date of completion of publication. ORS 33.720(3).

23. Invoking in rem jurisdiction in accordance with the procedures of ORS 33.710 to 33.720 establishes a justiciable controversy because (1) the parties to the contract have adopted and authorized the contract as a binding agreement between the parties, and (2) pursuant to the filing of this validation proceeding, service of notice by publication will be provided to the municipal corporation and all electors, freeholders, taxpayers or other interested persons, including all those opposed to the validity of the contract and who as parties may appear and timely file in opposition to the validation.

PRAYER

WHEREFORE, Petitioners pray:

That the court judicially examine and validate the sufficiency, regularity and legality of

the execution and proposed performance of the Agreement by EWEB in accordance with its stated terms and conditions; that these proceedings be tried forthwith and judgment rendered as expeditiously as possible; and that the court issue a Judgment decreeing that EWEB's execution and performance of the Agreement is valid and fully authorized by the Eugene Charter and the above-mentioned Oregon statutes.

DATED this ____ day of _____, 2010.

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