

BOND ELECTION ORDINANCE NO. 3461
COUNCIL BILL NO. 13-1008

AN ORDINANCE CALLING A SPECIAL MUNICIPAL REVENUE BOND ELECTION TO BE HELD FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, THE PROPOSITION OF THE ISSUANCE OF UP TO \$36,365,000 NEGOTIABLE REVENUE BONDS OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, TO FINANCE CERTAIN IMPROVEMENTS TO ITS WASTEWATER TREATMENT FACILITY SYSTEM, AND PROVIDING FOR THE ISSUANCE AND PAYMENT OF SUCH BONDS AND DESIGN AND CONSTRUCTION OF SAID IMPROVEMENTS.

STAFF REPORT: Mr. Gridley stated that Wastewater Treatment Superintendent Sid Fredrickson would join him in presenting this item. Mr. Gridley stated that the Wastewater Treatment utility has a draft permit regarding the discharge into the Spokane River, which stems from the Clean Water Act, which sets forth standards they must meet. The City has gone to court seeking a Judicial Confirmation but has not received a ruling yet. Councilman Adams has stated that he will appeal a favorable ruling, which could be a yearlong delay that would interrupt the compliance schedule that needs to be met. Therefore, the next option is to seek a bond election vote at the May 21, 2013 election, and the City would need to provide it to the County Clerk by Friday, March 29, 2013. Another option would be to pay for improvements in cash, which would cause a substantial increase in wastewater rates. Mr. Gridley provided a copy of a letter sent to the City of St. Maries regarding violations as an example of what the penalties can be for violating the act.

Mr. Fredrickson provided a brief history of the growth of the plant and the Total Daily Maximum Load (TDML) standards. In 1998, the Washington Department of Ecology listed the Spokane River as impaired. He was a member of a collaborative stakeholders group that met for three years, and when they got to an implementation strategy, Idaho and DEQ were not included. The Spokane River Stewardship Partnership (SRSP) was then formed to advocate for reasonable standards. In 2010, the City filed a lawsuit with EPA. In 2011, the EPA agreed with our model scenarios and agreed that Idaho would have the same discharge standards as Washington, which meant a stay of the lawsuit, which has not been withdrawn. In late 2012, the City received draft permits. He noted that he is in disagreement with the heavy metals loading language included in the draft. In 2013, he received a call from DEQ stating that if he can justify our compliance schedule, it can be included in the permit, which would be a good thing.

Mr. Gridley stated that it is staff's position to move forward with the bond election to prevent any harm. The reality is that daily fines up to \$37,000 could occur against the City. This work was approved as a long-term plan and the best way to insure the City does not have compliance issues or violate the schedule, would be to go to an election in May. It would require 50% plus 1 majority vote for approval. Councilman Edinger stated that this situation should have never happened. He asked if the Judge comes back with a favorable ruling and how long would someone have to file an appeal. Mr. Gridley stated that the person appealing has 42 days after that decision to appeal and that would be too late to do an election. Councilman Edinger asked if there was an election and the people vote it down, what happens. He clarified that he is in favor of public vote on certain issues, but this is something the City has to do, and with McEuen the

City did not have to do that project. Mr. Gridley stated that he could not imagine 50% plus one would not want to meet law, but if it is not approved and the Judicial Confirmation is approved, then the Judicial Confirmation would trump the election. However, the City would have to wait until the appeal is over. The November election would be another option.

Councilman Kennedy asked if he understood correctly that the interest rate would currently be 2% now and 3.5% later. Mr. Tymesen confirmed that to be correct. Councilman Edinger asked what the cost was to have an election in May. Mr. Fredrickson stated that he was not sure of cost, so he estimated \$75,000, which includes attorney cost, information disbursement costs (getting fact sheets out, etc.), and cost of appeal.

Councilman Edinger asked if rates could go up and if the EPA could put a moratorium against new construction. Mr. Fredrickson clarified that a moratorium happened in 1979/1980 through 1982. Councilman Gookin clarified that the \$75,000 is an estimate and the City does not believe it would spend it in its entirety and asked when fines are actually assessed. Mr. Fredrickson explained that the first milestone in the permit is one year after date of permit, which will be to furnish an engineering report. The next large milestone is three years after the permit, which is to furnish the results of a pilot test to DEQ, including the bid, construction, operation of the pilot, and collecting information for one full year. Councilman Gookin clarified that fines would not occur right away. Mr. Fredrickson stated that in one year there could be a compliance penalty; however, he is not too worried about that milestone. The three-year milestone is the greatest concern. In addition, the final date of the permit is expected to be this summer. Councilman Gookin asked if the fines would be phased in. Mr. Fredrickson said in three years, if there were non-compliance, the City would be fined. St. Maries has a three-year history of violations and will be fined and/or they will enter into a settlement agreement. Councilman Gookin stated that the blogs, letters, and newspaper are all over with information and there needs to be an understanding that the City has to stay on top of this requirement. Mr. Gridley reiterated that this is not something that is going away, the City has taken a strong stance by suing the EPA, the Clean Water Act fines are not going to go away, the hammer is there. The treatment facilities need to be built, run, and information needs to be collected. If the City does not get in the ground now, it does not allow for any correcting time if results are not where they need to be. He recommends the City going forward to the May election.

Councilman Edinger stated that he understands that the bond election is to cover the City if there is an appeal. Councilman Kennedy asked if they approve going forward and then the Judge rules in favor of Judicial Confirmation and Councilman Adams decides not to appeal then could the item be pulled from the ballot. Mr. Gridley stated that it would remain on the ballot; however, the election has no effect, it only has an impact if someone appeals the original decision. Councilman Kennedy asked if the presence of opposition at the Judicial Confirmation hearing reduces the chances of approval. Bond Counsel Ms. Quade stated that she believes it does, although she believes that the City has evidence on their side for an ordinary and necessary determination. She reiterated that the appeal process is lengthy. Councilman Adams stated that the other element is that if the City vote to proceed with the election, while the Judge has not rendered a decision, could the Judge render the petition mute. Ms. Quade stated that the election option is another path, so the Judge would not pull the request for Judicial Confirmation, it would just be two simultaneous paths; one does not invalidate the other.

Councilman Adams asked Mr. Fredrickson about the compliance schedule attached to the Supplemental Affidavit, which states that compliance is no later than ten years after the effective date of the final permit. Mr. Fredrickson stated that there is a one-year milestone, a three-year milestone, a five-year milestone, an eight-year milestone, and then full compliance at the ten-year milestone. Councilman Adams clarified that the City does not have a final permit and that the permit requirements are not finalized, and questioned how the City could finalize the sewer treatment improvements without a final permit and what the final discharge permits would be. Councilman Gookin asked Mr. Fredrickson if he has ever known what they really wanted through any upgrades and if the EPA has ever changed its requirements mid-way through a project. Mr. Fredrickson stated that the EPA has not changed standards; usually the standards are set in the draft permit. The only change he would anticipate in the final permit is that they would include a schedule for the organic. Councilman Adams asked about the clause regarding the immediate discharge requirements upon issuance of the 2013 permit, but felt that the City was already in compliance other than ammonia and phosphorus. Mr. Fredrickson stated that the City is on the edge on CBOD, which is why he is writing a letter for the compliance schedule, if EPA does not give us a compliance schedule the City would have to meet that day one of the final permit. Councilman Adams stated that the City has already issued \$28 million in bonds on the wastewater treatment plant and asked for clarification on how the funds were used. Mr. Fredrickson stated that Phase 4B, included a pump station, headworks, covers for clarifiers, and 5B new digester compliance, admin, lab, and shop. Councilman Adams stated with the next \$36 million plus the \$28, so for \$64 million what Million Gallons a Day (MGD's) would the City achieve. Mr. Fredrickson stated that they would achieve Tertiary treatment for up to 5 million gallons a day. Councilman Adams asked if the City wanted to get to 6 MGD and how much more that would cost. Mr. Fredrickson clarified that it would be approximately \$6 or \$7 million more and to get to our build out amount it would be 12 MGD. Councilman Adams asked if Mr. Fredrickson estimated that the cost of \$75 million would get the City to where it needs to be for a 100,000 population. Mr. Fredrickson stated that it would depend on density and he would estimate it to serve approximately a 60,000 population.

MOTION by Kennedy seconded by McEvers to approve ordinance 3461, an Ordinance calling a special municipal revenue bond election to be held for the purpose of submitting to the qualified electors of the City of Coeur d'Alene, Kootenai County, Idaho, the proposition of the issuance of up to \$36,365,000 negotiable revenue bonds of the City of Coeur d'Alene, Kootenai County, Idaho, to finance certain improvements to its Wastewater Treatment Facility system, and providing for the issuance and payment of such bonds and design and construction of said improvements.

DISCUSSION: Councilman Kennedy reiterated that he regrets that the City has to do this; the questions discussed have been vetted for years by staff and previous City Council. Councilman Gookin noted that the dollar amount listed in Resolution 13-003 is different from the amount listed in the Ordinance proposed today. Ms. Quade clarified that the Judicial Confirmation is about ordinary and necessary, not about the costs. The funding costs and fees include underwriter agencies, required reserves, etc. and the amount in the Ordinance is the maximum bond amount, which is not what the Judge is determining in Judicial Confirmation. Councilman Gookin asked Councilman Adams if he knows costs will increase, would he be willing to consider withdrawing his appeal. Councilman Adams stated that the Judge has not made a

determination yet. Ms. Quade clarified that there will be additional costs; however the cost depends on whether or not the City can still get the DEQ loan. Mr. Tymesen stated that the least expensive money and the least amount of money without any underwriting would be the Judicial Confirmation and that an increased interest rate would be approximately \$8 million; however, not all the money would be used at the same time. Mr. Fredrickson stated that the City are required to have a full-scale pilot with findings at the end of 3 years, then the total development at end of 8 years, with two years for final improvements. He reiterated that not all of the money would be pulled at the beginning; it will be phased over years. Councilman Gookin clarified that from a financial standpoint it would be most favorable for the City to move forward with Judicial Confirmation. He clarified that he is for public vote, but no one showed up at the original hearing and to be fiscally responsible and to look at a lower rate and lower fees, the best way to do it is the Judicial Confirmation. Additionally, he stated that he does not believe that anyone in town would be upset if Councilman Adams would switch his position. Councilman Adams stated that from a principal standpoint he could not compromise the integrity of the Idaho Constitution for a couple of interest points. Councilman Kennedy stated that the Boise case contains a different set of facts, and Councilman Adams is misapplying the facts to this situation. In the Copsey case, it was reasonable but not necessary and was for a parking garage, not like our case that is both reasonable and necessary. He stated that there is a lot of misinformation and it should be clear that it is a different point than the Boise case. Councilman Adams stated that it is arguable that it is ordinary and necessary; however to spend half of the City's annual appropriation is not ordinary. Councilman Gookin thinks Councilman Adams has made his point and that in this case it would be best to move forward and fight the battle another day.

Councilman Edinger reiterated that this situation should have never happened but down the road, he does not want to see taxpayers see a massive increase. The City has fulfilled their obligations with DEQ and EPA, the interest rate on this will never get it any lower. He is going to vote no, because he thinks the City can do it the right way, through Judicial Confirmation. Councilman Kennedy voted the same way the other night, but does not want a misunderstanding of state law to prohibit what is the right things for the citizens (unless Councilman Adams rescind his promise of appeal). He expressed that he was concerned that someone else could appeal, so he will vote for the Ordinance in order to give the City options. Mayor Bloem stated that there is a worst-case scenario in which the City moves forward with a vote for the election, and it does not pass. Her concern is the enormous amount of information that the City needs to get out and educate the public by May 21st. In the case that the bond does not pass, it would be the worst case because the City would have to increase rates over five years. She stated that a substantial increase in fees would halt job creation, as the estimated increase in commercial fees would be cost prohibitive for businesses looking at relocation to Coeur d'Alene, as they could get a much lower rate in Post Falls and Hayden. Councilman McEvers feels it comes down to the lesser of two evils and does not want to go to a vote but feels like it is the only choice. Mayor Bloem stated that going to a vote is a protection, as Councilman Adams might say that he won't appeal, yet based on his record of voting one way then reversing it at the next meeting many times in the past, to be safe you better vote.

MOTION: Motion by Edinger to call for the question. Motion carried with Gookin and Adams voting no.

ROLL CALL: McEvers, Yes; Goodlander, Yes; Gookin, Yes; Edinger, No; Adams, Yes; Kennedy, Yes. **Motion carried.**

MOTION: Motion by McEvers, seconded by Kennedy, to suspend the rules and to adopt Ordinance No. 3461 by its having had one reading by title only.

ROLL CALL: Edinger, Yes; Adams, Yes; McEvers, Yes; Goodlander, Yes; Gookin, Yes; Kennedy, Yes. **Motion carried.**

ADJOURNED: Motion by McEvers, seconded by Edinger that, there being no further business before the Council, the meeting be adjourned. Motion carried.

The meeting adjourned at 2:23 p.m.

Sandi Bloem, Mayor

ATTEST:

Renata McLeod, City Clerk