



## Memorandum

**To:** Bellevue Common Council  
**From:** Chris Johnson, Public Works Director  
**Re:** Bond Update  
**Date:** April 27, 2026

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### Background

Summery - If we don't build a new collection point, we should use grant funds for connecting the existing collection lines to the new transmission lines.

The City of Bellevue may lawfully proceed with issuing up to \$7 million in previously voter-approved revenue bonds, even though the Final Drinking Water Facility Plan differs from the earlier Preliminary Plan. However, there is some legal risk if bond funds are used for one specific revised project, and the memo recommends a conservative approach to avoid that risk.

### Key Points

#### 1. Bond Election Remains Valid

- Voters approved up to \$7 million in revenue bonds in a May 21, 2024 election.
- The election relied on a “preliminary engineering plan” (Drinking Water Technical Facility Plan DRAFT), which Idaho law explicitly allows.
- Changes made later to the facility plan do not invalidate the election.
- The time period to legally challenge the bond election has expired.

Bottom line: The voter authorization is still legally sound and enforceable.

#### 2. Bond Issuance Is Still Valid

- The bond election acts like a "contract with voters", allowing bonds only for the purposes described on the ballot.
- Bellevue may issue bonds "up to the authorized amount", at times and in phases chosen by the City.
- Bond proceeds must be used for purposes consistent with:
  - Improvements to the drinking water system
  - Construction, repair, replacement, and rehabilitation activities

- Other improvements necessary for safe and continued operation of the system

### 3. Main Change Between Plans (Which are no longer being pursued)

- Preliminary Plan (Dec. 2023): Recommended construction of a new spring collection system.
- Final Plan (Feb. 2026): Recommends connecting a transmission main to the existing spring collection system.

#### Reason for change:

- Landowner opposition
- Risk to existing water rights
- New information gathered after further investigation
- The original “new spring” option still exists in the Final Plan but as an alternative, not the preferred approach.

### 4. Legal Risk Assessment

- The revised project could arguably fall within the broad purposes approved by voters.
- However, there is a “non-zero risk” that someone could claim the new approach was “not specifically contemplated by voters”, making bond use for that purpose challengeable.

### 5. Recommended “Safe” Approach

To avoid any risk of legal challenge, the law firm recommends:

- Do not use bond proceeds for the newly recommended connection to the existing spring collection system; use grant funds instead for that specific component.
- Issue bonds only for the other water system projects that:
  - Were clearly described in the bond election
  - remain unchanged from the Preliminary Plan
  - Reduce the total bond issuance accordingly.

#### Practical Takeaway for City Leadership

- The bond election and authorization are valid.
- Bellevue can legally issue revenue bonds for most system improvements.
- There is some legal exposure if bond money funds the revised spring-connection project.
- The lowest-risk path is to fund that revised component with grant dollars and limit bond proceeds to clearly authorized projects.

**Recommendation and Next Steps**

No Action Required

**Enclosures**

1. Hawley Troxell Memorandum

**PRIVILEGED AND CONFIDENTIAL**  
**MEMORANDUM**

**TO:** Chris Johnson, Public Works Director  
City of Bellevue, Idaho

**FROM:** Hawley Troxell Ennis & Hawley LLP

**DATE:** April 22, 2026

**RE:** Drinking Water Facility Plan Amendment Analysis under 2024 Revenue Bond Authorization

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**INTRODUCTION**

You have asked for our analysis regarding amendments to the City of Bellevue’s (the “City”) Technical Draft of the Drinking Water Facility Plan dated December 2023 (the “Preliminary Plan”) prepared by Merrick & Company (the “Engineer”), which changes are reflected in the Final Drinking Water Facility Plan dated February 2026 (the “Final Plan”) and likewise prepared by the Engineer. Specifically, you have asked us to analyze whether the changes from the Preliminary Plan to the Final Plan would have any effect on the legality or validity of the City’s authority to issue up to \$7,000,000 in revenue bonds as authorized by a majority of qualified electors voting in the City’s May 21, 2024 revenue bond election (the “Bond Election”).

We note that for purposes of this Memorandum, that there are two separate issues at play: First is the validity of the Bond Election and authorization given by the voters to issue bonds. Second is the validity of the bonds when they are actually issued by the City. Each are addressed in turn below.

**ANALYSIS**

**I. Bond Election Validity**

The first question we address is the validity of the Bond Election if the City approves the Final Plan. We understand that concerns have been raised regarding the validity of the Bond Election if the City adopts the Final Plan containing certain changes to the Preliminary Plan that was referenced in the Common Council’s Revenue Bond Election Ordinance passed at its February 26, 2024 meeting (the “Election Ordinance”).

Sections 1027 through 1042, Idaho Code (collectively, the “Revenue Bond Act”) requires that prior to issuance of revenue bonds, a city council must first adopt an ordinance and hold an

election on the question of authority to issue those revenue bonds. The ordinance is required to include, among other things, the following:

(a) . . . a brief and general description of the works . . . , and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such . . . ; [and] (d) direct that revenue bonds of the city shall be issued pursuant to this chapter in such amount as may be necessary to pay the cost of the works . . . .<sup>1</sup>

As shown above, the report or plans and specifications prepared by an engineer that is included in the election ordinance is “preliminary,” and the costs of the projects to be constructed are “estimates” prepared by the engineer. The requirement of including the preliminary report/plans and estimated costs of the works to be constructed creates a general understanding of the projects to be completed and a basis for the principal amount of revenue bonds the city is seeking voter approval for. These are necessarily preliminary, however, as funds for project design often come from bond proceeds and final costs are rarely known until the projects are under way. The report/plans prepared by the engineer, or the specific elements of a project, may require certain revisions as funds become available to proceed with implementation of the preliminary plans, and such revisions are common on long term facility plans.

It should also be noted that in the requirements for the revenue bond election ordinance, that the ordinance reference a “brief and general” description of the projects, and Idaho courts have interpreted the requirement of describing the purposes in a bond election as being “sufficiently definite to reasonably apprise the voters of the general nature, purpose, and scope of the improvement contemplated” but there is no requirement that it go into minute detail, and it also cannot be so broad as to allow for unlimited expenditures that aren’t connected with the main purpose of the question.<sup>2</sup>

The Election Ordinance adopted by the Common Council, which included the form of ballot and form of notice of the Bond Election, complied with the requirements of the Revenue Bond Act. A subsequent revision to the Preliminary Plan does not affect the validity of the Bond Election and the voter approval granted thereat. Additionally, any challenge to the Bond Election itself is no longer possible, as the time has passed for a contest of the Bond Election.<sup>3</sup>

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<sup>1</sup> Idaho Code § 50-1035.

<sup>2</sup> *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891, 894 (1941).

<sup>3</sup> *See* Idaho Code § 34-2001A.

## II. Bond Issuance Validity

Although the Bond Election is valid, the second issue is whether the City adopting the Final Plan, which includes projects that differ from those outlined in the Preliminary Plan and subsequently issuing revenue bonds to finance such projects would be considered invalid.

At the outset, it should be noted that, generally speaking, the notice of election (which includes a statement of the question to be voted on) acts essentially as a “contract” with the voters and the City, in the sense that the voters are granting the City the authority to issue revenue bonds in the amount and for the purposes described therein and authorized by law.<sup>4</sup> Ancillary matters like advertisements or statements made by officials do not determine the scope of what is authorized by the voters pursuant to the election question and the ordinance calling for said election.<sup>5</sup> Once the revenue bonds have been approved by voters, then the City is limited to issuing revenue bonds *up to* the amount authorized and expending the bond proceeds in a manner consistent with the Revenue Bond Act and the Bond Election notice and question.<sup>6</sup> This does not mean that the City is *required* to issue the full amount of the bonds all at once and construct all of the described projects at the same time.

The issuance of revenue bonds pursuant to the Bond Election should not have its validity affected by changes made in the Final Plan, assuming that the ordinance issuing the bonds ultimately is issued for purposes authorized in the Bond Election. The Election Resolution complied with the requirements of the Revenue Bond Act, and the issuance and sale of the bonds should be unaffected by any changes present in the Final Plan. The Bond Election authorized revenue bonds in the amount of up to \$7,000,000 for improvements to the water system, including

construction, repair, replacement and rehabilitation of the System, including (i) construction of a new spring collection system, (ii) reconstruction of a transmission main, (iii) construction and replacement of watermain improvements, (iv) identifying and repairing leaks in the System and other improvements and betterments to the System, required to ensure the safe and continued operation of the System.<sup>7</sup>

The grant of authority by voters at the Bond Election places limits on the Common Council by capping the maximum principal amount of the bonds and limiting the purposes for which the bonds can be issued. This grant of authority does not, however, automatically limit the Council’s discretion in determining the manner of sale of the bonds, including the timing of issuance and

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<sup>4</sup> See *Lind v. Rockland Sch. Dist. No. 382*, 120 Idaho 928, 930–31, 821 P.2d 983, 985–86 (1991).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 932, 821 P.2d at 987.

<sup>7</sup> See Section 8 of the Election Resolution.

principal amount of bonds, and the manner of implementing the projects.<sup>8</sup> The limitation on the purposes of the bonds authorized in the Bond Election is to the primary purpose of “construction repair, replacement and rehabilitation of the System” which includes those specifically enumerated categories above “and other improvements and betterments to the System, required to ensure the safe and continued operation of the System.”

The Final Plan deviates from the Preliminary Plan in one primary way. Rather than recommending a new spring collection system, the Engineer now recommends connecting the transmission main to the existing spring collection system. Our understanding is that this change in recommendation is based on subsequent investigation and developments since the Preliminary Plan was approved, including opposition from a landowner who’s land would be necessary for the new collection system, and the analysis that a new collection system could jeopardize the City’s existing water rights. The new recommendation to connect the transmission main to the existing spring collector system in the Final Plan replaces the prior recommendation of an entirely new collection system, however the new collection system still remains a recommendation, albeit under one of the more costly options rather than the most cost-effective option the City is seeking to undertake in order to bring the System into compliance with Idaho Department of Environmental Quality (“IDEQ”) compliance.

Effectively, based on changing circumstances and new information, the Engineer has recommended a reduced scope of the IDEQ compliance project with an alternative that is likely more cost-effective. This type of change being proposed as design is completed following an election based on a preliminary plan is the type of change a project is expected to undergo as a more detailed analysis is undertaken, and the change alone does not affect the City’s authority to issue bonds. The language in the Bond Election question could be construed as broad enough to encompass this change, with the primary purpose being the construction, repair, replacement and rehabilitation of the System as further described in the Election Ordinance. It certainly can be argued that such a change is a more cost-effective means of accomplishing the goals of the new spring collector system, and thus the bonds could still be validly issued and the new project funded with bond proceeds because the intent of the project is still being achieved. However, there is still the risk that an argument could be made that the proposed change wasn’t contemplated under the original question in the Bond Election, and therefore would be a purpose that is not authorized by the voters, thereby preventing the City being able to issue valid bonds *for that specific purpose*.

Although the change in recommendation likely could be considered a necessary and incidental part of the main purpose of the authorized project, the safer option available to the City, due to the grant funds that have been awarded to the Project, would be to exclude the newly-recommended connection to the existing spring collection system as a purpose for which the bonds are being issued, and instead limit the bond issuance to finance the other projects referred to in the election question and identified in Preliminary Plan, which remain unchanged. This allocation of funds will avoid any potential issues that could arise if the bond issuance were challenged. The

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<sup>8</sup> See *Cline*, 63 Idaho 304, 119 P.2d at 895. (“The council necessarily is clothed with a certain latitude of discretion in carrying out the improvements authorized by vote of the people, namely, the improvement of the water system.”).

practical effect is that the City would proceed to issue bonds for the projects other than the new spring collector system, as it would before the Final Plan was proposed, as those recommended projects that are planned and authorized remain unchanged on overall purpose. The overall bond issue would be reduced by the portion of the bonds originally allocable to the new spring collector system and the connection of the transmission main to the existing spring collector system would be paid for with grant dollars.