Bond Case Briefs

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Kutak Rock Secures Win for City of Boulder.

Kutak Rock secured a significant victory for our client, the City of Boulder, when the Colorado Court of Appeals yesterday affirmed summary judgment in *Save South Boulder v. City of Boulder*, affirming on every issue the city's Ordinance 8690 authorizing $66 million in flood management revenue bonds through its Stormwater and Flood Management Utility Enterprise. The Court held that Boulder's stormwater fee is a fee—not a tax subject to TABOR—because its stated purpose is to fund stormwater and flood management services rather than general government expenses; the revenue is held in a dedicated account separate from Boulder's general fund; and there is a reasonable relationship between the fee charged and the services provided.

The Court further confirmed that the stormwater enterprise is a valid TABOR enterprise, rejecting the challengers' argument that the transfer of fee revenue from Boulder's billing system constitutes a prohibited "grant." This decision allows Boulder to move forward with issuing the bonds necessary to fund critical stormwater upgrades on South Boulder Creek—infrastructure designed to protect 3,500 people and 600 structures from a repeat of the devastating 2013 flood—and, more broadly, confirms that Colorado municipalities may continue to issue revenue bonds through their utility enterprises to fund individual improvement projects without triggering TABOR's voter-approval requirements, so long as those projects serve the enterprise's authorized purposes.

Thomas Snyder led the litigation team from Kutak Rock with support from public finance attorneys Jen Barrett and Ashley Dennis.

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Kutak Rock LLP