

DISTRICT COURT, JEFFERSON COUNTY, COLORADO		DATE FILED: April 11, 2019 4:05 PM FILING ID: B94461ACAE5E2 CASE NUMBER: 2014CV31904
Court Address: 100 Jefferson County Parkway Golden, CO 80401 Telephone: (303) 271-6154		
Petitioners: BIG SKY METROPOLITAN DISTRICT NOS. 1-7		▲ COURT USE ONLY ▲
Attorneys for Petitioners: Names: William P. Ankele, Jr., Esq. Zachary P. White, Esq. Address: WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Phone: (303) 858-1800 Fax: (303) 858-1801 Email: wpankele@wbapc.com zwhite@wbapc.com Atty. Reg. #: 12142 46700		Case Number: 2014CV031904 Division: 2 Courtroom:
NOTICE OF INTENT TO UNDERTAKE CERTAIN ACTIONS PURSUANT TO SECTION 32-1-207(3)(b), C.R.S.		

NOTICE IS HEREBY GIVEN that the Big Sky Metropolitan District No. 1, a special district in the City of Lakewood (the "City"), Jefferson County, Colorado (the "District No. 1"), intends to undertake certain actions and activities pertaining to the provision of sanitation services by District No. 1 outside of its boundaries, as further described below (the "Sanitation Services"). This notice is being given pursuant to Section 32-1-207 (3)(b), C.R.S.

District No. 1 was organized as a Metropolitan District, together with the Big Sky Metropolitan District Nos. 2-7 pursuant to the Service Plan for the Big Sky Metropolitan District Nos. 1-7 (the "Districts") as approved by the City of Lakewood on September 22, 2014 (the "Service Plan") and Section 32-1-101, et. seq., C.R.S. (the "Special District Act"). District No. 1 acts on behalf of the Districts in regard to provision of services and facilities authorized under the Service Plan.

The Special District Act and the Service Plan establish the authority of the Districts to provide the Sanitation Services outside of their respective boundaries, as follows:

- **Section 32-1-1004(2)(e), C.R.S.:** This Section of the Special District Act states that a Metropolitan District may provide “Sanitation services as specified in Section 32-1-103(18).”
- **Section 32-1-1004(3), C.R.S.:** This Section of the Special District Act states that a Metropolitan District providing the services described in Section 32-1-1004(2)(e), C.R.S. “shall have all of the duties, powers, and authority granted to a...[sanitation district] by this article....”
- **Section 32-1-103(18), C.R.S.:** This Section of the Special District Act states that a “Sanitation District means a special district that provides for storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, or solid waste disposal facilities or waste services, and all necessary or proper equipment and appurtenances incident thereto.”
- **Section 32-1-1001(1)(k), C.R.S.:** This Section of the Special District Act states that: “For an on behalf of the special district the board has the following powers: to furnish service and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties, or charges for such services and facilities.” (*Emphasis supplied*).
- **Section 32-1-1001(1)(d)(I), C.R.S.:** This Section of the Special District Act states that the board of a special district has the power “[t]o enter into contracts and agreements affecting the affairs of the special district....”
- **Section 32-1-207(2)(a), C.R.S.:** This Section of the Special District Act establishes the right of the City to approve “material modifications” of the Service Plan, consisting of changes of a “basic or essential nature” but excluding actions “necessary only for the execution of the original service plan....”
- **Section V.A. of the Service Plan:** This Section of the Service Plan states that: “The Districts shall have the power and authority to provide public infrastructure and related operation and maintenance services within and without the boundaries of the Districts as such power is described in the Special District Act, other applicable statutes, common law, and the Colorado Constitution, subject to the limitations set forth herein.” (*Emphasis supplied*).
- **Section V.A.1 of the Service Plan:** This Section of the Service Plan states: “The Districts shall not be authorized to operate and maintain any part or all of the Public Improvements, other than ... sewer ... improvements ..., unless the provision of such operation and maintenance is pursuant to an intergovernmental agreement with the City.” (*Emphasis supplied*).

- **Section II of the Service Plan:** This Section of the Service Plan includes definitions that establish the maximum extent of the Districts’ respective boundaries, described as the Districts’ “Service Area.” (*Emphasis supplied*).
- **Section V.A.7 of the Service Plan:** This Section of the Service Plan states that: “The Districts shall not include within any of their boundaries any property outside the Service Area without the prior written consent of the City.” (*Emphasis supplied*).

The District interprets the Service Plan and the Special District Act as expressly authorizing the District to provide the Sanitation Services outside the boundaries of the Districts, and to enter into contracts or agreements relating to the provision of the Sanitation Services outside of their respective boundaries without further approval from the City. This is based on the above-cited provisions of the Special District Act and the Service Plan, and the fact that the provision of the Sanitation Services outside of the boundaries of the Districts does not involve the inclusion of area(s) to be served into the boundaries of the Districts, which would make the properties subject to future ad valorem property taxes imposed by the Districts. As such, the limitation contained with Section V.A.7 of the Service Plan relating to City approval for inclusions of property outside of the Service Area into the boundaries of the Districts is inapplicable.

Further, because the Service Plan authorizes the Districts to enter into contracts to provide the Sanitation Services outside of their respective boundaries, such actions, when taken, will be taken “only for execution of the original service plan,” and therefore City approval of a material modification to the Service Plan is not required.

Accordingly, the District hereby gives notice that it intends to exercise those powers afforded by the Special District Act and the Service Plan by entering into one or more extraterritorial service agreements to provide the Sanitation Services.

In this regard, the Big Sky Metropolitan District No. 1 (“District No. 1”) has entered into an Intergovernmental Agreement with Green Mountain Water and Sanitation District, dated May 8, 2018 (the “Agreement”) relating to the provision of the Sanitation Services outside of the boundaries of the Districts.

Pursuant to the Agreement, the District intends to enter into one or more extraterritorial service agreements with other special districts or property owners in order to provide Sanitation Services to any and all properties located in the Big Sky Service Area as defined in Section 1.6 of the Agreement and depicted on the map attached to this Notice as **Exhibit A**. In accordance with the Agreement, wastewater generated from within the Big Sky Service Area shall be transmitted through sanitary sewer infrastructure owned and maintained by District No. 1 and then transmitted to the sanitary sewer system owned and maintained by the Green Mountain Water and Sanitation District for delivery to the Metro Wastewater Reclamation District for treatment and disposal. The sanitary sewer service contemplated by the Agreement is not a

change in the Service Plan of a basic or essential nature as defined in section 32-1-207 (2)(a), C.R.S.

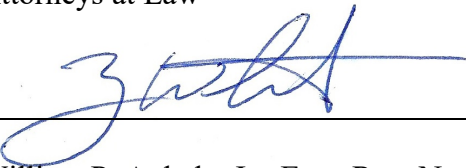
Pursuant to Colorado law, any action to enjoin the above-described actions as a material departure from the Service Plan must be brought by an interested party as defined in section 32-1-207 (3)(a) and 32-1-204 (1), C.R.S. within forty-five (45) days from publication of this notice or such an action shall be forever barred.

NOTICE IS FURTHER GIVEN that, pursuant to and in accordance with § 32-1-207(3), C.R.S., a Notice of Intent to Undertake Certain Actions will be published in the *Lakewood Your Hub* on April 11, 2019.

NOTICE IS FURTHER GIVEN that, pursuant to and in accordance with § 32-1-207(3), C.R.S., any action to enjoin such activity must be brought within forty-five (45) days from publication of this notice, which deadline is May 26, 2019.

Respectfully filed with the Court this 11th day of April, 2019.

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

A handwritten signature in blue ink, appearing to read 'W. Ankele', is written over a horizontal line.

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