

Summary and Index

Memorandum Regarding Service Plan Violations by the Big Sky Metropolitan District
and
Response to Cox/Fejka Memorandum to Lakewood City Council dated January 8, 2019

John Henderson
January 21, 2019

1. The Cox/Fejka memorandum repeats the White Bear arguments. p. 1
2. Special Districts in General - service plan limitations, modifications of service plans and boundaries. p. 2
3. The "Big Sky Sewer System" on its own terms is a material modification to the purpose of the Big Sky District approved by the Lakewood City Council. p. 4
 - A. The Cox/Fejka memo confirms the list of changes contained in the Big Sky IGA. p. 5
 - B. The White Bear memo of October 15, 2018, confirms the regional nature of this new "Project" and confirms the new changes where Big Sky will be the new "master meter" for sewer service to all of Rooney Valley in order to "enable development" for all of Rooney Valley in the most "streamlined", "efficient and economical" way. p. 6
4. On December 19, 2018, Ms. Fejka sent a letter to White Bear requesting their help in explaining why providing services outside the City boundaries is not a material modification. That question was not answered. But the Cox/Fejka memo argues that the material modification is "unlikely" because of what Mr. White said in his response dated December 31, 2018. p. 7
5. Mr. White's letter - do whatever we want to do unless the Service Plan says no. Mr. White's new argument - the Big Sky IGA changes are local changes not regional changes. They only need to get permission for regional changes not local changes. pp. 8 - 14
6. Response - can't do whatever Big Sky wants to do. The Court of Appeals decisions, statutes and Service Plan limit what Big Sky can do to those services and territory approved by the City in the Service Plan.

As to the new argument - under the Court of Appeals decisions, previous service plans and White Bear's own October 15, 2018, memo, the Big Sky IGA changes are regional changes. By definition, local services are inside the purpose and territory boundaries and regional services are outside the boundaries. Moreover, changes are changes whether or not they are "local" or "regional". The Big Sky IGA is a change to the purpose and territory boundaries of the Service Plan that requires permission from the City Council. pp. 8 - 14
7. Conclusions p. 14

Memorandum Regarding Service Plan Violations by the Big Sky Metropolitan District
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1. The Cox/Fejka Memorandum Repeats the White Bear Arguments

The Lakewood City Council received a memorandum prepared by the associate with City Attorney Mr. Tim Cox' office, Attorney Silvia Fejka¹ entitled "Executive Summary of Findings" dated January 8, 2019. The memo does not make factual findings. It essentially repeats arguments made by two attorneys from the White Bear law firm in support of their client, Big Sky (Brookfield), presented in a memorandum and letter.

The first White Bear memorandum is dated October 15, 2018, and was apparently prepared by Kristen Bear.

The second White Bear letter is dated December 31, 2018, and was prepared by Zachary White.

This second letter was in response to a letter Ms. Fejka sent to White Bear on December 19, 2018, requesting assistance. Ms. Fejka's letter has not been disclosed. But according to Mr. White's letter, she requested assistance from White Bear to address issues raised in a recent Court of Appeals decision. The Cox/Fejka memo then adopted and repeated Mr. White's argument as part of the Cox/Fejka conclusion.

Therefore what the Council has before it is a memorandum - prepared by an attorney with 2 1/2 years special district experience who, 7 months ago, was an associate with White Bear - based upon a memorandum and a letter prepared by White Bear attorneys on behalf of their client.

Unfortunately, this does not inspire public confidence in the expertise, objectivity and unbiased evaluation of the issues by the City Attorney's Office.

The arguments are addressed below.

¹ Mr. Cox previously disclosed to Council that he is not knowledgeable about special district law. The memo states Ms. Fejka is "an attorney with extensive experience representing and advising title 32 districts". According to her linked in page, since graduating from law school in 2013 Ms. Fejka had worked two years for White Bear, the same firm representing Big Sky (Brookfield). The two years were split in half and in between each year she worked two years for Westlaw, an internet legal search company. Ms. Fejka has worked for the Cox firm for 7 months since leaving White Bear. The "extensive experience" then is about 2 1/2 years.

2. Special Districts in General

The Cox/Fejka Memo casually endorses many of the special district abuses as normal procedure which is concerning. However, these issues will be addressed at another time.

There are three points raised in the Cox/Fejka memo regarding special districts that require a response as to the Big Sky IGA.

A. Service Plan Limitations

The Cox/Fejka memo repeats the White Bear mantra that if the Service Plan doesn't say they can't do something then they can. As explained previously, under both the statutes and the Service Plan itself, the reverse is true.

The **statutes** limit the focus to providing services for the inhabitants of such districts (CRS 32-1-102 (1)) A district is authorized "to enter into contracts and agreements affecting the affairs of the special district . . ." CRS 32-1-1001 (1)(d)(I).

The very first item the statutes require in a Service Plan is "(a) A description of the proposed services" CRS 32-1-202 (2) ("The service plan shall contain the following: (a) A description of the proposed services . . .")

There would be no reason to require the Service Plan to describe the proposed services if the district could do anything it wanted to do except what the Service Plan said it couldn't do.

The **Service Plan** limits the purpose and territory of the district.

The purpose of the Big Sky Service Plan was to finance the construction "of all the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District". . . . "The primary purpose is to provide for the Public Improvements associated with the development of the project. [homes and commercial]" (Big Sky Service Plan, page 1)

"This Service Plan is intended to establish a limited purpose for the Districts and explicit financial constraints that are not to be violated under any circumstances." (Big Sky Service Plan, page 1)

"V. A. 7. Inclusion Limitation

The Districts shall not include within any of their boundaries any property outside of their Service Area without the prior written consent of the City. (Big Sky Service Plan p. 6 - 7)

B. Modifications of Service Plans

The Cox/Fejka memo uses the words "deviation" and "significant deviation" to define a material modification to the Service Plan. These words suggest the change must be more than just a change. That is not what the statute says.

Material only means it applies to what the district is authorized to do. And the statute itself defines a material modification as a "change of a basic or essential nature". CRS 32-1-207(2). A "change of a basic or essential nature" is not a "significant deviation".

Moreover, the statute expressly states that "[s]uch approval of modifications shall be required only with regard to changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district . . ." CRS 32-1-207(2)

C. Boundaries

According to the statutes and Service Plan, the Service Area is specifically defined as the boundaries of the District approved by the City when they approved the Service Plan.

The Cox/Fejka Memo has adopted a new way of talking about the District boundaries which started in the in the White December 31 letter. Mr. White and Cox/Fejka use a new term for the first time, "taxing boundaries", which does not exist in the statutes or the Service Plan.

The boundaries are the boundaries and the Service Area is the Service Area. There are not two kinds of boundaries or service areas.

They can't change the boundaries by simply calling it a different name. The boundary is the boundary and the only way to change it is by asking the City Council's permission.

The Service Area unilaterally adopted by Big Sky in their IGA is significantly different from the Service Area approved by the City Council in 2014.

Big Sky (Brookfield) can apply to change the boundary if they want to but they must follow the rules under the statute for making that change, including a petition and public hearing. CRS 32-1-207.

3. The "Big Sky Sewer System" is a Material Modification to the Purpose and Territory of the Big Sky District

The Cox/Fejka Memo and the White Bear Memo and Letter do not appear to dispute that establishing a new sanitation district and doing all the new things described in the IGA is a big change from building homes and developing retail approved in the Big Sky Service Plan in 2014.

And how could they. There is nothing in the Big Sky Service Plan that talks about the "Big Sky Sewer System", nothing that talks about taking applications from customers for sewer outside of the district, nothing about building a sewer system to obtain sewage from customers outside the district and sending it to Green Mountain, nothing about building, owning and operating the sewer system in another district (Green Tree), nothing about enforcing compliance with state and federal environmental laws by all of these customers outside their district, nothing about building lift stations and storage tanks for sewage from customers who live outside the district, nothing about creating a system of fee structures and billing processes for customers outside their district - essentially doing what Green Mountain does - for Rooney Valley.

The change is also revealed in the numbers. Under the Service Plan approved by the City of Lakewood in 2014 to build homes and commercial businesses, the cost of providing sanitation services to the inhabitants of the Big Sky District was \$415,924.00. (Big Sky Service Plan) The proposed cost of the "Big Sky Sewer System", not including costs to Green Mountain Sanitation, is \$3,846,528.00 (IGA Exhibit D). That is a material modification.

The Cox/Fejka Memo and the White Bear Memo and Letter again justify this "change of a basic or essential nature" as ok because the statutes say they can provide sanitation services.

Yes, they can provide sanitation services: for the homeowners and businesses in their district. That is what the City Council approved in 2014. We would not be having this discussion if Big Sky was talking about providing sanitation services for the home owners and businesses in the Big Sky District which cost \$415,924.00 as authorized by the Service Plan.

We are having this discussion because on May 8, 2018, Big Sky had Green Mountain sign an IGA changing the purpose of the Big Sky district. An IGA which created a brand new sewer district and a new sewer system for Rooney Valley which will cost at least \$3,846,528.00.

That is a material change in the sanitation services approved by the City in the 2014 Service Plan. It is a "change of a basic or essential nature" in the purpose of the Big Sky District.

A. The Cox/Fejka Memo List of Changes to the Purpose of the District

The Cox/Fejka memo presents its list of key provisions of the IGA. Making the necessary factual corrections, this list also demonstrates that these changes constitute a "change of a basic or essential nature".

- Green Mountain will accept wastewater from the "Property" and send it to Denver Wastewater. What "Property". The "Property" in the IGA is significantly different and larger than the "Property" approved in the Service Plan. That is a material modification.

- Green Mountain will construct and expand facilities outside of the Districts' boundaries.
- The Districts will construct and expand facilities inside the Districts' boundaries.

First, outside what boundaries. The new IGA boundaries or the City approved 2014 boundaries. It appears that this references the expanded IGA boundaries. In either case, the statements are not accurate.

Sections 3.1, 3.3, 3.7 and 4.1 of the IGA expressly state that Big Sky (Brookfield), not Green Mountain will construct and own all of the Big Sky Sewer System. At least \$3.4 million of that work will be outside the boundaries approved by the City in 2014. In fact, the Big Sky District will construct, own and operate the Big Sky Sewer System in the new IGA Service Area which is outside the original Big Sky Service Area boundaries.

And any work that Green Mountain must do in the Green Mountain District or outside its district to accommodate the new Big Sky Sewer System will be reimbursed, paid, at least initially, by Big Sky (Brookfield). Green Mountain will pay 50% of its share of the customer payments back to Big Sky to repay the reimbursed costs.

This is a material modification to the 2014 Service Plan.

- The Districts will have owners apply for a permit from Green Mountain and owners will pay fees to Green Mountain.

Again, this is not accurate. Section 2.9 of the IGA explains that first the new customer applies to Big Sky and if Big Sky approves the customer, then the application is forwarded to Green Mountain.

Also, the new customers will pay both Big Sky and Green Mountain fees and Green Mountain will rebate 50% of certain fees to Big Sky.

Big Sky's cost of constructing the Big Sky Sewer System will also be paid in the form of cost, profit and interest on the "loan" to the residents of the district (through expensive interest bearing bonds) and inflated fees to those who do not live in the district. This is a material modification to the 2014 Service Plan.

- Funding construction through bonds and fees - see above. Again these are both material modifications to the Service Plan.

B. The White Bear Memo List of Changes to the Purpose of the District

In the White Bear Memo to City Attorney Tim Cox dated October 15, 2018, Kristen Bear boldly declared "there are no limitations on . . . sanitation powers", essentially asserting they can provide sanitation services to anyone anywhere without any limitations. That is a change from the Service Plan and inconsistent with the statutes.

She also declared that Big Sky "will essentially act as a master meter for the properties" both inside and outside its boundaries - referring this time to the 2014

boundaries. "Master meter". This is the same thing Green Mountain does. They are the "master meter" for their district from Denver Wastewater. This is a material change in the Service Plan.

Ms. Bear also complained that "without such service (Big Sky Sewer System in the IGA) development of the **Project** could not take place." Development of the "Project" could not take place. What "Project". The Project defined in the 2014 Service Plan was building houses and retail in the Big Sky District. Now the "Project" is developing Rooney Valley. That is a material change.

Further on in the memorandum Ms. Bear candidly explains that this "Project" is a good thing for the inhabitants of the 2014 Big Sky District because "[e]nabling development within the Rooney Valley has the potential to increase property values of the future residents of the Districts".

In her own words, "The IGA provides a streamlined approach to sewer service in the Rooney Valley which has the added benefit of avoiding duplication of facilities and services, and makes sewer facility construction and transmission of wastewater to Green Mountain the most efficient and economical solution, which is all intended to benefit the Districts, the properties service and Green Mountain. "

Going from building homes and retail in a specific approved location to "enabling development within Rooney Valley" and "provid[ing] a streamlined approach to sewer service in the Rooney Valley" is a material change to the purpose of the Big Sky District approved by the City in 2014.

4. Ms. Fejka's December 19, 2018 Letter to White Bear Requesting Help in Explaining Why Providing Services Outside the City Boundaries is Not a Material Modification

Attorney Zachary White's letter of December 31, 2018, responds to Ms. Fejka's letter of December 19, 2018, requesting help in preparing her memo for the Lakewood City Council. Ms. Fejka's letter of December 19 has not yet been disclosed. But it is clear from Mr. White's letter that she needs his assistance in explaining "why the provision of services **outside the boundaries of the City of Lakewood** does not constitute a material modification . . . in light of" a new Court of Appeals decision issued in September, 2018.

Mr. White's letter never answers that question, but it does talk about the new decision and how it applies to this situation. Ms. Fejka then simply summarizes Mr. White's analysis and repeats it in her memorandum. Keep in mind that Mr. White is the leading partner in the firm she worked for as an associate just 7 months ago.

Ms. Fejka not only repeats Mr. White's conclusion, but makes it the pivotal argument in her memo to the Council. She argues that the material modification is "unlikely" because of what Mr. White said in his letter.

5. Mr. White's Attempt to Spin the Court of Appeals Decision - Local v. Regional Services

Here is Mr. White's analysis of the September Court of Appeals decision in *Barrett v. Lembke*, 2018 COA 134 (September 6, 2018) (which I refer to as the "Beebe" decision - it involved the South Beebe Metro District).

A. Do Whatever We Want to

First, the Cox/Fejka memo repeats again and again Mr. White's mantra from his letter that Big Sky can do whatever it wants to unless the Service Plan says no. Again, that is not what the statutes or the Service Plan say.

As noted by the Court of Appeals in the *Beebe* decision:

The General Assembly enacted the Special District Act (the Act) with the intent that special districts "promote the health, safety, prosperity, security, and general welfare" **of their inhabitants** and of the State of Colorado. § 32-1-102(1), C.R.S. 2017; see also Sand Hills, ¶ 15; Todd Creek Vill. Metro. Dist. v. Valley Bank & Tr. Co., 2013 COA 154, ¶ 37.

Special districts are political subdivisions of the state that possess proprietary powers. Todd Creek, ¶ 38.

But they possess only those powers expressly conferred on them. Sand Hills, ¶ 15.

Once established, a special district **must conform to its service plan** "so far as practicable." § 32-1-207(1).

Any **material modifications to the service plan must be approved** by the appropriate governing authority. § 32-1-207(2)(a)."

Beebe, p. 6 - 7. (Additional paragraph breaks and emphasis added).

B. The Beebe Decision Is About Obtaining Permission First

Mr. White claims, and the Cox/Fejka memo repeats, that according to the *Beebe* decision, the Big Sky IGA is a local modification not a regional modification. And, they continue, since it is a "local" modification, that is ok - it does not violate the Service Plan or the statutes.

First, a modification is a modification. The statute and Service Plan do not say that you don't need permission for a "local" modification. They do not say you only need permission for "regional" modifications. Mr. White and Cox/Fejka are creating a new law

that is not present in the statutes, Service Plan and particularly not in the Court of Appeals' decisions.

Second, this new law is not what *Beebe* was about. In fact, according to the *Beebe* Court, the Big Sky IGA is a material modification and Big Sky must first obtain permission from Lakewood to become the new sanitation district for Rooney Valley. Here is why.

Beebe is a 58 page decision that addresses several issues. The only issue that has any application to our case is whether or not Beebe followed the correct steps in obtaining approval to provide regional services. *Beebe*, pp. 2, 23, 26 and 34.

This is important. The parties in that case all agreed that Beebe was providing services outside of the services approved in the Service Plan. They all agreed that Beebe had to obtain permission from the County to provide those new services. *Id.* The only question was whether or not they followed the correct procedures. *Id.*

Unfortunately for Beebe, they got permission from the planning commission and other officials, but not the County. Since they did not get permission from the County, providing additional services outside the Service Plan provisions was a material modification and invalid. *Id.* pp. 34 - 39.

What makes this case particularly applicable to Big Sky is that Beebe did the right thing. They got permission from the County in previous years to modify their service plan and obtained approval to expand their services. Big Sky never did and is fighting hard to never do it.

Beebe started out like Big Sky. Their original service plan approved in 1985 was to build homes for the Bromley Park subdivision.

Then they decided to expand the scope of their services to provide regional services outside the boundary of their service plan. They applied for a modification and approval from the County in previous years which was granted. So that by the time the *Beebe* case came up, Beebe was already a regional service provider - because their service plan had been amended by the County and they had permission to expand their purpose.

The 2018 Beebe case was based upon further expansion of the scope and territory of their services - but this time they did not obtain permission from the County. They thought the permission they had from the planning commission and other officials was enough.

In stark contrast, in Big Sky's case, they have not even tried to obtain permission to implement the Big Sky IGA and become the provider of sanitation services to Rooney Valley, including territory in the jurisdiction of Morrison and Jefferson County.

If the Big Sky case came before the same Court of Appeals in the *Beebe* case, there is no question that they would decide the IGA is a violation of the Service Plan and that it is invalid. At least Beebe followed the law previously and tried to this time.

Big Sky's position is different. They don't believe they need permission to create, operate and manage a new sanitation district. They believe is they can do whatever they want to as long as the Service Plan doesn't say they can't.

C. Beebe Says Local Equals Inside the Boundaries and Regional Equals Outside the Boundaries

Mr. White's letter, simply repeated by the Cox/Fejka memo, takes liberties with the *Beebe* decision by arguing that the boundary of the Service Area is not controlling. Services provided outside the boundary are ok as long as they are "local" services. And the **difference between local services and regional services is the size of the new territory and the distance between the Service Area territory and the new territory.**

Here is why this "spin" on the *Beebe* decision is not accurate.

1. The Court in *Beebe* expressly stated that **the size is irrelevant and there is absolutely no discussion in the decision about the distance.** In the Court's own words:

"But the division did not rest its conclusion **solely on the fact or size of the inclusion.** Rather, it focused on three aspects of the district's conduct: "the 2009 addition of the 70 Ranch property," "the 2011 complete geographic shift to the 70 Ranch property (removing all Lochbuie property)," and "the district's shift from a local focus with the purpose of providing **local necessities for the construction of the Altamira Development to a regional focus providing services beyond Lochbuie's boundaries.**" Id. at ¶ 20." Id p. 41-42 (emphasis added)

"Unlike in Sand Hills, South Beebe's shift from a local to a regional service provider was incremental, beginning in 2003 — long before the 70 Ranch was included. But Sand Hills remained a local provider until it included the 70 Ranch. Thus, **the mere size of the 70 Ranch did not make its inclusion a material modification; rather, the inclusion changed the "basic or essential nature" of Sand Hills.**" Id p. 42 -43 (emphasis added)

2. The Court in *Beebe* expressly stated that Local is inside the boundaries and Regional is outside the boundaries. In the Court's own words (in addition to the quotes above):

"Rather, it focused on three aspects of the district's conduct: . . . and "the district's shift from a **local focus** with the purpose of providing **local necessities for the construction of the Altamira Development to a regional focus providing services beyond Lochbuie's boundaries.**" Id. at ¶ 20." Id p. 41-42 (emphasis added)

"The court relied on Sand Hills, which stated that "the district's shift in purpose, reflected in the 2013 plan [build the Lochbuie development], from a **localized district providing for residential and commercial development in Lochbuie** to a **regional district reaching beyond Lochbuie and providing regional benefits to the**

county constituted a change to the basic and essential nature of the 2004 plan.” ¶ 23. South Beebe does not challenge this conclusion either.” Id p. 26.

"South Beebe does not challenge the trial court’s finding, discussed in Part V.B.1.a, supra, that “the district’s provision of **services beyond the geographic boundaries of Bromley Park** to the larger South Beebe Draw area constituted a **change of a basic or essential nature,**” and thus materially modified its service plan. This finding means that **South Beebe had to obtain BOCC approval.**” Id p. 34 (emphasis added)

"Then the court turned to whether South Beebe’s **providing services beyond the geographic boundaries of Bromley Park to the larger South Beebe Draw area constituted a change of a basic or essential nature.**” Id p. 25 (emphasis added)

"The court concluded:

South Beebe’s shift in purpose, from providing facilities and services for the proposed **Bromley Park residential and commercial development located near Brighton**, Colorado to a **regional district** reaching beyond Brighton and providing benefits to Adams County (and contemplating providing services to Weld County) constituted a change to the basic and essential nature of the 1985 Original Service Plan. South Beebe does not challenge this conclusion.”

Id pp 25 - 26.

D. *Sand Hill Decision* - No one wants to talk about - Answers the question and was Relied upon by the *Beebe Court*

For whatever reason, neither Kristen Bear, Zachary White or their former associate Ms. Fejka want to discuss *Barrett v. Sand Hills Metro District*, 411 P.3d 1086, 1091 - 1092 (Court of Appeals 2016), cert. den. 2017. (“First, the district's shift in purpose, reflected in the 2013 plan, from a localized district providing for residential and commercial development in Lochbuie to a regional district reaching beyond Lochbuie and providing regional benefits to the county constituted a change to the basic and essential nature of the 2004 plan.”). This is the case cited in my earlier material shared with all the attorneys.

Sand Hills involves some of the same parties as the *Beebe* decision. Beebe tried to rectify some of the problems in *Sand Hills* by applying for permission from the planning commission and other officials.

1. First, Sand Hills, like Big Sky (Brookfield), asserted that they could do whatever they wanted to do once they were approved as a special district. The Court of Appeals did not think very highly of that position.

"Sand Hills argues that the inclusion or exclusion of property within a district cannot impair or affect its organization and that once formed the district’s status as a legal entity cannot be challenged.

This sort of unbounded power is not contemplated by the Act. The Act is clear that

material modifications of a district's service plan can be challenged. See § 32-1-207(2)(a); see also § 32-1-209 (requiring districts to report to the board of county commissioners and allowing the county treasurer to withhold moneys).

To hold otherwise would lead to an absurd result, which we must avoid. Crandall, 238 P.3d at 662." *Sand Hills* p. 14 (emphasis and paragraph breaks added)

2. Second, *Sand Hills* makes it crystal clear. Local is within the boundaries and outside the boundaries requires permission and an approved modification:

"First, the district's shift in purpose, . . . **from a localized district providing for residential and commercial development in Lochbuie to a regional district reaching beyond Lochbuie and providing regional benefits to the county constituted a change to the basic and essential nature of the 2004 plan.** See § 32-1-207(2)(a); see also *Upper Bear Creek Sanitation Dist. v. Bd. of Cty. Comm'rs*, 715 P.2d 799, 800 (Colo. 1986) (**stating that appropriate board of county commissioners was required to approve a modified service plan**). *Id* p. 11

In sum, the district's geographical shifts, in 2009 and in 2011, the district's failure to implement the services articulated in the 2004 plan, and **the district's unilateral actions that effectively expanded the 2004 plan without the appropriate government's approval constituted de facto material modifications to the 2004 plan and violated the Act.** *Id* p. 19.

Similarly in Big Sky's case, the Big Sky IGA is a unilateral action that expanded the kind of purpose and the physical territory without permission.

And also similarly, Big Sky is providing services outside the jurisdiction of the City which approved the special district in the first place. In *Sand Hill*, the services extended into a jurisdiction which had not approved or even considered the move. In our case, the new Service Area created by Big Sky (Brookfield) is outside of Lakewood and includes Morrison and Jefferson County. This fact creates additional problems:

"The district's borders extended outside of Lochbuie and into Weld County, triggering additional notice and approval requirements. See §§ 32-1-203, -207." *Id* p. 12.

6. Local and Regional - Look no further than previous Service Plans Created by Brookfield and Approved by Lakewood

The two Courts of Appeals make clear that local means within the Service Plan boundaries and Regional means outside the boundaries. Of course we already knew that based upon the definitions of regional in prior service plans.

Take for example the Solterra Service Plan. It was written by the same lawyers - White and Beard. It was approved by the same authority - the City of Lakewood in 2006. It expressly approved and authorized regional improvements, including an estimate of their

cost and specifically where they were located:

"Public Improvements: means a part of all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped, operated, maintained . . . in Exhibit B, **to serve the future taxpayers and inhabitants of the Service Area.** Fossil Ridge Service Plan p. 7

"Regional Improvements: means that portion of the **public improvements identified on Exhibit B as "Regional Improvements"**. . . . Id

"Regional Improvements IGA: means an intergovernmental agreement . . . **concerning the provision of regional improvements within and around the Project** . . . "Id

"Project: means the development of real property located within the District Boundaries, also referred to hereinafter as Fossil Ridge [Solterra]. ". Id.

Regional improvements are defined as improvements both inside the boundaries and around the project. Not 30 miles away, not 100 miles away. Indeed, the regional improvements for Solterra included widening Alameda, Yale and McIntyre as well as building the dog park adjacent to Solterra. These regional improvements are even closer to Solterra than the improvements Big Sky (Brookfield) is now saying are purely "local" and need no approval from the City.

These "regional" improvements defined in the Solterra Service Plan are not in another jurisdiction (Morrison and Jefferson County). These "regional" improvements are not in another special district (Green Tree - Dinosaur Ridge). These "regional" improvements are not the remainder of Rooney Valley and across C-470.

No, these improvements defined as "regional" are regional simply because they are outside the boundaries of the District. That is what makes them regional. By definition.

If widening Alameda, Yale and McIntyre (Solterra Border roads) and building the dog park adjacent to Solterra are "regional" improvements, then becoming the "master meter" for Rooney Valley, building a new "Big Sky Sewer System" outside the 2014 boundaries and outside Lakewood in Morrison and Jefferson County as well as providing sewer services to another special district, the construction of lift stations and storage facilities as well as constructing and operating the new system for customers - all outside the district - are also regional improvements.

And, look at the Service Plan for Big Sky. There is no reference whatsoever to providing for regional services outside the Service Area boundary. They knew how to provide for these services and approve these services in a Service Plan when they wrote and the City approved the Service Plan for Solterra 8 years before they wrote and approved the Big Sky Service Plan.

They did provide in the Big Sky Service Plan for constructing sanitation services **for**

the inhabitants of the District. At a cost of \$415,924.00.

The Big Sky Service Plan does not provide however, in Kristen Bear's words, for a "master meter" to "enable development within Rooney Valley" and an "efficient and economical" "streamlined approach" to solving the problem of providing sewer to Rooney Valley. (Letter October 15, 2018.). The Big Sky Service Plan does not provide for a "Project" creating the new "Big Sky Sewer System" that, according to the Big Sky IGA will cost **\$3,846,528.00.**

The Big Sky Sewer System was never contemplated at the time the Big Sky Service Plan was prepared and approved. It is a change from what was approved. A material modification.

7. Cox/Fejka Memo Conclusions

Mr. White's arguments, repeated by the Cox/Fejka memo, which try to claim that the Big Sky IGA is just a "local" modification and that only "regional" modifications require action by the City, is simply wrong.

The Courts of Appeals make clear that local means within the boundaries of the district and regional is outside the boundaries.

The definition of regional used by White Bear and the City in prior Service Plans which do approved services outside the district boundaries make clear that anything outside the district boundaries is regional.

The Big Sky Service Plan only requested, and was only approved, to provide sanitation service to the inhabitants of the approved Big Sky District.

The Courts of Appeals, statutes and Service Plan make clear that any change in the purpose and boundary of the district must be approved by the City.

The Cox/Fejka memo concludes (with responses in bold):

a. "There is no hard line as to what constitutes a material modification"

The Court of Appeals, and the Big Sky Service Plan do draw a clear line in this case as to what constitutes a material modification.

The purpose of the Big Sky Service Plan was to finance the construction "of all the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District". . . . "The primary purpose is to provide for the Public Improvements associated with the development of the project. [homes and commercial]" (Big Sky Service Plan, page 1)

"This Service Plan is intended to establish a limited purpose for the Districts and explicit financial constraints that are not to be violated under any circumstances." (Big Sky

Service Plan, page 1)

"V. A. 7. Inclusion Limitation

The Districts shall not include within any of their boundaries any property outside of their Service Area without the prior written consent of the City. (Big Sky Service Plan p. 6 - 7)

Under both Courts of Appeals decisions, purposes and territory outside the Service Plan require permission and are modifications.

b. "But it is unlikely that the Green Mountain IGA rises to the level"

Unlikely to who. The Lakewood City Council will make the decision. And any Court of Appeals will show deference to the City's decision.

c. "If the District continues to expand services and becomes a regional provider in Jefferson County and beyond, Big Sky would need to seek approval for a material modification from both the City of Lakewood and the County."

Under the IGA, Big Sky is a provider in Jefferson County and Morrison, outside the City of Lakewood jurisdiction. According to this conclusion therefore, the IGA violates the Service Plan and Big Sky must apply for a modification from the City and Jefferson County. And of course, even using their regional analysis, for all the reasons previously expressed, the IGA is by definition a regional service.

8. Conclusion

The Big Sky IGA establishes a new sanitation district for Rooney Valley that was adopted as the votes were being counted on election night, May 8.

No application for a modification to the Big Sky Service Plan. No request to expand the purpose of the Big Sky District beyond building homes and retail. No request to expand the boundaries of the district outside the City of Lakewood to include another special district and territory in Jefferson County and Morrison. No public hearing. No feasibility study.

They just did it, enabled by attorneys who said in their opinion, contrary to the statutes and Service Plan, Big Sky could do whatever they wanted to as long as the Service Plan didn't say they couldn't.

The Lakewood City Council created the Big Sky District. The Lakewood City Council has the obligation to enforce the Big Sky Service Plan boundaries and limitations.

The Lakewood City Council has the authority to dissolve the Big Sky District. The Lakewood City Council has the authority to stop the IGA.

And this is a decision by the Lakewood City Council. Not the City Attorney who concedes a lack of knowledge in the area and an assistant City Attorney with two years

experience in special district law who until 7 months ago was working for the same firm that represents Big Sky (Brookfield).

And this is a decision by the Lakewood City Council. Not by a company and an individual whose occupational mission is to make as much profit as possible, selling sewer services at a profit where there is a monopoly, with no accountability to the residents, with no check and balance.

And this is a decision by the Lakewood City Council. Accountable to the public. Who aren't making decisions to make a profit. Who care about the public interest. Who care about our community. Who care about the allocation of scarce public resources. Who care about our future and that of our future residents.

Thank you for your time and consideration.

John Henderson

