

1.

From: **Kristen D. Bear** [mailto:kbear@wbapc.com]
Sent: Tuesday, September 11, 2018 1:01 PM
To: **Tim Cox** <TimCox@lakewood.org>
Cc: William P. Ankele, Jr. <wpankele@wbapc.com>; Zachary P. White <zwhite@wbapc.com>
Subject: Big Sky Metropolitan Districts

Tim:

Hope all is well with you! **I got a call today from Tom Morton requesting that I contact you in regard to public comment made at last night's Council meeting by John Henderson concerning the Big Sky Metropolitan District.** I also understand that there may be a memo or some other documentation that was provided to Council by Mr. Henderson. If the latter is available, I would like to request a copy of the same.

I understand that at least one councilmember requested staff to look into matters involving the Districts and **I want to make sure that we are coordinating as necessary in that effort. Do you have some time early next week to talk?**

Kristen D. Bear, Esq.
of counsel
WHITE BEAR ANKELE TANAKA & WALDRON
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Northern Colorado Office:
748 Whalers Way, Suite 210
Fort Collins, Colorado 80525

P 303.858.1800
F 303.858.1801
kbear@wbapc.com
www.whitebearankele.com

CONFIDENTIALITY AND PRIVILEGE NOTICE: The information contained in this email message, and any files transmitted with it, may be privileged, confidential, and exempt from disclosure under applicable law. This email message is intended only for the use of the individual(s) or entity(ies) to whom it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error, please notify us immediately by telephone or by reply email and delete the message and any copies from your computer.

2.

From: **Tim Cox**
Sent: Wednesday, September 12, 2018 1:57 PM MDT
To: **Kristen D. Bear** <kbear@wbapc.com>
Subject: RE: Big Sky Metropolitan Districts

Hello Kristen – Thanks for getting in touch. Yes, it was a brief but spirited discussion about Big Sky at Monday night’s meeting, and when the dust settled it was not entirely clear what the Council wants us to do. **What is clear is that Mr. Henderson has convinced some Council members that metro districts are inherently bad, and that some members want us to “investigate” the allegations made about Big Sky to see if the district has overstepped its bounds.**

I can forward to you the materials cited by Mr. Henderson, though I suspect you have them. **I’ll be reviewing them, and maybe you and I can talk after we both read through them.**

Thanks,

Tim

Timothy P. Cox
City Attorney
City of Lakewood
480 S. Allison Parkway
Lakewood, CO 80226
(303) 987-7450
timcox@lakewood.org

3.

From: **Tim Cox**
Sent: Wednesday, September 12, 2018 2:04 PM MDT
To: **Kristen D. Bear** (kbear@wbapc.com) <kbear@wbapc.com>
Subject: FW: Big Sky / Special District
Attachment(s): "attachment 1.pdf", "attachment 1.pdf", "Big Sky Evaluation.pdf", "attachment A Big Sky evaluation.pdf", "attachment B Big Sky Evaluation.pdf", "attachment 1.pdf"

Kristen – Here is information we received from Mr. Henderson, and we reported that we would take a closer look. Please get back to me with the district’s responses.

Thanks,

Tim

Timothy P. Cox
City Attorney
City of Lakewood
480 S. Allison Parkway
Lakewood, CO 80226

(303) 987-7450
timcox@lakewood.org

4.

From: **Kristen D. Bear** <kbear@wbapc.com>
Sent: Wednesday, September 12, 2018 2:10 PM MDT
To: **Tim Cox** <TimCox@lakewood.org>
CC: Zachary P. White <zwhite@wbapc.com>; William P. Ankele, Jr. <wpankele@wbapc.com>
Subject: RE: Big Sky Metropolitan Districts

Thank you Tim. We'll take a look at this and will pan on talking after we both have a chance to analyze the content. To the extent the City wants a written response, we can certainly do that as well **though we should discuss the scope and form of the same to ensure we are on the same page (noting some ambiguity in the Council's request below).** We'll plan on getting back with you next week if that works with your schedule?

KRISTEN D. BEAR, ESQ.
OF COUNSEL
WHITE BEAR ANKELE TANAKA & WALDRON
303.858.1800
www.whitebearankele.com

5.

From: **Tim Cox**
Sent: Wednesday, September 12, 2018 2:18 PM MDT
To: **Kristen D. Bear** <kbear@wbapc.com>
CC: Zachary P. White <zwhite@wbapc.com>; William P. Ankele, Jr. <wpankele@wbapc.com>
Subject: RE: Big Sky Metropolitan Districts

That should be fine. I may have some other materials submitted by Mr. Henderson that could help define the allegations more precisely. If I do I will pass them along.

Tim

6.

From: **Kristen D. Bear** <kbear@wbapc.com>
Sent: Wednesday, September 12, 2018 2:27 PM MDT
To: **Tim Cox** <TimCox@lakewood.org>
CC: Zachary P. White <zwhite@wbapc.com>; William P. Ankele, Jr. <wpankele@wbapc.com>
Subject: RE: Big Sky Metropolitan Districts

Thank you.

KRISTEN D. BEAR, ESQ.
OF COUNSEL
WHITE BEAR ANKELE TANAKA & WALDRON
303.858.1800
www.whitebearankele.com

7.

From: **Kristen D. Bear** <kbear@wbapc.com>
Sent: Tuesday, September 25, 2018 9:01 AM MDT
To: **Tim Cox** <TimCox@lakewood.org>
Subject: RE: Big Sky Metropolitan Districts

Tim:

I just left you a voice mail regarding this matter. We've gone through Mr. Henderson's memo and are in disagreement with most (if not all) of what he has presented to Council. I wanted to touch base briefly to give you a high level response, but also discuss what you think might be most beneficial for purposes of a response back to the City -- along with process in order to provide that response.

Is there a time today or tomorrow that you are available for a quick call?

KRISTEN D. BEAR, ESQ.
OF COUNSEL
WHITE BEAR ANKELE TANAKA & WALDRON
303.858.1800
www.whitebearankele.com

8.

Sent: Tuesday, September 25, 2018 11:24 AM MDT
To: **Kristen D. Bear** <kbear@wbapc.com>
Subject: RE: Big Sky Metropolitan Districts

Kristen – Thanks for getting in touch, and for conducting the review of the Big Sky documents. As it happens, I am in the office just for a short time today due to a death in the family. Tomorrow I may have time around late morning. Let me know if 10:30 or 11:00 might work for you – I have to remain a little flexible but at the moment those times work tomorrow.

Thanks,

Tim

Timothy P. Cox
City Attorney
City of Lakewood
480 S. Allison Parkway

Lakewood, CO 80226
(303) 987-7450
timcox@lakewood.org

9.

From: **Kristen D. Bear** <kbear@wbapc.com>
Sent: Tuesday, September 25, 2018 1:19 PM MDT
To: **Tim Cox** <TimCox@lakewood.org>
Subject: Re: Big Sky Metropolitan Districts
Attachment(s): "image001.png"

Tim:

I'm so sorry for your family's loss.

If it works, lets set a call up for 10:30 tomorrow. I'll block 10-11:15 on my calendar in case you need the flexibility. Just give me a call at the office.

Sent from my iPhone

Subject: Discuss Big Sky (between 10 and 11ish)
Location: Tim to call Kristen on Cell 720-837-0900
Start: Wednesday, September 26, 2018 10:30 AM MDT
End: Wednesday, September 26, 2018 11:00 AM MDT
Show Time As: Tentative
Recurrence: None
Meeting Status: Not yet responded
Organizer: Kristen D. Bear
Required Attendees: w3wp

10.

From: **Zachary P. White** <zwhite@wbapc.com>
Sent: Monday, October 15, 2018 10:11 AM
To: **Tim Cox** <tim@mcm-legal.com>; **Silvia Fejka** <Silvia@mcm-legal.com>
Cc: Kristen D. Bear <kbear@wbapc.com>
Subject: Big Sky Metropolitan District Nos. 1-7

Good Morning, Tim and Silvia,

Attached for your review is a memorandum describing special districts in general and the portions of the Service Plan (Service Plan) for Big Sky Metropolitan District Nos. 1-7 (Districts) related to the questions that were raised before the City Council in September. **We hope this information is helpful in your review of the Service Plan for the Districts and the intergovernmental agreement with Green Mountain Water and Sanitation District.**

If you have any questions, please do not hesitate to reach out to me or Kristen Bear. We are happy to assist in your review in any way that you deem helpful.

Thank you,

Zachary P. White, Esq.
Attorney
WHITE BEAR ANKELE TANAKA & WALDRON
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Northern Colorado Office:
748 Whalers Way, Suite 210
Fort Collins, Colorado 80525

11.

From: Silvia Fejka
Monday, October 15, 2018 3:48 PM
To: Zachary P. White; Tim Cox
Kristen D. Bear
RE: Big Sky Metropolitan District Nos. 1-7

Thank you, Zach- much appreciated!

Silvia Fejka
Michow Cox & McAskin, LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

12.

From: Silvia Fejka

Wednesday, November 7, 2018 4:04 PM

To: 'Zachary P. White'

Tim Cox; Kristen D. Bear

Big Sky/Green Mountain IGA

Green Mountain Notice of Conditions Precedent, 2018-11-02.pdf

Hi Zach,

I did get your voicemail, and Tim and I will give you a call back this afternoon. As it turns out, we just finished our own analysis this week of the Big Sky issues raised to the Lakewood Council by Mr. Henderson. We also received the attached from Green Mountain and wanted to forward and get your input. Looking forward to discussing.

Silvia Fejka

Michow Cox & McAskin, LLP

6530 S. Yosemite St., Suite 200

Greenwood Village, CO 80111

Phone: 303-459-2725

Direct: 303-459-4855

silvia@mcm-legal.com

13.

From: Zachary P. White <zwhite@wbapc.com>

Sent: Thursday, December 13, 2018 11:30 AM

To: Tim Cox <tim@mcm-legal.com>; Silvia Fejka <Silvia@mcm-legal.com>

Cc: Kristen D. Bear <kbear@wbapc.com>

Subject: Big Sky Memo

Tim/Silvia,

Any thoughts from either of you on when your memo re the Big Sky districts will be made available?

Thank you,

Zachary P. White, Esq.

Attorney

White Bear Ankele Tanaka & Waldron

2154 East Commons Avenue, Suite 2000

Centennial, Colorado 80122

Northern Colorado Office:

748 Whalers Way, Suite 210
Fort Collins, Colorado 80525

14.

From: Silvia Fejka [mailto:Silvia@mcm-legal.com]
Sent: Thursday, December 13, 2018 12:27 PM
To: Zachary P. White; Tim Cox
Cc: Kristen D. Bear
Subject: RE: Big Sky Memo

Zach,

We ended up adding a lot more information to the memo after Mr. Henderson's response to the WBA memo. Council will be reviewing over the next week or so, and we are working on a public summary, shooting for final version next week.

Silvia Fejka
Michow Cox & McAskin, LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

15.

From: Zachary P. White <zwhite@wbapc.com>
Sent: Thursday, December 13, 2018 12:33 PM
To: Silvia Fejka <Silvia@mcm-legal.com>; Tim Cox <tim@mcm-legal.com>
Cc: Kristen D. Bear <kbear@wbapc.com>
Subject: RE: Big Sky Memo

Thanks, Silvia.

Can you provide us with a copy of Mr. Henderson's response to our memo? I do not think we have seen that.

Thank you,

Zachary P. White, Esq.
Attorney
White Bear Ankele Tanaka & Waldron
303.858.1800
www.whitebearankele.com

16.

From: Silvia Fejka [mailto:Silvia@mcm-legal.com]
Sent: Thursday, December 13, 2018 3:34 PM
To: Zachary P. White; Tim Cox
Cc: Kristen D. Bear
Subject: RE: Big Sky Memo

Please see attached.

Silvia Fejka
Michow Cox & McAskin, LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

17.

From: Zachary P. White <zwhite@wbapc.com>
Sent: Thursday, December 13, 2018 3:36 PM
To: Silvia Fejka <Silvia@mcm-legal.com>; Tim Cox <tim@mcm-legal.com>
Cc: Kristen D. Bear <kbear@wbapc.com>
Subject: RE: Big Sky Memo

Thanks, Silvia. We will review. Would the City like a written response from us?

Thank you,

Zachary P. White, Esq.
Attorney
White Bear Ankele Tanaka & Waldron
303.858.1800
www.whitebearankele.com

18.

From: Silvia Fejka <Silvia@mcm-legal.com>
Sent: Thursday, December 13, 2018 3:40 PM
To: Zachary P. White <zwhite@wbapc.com>; Tim Cox <tim@mcm-legal.com>
Cc: Kristen D. Bear <kbear@wbapc.com>
Subject: RE: Big Sky Memo

Not at this time. Thank you!

Silvia Fejka
Michow Cox & McAskin, LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

19.

From: Silvia Fejka [mailto:Silvia@mcm-legal.com]
Sent: Wednesday, December 19, 2018 12:01 PM
To: Kristen D. Bear; Zachary P. White
Cc: Tim Cox

Subject: Big Sky/Green Mountain IGA follow-up

Kristen and Zach,

We are reaching out again in regards to our evaluation of the Intergovernmental Agreement for Extra-Territorial Sewer Service between Green Mountain Water and Sanitation District and Big Sky Metropolitan District No. 1 ("IGA"). **It appears that much of the land that is part of the "Big Sky Service Area" and "Big Sky- Potential Expanded Service Area" as shown in Exhibit A of the IGA is not within Lakewood municipal boundaries. In particular, the following are outside of Lakewood boundaries:**

- General Shale parcel north of Alameda Parkway and east of C-470 (unknown acreage)
- Three Dinos LLC parcel north of Alameda Parkway and east of C-470 (appx. 23 acres)
- Three Dinos LLC parcel west of C-470 (appx. 62 acres), and
- Bandimere piece of property east of C-470 (appx. 106.8 acres).

We are seeking an explanation as to why this expansion of services outside of the boundaries of the original approving jurisdiction does not constitute a material modification of the Service Plan for Big Sky Metropolitan District Nos. 1-7 in light of Bill Barrett Corp. v. Lembke, 2018 COA 134, ¶ 13, 2018 WL 4225030 (2018) (rehearing denied). Please address the trial court opinion referred to in the Court of Appeals opinion, and attached here, and in particular, pages 10-13. We are happy to discuss by phone but will also need a written response. Thank you!

Silvia Fejka
Michow Cox & McAskin, LLP

6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

20.

From: **Tim Cox** <TimCox@lakewood.org>
Sent: Thursday, December 20, 2018 4:23 PM MST
To: **Nina Cudahy** <Nina.cudahy@greenmountainwater.org>
CC: **Adam A. Paul** <apaul@lakewood.org>

Subject: RE: Big Sky

Ms. Cudahy – Thanks for your inquiry. I understand the District is up against a deadline and you're not pestering at all. We had hoped to have our formal analysis completed some weeks ago, but the contents kept changing as Mr. Henderson and others presented different twists on the argument regarding Big Sky's authority.

Just yesterday I shared a draft of the memo with the Mayor and his review of the memo prompted a couple of more questions. One of those questions we will handle via a fairly straightforward footnote, but the second question required additional legal analysis.

We also decided the question was significant enough that we turned to the attorneys for the Big Sky District. We are expecting to hear back from those attorneys by tomorrow, and if so we should be in a position to **revise our memo accordingly** and distribute it to the City Council (as an attorney-client privileged document).

Our plan is to then finalize an executive summary of the memo that could be made available to the public. Until we are satisfied with the information we gather in response to that remaining question, however, we won't be able to disclose the results of the City's analysis/research.

Finally, you are probably aware that case law interpreting the "material modification" portions of the statute is fairly sparse, so any conclusions we draw will necessarily be based in large part on opinion rather than hard and fast rule.

Thank you,

Tim

21.

From: Zachary P. White <zwhite@wbapc.com>
Monday, December 31, 2018 10:14 AM

To: Silvia Fejka; Tim Cox
Kristen D. Bear; William P. Ankele, Jr.; Tom Morton <mort7@me.com>

RE: Big Sky/Green Mountain IGA follow-up
Letter to Tim Cox re Material Modification, 2018-12-31.pdf]

Tim,

Per our discussion on Friday afternoon, please see the attached letter. If you have any additional questions, please do not hesitate to contact me.

Thank you,

ZACHARY P. WHITE, ESQ.
ATTORNEY
WHITE BEAR ANKELE TANAKA & WALDRON
303.858.1800
www.whitebearankele.com

22.

On Jan 8, 2019, at 8:15 AM, Zachary P. White <zwhite@wbapc.com> wrote:
Good Morning,

Will your memo be made public this week?

Thank you,

<image001.png>

ZACHARY P. WHITE, ESQ.
ATTORNEY
WHITE BEAR ANKELE TANAKA & WALDRON
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Northern Colorado Office:
748 Whalers Way, Suite 210
Fort Collins, Colorado 80525

23.

From: Tim Cox [mailto:tim@mcm-legal.com]
Sent: Tuesday, January 8, 2019 8:22 AM
To: Zachary P. White <zwhite@wbapc.com>
Cc: Silvia Fejka <Silvia@mcm-legal.com>
Subject: Re: Big Sky

Our memo was delivered to city council in confidential form yesterday. An executive summary will be made public perhaps today.

Tim

Sent from my iPhone

24.

From: Zachary P. White <zwhite@wbapc.com>
Sent: Tuesday, January 8, 2019 11:52 AM
To: Tim Cox <tim@mcm-legal.com>
Cc: Silvia Fejka <Silvia@mcm-legal.com>

Subject: RE: Big Sky

I think it goes without saying, but if you are able to release to executive summary today, we would appreciate being copied on the distribution.

Thank you,

ZACHARY P. WHITE, ESQ.
ATTORNEY
WHITE BEAR ANKELE TANAKA & WALDRON
303.858.1800
www.whitebearankele.com

25.

On Jan 8, 2019, at 1:56 PM, Silvia Fejka <Silvia@mcm-legal.com> wrote:

Zach and Kristen,

Please see attached summary released today.

Silvia Fejka
Michow Cox & McAskin, LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Phone: 303-459-2725
Direct: 303-459-4855
silvia@mcm-legal.com

26.

From: Zachary P. White <zwhite@wbapc.com>
Tuesday, January 8, 2019 1:58 PM

To: Silvia Fejka
Kristen D. Bear; Tim Cox

Re: Big Sky

Thank you, Silvia. We appreciate the work from both of you on this.

ZACHARY P. WHITE, ESQ.
ATTORNEY
WHITE BEAR ANKELE TANAKA & WALDRON
2145 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Northern Colorado Office:
748 Whalers Way, Suite 210
Fort Collins, Colorado 80525