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| DISTRICT COURT, JEFFERSON COUNTY,<br>COLORADO<br>100 Jefferson County Parkway , Golden, CO 80401   | DATE FILED: November 16, 2019 11:58 AM<br>FILING ID: D62AFC7A88BBC<br>CASE NUMBER: 2019CV30887 |
| BIG SKY METROPOLITAN DISTRICT NO 1,<br>Plaintiff<br><br>v.<br><br>GREEN MOUNTAIN WATER AND SANITATION<br>DISTRICT,<br>Defendant  | ▲ COURT USE ONLY ▲   |
| AMICUS CURIAE<br><br>John Henderson. #50508<br>2167 S. Juniper St.<br>Lakewood, Colorado 80228<br><a href="mailto:Jkhjr1@gmail.com">Jkhjr1@gmail.com</a><br>316-295-0084 | Case No. 19 CV 30887<br><br><br>Division 2   |
| <b>RESPONSE IN SUPPORT OF AMICUS CURIAE BRIEF</b>  |  |

Amicus respectfully provides the following in response to the plaintiff's opposition to the Amicus Curiae brief.

The essence of an amicus brief is to present facts and legal argument that are not otherwise available from the parties and will assist the Court in resolving the dispute.

Instead of addressing those facts and legal argument presented by the amicus brief, Big Sky, in the first 7 of 11 pages of their brief, attacks the author in what has become a signature characteristically dismissive style, in the apparent hope that the Court will go no further and fail to consider the additional facts and legal authority.

This approach by Big Sky speaks even more loudly in favor of allowing an open and rigorous debate about the facts and the law that apply to resolving the case.

And in the remaining 4 of 11 pages, Big Sky fails to address the pivotal legal and factual issues, particularly the fact that there are several alternative ways to obtain sewer for the properties, but which involve public hearings; and the legal framework which applies to the evaluation of Intergovernmental agreements.

First, with respect to the civil rules, amicus confesses he is not as familiar with the civil rules as he is with the criminal rules. A motion and brief double spaced will be filed. Consulting with opposing counsel now appears to be a moot point. But to suggest that amicus purposefully "flouted" the rules of this Court is beneath even the level of professional advocacy normally advanced by counsel for Big Sky.

Second, Big Sky alleges that amicus is secretly representing undisclosed parties. Attorneys are known to represent clients. But they are also simply people, citizens and residents of a community. And people who are attorneys are not restricted to speaking only when someone else is paying them to speak or speaking on behalf of others for no compensation. There are occasionally reasons to just speak - which apply to everyone, not just attorneys. And the value of the factual research and analysis is not defined by whether or not a person is an attorney.

Amicus in this case has never represented any particular individual or organization and has certainly never been paid to speak for someone else on these issues. Amicus has independently conducted investigations regarding special district abuse and legal research regarding special district abuse. He has shared the results of that work with the community. Publicly. Openly. In writing. At public meetings and hearings. Amicus has litigated the issues with counsel for Big Sky before the Lakewood City Council and the Green Mountain Water and Sanitation District.

Presumably individual people and organizations have made decisions about the issues based at least in part upon this public information.

Any formal consulting relationship with amicus related to special district issues initiated by and created by the Green Mountain Water and Sanitation District Board for all intended purposes ended no later than September 19, 2019.

Big Sky in its complaint and again in its opposition attributes a significant public following in support of positions expressed in the Amicus Brief. Although difficult to quantify, there is some measure of public support for these positions. That dynamic though is obviously different from an attorney being retained to represent someone and advocate their position.

Amicus continues to research special district issues and share information with the community, including all the publicly elected boards of, residents of and the development community who seeks to do business with, the community. Independently.

Finally, the Big Sky opposition provides several excellent examples of the value of an amicus brief in this case. Based upon this small sampling, a full and complete debate will certainly help clarify and focus the pivotal factual and legal issues.

Indeed, in its conclusion, Big Sky makes a monumental concession in finally admitting what this case is actually all about: in Big Sky's own words, "this litigation is about whether they [Green Mountain] had the power to do that [change policy] in the face of a binding IGA with Big Sky". Big Sky Brief p. 9. Whether or not the elected board had the power to legislate policy. Whether or not the elected board had the power to change prior legislative policy. Change prior legislative enacted by a prior board - on election night - as the votes were being counted - to remove them from office. The answer of course is yes, a legislative body has the power to make policy and change policy in the public interest. By definition, that is precisely

what they are elected to do.

With respect to other elemental issues, first, Big Sky argues that there is no "Big Sky Sewer System" as if amicus made up that term. Big Sky goes on to make the statement that "there is no such facility being proposed; instead, the "Big Sky Sewer System" is a network of pipes and sewer mains intended to collect wastewater from homes". Yet, here is what the Big Sky IGA states:

1.5 "Big Sky Sewer System" means a system of infrastructure provided by Big Sky in compliance with all applicable Green Mountain rules, regulations, standards, specifications and requirements to provide sewer service to its customers by the collection of wastewater arising within the Big Sky Service Area, and Big Sky Potential Expanded Service Area and delivery of the wastewater to Green Mountain for conveyance to Metro for disposal.

### III. Design and Construction of the Big Sky Sewer System

3.1 . . . The Big Sky Sewer System shall consist of (1) the sewer main lines. . . (2) any new lift station(s) and force mains . . . (3) provisions for monitoring to be located within the lift station(s) including monitoring equipment necessary to measure, at a minimum, flow and strength (the "Monitoring Stations") and (4) any other facilities . . . deemed necessary . . .

Big Sky IGA pp 3, 8 - 9

Given the delay in sequencing waste through the system, one of the necessary facilities will be a holding facility for sewage waiting its turn up the hill. Reference is made in the Big Sky IGA to mitigating the odor associated with this holding facility.

Next, Big Sky, for the first time, attempts to now amend the Big Sky IGA midstream in the context of this litigation by stating Green Tree, outside the boundaries of the Lakewood City approved Big Sky Service area (2014), will own and finance construction of its portion of the Big Sky Sewer System. This statement is inconsistent with the Big Sky IGA. There is no exception for any properties in the new Service Area created by the IGA or the even larger

"Expanded" potential service area. "At its sole expense Big Sky shall construct the Big Sky Sewer System in accordance with the design specifications . . . ". Big Sky IGA section 3.3 p. 10. "The Big Sky Sewer System shall be owned and maintained by Big Sky". Big Sky IGA section 3.7 p. 12. No exceptions. According to the actual terms of the Big Sky IGA, the system located outside the original limited Big Sky Service Area (2014) will not be financed by Green Tree or owned by Green Tree.

Third, Big Sky argues that Green Mountain will have no responsibility for the System. While it is certainly true that Big Sky will "own and maintain the entire system", as the new private "Master Meter" sanitation provider for Rooney Valley, it is also true that the ultimate responsibility lies with Green Mountain. According to the Big Sky IGA:

9.5 Emergency Remedies. Where a discharge to the Big Sky Wastewater System reasonably appears to present an imminent endangerment to the health and welfare of persons or presents or may present an endangerment to the environment or threatens to interfere with the operation of Green Mountain, Green Mountain may immediately initiate investigative procedures to identify the source of the discharge and take any steps necessary to halt or prevent the discharge . . .

8.1 Monitoring. Big Sky hereby grants to Green Mountain . . . the right to enter upon the property of the Big Sky Service Area and Big Sky Potential Expanded Service Area which contains improvements constituting the Big Sky Sewer System at all reasonable times for the purpose of monitoring the Wastewater and any other purposes ancillary to the performance of this agreement. . .

Big Sky IGA pp. 19 - 20, 18.

Fourth, Big Sky has repeatedly claimed in its briefs that Green Mountain pushed to expand its services beyond the limits of its own district into Rooney Valley. The Amicus Brief disclosed that, no, in fact the agreements repeatedly stated in no uncertain terms that Green Mountain was not agreeing to provide any sanitation service beyond the Solterra development into Rooney Valley. The pushing came from Big Sky and other developers, not Green

Mountain.

Big Sky now admits these statements existed in the agreements but attempts to minimize the significance of these statements by Green Mountain by dismissing them as merely a "prudent reservation of rights by Green Mountain". And, Big Sky goes on to argue, even though Green Mountain repeatedly expressly stated that Green Mountain was not agreeing to expand the service beyond Solterra, they didn't really mean it.

There can be no doubt that these agreements, drafted by the same counsel to Big Sky, stated what the development community hoped, wished and aggressively lobbied for. But at the same time, the agreements reflect the fact that a reluctant public body accountable to the residents, not private investors, were guided by, and needed to measure, their obligation to serve the public interest.

Big Sky concludes their response by championing a last minute Intergovernmental agreement, approved by board members as they were actually being voted out of office, as a true reflection of the public will and the public interest. And this while now working every legal maneuver available to avoid public hearings, public debate, and - avoid an amicus by the individual they hold singularly responsible for this challenge to their campaign to establish themselves as the sole distributor of sewer services, at a profit, to all of Rooney Valley.

Someone did think there was a plot afoot. Big Sky's counsel reflected that paranoia in his email soliciting other lawsuits against Green Mountain.

But that conspiracy thinking exposed a simple flaw. From their misguided perspective, representing the public interest necessarily means opposing their private interest. But that is not the case. Public hearings and public debate in deciding public policy as it relates to essential public services is open to all - even those who prefer the shadows of late election night

agreements approved as the votes are being counted. And it is there, in that open public forum, where everyone will be able to see the extent to which private interests are compatible with the public interest.

And, in that public forum, decisions are made about essential public services by public representatives who are accountable to the citizens. In that public forum all voices may be heard and none excluded.

\_\_\_\_\_/s/\_\_\_\_\_  
John Henderson #50508  
Amicus Curiae

Dated: November 16, 2019

**Certificate of Service**  
I certify that on November 16, 2019, I served the foregoing document by electronic mail through the electronic filing system /s/

