

# DENVER BOARD OF WATER COMMISSIONERS

Meeting Date: December 11, 2009

Board Item: V-E-10

## **Amendment to Agreement with Lowe Fell and Skogg for Legal Services**

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Action by Consent

Action

Information

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In January 2009, Denver Water entered into an agreement, Contract No. 12120A, with Lowe, Fell & Skogg, LLC, for legal services related to acquisition of 17 acres of property in the Winter Park area. In order to complete the acquisition, additional funds will be necessary.

The property to be acquired is located at either end of the Arrow Tunnel, which conveys water from the Ranch Creek collection system to the Moffat Tunnel. Denver Water has continuously occupied and conducted operations on this property since about 1936. We purchased the property in the 1940's to ensure fee simple title, but discovered many years later that the putative seller did not have legal title. The current owner of the property is Arrowhead Winter Park Investors, an LLC formed by Koelbel and Company.

The Board adopted a resolution allowing the property to be acquired by eminent domain in August 2008, and that method of acquisition was intended when we first engaged Lowe Fell & Skogg. Since then, however, many complicated legal issues have arisen, and the legal landscape has shifted.

First, Public Service Company filed a condemnation action against Arrowhead to acquire an easement for a high pressure gas line. The condemnation failed to list Denver Water as a respondent, even though portions of the property PSCo sought to acquire are subject to a 1922 Right-of-Way granted to Denver Water, and to other assertions of rights by Denver Water that appear in recorded documents. Denver Water intervened in PSCo's condemnation in February 2009, asserting rights under the Right-of-Way and by means of adverse possession, and the action was stayed in April. Eventually, PSCo amended its condemnation petition to exclude Denver Water's property interests, and we will shortly file a motion to be dismissed from the litigation. For the past several months, Denver Water and PSCo have been engaged in negotiating an agreement under which PSCo's gas line could occupy two and one-half miles of Denver Water's Right of Way through Forest Service property. The gas line agreement is very close to completion.

Second, based on a search of ancient documents gathered from various locations, we overturned our longstanding "conventional wisdom" that our Right-of-Way was inferior in time to the patent granted by the federal government to Arrowhead's predecessor in interest. We believe that the effective date of the Right-of-Way is 1922, which is superior to the patent dated 1924. Under these circumstances, a quiet title action, to include claims based on color of title and adverse possession, is the most appropriate legal mechanism to acquire the Arrow Tunnel property. The amendment to the agreement with Lowe Fell & Skogg will allow the property acquisition to be completed through a quiet title action.

12/02/2009

Revised by Legal 8/31/2009

The proposed amendment would increase the compensation under the agreement by \$45,000 to a total of \$120,000. The term of the agreement, which expires in January 2011, will not change. Funds for this contract are included in the 2009 and 2010 Legal Division budget in the MPC for professional services, 4JA0002.


Recommendation:

It is recommended that the Board approve the proposed amendment to the agreement for legal services with Lowe, Fell & Skogg, LLC.

**Approvals:**

  
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General Counsel

Respectfully submitted,

  
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H. J. Barry, Manager