

DENVER BOARD OF WATER COMMISSIONERS

Meeting Date: January 12, 2011

Board Item: V-E-4

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

Action by Consent

Action

Information

In January 2009, Denver Water entered into Contract No. 12120A, with Lowe, Fell & Skogg, LLC, for legal services related to acquisition of 17 acres of property in the Winter Park area. The contract amount of \$120,000 has nearly been fully expended, and the original contract term ends on January 31. In order to complete the quiet title litigation, additional funds and time will be required.

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. 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 Arrow property to be acquired by eminent domain, quiet title or otherwise in August 2008. Since we first engaged LF&S in January 2009, we have been involved in various efforts to protect and acquire our interests in the Arrow property. Public Service Company filed a condemnation action to acquire an easement for a high pressure gas line, along a route that included Denver Water's 1922 Right-of-Way and portions of the Arrow property. Most of 2009 was devoted to negotiating an agreement under which PSCo's gas line could occupy Denver Water's Right of Way. Although we were successful in reaching an agreement, only within the last two months did PSCo finally amend its condemnation petition to completely exclude Denver Water's property.

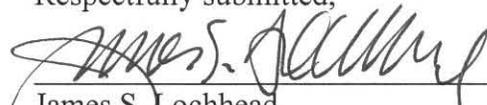
In 2010, we began the process of filing a quiet title action to acquire the Arrow property. We tried to reach a resolution with Arrowhead short of litigation, but were unsuccessful. The quiet title action was filed in July 2010, but only became active in November 2010. The matter is set for a five-day trial in July 2011 and will involve discovery of voluminous and ancient documents. LF&S estimates that the attorney fees and costs to manage the litigation through the trial will be approximately \$100,000. The term of the agreement will be extended to January 2012. Funds for this contract are included in the 2011 Legal Division budget in the MPC for professional services, 4JA0002.

Recommendation:

It is recommended that the Board approve the addition of \$100,000 to the agreement for legal services with Lowe, Fell & Skogg, LLC.

**Approvals:**

  
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General Counsel

Respectfully submitted,  
  
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James S. Lochhead  
CEO/Manager