



Colorado
Legislative
Council
Staff

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MEMORANDUM

March 9, 2009

TO: Capital Development Committee

FROM: Kori Donaldson, Senior Research Assistant, (303) 866-4976

SUBJECT: Department of Personnel and Administration Proposed Acceptance of Argo Tunnel Property Donation on Behalf of the Department of Public Health and Environment

Summary

The Department of Public Health and Environment (DPHE) has submitted a real property transaction proposal to the Capital Development Committee (CDC) for review. The department proposes to acquire, through donation, a 1.02 acre site near Idaho Springs for the operation of the Argo Tunnel Water Treatment Plant. The property title will be held by the Department of Personnel and Administration on behalf of the DPHE, and the property will be operated and maintained by the DPHE. The Argo Tunnel Water Treatment Plant is currently operated by the Environmental Protection Agency (EPA) and the DPHE as part of the Central City/Clear Creek Superfund Site cleanup project. The donation includes a non-exclusive permanent easement on 0.36 acres, and water rights to 1.0 cubic feet per second of flow. This memorandum provides information about the DPHE proposal. Table 1 provides an overview of the proposed acquisition.

Table 1
Department of Public Health and Environment
Proposed Property Acquisition

Current Owner	Proposed Owner	To Be Operated and Maintained By	Proposed Use	Estimated Cost to Purchase
Environmental Protection Agency	Department of Personnel and Administration	Department of Public Health and Environment	Argo Tunnel Water Treatment Plant	\$0, donation

Background

The Clear Creek drainage basin is a 400-square-mile watershed extending from the Continental Divide east to the Denver metropolitan area. It serves as a source of drinking water for the northwest Denver metropolitan area. According to the EPA, mine wastes are scattered throughout the Clear Creek basin. Abandoned mines along Clear Creek produce acidic metal-rich water that drains into the river, and piles of mine tailings, located along or near the river's banks, erode or leach metals into the water. The Argo Tunnel Water Treatment Facility treats drainage from the Argo Tunnel, the Big Five Tunnel, and Virginia Canyon. The water treatment plant removes about 1,000 pounds of metals each day from Clear Creek, including iron, manganese, zinc, and aluminum.

State law authorizes the DPHE to participate in the federal implementation of the Comprehensive Environmental Response Compensation, and Liability Act of 1980¹. This act provides that when there is no responsible party to fund cleanup costs at a superfund site, the EPA and the state share cleanup costs 90 percent from federal funds and 10 percent from state funds. State law further provides that cooperative agreements entered into with the federal government for cleanup costs at superfund sites may provide assurances that the state will assume all future operating and maintenance costs related to the removal and remediation of hazardous waste. The Central City / Clear Creek Superfund Site was identified by the EPA as a study site for improving water quality in 1983, when it was determined that individual clean up projects could not sufficiently address hazardous waste in the area. The Argo Tunnel Water Treatment Plant was built in 1997 and began operation in 1998, under the joint supervision of the EPA and the DPHE, to address mineral waste from abandoned mining operations in Clear Creek and Gilpin counties. Prior to the construction of the water treatment plant, the DPHE entered into an interagency agreement with the EPA to take title to the property and assume future operating and maintenance costs after the completion of the project.

Statutory Requirements

State law requires the executive director of the Department of Personnel and Administration to submit a report to the CDC prior to the acquisition of fee simple title to any real property for current or future use by the state². The CDC must review the report and provide recommendations to the executive director. The report must include the following information about the property:

1. the anticipated use of the property;
2. the maintenance costs related to the property;
3. the current value of the property;
4. any conditions or limitations that may restrict the use of the property; and
5. any potential liability to the state which will result from the acquisition.

¹Section 25-16-103, C.R.S.

²Section 24-82-102 (1) (a), C.R.S.

Proposed Acceptance of Argo Tunnel Property Donation

The DPHE provided the following information about the proposed acquisition:

1. The property will be used for the operation of the Argo Tunnel Water Treatment Plant. Operation of the plant will continue indefinitely.
2. The source of funds for the operation and maintenance of the water treatment facility is the Hazardous Substance Response Cash Fund.
3. The department estimates that the current replacement value of the water treatment plant, including the 1.02 acre site, is about \$8.0 million.
4. The use of the property will be limited to the operation of the water treatment plant, including an adjacent parking lot. No use of the property that disturbs the treatment plant will be permitted.
5. If the water treatment plant fails in the future to remedy the mineral waste in Clear Creek, both the EPA and the DPHE will be responsible for additional remedial actions.

Additional Information

According to the DPHE, based on the terms of the interagency agreement with the EPA, the department must assume the full operation and maintenance of the water treatment plant no later than October 1, 2009. The department says remedial action to address mineral waste in Clear Creek is complete. The department will continue to monitor the performance of the water treatment plant to ensure compliance with surface water quality standards. The department submitted a separate FY 2009-10 operating budget request to the Joint Budget Committee for 0.5 FTE and \$1.0 million cash funds spending authority for the operation of the water treatment plant.

CDC Staff Questions

1. What are the anticipated future controlled maintenance needs for the water treatment facility?

The DPHE does not have a current assessment of future controlled maintenance needs, but has performed some facility improvements and upgrades with federal assistance. Because of the nature of the facility including substantial process equipment, we anticipate future controlled maintenance needs will exceed the 1 percent of Current Replacement Value projected for more typical facilities.

2. Does the department anticipate requesting state funds for future controlled

maintenance needs for the water treatment facility?

The DPHE anticipates that controlled maintenance activities would be funded through the Hazardous Substance Response cash fund rather than the Office of State Architect controlled maintenance funds.

3. What is the projected revenue currently available from the Hazardous Substance Response cash fund?

The current balance in the HSRF is approximately \$41 million. Proposed legislation will transfer about \$17 million to the General Fund for budget balancing. There will be an adequate balance in the HSRF to cover anticipated costs in the short term.

4. Does this request also include a request to assume fee simple title to the Argo Tunnel Water Treatment Plant? If not, please provide details about how title to the facility will be transferred from the EPA to the state.

The request does include a request to obtain full ownership rights to the Argo Tunnel Water Treatment Plant. It is anticipated that the transfer of the facility and land will occur through one conveyance instrument.

5. Please provide details about the non-exclusive permanent easement. What is included in this easement?

The non-exclusive permanent easement was acquired for the construction, operation and maintenance of water collection and handling facilities. The structures that collect and convey water from the Argo Tunnel opening to the treatment plant are located on the easement property.

In the original transaction, the property owner desired to retain ownership of the ground surface at and around the tunnel portal.

In addition, the easement is subject to the reservations of 1) right of a proprietor of any penetrating vein or lode to extract his ore; and 2) right of way for ditches and canals constructed by authority of the United States of America and subject to existing easements for public roads and highways, public utilities, etc.

6. What is the status of the cash funds operating request made to the Joint Budget Committee in December 2008 for the operation of the water treatment facility, including 0.5 FTE and \$1.0 million cash funds spending authority?

The Decision Item is under consideration by the JBC. The DPHE's figure setting hearing is scheduled for 3/11/09.

7. Please provide the terms of the interagency agreement between the EPA and the department regarding the operation of the Argo Tunnel Water Treatment Plant.

Pursuant to CERCLA Section 104 (c)(3)(C) the State of Colorado assured EPA, through a 1996 cooperative agreement, that Colorado would pay or assure payment of 10 percent of the costs of the Remedial Action and 100 percent of future operations and maintenance costs. In this case, the completion of the Remedial Action for the Argo Water Treatment Plant occurs on September 30, 2009, which triggers the requirement for the state to assume full responsibility for operations and maintenance. During the Remedial Action (i.e., construction of the plant and the first ten years of operation), the state contributed 10 percent of the costs.

8. Has the Department of Personnel and Administration agreed to accept the donation of the Argo Tunnel property on behalf of DPHE?

The DPHE has been in contact with DPA Real Estate Programs regarding the Argo Tunnel Water Treatment Plant property transfer. It is DPHE's understanding that DPA will accept the donation of the Argo Tunnel property on behalf of DPHE, subject to an acceptable interagency agreement. DPHE anticipates the interagency agreement will contain the same terms as previous DPA/DPHE interagency agreements for the acceptance of property interests.

Action Required by the CDC

The CDC must review the report and provide recommendations to the executive director of the Department of Personnel and Administration. A letter with the CDC's recommendations will be drafted and sent to the executive director.