

## **Eldorado Springs LID Advisory Committee Minutes**

April 16, 2020

Video Conference Meeting

The meeting was called to order at approximately 6:40 p.m.

**Members Present:** Vija Handley, Cathy Proenza, Jeff Mason, Ken Sheldon, Kevin Tone

**Guests:** Gabby Begeman (ORC), Janet Robinson

**Staff:** Pete Salas, Mark Ruzzin

### **Approval of Minutes:**

There was no meeting in March.

### **Plant Operations:**

The group began the review of the report with Kevin mentioning that he was pleased with the March TIN numbers which were very low, and thanked Gabby for the good work. Gabby agreed with the assessment. Kevin expressed some concern relative to the rolling average and the state permit requirement that still appears to be nearly impossible to attain. Cathy asked about the number of months included in the rolling average. Kevin expressed concern relative to what he feels are difficulties with the permitting group at CDPHE and indicated that it appeared to be political and that perhaps the county commissioners need to be involved. Cathy indicated that it might be helpful to reach out to members of the state legislative delegation and express community concerns regarding CDPHE.

Kevin asked about next steps relative to the situation at Peter Spraitz's property. Gabby mentioned that things appear to be okay with no new pump replacements needed in the past few weeks. Gabby's crew cleaned out the pit and found some gravel and sand. The pit is clean and the pump is okay. She believes that they have confirmed that the collection side of the system is in proper working order, though the situation is far from ideal. Kevin asked if staff has had any additional communication with Mr. Spraitz. Pete indicated that there has been no recent communication with Mr. Spraitz since learning early in the year that he was out of town and not expected to return until April.

Pete reiterated the committee perspective that the situation with the property needs to be remedied and that Mr. Spraitz should be charged for the work, per the LID Rules and Regulations. Kevin asked what the next steps will be. Pete indicated that he will reach back out to Mr. Spraitz to update him on the work of the past few months and explore options for resolving the situation. Jeff mentioned that he had previously suggested that Mr. Spraitz be officially notified via certified mail to ensure that there is some documentation of the situation.

Mark indicated that staff is looking for guidance from the committee and offered the staff recommendation that the costs be split 50/50 to start the conversation. The committee expressed mixed feelings regarding the notion to split the costs. Gabby mentioned that the costs did not reflect the expense of past pump repairs that resulted from this situation. Jeff suggested that the committee move forward with the plan as presented. Kevin expressed a concern regarding related expenses caused by Mr. Spraitz's service lines. Vija ask a question regarding the fact that since neither party knew the nature of the problem it seemed unfair to charge Mr. Spraitz for all the costs. Ken raised a concern regarding when it would be apparent that a property might have a problem. There was a general agreement with the notion

that splitting the costs was a reasonable solution with a notification plan as outlined by the committee. The guidelines in the notification might include a plan, timeline for resolving the problem and possible repercussions for not complying with the ESLAC decision, which is based on the district Rules and Regulations. There was some additional discussion regarding the situation before the committee moved on to other topics.

Kevin brought up a concern with the update on the generator situation at the plant included in the ORC operator's report. The primary question is whether the generator is adequate for the plant operations. Gabby agreed that this is an area of concern. Gabby indicated that from the beginning the generator was likely undersized, and since the plant's opening the electric load of the plant has increased. She is communicating with Fluidyne regarding the load capacity of the plant to determine if the existing generator can be programmed to meet the need, or if a new generator will be needed.

Janet Robinson joined the meeting at this point.

Prior to Gabby leaving the meeting Cathy thanked her for the work on the new grinder pump installation at her residence. Cathy indicated that her old pump was seven years old and though the initial replacement was pre-emptive, it failed after 43 days and the new pump is much better. The committee spent some time discussing the expected life span of a grinder pump. Gabby asked Pete to send her the Ambiente invoices for the pump and all grinder pumps to be sure that all pump repairs are being properly tracked. There was a brief discussion in this regard.

Gabby indicated a need to order a new feed pump for standby and wanted to ensure that the unit was included in the 2020 budget. Mark noted that the purchase of a spare SBR pump is expected in 2020, and asked Gabby to hold off on ordering this pump until he can check with the county purchasing department regarding the need to secure three quotes for the purchase. Kevin asked about the need for a review of the capital replacement spreadsheet that Ramey had initially completed a few years back. Gabby indicated that she had done a revision and thought it had been provided to the committee.

Ken ask about the excavation at the Spraitz property and the reason it had not been completely backfilled. Gabby said that when it was backfilled the wall around the valve box was not placed back around the valve, and suggested that Mr. Spraitz should have a say in who should do the work.

Lastly, Gabby said that she had been in discussions with the contractors hired by EAS about the ballroom. Gabby received fixture counts and expressed concern regarding use of a single grinder pump and the capacity of the pump. She mentioned to the contractors that there might be a need to come to the committee for additional guidance on the need for an additional pump unit or a larger grinder pump and pit.

### **Committee Updates:**

**Invoices and Budget Update:** Pete referred the group to the budget spreadsheets. Mark reviewed the spreadsheet with the committee by explaining the nature of the budget report. Mark indicated why there were so few entries due to the budget staff not being able to be in the office and the fact that expenses are only entered after bills have been paid. Mark provided details of the expense sheet he compiled which contained those expenses not on the budget office spreadsheet. There was some discussion regarding the placement of expenses on the spreadsheet relative to capital expenses and general operational expenses.

**Old/New Business:**

- a. **WWTP operating permit:** Mark provided an update relative to this item. Mark indicated that he had reached out to the city of Boulder and confirmed that the city would not be placing a stream gauge in South Boulder Creek until after the Gross reservoir dam expansion project, perhaps 5 to 7 years out. Kevin asked if the city would be willing to reimburse the district if a gauge is put in place sooner. The committee discussed possibilities regarding a stream gauge and the process that might be required to install one. Mark mentioned that Jane Clary had indicated that even if a gauge were put in place, it might not provide the type of timely data needed to influence the WWTP operating permit.

Mark provided an update regarding the Alternatives Analysis. Mark indicated that he has had discussions with Wright Water Engineers to perform the analysis and the possibility of working on a sole source contract since WWE is already under contract with Boulder County Public Health.

Mark provided some information regarding the previous discussion relative to the county's legislative delegation and contact info if the committee wished to pursue a political avenue.

- b. **EAS Memorandum of Understanding:** Mark provided a short update on the EAS building permit application review process being conducted by the county's Community Planning and Permitting Department. Mark indicated that he had heard from Heather Dodge who is reviewing the Ballroom project; Heather informed him that revised documents have been sent to her but she has not yet reviewed them. Dan Mastin, who is reviewing the pool project, indicated that not much progress has been made, that as far as he knew the fire marshal has not made any official decisions regarding an occupancy limit, and that the design approach continues to be a moving target.

Mark mentioned that staff has been working with Kate Burke in the County Attorney's Office to update the MOU. At this point Cathy suggested that Ken not participate in the MOU discussion due to her opinion that Ken has a conflict of interest because she understands that Ken is a contractor for EAS. Ken explained that his role with EAS was to provide pre-construction information regarding the county's building permit process. Ken indicated that his role was limited and that he is no longer involved with EAS in any regard. Cathy explained that her interest was primarily one of being as transparent as possible. Ken indicated that this concern had been discussed in the past with no apparent objection. Cathy indicated that that discussion had occurred off the record and she wanted it to be on the record. Ken agreed and stated that he is not currently involved with EAS to which Cathy indicated satisfaction.

Mark continued to provide information on the steps he had taken with regard to the MOU. Mark outlined the process, indicating he had taken questions from ESLAC members and those raised at the March community meeting and had separated them into legal questions and other questions. Mark stated that the legal questions were answered by Kate Burke after reviewing the project records. Included in the documentation was the resolution adopted by the county commissioners in January that, while primarily regarding improvements that must be made to the road, also includes a requirement that EAS must monitor average daily discharge of the resort and report this data to the county every October. Kate had indicated that the clause relative to the monitoring of the discharge is an important item in this regard.

The discussion item was presented as an opportunity for ESLAC to review the MOU and then work strategically with the County Attorney's Office to bring it to EAS. Jeff indicated that from his perspective the MOU is meaningless. Cathy agreed stating that the MOU had become so watered down that it is meaningless. Jeff asked if this is the case, what is its value? Mark indicated that the

value of the MOU is to articulate a set of expectations for both the LID and EAS in respect to the project and how the two parties will engage with one another if the project exceeds its EQR allocation and has a larger impact on the district than planned. In addition, it sets up requirements for EAS relative to the monitoring of the discharge and flow. Mark reiterated that EAS does not have to agree to the MOU but if they do, then it becomes a binding contract which both parties must adhere to. Regardless of whether or not the LID and EAS enter into an MOU, EAS will still be subject to the same requirements as any other user on the system relative to the LID's Rules & Regulations.

Jeff expressed his concern that after reading the legal responses, he feels that even if EAS signs the MOU, they can change their mind, choose not to abide by the MOU, and there is nothing that can be done. Mark indicated that if there is no enforcement spelled out in the MOU a request would be made to Kate Burke to provide a clause which would make the MOU enforceable. Jeff cited a clause which states that "anything beyond recovery of actual costs would be punitive and beyond the LID's authority." Mark stated that this is state law, meaning that governments in Colorado are not able to charge more for services than what it costs them to provide the service. Jeff again indicated that there appears to be no enforcement requirements.

Mark noted that Kate's point is that EAS would not enter into the agreement if they didn't intend to abide by it. Mark referred to county Resolution 2020-28 which calls for EAS to meet requirement 10a to monitor the discharge into the treatment system. Jeff reiterated that it is still his opinion that the MOU is meaningless.

Ken suggested that it wouldn't hurt to approach EAS with the MOU. Vija expressed her view that the main power of the LID is in the Rules & Regs, and that something needed to be done to make them stronger. Vija indicated that what was currently in the MOU relative to enforcement was not adequate and should be removed. She stated that the Rules & Regs need to be strengthened and an attorney is needed to look at the MOU and figure out how the Rules & Regs can speak to this specific project. Vija indicated that she found the legal information interesting and important to know prior to any signing of the MOU. Vija felt that the information was clear and helpful.

Mark indicated that the question regarding the Rules & Regs could be sent to Kate to determine whether some aspects of the MOU can be incorporated into the Rules & Regs and applied to either commercial properties or other rate payers. Vija suggested Kate be asked, because EAS is called out in the Rules and Regs as its own category, if it is permissible to have specific rules for EAS as a unique entity. Cathy asked if the next month's agenda can include an item to review the Rules & Regs to consider suggested changes.

Mark stated that this is a good opportunity to work with Kate. Cathy suggested that perhaps at the next meeting the committee could review the Rules and Regs and make suggestions relative what could be accomplished to protect the community. Cathy also suggested that at the subsequent meeting (the June meeting) Kate be invited to appear before the committee to have a conversation directly with her and speak to the legal aspects of how to accomplish the goals desired by the committee. Vija expressed her view that something be written that is more specific to the EAS property, perhaps as an addendum to the Rules & Regs.

Kevin indicated that one of the only things that could be applied to the EAS project was regarding the Plant Investment Fee and asked that this not be lost in the discussion. Kevin's concern was that the committee not lose sight that EAS would owe the PIF. The question was raised as to whether the PIF had been agreed upon. Mark reviewed ESLAC's discussions regarding the PIF and what had been agreed upon. Mark noted that EAS must pay the PIF before they receive any building permits.

Kevin indicated that at the time the PIF was determined, the committee had little confidence that the EQR it had determined for the project was adequate in terms of whether it was too high or too low. Kevin suggested that the PIF issue was the impetus for the development of the MOU to get additional monitoring requirements to better understand the EAS usage. In regard to this point, Kevin expressed a concern as to if anything further can be done if EAS places more demands on the treatment plant than they are entitled to through their EQR.

Vija indicated that the EQR/PIF has been set and that EAS has accepted it. Mark indicated that the discharge data that is collected could be used to reconsider EAS's operating fee and that it could be changed to accommodate any new conditions. Jeff expressed a concern that the Rules & Regs did not cover this item. Vija indicated that she thought it was considered in the Rules. Cathy reiterated a desire to revisit the Rules & Regs to consider changes.

Pete referred to Resolution 2020-28 which, according to Kate, provides some leverage relative to the requirement that the system must be adequate to handle EAS usage and that monitoring is required as a condition of the permit. Jeff suggested that the only thing that could be done is have the MOU specifically reference the Rules & Regs. Cathy suggested that the MOU reference the Resolution. Jeff disagreed with the intent of the clause in the resolution relative to the MOU. Cathy reiterated the clause relative to the condition that the waste water treatment system must be adequate to handle the usage of the resort. Cathy indicated that she thought it gave the committee a lot to go on and might be referenced in the MOU.

Mark indicated that he feels the Attorney's Office would agree that the resolution requirement is a good card to hold in discussions with EAS. Cathy asked if it could be added to which Mark agreed. Mark indicated that getting as much as possible in the Rules & Regs is useful since it is the governing document for the district. Mark also indicated that staff would go back to Kate to discuss modifications.

### **Public Comment:**

The public was invited to comment. Janet Robinson commented that she hoped there wouldn't be a rush to any decisions since this is the biggest development in the district. Her concern was around who pays for plant expansion if the pool exceeds its usage. Pete indicated that he felt that the Rules & Regs could be adjusted to deal with this type of situation and allocate the costs accordingly. If the use triggers a review to cause the plant to require expansion then this would be something the commissioners would deal with.

Ken commented that if you look at the engineering plans, it doesn't look like the plant would exceed capacity. Mark commented that assuming the committee is monitoring the usage and if it appears to be excessive it would trigger the requirement that the applicant would be required to address the issue. There is a need for the attorneys to further investigate. Janet expressed a hope that the community will be provided with feedback in this regard.

There was no additional public comment and the meeting adjourned at 8:40 p.m.