

MEMORANDUM

To: Eldorado Springs Local Improvement District Advisory Committee
Cc: Mike Thomas, Jennifer Keyes, Taylor Ladenburg
From: Olivia Lucas, County Attorney's Office
Re: Options for New Entities to Operate Eldorado Springs Wastewater Facility

In 2025, the Eldorado Springs Local Improvement District (the "LID") will finish paying off the loans it obtained to construct and expand the Eldorado Springs Wastewater Facility (the "Facility"). The Facility replaced the approximately 130 septic systems in Eldorado Springs that were a water quality and public health hazard to Boulder Creek. Once repayment on the 20-year loan is complete, statutes require that the LID that was created to finance the construction and improvement of the Facility be dissolved. *See* C.R.S. § 30-20-627 ("When the local improvements . . . have been completed and any debt incurred or bonds issued have been paid, the board shall take all steps necessary to dissolve the district and, upon completion of such steps, shall declare, by resolution, that the district is dissolved"). The Boulder County Board of County Commissioners (BOCC) sits as the LID Board of Directors, and the LID owns the Facility. Once the LID is dissolved, the ownership will revert to Boulder County absent another legal entity to take the place of the LID. This memo outlines potential options for continued Facility operations and provides a comparative table for the Eldorado Springs Local Improvement District Advisory Committee (ESLIDAC)¹ and County staff to use as a reference as they communicate with LID residents about this issue. The BOCC as the Board of the LID is interested in the ESLIDAC's input and input from the community as the BOCC makes its decision about the Facility's future.

The key concerns for the future of the Facility are that it is run in a cost-effective manner via an entity that is sustainable into the future. The new entity would likely continue to fund operations via a mechanism similar (if not identical) to the current quarterly billing system. In addition, it would be ideal for the new entity to be public and thereby have the power to levy taxes and issue bonds as needed to fund the Facility's future needs. It is possible that a private

¹ The ESLIDAC "Acts as a communication link between the ratepayers and residents of ESLID I and II, the service providers who provide operations and administrative services to the Districts and the Board of Directors. Advises the County Commissioners on issues pertinent to the implementation of the public improvements serving the Districts." <https://bouldercounty.gov/government/boards-and-commissions/>

sewer company could buy the Facility and operate it; the Colorado Public Utilities Commission (PUC) would regulate the service, rates and charges of the Facility if the system were privately-run.²

County/Resident Collaboration Option:

Create a Public Improvement District

A Public Improvement District (PID) is a logical model for continuing operations of the Facility. Technically, LIDs are not statutorily designed to be used for ongoing operation and maintenance of facilities, but PIDs are. Moreover, PIDs can obtain loans and grants, issue revenue and special assessment bonds, charge rates and fees and also impose ad valorem taxes. This way a PID could both fund operations via a billing system similar to the currently EQR billing system, and also raise money for future improvements as necessary. For example, a PID could legally create a LID to fund improvement projects.

Formation of a PID requires support from the community. To form a PID, a petition must be submitted with signatures from 30% of the eligible electors of the proposed district or 200 people, whichever is less. Statute provides that petitioners must also submit a bond to cover election costs, although the commissioners have waived that requirement before and could do so again. If the petition is adequate, the residents of the proposed PID have to vote for both formation of the PID and any debt it plans to incur. The county could reach agreement with the district proponents regarding payment of election costs and would be able to help draft the petition, though would not be involved in helping acquire signatures.

The board of the PID is the BOCC. However, the PID is a separate legal entity that can own the property and equipment, enter all necessary contracts, and manage its own finances. The County could set up a committee to do the day-to-day management, similar to the existing advisory committee but perhaps with more delegated powers. In addition, it is likely the ESLIDAC or some similar body would continue in an advisory capacity to the PID Board. (While an advisory committee is not statutorily required, it is logical to continue the ESLIDAC if a PID is created.)

² <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2017/07/Colorado.pdf>

County-only option:

Operate pursuant to statutory authority

Counties are authorized to run “sewerage facilities” directly under C.R.S. §§ 30-20-401 *et seq.* Under this statutory section, the county is free to manage the facility however it chooses. Counties can obtain loans and grants, issue bonds, and charge customers rates, fees, and tolls. *See* C.R.S. § 30-20-402(1). In addition, if system users fail to pay rates, fees or charges associated with using the system, the County could continue the practice of certifying a lien for unpaid amounts on the user’s property. The main financial difference between a county-run system and one run by a PID or LID is that the county does not have authority to levy taxes for improvements. However, the County could create another LID to finance improvements as necessary.

Summit County in the past has run a sewer facility in the Keystone area in this manner. It funds it solely on rates and fees. As there is ongoing development in that area, it charges significant tap fees for new builds, which helps to maintain the system. (Note that as of January 2024, Keystone has incorporated as a separate municipality. It is not clear whether the municipality will take over operation of the sewer facility.³)

Options that exclude future county involvement:

Option A: Create a Title 32 District

There are two types of special districts under Title 32 that can run a sewer system in Eldorado Springs: a Sanitation District or a Metropolitan District.⁴

Under C.R.S. § 32-1 103(18) a sanitation district is one that provides for storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facility or solid waste disposal facilities or waste services, and all necessary or property equipment for those facilities. Sanitary Districts have the authority to require residents to connect to a sewer system and have authority to charge rates and fees for operations of sewer treatment facilities. While it

³ <https://www.vaildaily.com/news/colorados-newest-town-is-ready-to-elect-its-first-ever-leaders/>

⁴ Water and Sanitation Districts can also be formed under Title 32, but those districts provide both water and sewer systems. Because Eldorado Springs already has a water supplier, we do not discuss the possibility of a water and sanitation district being formed.

appears a sanitation district would be the most useful type of special district for the purposes of the Facilities, Eldorado Springs residents could also seek to form a Metropolitan District, which could also provide sanitary sewer services. However, Metropolitan Districts must provide two services out of a list of options. Of the services on the list, we assume that most are already provided or are beyond the scope of what a new district would want to take on (fire protection, parks and recreation, safety protection, trash management, street improvement, television relay, transportation, and drinking water). The only service on the list that appears feasible for an Eldorado Springs Metropolitan District would be mosquito control.

Forming Title 32 districts is fairly burdensome: an interested group must create and submit a service plan to the BOCC for review and approval, and assuming the BOCC approves the plan, the proponents must get court approval to form the district, help coordinate an election for the creation and funding of the district and create a board. The board is then subject to the statutory reporting and governance standards in Title 32. Unlike the requirements for a petition to create a PID, there are no statutory requirements related to how many people must act together to put forward a district. If the BOCC approves the proponents' service plan, the proponents then go to court to have the court order an election, and the election is created if a majority of electors in the district that voted in the election vote to create the district. Also, the district would have to pay for legal and other outside professional help in carrying out those functions, in addition to the elections and court costs.

Option B: Sale to a private entity

It is conceivable that a private entity might be interested in buying and operating the Facility. However, the BOCC does not support privatization, as it fears rate hikes and other issues with privatization.

Option C: Area incorporates or is annexed into another municipality

Municipalities have statutory authority to create, own, and operate water and "sewerage" facilities. C.R.S. § 31-35-402. The municipality may also require residents to connect to the sewer facility. C.R.S. §31-25-601 et seq. There appear to be several legal barriers to Eldorado Springs annexing to the City of Boulder, however. First, under Colorado law, annexation is only possible when one-sixth of the perimeter of the area to be annexed is contiguous with City limits.

C.R.S 31-12-104. This is not the case with the service area of the Eldorado Spring LID. Even if that legal hurdle could be overcome, according to the Boulder Valley Comprehensive Plan, Area III (where Eldorado Springs is located) is not expected to be annexed into the City. If the ESLIDAC and Eldorado Springs residents are interested in discussing whether there are potential variances that could result in Eldorado Springs being annexed by the City, they would need to engage with the City of Boulder.

An alternative to annexation is incorporation. The residents of Eldorado Springs may want to incorporate into a municipality, which would then give them the statutory authority, among other things, to own and operate the Facility. State statute describes the steps for incorporation at C.R.S. 31-2-101. The first step is a petition to the county court. It appears that the municipality must have a population of at least 150 people to incorporate; the law requires that the petition to the Court asking for incorporation “shall be signed by not less than one hundred fifty of the registered electors who are landowners and residents within the territory” when the county has a population over 25,000 people. *Id.* Recent data suggest Eldorado Springs has a population of 295 people, though it’s not clear whether 150 of them are registered electors who are landowners and residents. If residents want to pursue this option, they should meet with their own counsel to understand the steps and any potential drawbacks to this approach.