

Response to a letter from a
Resident/Attorney
And the response from the
Pine Brook Water District's Attorney

Original letter received

March 8, 2018

Pine Brook Water District Board of Directors
Robert de Haas, Water District Manager
1903 Linden Drive
Boulder, CO 80304

Via Email

Dear Members of the Board and Mr. de Haas:

I write to follow up on the concerns I raised via email on February 14, 2018, to Bob de Haas regarding the appearance of impropriety in allowing the longstanding familial relationship between a district board member and employee. According to the board's agenda for its meeting of February 15, the board took no action to address these serious concerns at its meeting that day.

In response to my email, a district board member's partner corrected the misinformation a neighbor had communicated to me regarding the familial relationship between board chair Mel Beauprez and district employee number two of three, Shawn Beauprez, stating that the relationship was one of uncle-nephew, not father-son. This board member's partner echoed views of other board-related persons when she opined that "[t]he recent politicization and spreading of mis-information severely detracts for [sic] the benefits of participation and diminishes [the public forum's] value." This latest attempt by a partner of a district board member follows a deeply disturbing trend of pressure from members of this board either directly, or indirectly via their spouses/significant others, to discourage members of the public from questioning actions of the water district via the public forum. At a minimum, it offends deep American traditions of open democratic government that any public official or employee would attempt to squelch public debate. I only began to chime in on the forum to address this readily apparent trend of interference with free speech. Until then, I had assumed that the district was operating according to best practices and that any complaints about rates were attributable to individual concerns. It is precisely the district's pattern of discouraging open debate that led me to suspect that perhaps there are reasons behind the district's "there's nothing to see here" response to the healthy public debate underway.

The board member's partner continued in her email to the forum that there is no ethical concern involved in the familial relationship between a board member and district employee here in PBWD, because it doesn't violate the law. Really? Is the ethical bar for this body whether conduct violates the law, not whether it creates an appearance of impropriety?

Even more troubling is a board member's response to me individually, describing the district's practices allegedly in place to avoid ethical conflicts, but which my later review of the minutes and agendas reveals the district did not follow:

Mel Beauprez is a DISTANT relative of the employee Shaun [sic]. Mel asserts NO managerial control over Shaun [sic], nor is involved in Shaun's [sic] compensation (which many attendees at the HOA meeting stated was too LOW). Most organizations end up with family relationships, and the clear rules are separation of duties, no direct reporting relationship, no involvement in compensation decisions. **Our Board makes sure of all this.** (Capitalization in original, emphasis added).

Bob de Haas responded to my concerns, again citing alleged ethical safeguards in place, which the minutes and agenda show the district did not follow:

Anytime that there has been a vote that would be considered a conflict of interest, even if it was somewhat remotely, the Board member in question has abstained. If there is any doubt in my mind I have never hesitated to bring it up and state that they should not vote. Mel is Shawn's uncle. Mel had nothing to do with Shawn being hired by me, that was my decision alone, and only occurred with proper disclosure.

My review of just a limited number of board minutes shows that at no time did Mel Beauprez recuse himself, and at times affirmatively voted to confer salary increases or other benefits on his nephew. These actions are contrary to the district's representations of how it purportedly handles such matters and raise important questions:

1. Does the board consider the relationship of uncle-nephew so "distant" that it triggers no ethical red flags in its collective mind? Consider that the City of Boulder prohibits a public official from participating in decisions that affect a relative, and they define the term "relative" as "any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including, without limitation, the following: spouse, parents . . . uncles, cousins, nephews and nieces." Isn't that a more laudable ethical standard for the district to adopt?
2. The City of Boulder's ethical standards require recusal by a public official whose participation in a matter would violate its code of ethics, by "disclosure and discussion of the potential violation in a public meeting" Moreover, the ethical standards prohibit participation in any decision affecting the position of a relative. While the board member and Bob de Haas conveyed to me that our district abides by similar standards, the board agendas and minutes contradict this. There are clear instances where Mel Beauprez should have recused himself according to the stated ethical standards, but did not. I ask that the district publicize its code of conduct and conflicts of interest policies on its website. If none exist, then please indicate whether the board will adopt such policies.
3. District records show that during Mel Beauprez' service on the board, Shawn's salary increased from \$30,000 in 2000 to \$60,000 as of 2014, plus benefits, such as personal use of a district vehicle. Query: how many Boulder County government employees saw similar rates of increase during this same period? Are Boulder County employees allowed personal use of their assigned government vehicles? What was the business

justification that led our district to allow personal use of district vehicles? This isn't a typical benefit in a government agency and most employees would face serious repercussions for personally using government assets, including vehicles. One need only drive by any Boulder County parking lot to see the many government vehicles parked there overnight instead of at the homes of employees to understand this point. Thus, the personal use of vehicles and fuel our district provides as employee benefits seems an outlier for public servants. Does the district impose limits on the personal use of these assets? For example, there could be strong justification for employees to take district vehicles home due to the need to respond to emergencies, but are there limits on personal use beyond that district-related purpose? If district vehicles are used to transport family members, does the district assume that liability? What limits, if any, has the district imposed to protect itself from liability associated with employees using district vehicles during non-work hours? Please provide a copy of any policy governing vehicle use, and if none exists, then please indicate whether the board will adopt such a policy to protect the district against inherent risks.

4. Another governance question pertains to the recent hiring of the third employee. Did the district engage in a public search to fill this position? Please provide a copy of the public announcement of the opening. Also, please provide a copy of the job description detailing the knowledge, skills and abilities our district sought in qualified candidates. The third employee reportedly lacks any experience working in the water industry, but previously worked for the fire district. This raises obvious questions about the justification for hiring him, instead of someone who possessed relevant experience in the water industry. Does the district have a hiring policy? If not, please indicate whether the board will adopt a policy aimed at ensuring that the district avails itself of the most qualified candidates for employment.
5. Does the district have a gifts, meals and entertainment policy? What are the limits and how does the district track these benefits on an annual basis to safeguard against potential abuses? For example, does the board require monthly reports from employees of any gifts, meals or entertainment benefits they received from contractors who do business with the district? Please provide a copy of any such policy. If none exists, then please indicate whether the board will take steps to adopt one.
6. The district only appears to engage in competitive bidding for procurement when the federal government requires it. This raises obvious questions about whether the district is hiring contractors who render the best services at the best value versus those who may have friendships or other ties to the district. Without competitive bidding, how can the board possibly evaluate whether its procurement practices lead to the best value for the district? Does the district have a spending cap for non-competitively bid contracts? Does the district have limits on the number of years a contract may continue without renewed competitive bidding? Please provide a copy of any procurement policy, and if none exists, then please indicate whether the board will take steps to adopt one.

My cursory review of board minutes and agendas also reveals a disturbing pattern of failing to publicly announce board vacancies. Rather, the district's records show that the board hand-picks new board members with zero vetting of possible competitors. Clearly, the better

practice is to publicly announce vacancies and seek a broader spectrum of qualified candidates. Even if that exercise yielded no new candidates, it would instill public confidence by demonstrating that the board takes seriously its obligation to search for the best possible candidates who will safeguard our community's most valuable asset.

In closing, it is the disturbing trend I witnessed in our public forum and at the HOA meeting of district-related persons seeking to squelch public debate, even calling it "harassment" of board members, which raised a glaring red flag in my mind about the potential causes for such an inexplicable attitude by those associated with stewardship of a public agency. It is my sincere hope that the insularity and potential ethical conflicts the district's records reveal are not the cause for that attitude. **To be clear, I am not accusing Mel or any other board member or district employee of acting with impropriety. Rather, these examples of potential pitfalls illustrate the undeniable need for the district to adopt stronger safeguards to ensure it is operating according to best practices.** Our community cannot afford financial losses attributable to entirely avoidable risks.

Sincerely,

Alicia Villarreal
Hawk Lane

Response from Pine Brook District's Attorney

Porzak Browning & Bushong LLP

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March 22, 2018

By US Mail and email: avillarrealhb@yahoo.com

Alicia Villarreal
90 Hawk Lane
Boulder, CO 80304

Re: Pine Brook Water District

Dear Ms. Villarreal:

I am writing on behalf of the Board of Directors of Pine Brook Water District ("Pine Brook") in response to your letter dated March 8, 2018. Your letter raises serious allegations of the appearance of impropriety and other matters; as a result, the Board has asked that we respond to your letter.

Your initial (and apparently primary) concern relates to Pine Brook's employment of Shawn Beauprez.¹ Mr. Beauprez was hired in 1998 by Pine Brook's manager, Mr. de Haas. The Board was not directly involved in the hiring decision, although one Board member, Mr. Markey, assisted Mr. de Haas in evaluating the candidates for the position. Ultimately, after another candidate did not work out, Mr. Beauprez was considered by Pine Brook's manager to be the best candidate for the job. It also is Mr. de Haas who determines and recommends pay increases for Pine Brook employees. The Board has unanimously approved increases to his compensation as determined by Mr. de Haas every year. As a result, even though Mel Beauprez has been a Board member during Shawn Beauprez's entire employment period, their familial relationship has been disclosed to all Board members and Mel Beauprez has never cast a deciding vote on any issue relating to Shawn Beauprez's employment.

Shawn Beauprez has been with Pine Brook for almost 20 years now, and he has been a consistently valuable employee. His experience and training make him an indispensable asset to Pine Brook. His salary, as you mention, increased from \$30,000 to \$60,000 during his first 15 years, and now is \$68,000 after 20 years. Over this 20 year period, this represents an average

¹ The main paragraph of the first page of your letter appears to pertain to a public, on-line forum. Pine Brook does not control that forum, but it appears to provide a venue for divergent opinions rather than the oppression thereof.

annual increase of approximately four percent (4.2%). Further, his benefits are significantly below most public agencies: he gets 6 recognized holidays per year, no retirement benefits, and health insurance only for himself and his wife (he would have to pay for any dependent's health insurance). He is required to take a Pine Brook truck home inasmuch as he (like Mr. de Haas) is on-call nearly 24 hours per day, seven days per week. Overall, then, Mr. Beauprez is an employee with 20 years of experience, is on-call at nearly all times, has few benefits, and is required to take a vehicle home to be able to respond to emergencies at all times. As a recent salary evaluation indicated, his salary is competitive for this type of job with his level of experience.²

You also have expressed concerns about Mr. de Haas's use of a truck, Pine Brook hiring a third employee, policies relating to gifts and meals, and Pine Brook's bidding process. As indicated above, Mr. de Haas is on-call 24 hours per day, every day. In addition, Mr. de Haas actually contributed to the purchase price of the truck, and took a reduction in his pay raise to off-set the additional personal use of the truck, all of which the Board approved. Mr. de Haas hired a third employee whom he knew, trusted, and had the requisite skills, and the Board approved this hiring. Please keep in mind that this is a special district operating an independent water system that includes a complex diversion structure, a modern dam and treatment plant, and many miles of pipeline to over 1,200 residents, yet there are only three employees operating this entire system.

There have not been requests for reimbursement of entertainment costs in the 30 years in which Mr. de Haas has been employed by Pine Brook, only an occasional lunch at which District business is discussed, and the Board has approved these few expenditures (the Board has determined that there are not a sufficient number of meal expense requests to justify a formal policy, so they handle these on an ad hoc basis). Pine Brook's employees do not accept gifts or meals from contractors without reimbursement or repayment, other than a few instances of minor items such as baseball caps or coffee mugs. Pine Brook's employees use Colorado law as it pertains to elected officials (which they are not) with respect to such matters.

With respect to competitive bidding and elections, Pine Brook carefully follows and/or exceeds the requirements of Colorado law and the guidelines of the Colorado Special District Association. All projects that require open bids are so bid (in Colorado, those are projects of which the cost exceeds \$60,000, such as the Pine Brook Reservoir; when federal monies are used, federal law requires open bids when the project cost exceeds \$150,000, and competitive pricing for projects in excess of \$5,000). Otherwise, for smaller projects Mr. de Haas relies on trusted contractors who know Pine Brook's system and have a long history of being honest, on time, and under budget. For elections, publication and notices of elections are always made as required, and in addition to those requirements, Pine Brook typically announces elections at its meetings and in the local newsletter.

² On several points, you appear to compare Pine Brook with the City of Boulder and/or Boulder County. Boulder County is not a municipal water provider, so the basis of this comparison is unclear. In any event, we suggest that you review the benefits of employees of either the City or County, both of which are far in excess of Pine Brook's employee benefits.

Alicia Villarreal

March 22, 2018

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As the Board of Directors of a Colorado special district, Pine Brook's Board has wide authority to make decisions within the scope of its powers. The issues you express concern about are within the powers of the Board and/or Pine Brook management. The Board makes these decisions based on the information and advice of management and otherwise as discussed at Board meetings, consistent with Colorado law. It also does so understanding the context of Pine Brook as it is not an organization of the size and bureaucracy of the City of Boulder or Boulder County governments. As a result, the Board welcomes input at the monthly Board meetings, and it encourages all Pine Brook residents to run for Board positions as they become available. It also encourages you to attend Board meetings regularly and express your opinions and/or concerns about specific decisions and activities.

Please do not hesitate to contact me to discuss this matter further or if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Kinyear", written over a light blue horizontal line.

Kevin J. Kinyear