

Eagle River Water & Sanitation District
Board of Directors Meeting
June 28, 2018
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 28, 2018, at 11:30 a.m., in the District's Walter Kirch Room, 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

1 **The following Directors were present, thereby constituting a quorum:**

2 Dick Cleveland
3 Steve Coyer
4 Steve Friedman
5 George Gregory
6 Timm Paxson
7 Bill Simmons

8 **The following Director was absent and excused:**

9 Brian Sipes

10 **Also in attendance were:**

11 <u>District Staff</u>	24	Brian Tracy
12 Tug Birk	25	Hannah Whitton
13 Linn Brooks	26	James Wilkins
14 Jason Cowles	27	Lizzie Williams
15 Carol Dickman	28	Len Wright
16 Catherine Hayes	29	<u>Consultants</u>
17 Diane Johnson	30	Jim Collins, Collins Cockrel & Cole
18 Lilly Johnson	31	Glenn Porzak, Porzak Browning & Bushong LLP
19 John McCaulley	32	<u>Public</u>
20 Maureen Mulcahy	33	Rick Sackbauer, director district 1 candidate
21 Jeff Schneider	34	Cliff Thompson, IKS consulting
22 Meghan Schultz		
23 Amy Schweig		

35 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

36 The Board noted it had received more than 72 hours prior to the meeting certain disclosures of Potential Conflicts of Interest
37 Statements for the following Directors indicating the following conflicts:

38 Director Cleveland disclosed that he serves on the board of Vail Health. Director Friedman serves on the Boards of the Beaver
39 Creek Metropolitan District and the Vail Valley Foundation. Director Gregory disclosed that he serves on the Boards of the Upper
40 Eagle Regional Water Authority (Authority and the Berry Creek Metropolitan District and occasionally undertakes development and
41 construction activities within the District and Authority service areas. Director Simmons disclosed that he is the General Manager of
42 the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the board of the Edwards Metropolitan District.

43 **CALL TO ORDER**

44 Acting Chair Friedman called the meeting to order at 11:30 a.m. Present were the board, Ms. Brooks, Ms.

45 Hayes, and Messrs. Collins and Porzak.

46 **ACTION ITEMS**

47 **Consideration of Minutes** – The minutes of the regular meeting of May 24, 2018, were considered.

48 Upon motion duly made and seconded, it was unanimously

49 **RESOLVED** that the minutes of the May 24, 2018, regular meeting be accepted and hereby are
50 approved as presented.

51 **Director District 1 Vacancy: Candidate Interview and Appointment** – The board interviewed two
52 candidates for the vacancy in Director District 1: Timm Paxson and Rick Sackbauer. Both candidates
53 fielded questions regarding qualifications, reasons for wanting to serve on the board, and other details.

54 After discussion and upon motion duly made and seconded, by a 3 – 2 vote, it was

55 **RESOLVED** that Timm Paxson be and hereby is appointed to fill the Director District 1 vacancy.

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1 Mr. Sackbauer left the meeting at 12:18 p.m.

2 **Oath of Office** – Mr. Collins administered the oath of office to Mr. Paxson, a copy of which is attached
3 hereto as **Exhibit A** and incorporated herein by this reference.

4 At 12:19 p.m. the remainder of the attendees entered the meeting.

5 **Election of Officers** – The board discussed election of officers. After discussion and upon motion duly
6 made and seconded, it was unanimously

7 **RESOLVED** that Steve Friedman serve as Chair.

8 After discussion and upon motion duly made and seconded, it was unanimously

9 **RESOLVED** that George Gregory serve as Secretary.

10 After discussion and upon motion duly made and seconded, it was unanimously

11 **RESOLVED** that Steve Coyer serve as Treasurer.

12 After discussion and upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that all other directors serve as Assistant Secretary and Vice Chair.

14 **Committee Appointments** – The board discussed vacancies on various committees. Director Cleveland
15 was appointed to the Housing and Organizational Development committees. Director Sipes was
16 appointed to the Real Estate Development Committee. Director Paxson was appointed to the Water
17 Quality and Climate Action Plan committees. An updated copy of the board committees memo is attached
18 hereto as **Exhibit B** and incorporated herein by this reference.

19 At 12:33 p.m., all attendees left the room, with the exception of the board, Mses. Brooks, Dickman, Hayes, and
20 Johnson, and Messrs. Collins and McCaulley.

21 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle
22 Park Reservoir Company, pursuant to §24-6-402(4)(b) and (f), C.R.S. He asked that no electronic record
23 be made, as the discussion would be entirely privileged attorney-client. Upon motion duly made and
24 seconded, it was unanimously

25 **RESOLVED** to enter Executive Session at 12:34 p.m. to discuss attorney-client privileged
26 issues concerning Eagle Park Reservoir Company, pursuant to §24-6-402(4)(b) and (f)
27 C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion
28 would contain privileged attorney-client communications.*

29 The regular meeting resumed at 12:40 p.m.

30 **Eagle Park Reservoir Company Representative** – After discussion and upon motion duly made
31 and seconded, it was unanimously

32 **RESOLVED** that Mr. Porzak be and hereby is appointed to serve as the District
33 representative on the Eagle Park Reservoir Company board.

34 At 12:42 p.m., the board took a short recess for lunch. The regular meeting resumed at 12:55 p.m.

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INTRODUCTIONS

Mr. Cowles introduced Dr. Len Wright, the District's new water resource engineer. Ms. Mulcahy introduced Ms. Whitton, the District's first-ever sustainability intern. Mr. McCaulley introduced Ms. Lilly Johnson, a customer service metering intern.

ACTION ITEMS

Resolution to Establish a Public Comment Period for the Water Efficiency Plan – Ms. Mulcahy discussed her board action request and resolution, copies of which are attached hereto as **Exhibits C** and **D**, respectively, and incorporated herein by this reference. She noted the Colorado Water Conservation Board required a public comment period prior to plan adoption by the boards of directors and submittal to the CWCB for its approval. There is past precedent for a 30-day comment period, in addition to the extensive public outreach that staff has undertaken to present the plan to a variety of local organizations and stakeholders. Therefore, Ms. Mulcahy asked the board to adopt the 30-day comment period rather than a 60-day comment period. In response to a question, Ms. Mulcahy said a press release on the comment period was prepared and would be shared with local media and on the District's website. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the resolution establishing a 30-day public comment period for the joint regional water efficiency plan be and hereby is approved as presented.

Inclusion of CenturyTel Parcel in Edwards for Sewer Service – Mr. Schuette presented his board action request and related documents, copies of which are attached hereto as **Exhibits E** and **F**, respectively, and incorporated herein by this reference. A public hearing was opened at 12:40 p.m. Public comment was called for, and there was none. Discussion ensued regarding the location and specifics of the inclusion. The public hearing was closed at 12:45 p.m. Upon motion duly made and seconded, it was unanimously

RESOLVED that the inclusion of the CenturyTel property at 32478 Highway 6 in Edwards be and hereby is approved as presented.

A copy of the inclusion resolution is attached hereto as **Exhibit G** and incorporated herein by this reference.

Consent Agenda – The Board unanimously approved the Consent agenda, a copy of which is attached hereto as **Exhibit H** and incorporated herein by this reference.

STRATEGY ITEMS

I-70 West Vail Pass Auxiliary Lanes Project – In Ms. Roman's absence, Ms. Brooks and Ms. Johnson discussed the CDOT project to add auxiliary lanes both east and westbound, west of Vail Pass. A copy of the presentation is attached hereto as **Exhibit I** and incorporated herein by this reference. Ms. Roman is participating on the District's behalf on the project's technical team, and Director Cleveland is on the project's leadership team. The additional lanes address safety concerns due to the physical characteristics of the road, not due to capacity reasons. Ms. Brooks and Ms. Johnson pointed out the various areas on I-70 where accidents are most common.

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1 Discussion ensued regarding timeline, logistics, and the possibility of phasing the project, which
2 would offer CDOT multiple chances to evaluate the programmatic improvements and potentially
3 eliminate or reduce the need for certain later phases of the project. Ms. Brooks emphasized Ms.
4 Roman's role in ensuring water resources and water quality concerns were addressed by CDOT
5 in the project, including the addition of language to specify impacts to terrestrial and aquatic
6 wildlife. The Board agreed to write a letter to CDOT to voice concerns and request project
7 phasing and systematic re-evaluation rather than one large project.

8 **Board Member Input** – Chair Friedman called for public comment and there was none.

9 **GENERAL MANAGER REPORT**

10 Ms. Brooks presented the General Manager report, a copy of which is attached hereto as **Exhibit J** and
11 incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached
12 hereto as **Exhibit K** and incorporated herein by this reference.

13 **OPERATIONS REPORT**

14 Mr. Tracy presented the operations report, a copy of which is attached hereto as **Exhibit L** and
15 incorporated herein by this reference.

16 **2017 District Consumer Confidence Report (CCR)** – Mr. Tracy discussed his memo and the
17 2017 CCR, a required annual communication to all customers regarding the quality of the
18 District's water. Copies are attached hereto as **Exhibits M** and **N**, respectively, and incorporated
19 herein by this reference. Mr. Tracy reported there were no violations in the 2017 calendar year.
20 He also noted the water department voluntarily participates in the American Water Works
21 Association's partnership for safe water and received Phase III recognition. Upon achieving
22 Phase IV status, the water system will be considered "fully optimized." In response to a question,
23 Mr. Tracy said only detected contaminants are listed on the CCR; those that are tested for and
24 not detected are not reported. In response to another question, Mr. Tracy noted water quality
25 varies over the year based on the source water used. Ms. Brooks complimented the water
26 department and noted the report is the compilation of tens of thousands of data points, so
27 receiving zero violations is quite an accomplishment.

28 **Eagle Park Reservoir Company Update** – Mr. Tracy reported that power was restored at the
29 East Fork Pump Station on June 5 after an arc flash interrupted operations there on May 29.
30 District staff worked diligently to repair the station, and with the assistance of the Vail Resorts
31 snowmaking department, received and installed a spare breaker that would have otherwise taken
32 three weeks to order. The reservoir is 55 acre feet short of filling, rather than the original estimate
33 of at least 300 acre feet short, which was a great accomplishment, especially given the current
34 dry conditions. Discussion ensued regarding the need for an outside shutoff for the pump station,
35 as well as stocking a spare breaker in the District's inventory.

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1 ENGINEERING REPORT

2 Mr. Cowles noted he did not include a written report in the packets.

3 **Eagle River Integrated Water Plan** – Mr. Cowles reported on a recent meeting of Eagle River
4 stakeholders, including Colorado Springs, Aurora, Colorado Parks and Wildlife, American Rivers,
5 town of Avon, Eagle County and others. The group is working on a management plan for the
6 Eagle River and wanted to establish ground rules for decision making as the plan moves forward.

7 **Water System Master Plan** – Mr. Cowles reported the District selected AE2S (Advanced
8 Engineering and Environmental Services) to complete a water system master plan for the
9 Authority and District. The company will start with creating a new hydraulic model of the
10 distribution system that is GIS-based.

11 **Sewer Project Updates** – Mr. Schneider updated on high profile sewer projects. The West Vail
12 sewer project encountered some delays, including after initial excavation revealed the sewer pipe
13 was not where it was mapped. Mr. Schneider also discussed the Bridge Road project in East Vail.
14 Multiple utility relocations are part of the project, and again due to mapping deficiencies, changes
15 were accommodated.

16 COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

17 Ms. Johnson discussed her report, a copy of which is attached hereto as **Exhibit O** and incorporated
18 herein by this reference.

19 **Stillwater Groundbreaking** – Ms. Johnson noted a successful groundbreaking event at the
20 Stillwater employee housing development in Edwards. Ms. Brooks said there was good media
21 coverage of the project, and she received a phone call from the GM of a Lake Tahoe water utility,
22 which is struggling with employee housing and had questions about the District's program.

23 **Black Lakes Fish Stocking** – Ms. Johnson noted one fish stocking event occurred in June, and
24 the second will occur in July. The District stocks fish in the lakes as part of a 1986 agreement with
25 the Colorado Department of Natural Resources.

26 **Water Supply and Weather Outlook** – Ms. Johnson discussed local and regional water supply
27 and weather outlooks. Lake Powell is projected to deliver 9 million acre feet to Lake Mead this
28 year, and it is believed that Mead will hit its threshold low level this year as well. She noted a
29 recent meeting of the Upper Colorado River Commission, comprised of the four upper basin
30 states, during which the commission voted to halt the system conservation pilot project at the end
31 of the year, citing no determination on how to use the water that is saved to benefit the upper
32 basin. Discussion ensued regarding the Central Arizona Project and the backlash over its alleged
33 "gaming" of the system by keeping Lake Mead at a level by which Lake Powell must continue to
34 send water there.

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GENERAL COUNSEL REPORT

Mr. Collins referred to his confidential legal report in the confidential packet.

Update on Intermountain Claim of Easement Project – Mr. Collins provided an update on the claim of easement project in Intermountain. He reminded the board that Mr. Randy Fischer and his attorney attended the May 24 board meeting at which the public hearing for the project was held. On Mr. Fischer's behalf, his attorney stated the Fischers did not believe there was District infrastructure on their property. Mr. Collins noted that the issue has been ongoing since the prior year, when staff disagreed that at least a portion of this 8-inch sewer main was not on the property and verbally agreed with Mr. Fischer to accept a smaller easement than is required by the District's rules and regulations (4 ft. rather than 10 ft.). Thereafter, Mr. Fischer built a car platform outside of the agreed-upon easement area. He then claimed the modified location of his platform cost, and/or the value of the 4 ft. easement was, \$60,000, and filed suit against the District for inverse condemnation. The Board supported the defense of the District's position.

Continued Legal Service from Collins Cockrel and Cole – Mr. Collins presented a proposed letter of engagement by which his firm would continue to provide legal services to the Authority, a copy of which is attached hereto as **Exhibit P** and incorporated herein by this reference. He noted it was best practices to reconsider such documentation from time to time. Upon motion duly made and seconded, it was unanimously

RESOLVED that the letter of continuing engagement with Collins Cockrel & Cole be and hereby is approved as presented.

Update on HB 18-1181 – Mr. Collins reported that Governor Hickenlooper vetoed HB 1181, which would have allowed non-Colorado registered electors to vote in special district board of director elections if they owned real or taxable property in Colorado.

WATER COUNSEL REPORT

Mr. Porzak referred to his confidential legal reports in the confidential packet.

Black Lakes Water Lease with Vail Resorts – Mr. Porzak discussed a letter sent to Vail Resorts giving the required one-year notice that the District terminates the lease for 125 acre feet of water that was previously leased to Vail Resorts for snowmaking purposes. A copy of the letter is attached hereto as **Exhibit Q** and incorporated herein by this reference.

CJC Properties/Wolcott Change Case – Mr. Porzak discussed a joint application with CJC properties for water rights in the Wolcott area. Copies of the engineering report and proposed decree, copies of which are attached hereto as **Exhibits R** and **S**, respectively, and incorporated herein by this reference. Mr. Porzak confirmed the cost of the change case is being split by the District and CJC Properties; however, the District's costs will be reimbursed as part of the future water service agreement.

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1 At 2:28 p.m., Mses. Johnson, Mulcahy, Schultz, Schweig, Whitton, and Messrs. Schneider and Wright left
2 the meeting.

3 **EXECUTIVE SESSION**

4 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding real estate matters,
5 pursuant to §24-6-402(4)(a) C.R.S. He asked that no electronic record be made, as the discussion would be
6 entirely privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

7 **RESOLVED** to enter executive session at 2:30 p.m. to discuss attorney-client privileged
8 issues concerning real estate matters, pursuant to §24-6-402(4)(a) C.R.S. with no electronic
9 record created as Mr. Collins opined the contents of the discussion would contain privileged
10 attorney-client communications.*

11 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle
12 River MOU, Bolts Lake, and CRCA matters, pursuant to §24-6-402(4)(b) and (f), C.R.S. He asked that no
13 electronic record be made, as the discussion would be entirely privileged attorney-client. Upon motion
14 duly made and seconded, it was unanimously

15 **RESOLVED** to continue Executive Session at 2:31 p.m. to discuss attorney-client privileged
16 issues concerning Eagle River MOU, Bolts Lake, and CRCA matters, pursuant to §24-6-
17 402(4)(b) and (f) C.R.S. with no electronic record created as Mr. Porzak opined the contents
18 of the discussion would contain privileged attorney-client communications.*

19 The regular meeting resumed at 2:59 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:00 p.m.

3 Respectfully submitted,

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8 Secretary to the Meeting

9 **MINUTES APPROVED, FORMAL CALL, AND**
10 **NOTICE OF MEETING WAIVED**

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14 _____ **Dick Cleveland, Director**

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18 _____ **Steve Coyer, Treasurer**

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22 _____ **Stephen Friedman, Chair**

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26 _____ **George Gregory, Secretary**

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30 _____ **Timm Paxson, Director**

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34 _____ **Bill Simmons, Director**

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38 _____ **Brian Sipes, Director**

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43 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
44 in Executive Session not recorded constituted privileged attorney-client communications.

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47 _____
48 **Jim Collins, General Counsel**

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Glenn Porzak, Water Counsel