

Eagle River Water & Sanitation District
Board of Directors Meeting
July 26, 2018
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 26, 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, *via phone and in person*
4 Steve Friedman,
5 George Gregory
6 Timm Paxson
7 Bill Simmons
8 Brian Sipes

9 **Also in attendance were:**

10 <u>District Staff</u>	19	Amy Schweig
11 Linn Brooks	20	Brian Tracy
12 Jason Cowles	21	James Wilkins
13 Carol Dickman	22	Len Wright
14 Catherine Hayes	23	<u>Consultants</u>
15 Diane Johnson	24	Jim Collins, Collins Cockrel & Cole
16 John McCaulley	25	Glenn Porzak, Porzak Browning & Bushong LLP
17 Maureen Mulcahy	26	Scott Fifer, Resource Engineering, Inc.
18 Siri Roman		

27 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

35 **CALL TO ORDER**

36 Chair Friedman called the meeting to order at 11:30 a.m.

37 **INTRODUCTIONS**

38 Consultant Scott Fifer was introduced.

39 **ACTION ITEMS**

40 **Consideration of Minutes** – The minutes of the regular meeting of June 28, 2018, were considered.

41 Upon motion duly made and seconded, it was unanimously

42 **RESOLVED** that the minutes of the June 28, 2018, regular meeting be accepted and hereby are
43 approved as presented.

44 **2017 Audit Consideration** – Mr. Wilkins discussed his board action request and the 2017 audit, copies
45 of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this
46 reference. Mr. Wilkins summarized the audit, noting that actual revenue was \$28.5 million over budget,
47 entirely due to two bond refunding events that were not anticipated in 2018. Such refundings saved
48 ratepayers over \$2.3 million over the life of the bonds. Mr. Wilkins also noted due to modeling
49 inaccuracies, the District over collected roughly \$77,000 in fees from District customers, which amounts to
50 roughly \$0.23 per month per SFE. Mr. Wilkins also discussed a meeting with the auditors, McMahan and

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1 Associates, and the Audit/Budget committee (Chair Friedman and Treasurer Coyer) regarding the draft
2 audit. Chair Friedman noted he and Treasurer Coyer were satisfied with the audit and recommended
3 approval, pending a small clarification related to the water rights reference in the audit. After discussion
4 and upon motion duly made and seconded, it was unanimously

5 **RESOLVED** that the 2017 audit be and hereby is approved as amended and final copies
6 distributed, and

7 **FURTHER RESOLVED** that Ms. Brooks and Mr. Wilkins are hereby authorized to sign the letter
8 of representation addressed to McMahan and Associates.

9 **Consent Agenda** – The Board unanimously approved the Consent agenda, a copy of which is attached
10 hereto as **Exhibit C** and incorporated herein by this reference. Staff answered various questions
11 regarding the contracts included on the log.

12 **STRATEGY ITEMS**

13 **Update on Benchmarking and Metrics Reporting** – Ms. Brooks discussed her memo regarding
14 the benchmarking and metrics report being compiled by staff, a copy of which is attached hereto
15 as **Exhibit D** and incorporated herein by this reference. She noted reliance on the American
16 Water Works Association benchmarking manual for data allowing comparison of the Authority
17 and District to other similar entities. Staff has also gathered trending data, allowing the Authority
18 and District to look at its own metrics year over year. The Board agreed with the chosen
19 benchmarks and metrics and directed staff to continue working on the report, which is scheduled
20 for presentation to the boards in October. Ms. Brooks said any additional comments on the
21 benchmarks could be emailed to her in the next week as well.

22 **Dry-Year Management Plan and Policies** – Ms. Brooks presented information on the dry-year
23 management plan, a copy of which is attached hereto as **Exhibit D**. Ms. Brooks discussed the
24 spring and summer weather, which has been abnormally dry and hot, causing the base flows in
25 local streams to decline. Information from prior drought years in 2002 and 2012 was also
26 presented and compared to current conditions. Ms. Brooks discussed proposed policies for
27 enforcement, to ensure streamflows remain viable for aquatic life if and when low water levels are
28 approached. Large irrigators and customers alike would be asked to reduce outdoor water use in
29 amounts commensurate with keeping enough water in streams. Some exceptions would be
30 made, allowing continued water use for economic drivers like ball fields and public gardens.
31 There was no expectation that indoor use, which has very little consumptive impact, would be
32 limited. The Board also agreed to give discretion to the General Manager to consider a variety of
33 factors when determining enforcement levels; documentation will follow at the August meeting for
34 incorporation into the Rules and Regulations. Discussion ensued, including the future use of the
35 District's Advanced Metering Infrastructure (AMI) to enforce the District's water use schedule.

36 Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the proposed policies and implementation be and hereby are approved
2 as presented for immediate implementation.

3 A copy of the enforcement action is attached hereto as **Exhibit E** and incorporated herein by this
4 reference.

5 **Board Member Input** – Director Paxson thanked staff for assisting with his onboarding. Director
6 Cleveland asked for additional details on the water supply emergency that was briefly declared in
7 response to the Red Canyon II fire in Wolcott recently, which threatened power supply to the
8 District’s entire service area. Ms. Johnson confirmed the emergency was deliberately not
9 communicated via the county’s EC Alert system because that channel was being heavily used to
10 distribute fire and power-related information.

11 **GENERAL MANAGER REPORT**

12 Ms. Brooks presented the General Manager report, a copy of which is attached hereto as **Exhibit F** and
13 incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached
14 hereto as **Exhibit G** and incorporated herein by this reference. Chair Friedman referenced the updated
15 committees attachment and congratulated Director Sipes on his appointment to the Real Estate and New
16 Development committee.

17 **OPERATIONS REPORT**

18 The operations report was presented, a copy of which is attached hereto as **Exhibit H** and incorporated
19 herein by this reference.

20 **Nutrient Management Memorandum of Understanding** – Ms. Roman presented her memo
21 and the related MOU with the Water Quality Control Division (WQCD) of the Colorado
22 Department of Public Health and Environment (CDPHE), copies of which are attached hereto as
23 **Exhibits I and J**, respectively, and incorporated herein by this reference. The MOU was recently
24 signed by the District and WQCD and is the culmination of years of work by District staff to
25 achieve phased implementation of the state’s nutrient regulations across the District’s three
26 wastewater treatment facilities. This will ultimately bring larger benefits to stream health, allow for
27 operational efficiencies, and be more cost effective. Ms. Brooks thanked Ms. Roman and noted
28 this was a huge achievement for staff, also signaling the WQCD’s willingness to be flexible and
29 work with providers on innovative solutions. The Board also complimented Ms. Roman on these
30 efforts and the positive outcome.

31 **ENGINEERING REPORT**

32 Mr. Cowles presented his report, a copy of which is attached hereto as **Exhibit K** and incorporated herein
33 by this reference.

34 **East West Resorts Development Application** – Mr. Cowles discussed a recent development
35 application submitted to the town of Avon by East West resorts to develop the property
36 immediately east of the Avon WWTF. As part of the town’s approval process, a trail connector

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1 was requested to be installed from Riverfront Lane to the recreation path below. Because of site
2 constraints, the developer has requested to construct part of the trail on District property. Mr.
3 Cowles said the impacted District property is steep, undevelopable, and would not be included in
4 future AWWTF expansion plans. The Board directed Mr. Cowles to move forward with getting an
5 appraisal for the property and then bringing a proposed easement to a future board meeting.

6 **Current Construction Costs** – Mr. Cowles discussed a memo by Mr. Schneider regarding
7 construction costs, a copy of which is attached hereto as **Exhibit L** and incorporated herein by
8 this reference. Colorado Department of Transportation produces a quarterly construction cost
9 index, which was used in the memo. Construction costs had rapidly increased in the past few
10 years and seem to have leveled off currently. Mr. Cowles pointed out that the current
11 administration’s tariffs may affect materials and pricing of some planned projects, however. Mr.
12 Cowles confirmed that staff was not recommending accelerated timelines for any construction
13 projects based on these projections.

14 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

15 Ms. Johnson discussed her report, a copy of which is attached hereto as **Exhibit M** and incorporated
16 herein by this reference.

17 **Water Efficiency Plan Outreach** – Ms. Johnson said Ms. Mulcahy and Ms. Schweig wrapped up
18 all scheduled presentations for the Water Efficiency Plan, the public comment period for which
19 ends on July 31. They may continue to present as requested to other groups, including the Eagle
20 Board of County Commissioners. Ms. Mulcahy said she’s received one public comment on the
21 plan so far.

22 **Colorado River Basin Roundtable Update** – Ms. Johnson discussed a recent meeting she
23 attended of the basin roundtable. Topics included the water released downstream to protect four
24 endangered species of fish on the Colorado (formerly called the 10825 water); this effort aims to
25 have 850 cfs at the USGS gage at Palisade, which is far below the target currently. She noted
26 consensus among the meeting attendees that water providers can only do so much to mitigate
27 naturally-occurring low streamflows. Ms. Johnson also referenced discussion of the Lake
28 Christine Fire in Basalt and questions regarding where the firefighting water comes from and how
29 the water accounting works. The fire started on July 3 and has burned nearly 12,000 acres. She
30 noted firefighters will take water from anywhere possible during efforts to extinguish wildfires. The
31 accounting will take place later, based on the water rights of entities in the area.

32 **GENERAL COUNSEL REPORT**

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

34 **Eagle Park Reservoir Company Matters** – Mr. Collins said staff received a request from EPRC
35 Chair Doug Lovell to hold a meeting with the legal counsel for each of the Eagle Park

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1 Shareholders. Mr. Collins said staff and counsel were amenable to holding such a meeting, but
2 could not see what productive outcome might occur from the meeting.

3 **Randy Fischer Dispute** – Mr. Collins updated on the suit filed against the District by Mr. Fischer,
4 who is suing the District for expenses he claims were incurred when he built a car platform in a
5 modified location due to the presence of a 4 ft. District easement in the area. His original claim
6 was that the value of this was \$60,000; he has since offered to settle for \$40,000. The law firm of
7 Nathan, Dumm and Mayer is representing the District in this matter.

8 **Bighorn Sanitation Subdistrict** – Mr. Collins said the Bighorn Sanitation subdistrict was legally
9 formed, and staff was moving ahead with design plans for bringing the sewer infrastructure up to
10 the District's standards. Mr. Cowles gave a brief history of the matter, by which that area of East
11 Vail was on a private sewer line and often had operational and maintenance issues. The District
12 offered to assist with subdistrict formation, which will allow a financing mechanism by which the
13 residents can pay for the improvements.

14 **Traer Creek Easements** – Mr. Collins noted his partner, Kathryn Winn, continues to work with
15 staff on getting easements within the Traer Creek development that were never conveyed to the
16 District over 15 years ago.

17 **De-Gallagherizing Operations Mill Levies** – Mr. Collins discussed the interplay between the
18 1982 Gallagher Amendment and 1992 TABOR amendment, which is causing the residential
19 assessment rate (RAR) to drop next year, reducing the operating mill levies of entities that
20 receive such revenue. The District is not highly reliant on property tax for its revenue, and after
21 discussion, the Board declined to take any questions to the voters to make up for any lost
22 revenue due to the RAR.

23 **WATER COUNSEL REPORT**

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

25 At 2:03 p.m., Ms. Mulcahy left the meeting.

26 **EXECUTIVE SESSION**

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

30 **RESOLVED** to enter executive session at 2:04 p.m. to discuss attorney-client privileged
31 issues concerning real estate matters, pursuant to §24-6-402(4)(a) C.R.S. with no electronic
32 record created as Mr. Collins opined the contents of the discussion would contain privileged
33 attorney-client communications.*

34 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle
35 River MOU, Bolts Lake matters, and snowmaking return flows, pursuant to §24-6-402(4)(b) and (f), C.R.S.

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1 He asked that no electronic record be made, as the discussion would be entirely privileged attorney-
2 client. Upon motion duly made and seconded, it was unanimously

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

8 The regular meeting resumed at 3:02 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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15 **Dick Cleveland, Director**

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19 **Steve Coyer, Treasurer**

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23 **Stephen Friedman, Chair**

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27 **George Gregory, Secretary**

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31 **Timm Paxson, Director**

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35 **Bill Simmons, Director**

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39 **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