

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**August 23, 2018**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held August 23, 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>	18	Jeff Schneider
11          Linn Brooks	19	Micah Schuette
12          Jason Cowles	20	Amy Schweig
13          Carol Dickman	21	James Wilkins
14          Catherine Hayes	22	<u>Consultants</u>
15          Diane Johnson	23	Jim Collins, Collins Cockrel & Cole
16          John McCaulley	24	Kristin Moseley, Porzak Browning & Bushong LLP
17          Siri Roman	25	Glenn Porzak, Porzak Browning & Bushong LLP

26          **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

34          **CALL TO ORDER**

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

36          **INTRODUCTIONS**

37          There were no introductions.

38          **ACTION ITEMS**

39                 **Consideration of Minutes** – The minutes of the regular meeting of July 26, 2018, were considered.

40                 Upon motion duly made and seconded, it was unanimously

41                         **RESOLVED** that the minutes of the July 26, 2018, regular meeting be accepted and hereby are  
42                         approved as amended.

43                 **Water Efficiency Plan** – Mr. McCaulley discussed the board action request and joint regional Water  
44                 Efficiency Plan of the Authority and District, copies of which are attached hereto as **Exhibits A and B**,  
45                 respectively, and incorporated herein by this reference. The required public comment period for the plan  
46                 ended on July 30. Staff presented the plan to over 30 local organizations with only one comment  
47                 received. Mr. McCaulley explained the efficiency goals, which are modest but achievable. Coupled with  
48                 planned water budgeting for individual properties, future reductions in use are likely to exceed  
49                 expectations. Upon motion duly made and seconded, it was unanimously

## Eagle River Water & Sanitation District

1           **RESOLVED** that the Joint Regional Water Efficiency Plan of the Authority and District be and  
2           hereby is approved as presented.

3           A copy of the resolution approving the plan is attached hereto as **Exhibit C** and incorporated herein by  
4           this reference.

5           **Public Hearing for Inclusion** – Mr. Schuette presented his board action request and related information  
6           regarding the proposed inclusion for water service at 3700 North Frontage Road West in Vail, which is  
7           owned by the Vail Corporation. Copies of the documents are attached hereto as **Exhibits D and E**,  
8           respectively, and incorporated herein by this reference. A public hearing was opened at 11:42 a.m. Public  
9           comment was requested and there was none. Mr. Collins explained that the board can approve such a  
10          request despite the parcel's end use being unknown. Mr. Cowles said once the Vail Corporation moves to  
11          develop the parcel, the District would consider its ability to serve the project. He also noted Vail Resorts  
12          has water rights to devote to any proposed project. The public hearing was closed at 11:45 a.m. After  
13          discussion and upon motion duly made and seconded, it was unanimously

14           **RESOLVED** that the request for inclusion of 3700 North Frontage Road West in Vail be and  
15           hereby is approved as presented.

16          The inclusion resolution is attached hereto as **Exhibit F** and incorporated herein by this reference.

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

### 20          **STRATEGY ITEMS**

21           **Board Member Input** – Board member input was requested and there was none.

### 22          **GENERAL MANAGER REPORT**

23          Ms. Brooks presented the General Manager report, a copy of which is attached hereto as **Exhibit H** and  
24          incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached  
25          hereto as **Exhibit I** and incorporated herein by this reference.

26           **Easement Request from Town of Avon** – Ms. Brooks and Mr. Cowles discussed a request from  
27          the town of Avon regarding a desired easement east of the Avon WWTF, a copy of which is  
28          attached hereto as **Exhibit J** and incorporated herein by this reference. East West Resorts is  
29          developing the property and Avon requested a trail connector from Riverfront Lane to the  
30          recreation path below. The needed easement was discussed at the July 26 board meeting, and  
31          requested by the developer; the town now believes it should be granted at no cost to the town, as  
32          it is part of Avon's trails plan. Discussion ensued regarding prior easements, costs, and benefits.  
33          The board directed staff to work with the town on the details and bring such request before the  
34          Board in September.

# Eagle River Water & Sanitation District

## 1 FINANCE REPORT

2 **Quarterly Financial Report** – Mr. Wilkins presented the quarterly financial report, a copy of  
3 which is attached hereto as **Exhibit K** and incorporated herein by this reference. Revenue  
4 projections for the District will likely be exceeded as the drought conditions led to increased  
5 outdoor irrigation. Mr. Wilkins specifically noted the May water sales were as high as a summer  
6 watering month, as the dry weather prompted early use of irrigation water. This amount of usage  
7 in May was never seen before in District historical records. The Board acknowledged receipt of  
8 the report.

## 9 OPERATIONS REPORT

10 The operations report was presented, a copy of which is attached hereto as **Exhibit L** and incorporated  
11 herein by this reference.

12 **Letter of Support to CDOT for West Vail Pass Auxiliary Lane Project** – Ms. Roman discussed  
13 her memo and a letter of support to the Colorado Department of Transportation (CDOT)  
14 regarding its West Vail Pass Auxiliary Lane Project, copies of which are attached hereto as  
15 **Exhibits M** and **N**, respectively, and incorporated herein by this reference. CDOT is moving  
16 forward quickly with analysis of this project using a streamlined National Environmental Protection  
17 Agency (NEPA) process. The project construction and permanent expansion of the highway may  
18 be very impactful to water quality in the area, and a unified community voice is important  
19 regarding protection and enhancement of water quality and the surrounding areas. The board  
20 unanimously approved sending the letter to CDOT regarding the project.

21 **Eagle Park Reservoir Company Operations Report** – In response to a question, Ms. Brooks  
22 noted the dam inspection was found to be satisfactory, and the Board was pleased that the  
23 inspector classified the dam as “well-maintained.” Ms. Brooks also said the meeting scheduled for  
24 later that day was cancelled and would be rescheduled for September.

## 25 ENGINEERING REPORT

26 Mr. Cowles presented his report, a copy of which is attached hereto as **Exhibit O** and incorporated herein  
27 by this reference.

28 **Red Sandstone Sewer Main** – Mr. Cowles elaborated on his report. He discussed a 23' deep  
29 water transmission main in the area of Red Sandstone school, which is undergoing reconstruction  
30 and the addition of a parking garage. Staff would like to enter into an intergovernmental  
31 agreement with Eagle County School District for relocation of the entire water main, with the  
32 school district paying for the portion of the main that it would have had to relocate on its own to  
33 facilitate the project and the District picking up the remainder of the costs. Mr. Cowles said the  
34 current line likely predated the construction of I-70, which could explain the depth and location of  
35 the line. Discussion ensued, and it was clarified that the funds would come from the capital  
36 replacement budget. Upon motion duly made and seconded, it was unanimously

## Eagle River Water & Sanitation District

1           **RESOLVED** that staff be and hereby is approved to enter into an Intergovernmental  
2           Agreement with the Eagle County School District for relocation of the water main.

### 3   **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

4   Ms. Johnson noted she did not include a written report in packets. Her work has focused on the ongoing  
5   drought communications and other related efforts that Ms. Brooks would discuss.

6           Ms. Dickman left the meeting at 12:30 p.m.

### 7   **GENERAL MANAGER REPORT (CONT.)**

8           **Drought Update** –Ms. Brooks discussed current weather and water supply conditions and  
9           compared them to previous dry years in 2002 and 2012. Stream temperatures are coming down,  
10          and recent rain has helped, though forecasters predict hot, dry weather in the weeks to come.  
11          Ms. Brooks also discussed customer outreach and communication, including newspaper, radio,  
12          and web messaging, in addition to recent letters to excessive users. The letters and a  
13          simultaneous Vail Daily article on drought resulted in a drastic increase in call volume to customer  
14          service in the following days, and Ms. Brooks complimented staff on handling those calls  
15          efficiently and professionally. She also noted large irrigators have significantly reduced water use;  
16          these relationships are critical to managing demand in drought years. Using new smart meter  
17          technology, staff was able to query any accounts using irrigation water on Mondays, a day when  
18          outdoor irrigation is prohibited. Once all customers have smart meters in the coming years, such  
19          enforcement will be more widely used to ensure compliance with the outdoor water use rules. The  
20          threshold for determining “high use” was discussed, and staff noted that enforcement activities  
21          were somewhat limited by the ability of staff to assist such customers after they were notified of  
22          their excessive uses. Ms. Brooks also noted there were more excessive users in the Authority  
23          than the District, and accordingly, reductions by excessive users in the Authority were larger than  
24          in the District.

25          **Rules and Regulations Amendment** – Ms. Brooks discussed a board action request and proposed  
26          amendment to the Rules and Regulations, copies of which are attached hereto as **Exhibits P and Q**,  
27          respectively, and incorporated herein by this reference. This amendment, which would comprise Article  
28          XI, codifies the water supply response plan policies the board verbally approved at the July 26 board  
29          meeting. Discussion ensued regarding the balance between the regulations for excessive use, and  
30          limitations of the available technology and staff to enforce such regulations and fines. Ms. Brooks and Mr.  
31          McCaulley discussed current accounting and enforcement mechanisms available to staff, as well as  
32          future plans to improve monitoring and enforcement. After discussion and upon motion duly made and  
33          seconded, it was unanimously

34               **RESOLVED** that the amendment to the Rules and Regulations be and hereby is  
35               approved as presented.

## Eagle River Water & Sanitation District

1 Ms. Brooks noted once water budgeting is fully implemented in the years to come, this section of the  
2 Rules and Regulations can be updated accordingly with stricter regulations and enforcement. A copy of  
3 the Resolution to Amend the Rules and Regulations is attached hereto as **Exhibit R** and incorporated  
4 herein by this reference.

### 5 GENERAL COUNSEL REPORT

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

7 **Construction Projects Update** – Mr. Schneider briefly discussed the West Vail Sewer project,  
8 which required a large change order due to unforeseen circumstances by which the sewer main  
9 was in a much different location than records suggested. Staff was authorized to move forward,  
10 and Mr. Schneider was pleased with the coordination between staff, CDOT, and the town of Vail.

11 **Randy Fischer Dispute** – Mr. Collins updated on the suit filed against the District by Mr. Fischer,  
12 who is suing the District for expenses he claims were incurred when he built a car platform in a  
13 modified location due to the presence of sewer main in the area. The law firm of Nathan, Dumm  
14 and Mayer is representing the District in this ongoing matter.

### 15 WATER COUNSEL REPORT

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

### 17 **EXECUTIVE SESSION**

18 Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding Eagle  
19 River MOU, Bolts Lake and Minturn water matters, CRCA matters, and the Pando Feeder Canal,  
20 pursuant to §24-6-402(4)(b) and (f), C.R.S. He asked that no electronic record be made, as the  
21 discussion would be entirely privileged attorney-client. Upon motion duly made and seconded, it was  
22 unanimously

23 **RESOLVED** to enter into Executive Session at 1:04 p.m. to discuss attorney-client privileged  
24 issues concerning Eagle River MOU, Bolts Lake and Minturn water matters, CRCA matters,  
25 and the Pando Feeder Canal, pursuant to §24-6-402(4)(b) and (f) C.R.S. with no electronic  
26 record created as Mr. Porzak opined the contents of the discussion would contain privileged  
27 attorney-client communications.\*

28 The regular meeting resumed at 1:55 p.m.

29 **Response Letter to Homestake Partners** – After discussion and upon motion duly made and seconded,  
30 it was unanimously

31 **RESOLVED** that sending a joint response letter from the District and Authority to the  
32 Homestake Partners regarding their 90-day phase II Eagle River MOU project notice be  
33 and hereby is approved as presented.

34 **Bolts Lake** – After the Executive Session discussion with staff and counsel, the Board unanimously

## Eagle River Water & Sanitation District

1                   **RESOLVED** that the District staff and water and general counsel should continue pursuit  
2                   of the development of a Bolts Lake agreement and a bulk water services agreement with  
3                   Minturn and Battle Mountain as presented.

4   **Pando Feeder Canal Diligence Application** – After the Executive Session discussion about this critical  
5   water right, the Board unanimously

6                   **RESOLVED** that Mr. Porzak be and hereby is authorized to draft and submit a diligence  
7                   application on the District and Authority's behalf for the Pando Feeder Canal Water Right.  
8

**Eagle River Water & Sanitation District**

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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7 \_\_\_\_\_  
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**

49 \_\_\_\_\_  
**Glenn Porzak, Water Counsel**