

Eagle River Water & Sanitation District
Board of Directors Meeting
October 25, 2018
MINUTES

A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held October 25, 2018, at 1:00 p.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*
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	James Wilkins
11 Linn Brooks	19	<u>Consultants</u>
12 Jason Cowles	20	Kristin Moseley, Porzak Browning & Bushong LLP
13 Carol Dickman	21	Glenn Porzak, Porzak Browning & Bushong LLP
14 Catherine Hayes	22	Kathryn Winn, Collins Cockrel & Cole
15 Diane Johnson	23	<u>Public</u>
16 Siri Roman	24	Kathy Chandler-Henry, Eagle Board of County Commissioners
17 Amy Vogt	25	Gary Shimanowitz, Vail Resorts/Eagle Park Reservoir Company

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 1:00 p.m.

36 **INTRODUCTIONS**

37 County Commissioner Chandler-Henry was introduced, as well as Mr. Shimanowitz, an Eagle Park
38 Reservoir Company board member.

39 **PUBLIC COMMENT**

40 Public comment was requested and there was none.

41 **WATER COUNSEL REPORT**

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

43 **EXECUTIVE SESSION**

44 Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding Colorado
45 River Compact issues, pursuant to §24-6-402(4)(b) and (f), C.R.S. He asked that no electronic record be
46 made, as the discussion would be entirely privileged attorney-client communications. Upon motion duly
47 made and seconded, it was unanimously

48 **RESOLVED** to enter into Executive Session at 1:01 p.m. to discuss attorney-client privileged
49 issues concerning the Colorado River Compact, pursuant to §24-6-402(4)(b) and (f) C.R.S.

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1 with no electronic record created as Mr. Porzak opined the contents of the discussion would
2 contain privileged attorney-client communications.*

3 Mr. Shimanowitz left the meeting at 1:11 p.m. Ms. Chandler-Henry left the meeting at 1:18 p.m., and the
4 regular meeting resumed at 1:19 p.m.

5 ACTION ITEMS

6 **Consideration of Minutes** – The minutes of the special meeting of September 27, 2018, were
7 considered. Upon motion duly made and seconded, it was unanimously

8 **RESOLVED** that the minutes of the September 27, 2018, special meeting be accepted and
9 hereby are approved as presented.

10 **Sanitation Maintenance Warranty Deductible** – Mr. Wilkins discussed the board action request
11 and Sanitation Maintenance Warranty Deductible for 2019, copies of which are attached hereto
12 as **Exhibits A** and **B**, respectively, and incorporated herein by this reference. Mr. Wilkins noted
13 that approval of the endorsement would reduce the District's liability premiums by 33%. After
14 discussion and upon motion duly made and seconded, it was unanimously

15 **RESOLVED** that the endorsement be and hereby is approved as presented.

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

18 STRATEGY ITEMS

19 **Benchmarking Report** – The Board briefly discussed the 2017 Benchmarking and Key
20 Indicators report and related memo included in board packets. Copies are attached hereto as
21 **Exhibits D** and **E**, respectively, and incorporated herein by this reference. Ms. Brooks explained
22 that the benchmarks were defined and provided by the American Water Works Association,
23 compiled from the data reported by participating entities. Other key performance indicators and
24 trending data were specific to Authority and District operations. Discussion ensued, and the
25 board suggested a summary of the report would be helpful.

26 **Draft 2019 Budget Presentation** – Mr. Wilkins discussed the draft FY 2019 budget and related
27 materials, copies of which are attached hereto as **Exhibit F** and incorporated herein by this
28 reference. The budget committee, Chair Friedman and Treasurer Coyer, discussed the annual
29 budget process and their involvement. They also discussed key proposed budget increases
30 supported by the committee: an increase to offset electric use with the purchase of 100%
31 renewable energy from Holy Cross, the District's electric provider; and an increase to the
32 personnel budget for working conditions supplemental pay. This flat pay supplement would
33 primarily apply to wastewater employees to encourage retention and assist with recruiting in this
34 field, which has unique due to the nature of the work, but could potentially apply to any
35 employee who was exposed to challenging working conditions. The committee and Mr. Wilkins
36 also discussed undertaking preliminary efforts to match the District's tiered rate structure with
37 that of the Authority, which has five tiers vs. the District's current three tiers. Mr. Wilkins also

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1 noted the anticipated issue of a wastewater revenue bond in 2019. The committee
2 recommended approval of the budget during the public budget hearing, which was noticed for
3 the Nov. 15 board meeting.

4 **Board Member Input** – Chair Friedman shared a letter he received from the Eagle River
5 Watershed Council, thanking the District for its ongoing partnership and funding of the Watershed
6 Council.

7 **GENERAL MANAGER REPORT**

8 Ms. Brooks noted she did not include a written report in packets. Monthly reports were acknowledged,
9 copies of which are attached hereto as **Exhibit G** and incorporated herein by this reference.

10 **OPERATIONS REPORT**

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

13 **Eagle Mine Update** – Ms. Roman discussed a recent spill at the Eagle Mine, which was not
14 reported to the District via the agreed-upon channels of communication. While instream water
15 quality standards for metals were likely not exceeded and drinking water intakes were not
16 impacted, concerns persist regarding the inspection and monitoring efforts at the Mine. Ms.
17 Roman noted that she is working to build positive relationships with the new personnel at the
18 Mine and the Colorado Department of Public Health and the Environment. A meeting with key
19 stakeholders was scheduled in the coming weeks. Discussion ensued regarding the ideal level of
20 involvement for the District, as well as the relationships governing the ongoing work at the Mine.
21 A related memo is attached hereto as **Exhibit I** and incorporated herein by this reference.

22 **2017 Macroinvertebrate Sampling Results** – Ms. Roman presented a memo regarding the
23 latest macroinvertebrate sampling results for local waterways, a copy of which is attached hereto
24 as **Exhibit J** and incorporated herein by this reference. She noted the data indicates
25 improvements on Gore Creek; however, the Eagle River sample sites experienced some
26 degradation of conditions.

27 **ENGINEERING REPORT**

28 Mr. Cowles noted he did not include a written report in packets; all of his items would be covered in
29 Executive Session.

30 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

31 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit K** and incorporated
32 herein by this reference.

33 **Safe Drug Disposal Event** – Ms. Johnson reminded Directors of the Oct. 27 national drug take
34 back event. Law enforcement partners are hosting collection sites in Vail, Edwards, and Gypsum,
35 to receive and dispose of prescription, over-the-counter medications and supplements, and
36 controlled substances. The event keeps pharmaceuticals out of the waste stream, in part to

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1 protect water quality. The event is free and no personal information is collected. There are six
2 permanent take-back receptacles available in Eagle County for anyone unable to attend
3 Saturday; details are on the district website.

4 **Vail Farmers' Market** – Ms. Johnson noted that the market ended Oct. 7 and acknowledged Ms.
5 Vogt for her success in coordinating twenty co-workers to staff the water station each Sunday;
6 they distributed about 2,300 gallons of water and had about 30,000 customer interactions over
7 the 17 weeks.

8 **Colorado River Matters** – Chair Friedman thanked Ms. Johnson for her efforts to coordinate the
9 presentation by Messrs. Kuhn and Treese earlier in the day. They discussed major issues
10 affecting the Colorado River Basin at a joint meeting of the Authority and District boards.

11 GENERAL COUNSEL REPORT

12 Ms. Winn referenced her confidential legal report in the confidential packet.

13 **Intergovernmental Agreements** – Ms. Winn discussed the recommendation from her and Jim
14 Collins that certain intergovernmental agreements (IGAs) could be approved by staff and reported
15 to the board at the next board meeting. Criteria for IGAs to be staff-approved include those that
16 are opportunistic and for which timing is key. Discussion ensued regarding how to define a
17 “major” vs. “minor” IGA, and the board indicated that the general manager was given the
18 discretion to make such determinations with board oversight. Upon motion duly made and
19 seconded, it was unanimously

20 **RESOLVED** that staff may approve intergovernmental agreements for which time is of
21 the essence and must report on such execution at the next board meeting.

22 WATER COUNSEL REPORT

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

24 **Proposed 2019 Cash in Lieu of Water Rights Fees** – Mr. Porzak discussed the District's
25 updated water dedication policy, which proposes increases in the District's cash-in-lieu of water
26 rights fees for 2019. A copy is attached hereto as **Exhibit L** and incorporated herein by this
27 reference. Such changes would be approved with the 2019 budget. Mr. Porzak recommended
28 direct flow water fees increase from \$9,000/acre foot to \$9,360. After discussion, the board
29 recommended in-basin augmentation water fees increase from \$35,000/acre foot to \$38,500, a
30 10% increase, which is reflective of the true cost of water and rising water development costs in
31 the area. Mr. Porzak agreed to update his resolution and bring it back with the 2019 budget at the
32 November 15 meeting.

33 **Pando Feeder Canal Diligence/Absolute Application** – Mr. Porzak discussed the application to
34 make absolute a portion of the 1955 Pando Feeder Canal water right, a copy of which is attached
35 hereto as **Exhibit M** and incorporated herein by this reference. This water right was originally
36 donated to Eagle Park Reservoir Company by the Colorado River District and is diverted at the

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1 East Fork Pump Station to fill Eagle Park Reservoir. Mr. Porzak noted it was a joint application on
2 behalf of all the Eagle Park Reservoir Company shareholders. The board approved Mr. Porzak to
3 sign and file the diligence application on its behalf.

4 **Amendment to the Colorado River Cooperative Agreement** – Mr. Porzak discussed an
5 amendment to the CRCA regarding the Clinton Reservoir dead storage pool. An exhibit to the
6 CRCA requires that the Clinton Reservoir dead storage cannot be used until a pump is installed;
7 however, Winter Park and Copper Mountain would like to use their allocation in the pool without
8 the need for a pump by taking the water from the active storage capacity, as not all of the
9 shareholders are using their entire allocation of the active storage capacity. Thus, the matter
10 could be handled through a bookkeeping entry. While this does not affect the District or Authority,
11 they are signatories to the CRCA and therefore must approve any change to the agreement. After
12 discussion and upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the amendment to the Colorado River Cooperative Agreement be and
14 hereby is approved as presented.

15 A copy of the amendment is attached hereto as **Exhibit N** and incorporated herein by this
16 reference.

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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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48 **Kathryn Winn, General Counsel**

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Glenn Porzak, Water Counsel