

Eagle River Water & Sanitation District
Board of Directors Meeting
January 24, 2019
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 24, 2019, 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*
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> | 20 | Brian Tracy |
| 11 Linn Brooks | 21 | Amy Vogt |
| 12 Jason Cowles | 22 | Len Wright |
| 13 Carol Dickman | 23 | <u>Consultants</u> |
| 14 Catherine Hayes | 24 | Jim Collins, Collins Cockrel & Cole |
| 15 Diane Johnson | 25 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 16 John McCaulley | 26 | Larissa Read, Common Ground Consulting |
| 17 Melissa Mills McLoota | 27 | <u>Public</u> |
| 18 Maureen Mulcahy | 28 | Sarah Smith Hymes, Town of Avon Mayor |
| 19 Siri Roman | | |

29 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

37 **CALL TO ORDER**

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

39 **INTRODUCTIONS**

40 Ms. Read was introduced; she is the owner of Common Ground Consulting and would be presenting later
41 in the meeting.

42 **PUBLIC COMMENT**

43 Public Comment was called for, and there was none.

44 **ACTION ITEMS**

45 **Consideration of Minutes** – The minutes of the regular meeting of December 13, 2018, were
46 considered. Upon motion duly made and seconded, it was unanimously

47 **RESOLVED** that the minutes of the December 13, 2018, regular meeting be accepted and
48 hereby are approved as presented.

49 **Staffing Request: Sustainability Coordinator** – The Board discussed the staffing request for a
50 sustainability coordinator position, a copy of which is attached hereto as **Exhibit A** and
51 incorporated herein by this reference. Discussion ensued regarding funding for the position, as
52 well as expected job duties and how to measure the success of such a position. The board

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1 requested periodic updates regarding efficiencies and savings achieved with the position. After
2 discussion and upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the addition of a full-time sustainability coordinator for 2019 be and
4 hereby is approved as presented.

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

7 **STRATEGY ITEMS**

8 **Hahnewald Barn Update** – Town of Avon Mayor Hymes discussed the Hahnewald Barn, which
9 is located on District property at the Avon Wastewater Treatment Facility. The barn must be
10 moved from its current location by spring to facilitate a needed expansion of wastewater facilities.
11 Mayor Hymes showed a video about the barn, its history, and commentary from stakeholders
12 interested in preserving the barn in some way. Mayor Hymes noted councilmembers' opinions
13 ranged from spending no money at all on the barn to complete preservation of the intact barn.
14 She also reported there is minimal citizen support, so a full barn preservation was unlikely. The
15 Avon council will determine the fate of the barn at its Feb. 12 meeting. She thanked the directors
16 for their time.

17 The board took a short recess for lunch at 12: 10 p.m., and the regular meeting resumed at 12:20 p.m.

18 **National Environmental Policy Act (NEPA) 101** – Ms. Read discussed the National
19 Environmental Policy Act (NEPA) and its history. Seventy-five percent of Eagle County land is
20 under federal jurisdiction, so the NEPA process is very relevant in our area. Ms. Read
21 summarized the three main tenets of the act for any entity undergoing a project with potential
22 environmental impacts: such entity must evaluate alternatives, study potential impacts, and
23 gather public comments. Ms. Read noted pertinent NEPA regulations and the circumstances
24 under which certain ones would be applicable, including comparisons to local projects with which
25 the board is familiar. Under NEPA, projects with minimal or no projected impacts could receive a
26 categorical exclusion to be exempt from requirements to prepare an environmental impact
27 statement. As possible impacts increase, so does the level of NEPA oversight imposed by the
28 appropriate federal agency, including the requirement for an environmental assessment (EA)
29 and potentially an environmental impact statement (EIS), which is reserved for the most
30 impactful projects. In response to a question, Ms. Read said an EA can take from one to four
31 years, and an EIS could require three to five years, depending on project details. She also noted
32 that the process was not affected based on the administration in office at the time of any project
33 application. A memo on the topic is attached hereto as **Exhibit C** and incorporated herein by this
34 reference.

35 **West Vail Pass Auxiliary Lane Project** – Ms. Read specifically discussed the West Vail Pass
36 Auxiliary Lane project and how the project has proceeded so far under the NEPA process. A
37 related memo is attached hereto as **Exhibit D** and incorporated herein by this reference. The

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1 project is currently (and legally) undergoing an environmental assessment, despite widespread
2 concern among stakeholders that a more stringent environmental impact statement should be
3 undertaken. Specifically, local stakeholders believe that water resources and stormwater runoff
4 are not being adequately considered. Ms. Roman noted her desire that the project managers
5 use a more science-based approach (tracking water quality metrics) to the project. The board
6 thanked Ms. Read for her presentation, and she left the meeting at 1:15 p.m.

7 **Proposed Work Session with the Town of Vail** – Ms. Brooks noted her recent meeting with
8 town manager Greg Clifton, who suggested a joint meeting of the council and District board to
9 discuss topics of mutual interest. Possible topics were included in a board memo, a copy of
10 which is attached hereto as **Exhibit E** and incorporated herein by this reference. Discussion
11 ensued, and the board suggested narrowing the list down to one or two topics before scheduling
12 such a meeting.

13 **Unification** – Ms. Brooks reported that she asked managers, consultants, and affected staff to
14 compile lists of possible advantages and disadvantages of consolidation of the Authority and
15 District. The board appointed Chair Friedman and Treasurer Coyer to the board subcommittee to
16 further explore this concept, joining Authority directors Sarah Smith Hymes and Kim Bell
17 Williams.

18 **GENERAL MANAGER REPORT**

19 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit F** and incorporated herein
20 by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit G**
21 and incorporated herein by this reference.

22 **Appeals Process** – Ms. Brooks refreshed the board on the appeals process, by which a
23 customer or developer can appeal a decision of the Construction Review Team. Such procedure
24 is outlined in the board's Rules and Regulations. The first level of appeals is to the Rules and
25 Regulations Administrator, and next to the General Manager. If a satisfactory conclusion is still
26 not reached, the appeal can escalate to the Board. For informational purposes only, Ms. Brooks
27 reported the 6 West Developer had appealed the District's calculation of the development's tap
28 fees, which included storage space. After a site visit, Ms. Brooks determined that a portion of
29 some of the development's storage space did not impact water use and would be removed from
30 the square footage in the tap fee calculation; two other types of storage areas would still be
31 included in the tap fee calculation. The developer may still wish to appeal to the Board, and so no
32 discussion of the topic was undertaken.

33 **OPERATIONS REPORT**

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

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1 **Tour of Avon Drinking Water Facility (ADWF)** – Mr. Tracy said he would facilitate a tour of the
2 ADWF to showcase recent capital improvements there. Mr. Tracy extended the invitation to any
3 interested directors; he will send out a poll to determine the best date and time for the tour, which
4 will highlight recent capital improvements at the facility. A presentation on the improvements is
5 also planned for the February board meeting.

6 **ENGINEERING REPORT**

7 Mr. Cowles presented his report, a copy of which is attached hereto as **Exhibit I** and incorporated herein
8 by this reference.

9 **Lionshead Development** – In response to a question, Mr. Cowles discussed a proposed zoning
10 amendment to allow for unlimited residential density in the town of Vail's Lionshead Mixed Use –
11 1 Zone District. Future development would still be subject to existing building heights, building
12 setbacks, and gross residential floor area limitations. The impacts of the zone change could
13 necessitate wastewater treatment improvements to the Vail Wastewater Treatment Facility
14 sooner than projected in the 2017 wastewater master plan if growth rates exceeded the rates
15 assumed in the plan. Such an increase could compound customer rate increases given bonding
16 projections for other planned projects. Mr. Cowles said that it would be difficult to provide a more
17 detailed impact analysis during the town's requested referral response period given the many
18 unknowns involved.

19 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

20 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit J** and incorporated
21 herein by this reference.

22 **Legislative Updates** – Ms. Johnson noted the 2019 legislative session began Jan. 4. She is
23 tracking HB19-1050, which would extend to special districts the same policy that came from 2013
24 legislation, which said any homeowner association (HOA) rules that require homeowners to have
25 turf grass are unenforceable. Ms. Johnson outlined methods by which staff and consultants track
26 legislation relevant to the Authority and District throughout the legislative session.

27 **Meeting with Rep. Dylan Roberts** – Ms. Johnson said a recent meeting with Rep. Dylan
28 Roberts and District staff and board members was productive and effective in sharing information
29 about Authority and District concerns.

30 **Gov. Polis Cabinet Appointment** – Ms. Johnson noted Eagle County Commissioner Jill Ryan
31 was named executive director of the Colorado Department of Public Health and Environment
32 (CDPHE) and begins that role Jan. 28; her official resignation from Eagle County is Jan. 27. The
33 Authority and District have a positive relationship with Ms. Ryan, and staff will continue to look for
34 opportunities to work with her on relevant items.

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1 **Stream Access Lawsuit** – Ms. Johnson noted that a federal court dismissed another iteration of
2 a stream access lawsuit (*Hill v Warsewa*) based on lack of standing, so none of the substantive
3 portions of the suit were ruled upon.

4 **Eagle River Community Water Plan** – Ms. Johnson reported that she and Amy Vogt continue
5 their involvement in the community engagement committee for the Community Water Plan.
6 Upcoming open houses are scheduled for Feb. 21 (Avon Town Council Chambers) and Feb. 27
7 (Eagle County Building) from 5 to 7 p.m. each evening, with one hour of presentations scheduled
8 for each. A Spanish language meeting is planned for 6 to 7:30 p.m. March 7 at CMC in Edwards.
9 Ms. Johnson will share more details as they are available.

10 **Colorado River Drought Contingency Planning** – Ms. Johnson discussed drought contingency
11 planning, particularly in the lower basin states. She reported that the Central Arizona Project had
12 approved plans earlier in the day and that the Arizona legislature must approve the plan by Jan.
13 31 to meet the Bureau of Reclamation deadline.

14 GENERAL COUNSEL REPORT

15 Mr. Collins referenced his confidential legal report in the confidential packet.

16 **Fischer Lawsuit** – Mr. Collins noted the Fischer litigation would be discussed in Executive
17 Session.

18 **Liens on Delinquent Accounts** – Mr. Collins shared that he will streamline the legal process by
19 which liens are used to collect unpaid water bills. The District, which files the liens on the
20 Authority's behalf, is statutorily entitled to such a lien regardless of whether it is actually recorded
21 with the county. The board agreed with Mr. Collins that no liens will be filed going forward, except
22 under extraordinary circumstances.

23 WATER COUNSEL REPORT

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

25 **Wolford Mountain Exchange Absolute/Diligence Application** – Mr. Porzak discussed the
26 absolute/diligence application for this water right, which was recently filed at the board's direction.
27 A copy is attached hereto as **Exhibit K** and incorporated herein by this reference. Mr. Porzak
28 noted the Grand Valley Water Users requested some of the supporting documentation in the
29 application, which is being provided to them. The opposition period for this application is currently
30 open.

31 **Homestake Reservoir Exchange Absolute/Diligence Application** – Mr. Porzak discussed the
32 Homestake Exchange absolute/diligence application, which was recently filed at the board's
33 direction. A copy is attached hereto as **Exhibit L** and incorporated herein by this reference. The
34 opposition period for this application is currently open.

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1 **Colorado River Compact Matters** – Mr. Porzak discussed the letter he sent to the Colorado
2 Water Conservation Board (CWCB) on the boards' behalf, which states the concerns of the
3 Authority and District regarding the CWCB's proposed actions if a compact call occurs. A copy of
4 the letter is attached hereto as **Exhibit M** and incorporated herein by this reference. Such plans
5 make no mention of the priority system that is the foundation of Colorado Water Law. Mr. Porzak
6 indicated that litigation may result from affected West Slope parties if the Prior Appropriation
7 doctrine is not the basis of water administration in the event of a compact call.

8 **EXECUTIVE SESSION**

9 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Fischer
10 litigation and Hahnewald Barn, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic
11 record be made, as the discussion would be entirely privileged attorney-client communications. Upon
12 motion duly made and seconded, it was unanimously

13 **RESOLVED** to enter Executive Session at 2:12 p.m. to discuss attorney-client privileged
14 issues concerning Fischer litigation and Hahnewald Barn, pursuant to §24-6-402(4)(b) and
15 (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the
16 discussion would contain privileged attorney-client communications.*

17 Mr. Porzak requested the Board continue Executive Session to receive legal advice Bolts Lake
18 Agreement, Minturn Water Service Agreement, the Colorado River Compact, Black Lakes, water rights
19 hydrology modeling, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
20 electronic record be made, as the discussion would be entirely privileged attorney-client communications.
21 Upon motion duly made and seconded, it was unanimously

22 **RESOLVED** to continue Executive Session at 2:27 p.m. to discuss attorney-client privileged
23 issues concerning the Bolts Lake Agreement, Minturn Water Service Agreement, the
24 Colorado River Compact, Black Lakes, water rights hydrology modeling, and CRCA matters,
25 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak
26 opined the contents of the discussion would contain privileged attorney-client
27 communications.*

28 The regular meeting resumed at 3:44 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:45 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