

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**February 28, 2019**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held February 28, 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>    | 21 | Brian Tracy                                 |
| 11          Linn Brooks     | 22 | Amy Vogt                                    |
| 12          Jason Cowles    | 23 | Len Wright                                  |
| 13          Carol Dickman   | 24 | <u>Consultants</u>                          |
| 14          Tim Drescher    | 25 | Jim Collins, Collins Cockrel & Cole         |
| 15          Catherine Hayes | 26 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 16          Diane Johnson   | 27 | <u>Public</u>                               |
| 17          Melissa Marts   | 28 | Dr. Robert Lipnick, Vail resident           |
| 18          John McCaulley  | 29 | Rick Sackbauer, Vail resident               |
| 19          Maureen Mulcahy |    |   |
| 20          Siri Roman      |    |   |

30           **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

33           Director Cleveland disclosed that he serves on the board of Vail Health. Director Coyer disclosed that one of his relatives is an Avon  
34           resident who is looking for Hahnwald Barn removal alternatives. Director Friedman serves on the Boards of the Beaver Creek  
35           Metropolitan District and the Vail Valley Foundation. Director Gregory disclosed that he serves on the Boards of the Upper Eagle  
36           Regional Water Authority (Authority and the Berry Creek Metropolitan District and occasionally undertakes development and  
37           construction activities within the District and Authority service areas. Director Simmons disclosed that he is the General Manager of  
38           the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the board of the Edwards Metropolitan District.

39           **CALL TO ORDER**

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

41           **INTRODUCTIONS**

42           Dr. Lipnick, a Vail resident, was introduced.

43           **PUBLIC COMMENT**

44           Mr. Sackbauer discussed Mr. Porzak's Vail Trailblazer award and thanked him for his contributions to the  
45           community.

46           **ACTION ITEMS**

47           **Resolution Honoring Rick Sackbauer** – Chair Friedman read a resolution honoring Mr. Sackbauer for  
48           his accomplishments during his previous tenure on the board. A copy of the resolution is attached  
49           hereto as **Exhibit A** and incorporated herein by this reference. The board unanimously approved the  
50           resolution, and thanked Mr. Sackbauer for his years of service.

51           **Consideration of Minutes** – The minutes of the regular meeting of January 24, 2019, were considered.

52           Upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the minutes of the January 24, 2019, meeting be accepted and hereby are  
2 approved as presented.

3           **Parameters Resolution for 2019 Enterprise Wastewater Revenue Bonds** – The Board  
4 discussed the bonds, which will help fund wastewater treatment plant upgrades to meet state-  
5 required nutrient regulations. Mr. Wilkins and Ms. Roman discussed the parameters resolution  
6 and related documents, copies of which are attached hereto as **Exhibit B** and incorporated  
7 herein by this reference. Mr. Wilkins said bond issuance is likely to be in late April or early May.  
8 Ms. Roman said project costs are coming in much higher than anticipated, so additional planning  
9 will be required to determine if any planned improvements can be modified or removed. Ms.  
10 Roman also noted there are only a few contractors in the state that are qualified to perform such  
11 highly technical construction projects. A resolution to establish a wastewater bond debt service  
12 rate was also presented, a copy of which is attached hereto as **Exhibit C** and incorporated herein  
13 by this reference; a \$5.50/month per single family equivalent base rate is also anticipated on  
14 customer monthly bills beginning in 2020. After discussion and upon motion duly made and  
15 seconded, it was unanimously

16           **RESOLVED** that the parameters resolution for 2019 enterprise wastewater revenue  
17 bonds be and hereby is approved as presented; and

18           **FURTHER RESOLVED** that the resolution to establish a wastewater bond debt service  
19 rate be and hereby is approved as presented.

20           **Rules and Regulations Update: Appendix G** – Ms. Mulcahy presented her board action request and  
21 related documents, copies of which are attached hereto as **Exhibit D** and incorporated herein by this  
22 reference. She summarized the need for the updates, to ensure compliance with the state-issued  
23 Backflow Prevention and Cross Connection Control (BPCCC) requirements during the District's upcoming  
24 sanitary survey with the state. In response to a question, Ms. Mulcahy noted that surveys of single-family  
25 residences were not required by the state but that they could be surveyed in the future. In response to  
26 another question, Ms. Mulcahy explained the \$500 monthly fee per instance of noncompliance is meant  
27 as a baseline for enforcement; it could change depending on a variety of factors following implementation.  
28 She also confirmed that when District meter technicians enter customer homes to change meters, they  
29 are also looking for other compliance-related items Upon motion duly made and seconded, it was  
30 unanimously

31           **RESOLVED** that the updates to Appendix G of the Rules and Regulations be and hereby are  
32 approved as presented.

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

### 35 **STRATEGY ITEMS**

36           **Board Member Input** – Board input was called for and there was none.  
37

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## GENERAL MANAGER REPORT

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

**Compost Program at the Vail Office** – Ms. Brooks informed directors that the Vail office now has a commercial compost pickup service through EverGreen Zero Waste, based out of Aspen. Employees are encouraged to compost at work and bring compost from home as well; interested directors are welcome to bring compost and can get further details from staff.

**Red Sandstone Sewer Main Intergovernmental Agreement** – In response to a question, Ms. Brooks clarified that the IGA she signed with the town of Vail was for the District's portion of the cost to replace the Red Sandstone sewer main. This work is being done in conjunction with the construction of the parking garage and new elementary school in the area.

## **FINANCE REPORT**

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

**Finance Update** – Mr. Wilkins reported that District water sales were above budget projections, with May and July sales much higher than anticipated, likely due to the extremely dry summer in the service area. District tap fees were also higher than projections, and many developers paid at the end of December, prior to annual increases. Mr. Wilkins also noted fewer rollovers than in years past, as staff continues to work on improving project spending projections and timelines.

**Stillwater Employee Housing Development** – Mr. Wilkins discussed progress on the Stillwater housing development, with units expected to be ready for mid-August move in. An RFP for property management firms solicited two bids; the lower level of interest may be due to the small inventory and the level of demand for such services around the valley. Mr. Wilkins expects to present a comprehensive housing update to the board in May or June.

## **OPERATIONS REPORT**

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

**Avon Drinking Water Facility (ADWF) Capital Improvements** – Mr. Tracy presented an overview of recent capital improvements at the Avon Drinking Water Facility. State requirements have necessitated many of the upgrades, including a project to reduce disinfection byproducts to meet new Colorado Department of Public Health and Environment (CDPHE) regulations. Other highlights at the facility included being the first water provider to receive credits for ozone disinfection, as well as having 24/7 automated operations. In response to questions, Ms. Brooks and Mr. Tracy confirmed that many of the optimization activities have been completed with little or

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1 no capital investment; such improvements often mitigate small issues before they become large  
2 problems. The board thanked Mr. Tracy for the information.

3 **Partnering Event for AWWTF Nutrient Upgrade Project** – Mr. Schneider and Ms. Marts gave  
4 an overview of upcoming Avon Wastewater Treatment Facility capital improvements to meet the  
5 state’s nutrient regulations. A related memo is attached hereto as **Exhibit J** and incorporated  
6 herein by this reference. A construction manager at risk method is being used, and Ms. Marts  
7 noted a partnering session with the staff, and engineering and contractor representatives to kick  
8 the project off in a collaborative spirit and to minimize construction cost risk. Construction is  
9 expected to start this fall and be completed in 2022; the project costs are currently estimated at  
10 \$34 million but some cost escalation is expected based on current estimates. Ms. Marts noted  
11 this project is unique in that it requires construction through existing operations. The board  
12 thanked Ms. Marts for the presentation.

### 13 **ENGINEERING REPORT**

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

16 **6 West Project** – Mr. Cowles reported a subcontractor at the 6 West project did not properly  
17 install the water and sewer mains for the development. The District’s field inspector identified  
18 numerous issues, which the subcontractor has since remedied. In response to a question, Mr.  
19 Cowles said the subcontractor had lost many of its tenured employees after being purchased by a  
20 larger company. To protect the District and Authority if the fixes are not sufficient, an extended  
21 three-year warranty for the work will be procured by the developer; warranty bonds will also be  
22 assigned to the District and Authority by the contractor to back the extended warranty. Further,  
23 the District will record a perpetual lien against the property, which will be memorialized via an  
24 agreement with the subcontractor’s company. The board expressed satisfaction with the remedy.

### 25 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

26 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit L** and incorporated  
27 herein by this reference.

28 **Legislative Updates** – Ms. Johnson noted the 2019 legislative session began Jan. 4. She  
29 updated the board on HB19-1050, which would extend to special districts the same policy that  
30 came from 2013 legislation, which said any homeowner association (HOA) rules that require  
31 homeowners to have turf grass are unenforceable. This bill is prepared for the governor’s  
32 signature after passing in both the House and Senate. Ms. Johnson also discussed HB19-1108,  
33 which would allow nonresident homeowners in Colorado to vote within special district elections  
34 and serve on special district boards in a nonvoting capacity. This is an iteration of a bill from 2018  
35 that was vetoed by former Gov. Hickenlooper. The bill is on the calendar for the Senate  
36 committee for State, Veterans, & Military Affairs, with a hearing scheduled for the following week.

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1 The District opposes this legislation; Ms. Johnson is working with others to get a “no” vote at the  
2 committee hearing.

3 **Drought Contingency Planning** – Ms. Johnson updated the board on drought contingency  
4 planning, particularly issues that the lower basin states are having. March 4 is the latest deadline  
5 for the lower basin states to come to agreement regarding their drought contingency plan,  
6 although the Bureau of Reclamation will allow time for states to agree while it takes input from  
7 each of the seven basin states per the notice in the federal register.

### 8 GENERAL COUNSEL REPORT

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

10 **Hahnewald Barn Update** – Mr. Collins discussed a letter of agreement he sent to the town of  
11 Avon’s attorney, Eric Heil, regarding the various terms and requirements to ensure the  
12 Hahnewald Barn is removed from the District’s property at the Avon WWTF for a facility  
13 expansion. Verbal acknowledgement of the agreement was received, as Mr. Collins noted little  
14 desire by either party to draft a full-blown agreement for signature.

15 **Casa del Sol Update** – Mr. Collins said the various easement issues with the development are  
16 coming to closure.

17 **Unification Committee** – Mr. Collins discussed a recent meeting of the unification joint  
18 subcommittee of the boards. The involved directors requested a determination of how both  
19 boards could unify into an authority. The next meeting of the subcommittee will be March 27.

### 20 WATER COUNSEL REPORT

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

22 **Colorado Outdoor Recreation and Economy (CORE) Act** – Mr. Porzak discussed this  
23 legislation, which will be introduced in Congress and, among other issues, deals with wildfire  
24 coordination efforts in wilderness areas. Of particular interest to the Authority and District are the  
25 inclusion of Camp Hale as a National Treasured Landscape, as water released from Eagle Park  
26 Reservoir must traverse these areas. Mr. Porzak also pointed out that the current legislation does  
27 not require a cleanup of unexploded ordnances in the area, a change from previous iterations of  
28 the bill. He will continue to monitor the legislation, which he expects will see many changes  
29 before it would ever be signed into law. Related information is attached hereto as **Exhibit M** and  
30 incorporated herein by this reference.

31 **Pando Feeder Canal Absolute/Diligence Application** – Mr. Porzak reported there were no  
32 opposers to the Pando Feeder Canal filing to make absolute a portion of these important water  
33 rights. He filed the motion for entry of final decree and is awaiting the referee’s signature. A copy  
34 of the motion is attached hereto as **Exhibit N** and incorporated herein by this reference.

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1 **EXECUTIVE SESSION**

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

7 **RESOLVED** to enter Executive Session at 2:13 p.m. to discuss attorney-client privileged  
8 issues concerning the Bolts Lake Agreement, Minturn Water Service Agreement, water rights  
9 hydrology modeling, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no  
10 electronic record created as Mr. Porzak opined the contents of the discussion would contain  
11 privileged attorney-client communications.\*

12 All staff, with the exception of Ms. Brooks, left the meeting at 3:06 p.m.

13 Mr. Collins requested the Board continue Executive Session to receive legal advice on a personnel matter  
14 §24-6-402(4)(f) C.R.S. He asked that no electronic record be made, as the discussion would be entirely  
15 privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

16 **RESOLVED** to continue Executive Session at 3:07 p.m. to discuss attorney-client privileged  
17 issues concerning a personnel matter, pursuant to §24-6-402(4)(f) C.R.S. with no electronic  
18 record created as Mr. Collins opined the contents of the discussion would contain privileged  
19 attorney-client communications.\*

20 The regular meeting resumed at 3:13 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:14 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**