

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

A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held March 28, 2019, at 12:00 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>	20	Siri Roman
11 Linn Brooks	21	Brian Tracy
12 Jason Cowles	22	Len Wright
13 Carol Dickman	23	<u>Consultants</u>
14 Tim Drescher	24	Jim Collins, Collins Cockrel & Cole
15 Catherine Hayes	25	Glenn Porzak, Porzak Browning & Bushong LLP
16 Diane Johnson	26	<u>Public</u>
17 Melissa Marts	27	Dr. Robert Lipnick, Vail resident
18 John McCaulley	28	Rick Sackbauer, Vail resident
19 Maureen Mulcahy		

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

38 **CALL TO ORDER**

39 Chair Friedman called the meeting to order at 12:22 p.m.

40 **PUBLIC COMMENT**

41 Public comment was called for, and there was none.

42 **ACTION ITEMS**

43 **Consideration of Minutes** – The minutes of the regular meeting of February 28, 2019, were
44 considered. Upon motion duly made and seconded, it was unanimously

45 **RESOLVED** that the minutes of the February 28, 2019, regular meeting be accepted and hereby
46 are approved as presented.

47 **Rules and Regulations Update** – Mr. Cowles discussed a board action request and related documents,
48 copies of which are attached hereto as **Exhibit A** and incorporated herein by this reference. He noted the
49 strategic, annual method by which staff is updating the Rules & Regulations. Mr. Cowles and Ms. Brooks
50 specifically discussed the prohibition of “Y” connections in the water and wastewater system joint service
51 lines. This will protect current and future customers and the District from the liability associated with such
52 connections, which have caused backups and property damage in the past. Use of Y connections is less

Eagle River Water & Sanitation District

1 costly for developers, but future buyers and the District and Authority bear the burden of associated risk
2 of service line failures. The board discussed the letter from Mike Dantas and considered the concerns
3 therein stated. After additional discussion and upon motion duly made and seconded, it was unanimously

4 **RESOLVED** that the updates to the Rules and Regulations be and hereby are approved as
5 presented.

6 **Request for Easement on Avon Wastewater Treatment Facility Property** – Mr. Schneider
7 presented a board action request and related documents regarding a requested easement on the
8 AWWTF property, copies of which are attached hereto as **Exhibit B** and incorporated herein by this
9 reference. He said the town of Avon was leading the effort to bury powerlines on the northern property
10 line of the AWWTF using Holy Cross Energy grant funds. This work will benefit the District in removing
11 a possible obstruction and safety concern in advance of the upcoming AWWTF nutrient upgrade
12 project. After discussion and upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the town of Avon’s request for an easement on the AWWTF property be and
14 hereby is approved as presented.

15 **Consent Agenda** – Discussion ensued regarding some questions on specific contracts, which Ms.
16 Brooks clarified. 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 **Unification** – Chair Friedman discussed a recent joint board subcommittee meeting regarding
20 the unification/restructuring process; this was the second meeting of the subcommittee. He noted
21 potential savings projections by staff had increased after further investigation following the initial
22 meeting. Mr. Porzak also indicated potential increases in the unallocated water pool if a
23 unification of both boards occurred, as some reuse of the water could be possible. Chair
24 Friedman believes the case for unification is becoming more compelling; subcommittee members,
25 staff, and consultants will continue to work together on this matter.

26 **GENERAL MANAGER REPORT**

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

30 **Hahnewald Barn Update** – Ms. Brooks noted the next Avon Town Council meeting is April 9, at
31 which time the council should have the results of its constituent survey regarding whether the
32 barn should be moved or left for the District to remove as it sees fit. District staff is already
33 researching potential options if voters indicate no support for moving the barn.

34 **Biosolids Containment Facility Solar Array** – In response to a question, Ms. Brooks discussed
35 the proposed solar array at the District’s Biosolids Containment Facility (BCF) in Wolcott. The
36 District has a patent for the land from the BLM that allows use for wastewater related purposes;
37 however, the District must either change the use or buy the land outright to accommodate a solar

Eagle River Water & Sanitation District

1 project. In response to a question, Mr. Collins noted the District would need to buy the land
2 outright to be legally allowed to make a profit from activities on the land, even if such profit was
3 an offset of District electric costs.

4 OPERATIONS REPORT

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

7 **Eagle Mine Superfund Site Consent Decree** – Ms. Roman discussed the consent decree
8 between the Environmental Protection Agency (EPA) and CBS, the owner of the Eagle Mine.
9 District and Authority concerns were communicated in writing to ensure the consent decree
10 includes timeliness of notifications and cleanup, regular inspections, and ongoing monitoring to
11 protect our rivers and source water quality. The Eagle Board of County Commissioners also sent
12 a letter to EPA that reinforced the District and Authority’s concerns and requests. Copies of this
13 information are attached hereto as **Exhibit G** and incorporated herein by this reference. Ms.
14 Roman expects the negotiations between EPA and CBS to occur soon regarding the Consent
15 Decree. Director Paxson added that the previous consent decree did not require remedial actions
16 if violations occurred but expects this one will have actionable consequences for violations.

17 **West Vail Pass Auxiliary Lane Project** – Ms. Roman continues to participate in the stakeholder
18 meetings on the Authority and District’s behalf. At the last meeting, she suggested if the
19 stakeholders and the Colorado Department of Transportation (CDOT) could agree on required
20 metrics for the project, the Authority and District would not require such diligent oversight of water
21 quality and technical project aspects. Agreed-upon metrics have been used for similar projects in
22 the past; staff is awaiting more information from CDOT on whether these metrics are an
23 acceptable alternative. Ms. Roman also emphasized the importance of making Authority and
24 District requirements clear and written in the Environmental Assessment (EA) document, in case
25 project personnel changes occur by the time the project receives funding.

26 **Eagle Park Reservoir Company Update** – Mr. Tracy updated the board on Eagle Park
27 Reservoir conditions and operations. He noted the reservoir was expected to gravity fill due to the
28 high snowpack, but the East Fork Pump Station will run at least briefly to ensure the recent
29 upgrades there are successful. The annual reservoir water quality report was recently received
30 from Leonard Rice Engineers and will be closely reviewed by staff in the coming weeks.

31 **Water Department Updates** – Mr. Tracy briefly updated on upcoming events for the water
32 department, including the annual lead and copper sampling, the state requirements for which are
33 becoming more stringent and detailed. In addition, the Consumer Confidence Reports (CCRs) will
34 be distributed to customers in the coming months. Annual communication of the information in the
35 CCRs is required by the Safe Drinking Water Act.

36 **Inundation Mapping Update** – Dr. Wright presented updated inundation mapping information
37 related to a possible catastrophic dam failure at Eagle Park Reservoir. Previous such efforts were

Eagle River Water & Sanitation District

1 outdated and consisted of paper maps. The District received a Federal Emergency Management
2 Agency (FEMA) grant for the work to digitize the mapping and conduct computer modeling to
3 better prepare for such an event. Dr. Wright noted the District's dams are regularly state-
4 inspected and optimally maintained, so the probability of such a failure is low. Discussion ensued
5 regarding public communication of a catastrophic failure and the timing of certain associated
6 events.

7 **ENGINEERING REPORT**

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

10 **Vines at Vail Update** – Mr. Cowles updated the board regarding Eagle County's decision on a
11 requested extension for the Vines at Vail's Planned Unit Development entitlements in the
12 District's Wolcott service area. The project was granted a two-year extension conditioned upon
13 the Developer entering into a subdivision improvement agreement with the County and providing
14 collateral for the project's public improvements within 180 days of the ruling. Mr. Cowles also
15 noted that the District is participating in a joint change case to change irrigation water rights
16 owned by the Chris Joufflas family to municipal use. There are no imminent development plans in
17 the Wolcott area.

18 **Vail Resorts Employee Housing Proposal in East Vail** – Mr. Cowles discussed the
19 controversial employee housing proposal in East Vail on Vail Resorts-owned land. Opponents are
20 concerned about the effects on bighorn sheep in the area; proponents recognize the need for
21 more employee housing. Vail Resorts would have to dedicate Eagle Park Reservoir water for the
22 development. In response to a question, Mr. Cowles noted District staff is not completing any
23 work related to the proposed development at this time.

24 **Berliamont Estates Proposed Development** – In response to a question, Mr. Cowles clarified
25 that if the proposed Berliamont Estates development moved forward, the residents there would
26 use well water and septic; the District is unable to serve any development there.

27 **Proposed Development in Edwards** – Mr. Cowles noted a proposed project near the old B&B
28 gravel pit in Edwards. The current proposal anticipates 594 units, including a hotel, several
29 condos, and residential units, including single family houses and townhomes. The board
30 discussed the project and the request for conditional capacity to serve, for which the Authority
31 board requested additional information before any conditional commitment for water service.

32 **Lionshead Zoning Update** – Mr. Cowles discussed recent Vail Town Council efforts to stimulate
33 redevelopment in Lionshead, via a proposal to allow unlimited residential development within
34 current setbacks. The effort passed first reading. Mr. Cowles discussed concerns, as increased
35 loading to the wastewater treatment facility could trigger capacity upgrades sooner than planned

Eagle River Water & Sanitation District

1 in the wastewater master plan; this would compound customer rate increases that have been
2 carefully planned to minimize impacts to customers.

3 **Water Conservation Considerations in Front Range Water Projects** – Mr. Cowles discussed
4 lawsuits brought by citizen group “Save the Colorado” against the federal agencies that permitted
5 the large Front Range Windy Gap Firing Project and the Moffat Collection System Project. The
6 suits allege that conservation was not considered a reasonable alternative to these projects in
7 either case. Mr. Cowles noted the Authority and District’s aggressive conservation efforts will
8 become more important in planning and permitting for any future projects. Mr. Porzak shared that
9 some environmental groups are also questioning snowmaking water use as it relates to
10 conservation.

11 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

12 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit I** and incorporated
13 herein by this reference.

14 **Colorado River Basin Roundtable Funding** – Ms. Johnson explained how the roundtables are
15 funded. She noted the CBRT voted March 25 to award funds for the EagleVail Metropolitan
16 District’s Stone Creek restoration project, which will improve water quality there. She also noted
17 that “Learning by Doing,” which resulted from the Colorado River Cooperative Agreement, is now
18 a 501(c)3 based in Grand County.

19 **CIP Projects and Customer Communications** – Ms. Johnson said a variety of construction
20 projects are ramping up so communication to affected customers is also increasing. She noted
21 the CDOT Edwards Spur Road Project would require some water shutdowns in the area that
22 would affect many customers; she and project engineer Mark Mantua are working on customer
23 notifications.

24 **Eagle River Valley State of the River Community Meeting** – Ms. Johnson noted this free
25 public meeting was upcoming, with possible dates of May 20 or 29. Mr. Mueller of the Colorado
26 River Water Conservation District will discuss drought contingency planning, with other speakers
27 addressing local water issues.

28 **Legislative Updates** – Ms. Johnson reported on the status of various bills of interest to the
29 Authority and District. Of interest was that HB19-1108, the non-resident elector bill was killed in
30 committee. The district opposed the bill, which would have allowed non-resident electors in
31 Colorado special districts to vote in board member elections.

32 **Vail Water Billing Tiers** -- Ms. Johnson informed the board of a communication that will be
33 included in the April billing statements of all Vail water customers concerning the 2019 billing
34 tiers, which the board adjusted from three to five, effective Jan. 1. The change was previously
35 communicated, but is expected to be noticed more by customers as irrigation season begins, thus
36 the timing of sending more information in the April bills.

Eagle River Water & Sanitation District

1 **Additional Legislative Update** – Ms. Moseley offered additional information on late bills
2 introduced in the current legislative session. Such bills deal with leasing water rights to the CWCB
3 in successive ten-year periods (HB19-1218); oil and gas regulations (SB19-181) that would affect
4 severance taxes; water rights easement legislation (HB19-1082) that would allow piping open
5 ditches; and authority to regulate agricultural chemicals in surface water, not just groundwater
6 (SB19-186). Ms. Moseley will continue to monitor such legislation on the Authority and District's
7 behalf.

8 **GENERAL COUNSEL REPORT**

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

10 **6 West Update** – Messrs. Collins and Cowles discussed the continued issues of poor
11 construction at the development. The Authority and District have required an extended warranty
12 and warranty bonds to ensure any future water and sewer main installation issues are remedied
13 at the developer's cost.

14 **Casa del Sol Update** – Mr. Collins said the various easement issues with the development are
15 coming to closure, and settlement is expected soon.

16 **WATER COUNSEL REPORT**

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

18 **EXECUTIVE SESSION**

19 Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding the Bolts
20 Lake/Minturn water service agreement, CRCA matters, river access matters, the Colorado Outdoor
21 Recreation and Economy Act, and water rights hydrology model sharing, pursuant to §24-6-402(4)(b) and
22 (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged
23 attorney-client communications. Upon motion duly made and seconded, it was unanimously

24 **RESOLVED** to enter Executive Session at 2:30 p.m. to discuss attorney-client privileged
25 issues concerning the Bolts Lake/Minturn water service agreement, CRCA matters, river
26 access matters, the Colorado Outdoor Recreation and Economy Act, and water rights
27 hydrology model sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic
28 record created as Mr. Porzak opined the contents of the discussion would contain privileged
29 attorney-client communications.*

30 The regular meeting resumed at 3:02 p.m.

31 **Minturn Water Service Agreement** – After discussion and upon motion duly made and seconded, it was
32 unanimously

33 **RESOLVED** that the board hereby authorizes Mr. Porzak to communicate the following to the
34 town of Minturn: it must abandon its Cross Creek water rights or subordinate such rights to
35 District and Authority water rights to ensure consistent filling of a proposed Bolts Lake Reservoir.

Eagle River Water & Sanitation District

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:03 p.m.

3 Respectfully submitted,

4
5
6
7 _____
8 Secretary to the Meeting

9 **MINUTES APPROVED, FORMAL CALL, AND**
10 **NOTICE OF MEETING WAIVED**

11
12
13
14 _____
15 **Dick Cleveland, Director**

16
17
18 _____
19 **Steve Coyer, Treasurer**

20
21
22 _____
23 **Stephen Friedman, Chair**

24
25
26 _____
27 **George Gregory, Secretary**

28
29
30 _____
31 **Timm Paxson, Director**

32
33
34 _____
35 **Bill Simmons, Director**

36
37
38 _____
39 **Brian Sipes, Director**

40
41
42
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.

45
46
47 _____
48 **Glenn Porzak, Water Counsel**
49