

Eagle River Water & Sanitation District
Board of Directors Meeting
June 27, 2019
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 27, 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
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 | Len Wright |
| 12 Jason Cowles | 20 | <u>Consultants</u> |
| 13 Catherine Hayes | 21 | Steve Bushong, Porzak Browning & Bushong LLP |
| 14 Diane Johnson | 22 | Corbin Larsen, MRP |
| 15 Siri Roman | 23 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 16 Kailey Rosema | 24 | Corey Whitehead, MRP |
| 17 Jeff Schneider | 25 | Kathryn Winn, Collins Cockrel & Cole |

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 Introductions were made, including Messrs. Larson and Whitehead from Moreton Retirement Partners,
38 who would be presenting later in the meeting.

39 **PUBLIC COMMENT**

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

41 **ACTION ITEMS**

42 **Consideration of Minutes** – The minutes of the special meeting of May 23, 2019, were considered.
43 Upon motion duly made and seconded, it was unanimously

44 **RESOLVED** that the minutes of the May 23, 2019, special meeting be accepted and hereby are
45 approved as presented. Directors Gregory and Sipes abstained.

46 The minutes of the joint special meeting of May 23, 2019, with the Upper Eagle Regional Water Authority
47 were considered. Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the minutes of the May 23, 2019, joint special meeting with the Upper Eagle
2 Regional Water Authority be and hereby are approved as presented. Directors Gregory and Sipes
3 abstained.

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

6 **STRATEGY ITEMS**

7 **Moreton Retirement Partners Update** – Messrs. Larsen and Whitehead updated the board on
8 the District’s employee retirement plans and the history of the program. They reminded the board
9 that the District opted out of Social Security in the 1980s and explained the replacement plans in
10 place, which are performing well and with which employees are pleased. Discussion ensued
11 regarding the committee that administers the plan, whether an additional employee
12 representative should be involved, and plan performance compared to Social Security over the
13 same period. The board thanked Messrs. Larson and Whitehead for their time.

14 **Board Member Input** – Board member input was called for and there was none.

15 The board took a short recess for lunch at 12:12 p.m. The regular meeting resumed at 12:23 p.m.

16 **Update on Climax, Eagle Mines** – Mr. Bushong of Porzak Browning and Bushong LLP updated
17 the board on Climax Mine and Eagle Mine matters. He said the Eagle Park Reservoir water
18 quality is excellent; however, issues of ongoing concern surrounding Climax Mine include
19 increasing levels of molybdenum from their operations and the potential to adversely affect water
20 quality in the surrounding watersheds. Mr. Bushong also discussed ongoing issues at Eagle Mine
21 regarding maintenance, monitoring, and notifications as it relates to mine operations and how
22 such issues can affect water quality in the Eagle River. He did acknowledge that progress is
23 being made at Eagle Mine regarding better maintenance and communication of incidents. Mr.
24 Bushong also noted the Eagle Mine was in the process of getting a new consent decree, a
25 process he is carefully monitoring.

26 **GENERAL MANAGER REPORT**

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

30 **Colorado Water Congress (CWC) Update** – Ms. Brooks noted she attended the recent CWC
31 board retreat, during which she was asked to serve a one-year term as the vice president of the
32 board of directors, to be followed by one-year term as president and then a one-year term as the
33 immediate past president. The District board was supportive of this prestigious nomination and
34 congratulated her on this honor.

35 **Backflow Prevention and Cross Connection Control Program (BPCCCP) Notice of**
36 **Violation** – Ms. Brooks discussed the receipt of a formal notice of violation from the Colorado
37 Department of Public Health and Environment (CDPHE) regarding the District and Authority’s

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1 BPCCCP on June 7. Required notification to customers must be issued within 30 days of the
2 formal notice. A letter containing required information was prepared by staff and will be mailed on
3 July 2 with customer water bills. A press release will also be issued to reach customers who do
4 not receive a water bill. Customer support is also needed to meet compliance with the BPCCCP,
5 which is another reason to communicate broadly with the larger community about this matter. A
6 copy of the letter is attached hereto as **Exhibit D** and incorporated herein by this reference.

7 **Director of Operations Promotion** – The Board congratulated Ms. Roman on her recent
8 promotion to Director of Operations. This position hasn't been filled since 2015. Ms. Roman will
9 oversee the water, wastewater, and field operations departments. Her former position,
10 wastewater manager, will be recruited shortly, along with the open water manager position that
11 resulted from Brian Tracy's recent resignation.

12 OPERATIONS REPORT

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

15 **Lift Station #4 State Notification** – Ms. Brooks summarized a recent sewage overflow at Lift
16 Station #4 in Dowd Junction. Per regulations, the state was notified. It is the oldest lift station in
17 the District's system and was already slated for repair in 2020. Staff is looking for ways to
18 accelerate replacement.

19 **Lead and Copper Rule Sampling Update** – Ms. Rosema updated the board on the required
20 lead and copper sampling efforts. There was a good response to the original round of request
21 letters, and half of the Authority's samples were collected within the first three weeks of the
22 sampling period. Ms. Rosema gave background on why homes with water softeners and whole-
23 home filtration systems were ineligible for the sample pool, which is smaller than in previous
24 years due to recent changes to the rule. She explained that these systems mitigate "hard water"
25 by removing the calcium and magnesium ions from water. Hard water buildup actually protects
26 pipes from corrosion and poses no human health threat. In-house softeners and treatment
27 systems are not encouraged because of the negative impacts they have to wastewater discharge
28 limits and in-house pipe corrosion. Discussion ensued regarding communication of this
29 information to the public.

30 **Eagle Park Reservoir Company Quarterly Update** – The confidential EPRC quarterly
31 operations report was acknowledged.

32 ENGINEERING REPORT

33 Mr. Cowles presented the Engineering Report, a copy of which is attached hereto as **Exhibit F** and
34 incorporated herein by this reference.

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1 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

2 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
3 herein by this reference.

4 **Taxpayer's Bill of Rights (TABOR) Ballot Question** – Ms. Johnson and Ms. Winn discussed a
5 push for a potential ballot question that would allow voters to decide whether to fully repeal
6 TABOR, which limits the annual growth in state revenues or spending to the sum of the annual
7 inflation rate and the annual percentage change in the state's population. Proponents of a full
8 repeal believe TABOR limits Colorado's revenue and adversely affects its budget. Ms. Winn
9 noted the likelihood of full a repeal was unlikely; her firm continues to stay abreast of any
10 developments on the matter.

11 **Colorado Basin Roundtable Update** – Ms. Johnson discussed the Colorado Basin Roundtable
12 and meetings of the four West Slope basin roundtables regarding Phase III of the Risk Study,
13 with funding provided by the Colorado River District and Southwest Water Conservancy District.
14 The Risk Study focuses on the implications of a Compact Call, as well as how the Front Range
15 and West Slope would be affected. Discussion ensued regarding the seniority of the Authority
16 and District's water rights, the state politics that would be involved in meeting a compact call, and
17 various other considerations. Ms. Johnson noted former River District general manager, Eric
18 Kuhn, was coauthoring a book titled "Science be Dammed: How Ignoring Inconvenient Science
19 Drained the Colorado River." The book is slated for release in November 2019.

20 **Colorado's Water Plan Funding** – Ms. Johnson noted an educational campaign called "For the
21 Love of Colorado" that is being funded in part by philanthropists to raise awareness of the need to
22 fund Colorado's Water Plan, which was signed into law by then-governor Hickenlooper in 2015. It
23 is not associated with a ballot initiative that would legalize sports betting to at least partially fund
24 Plan projects. The sports betting initiative may appear on November ballots.

25 **Legislative Updates** – Ms. Johnson reported that the Colorado Outdoor Recreation and
26 Economy (CORE) Act passed through the House Committee, clearing one major hurdle. The
27 CORE Act calls for preservation of large amounts of public land.

28 **GENERAL COUNSEL REPORT**

29 In Mr. Collins absence, Ms. Winn was attending the meeting and referenced her confidential legal report
30 in the confidential packet.

31 **Changes to Meeting Posting and Agenda Requirements** – Ms. Winn reported that on Aug. 1
32 special districts can post meeting and agenda notices on their websites rather than physical
33 posting in three locations plus at the district's main office. Such changes will also require updates
34 to the District and Authority bylaws, which will be presented to the boards in July. Ms. Winn
35 suggested continuing the current physical posting methods for some months to communicate the
36 change to the public.

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1 **Proposed Purchase of the Biosolids Containment Facility (BCF) Land** – Ms. Winn updated
2 on the District’s desire to purchase outright the BCF land, for which the District currently has a
3 patent with the Bureau of Land Management (BLM) which restricts the use of the land. Ms. Winn
4 reported that the BLM is willing to work with the District but does not have a real estate specialist
5 in place right now. Such a person will need to be hired before progress can be made to that end.
6 In the interim, staff is working with a local solar company to ensure site feasibility, as well as
7 discussing the proposal with Holy Cross Energy, the electric provider for the Authority and
8 District, which needs to determine the appropriate agreements, policies, and physical equipment
9 by which any solar power produced at the array would ultimately offset Authority and District
10 electric use.

11 **Fischer Litigation** – In response to a question, Ms. Winn noted the matter had been settled. The
12 District obtained the needed easement.

13 WATER COUNSEL REPORT

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

15 At 2:08 p.m., Ms. Rosema left the meeting.

16 **EXECUTIVE SESSION**

17 Ms. Winn requested the Board enter into Executive Session to receive legal advice regarding Vail Tank
18 #2, Lift Station #4, the Backflow Program, and the Hahnewald Barn, pursuant to §24-6-402(4)(b) and (e)
19 C.R.S. She asked that no electronic record be made, as the discussion would be entirely privileged
20 attorney-client communications. Upon motion duly made and seconded, it was unanimously

21 **RESOLVED** to enter Executive Session at 2:09 p.m. to discuss attorney-client privileged
22 issues concerning Vail Tank #2, Lift Station #4, the Backflow Program, and the Hahnewald
23 Barn, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Ms.
24 Winn opined the contents of the discussion would contain privileged attorney-client
25 communications.*

26 Mr. Schneider left the meeting at 2:21 p.m.

27 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Bolts Lake
28 agreement/Minturn bulk water and delivery agreement, water model data sharing agreement, and CRCA
29 matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
30 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
31 seconded, it was unanimously

32 **RESOLVED** to continue Executive Session at 2:22 p.m. to discuss attorney-client privileged
33 issues concerning Bolts Lake agreement/Minturn bulk water and delivery agreement, water
34 model data sharing agreement, and CRCA matters, pursuant to §24-6-402(4)(b) and (e)
35 C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion
36 would contain privileged attorney-client communications.*

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1 The regular meeting resumed at 2:57 p.m.

2 **Hahnewald Barn** – The board discussed the desire of the Knapp Ranch to move the Hahnewald Barn
3 from the Avon Wastewater Treatment Facility property and relocate it to the Ranch's Lake Creek location.

4 The board reaffirmed its desire to have the barn removed from the AWWTF property and reimburse the
5 Knapp's for its relocation up to \$30,000 after completion of the relocation project.

6 **Traer Creek Commercial Lease Letter of Intent** – Ms. Brooks discussed Mr. Wilkins' memo and letter of
7 intent, copies of which are attached hereto as **Exhibit H** and incorporated herein by this reference. The
8 board directed staff to move forward with the lease negotiations and continue to inform the board of
9 progress.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:28 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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14 _____ **Dick Cleveland, Director**

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17 _____ **Steve Coyer, Treasurer**

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20 _____ **Stephen Friedman, Chair**

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23 _____ **George Gregory, Secretary**

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26 _____ **Timm Paxson, Director**

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29 _____ **Bill Simmons, Director**

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32 _____ **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 **Kathryn Winn, General Counsel**

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Glenn Porzak, Water Counsel