

Eagle River Water & Sanitation District
Board of Directors Meeting
July 25, 2019
MINUTES

A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 25, 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 Friedman
4 George Gregory
5 Timm Paxson
6 Bill Simmons
7 Brian Sipes

8 **The following Director was absent and excused:**

9 Steve Coyer

10 **Also in attendance were:**

| | | |
|-----------------------------------|----|--|
| 11 <u>District Staff</u> | 21 | James Wilkins |
| 12 Linn Brooks | 22 | Len Wright |
| 13 Carol Dickman | 23 | <u>Consultants</u> |
| 14 Catherine Hayes | 24 | Kristin Moseley, Porzak Browning & Bushong LLP |
| 15 Diane Johnson | 25 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 16 Ali Kelkenberg | 26 | Kathryn Winn, Collins Cockrel & Cole |
| 17 Melissa Mills McLoota | 27 | <u>Public</u> |
| 18 Byron Nelson | 28 | Heather Sackett, Aspen Journalism |
| 19 Siri Roman | | |
| 20 Amy Vogt | | |

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 Board of the Beaver Creek
33 Metropolitan District. Director Gregory disclosed that he serves on the Boards of the Upper Eagle Regional Water Authority
34 (Authority and the Berry Creek Metropolitan District and occasionally undertakes development and construction activities within the
35 District and Authority service areas. Director Simmons disclosed that he is the General Manager of the Beaver Creek Metropolitan
36 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 12:25 p.m.

39 **INTRODUCTIONS**

40 Introductions were made, including Mr. Nelson, Edwards Wastewater Treatment Facility operation, and
41 Ms. Sackett, with Aspen Journalism.

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 June 25, 2019, were considered.
46 Upon motion duly made and seconded, it was unanimously

47 **RESOLVED** that the minutes of the June 25, 2019, regular meeting be accepted and hereby are
48 approved as presented. Directors Gregory and Sipes abstained.

49 **Resolution Authorizing Execution of Documents** – Ms. Winn explained the updated resolution
50 authorizing execution of certain documents by the Director of Finance, Director of Operations, or

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1 Engineering Manager in the absence of the General Manager. After discussion and upon motion duly
2 made and seconded, it was unanimously

3 **RESOLVED** that the resolution authorizing execution of documents be and hereby is
4 approved as presented.

5 A copy of the resolution is attached hereto as **Exhibit A** and incorporated herein by this reference.

6 **Online Posting of Meeting Notices** – Ms. Winn discussed a resolution to allow online posting of District
7 meeting notices for board meetings and work sessions on the District’s website beginning on Aug. 2, per
8 new legislation. A copy of the resolution is attached hereto as **Exhibit B** and incorporated herein by this
9 reference. Ms. Winn suggested notices continue to be physically posted at the Vail Administration office
10 for a period of time. After discussion and upon motion duly made and seconded, it was unanimously

11 **RESOLVED** that the resolution allowing online posting of meeting notices be and hereby is
12 approved as presented.

13 **FY2020 Operations Agreement with Eagle Park Reservoir Company** – Ms. Hayes discussed the
14 board action request regarding the FY2020 operations agreement with EPRC, which includes a 3%
15 increase in cost of operations and administrative services. A copy of the request is attached hereto as
16 **Exhibit C** and incorporated herein by this reference. The renewal of the agreement aligns with EPRC’s
17 fiscal year and was approved by the EPRC board in June. Upon motion duly made and seconded, it was
18 unanimously

19 **RESOLVED** that the FY2020 Operations Agreement with Eagle Park Reservoir Company be and
20 hereby is approved as presented.

21 A copy of the agreement is attached hereto as **Exhibit D** and incorporated herein by this reference.

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

24 STRATEGY ITEMS

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

26 GENERAL MANAGER REPORT

27 Ms. Brooks noted she did not include a public report in this month’s packets. Monthly reports were
28 acknowledged, copies of which are attached hereto as **Exhibit F** and incorporated herein by this
29 reference.

30 **Meeting with Harvey Economics re Purpose and Need Review** – Ms. Brooks reported on a
31 meeting with a prospective firm to review the Authority and District’s purpose and need for new
32 water supply from an economist’s point of view. Funds were budgeted for this purpose and are
33 available, with an estimated \$25,000 cost for these services. The board directed Linn to engage
34 the firm for this review.

35 OPERATIONS REPORT

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

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1 **2019 Peak Runoff and Peak Flows** – Ms. Roman noted peak runoff occurred late this year, in
2 July compared to June in an average year. Runoff coincided with peak flows into the wastewater
3 treatment facilities, which were very high compared to previous years. Edwards Wastewater
4 Treatment Facility experienced increased inflow due to manholes and other equipment being
5 submerged by high streamflows. Operators handled this event well, despite both large
6 temperature swings and infiltration of river water into the plant. Staff will review work needed to
7 protect equipment from future high streamflows.

8 **Denver Water's Draft Lead Reduction Program Plan** – Ms. Roman discussed Denver Water's
9 proposed lead reduction program, for which a variance would be required from the Environmental
10 Protection Agency. EPA wants Denver to add orthophosphate to its pipes by 2021 to reduce the
11 corrosivity and reduce the possibility of lead getting into household water sources; however,
12 Denver Water instead proposes to replace lead service lines within its system at its own expense
13 – estimated at \$300 million. More information on the program is attached hereto as **Exhibit H** and
14 incorporated herein by this reference.

15 **Holy Cross Energy (HCE) Peak Demand Pilot Program** – Ms. Hayes introduced Mr. Nelson,
16 Edwards Wastewater operator. Mr. Nelson presented information regarding the Edwards
17 Wastewater Treatment Facility's participation in the HCE peak demand pilot program. Program
18 participants are alerted 24 hours in advance of a projected peak event and requested to reduce
19 energy use during a specific time period; however, there is no risk of penalty if program
20 participants are unable to reduce. If HCE can get its customers to reduce use during peak times,
21 it saves money; high energy users that participate can share in the savings by reducing at the
22 peak times and receiving rebates. During three requests for energy reduction within a one-week
23 period, the EWW operators successfully complied and received rebates of \$3200, in addition to
24 energy saved during the events, which average three hours total. The board thanked Mr. Nelson
25 for the presentation and for the efforts to reduce energy use and save money.

26 **ENGINEERING REPORT**

27 A copy of the engineering report is attached hereto as **Exhibit I** and incorporated herein by this reference.
28 In Mr. Cowles absence, there was no discussion of the report.

29 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

32 **Colorado River Updates** – Ms. Johnson discussed a general update on Colorado River
33 conditions. She noted water levels Lakes Powell and Mead were both expected to rise, but
34 additional work to reduce usage and continue drought contingency planning is needed.
35 Regarding drought contingency planning in Colorado, Ms. Johnson said the participants are no
36 longer required to sign non-disclosure agreements, so the District and Authority can receive

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1 progress reports from the Colorado River District on these efforts. Additionally, the River District
2 annual conference is scheduled for Sept. 18; Eric Kuhn, its former general manager, will be one
3 of the keynote speakers, discussing his book on the overallocation of the Colorado River called
4 “Science be Dammed.”

5 **Stillwater Employee Housing Ribbon-Cutting** – Ms. Johnson said the ribbon-cutting ceremony
6 and open house for the Stillwater Employee Housing Development was scheduled for Aug. 9
7 from 11:00 a.m. – 1:00 p.m. All directors are invited to attend and walk through the development
8 to tour units, review landscaping and common areas, and hear about the many sustainable
9 elements that were incorporated into the design.

10 **Diligence Activities for Vail Whitewater Park Water Right** – Ms. Johnson noted the high
11 streamflows and late runoff have allowed recreational activities in Gore Creek uncharacteristically
12 late in the season. If such conditions continue, there is the possibility of documenting recreational
13 uses in Gore Creek in August; proof of such activities could be used to make additional portions
14 of the water right absolute.

15 **Colorado Recreation and Conservation Enhancement Act (Colorado REC Act)** – In
16 response to a question about the Colorado REC Act, Ms. Johnson noted would bring additional
17 information on the proposed legislation to the boards in August.

18 GENERAL COUNSEL REPORT

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

21 WATER COUNSEL REPORT

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

23 **Consolidated Ditches Supreme Court Decision** – Mr. Porzak reported on a recent Supreme
24 Court decision. It ruled that Denver Water could reuse any of its water besides that from the
25 Moffat system, which was specifically prohibited by a 1940s agreement between Denver Water
26 and Consolidated Ditches. He noted the Authority, District, and others had filed amicus briefs in
27 support of Denver Water’s position; allowing Denver Water to reuse return flows decreases the
28 amount of water Denver takes from the West Slope. A copy of the decision is attached hereto as
29 **Exhibit K** and incorporated herein by this reference.

30 **Minturn Water Interconnect** – Mr. Porzak discussed various articles in the Vail Daily regarding
31 the proposed interconnection between the District and Authority water system and Minturn.
32 Copies of the articles are attached hereto as **Exhibit L** and incorporated herein by this reference.
33 He noted the Minturn Council meeting of July 17, at which no decision was reached by the
34 council regarding the proposed interconnect. He reserved additional discussion for Executive
35 Session.

36 At 1:12 p.m., Ms. Vog left the meeting.

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1 **EXECUTIVE SESSION**

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

6 **RESOLVED** to continue Executive Session at 1:13 p.m. to discuss attorney-client privileged
7 issues concerning the Hahnewald Barn, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
8 electronic record created as Ms. Winn opined the contents of the discussion would contain
9 privileged attorney-client communications.*

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

15 **RESOLVED** to continue Executive Session at 1:15 p.m. to discuss attorney-client privileged
16 issues concerning the Bolts Lake agreement/Minturn bulk water and delivery agreement,
17 CRCA matters, Eagle River MOU matters, and water hydrology model sharing, pursuant to
18 §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
19 contents of the discussion would contain privileged attorney-client communications.*

20 The regular meeting resumed at 1:32 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:33 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 **Kathryn Winn, General Counsel**

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Glenn Porzak, Water Counsel