

Eagle River Water & Sanitation District
Board of Directors Meeting
September 26, 2019
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held September 26, 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>	20	Nikola Nemcanin
11 Linn Brooks	21	Jeff Schneider
12 Troy Clous	22	Amy Vogt
13 Jason Cowles	23	James Wilkins
14 Carol Dickman	24	Len Wright
15 Tim Drescher	25	<u>Consultants</u>
16 Claude Goldberg	26	Jim Collins, Collins Cockrel & Cole
17 Catherine Hayes	27	Holly Loff, Eagle River Watershed Council
18 Diane Johnson	28	Glenn Porzak, Porzak Browning & Bushong LLP
19 Melissa Mills McLoota		

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 11:30 a.m.

39 **INTRODUCTIONS**

40 Introductions were made, including Ms. Goldberg, the new Sr. Human Resources Generalist and Holly
41 Loff, Eagle River Watershed Council Executive Director.

42 **PUBLIC COMMENT**

43

44 Ms. Johnson introduced Mr. Drescher, Avon Wastewater Treatment Facility Supervisor. Mr. Drescher was
45 recently selected as the Outstanding Young Professional of the Year by the regional chapters of the
46 American Water Works Association (AWWA) and the Water Environment Foundation (WEF). Mr.
47 Drescher was recognized primarily for his dedication to training wastewater operators and assuming
48 responsibility for a local professional seminar that is now in its 25th year. The Board congratulated Mr.
49 Drescher on the award. Mr. Drescher took the opportunity to thank the board for its approval of the
50 wastewater differential pay, which he noted has been extremely successful in reducing turnover and
51 improving employee morale for this critical group of employees. At 11:40 a.m., Mr. Drescher left the
52 meeting.

Eagle River Water & Sanitation District

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of August 22, 2019, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the August 22, 2019, regular meeting be accepted and hereby are approved as presented.

Designation of Representatives for Colorado Special Districts (CSD) Liability Pool – Mr. Wilkins explained the District's need for a designated member representative and alternate member representative to handle administrative tasks related the CSD liability pool. A related memo is attached hereto as **Exhibit A** and incorporated herein by this reference. Mr. Wilkins would like the board to approve designation of different representatives, to reflect changing duties and roles of involved employees. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the representatives for the Colorado Special Districts Liability Pool be and hereby are designated as Connie Nunley (primary representative) and Mr. Wilkins (alternate representative).

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

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

STRATEGY ITEMS

Eagle River Watershed Council Funding Request – Ms. Loff presented a 2020 funding request letter to the board, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference. She outlined the past year's efforts by the Eagle River Watershed Council, which would not have been possible without the funding from the Authority, District, and other contributors in the community. She highlighted the Authority's funding, including \$25,000 for water quality monitoring and assessment, and \$25,000 towards the unrestricted fund balance. She outlined the various projects that were accomplished last year, including ongoing water quality efforts related to the Eagle Mine and Black Gore Creek; community cleanups; education and outreach; and a variety of others. The board unanimously approved \$50,000 in funding for 2020, which is included in the 2020 budget that will be approved in the coming months. In response to a question, Ms. Loff noted that while improvements were made to the Eagle Mine that increased water quality on the adjacent section of the Eagle River, there is still much room for improvement.

Ms. Loff left the meeting at 11:55 a.m.

Board Member Input – Director Simmons noted that he attended last week's Special District Association annual conference, at which Secretary Gregory was honored as one of the SDA's board members of the year. The board congratulated Secretary Gregory on this achievement.

Service for John McCaulley – Ms. Brooks reminded directors of the memorial service for John McCaulley, planned for Saturday, Sept. 28 at the Eagle River Presbyterian Church in Avon. Mr.

Eagle River Water & Sanitation District

1 McCaulley was recently retired from the District, having served as Customer Service manager
2 and Field Operations manager. He had a short but courageous battle with pancreatic cancer.

3 **Board Member Input** – Chair Friedman shared that his home in Beaver Creek is under contract,
4 with closing scheduled after the October board meeting. At that time, he will be ineligible to
5 continue serving on the board. He expressed his enjoyment of his tenure on the board and
6 implored the remaining directors to keep ratepayers at the forefront of their focus when approving
7 funding requests, capital projects, and other items that ultimately affect customer bills. He
8 thanked board members and staff.

9 The board took a short recess for lunch at 12:24 p.m., and the regular meeting resumed at 12:34 p.m.

10 **GENERAL MANAGER REPORT**

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

14 **Holy Cross Energy Peak Demand Rebate Program** – Staff continues to work with Holy Cross
15 Energy on its peak demand rebate program, by which the District and Authority are eligible to
16 receive rebates if enrolled meters reduce energy use during expected peak demand periods.
17 Notices are sent out 24 hours in advance, so staff can plan equipment shutdowns and monitor
18 processes to ensure compliance with required regulations. Since program implementation in July,
19 the District and Authority have received nearly \$15,000 in rebates for reducing energy use during
20 peak demand times. This is in addition to the savings from greatly reduced electric use during
21 these times. Discussion ensued regarding other possibilities to assist with peak load shedding.
22 Staff gave a brief update on other potential projects that would assist with reducing energy use or
23 producing renewable energy, such as the proposed solar array at the Biosolids Containment
24 Facility.

25 **Proposition DD** – Ms. Brooks discussed Proposition DD, which will be on the November ballot.
26 This proposition would legalize sports betting and create a revenue stream for projects identified
27 in Colorado's Water Plan. At the recent Colorado Water Congress (CWC) board meeting that Ms.
28 Brooks attended, the CWC members discussed the proposition at length and decided to publicly
29 support the proposition. After discussion and upon motion duly made and seconded, it was
30 unanimously

31 **RESOLVED** the board be and hereby does approve the resolution in support of
32 Proposition DD, to legalize sports betting in Colorado.

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

Eagle River Water & Sanitation District

1 OPERATIONS REPORT

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

4 ENGINEERING REPORT

5 Mr. Cowles presented the engineering report, a copy of which is attached hereto as **Exhibit I** and
6 incorporated herein by this reference.

7 **System Tampering Charges** – In response to a question, Mr. Cowles discussed the two
8 instances of water system tampering outlined in his report, for which a local excavation company
9 was fined. Mr. Cowles reported that tampering is not common, but that the District has had
10 particular trouble with Schofield Excavation this summer.

11 COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

14 **Colorado River Compact Matters** – Ms. Johnson mentioned the “Grand Bargain” and a Denver
15 Post story about it, which is a concept proffered by some as the lower and upper basins look
16 towards the next phase of negotiations on the coordinated operations of Lakes Powell and Mead.
17 She mentioned that the River District’s Sept. 18 water seminar focused on these issues and
18 recommended viewing the presentations, which are available on the River District’s website.

19 GENERAL COUNSEL REPORT

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

21 **Board Meeting Processes** – The Board discussed the legal requirements around board meeting
22 records and communications. The District and Authority boards follow the state archivist’s
23 recommendation for retention and destruction, which requires public meeting recordings be saved
24 for six months after approval of that meeting’s minutes. Mr. Collins advised it is not legally
25 required for a special district to record its meetings, though many local entities choose to do so.
26 The board directed staff to continue recording public board meetings. The board also suggested
27 adding information on the District’s website regarding how to request meeting recordings and the
28 retention schedule for such recordings. Staff acknowledged growing pains with the audio visual
29 technology in the board room and committed to ensuring the equipment is properly functioning so
30 the recordings can be made consistently available to interested parties.

31 WATER COUNSEL REPORT

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

33 **District Water Rights Appraisal** – Mr. Porzak reported that a recent review of the District’s
34 water rights was undertaken; the value is almost \$58 million. Though the present market value of
35 its water rights cannot be included in the District’s annual audit, the market value is included at

Eagle River Water & Sanitation District

1 the end of the audit, in the statistical section. A copy of the appraisal is attached hereto as
2 **Exhibit K** and incorporated herein by this reference.

3 **Diligence and Absolute Decree for District Water Rights** – Mr. Porzak discussed the final
4 decree of the Water Court, making absolute an additional portion of the Gore Creek intake for the
5 Booth Creek Treatment Plant and the Plow Spring, and a finding of diligence for a variety of
6 additional rights. A copy of the decree is attached hereto as **Exhibit L** and incorporated herein by
7 this reference.

8 **Waters of the US (WOTUS) Rule Repeal** – Mr. Porzak reported a full repeal of the federal
9 WOTUS Rule, which was first introduced in 2015 and challenged by many states because it
10 would have expanded the scope of permitting authority to water bodies that are disconnected
11 from streams and rivers or have only intermittent flow. The rule never went into effect due to the
12 many legal challenges it faced.

13 At 1:10 p.m. Mses. Goldberg, Mills McLoota, and Vogt and Messrs. Nemcanin and Schneider left the
14 meeting.

15 EXECUTIVE SESSION

16 Mr. Collins requested the Board enter Executive Session to receive advice of counsel, pursuant to §24-6-
17 402(4)(a)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be
18 entirely privileged attorney-client communications. Upon motion duly made and seconded, it was
19 unanimously

20 **RESOLVED** to enter Executive Session at 1:11 p.m. to discuss attorney-client privileged
21 issues, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr.
22 Collins opined the contents of the discussion would contain privileged attorney-client
23 communications.*

24 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding property
25 matters, CRCA matters, Bolts Lake, and the water rights hydrology model sharing, pursuant to §24-6-
26 402(4)(a)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be
27 entirely privileged attorney-client communications. Upon motion duly made and seconded, it was
28 unanimously

29 **RESOLVED** to continue Executive Session at 1:30 p.m. to discuss attorney-client privileged
30 issues concerning property matters, CRCA matters, Bolts Lake, the water rights hydrology
31 model sharing, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record
32 created as Mr. Porzak opined the contents of the discussion would contain privileged
33 attorney-client communications.*

34 The regular meeting resumed at 2:28 p.m.

Eagle River Water & Sanitation District

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:29 p.m.

Respectfully submitted,


Secretary to the Meeting

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

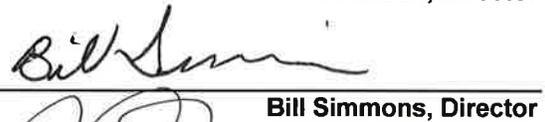

Dick Cleveland, Director

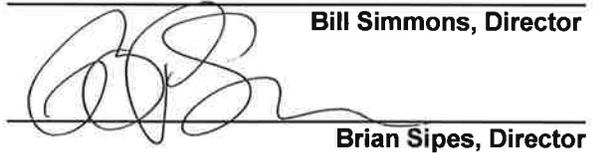
Steve Coyer, Treasurer

Stephen Friedman, Chair

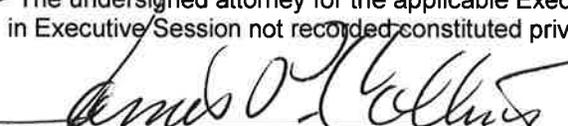
George Gregory, Secretary


Timm Paxson, Director


Bill Simmons, Director


Brian Sipes, Director

*The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion in Executive Session not recorded constituted privileged attorney-client communications.


Jim Collins, General Counsel


Glenn Porzak, Water Counsel