

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**December 19, 2019**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held December 19, 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           George Gregory  
5           Timm Paxson  
6           Bill Simmons  
7           Brian Sipes  
8           Robert Warner
- 9           **Also in attendance were:**
- |                                   |    |   |
|-----------------------------------|----|---|
| 10 <u>District Staff</u>          | 24 | Evette Smits                                  |
| 11          Tug Birk              | 25 | Mike Thompson                                 |
| 12          Linn Brooks           | 26 | James Wilkins                                 |
| 13          Alan Cerny            | 27 | Len Wright                                    |
| 14          Jason Cowles          | 28 | Chris Wolff                                   |
| 15          Carol Dickman         | 29 | Brad Zachman                                  |
| 16          Claude Goldberg       | 30 | <u>Consultants</u>                            |
| 17          Catherine Hayes       | 31 | Jim Collins, Collins Cockrel & Cole           |
| 18          Diane Johnson         | 32 | Glenn Porzak, Porzak Browning & Bushong LLP   |
| 19          Kira Koppel           | 33 | <u>Public</u>                                 |
| 20          Mindi McClintock      | 34 | Dennis Scalise, customer                      |
| 21          Melissa Mills McLoota | 35 | Mick Woodworth, director district 6 applicant |
| 22          Siri Roman            |    |   |
| 23          Jeff Schneider        |    |   |

36           **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

39           Director Cleveland disclosed that he serves on the board of Vail Health. Director Gregory disclosed that he serves on the Boards of  
40           the Upper Eagle Regional Water Authority (Authority and the Berry Creek Metropolitan District and occasionally undertakes  
41           development and construction activities within the District and Authority service areas. Director Simmons disclosed that he is the  
42           General Manager of the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the boards of the  
43           Edwards Metropolitan District and Eagle River Fire Protection District. Director Warner disclosed that he is a developer within the  
44           District's service area and also serves on the Eagle County Planning Commission, which occasionally has dealings with the District.

45           **CALL TO ORDER**

46           Chair Simmons called the meeting to order at 11:30 a.m.

47           **PUBLIC COMMENT**

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

49           **ACTION ITEMS**

- 50           **Claim of Easement Hearing** – Mr. Birk presented information regarding a claim of easement at 2617  
51           Arosa Drive in Vail, copies of which are attached hereto as **Exhibit A** and incorporated herein by this  
52           reference. The owner of the property, Mr. Scalise, addressed the board and noted his concerns  
53           regarding how the proposed easement would affect his property value and ability to complete additional  
54           improvements. Discussion ensued. Upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the resolution authorizing the claim of easement and encroachment  
2 authorization on real property located at Lot 11A, Block C of the Vail Ridge Subdivision, 2617  
3 Arosa Drive, Vail CO 81657 be and hereby is approved as presented; and

4           **FURTHER RESOLVED** to withhold recording the claim until General Counsel has an  
5 opportunity to negotiate receipt of an acceptable grant of easement from the owner, not to  
6 exceed a 60-day period from this date.

7           **Director District 6 Vacancy and Appointment** – The board discussed the vacancy in Director District 6;  
8 Chair Simmons and Director Cleveland, the board’s organizational development subcommittee members,  
9 interviewed interested candidates in December, including Mr. Warner and Mr. Woodworth, who were in  
10 attendance, as well as Mr. Dreyer, who was not in attendance. After discussion and upon motion duly  
11 made and seconded, it was unanimously

12           **RESOLVED** that Robert Warner be and hereby is appointed to fill the Director District 6 vacancy.

13           **Oath of Office** – Chair Simmons administered the oath of office to Mr. Warner, a copy of which is  
14 attached hereto as **Exhibit B** and incorporated herein by this reference. Immediately following the oath,  
15 Ms. Hayes electronically transmitted the required documentation to the office of the Eagle County Clerk  
16 and Recorder.

17           **Consideration of Minutes** – The minutes of the regular meeting of November 21, 2019, were  
18 considered. Upon motion duly made and seconded, it was unanimously

19           **RESOLVED** that the minutes of the November 21, 2019, regular meeting be accepted and  
20 hereby are approved as presented.

21           **2020 Redistricting and Election Update** – Ms. Hayes reported that redistricting efforts were still  
22 underway. She plans to present the proposed, updated director district map at the January 23, 2020,  
23 board meeting. Ms. Hayes reminded directors that the redistricting effort would ensure a roughly  
24 equivalent number of electors in each director district. Such an effort was last undertaken in 2014, and  
25 some districts have experienced significant growth and/or development since that time. Ms. Hayes also  
26 said the 2020 Election Resolution would be presented at the January 2020 board meeting, as polling  
27 places are still being determined, if the board chooses to conduct a polling place election.

28           **Proposed 2020 Meeting Schedule** – Ms. Hayes presented the proposed 2020 meeting schedule, a copy  
29 of which is attached hereto as **Exhibit C** and incorporated herein by this reference. The proposed  
30 schedule maintains the 8:30 a.m. board meetings every fourth Thursday of the month, with meetings held  
31 on the third Thursday in November and December to accommodate holidays. After discussion and upon  
32 motion duly made and seconded, it was unanimously

33           **RESOLVED** that the 2020 meeting schedule for the District be and hereby is approved as  
34 presented.

35           **2020 Operations Agreements with Authority, Minturn** – Ms. Hayes presented a memo regarding the  
36 2020 Operations Agreements the District has with the Authority and the Town of Minturn. A copy of which  
37 is attached hereto as **Exhibit D** and incorporated herein by this reference. The monthly compensation for

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1 the management of the Authority by the District increased based on historical charges, and changes were  
2 made to Exhibits A, B, and E, for capital construction, district equipment and personnel fees, and basic  
3 compensation, respectively. The monthly fee for the Town of Minturn's sewer and trash billing was also  
4 increased by 3%. After discussion and upon motion duly made and seconded, it was unanimously

5 **RESOLVED** that the District's 2020 operations agreement with the Upper Eagle Regional Water  
6 Authority be and hereby is approved as presented, and

7 **FURTHER RESOLVED** that the District's 2020 operations agreement with the Town of Minturn  
8 be and hereby is approved as presented.

9 Copies of the Authority and Minturn agreements are attached hereto as **Exhibits E** and **F**, respectively,  
10 and incorporated herein by this reference.

11 **Colorado Water Stewardship Project Request for Funds** – Ms. Brooks summarized a request for  
12 funding to replenish the Colorado Water Stewardship Project fund, a special project of the Colorado  
13 Water Congress (CWC). This organization responds to the public trust on behalf of the water interests of  
14 the CWC members. The group has had many legal successes, and the board agreed to contribute money  
15 to this effort again. After discussion and upon motion duly made and seconded, it was unanimously

16 **RESOLVED** to contribute \$2,000 to the Colorado Water Stewardship Project fund.

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

19 The board took a short recess for lunch at 12:18 p.m., and the regular meeting resumed at 12:40 p.m.

### 20 **STRATEGY ITEMS**

#### 21 **Water Efficiency Rebate Pilot Program and Qualified Water Efficient Landscaper (QWEL)**

22 **Program** – Mr. Wolff, Water Demand Management Coordinator, presented information on a  
23 proposed water efficiency rebate program, funds for which were budgeted in 2020. Copies of the  
24 information are attached hereto as **Exhibit H** and incorporated herein by this reference. This will  
25 include indoor rebates for efficient toilets and washing machines. New construction projects  
26 would not be eligible for such rebates, and customers must be enrolled in the WaterSmart  
27 program to take advantage of the rebates. Outdoor rebates would include funds for reducing turf  
28 area and upgrading irrigation systems, among others. The QWEL program would allow the  
29 District to become a professional certifying organization to train others in efficient landscape  
30 practices. Mr. Wolff noted the pilot stage of the rebate program would include all the  
31 recommendations from the joint Water Efficiency Plan of the Authority and District, which was  
32 adopted in 2018. The Board thanked Mr. Wolff for his efforts.

33 **Board Member Input** – Director Cleveland complimented staff on the quick and professional  
34 response to a recent water leak incident on Arosa Drive, near his home.

35

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## GENERAL MANAGER REPORT

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

## **OPERATIONS REPORT**

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

**Field Operations Update** – Ms. Roman introduced Ms. Smits, a field operations supervisor. Ms. Smits presented information on four recent infrastructure events in the field, to which staff responded. She outlined the various causes and remedies for the system failures, most of which required complex project sequencing in difficult weather conditions. Ms. Smits noted that in some cases, it was difficult to find contractors for the repairs, which were then completed by in-house staff. Ms. Roman expressed appreciation for staff's positive attitudes as well as the community support during these events. The Board thanked Ms. Smits for her presentation.

**Rulemaking Hearing Update** – Ms. Roman updated on recent state rulemaking hearings and discussed a related memo, a copy of which is attached hereto as **Exhibit L** and incorporated herein by this reference. Reg. 93 dealt with the state's methodology for the 303(d) listing of impaired streams. The process highlighted the District's involvement and efforts in providing data to the state for these processes, and state Water Quality Control Commission board members were complimentary of the District's staff and consultants in the process. Ms. Roman also reported the state extended the temporary molybdenum modification until 2023 in Ten Mile Creek, pending the outcome of a toxicity study regarding molybdenum. This was not the District's desired outcome, but staff and consultants are hopeful that the additional studies will back up the Authority and District's requested changes.

## **ENGINEERING REPORT**

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

**Village at Avon Water Bank** – Mr. Cowles discussed analysis of the water use at the Village at Avon PUD. Staff determined that 10% of the land has been developed and is using 20% of the water for the entire PUD. Mr. Cowles emphasized the need to inform the Village at Avon developer of the amount of available water as lots are being sold and developed. A letter to this effect was sent to Marcus Lindholm, for which no response was received.

**Berry Creek Booster Pump Station (BPS) Upgrade: Debrief with Eagle County Staff** – Mr. Cowles reported on a debrief session with Eagle County staff regarding a recent needed project to upgrade the Berry Creek BPS. Mr. Cowles said District and County staff agreed that a preapplication meeting would have been helpful, in addition to reviewing the entire permitting process in the future.

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1       **Water Rights Hydrology Model Sharing Agreement** – Mr. Cowles noted the City Councils of  
2       Aurora and Colorado Springs had formally approved the model sharing agreement. Upon motion  
3       duly made and seconded, it was unanimously

4               **RESOLVED** that the water rights hydrology model sharing agreement among the Eagle  
5               River MOU partners be and hereby is approved as presented.

6       A copy of the agreement is attached hereto as **Exhibit N** and incorporated herein by this  
7       reference.

### 8       **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

9       Ms. Johnson presented the Communications and Public Affairs report, a copy of which is attached hereto  
10      as **Exhibit O** and incorporated herein by this reference.

11       **Colorado River Water Users Association (CRWUA) Update** – Ms. Johnson said at the recent  
12      CRWUA meeting, U.S. Secretary of the Interior David Bernhardt announced that the Bureau of  
13      Reclamation will begin the formal review of the 2007 Interim Guidelines at the start of 2020,  
14      nearly a year ahead of when the review must start. The guidelines generated much discussion at  
15      the CRWUA meeting, and their review has been highlighted in the media in recent months. In  
16      response to a question, Ms. Johnson clarified that in the wider discussions of water curtailment,  
17      some involved parties use the term “compact call,” which is a misnomer. She also mentioned that  
18      climate change has been increasingly included in the overall water supply discussions.

19       **Water Supply Tools** – Ms. Johnson noted the development of new tools to allow water users to  
20      more easily and remotely monitor water supply and water quality.

21       **Communications Update** – Ms. Johnson noted a recent story published in the Vail Daily  
22      regarding local housing issues and the District’s positive outcomes in that area, including the  
23      Stillwater employee housing development.

### 24      **GENERAL COUNSEL REPORT**

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

### 26      **WATER COUNSEL REPORT**

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

28       **District Water Dedication Policy** – Mr. Porzak presented the District’s water dedication policy, a  
29      copy of which is attached hereto as **Exhibit P** and incorporated herein by this reference. The  
30      board ratified its approval of the updated water dedication policy, which includes a cost of living  
31      increase for the in-basin storage water and summertime irrigation water. For 2020, such fees are  
32      now \$39,500 and \$9,500/acre foot, respectively, and were already approved with the 2020  
33      budget in November.

34      At 9:54 a.m., Mses. Koppel, McClintock, Smits and Vogt, and Messrs. Cerny, Schneider, Thompson, and  
35      Wolff left the meeting.

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1 **EXECUTIVE SESSION**

2 Mr. Porzak requested the Board enter Executive Session to receive legal advice of counsel regarding  
3 unallocated water, Bolts Lake, and Wolford Mountain Reservoir, pursuant to §24-6-402(4)(a)(b) and (e)  
4 C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged  
5 attorney-client communications. Upon motion duly made and seconded, it was unanimously

6 **RESOLVED** to enter Executive Session at 2:00 p.m. to receive advice of counsel regarding  
7 unallocated water, Bolts Lake, and Wolford Mountain Reservoir, pursuant to §24-6-402(4)(b)  
8 and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the  
9 discussion would contain privileged attorney-client communications.\*

10 Mr. Porzak left the meeting at 2:34 p.m.

11 Mr. Collins requested the Board continue Executive Session to receive legal advice of counsel regarding  
12 the Claim of Easement Program, pursuant to §24-6-402(4)(a)(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 enter Executive Session at 2:35 p.m. to receive advice of counsel regarding  
16 the Claim of Easement Program, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no  
17 electronic record created as Mr. Collins opined the contents of the discussion would contain  
18 privileged attorney-client communications.\*

19 All remaining staff members left the meeting at 2:45 p.m.

20 Mr. Collins requested the Board continue Executive Session to undertake the annual review of the  
21 General Manager, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no electronic record be  
22 made, as the discussion would be entirely privileged attorney-client communications. Upon motion duly  
23 made and seconded, it was unanimously

24 **RESOLVED** to enter Executive Session at 2:46 p.m. to receive advice of counsel regarding  
25 the Claim of Easement Program, pursuant to §24-6-402(4)(f) C.R.S. with no electronic record  
26 created as Mr. Collins opined the contents of the discussion would contain privileged  
27 attorney-client communications.\*

28  
29

**Eagle River Water & Sanitation District**

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 4:00 p.m.

3 Respectfully submitted,

4  
5  
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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 \_\_\_\_\_  
15 **Dick Cleveland, Director**

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18 \_\_\_\_\_  
19 **Steve Coyer, Treasurer**

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22 \_\_\_\_\_  
23 **George Gregory, Secretary**

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26 \_\_\_\_\_  
27 **Timm Paxson, Director**

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30 \_\_\_\_\_  
31 **Bill Simmons, Chair**

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34 \_\_\_\_\_  
35 **Brian Sipes, Director**

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38 \_\_\_\_\_  
39 **Robert Warner, Director**

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

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44  
45 \_\_\_\_\_  
46 **James P. Collins, General Counsel**

47 \_\_\_\_\_  
**Glenn Porzak, Water Counsel**