

Eagle River Water & Sanitation District
Board of Directors Meeting
April 23, 2020
MINUTES

A regular, virtual meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held April 23, 2020, at 11:30 a.m., in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

The following Directors were present via Skype, thereby constituting a quorum:

1
2 Dick Cleveland
3 Steve Coyer
4 George Gregory
5 Timm Paxson
6 Bill Simmons
7 Brian Sipes
8 Robert Warner

Also in attendance were:

9			
10	<u>District Staff</u>	21	Shane Swartwout
11	Linn Brooks	22	James Wilkins
12	Allen Cerny	23	Len Wright
13	Kyle Collins	24	Brad Zachman
14	Jason Cowles	25	<u>Consultants</u>
15	Carol Dickman	26	Jim Collins, Collins Cockrel & Cole
16	Catherine Hayes	27	Kristin Moseley, Porzak Browning & Bushong LLP
17	Diane Johnson	28	Glenn Porzak, Porzak Browning & Bushong LLP
18	Kira Koppel	29	Marc Ragan, Piper Jaffray
19	Siri Roman		
20	Jeff Schneider		

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

CALL TO ORDER

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

PUBLIC COMMENT

Public comment was called for, and there was none.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of March 26, 2020, were considered.
Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the March 26, 2020, regular meeting be accepted and hereby are approved as presented.

Resolution re Bond Debt Service Base Rate – Mr. Wilkins and Mr. Ragan discussed the resolution to establish a debt service base rate to fund the enterprise wastewater revenue bonds to be issued in the coming months, pending favorable market conditions. A related memo is attached hereto as **Exhibit A** and incorporated herein by this reference. Mr. Ragan noted the current market was favorable; the District's bond rating is expected to be updated in the coming weeks, following calls with various bond

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1 rating agencies. Once the District's rating is established, bonds can be issued. After discussion and upon
2 motion duly made and seconded, it was unanimously

3 **RESOLVED** that the debt service base rate resolution for 2020 wastewater enterprise wastewater
4 revenue bonds be and hereby is approved as presented.

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

6 **Public Water System ID Combination** – Mr. Zachman discussed the Colorado Department of Public
7 Health and Environment's (CPDHE) desire to administratively combine the District and Authority's public
8 water system identification numbers, after which the CDPHE would regulate the systems as one. Mr.
9 Zachman presented a related board action request for staff direction, a copy of which is attached hereto
10 as **Exhibit C** and incorporated herein by this reference. Mr. Zachman confirmed that water rights and
11 governance of the two entities would remain separate and unaffected by this administrative combining.
12 After discussion and upon motion duly made and seconded, the board unanimously

13 **RESOLVED** that the request to proceed with combining the District's system with the Authority's
14 system for CDPHE regulation purposes be and hereby is approved as presented.

15 **Extension of Late Fee Waiver** – Mr. Swartwout discussed his board action request regarding extension
16 of customer late fee waivers during the pandemic, a copy of which is attached hereto as **Exhibit D** and
17 incorporated herein by this reference. He noted the volume of unpaid customer bills has remained low
18 throughout the COVID-19 pandemic. Ms. Brooks reminded the board that per Gov. Polis's order, no
19 utilities may be shut off due to non-payment during the pandemic. Additionally, unpaid bills represent
20 delayed revenue, not lost revenue. Mr. Swartwout noted there has not been an increase in delinquent
21 accounts to date. After discussion and upon motion duly made and seconded it was unanimously

22 **RESOLVED** that the extension of late fee waivers be and hereby is extended through the May
23 billing period, which ends on June 2, 2020.

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

26 **Information Reports** – The information reports were acknowledged and are attached hereto as **Exhibit**
27 **F** and incorporated herein by this reference.

28 **GENERAL MANAGER REPORT**

29 Ms. Brooks presented her general manager report, a copy of which is attached hereto as **Exhibit G** and
30 incorporated herein by this reference.

31 **COVID-19 Response Update** – Ms. Brooks and Ms. Roman updated the board on the COVID-19
32 response. The District will stay in stage 3 of its operating plan until at least May 15, though Gov.
33 Polis's "stay at home" order will expire on April 26, giving way to a "safer at home" directive. In
34 stage 3 of the District's response, non-essential employees are required to work from home.
35 Discussion ensued regarding how the District's possible return to stage 2 would differ from stage
36 3. The next stage could allow up to 50% of employees onsite, based on the governor's order;
37 however, discussions are ongoing regarding how this will be implemented across the District's

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1 various facilities to ensure protection of essential workers and the Authority and District's ability to
2 provide its core functions. The board had various questions about return-to-work policies and
3 suggested the District take a more conservative approach than that suggested by Gov. Polis's
4 order.

5 Ms. Brooks and Ms. Roman also discussed the District's weekly all-employee Town Hall
6 meetings, which the District has been hosting virtually for employees since April 8. These
7 sessions highlight 2 – 3 departments and changes to how that department's employees are
8 completing work due to the pandemic. Attendance for these sessions has been excellent, with
9 80+ employees logging in each week. Operationally, water demand has been lower than in years
10 past. Financial modeling is ongoing. Decreased impact fees are expected as development slows
11 due to the economic conditions. Some Authority and District capital projects will be delayed,
12 which will save funds. Others, like the Nutrient Upgrade Project at Avon WWTF, will continue as
13 planned due to their regulatory necessity and the amount of design and planning that have
14 already gone into such projects.

15 **Financial Modeling** – Ms. Brooks, Mr. Wilkins, and Mr. Swartwout discussed financial modeling.
16 Impacts are expected in three areas: monthly billing revenue, loss of impact fees, and costs for
17 responding to the COVID-19 pandemic. A related presentation is attached hereto as **Exhibit H**
18 and incorporated herein by this reference. Ms. Brooks explained that most revenues are
19 generated through base rates, which has narrowed staff's focus to unpaid bills; reduced water
20 usage will not affect revenues nearly as much. Ms. Brooks also confirmed that most treatment
21 costs are fixed and would not be significantly reduced with decreased water usage.

22 OPERATIONS REPORT

23 Ms. Roman presented the operations report, a copy of which is attached hereto as **Exhibit I** and
24 incorporated herein by this reference.

25 **General Operations Update** – Ms. Roman and Mr. Zachman discussed operations. Water
26 production and wastewater inflows are lower than expected for this time of year. Ms. Roman
27 noted operators seem more settled in stage 3 now than last month, when anxiety was higher. She
28 is pleased with the flexibility of staff in adapting to the new expectations of this working
29 environment.

30 **Avon Wastewater Treatment Facility Nutrient Upgrade Project (NUP) Update** – Ms. Marts
31 and Mr. Schneider updated the board on the NUP; a related memo is attached hereto as **Exhibit**
32 **J** and incorporated herein by this reference. Ms. Marts noted the project is using a CMAR
33 (construction manager at risk) delivery method, which has helped with navigating the unknowns
34 of the current economic situation. Contract documents are being modified, per the CMAR
35 method, as contract prices can decrease with lower commodities pricing during the pandemic.
36 Additionally, the project is 5 – 6 weeks behind schedule, which pushes a critical shutdown period

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1 in the spring to a less busy time of year, which is beneficial. All state, local, and district policies for
2 COVID-19 prevention must be followed by any on-site contract workers. Official notice to proceed
3 was issued on April 23, and site mobilization will occur on May 4.

4 GENERAL COUNSEL REPORT

5 Mr. Collins referred to his confidential legal report included in the confidential packet.

6 WATER COUNSEL REPORT

7 Mr. Porzak referred to his confidential legal report included in the confidential packet.

8 **Pando Feeder Diligence Protest** – Mr. Porzak discussed the absolute/diligence application for
9 the Pando Feeder Canal. The referee granted diligence but included a requirement in the
10 diligence finding that would unduly restrict the ability to obtain an absolute decree for a future
11 enlargement of Eagle Park Reservoir; a copy of the referee’s ruling and decree is attached hereto
12 as **Exhibit K** and incorporated herein by this reference. A protest letter was filed on behalf of the
13 Eagle Park Reservoir Company and its shareholders, as was an opposition to the state and
14 division engineers’ motion to intervene, though the motion was ultimately granted. Copies of both
15 are attached hereto as **Exhibits L** and **M**, respectively, and incorporated herein by this reference.
16 During a phone conference with the judge, the Company shareholders were granted 45 days to
17 prepare an opening brief to support the protest, which is due on May 29.

18 **Eagle Park Reservoir Diligence Application** – Mr. Porzak discussed the diligence application
19 for the two remaining conditional junior storage rights for Eagle Park Reservoir. The referee
20 agreed with the finding of diligence but wants to include a footnote regarding the East Fork Pump
21 Station as an alternate point of diversion, referencing a previous change case. Discussion ensued
22 regarding the footnote, which the directors agreed was unrelated to the diligence case and should
23 be removed. The ruling of the referee and the Company shareholders’ response are attached
24 hereto as **Exhibits N** and **O**, respectively, and incorporated herein by this reference.

25 At 1:00 p.m., Mses. Koppel and Marts and Messrs. Cerny, Schneider, and Schuette left the meeting.

26 **EXECUTIVE SESSION**

27 Mr. Porzak requested the Board enter Executive Session to receive legal advice of counsel regarding
28 Green Mountain Reservoir, the District water rights report, CJC Properties change case, and Bolts Lake,
29 pursuant to §24-6-402(4)(a)(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 enter Executive Session at 1:01 p.m. to receive advice of counsel regarding
33 Green Mountain Reservoir, the District water rights report, CJC Properties change case, and
34 Bolts Lake, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as
35 Mr. Porzak opined the contents of the discussion would contain privileged attorney-client
36 communications.*

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- 1 At 1:35 p.m., prior to discussion of Bolts Lake, all remaining staff left the call, with the exception of
- 2 Mses. Brooks, Hayes, Johnson, and Roman, and Mr. Cowles.
- 3 The regular meeting resumed at 2:35 p.m.
- 4
- 5

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:35 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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22 _____
23 **George Gregory, Secretary**

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27 **Timm Paxson, Director**

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30 _____
31 **Bill Simmons, Chair**

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35 **Brian Sipes, Director**

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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**

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Glenn Porzak, Water Counsel