

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**May 28, 2020**  
**MINUTES**

A special, virtual meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held May 28, 2020, at 12:30 p.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	Micah Scheutte
11	Linn Brooks	22	Jeff Schneider
12	Troy Clous	23	Shane Swartwout
13	Jason Cowles	24	Amy Vogt
14	Carol Dickman	25	James Wilkins
15	Catherine Hayes	26	Brad Zachman
16	Diane Johnson	27	<u>Consultants</u>
17	Kira Koppel	28	Jim Collins, Collins Cockrel & Cole
18	Craig Malkmes	29	Kristin Moseley, Porzak Browning & Bushong LLP
19	Melissa Mills McLoota	30	Glenn Porzak, Porzak Browning & Bushong LLP
20	Siri Roman		

**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 12:30 p.m.

**INTRODUCTIONS/PUBLIC COMMENT**

Mr. Cowles introduced the District's new GIS specialist, Craig Malkmes.

Public comment was called for and there was none.

**ACTION ITEMS**

**Oaths of Office** – Ms. Hayes noted all oaths of office for the newly elected board members were filed with the Clerk and Recorder prior to the meeting. Copies of oaths are attached hereto for Directors Cleveland, Gregory, Paxson, and Warner as **Exhibits A, B, C, and D**, respectively, and incorporated herein by this reference.

**Election of Officers** – The board discussed election of officers, which is normally done at the board meeting following special district elections. Discussion ensued, and upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the current slate of officers will continue to serve in their current roles. This  
2 includes Bill Simmons (Chair), George Gregory (Secretary), Steve Coyer (Treasurer), and all  
3 other board members serve as assistant secretaries/treasurers.

4           **Consideration of Minutes** – The minutes of the regular meeting of April 23, 2020, were considered.  
5 Upon motion duly made and seconded, it was unanimously

6           **RESOLVED** that the minutes of the April 23, 2020, regular meeting be accepted and hereby are  
7 approved as presented.

8           **Extension of Late Fee Waiver** – Mr. Swartwout discussed his board action request regarding extension  
9 of customer late fee waivers during the pandemic, a copy of which is attached hereto as **Exhibit E** and  
10 incorporated herein by this reference. The volume of unpaid customer bills has remained low throughout  
11 the COVID-19 pandemic. After discussion and upon motion duly made and seconded it was unanimously

12           **RESOLVED** that the extension of late fee waivers be and hereby is extended through the August  
13 billing period, which ends on Sept. 2, 2020.

14           **Kudel Inclusion** – Mr. Schuette discussed his request and related information regarding the inclusion of  
15 a parcel of land for sewer service in Edwards. Copies are attached hereto as **Exhibit F** and incorporated  
16 herein by this reference. A public hearing was opened at 12:38 p.m. Public comment was called for and  
17 there was none, and the hearing was closed at 12:39 p.m. After discussion and upon motion duly made  
18 and seconded, it was unanimously

19           **RESOLVED** that the Kudel inclusion be and hereby is approved as presented.

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

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

23           **Information Reports** – The information reports were acknowledged and are attached hereto as **Exhibit I**  
24 and incorporated herein by this reference.

### 25 **GENERAL MANAGER REPORT**

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

28           **COVID-19 Response Update** – Ms. Brooks updated the board on the COVID-19 response. The  
29 District will move to the sustain stage of its pandemic response starting June 1. This will allow up  
30 to 50% of staff to return onsite; however, Ms. Brooks expects onsite staffing will be closer to 30%.  
31 District offices remain closed to the public, and board meetings will continue to be hosted virtually  
32 as Ms. Brooks clarified that the size of the board meetings would not allow staff and board  
33 members to meet social distancing guidelines. Attendance remains stable, and only one staff  
34 member, who was working offsite, tested positive for the virus to date.

35           **Financial Modeling** – Ms. Brooks and Mr. Wilkins provided an update on District finances and  
36 the effects of COVID-19; a presentation is attached hereto as **Exhibit K** and incorporated herein

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1 by this reference. Mr. Wilkins confirmed the District's AA – rating was affirmed by the S&P on a  
2 recent conference call related to the District's upcoming bond issuance. The S&P representatives  
3 specifically referenced the District's strong fund balance and the monthly debt service fees as  
4 they related to maintaining this rating. Discussion ensued regarding water sales trending,  
5 seasonal changes in demand, and year over year comparisons. Mr. Wilkins expects impact fees  
6 for new development to be under budgeted amounts due to the local economic impacts of  
7 COVID-19. The District is achieving savings by leaving some open positions unrecruited, limiting  
8 staff to virtual training, and postponing District capital projects as feasible. Ms. Brooks confirmed  
9 that she was comfortable with not recruiting certain open positions at this time; however, none of  
10 the approved positions are unnecessary, and filling them will become a priority once pandemic  
11 conditions stabilize.

12 **Eagle River MOU Update** – Mr. Cowles noted two recent meetings regarding Eagle River MOU  
13 matters: one with principals and the other, which included each entity's legal team. He reserved  
14 the rest of his discussion for Executive Session.

### 15 **OPERATIONS REPORT**

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

18 **Sanitary Sewer Overflow** – A memo regarding a recent sanitary sewer overflow (SSO) is  
19 attached hereto as **Exhibit M** and incorporated herein by this reference.

20 **Backflow Program Update** – Mr. Swartwout discussed his memo regarding the Backflow  
21 Prevention and Cross Connection Control Program, a copy of which is attached hereto as **Exhibit**  
22 **N** and incorporated herein by this reference. He noted the District and Authority remained out of  
23 compliance with the backflow testing portion of the regulation and were required to report such  
24 non-compliance to customers, including in the Consumer Confidence Reports for each entity. Mr.  
25 Swartwout affirmed that this was the District and Authority's number one priority, and a staff task  
26 force was recently created to focus efforts on achieving compliance for both entities by the end of  
27 2020. Staff will provide monthly board progress updates and understands the severity of the  
28 continued non-compliance. In response to a question, Mr. Swartwout noted many entities were  
29 struggling to comply with the backflow regulations. In the District and Authority service area  
30 specifically, many backflow devices are located in homes, which adds a layer of complexity to  
31 scheduling surveys; the current pandemic will make this even more challenging.

### 32 **GENERAL COUNSEL REPORT**

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

34 **Edwards Spur Road Update** – Mr. Schneider presented information to the board on the water  
35 main and support structures that were installed by Colorado Department of Transportation  
36 (CDOT) project contractor and subcontractor in summer 2019. The pipeline is exhibiting signs of

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1 deflection, indicating the alignment is not straight as shown on the construction plans. During a  
2 late summer 2019 walkthrough, the pipeline exhibited a minor irregularity that worsened  
3 throughout the winter. A bypass main has been installed to allow for continued water supply to  
4 the Old Edwards Estates subdivision during the correction of the defect. CDOT has been put on  
5 notice of the defect and staff is working closely with counsel on notice requirements and contract  
6 obligations. Counsel believes the Authority's liability in the matter is limited, as this appears to be  
7 a combination of construction and design defect. Staff continues to monitor the pipeline daily for  
8 any further deflection. A copy of the presentation is attached hereto as **Exhibit O** and  
9 incorporated herein by this reference.

10 Mr. Collins left the meeting at 1:15 p.m.

### 11 **WATER COUNSEL REPORT**

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

13 At 1:21 p.m., Mses. Dickman, Koppel, and Vogt and Messrs. Clous, Schuette, and Schneider left the  
14 meeting.

### 15 **EXECUTIVE SESSION**

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

20 **RESOLVED** to enter Executive Session at 1:22 p.m. to receive advice of counsel regarding  
21 the Pando Feeder Canal and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with  
22 no electronic record created as Mr. Porzak opined the contents of the discussion would  
23 contain privileged attorney-client communications.\*

24 The regular meeting resumed at 1:40 p.m.

25 **Village Hall Water Main Project** – Chair Simmons noted the completed Village Hall water main project  
26 went smoothly and expressed his thanks to project engineer Niko Nemcanin for the project's success and  
27 his effective communications with the Beaver Creek Metropolitan District board and other affected parties  
28 in Beaver Creek.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:42 p.m.

3 Respectfully submitted,

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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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15 **Dick Cleveland, Director**

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18 **Steve Coyer, Treasurer**

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22 **George Gregory, Secretary**

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26 **Timm Paxson, Director**

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30 **Bill Simmons, Chair**

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34 **Brian Sipes, Director**

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37 \_\_\_\_\_  
38 **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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45 \_\_\_\_\_  
46 **Glenn Porzak, Water Counsel**  
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