

**Eagle River Water and Sanitation District
Upper Eagle Regional Water Authority
Joint Special Meeting
August 27, 2020
MINUTES**

1 A joint special meeting of the Boards of Directors of the Upper Eagle Regional Water Authority (**Authority**)
2 and Eagle River Water and Sanitation District (**District**) was held August 27, 2020, at 11:00 a.m., via Skype,
3 in accordance with the applicable statutes of the State of Colorado.

4 **ATTENDANCE**

5 **The following Authority Directors were present, thereby constituting a quorum:**

6 Geoff Dreyer, Arrowhead Metropolitan District
7 Pam Elsner, Beaver Creek Metropolitan District
8 George Gregory, Berry Creek Metropolitan District
9 Sarah Smith Hymes, town of Avon
10 Kim Bell Williams, EagleVail Metropolitan District
11 Mick Woodworth, Edwards Metropolitan District

12 **The following District Directors were present, thereby constituting a quorum:**

13 Dick Cleveland
14 Steve Coyer
15 George Gregory
16 Timm Paxson
17 Bill Simmons
18 Brian Sipes
19 Robert Warner

20 **Also in attendance were:**

21 **ERWSD Staff**

22 Linn Brooks
23 Allen Cerny
24 Troy Clous
25 Carol Dickman
26 Catherine Hayes
27 Diane Johnson
28 Kira Koppel
29 Mark Mantua
30 Melissa Marts
31 Louise Reiter
32 Siri Roman
33 Jeff Schneider
34 Rick Smith
35 Evette Smits
36 Shane Swartwout
37 Len Wright

38 Brad Zachman

39 **Consultants**

40 Steve Bushong, Porzak Browning & Bushong LLP
41 Kim Crawford, Butler Snow
42 Jim Collins, Collins Cockrel & Cole
43 Jonathan Heroux, Piper Sandler
44 Joe Middleton, Middleton Environmental Law
45 Kristin Moseley, Porzak Browning & Bushong LLP
46 Glenn Porzak, Porzak Browning & Bushong LLP

47
48 **Public**

49 Lorne Bassel, Battle North
50 Eric Heil, Town of Avon
51 Tim McGuire, Battle North
52 Gerry Ronan, Lupert-Adler

53 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

56 **For the Authority:**

57 Director Elsner disclosed her membership with the Vilar Performing Arts Center Guild, which operates within the Authority's service
58 area. Director Gregory and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation
59 District. Director Gregory also disclosed that he occasionally undertakes small development and construction activities within the
60 Authority and District service areas. Alternate Director Simmons noted he serves on the boards of the Eagle River Fire Protection
61 District and Edwards Metropolitan District and is employed by Beaver Creek Metropolitan District, an Authority member. Director
62 Williams disclosed that she is the Eagle County Housing Director. Director Woodworth disclosed that he is employed by the Eagle
63 River Fire Protection District, which operates within the Authority's service area.

64 **For the District:**

65 Director Cleveland disclosed that he serves on the board of Vail Health. Director Gregory disclosed that he serves on the Boards
66 of the Upper Eagle Regional Water Authority (Authority and the Berry Creek Metropolitan District and occasionally undertakes
67 development and construction activities within the District and Authority service areas. Director Simmons disclosed that he is the

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1 General Manager of the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the boards of the
2 Edwards Metropolitan District and Eagle River Fire Protection District. Director Warner disclosed that he is a developer within the
3 District's service area and serves on the Eagle County Planning Commission, which occasionally has dealings with the District.
4

5 **CALL TO ORDER**

6 Chair Simmons of the Eagle River Water and Sanitation District called the meeting to order at 11:01 a.m., and
7 Chair Gregory of the Upper Eagle Regional Water Authority concurred.

8 **PUBLIC COMMENT**

9 Public comment was called for and there was none.

10 **INTRODUCTIONS**

11 Ms. Brooks introduced Mr. Smith, interim director of finance for the district. Guests were also introduced,
12 including Ms. Crawford of Butler Snow and Mr. Heroux of Piper Sandler, both of whom would be assisting
13 with discussion of the bond parameters resolution.

14 **ACTION ITEMS**

15 **Authority**

16 **Parameters Resolution** – A parameters resolution was presented for consideration by the Authority, a
17 copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. The resolution
18 set forth the terms by which the 2020 water revenue improvement bonds would be issued, as well as
19 the refunding of a previous bond. The resolution also allows the General Manager or Director of
20 Finance to approve the pricing and sale of the bonds subject to certain maximum parameters. This
21 gives the Board the flexibility to adopt a resolution in advance and sell the bonds in the market at the
22 most opportune time. Mr. Collins also noted that at a later meeting, the board would consider a
23 resolution to establish the debt service base rate to pay for the bonds, after final pricing was
24 determined. After discussion and upon motion duly made and seconded, it was unanimously

25 **RESOLVED** that the bond parameters resolution be and hereby is approved as presented; and

26 **FURTHER RESOLVED** that a debt service base rate resolution would be considered at such
27 time as the final bond is issued and final pricing is known.

28 Ms. Crawford and Mr. Heroux left the call at 11:15 a.m.

29 **Joint**

30 **Consideration of Minutes** – The minutes of the Authority and District joint special meeting of July 23,
31 2020, were considered. Upon motion duly made and seconded, it was unanimously

32 **RESOLVED** that the minutes of the July 23, 2020, joint special meeting be accepted and hereby
33 are approved as presented by both boards.

34 **Late Fee Waiver Extension** – Mr. Swartwout presented a board action request regarding to extension of
35 the District's waiver for customer late fees to coincide with the Colorado Executive Order on such matters.
36 A copy of the request is attached hereto as **Exhibit B** and incorporated herein by this reference. Upon
37 motion duly made and seconded, it was unanimously

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1 **RESOLVED** to approve the late fee waiver extension and align the timing with the state of
2 Colorado's Executive Order.

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

5 **Information Reports** – The information reports were acknowledged and are attached hereto as **Exhibit**
6 **D** and incorporated herein by this reference.

7 **GENERAL MANAGER REPORT**

8 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit E** and incorporated herein
9 by this reference. She said staff was again minimizing verbal updates during the virtual meetings and
10 noted written reports on sustainability and communications, attached hereto as **Exhibits F and G**,
11 respectively, and incorporated herein by this reference.

12 **Quarterly Financials** – Mr. Smith and Ms. Reiter presented the quarterly financial reports for the
13 Authority and District, attached hereto as **Exhibits H and I**, respectively, and incorporated herein
14 by this reference. Both boards acknowledged receipt of the reports.

15 **OPERATIONS REPORT**

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

18 **Low Streamflow Operating Plan** – Dr. Wright presented information regarding current
19 streamflows in Gore Creek and the Eagle River. He discussed how water operations shifted to
20 divert from the Eagle River at the lowest possible point, leaving more water upstream for aquatic
21 life purposes. Instream flow calls were placed on the Eagle River on Monday, Aug. 24, and staff
22 is releasing Eagle Park Reservoir water in response. Dr. Wright also discussed the various tools
23 by which staff makes day to day changes to operations protocols.

24 **Backflow 101 Presentation** – Mr. Zachman and Ms. Smits presented information on the
25 Authority and District backflow program, including requirements, compliance matters, and the
26 incident command structure staff is using to address the compliance issues. The Authority and
27 District have been out of compliance since the backflow rule was promulgated by the state in
28 2016. Mr. Zachman explained that the rule requires surveys of all customers accounts except
29 single family residences, which are not yet regulated. Staff is working diligently but may not reach
30 full compliance by year end; however, Mr. Zachman emphasized that the program has made
31 considerable progress, with an action plan in place.

32 **Avon Wastewater Treatment Facility Nutrient Upgrade Project (NUP) Update** – Ms. Marts
33 updated on the AWWTF nutrient upgrade project and discussed her memo, attached hereto as
34 **Exhibit K** and incorporated herein by this reference. The NUP is slightly behind schedule due

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1 materials and subcontractor delays related to the Grizzly Creek fire, which shut down I-70
2 between Glenwood Springs and Dotsero for a week in mid-August.

3 **Edwards Spur Road Update** – Mr. Mantua updated on the Edwards Spur Road project and
4 presented a related memo, a copy of which is attached hereto as **Exhibit L** and incorporated
5 herein by this reference. The pipe replacement needed for the Edwards Spur Road project will
6 commence soon at CDOT’s cost, since the material was changed from the original plans and the
7 installation for the new material pipe was improperly completed.

8 **GENERAL COUNSEL REPORT**

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

10 **WATER COUNSEL REPORT**

11 Mr. Porzak referred to his confidential legal report included in the confidential packet and referenced a
12 confidential memorandum that was distributed to the boards on his behalf on August 26.

13 **Authority**

14 **Eagle Park Reservoir Company Stock Agreement** – Mr. Porzak reported that Eagle County
15 misplaced one of its stock certificates, so the physical conveyance of the shares of Eagle Park
16 Reservoir Company stock from the county to the Authority was delayed. Mr. Porzak continues to
17 work on this and will apprise the boards when it is completed.

18 **Authority + District**

19 **Eagle Park Reservoir Diligence Ruling** – Mr. Porzak discussed the protest by the division and
20 state engineers to the ruling of the referee regarding the finding of diligence for the Eagle Park
21 Reservoir storage rights, a copy of which is attached hereto as **Exhibit M** and incorporated herein
22 by this reference. Mr. Porzak noted an upcoming status conference with the judge on this matter.

23 At 12:30 p.m., Mses. Dickman, Koppel, Marts, Reiter, and Vogt and Messrs. Cerny, Clous, Schneider,
24 and Wright left the meeting.

25 **EXECUTIVE SESSION**

26 Mr. Collins requested the Boards enter Executive Session to receive legal advice of counsel regarding
27 Cordillera Valley Club water use and EverVail, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked
28 that no electronic record be made, as the discussion would be entirely privileged attorney-client
29 communications. Upon motion duly made and seconded, it was unanimously

30 **RESOLVED** to enter Executive Session at 12:31 p.m. to receive advice of counsel regarding
31 Cordillera Valley Club water use and EverVail, pursuant to §24-6-402(4)(b) and (e) C.R.S.
32 with no electronic record created as Mr. Collins opined the contents of the discussion would
33 contain privileged attorney-client communications.*

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1 At 12:57 the board took a recess. The meeting resumed at 1:30 p.m., in Executive Session, at which time
2 Messrs. Bassel, McGuire, Middleton, and Ronan joined the meeting. Prior to the discussion of Bolts Lake
3 matters, Messrs. Smith and Zachman left the meeting.
4

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

9 **RESOLVED** to continue Executive Session at 12:23 p.m. to receive advice of counsel
10 regarding Bolts Lake matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic
11 record created as Mr. Porzak opined the contents of the discussion would contain privileged
12 attorney-client communications.*

13 Messrs. Bassel, McGuire, and Ronan left the meeting at 2:49 p.m.
14

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

19 **RESOLVED** to continue Executive Session at 2:50 p.m. to receive advice of counsel
20 regarding Bolts Lake matters and the strategic reserve policy, pursuant to §24-6-402(4)(b)
21 and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the
22 discussion would contain privileged attorney-client communications.*

23 The regular meeting resumed at 4:42 p.m.

24 Director Sipes announced this would be his last meeting, as he was moving out of director district
25 5. Staff will notice the vacancy in the coming weeks.

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ADJOURNMENT

There being no further business to come before the Boards, the meeting adjourned at 4:43 p.m.

Respectfully submitted,

Secretary to the Meeting

EAGLE RIVER WATER & SANITATION DISTRICT

Dick Cleveland, Director

Steve Coyer, Treasurer

George Gregory, Secretary

Timm Paxson, Director

Bill Simmons, Chair

Brian Sipes, Director

Robert Warner, Director

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UPPER EAGLE REGIONAL WATER AUTHORITY

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Arrowhead Metropolitan District

Town of Avon

Beaver Creek Metropolitan District

Berry Creek Metropolitan District

EagleVail Metropolitan District

Edwards Metropolitan District

*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.

James P. Collins, General Counsel

Glenn Porzak, Water Counsel