

Eagle River Water & Sanitation District
Board of Directors Meeting
Dec. 17, 2020
MINUTES

A special, virtual meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held Dec. 17, 2020, at 1:00 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 Kate Burchenal
3 Dick Cleveland
4 Steve Coyer
5 George Gregory
6 Timm Paxson
7 Bill Simmons
8 Robert Warner

Also in attendance were:

9			
10	<u>District Staff</u>	24	Jeff Schneider
11	Linn Brooks	25	Shane Swartwout
12	Allen Cerny	26	Amy Vogt
13	Troy Clous	27	Len Wright
14	Jason Cowles	28	Brad Zachman
15	Carol Dickman	29	<u>Consultants</u>
16	Catherine Hayes	30	Jim Collins, Collins Cockrel & Cole
17	Diane Johnson	31	Kristin Moseley, Porzak Browning & Bushong LLP
18	Kira Koppel	32	Glenn Porzak, Porzak Browning & Bushong LLP
19	Melissa Mills McLoota	33	<u>Public</u>
20	Niko Nemcanin	34	Katherine Benysh, Bighorn Terrace resident
21	David Norris	35	Wendell Porterfield, attorney for Bighorn Mutual San & Rec Co.
22	Siri Roman		
23	Tracy Rymph		

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 Burchenal disclosed that she in on the Eagle River Watershed Council board of directors. 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 1:00 p.m.

INTRODUCTIONS/PUBLIC COMMENT

Ms. Benysh commented on the Bighorn Terrace water and sewer main replacement project and noted the cost increased since the project was originally envisioned, which would be a financial burden on the owners paying for the water main replacement. Mr. Porterfield commented that the Bighorn Terrace project and related costs were approved by the majority of homeowners within the subdistrict.

ACTION ITEMS

Bighorn Terrace Subdistrict Project Update – Mr. Collins suggested the board discuss the topic out of order while Ms. Benysh and Mr. Porterfield were present. Discussion ensued regarding the project timing, which has been delayed due to lack of as-builts in the area for these private water and sewer lines. Mr. Collins noted the District was paying for the sewer line

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1 replacement, and the Bighorn Terrace residents were paying for water line replacement, which
2 would be accepted for permanent maintenance by the District after construction. A related memo
3 is attached hereto as **Exhibit A** and incorporated herein by this reference. Discussion ensued
4 regarding extending the repayment period and lowering the interest rate from 3% to 2%. After
5 discussion and upon motion duly made and seconded, it was unanimously

6 **RESOLVED** that the proposed interest rate be lowered to 2% for project financing and
7 the repayment period be extended to 25 years with full payoff at any time, and that staff
8 may proceed with the project and establish the additional charge on the wastewater
9 service fee.

10 Ms. Benysh and Messrs. Nemcanin and Porterfield left the meeting at 1:23 p.m.

11 **Consideration of Minutes** – The minutes of the special meeting of Nov. 19, 2020, were considered.
12 Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the minutes of the Nov. 19, 2020, special meeting be accepted and hereby are
14 approved as presented.

15 The minutes of the joint, special meeting of Nov. 19, 2020, with the Upper Eagle Regional Water
16 Authority were considered. Upon motion duly made and seconded, it was unanimously

17 **RESOLVED** that the minutes of the joint special Nov. 19, 2020, meeting be accepted and hereby
18 are approved as presented.

19 **Representative Appointment for Colorado Special Districts Property & Liability Pool** – The board
20 discussed the request to appoint Mr. Norris as the alternate contact for the CSD Pool, a copy of which is
21 attached hereto as **Exhibit B** and incorporated herein by this reference. Ms. Hayes confirmed Connie
22 Nunley was the primary contact, and Mr. Norris was replacing the previous alternate. After discussion and
23 upon motion duly made and seconded, it was unanimously

24 **RESOLVED** that Mr. Norris be and hereby is appointed as the District's alternate representative
25 for the Colorado Special Districts Property & Liability Pool.

26 **2021 Operations Agreements** – The board reviewed a board action request regarding the 2021
27 Operations Agreements with the Authority and Town of Minturn, a copy of which is attached hereto as
28 **Exhibits C** and incorporated herein by this reference. Upon motion duly made and seconded, it was
29 unanimously

30 **RESOLVED** that the 2021 Operations Agreement with the Upper Eagle Regional Water Authority
31 be and hereby is approved as presented; and

32 **FURTHER RESOLVED** that the 2021 Operations Agreement with the Town of Minturn be and
33 hereby is approved as presented.

34 Copies of the agreements with the Authority and Minturn are attached hereto as **Exhibits D** and **E**,
35 respectively, and incorporated herein by this reference.

36 **2021 Meeting Place and Posting Location** – The board considered a resolution regarding the 2021
37 meeting place and posting location for its regular meetings. A related memo and the resolution are

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1 attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference. The board
2 agreed it would continue to meet at 11:30 a.m. on the fourth Thursday of each month and that the
3 meeting notices would be posted online, per the Colorado Revised Statutes. Meetings will be held virtually
4 for the foreseeable future. Upon motion duly made and seconded, it was unanimously

5 **RESOLVED** that the Resolution Designating the District's 2021 Meeting Place and Posting
6 Location be and hereby is approved as presented.

7 **PUBLIC HEARING: 2020 BUDGET AMENDMENT**

8 Chair Simmons opened a public hearing at 1:28 p.m. to discuss a resolution to amend the 2020 budget, a
9 copy of which is attached hereto as **Exhibit H** and incorporated herein by this reference. A call for public
10 input solicited no response. The public hearing was closed at 1:29 p.m. Mr. Norris discussed the legal
11 requirement for the amendment, the need for which resulted from bond refunding and the timing of capital
12 project expenditures. The original 2020 budget estimated \$46.1 million in expenditures for the wastewater
13 fund; actual spending was \$58.3 million. For the water fund, the 2020 budgeted amount was \$12.2
14 million; actual spending was \$10.1 million. After discussion and upon motion duly made and seconded, it
15 was unanimously

16 **RESOLVED** that the Resolution to Amend the 2020 Budget be and hereby is approved
17 as presented.

18 **Consent Agenda** – The consent agenda was approved, a copy of which is attached hereto as **Exhibit I** and
19 incorporated herein by this reference.

20 **Information Reports** – The information reports are attached hereto as **Exhibit J** and incorporated herein by this
21 reference.

22 **STRATEGY ITEMS**

23 **Board Member Input** – Board member input was requested and there was none.

24 **Cloudseeding Activities** – Mr. Porzak discussed an inquiry from a previous board member
25 regarding cloudseeding, which Vail Resorts declined to do for the 2020-21 ski season. The board
26 discussed various ways in which regional and local entities could contribute to the effort this
27 season, which costs approximately \$300,000. The District board agreed it was willing to pay up to
28 \$15,000 if other stakeholders would also contribute funds to the effort. Staff can provide
29 additional materials regarding cloudseeding to interested board members.

30 **GENERAL MANAGER REPORT**

31 Ms. Brooks noted she did not include a public report in packets this month.

32 **COVID-19 Update** – Ms. Brooks updated the board on COVID-19 operations and noted no new
33 cases among staff since her report of Dec. 9. She noted a recent conversation with Eagle County
34 Public Health director Birch Barron, who confirmed the District's frontline employees would be
35 vaccinated in phase 2A of the county's vaccine order. Phase 1 is meant for healthcare providers
36 and first responders that have direct contact with potential COVID patients.

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1 **Year-End Celebration Update** – Ms. Brooks noted the ways in which staff is fostering
2 connection during a time when employees and the boards would normally gather for the annual
3 holiday party. Each department has been scheduled for a celebration week in which that team is
4 honored for the role each plays in the District's success. Ms. Brooks also discussed the previous
5 day's online town hall, at which values awards were presented to staff and the Authority and
6 District board chairs thanked staff for their efforts during the year. The board expressed gratitude
7 for all the staff during this difficult year.

8 **FINANCE REPORT**

9 Mr. Norris presented the quarterly financial report, a copy of which is attached hereto as **Exhibit K** and
10 incorporated herein by this reference. He outlined report changes he will implement and asked directors
11 to offer feedback on what they would like to be included in the report. Mr. Norris noted the financials
12 looked strong and revenues were trending upward, even during the pandemic. Net income is solid, and
13 additional tap fees are expected before year end.

14 **OPERATIONS REPORT**

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

17 **Draft Wastewater Discharge Permit** – Ms. Roman discussed the draft wastewater discharge
18 permits from the state, which are attached hereto as **Exhibit M** and incorporated herein by this
19 reference. Ms. Roman noted the permits contain many stringent requirements and are still under
20 staff review. Such requirements drive costly upgrades, such as the nutrient upgrade project
21 ongoing at the Avon WWTF.

22 **Avon Wastewater Treatment Facility Nutrient Upgrade Project** – Ms. Roman updated on the
23 nutrient upgrade project, which is going well. She noted the contractor received a right-of-way for
24 construction from the Union Pacific Railroad, which will greatly assist in project completion and
25 improve project site safety.

26 **Emergency Water Main Break and Repair** – Ms. Roman reported on a water main break in
27 East Vail, which flooded the basement of one home and affected 15 other homes, which were
28 without water while the repair was completed. Mr. Roman noted the field operations department
29 worked tirelessly in the cold, dark conditions to ensure the repair was completed.

30 **Backflow and Cross-Connection Program Update** – Mr. Zachman shared that staff expects to
31 achieve full compliance for both the hazard ratio and device testing ratios of this state-required
32 program in both the District and Authority. A task force of employees has been working on this
33 monumental effort since July, and Mr. Zachman highlighted the team effort required to achieve
34 compliance. The board expressed gratitude for this huge accomplishment.

35 **Eagle Park Reservoir Quarterly Report** – The confidential quarterly report was referenced.

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1 **ENGINEERING AND WATER RESOURCES REPORT**

2 Mr. Cowles noted he did not include a written report in packets.

3 **Traer Creek Tank Update** – Mr. Cowles said the Traer Creek Tank project was awarded to DN
4 Tanks. Project completion is expected by the end of 2021.

5 **Water Demand Management Advisory Committee** – Mr. Cowles noted he was invited to
6 participate in an advisory committee regarding water demand management as it relates to
7 compact call avoidance. Many of the stakeholders are from the West Slope and are working
8 together to organize a program for temporary, compensated reduced water use.

9 **West Vail Interceptor Project** – Mr. Cowles and Mr. Schneider updated the board on the West
10 Vail Interceptor project, for which there were no successful bids. A related memo is attached
11 hereto as **Exhibit N** and incorporated herein by this reference, which outlines how staff will move
12 forward with this important project.

13 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

14 Ms. Johnson noted she did not include a written report in packets.

15 **Colorado River District Ballot Issue Update** – Ms. Johnson reported that the River District's
16 ballot issue passed handily in November. The funds from the ballot issue will provide about \$5
17 million in funding for water projects in the River District's service area.

18 **GENERAL COUNSEL REPORT**

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

20 **WATER COUNSEL REPORT**

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

22 **CJC Properties Water Rights Application** – Mr. Porzak reminded the board that the District
23 was a co-applicant with CJC Properties, the entity that owns the Chris Joufflas property in Wolcott,
24 on an application to quantify the CJC properties' historic consumptive use (HCU) credits for its
25 water rights. The referee issued a ruling and if no protests are filed in the 21-day protest period,
26 the judge will sign the final decree. The decree quantifies the average HCU's at 118.8 AF/year
27 with a maximum annual use of 139 AF/year in a dry year.

28 **Black Lakes Water Use** – Mr. Porzak noted that Black Lakes water will be released to
29 supplement Gore Creek streamflows this year; the Authority could utilize some of that water,
30 under an agreement with the District, preserving its Eagle Park Reservoir water.

31 **Option Agreement** – Mr. Porzak discussed the option agreement between the Authority and
32 District, a copy of which is attached hereto as **Exhibit O** and incorporated herein by this
33 reference. The agreement outlines the terms by which the District will provide 25 acre feet of
34 water to the Authority to serve new development; the term of the agreement is ten years or the
35 time at which Bolts Lake is operational, whichever comes first. Mr. Porzak said if the District

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1 offers additional water in the future, and it should be covered under a separate agreement. After
2 discussion and upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the option agreement be and hereby is approved as presented.

4 **EXECUTIVE SESSION**

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

9 **RESOLVED** to enter Executive Session at 2:46 p.m. to receive advice of counsel regarding
10 Bolts Lake and the community water plan, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
11 electronic record created as Mr. Collins opined the contents of the discussion would contain
12 privileged attorney-client communications.*

13 The regular meeting resumed at 2:59 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:59 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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14 _____
15 **Kate Burchenal, Director**

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19 **Dick Cleveland, Director**

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22 _____
23 **Steve Coyer, Treasurer**

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26 _____
27 **George Gregory, Secretary**

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30 _____
31 **Timm Paxson, Director**

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34 _____
35 **Bill Simmons, Chair**

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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.

43
44
45 _____
46 **Jim Collins, General Counsel**
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