

EAGLE RIVER WATER & SANITATION DISTRICT

Board of Directors Meeting

April 28, 2011

MINUTES

A Combined Special Meeting of the Boards of Directors of the Eagle River Water & Sanitation District (**District**) and the Upper Eagle Regional Water Authority (**Authority**) was held April 28, 2011, at 12:30 p.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District, 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

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

Debbie Buckley
Ludwig Kurz
Rick Pylman
Frederick P. Sackbauer IV
David Viele
Robert Warner Jr.
Darell Wegert

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 Pylman is owner and president of Pylman & Associates, Inc., a land planning consulting business that represents real estate development projects within the District. Director Viele is a principal Director, President and owner of Viele Construction, which has significant land ownership and business interests within the District, is a member of the Vail Planning Commission, and is a Board Member of Ski and Snowboard Club Vail, a non-profit corporation which may contract with the District. Director Viele also has management responsibilities over certain Glen Lyon property which lies near the District's wastewater treatment plant. Director Warner is a principal shareholder for Warner Developments, Inc., which has significant business interests with and within the District. Director Wegert is employed at Vail Valley Ace Hardware, which has a general purchasing agreement with the District. Also, Director Wegert's son is employed by Marcin Engineering, with which the District does business.

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

Tom Allender, Eagle-Vail Metropolitan District
Kristi Ferraro, Town of Avon
George Gregory, Berry Creek Metropolitan District
Tom Leonhardt, Arrowhead Metropolitan District
Jim Power, Beaver Creek Metropolitan District
Bill Simmons, Edwards Metropolitan District

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 Allender disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership and business interests within the Authority. Also, he is appointed by Vail Associates, Inc. to serve as a Director of both the Eagle Park Reservoir Company and the Clinton Ditch and Reservoir Company. Director Ferraro disclosed that she is a real estate and business law attorney and has clients who do business with the Authority. Also, her husband is a principal with East West Partners, a real estate development company with whom the Authority conducts business. Director Funk disclosed that her husband is the Vice President of Real Estate for Vail Resorts Development Company, which has significant land ownership and business interests within the Authority. Director Simmons disclosed that he is an employee of Vail Resorts, Inc., which has significant land ownership and business interests within the Authority.

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Also in attendance were:

1			
2	<u>District Staff</u>	14	Andy Strehler
3	Linn Brooks	15	
4	Becky Bultemeier	16	<u>Consultants</u>
5	Penny Bumgarner	17	James P. Collins, Collins Cockrel & Cole
6	Carol Dickman	18	Glenn Porzak, Porzak Browning & Bushong LLP
7	Angelo Fernandez	19	
8	Todd Fessenden	20	<u>Members of the Public</u>
9	Roby Forsyth	21	Dale Corporon, Cordillera Metropolitan District
10	Dennis Gelvin	22	Clyde Hanks, Beaver Creek Metropolitan District
11	Leslie Isom	23	Jenny Strehler, Town of Avon
12	Diane Johnson	24	Cliff Thompson, IKS Consulting
13	Catherine Lundy	25	Joe Wilson, Cordillera Metropolitan District

26 CALL TO ORDER

27 Chairman Sackbauer called the District meeting to order at 12:49 p.m. Chairman Leonhardt
28 of the Upper Eagle Regional Water Authority concurred.

29 PUBLIC COMMENT

30 Chairman Sackbauer discussed that morning's Colorado River Cooperative Agreement
31 announcement and read aloud Mr. Porzak's comments from the announcement. The Boards
32 and staff praised Mr. Porzak's efforts in achieving this monumental Agreement.

33 CONSIDERATION OF MINUTES

34 The minutes of the Combined Authority and District Meeting of March 24, 2011, were
35 considered. Upon motion duly made and seconded, it was unanimously

36 **RESOLVED** by the Upper Eagle Regional Water Authority Board that the minutes
37 of the March 24, 2011, Combined Authority and District Meeting hereby are
38 approved as presented.

39 **RESOLVED** by the Eagle River Water & Sanitation District Board that the minutes
40 of the March 24, 2011, Combined Authority and District Meeting hereby are
41 approved as presented. Director Wegert abstained.

42 REPORT BY WATER COUNSEL

43 **Climax Mine Permit Amendment** – Mr. Porzak updated the Boards on a recent hearing
44 before the Mined Land Reclamation Board regarding Climax's proposed permit amendment,
45 during which passage of the amendment failed. Mr. Porzak reserved further discussion for
46 executive session.

47 **Colorado River Cooperative Agreement** – Mr. Porzak discussed the Agreement, which sets
48 forth stipulations regarding any future Denver Water diversions of West Slope water, among

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1 other issues. He highlighted the virtual Shoshone Call, details of which are still being
2 negotiated. He expects the Agreement to be signed in late June.

3 **REPORT BY GENERAL COUNSEL**

4 **Cordillera Valley Club (CVC) Update** – Mr. Collins updated the Boards on ongoing
5 discussions with the CVC HOA related to two topics, which are being dealt with
6 simultaneously: CVC’s desired easement for access across the new tank site, and the
7 District’s possible purchase of a piece of land near its Edwards WWTP, which CVC owns.

8 **REPORT BY ASSISTANT GENERAL MANAGER**

9 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit A** and
10 incorporated herein by this reference.

11 **Urban Runoff Group Update** – Ms. Brooks updated the Boards on recent stormwater
12 sampling during warm days with substantial snowmelt. The next sampling phase will focus
13 on large runoff flows; a subsequent phase will capture samples from rainstorm events.
14 Discussion ensued regarding stormwater regulation, possible sources of pollution in urban
15 runoff and the issues in Gore Creek, Town of Vail infrastructure issues, and need for
16 permanent funding.

17 **Town of Avon 1041 Permit** – Ms. Brooks said staff is following developments with the
18 process and noted an Xcel Energy permit application was submitted to Avon. She explained
19 that Avon chose 1041 power regarding transportation interchanges, water and wastewater,
20 and utility facilities.

21 **Eagle and Summit County Wilderness Preservation Act (Act)** – Ms. Brooks noted that
22 Congressman Jared Polis introduced the Act, formerly the Hidden Gems Wilderness Proposal,
23 the bill for which would likely not be presented until the next congressional session in late fall.
24 Staff will continue to monitor related developments, and the map of the proposed wilderness
25 areas will be scrutinized to ensure no parcels have been added since the last proposal in 2010.
26 Ms. Brooks noted that other states include an emphasis on watershed values in management of
27 wilderness lands in wilderness legislation; the Forest Service indicated watershed values in
28 Colorado bills would help direct Forest Service management of these areas. Fritz Holleman of
29 Porzak, Browning, and Bushong LLP, is working on draft language towards this end.

30 **Board Committees** – Ms. Brooks distributed a summary of District, Authority, and joint
31 Board committees, a copy of which is attached hereto as **Exhibit B** and incorporated herein
32 by this reference. Directors Kurz and Wegert agreed to serve on the Easement Committee;

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1 Directors Allender and Pylman agreed to serve on the Urban Runoff Group Committee;
2 Director Wegert volunteered for the Non Revenue Water Committee, and an Authority
3 representative for this committee will be appointed after the next board meeting.

4 **Aurora Water Tour** – Ms. Brooks offered interested directors the opportunity to attend
5 Aurora Water’s annual facilities tour, August 11 – 12. Ms. Brooks will request seats on the
6 tour for one member of each Board, to be determined closer to the date of the tour, if seats
7 are offered.

8 **REPORT BY COMMUNICATIONS AND PUBLIC AFFAIRS MANAGER**

9 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit C** and
10 incorporated herein by this reference.

11 **Safe Drug Disposal Program** – Ms. Johnson reminded the boards of the U.S. Drug
12 Enforcement Administration “National Take Back Initiative” on April 30; the local
13 partnership is hosting collection sites in Vail, Edwards, Minturn, and Gypsum.

14 **Colorado River Cooperative Agreement Public Outreach** – Ms. Johnson informed the
15 Boards that the Colorado River Water Conservation District is coordinating public meetings
16 at locations throughout the Western Slope; these will include discussion of the Agreement
17 and water information of general interest to the host community. She is working with River
18 District staff to bring a meeting to the Eagle River Valley; the date has not been determined.

19 **Mini-Clinic: Interconnect Operations and Water Quality** – As part of Authority U, Mr.
20 Fessenden presented a Powerpoint on the Interconnect between the District and Authority
21 water systems and a presentation summary, copies of which are attached hereto as **Exhibits**
22 **D** and **E**, respectively, and incorporated herein by this reference. Discussion ensued
23 regarding the original construction of the interconnect, and the varying water hardness
24 throughout the District and Authority service areas.

25 **REPORT BY GENERAL MANAGER**

26 **Eagle Park Reservoir 3rd Quarter Update** – Mr. Gelvin presented Mr. Fessenden’s report
27 and memorandum on Eagle Park Reservoir releases and pump operations, copies of which
28 are attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this
29 reference.

30 **Homestake Releases for Teva Games** – Mr. Gelvin noted that water from Homestake
31 Reservoir is available for release for the Teva Games this year. As the early June release date
32 approaches, calculations will determine the appropriate amount of water to release, and
33 District employee Pete Miller will facilitate the release. Mr. Gelvin reminded the Boards that

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1 this water would be unavailable next year for the Games, as Homestake Reservoir undergoes
2 repairs and will not store any water; he also informed Teva organizers of this issue.

3 **Investment Policy and RFP Update** – Ms. Bultemeier informed the Boards that she will
4 send requests for proposal to outside investment firms on behalf of the District and Authority.
5 The Authority could benefit from an outside investment advisor, a service which it has not
6 previously used; a new approach may offer more active management of District funds.

7 **Authority Rate Study/Usage Review** – Ms. Bultemeier updated the District Board on the
8 Authority’s rate study and summarized the results: the current rate structure is rational, within
9 industry standards, and comparable to similar communities. She also noted the Authority’s
10 desire to manage a group of customers that use excessive amounts of water. She will continue
11 to share applicable information with the District Board.

12 **Combined Meeting Format** – Mr. Gelvin discussed the new combined meeting format. He
13 noted feedback from Authority Chairman Leonhardt, who suggested more interaction from
14 directors during the meetings. Mr. Gelvin appreciated the efficiency of the combined meeting
15 for directors, consultants, and staff; he noted staff will continue to find topics of mutual
16 interest to present to both Boards.

17 **Bennie’s Breakfast** – Mr. Gelvin reminded Directors to RSVP for the Bennie Atencio
18 Annual Breakfast on May 25, at which staff is recognized for the past year’s achievements.

19 Ms. Bumgarner and Messrs. Corporon, Thompson, and Wilson left the meeting at 2:14 p.m.

20 **EXECUTIVE SESSION**

21 Mr. Porzak requested the Boards enter into Executive Session to receive legal advice regarding
22 pending negotiations pursuant to §24-6-402(4)(b) and (e), C.R.S. He asked that no electronic
23 record be made, as the discussion would be entirely privileged attorney-client communications.
24 Upon motion duly made and seconded, it was unanimously

25 **RESOLVED** by the Eagle River Water & Sanitation District Board to enter into an
26 executive session at 2:15 p.m. to discuss attorney-client privileged issues concerning the
27 Climax Mine permit amendment, Wild and Scenic Management Plan, Forest Service
28 Meetings on Water Right Ownership, and the Columbine Ditch Junior Water Right
29 Claim, pursuant to §24-6-402(4)(b) and (e), C.R.S. with no electronic record created as
30 Mr. Porzak opined the discussion would contain privileged attorney-client
31 communications.*

32 **RESOLVED** by the Upper Eagle Regional Water Authority Board to enter into an
33 executive session at 2:15 p.m. to discuss attorney-client privileged issues concerning the

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1 Climax Mine permit amendment, Wild and Scenic Management Plan, Forest Service
2 Meetings on Water Right Ownership, and the Columbine Ditch Junior Water Right
3 Claim, pursuant to §24-6-402(4)(b) and (e), C.R.S. with no electronic record created as
4 Mr. Porzak opined the discussion would contain privileged attorney-client
5 communications.*

6 The regular meeting resumed at 2:49 p.m.

7 **Colorado River Basin Proposal** – Upon motion duly made and seconded, it was unanimously

8 **RESOLVED** by the Eagle River Water & Sanitation District to be a signatory to the Colorado
9 River Basin Proposal, with the stipulation that instream flow requirements are not included in the
10 plan.

11 **RESOLVED** by the Upper Eagle Regional Water Authority to be a signatory to the Colorado
12 River Basin Proposal, with the stipulation that instream flow requirements are not included in
13 the plan.

14 There being no further business to come before the Authority Board, the special meeting of the
15 Authority and the combined meeting of the Authority and District Boards adjourned at 2:50 p.m.

16 Thereafter, the Board of Directors of the Upper Eagle Regional Water Authority left the meeting;
17 Ms. Strehler and Messrs. Fessenden, Strehler, Thompson, and Wilson also left the meeting.

18 The Board of Directors of the Eagle River Water & Sanitation District then conducted the business of
19 its special meeting.

20 **SPECIAL MEETING OF THE EAGLE RIVER WATER & SANITATION DISTRICT**
21 **BOARD OF DIRECTORS**

22 The Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District
23 was held April 28, 2011, at 1:30 p.m., in the Walter Kirch Room of the Eagle River Water &
24 Sanitation District, 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the
25 applicable statutes of the State of Colorado.

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

- 27 Debbie Buckley
- 28 Ludwig Kurz
- 29 Rick Pylman
- 30 Frederick P. Sackbauer IV
- 31 David Viele
- 32 Robert Warner Jr.
- 33 Darell Wegert

34 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

37 Director Pylman is owner and president of Pylman & Associates, Inc., a land planning consulting business that
38 represents real estate development projects within the District. Director Viele is a principal Director, President and
39 owner of Viele Construction, which has significant land ownership and business interests within the District, is a
40 member of the Vail Planning Commission, and is a Board Member of Ski and Snowboard Club Vail, a non-profit
41 corporation which may contract with the District. Director Viele also has management responsibilities over certain

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1 Glen Lyon property which lies near the District's wastewater treatment plant. Director Warner is a principal
2 shareholder for Warner Developments, Inc., which has significant business interests with and within the District.
3 Director Wegert is employed at Vail Valley Ace Hardware, which has a general purchasing agreement with the
4 District. Also, Director Wegert's son is employed by Marcin Engineering, with which the District does business.

5 **CONSIDERATION OF MINUTES**

6 The portion of the minutes related to the District Regular Meeting of March 24, 2011, was
7 considered. Upon motion duly made and seconded, it was unanimously

8 **RESOLVED** that the portion of the minutes relating to March 24, 2011, District

9 Regular Meeting be accepted and hereby is approved as presented. Director Wegert
10 abstained.

11 **REPORT BY GENERAL COUNSEL**

12 **Board of Directors' Definition of Policy vs. Operations** – Mr. Collins presented the Policy
13 vs. Operations document, a copy of which is attached hereto as **Exhibit H** and incorporated
14 herein by this reference. He noted the document reflected Board direction from its previous
15 meeting. The Board accepted the document, which will be reviewed every few years.

16 **Ever Vail** – Mr. Collins said he would conduct his Ever Vail discussion in executive session.

17 **REPORT BY WATER COUNSEL**

18 **Raw Water Diversion Case Court Decision** – Mr. Porzak summarized the decision in the
19 case, in which the judge ruled in favor of the District. A copy of the ruling is attached hereto
20 as **Exhibit I** and incorporated herein by this reference. Discussion ensued over the
21 ramifications of this ruling.

22 **Eagle Park Reservoir Company (EPRC) Representative** – Mr. Porzak discussed the
23 recent change of District chairman, which could affect the District's EPRC representative.
24 Further discussion was tabled until the next meeting.

25 **REPORT BY GENERAL MANAGER**

26 **Housing Down Payment Assistance Program** – Mr. Fernandez distributed his memo, a
27 copy of which is attached hereto as **Exhibit J** and incorporated herein by this reference. The
28 Board discussed the request for increased program funding; further information will be
29 provided for the May meeting.

30 **Update on Executed Documents** – Mr. Gelvin noted that the District was repurchasing a
31 Stratton Flats property.

32 **Easements** – In response to a question, Ms. Brooks estimated over 100 easements that the
33 District needs to claim in Vail and Minturn.

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1 **Inline Booster Pump Failure** – In response to a question, Mr. Gelvin updated directors on
2 the ongoing discussions regarding the failure, potentially liable parties, and possible
3 prevention of the failure had the manufacturer informed the District of available additional
4 equipment. Mr. Gelvin noted that SGM was the project engineer.

5 **Town of Minturn Meter Upgrades** – Ms. Bultemeier discussed the District’s current radio
6 reading equipment for customer meters. The District is upgrading to newer, sealed radio
7 transmitters with a 20-year warranty, which prevent tampering and can still be read via the
8 same radio signal. After removal, the District will provide the older radio transmitters to
9 Minturn; this will allow District staff to obtain timely and accurate radio meter reads during
10 the winter. Minturn’s old meters required manual reading and were often impossible to
11 access during the winter because of snow blockage around buildings. Ms. Bultemeier noted
12 that Minturn expressed thanks for the equipment.

13 **CONSENT AGENDA**

14 The consent agenda was reviewed, a copy of which is attached hereto as **Exhibit K** and
15 incorporated herein by this reference. After review and discussion and upon motion duly
16 made and seconded, it was unanimously

17 **RESOLVED** to accept and approve the Contracts and Change Orders reflected in the
18 Contract Log, acknowledge receipt of the Monthly Financial Report, and approve the
19 Cash Disbursements contained in the Journal Summary through April 15, 2011.

20 **EXECUTIVE SESSION**

21 Mr. Collins requested the Board enter into Executive Session to receive legal advice pursuant to
22 §24-6-402(4)(b) and (e), C.R.S. He asked that no electronic record be made, as the discussion
23 would be entirely privileged attorney-client communications. Upon motion duly made and
24 seconded, it was unanimously

25 **RESOLVED** to enter executive session at 3:45 p.m. to discuss attorney-client privileged
26 issues concerning Easements and Ever Vail and a Wolcott Special Improvement District
27 pursuant to §24-6-402(4)(b) and (e), C.R.S. with no electronic record created as Mr.
28 Collins opined the contents of the discussion would contain privileged attorney-client
29 communications.*

30 The special meeting resumed at 4:24 p.m.

31 **Waiving of Potential Conflict of Interest** – Mr. Collins reported that the Hermes Group has
32 requested his legal services in forming several metropolitan districts in Wolcott as a

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1 mechanism to finance the infrastructure. Upon motion duly made and seconded, it was
2 unanimously

3 **RESOLVED** that the Board acknowledges and waives any conflict of interest for
4 Mr. Collins in working with the Hermes Group to form metropolitan districts in
5 Wolcott.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 4:25 p.m.

3 Respectfully submitted,

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6 _____
7 Secretary to the Meeting

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9 **MINUTES APPROVED, FORMAL CALL, AND**
10 **NOTICE OF MEETING WAIVED**

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13 _____
14 **Debbie Buckley, Secretary**

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17 _____
18 **Ludwig Kurz, Director**

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21 _____
22 **Rick Pylman, Director**

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25 _____
26 **Frederick P. Sackbauer IV, President/Chairman**

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30 **David Viele, Treasurer**

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34 **Robert Warner, Jr., Director**

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37 _____
38 **Darell Wegert, Director**

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

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45 _____
46 **Glenn Porzak, Esq.; Water Counsel**

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James P. Collins; General Counsel

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