

EAGLE RIVER WATER & SANITATION DISTRICT

Board of Directors Meeting

June 23, 2011

MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (**District**) was held June 23, 2011, at 11:00 a.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
Robert Warner Jr.
Darell Wegert

The following District Director was absent and excused:

David Viele

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.

Also in attendance were:

<u>District Staff</u>	34	Steve Sego
Linn Brooks	35	
Penny Bumgarner	36	<u>Consultants</u>
Robert Cawrse	37	James P. Collins, Collins Cockrel & Cole
Carol Dickman	38	Glenn Porzak, Porzak Browning & Bushong LLP
Angelo Fernandez	39	
Todd Fessenden	40	<u>Members of the Public</u>
Dennis Gelvin	41	Melissa Macdonald, Eagle River Watershed Council
Catherine Hayes	42	Martha Moore, Colorado River District
Leslie Isom	43	Jon Stavney, Board of County Commissioners
Diane Johnson	44	Cliff Thompson, IKS Consulting

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:07 a.m.

CONSIDERATION OF MINUTES

The minutes of the Regular Meeting of May 26, 2011, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the May 26, 2011, regular meeting hereby are approved as presented.

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1 **COLORADO RIVER DISTRICT OVERVIEW AND MUTUAL AFFAIRS**

2 Ms. Johnson distributed a memo regarding the Colorado River District (CRD), a copy of
3 which is attached hereto as **Exhibit A** and incorporated herein by this reference. Ms. Moore,
4 CRD Public Affairs Specialist, and Jon Stavney, CRD Director and Eagle County
5 Commissioner, were introduced. Ms. Moore distributed the CRD’s 2010 Annual Report, a
6 CRD fact sheet, and a pamphlet about Wolford Mountain Reservoir, copies of which are
7 attached hereto as **Exhibits B, C, and D**, respectively, and incorporated herein by this
8 reference, and highlighted information pertinent to the District. Mr. Porzak noted the
9 beneficial relationship between the CRD and District.

10 Ms. Moore and Mr. Stavney left the meeting at 11:38 a.m.

11 **REPORT BY ASSISTANT GENERAL MANAGER**

12 Ms. Brooks discussed her report, a copy of which is attached hereto as **Exhibit E** and
13 incorporated herein by this reference.

14 **2010 Annual Operations Report** – Ms. Brooks distributed the Report, a copy of which is
15 attached hereto as **Exhibit F** and incorporated herein by this reference. The Report
16 highlighted 2010 achievements and organizational efficiencies and should help Directors
17 focus on certain areas during FY 2012 budget planning. Directors appreciated staff efforts in
18 compiling the Report.

19 **Addition of New Positions** – Ms. Brooks expressed the District’s need to add three full-time
20 positions during the FY 2012 budget planning cycle. She noted an immediate need for an
21 additional Mechanical Electrical position; this work was previously performed by
22 consultants. Discussion ensued regarding the merits of performing this work in house. The
23 Board approved the immediate addition of the M/E position; the other two positions will be
24 discussed during budget planning.

25 **Eagle and Summit County Wilderness Preservation Act** – Ms. Brooks discussed previous
26 correspondence with Congressman Jared Polis’ office regarding the Board’s position on
27 designation of wilderness in the District and Authority services areas. She distributed maps
28 and proposed language defining watershed management values for possible inclusion in
29 future wilderness legislation, copies of which are attached hereto as **Exhibit G** and
30 incorporated herein by this reference. Ms. Brooks noted the City of Aurora supports this
31 language and will propose it to Congressman Polis. The Board directed Ms. Brooks to
32 support Aurora’s position and also propose the draft language to Congressman Polis.

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1 **Schmueser Gordon Meyer, Inc. (SGM) Update** – Ms. Brooks noted that former District
2 employee Chris Maines was hired by SGM, which may pursue a contract to operate the Red
3 Cliff Water and Wastewater Treatment Plant. If this occurs, it would replace some of the
4 current District operations there. Discussion ensued regarding this possibility.

5 The board took a short recess at 12:10 p.m. The meeting resumed at 12:19 p.m.

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

7 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit H** and
8 incorporated herein by this reference.

9 **Ever Vail** – Ms. Johnson said the meeting referenced in her report, between District and
10 Town of Vail staff, is scheduled for June 28.

11 **Water Conservation Plan (Plan)** – Ms. Johnson said the meeting referenced in her report, to
12 review the 2009 draft plan, is scheduled for June 27. Discussion ensued regarding the
13 importance of the Plan being useful to the District beyond meeting a State requirement.

14 **Eagle River Valley State of the River Meeting** – Ms. Johnson distributed a DVD of the
15 meeting and associated handouts, copies of which are attached hereto as **Exhibits I and J**,
16 respectively, and incorporated herein by this reference. She provided a wrap-up of the event,
17 per the summary in her memo, and thanked the River District and Eagle River Watershed
18 Council for their help with planning.

19 **REPORT BY GENERAL COUNSEL**

20 **Distribution and Collection Facility Property** – Mr. Collins met with county
21 commissioners regarding possible District purchase of Tract E, which is directly west of the
22 Edwards WWTP. He is awaiting a response regarding the proposed offer.

23 **Downs Property** – Mr. Collins noted another overture was made to the Downs Family
24 regarding possible purchase of their property on Highway 6 in Edwards.

25 **Employee Housing Program** – In response to various questions, Mr. Collins suggested the
26 discussion regarding the Employee Housing Program be undertaken in executive session.

27 **REPORT BY WATER COUNSEL**

28 **Raw Water Diversion Case** – Mr. Porzak noted that the appeals deadline had passed for this
29 case, which was ruled in the District’s favor; no appeals were filed.

30 **Colorado River Endangered Fish Biological Opinion/10825 Water Environmental**
31 **Assessment** – Mr. Porzak presented the Assessment, a copy of which is attached hereto as
32 **Exhibit K** and incorporated herein by this reference. He discussed the requirement for East

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1 and West Slope provision of 10,825 acre-feet (af) of water to protect endangered fish on a
2 stretch of the Colorado River near Grand Junction. East and West Slope parties will provide
3 water from Granby and Reudi Reservoirs, respectively. Mr. Porzak also reminded the Board
4 that they contributed to the cost of the Assessment; he noted an ongoing attempt to procure
5 federal funding to cover the cost of the “10825” water since it protects endangered species.

6 **Orchard Mesa Irrigation District (OMID) Inefficiency Finding** – Mr. Porzak discussed
7 OMID, a frequent objector of past and present District and Authority water rights
8 applications. The 10825 Environmental Assessment revealed OMID annually wastes
9 17,000af of irrigation water.

10 **Wolford Mountain Reservoir Augmentation Plan (09CW191)** – Mr. Porzak presented
11 letters to remaining objectors, the State, OMID, and the other Grand Valley parties, copies of
12 which are attached hereto as **Exhibits L** and **M**, respectively, and incorporated herein by this
13 reference. He noted the state’s objection constitutes speculation in water and that OMID’s
14 inefficiency finding suggests this and other Authority and District applications should not
15 injure OMID, as it claims. Mr. Porzak also noted that the current District supply is equivalent
16 to about half a year’s water use by its customers; obtaining enough storage water to serve
17 customers for up to two years is common practice.

18 **Eagle River Valley State of the River Meeting** – Mr. Porzak noted a good meeting and
19 reiterated that the District and Authority took the proper precautions to protect the Eagle
20 River from any potential Eagle Mine contamination; this topic was discussed at the meeting.

21 **District’s Representative for Eagle Park Reservoir Company (EPRC)** – Mr. Porzak noted
22 that the Annual Shareholders and Board of Directors meetings would be held shortly after
23 this meeting. He reminded Directors that the District representative to EPRC is appointed and
24 can be reviewed or changed at the Board’s pleasure.

25 **REPORT BY GENERAL MANAGER**

26 **Housing Down Payment Assistance Program Request** – Mr. Gelvin presented the Request
27 and background materials, copies of which are attached hereto as **Exhibit N** and
28 incorporated herein by this reference. Mr. Fernandez summarized the Program’s proposed
29 changes to help reduce District risk and incentivize employees to repay housing loans more
30 quickly. Discussion ensued regarding the current housing market, risks involved with District
31 loans to employees, the security offered by deed-restricted sales, and other similar programs
32 in the Eagle County area. Further discussion was reserved for executive session.

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1 **Quarterly Housing Update** – Mr. Gelvin presented the Update, a copy of which is attached
2 hereto as **Exhibit O** and incorporated herein by this reference. In response to a question, Mr.
3 Fernandez noted that he is working with the Stratton Flats developer to ensure the security of
4 the District’s option payment in that development for future housing.

5 Ms. Bumgarner, Ms. Macdonald, and Messrs. Cawrse and Thompson left the meeting at 1:11 p.m.

6 **EXECUTIVE SESSION**

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

11 **RESOLVED** to enter executive session at 1:12 p.m. to discuss attorney-client privileged
12 issues concerning the Water Conservation Plan and Wolcott Reservoir pursuant to §24-6-
13 402(4)(b) and (e), C.R.S. with no electronic record created as Mr. Porzak opined the
14 contents of the discussion would contain privileged attorney-client communications.*

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

19 **RESOLVED** to continue executive session at 1:35 p.m. to discuss attorney-client
20 privileged issues concerning the Employee Housing Program pursuant to §24-6-402(4)(b)
21 and (e), C.R.S. with no electronic record created as Mr. Collins opined the contents of the
22 discussion would contain privileged attorney-client communications.*

23 The regular meeting resumed at 2:11 p.m.

24 **Employee Housing Down Payment Assistance Program** – After discussion and upon motion duly
25 made and seconded, it was unanimously

26 **RESOLVED** that for transactions involving deed-restricted employee housing units,
27 District staff will continue to handle purchases and sales of employee housing units
28 including second mortgages (limited to 10% of the purchase price), subject to
29 availability of funds approved by the District Board. For open market properties,
30 District staff and the Housing Subcommittee will review each request for a second
31 mortgage; whether a second mortgage is offered and if so, in what amount, will be at

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1 the discretion of the Housing Subcommittee. Any increase in availability of funds for
2 second mortgages will also be funded at the discretion of the Housing Subcommittee.

3 **CONSENT AGENDA**

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

7 **RESOLVED** to accept and approve the Contracts and Change Orders reflected in the
8 Contract Log, acknowledge receipt of the Monthly Financial Report, and approve the
9 Cash Disbursements contained in the Journal Summary through June 10, 2011.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:12 p.m.

3 Respectfully submitted,

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7 Secretary to the Meeting

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

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14 **Debbie Buckley, Secretary**

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18 **Ludwig Kurz, Director**

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22 **Rick Pylman, Director**

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

_____ **James P. Collins; General Counsel**