

Eagle River Water & Sanitation District
Board of Directors Meeting
June 23, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 23, 2016, at 11:30 a.m., in the District's Walter Kirch Room, 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

The following Directors were present, thereby constituting a quorum:

Tom Allender
Steve Friedman
George Gregory
Bill Simmons
Frederick P. Sackbauer IV

The following Directors were absent and excused:

Steve Coyer
Paul Testwuide

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:

Directors Allender and Gregory disclosed that they also serve on the Board of the Upper Eagle Regional Water Authority (Authority). Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other ski areas. Director Friedman serves on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Sackbauer is employed by Vail Resorts, Inc., which has significant land ownership and business interests within the District. Director Simmons disclosed that he is the General Manager of the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the board of the Edwards Metropolitan District. Director Testwuide disclosed that he performs consulting for Vail Resorts, his former employer, owns water rights in two states, and occasionally uses the District's water counsel, Glenn Porzak, as his personal attorney.

Also in attendance were:

<u>District Staff</u>	32	Jason Sica
Linn Brooks	33	Brian Tracy
Jason Cowles	34	James Wilkins
Camille Cuypers	35	<u>Consultants</u>
Carol Dickman	36	Jim Collins, Collins Cockrel & Cole
Sage Ebel	37	Glenn Porzak, Porzak Browning & Bushong LLP
Catherine Hayes	38	<u>Public</u>
Diane Johnson	39	Kim Langmaid, Walking Mountains Science Center
Melissa Mills McLoota		

CALL TO ORDER

Director Sackbauer called the meeting to order at 11:32 a.m.

ACTION ITEMS

Conflict of Interest Disclosure – An updated conflict of interest letter was filed for Director Simmons, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. Mr. Collins noted a letter would be written and filed for Director Gregory as well.

Resolution Honoring Kim Langmaid – Chair Sackbauer welcomed former Director Langmaid and thanked her for coming. He read a resolution honoring her for her many contributions and accomplishments during her time on the Board, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference. She thanked the Board and expressed appreciation for the opportunity to serve and learn about the complexity of the District's operations. She also said she looked forward to future opportunities to collaborate with the District. Ms. Langmaid left the meeting at 11:37 a.m.

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1 **Resolution Honoring Debbie Buckley** – Chair Sackbauer said former Director Buckley was unable to
2 attend. He noted the resolution honoring her many contributions and accomplishments during her time
3 on the Board, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this
4 reference.

5 **Oaths of Office** – It was noted that staff administered an Oath of Office to appointed Director Coyer, a
6 copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference.

7 **Consideration of Minutes** – The minutes of the regular meeting of May 26, 2016, were considered.
8 Upon motion duly made and seconded, it was

9 **RESOLVED** that the minutes of the May 26, 2016, regular meeting be accepted and hereby are
10 approved as presented.

11 **District Committees** – The Board discussed vacancies on various committees due to changes in
12 Board membership. Ms. Brooks noted Director Coyer expressed interest in serving on certain
13 committees, including Employee Housing, Water Demand Management, and Real Estate and New
14 Development. The Board appointed the following directors to fill the vacancies: Sackbauer and Coyer
15 (Employee Housing), Gregory (Real Estate/New Development), Coyer (Hahnwald Barn), Allender and
16 Friedman (Water Quality), and Coyer (Water Demand Management). The Board also determined the
17 Wilderness Committee could remain dormant for the time being. An updated copy of the board
18 committee membership memo is attached hereto as **Exhibit E** and incorporated herein by this
19 reference.

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

22 **GENERAL MANAGER REPORT**

23 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
24 herein by this reference. The monthly reports were also acknowledged, copies of which are attached
25 hereto as **Exhibit H** and incorporated herein by this reference.

26 **Joint Meetings** – The Board discussed whether it was desirable to hold monthly joint meetings of
27 the District and Authority Boards to discuss topics of mutual concern and so staff and counsel
28 only reported on such items once. Discussion ensued, and Vice Chair Friedman expressed
29 concern about protecting the integrity of each separate Board, especially in light of the fact that
30 some directors serve on both Boards.

31 **FINANCE REPORT**

32 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit I** and incorporated
33 herein by this reference.

34 **Water Sales and Development Impact Fee Revenues** – Mr. Wilkins noted May water sales
35 were close to projections and development impact fee revenues were coming in as spring
36 construction projects commence. He summarized last month's discussion regarding future years'
37 sales projections, noting that staff would begin to take into account Beaver Creek and Vail

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1 Mountain closing dates, weather projections, and peak tourist weeks, among other items. In
2 response to a question, Mr. Wilkins said the current budget would stay in place; if revised
3 projections are needed, it would not be apparent until later in the summer. He also noted any
4 additional, unbudgeted revenues collected would be placed in the general fund.

5 **Wells Fargo Purchasing Program Rebate** – Mr. Wilkins discussed the District's purchasing
6 card program, which was implemented four years ago. A related memo is attached hereto as
7 **Exhibit J** and incorporated herein by this reference. Based on projected spending levels, the
8 District is likely to qualify for a rebate of approximately \$14,000 this year. In response to a
9 question, Mr. Wilkins said almost every employee has a purchasing card and limits are variable
10 based on that employee's specific need and role. He noted the purchasing card program allows
11 his department to better track spending and ensure purchases are authorized and appropriate.

12 **SpyGlass Telecommunications Audit** – Mr. Wilkins discussed a District telecommunications
13 audit performed by SpyGlass in fall 2015 to identify cost saving opportunities. A related memo is
14 attached hereto as **Exhibit K** and incorporated herein by this reference. Mr. Wilkins said some
15 recommendations have been successfully implemented; others will be employed in the coming
16 months and are expected to yield additional savings. He also outlined staff-level efforts that have
17 resulted in significant savings, noting that these items were done in the spirit of the business
18 optimization initiative (BOI), although were not part of any formal BOI events.

19 OPERATIONS REPORT

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

22 **Eagle Park Reservoir Company Quarterly Report** – Mr. Tracy discussed the EPRC quarterly
23 operations report and noted the board of directors and annual shareholders meetings would be
24 held later that day. Mr. Tracy also discussed a recent meeting with Climax representatives to
25 discuss Eagle Park water quality and increase cooperation. He said Mr. Porzak would elaborate
26 further during his report.

27 **Regulation 31 Rulemaking Hearing Update** – Mr. Tracy summarized recent developments
28 regarding the Reg. 31 rulemaking hearing and discussed related information, copies of which are
29 attached hereto as **Exhibit M** and incorporated herein by this reference. Reg. 31 deals with
30 temperature and metals standards for cold water streams. He noted the most recent rulemaking
31 hearing results were favorable for the District and Authority. Ms. Brooks emphasized the success
32 the District and Authority have had in getting involved with such rulemaking hearings at the
33 beginning, rather than waiting until costly and ineffective regulations are enacted. This front-end
34 involvement allows both entities to impact the decision-making process; provide relevant data and
35 comments; and achieve significant cost savings. Ms. Brooks specifically discussed the
36 importance of the District and Authority's recent Reg. 31 temperature standard request; if their

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1 recommendation was not accepted, it would have resulted in about \$10 million in wastewater
2 treatment plant upgrades to reduce the temperature of treated effluent before it was discharged to
3 the river and may not have had the benefit to aquatic life that was intended.

4 The Board took a short recess for lunch at 12:05 p.m. The regular meeting resumed at 12:28 p.m.

5 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

6 Ms. Johnson presented the Communications and Public Affairs Report, a copy of which is attached
7 hereto as **Exhibit N** and incorporated herein by this reference.

8 **Consumer Confidence Reports** – Ms. Johnson discussed the Consumer Confidence Reports,
9 which are an annual, required communication to customers regarding drinking water quality. The
10 reports for 2015 were recently mailed to Authority and District customers. There were no
11 violations in 2015.

12 **Vail Farmers' Market** – Ms. Johnson said the Vail Farmers' Market began on June 19. The
13 District is again staffing a booth to provide drinking water and interact with customers. The market
14 runs until early October. In response to a question, Ms. Johnson said the District's booth was
15 staffed by employees who can flex their schedules to accommodate time spent at the market. Mr.
16 Tracy noted it was good training for employees to interact with customers.

17 **Colorado River Basin Update** – Ms. Johnson discussed levels in Lakes Powell and Mead and
18 the continuing media coverage this topic is receiving, especially as Lake Mead continues to drain
19 year to year. The Board discussed possible federal actions that could be implemented if critical
20 water levels are reached in Lake Mead. Ms. Johnson said Colorado River Water Conservation
21 District general manager Eric Kuhn is very knowledgeable and offered to discuss this topic further
22 at the July 28 meeting. The Board agreed to hold a joint meeting with the Authority Board for this
23 presentation.

24 **GENERAL COUNSEL REPORT**

25 **Dismissal from Milligan, et al Lawsuit** – Mr. Collins said the District was recently dismissed
26 from a lawsuit stemming from a 2015 incident by which a contractor dug on a property without
27 procuring a water line locate from the District. The contractor hit and broke a water line, which
28 subsequently damaged two homes on Forest Road. Mr. Collins does not expect an appeal to be
29 filed in the case.

30 **Claim of Easements Project** – Mr. Collins said Becky Peterson of the CIP department was
31 moving forward with this project.

32 **Liability of District Employees** – Mr. Collins cited a memo he provided to Ms. Brooks regarding
33 the liability of District employees. A copy of the memo is attached hereto as **Exhibit O** and
34 incorporated herein by this reference.

35 **Angler's Preserve Easement** – Mr. Collins said it appeared that the needed easement was
36 being finalized by the developer and property owner.

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1 **Hahnewald Barn Update** – Mr. Collins noted he would discuss the deadline for barn removal
2 with the town of Avon after the Avon Drinking Water Facility ground lease is completed.

3 **July Meeting** – Mr. Collins said he would be absent for the July 28 meeting and would not send a
4 replacement from his firm unless any there are any pressing legal matters that appear prior to the
5 meeting.

6 **WATER COUNSEL REPORT**

7 **District Water Rights Report** – Mr. Porzak discussed whether the board wanted his firm and
8 Tom Williamsen to prepare a report on the District's water rights and water agreements similar to
9 the reports prepared for the Authority members. Mr. Porzak said such a report would analyze the
10 District's current water demands and the demands at full buildout. Such a report would provide
11 important information for the board to determine how much additional storage is likely needed
12 from the potential Eagle River MOU project. Mr. Porzak also said the Wolcott development
13 appeared to be moving forward, as the Hermes Group is working to procure financing for the
14 development; the District is obligated to serve this development. The Board directed Mr. Porzak
15 to work with Mr. Williamsen to prepare such a water right report for the District.

16 **Federal Water Rights Protection Act** – Mr. Porzak discussed a recent conversation with Sen.
17 Bennet's Washington D.C. staff regarding the federal Water Rights Protection Act. Mr. Porzak
18 urged passage of the act and suggested the recently approved Colorado Water Rights Protection
19 Act could serve as a template. He also gave Sen. Bennet's staff background on Forest Service
20 conduct from 2011 to present, noting the adverse effects of the proposed Forest Service
21 directives as well as the importance of water rights to western states.

22 **Wilderness Update** – Mr. Porzak said recent work with Sen. Bennet's Washington D.C. staff on
23 wilderness language for future legislation has been very productive. The group discussed adding
24 language in a separate provision that would include use of mechanized equipment, including
25 aircraft, to remediate damage to watershed wilderness areas caused by fire and flooding events.
26 Mr. Porzak also noted a July 21 meeting was scheduled with Rep. Polis and the board chairmen
27 in Vail. Discussion ensued regarding whether staff expected any wilderness proponents to attend
28 the July meeting.

29 **Upcoming Water Rights Diligence Filings** – Mr. Porzak said two District water rights diligence
30 applications were pending, including the Vail Whitewater Course and Red Sandstone Reservoir.
31 Two objectors remain in the Vail Whitewater Course case: the CWCB and a private citizen who
32 owns no water rights. Additionally, diligence for the Wolcott water rights is due by the end of July.

33 **Meeting with Climax Mine Representatives** – Mr. Porzak discussed a recent meeting he and
34 staff attended with Climax Mine local and corporate officials. Topics of discussion included
35 partnership on a potential Eagle Park Reservoir enlargement. The group also discussed the
36 importance of maintaining the high water quality in the reservoir, which Climax must do based on

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1 the original purchase agreement and the more recent agreement concerning the environmental
2 protections to Eagle Park Reservoir required as part of the amended permit for the Climax Mine.
3 Ms. Brooks said attendees on behalf of EPRC were able to effectively communicate that when
4 Climax requests relaxed regulations and permit standards, the Reservoir Company has no choice
5 but to comment to the Water Quality Control Commission to ensure protection of water quality for
6 downstream users, including the District, the Authority, and their customers.

7 **ERMOU Projects Update** – Mr. Porzak discussed a recent meeting with Eagle River MOU
8 parties to review potential options for collaborative projects.

9 **Upcoming Service Area Tour** – The Board discussed an upcoming service area tour and
10 meeting scheduled for July 25–26, during which the District and Authority will host many
11 representatives from the various ERMOU partners. Discussion ensued regarding transportation
12 and attendance. These topics would be discussed by the Eagle Park Reservoir Company Board
13 later that day.

14 At 1:24 p.m. all remaining staff, with the exception of Ms. Brooks and Ms. Johnson, left the meeting.

15 **EXECUTIVE SESSION**

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

20 **RESOLVED** to enter executive session at 1:25 p.m. to discuss attorney-client privileged
21 issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
22 electronic record created as Mr. Porzak opined the contents of the discussion would contain
23 privileged attorney-client communications.*

24 The regular meeting resumed at 1:37 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:38 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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13 _____
14 **Tom Allender, Treasurer**

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17 _____
18 **Steve Coyer, Director**

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22 **Stephen Friedman, Vice Chair**

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26 **George Gregory, Secretary**

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30 **Frederick P. Sackbauer IV, President/Chair**

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34 **Bill Simmons, Director**

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38 **Paul Testwuide, 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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Jim Collins, General Counsel