

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**December 15, 2016**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held December 15, 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 Coyer  
Steve Friedman  
George Gregory  
Bill Simmons  
Frederick P. Sackbauer IV, *via phone*  
Paul Testwuide

**Also in attendance were:**

<u>District Staff</u>	23	Siri Roman
Tug Birk	24	Micah Schuette
Linn Brooks	25	James Wilkins
Jason Cowles	26	<u>Consultants</u>
Carol Dickman	27	Jim Collins, Collins Cockrel & Cole
Maureen Egan	28	Glenn Porzak, Porzak Browning & Bushong LLP
Catherine Hayes	29	<u>Public</u>
Debbie Hoffman	30	Pam Hopkins, Hopkins Architecture
Diane Johnson	31	Whitney Hopkins, Hopkin Architecture
Ali Kelkenberg	32	Leah Mayer, LKSM Design
Melissa Mills McLoota	33	Larissa Read, Common Ground Environmental Consulting
Glen Phelps	34	Rick Pylman, Pylman & Associates
Connie Nunley		

**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 Gregory also serves on the board of the Berry Creek Metropolitan District and occasionally undertakes development and construction activities within the District and Authority service areas. 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.

**CALL TO ORDER**

Acting Chair Friedman called the meeting to order at 11:54 a.m.

**INTRODUCTIONS/PUBLIC COMMENT**

Guests were introduced, including those in attendance to discuss the Stillwater PUD: the Hopkins, Ms. Mayer, Ms. Read, and Mr. Pylman. The newest District planner, Mr. Schuette, was also introduced.

**ACTION ITEMS**

**Consideration of Minutes** – The minutes of the regular meeting of November 17, 2016, were considered. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the November 17, 2016, regular meeting be accepted and hereby are approved as presented. Acting Chair Friedman abstained.

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1       **Proposed 2017 Meeting Schedule** – Ms. Brooks discussed a memo regarding the proposed  
2       2017 meeting schedule, a copy of which is attached hereto as **Exhibit A** and incorporated herein  
3       by this reference. Discussion ensued regarding staff conflicts during certain months with the  
4       regular meeting schedule for the fourth Thursday of the month; however, moving such meetings  
5       to the third Thursday can cause scheduling conflicts for Directors. The Board requested all  
6       meetings remain on the fourth Thursday of the month, with the exception of November and  
7       December, when the meetings will be held on the third Thursday. The Board also requested Ms.  
8       Brooks appoint another staff member to attend any meetings in her absence. Staff will  
9       communicate the schedule to the Authority Board.

### **Resolution for Joint Regional Water Efficiency Plan with Upper Eagle Regional Water**

10       **Authority** – Ms. Egan presented a board action request and related resolution regarding a joint  
11       regional water efficiency plan for the Authority and District, copies of which are attached hereto as  
12       **Exhibits B and C**, respectively, and incorporated herein by this reference. The Board discussed  
13       the efficiencies of doing a regional plan. In response to a question, Ms. Egan noted the Authority  
14       and District would apply for a Colorado Water Conservation Board (CWCB) grant to complete the  
15       plan and said the CWCB would request such a resolution to confirm that both entities were  
16       moving forward with the joint plan. After discussion and upon motion duly made and seconded, it  
17       was unanimously  
18       was unanimously

19               **RESOLVED** that the resolution for a Joint Regional Water Efficiency Plan with the Upper  
20               Eagle Regional Water Authority be and hereby is approved as presented.

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

### **GENERAL MANAGER REPORT**

23       Ms. Brooks discussed her report, a copy of which is attached hereto as **Exhibit E** and incorporated herein  
24       by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit F**  
25       and incorporated herein by this reference.  
26

27       **Lead and Copper Sampling** – Ms. Brooks summarized the Safe Drinking Water Act's Lead and  
28       Copper Rule requirements and said the Authority and District systems have been on reduced  
29       monitoring due to low or no levels of detection. The Authority's scheduled monitoring period was  
30       earlier this year; results from each sampled home remained low or non-detected. Sampling  
31       results were communicated to customers with some information about lead in drinking water –  
32       which usually comes from a home's own plumbing. However, some required language was  
33       inadvertently omitted from the letters to customers, which could result in a violation. A follow-up  
34       letter will be sent to participating customers, and staff will notify state regulators. Ms. Brooks  
35       proposed a public outreach effort to inform customers about lead in drinking water; the Board  
36       agreed that transparency is best and noted some related issues to include. The Environmental  
37       Protection Agency has increased its focus on lead in drinking water and has been updating the

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1           Lead and Copper Rule. Colorado regulators have notified staff that the sampling frequency for  
2           lead and copper will increase from the current once every three years to at least annually. Ms.  
3           Brooks informed the Board that this increase may require an additional employee to complete the  
4           sampling and reporting.

5           The Board took a short recess for lunch at 12:21 p.m. at which time Mr. Sackbauer left the  
6           teleconference. The regular meeting resumed at 12:30 p.m., and Mr. Collins entered the meeting at 12:41  
7           p.m.

### 8           **STILLWATER PUD PRESENTATION**

9           Mr. Wilkins welcomed consultants involved in planning for the Stillwater PUD development. He  
10          discussed the report included in packets, a copy of which is attached hereto as **Exhibit G**, and  
11          incorporated herein by this reference. He gave an overview of the Stillwater project, the history of the  
12          District's employee housing program, and the current local housing crisis, by which median home price  
13          increases have far exceeded the median family income increases. This has made home ownership  
14          financially unfeasible for many locals. The situation is further compounded by the lack of affordable rental  
15          housing, as short-term vacation rentals have gained popularity locally, and the pool of long-term rental is  
16          shrinking.

17          Mr. Pylman discussed the predevelopment analysis he and his colleagues undertook after  
18          receiving Board direction in March. Ms. Mayer presented a PowerPoint, a copy of which is attached  
19          hereto as **Exhibit H** and incorporated herein by this reference. The presentation included information on  
20          data gathering, employee-driven insights for design, proposed unit mix, and next steps. Discussion  
21          ensued regarding the unit mix, potential infrastructure changes dependent upon the unit mix, employee  
22          feedback on the housing program and proposed development, and the importance of employee housing  
23          availability for recruitment and retention. Mr. Pylman also noted the site plan, which must accommodate  
24          the grade on the property and the access point, which needs to align with the Vail Interfaith Chapel  
25          entrance, even though this is not the preferred location. He also discussed the benefits of including some  
26          upgraded finishes and amenities, which will require less frequent replacement and add to the appeal of  
27          the units.

28          The Board also discussed project financing, which would likely include bonding through the  
29          wastewater subdistrict because of the project scope and size; historically fund balance has been used for  
30          employee housing projects. The Board agreed that the employee housing program is essential to the  
31          District's ability to recruit and retain employees. After discussion and upon motion duly made and  
32          seconded, it was unanimously

33                       **RESOLVED** to authorize the consultants to spend up to \$190,000 to move forward with  
34                       the conceptual plan, further evaluate inclusion of additional units in the development, and  
35                       prepare the application to Eagle County for the Board's review prior to submittal.

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1 The Board requested a progress report from the consultants in three months, at the Board's  
2 March meeting. Ms. Egan, Ms. McLoota, Ms. Nunley, Ms. Roman, and all consultants for the Stillwater  
3 PUD left the meeting at 1:51 p.m.

### 4 **FINANCE REPORT**

5 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit I** and incorporated  
6 herein by this reference. He noted Authority water sales were slightly above projections and District sales  
7 were slightly below, though both entities were well within year-to-date expectations. Tap fees are above  
8 projections and expected to increase further in 2016 as developers pay before 2017 increases go into  
9 effect.

### 10 **OPERATIONS REPORT**

11 The operations report was presented, a copy of which is attached hereto as **Exhibit J** and incorporated  
12 herein by this reference.

13 **Drought and Lakes Powell and Mead** – In response to a question, Ms. Brooks discussed the  
14 most recent graph of Lake Mead, water levels in which continue to decline, making additional  
15 drought years more difficult to weather. Staff noted Lake Powell was last full in 1999, and this was  
16 largely why the 2003/2004 drought was successfully endured. Lake Powell's level has increased  
17 slightly in recent years due to above-average total water generated in its watershed. Current  
18 conditions are concerning for a variety of reasons, especially as lower basin states, including  
19 California, continue to use more water than their allocation of water per the Colorado River  
20 Compact.

### 21 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

22 Ms. Johnson noted she did not include a written report for the monthly packets.

23 **Gore Creek Hotline** – Ms. Johnson informed the Board of the town of Vail's newly established  
24 hotline, 970-476-GORE (4673), to anonymously report suspected spills or potential hazards to  
25 Gore Creek. Such events can be reported 24/7 and will be received by the town's environmental  
26 sustainability office during business hours and directed to the Vail Police department afterhours.

### 27 **GENERAL COUNSEL REPORT**

28 **Tap Fee Policy for Public Use Facilities** – Mr. Collins discussed the District and Authority's tap  
29 fee policy for public use facilities. The Board reaffirmed the policy, which allows financing of tap  
30 fees for public use facilities for up to ten years. Per the policy, the District and Authority will not  
31 waive the fees, as such facilities have a measurable impact on the system and both entities have  
32 a "growth pays for growth" philosophy. Staff also noted the fees are based on square footage;  
33 thus, smaller units pay lower fees.  
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## WATER COUNSEL REPORT

**Water Rights Appraisals** – Mr. Porzak discussed the most recent water rights appraisals for the District and Authority of approximately \$49 million and \$50 million, respectively. A related breakdown of water rights and their values is attached hereto as **Exhibit K** and incorporated herein by this reference.

**Colorado River Compact Update** – Mr. Porzak discussed the State Engineer’s recently submitted draft rules regarding compliance with the Republican River Compact. He noted the draft rules do not exclude pre-Compact water rights and do not administer post-Compact rights according to the priority system. He suggested the District and Authority work with the River District to oppose the rules, as they could set an adverse precedent for future State Engineer rules governing the administration of the Colorado River Compact. Mr. Porzak also presented related materials, including a letter written to the State Engineer regarding the Republican River Compact call and a memo regarding the impact of a Colorado River Compact Call on pre-Compact water rights, copies of which are attached hereto as **Exhibits L** and **M**, respectively, and incorporated herein by this reference.

**Eagle River MOU Projects** – Mr. Porzak discussed a recent Colorado Supreme Court ruling in the Ivanhoe-Buske case, which will prevent Aurora and Colorado Springs from expanding the use of existing Homestake Reservoir transmountain diversions by storing those diversions in new east slope storage facilities. A copy is attached hereto as **Exhibit N** and incorporated herein by this reference. He also noted this makes the Eagle River MOU projects even more important to the East Slope stakeholders.

Ms. Hoffman and Mr. Schuette left the meeting at 2:17 p.m.

## **EXECUTIVE SESSION**

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

**RESOLVED** to enter executive session at 2:18 p.m. to discuss attorney-client privileged issues concerning Eagle Park Reservoir matters, Eagle River MOU projects, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion would contain privileged attorney-client communications.\*

At 2:38 p.m., before the discussion of CRCA matters, all staff left the meeting, with the exception of Ms. Brooks and Ms. Johnson.

The regular meeting resumed at 2:41 p.m.

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**ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 2:42 p.m.

Respectfully submitted,

\_\_\_\_\_  
Secretary to the Meeting

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

\_\_\_\_\_  
**Tom Allender, Treasurer**

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**Steve Coyer, Director**

\_\_\_\_\_  
**Stephen Friedman, Vice Chair**

\_\_\_\_\_  
**George Gregory, Secretary**

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

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**Bill Simmons, Director**

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**Paul Testwuide, Director**

\*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**