



# Eagle River Water & Sanitation District

## WATER COUNSEL REPORT

**Changes to State Water Staff** – Mr. Porzak noted state engineer Dick Wolfe is retiring. Additionally, the director of the Colorado Water Conservation Board (CWCB), James Eklund, is resigning his post to pursue private legal practice. The state engineer is a governor-appointed post, while the head of the Department of Natural Resources will appoint the new CWCB director. Mr. Porzak noted an abundance of new employees in the state attorney general's office.

**St. Jude's Recreation Water Bill** – Mr. Porzak updated on the bill, which passed the House of Representatives Agriculture Committee, where it originated. He expected the bill to pass the House and that the final form of the bill will preserve all existing decreed recreational water rights. Additional provisions of the bill may or may not survive because they do not have wide support in the Senate.

**Amicus Brief in Consolidated Ditches Case** – Mr. Porzak discussed the 2016 case, in which the Water Court found in Denver Water's favor. The Court ruled that Denver Water could reuse any of its water besides that from the Moffat system, which was specifically prohibited by a 1940s agreement between Denver Water and Consolidated Ditches. Consolidated Ditches appealed the decision to the Colorado Supreme Court. With the approval of the District and Authority Boards, Mr. Porzak submitted an amicus brief in support of Denver Water on the boards' behalf, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. In response to a question, Mr. Porzak said if the decision was reversed, Denver Water could lose 10,000 AF of water, which could put increased pressure on West Slope water.

**Piney River Unit and Wolcott Reservoir** – Mr. Porzak presented a memo regarding the Piney River Unit water right, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference. He also outlined the history of the water right and the proposed Wolcott Reservoir. When Denver abandoned its water rights in the Eagle River valley, it retained the rights to a joint use reservoir along with the Authority and District and the Colorado River Water Conservation District, for which the Authority and District have veto power. If Denver Water no longer wishes to pursue the Wolcott Reservoir, the Board authorized Mr. Porzak to commence discussions with Denver to obtain the land Denver owns near 4 Eagle Ranch. Mr. Porzak noted a meeting on March 28 with Denver Water at which this and other topics of mutual interest will be discussed.

## **ACTION ITEMS**

**Consideration of Minutes** – The minutes of the regular meeting of February 23, 2017, were considered. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the February 23, 2017, regular meeting be accepted and hereby are approved as presented. Director Armour abstained.

**Rules and Regulations Revisions** – Mr. Birk discussed revisions to the Rules and Regulations and presented a related board action request and redlined copy of the document, copies of which are

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1 attached hereto as **Exhibits C** and **D**, respectively, and incorporated herein by this reference. Staff  
2 extensively updated the appendices, especially those related to water and wastewater materials, as well  
3 as the addition of a new appendix regarding earthwork. The revisions were reviewed by staff, legal  
4 counsel, and the rules and regulations board subcommittee. Discussion ensued regarding specific  
5 provisions regarding land use authorities and variances. Mr. McCaulley clarified that a new state  
6 regulation only requires annual testing of known backflow devices, which make up roughly 15% of the  
7 Authority and District accounts. Staff must report the percentages of verified vs. non-verified backflow  
8 devices. The regulation does not require a retrofit program for non-verified devices. Upon motion duly  
9 made and seconded, it was unanimously

10 **RESOLVED** that the revised Rules and Regulations be and hereby are approved as  
11 amended.

12 **Alpine Drive Easement** – The Board tabled the easement vacation to a future meeting.

13 **Claim of Easement Program** – Ms. Peterson presented a board action request and related forms,  
14 copies of which are attached hereto as **Exhibits E** and **F**, respectively, and incorporated herein by this  
15 reference. She and Mr. Collins explained the history of the easement program and its purpose, which is to  
16 ensure that District and Authority infrastructure on private property is accessible. Because each situation  
17 is unique, such easements are handled on a case-by-case basis. Mr. Collins clarified that the District can  
18 and does offer permanent encroachment authorizations for cases in which infrastructure runs under  
19 buildings or extensive landscaping or other improved areas. After discussion and upon motion duly made  
20 and seconded, it was unanimously

21 **RESOLVED** that the Claim of Easement program, including the processes and forms, be and  
22 hereby is approved as presented.

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

### 25 **STRATEGY ITEMS**

26 **Director District 2 Appointee** – The Board welcomed newly appointed Director Armour to his  
27 first meeting. He thanked staff and board members for getting him up to speed on his new  
28 position.

29 **Board Committee Appointments** – The Board discussed committee vacancies and appointed  
30 Director Armour to the Organizational Development Committee.

31 **Stillwater PUD Update** – Mr. Wilkins discussed the Stillwater PUD and a related memo, a copy  
32 of which is attached hereto as **Exhibit H** and incorporated herein by this reference. Discussion  
33 ensued regarding progress on the development, including a request for proposal for a general  
34 contractor; potential for undertaking a construction manager at risk (CMAR) approach to the  
35 project; and the need for a board-level review of the project at an upcoming meeting.

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# Eagle River Water & Sanitation District

## 1 **FINANCE REPORT**

2 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit I** and incorporated  
3 herein by this reference. He noted District and Authority water sales were below projections, which are  
4 now based on the five-year model. The town of Vail also saw decreased sales tax for February, which it  
5 attributed to the unavailability of rooms at the Vail Cascade and Holiday Inn. This could be one reason for  
6 lower water sales in the District's service area. Visitor numbers valley-wide appear similar to past years,  
7 so the disparity in water sales is somewhat of an anomaly, especially for the Authority. Discussion ensued  
8 regarding potential revenue impacts of the shortfall. Mr. Wilkins also stated that he expects impact fee  
9 revenues to increase as builders begin projects in the springtime, as the number of connection  
10 applications received by the Customer Service department recently increased.

## 11 **GENERAL MANAGER REPORT**

12 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit J** and incorporated herein  
13 by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit K**  
14 and incorporated herein by this reference.

15 **Succession Planning Update** – Ms. Brooks noted annual discussions and ongoing dialogue  
16 regarding succession plans for the District and Authority's key consultants. She said she was  
17 satisfied with the current succession plans for each of the four main consultants.

## 18 **OPERATIONS REPORT**

19 The operations report was presented, a copy of which is attached hereto as **Exhibit L** and incorporated  
20 herein by this reference.

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

22 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit M** and incorporated  
23 herein by this reference.

24 **Town of Vail Community Meeting** – Ms. Johnson discussed the town of Vail's annual  
25 community meeting the prior week. She and Ms. Schweig shared information on Fats, Oils, and  
26 Grease (FOG) and their effects on the wastewater system with attendees, as well as engaging in  
27 discussion regarding various topics of interest related to water and wastewater service.

28 **Vail Mountain SNOTEL Data** – Ms. Johnson noted a delay in the snow water equivalent data for  
29 the Vail Mountain SNOTEL site; increases or decreases of a certain size within a day's time  
30 trigger a manual review of the numbers before official release. In the current case, the data was  
31 adjusted before its eventual release. Ms. Johnson and Ms. Brooks also discussed snowpack in  
32 general, runoff scenarios, and various factors that affect water supply availability on the Front  
33 Range and West Slope. In response to a question, Ms. Johnson discussed a small portion of  
34 conditional Recreational In-Channel Diversion (RICD) water rights on Gore Creek; depending on  
35 spring runoff and resulting streamflows, some of the water rights could be made absolute if  
36 streamflows are robust enough to support recreation in April.

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1        **Edwards Odor Issues** – Ms. Johnson discussed recent odor issues in Edwards that attracted  
2        many comments and feedback from residents in the Miller Ranch and surrounding area over the  
3        past week. Staff monitored the feedback via various social media channels throughout the week;  
4        simultaneously District field operations crews searched the wastewater system for overflows and  
5        backups, as well as storm sewer issues (for which the District is not responsible). These searches  
6        turned up no odor-causing issues, nor did searches by local fire crews and gas utility companies.  
7        Earlier in the day, staff discovered a pond east of the west entrance to Arrowhead that was  
8        emitting a strong odor, was visibly discolored, and contained dead fish. Staff is following up with  
9        Eagle County Environmental Health Department, as well as other stakeholders to conduct testing  
10       and discuss a plan of action to ensure mitigation of the odors and protect local waterways.

11      At 3:16 p.m., Mr. Schuette and Ms. Schweig left the meeting.

### 12      **EXECUTIVE SESSION**

13      Mr. Collins requested the Board enter Executive Session to receive legal advice regarding a land acquisition,  
14      pursuant to §24-6-402(4)(a) C.R.S. He asked that no electronic record be made, as the discussion would be  
15      entirely privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

16                      **RESOLVED** to enter executive session at 3:17 p.m. to discuss attorney-client privileged  
17                      issues concerning term limits and director districts, pursuant to §24-6-402(4)(a) C.R.S. with  
18                      no electronic record created as Mr. Collins opined the contents of the discussion would  
19                      contain privileged attorney-client communications.\*

20      The regular meeting resumed at 3:22 p.m.

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**ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 3:23 p.m.

Respectfully submitted,

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Secretary to the Meeting

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

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**Tom Allender, Treasurer**

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**Bob Armour, Director**

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**Steve Coyer, Director**

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**Stephen Friedman, Vice Chair**

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**George Gregory, Secretary**

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

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**Bill Simmons, 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.

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**James P. Collins, General Counsel**

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**Glenn Porzak, Water Counsel**