

# EAGLE RIVER WATER & SANITATION DISTRICT

Board of Directors Meeting

March 26, 2015

## MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held March 26, 2015, at 11:00 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  
Debbie Buckley  
Steve Friedman  
Bill Simmons  
Frederick P. Sackbauer IV  
Paul Testwuide

**The following Directors were absent and excused:**

Kim Langmaid

### 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 District and Authority. He also serves on the Boards of the Upper Eagle Regional Water Authority, Eagle Park Reservoir Company, and the Clinton Ditch and Reservoir Company. Director Friedman serves on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Langmaid disclosed that she founded and is employed by Walking Mountains Science Center, which receives funding from parties with which the District does business, including the US Forest Service, Vail Resorts, Towns of Vail and Avon, Vail Recreation District, Eagle County, and Holy Cross Energy. Directors Sackbauer and Simmons are employed by Vail Resorts, Inc., which has significant land ownership and business interests within the District. Directors Simmons also serves on the Boards of the Upper Eagle Regional Water Authority, and the Edwards, Holland Creek, and Red Sky Ranch Metropolitan Districts. 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>	34	Glen Phelps
Tug Birk	35	Siri Roman
Linn Brooks	36	Steve Segó
John Cahill	37	James Wilkins
Jason Cowles	38	<u>Consultants</u>
Carol Dickman	39	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	40	Glenn Porzak, Porzak Browning & Bushong LLP
Leslie Isom	41	<u>Public</u>
Diane Johnson	42	Tommy King, the Paint Man
Melissa Mills McLoota	43	Doug Serrill, Eagle River Watershed Council

### CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:17 a.m.

### INTRODUCTIONS

Guests were introduced, including Doug Serrill of the Eagle River Watershed Council. He gave the board information regarding the River District's annual highway cleanup on April 25.

### ACTION ITEMS

**Meeting Minutes** – The minutes of the Regular Meeting of February 26, 2015, were considered.

Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the February 26, 2015, Regular Meeting be accepted and hereby are approved as presented.

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1       **Vacation of Easement Request** – Mr. Birk discussed his vacation of easement request and  
2       for 223 Beaver Dam Road and a related resolution, copies of which are attached hereto as  
3       **Exhibits A and B**, respectively, and incorporated herein by this reference. After discussion  
4       and upon motion duly made and seconded, it was unanimously

5               **RESOLVED** that the vacation of easement at 223 Beaver Dam Road be and hereby  
6               is approved as presented.

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

9       **STRATEGY ITEMS**

10       **Water Impact Fee Study** – Ms. Brooks discussed the Authority’s recent water impact fee  
11       study, which resulted in a methodology to better track, calculate, and periodically update the  
12       Authority’s plant investment fee. The Authority Board approved a fee of approximately  
13       \$9,000/SFE at its meeting, which is roughly double the previous plant investment fee. Ms.  
14       Brooks noted the District’s water and wastewater fund fees would be reviewed using the  
15       same methodology, and staff would present recommended updates in the coming months.

16       **REPORT BY GENERAL MANAGER**

17       **Water Supply Planning Efforts** – Ms. Brooks updated the Board on efforts to engage the  
18       county and towns in water supply planning efforts to ensure integration between their land  
19       use approval and the District’s development approval process. Ms. Brooks suggested sending  
20       more robust responses to referral letters regarding developments’ potential impacts on  
21       streamflows, water quality, nutrient loading, and that land use agencies heavily influence  
22       how their applicants ultimately use water. The Board supported this effort.

23       **Streamflow Modeling** – Ms. Brooks said the Colorado River Basin Roundtable wants to  
24       create a streamflow model to determine the basin’s non-consumptive needs and evaluate the  
25       impacts of future projects and Trans-Basin Diversions. Ms. Brooks serves on a roundtable  
26       committee to investigate a model’s scope and benefits. She cautioned the committee that the  
27       existence of multiple models would cause problems and recommended that the roundtable  
28       support the state’s model, and as a separate effort, develop a geographical data base to  
29       compile qualitative information such as riparian health and water quality impacts. She also  
30       suggested that the District and Authority share the framework of their model, currently under  
31       development, with the state so that all are working with the same information. Discussion

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1           ensued regarding why the Colorado River Water Conservation District had not taken the lead  
2           on such a modeling effort.

3           **Authority Update**– Ms. Brooks noted the Authority Board signed a resolution that morning  
4           to accept the Traer Creek water storage tank into its system. She noted the tank was near final  
5           completion with only punchlist items remaining; it is online and functioning well.

6           **REPORT BY DIRECTOR OF OPERATIONS**

7           Mr. Fessenden presented his report, a copy of which is attached hereto as **Exhibit D** and incorporated  
8           herein by this reference.

9           **Forest/Rockledge Road Project** – Mr. Fessenden discussed the project and reported it was  
10          over budget due to rising construction costs. Staff had anticipated this, and funds can be  
11          allocated from other areas to account for the shortfall. Discussion ensued regarding project  
12          details. The Board asked that staff confirm that all local entities, including the town of Vail  
13          and Vail Recreation District, are coordinated in preparation for this project.

14          **Eagle River MOU Update** – Mr. Fessenden discussed ongoing review of joint project  
15          possibilities with the Eagle River MOU work group. Staff received input from consultants  
16          Tom Williamsen and Bob Weaver regarding the potential projects, including review of in-  
17          basin reservoir sites. Mr. Fessenden said the MOU work group has divided the agreed-upon  
18          projects to maximize the efforts and expertise of those involved.

19          **EWWTf Project Status** – Mr. Fessenden noted issues with pile drilling at the project site.  
20          Staff, the contractor, and the project engineer are working to solve this with minimal delays  
21          to the project.

22          **Water Line Break Benchmarking** – Mr. Fessenden noted a line break benchmark presented  
23          at the February meeting was inaccurate and presented a graph with the correct figures, a copy  
24          of which is attached hereto as Exhibit E and incorporated herein by this reference. The  
25          District is actually within the American Waterworks Association’s (AWWA) recommended  
26          standard of breaks per 100 miles of pipe. The previous reported number had included breaks  
27          in customer service lines, which are not considered in the AWWA standard.

28          The Board took a short recess for lunch at 12:05 p.m. The regular meeting resumed at 12:20 p.m.

29          **Stormwater/Urban Runoff Group Update** – Ms. Roman presented information from the  
30          Black Gore Creek Steering Committee Meeting. She noted that the Colorado Department of  
31          Transportation (CDOT) is using more magnesium chloride than sand/decier to reduce travel  
32          times and keep roads open. Also, the Eagle River Watershed Council is urging CDOT to

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1 develop a long-term maintenance plan for the Basin of Last Resort (BOLR) near Vail Pass as  
2 the upper third of the basin is reaching capacity. CDOT is working on the preliminary design  
3 for the access road and identified funds for design and environmental clearances;  
4 construction funds are still needed, with cost estimates at a little more than \$1M. CDOT also  
5 ordered a vacuum truck for the Vail/Summit area which should be delivered this summer and  
6 will help with cleaning catch basins near the road.

7 **Vail Valley Medical Center Master Plan** – Ms. Roman discussed the VVMC  
8 redevelopment master plan and noted the District owns the parcel west of VVMC’s parking  
9 lot, where Middle Creek runs through town. As part of the master plan, water quality  
10 improvements are planned for the lot and surrounding areas.

11 **Town of Avon Strategic Plan** – Ms. Roman discussed the town’s strategic plan, which has a  
12 section focused on water quality, including supporting the Urban Runoff Group and its water  
13 quality improvement plan.

14 **REPORT BY DIRECTOR OF FINANCE**

15 New Finance Director James Wilkins was introduced; he is taking over for Becky Bultemeier, who is  
16 retiring after 28 years of service. Mr. Wilkins noted water sales are tracking close to projected  
17 numbers. He will be meeting with the auditors shortly and expects final audit delivery in mid-June.

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

19 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit F** and incorporated  
20 herein by this reference.

21 **Town of Vail Annual Meeting** – Ms. Johnson said the District is again participating as a  
22 partner entity in the annual town of Vail community meeting scheduled for March 31. Capital  
23 Improvement Program staff will attend to provide information about the upcoming project on  
24 Rockledge Road and mid-Forest Road.

25 **Statewide Basin Roundtable Summit** – Ms. Johnson reported on the March 12 Summit,  
26 which included representatives from throughout the state to discuss the Colorado Water Plan.  
27 Discussion focused on funding, permitting, legislation, agriculture, and the seven points of  
28 the “conceptual framework.”

29 **Colorado Water Plan Update** – Ms. Johnson said Eagle River region stakeholders met  
30 March 2 and prioritized projects included in the Colorado Basin Roundtable’s Basin  
31 Implementation Plan. The Eagle River MOU is a top priority for the region; protecting the

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1 Shoshone hydroelectric plant call is the top priority basin-wide. The final draft of the BIP is  
2 due to the Colorado Water Conservation Board April 17.

3 **Legislative Update** – Ms. Johnson discussed HB 15-1144, which would ban the manufacture  
4 and sale of products with microbeads, effective in January 2019. The bill is awaiting the  
5 governor’s signature. Microbeads are in many personal care products and end up in  
6 waterways because they pass through wastewater treatment facilities. She also discussed HB  
7 15-1259, the “rain barrel bill.” The bill passed the Colorado House and was introduced  
8 March 25 in the Senate. The District has no issue with the bill, which would allow  
9 homeowners to capture about 600 gallons of rain water for outdoor use.

10 **Retirements and Appointments** – Ms. Johnson said Colorado Supreme Court Justice Greg  
11 Hobbs will retire August 31. Also, Governor Hickenlooper named James Eklund as  
12 Colorado’s Commissioner to the Upper Colorado River Commission on February 6. He  
13 replaces John McClow, who served in the role since 2013.

### 14 **REPORT BY ADMINISTRATION MANAGER**

15 **Employee Housing Summary for 2014** – Ms. Isom presented the 2014 employee housing  
16 report, a copy of which is attached hereto as **Exhibit G** and incorporated herein by this  
17 reference. She noted Directors Buckley and Langmaid serve on the housing committee and  
18 new finance director Wilkins will also join the committee. Ms. Isom said roughly 36% of  
19 current employees are using the program and about 45% of employees have utilized  
20 employee housing during their tenure at the District. She noted various changes in the  
21 program and its administration; Connie Nunley is now overseeing the rental program, and  
22 tenants have been empowered to take care of maintenance and repair issues in their units.

### 23 **REPORT BY WATER COUNSEL**

24 **Federal Water Right Directives** – Mr. Porzak discussed the three federal water rights  
25 directives introduced by the Forest Service. He noted the groundwater directive was  
26 withdrawn due to many negative comments. He expects the Forest Service to reintroduce a  
27 revised version of the water right permit clause directive in May or June.

28 **Federal Legislation (Water Right Protection Act)** – Mr. Porzak said Representative Tipton  
29 and Senator Barrasso intend to introduce the Water Rights Protection Act, which would  
30 protect water rights, including those of the ski industry, municipal providers, agricultural  
31 providers, and all other state rights. After discussion and upon motion duly made and  
32 seconded, it was unanimously

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1           **RESOLVED** that the Board hereby does support the Water Rights Protection Act as  
2           modified to remove the reference to Forest Service ownership of groundwater that  
3           lies beneath the national forest.

4           **State Legislation (Senate Bill 64)** – Mr. Porzak gave background on similar legislation last  
5           year, which was killed in the Senate. The bill passed in the Senate this year but was killed in  
6           the House State Affairs committee. Mr. Porzak noted multiple Representatives who voted  
7           against the bill have since expressed regret; the bill could be reintroduced as a late bill. Sen.  
8           Sonnenberg is willing to take the bill through the Senate again, but wants confirmation that it  
9           will pass in the House. Mr. Porzak will continue to monitor the situation.

10          **Colorado River Compact Water Bank** – Mr. Porzak discussed the possibility of a Western  
11          Slope water bank using historic consumptive use credits; this could protect against a future  
12          compact call and could potentially involve a variety of East and West Slope parties. A March  
13          3 meeting was held with Colorado River Water Conservation District representatives,  
14          including President Jon Stavney, to further discuss this concept. Mr. Porzak will schedule a  
15          meeting with Jim Lochhead of Denver Water on the matter.

16          **New Public Trust Initiative** – Mr. Porzak discussed a new public trust initiative, the  
17          language for which has been approved by the Title Board. He noted this version is more  
18          sweeping than past initiatives. Ms. Brooks said the proponents need over 97,000 signatures to  
19          get on the November ballot. The Colorado Water Congress is working to provide tools for  
20          local water providers to communicate with their constituents about the initiatives and their  
21          consequences.

22          **EXECUTIVE SESSION**

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

27                   **RESOLVED** to enter executive session at 1:17 p.m. to discuss attorney-client privileged  
28                   issues concerning the Shoshone Power Plant water right, pursuant to §24-6-402(4)(a)(b)  
29                   and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the  
30                   discussion would contain privileged attorney-client communications.\*

31          The regular meeting resumed at 1:35 p.m.

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1 **Shoshone Acquisition** – The Board discussed funding for a potential Shoshone Power Plant  
2 acquisition. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to increase the amount of funding for the Shoshone Acquisition to a  
4 maximum of \$13,334 and authorize Mr. Porzak to sign the common interest  
5 document and cost-sharing agreement on behalf of the District.

6

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:37 p.m.

3 Respectfully submitted,

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5  
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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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15 **Tom Allender, Director**

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19 **Debbie Buckley, Secretary**

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22 \_\_\_\_\_  
23 **Stephen Friedman, Treasurer**

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26 \_\_\_\_\_  
27 **Kimberly Langmaid, Director**

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30 \_\_\_\_\_  
31 **Frederick P. Sackbauer IV, President/Chairman**

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34 \_\_\_\_\_  
35 **Bill Simmons, Director**

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38 \_\_\_\_\_  
39 **Paul Testwuide, Director**

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

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44 \_\_\_\_\_  
45 **Glenn Porzak, Water Counsel**