

Eagle River Water & Sanitation District
Board of Directors Meeting
May 28, 2015
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held May 28, 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 (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. 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 Director for the Authority, an on the Boards of 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>	35	Elena Jones
Tug Birk	36	John McCaulley
Linn Brooks	37	Melissa Mills McLoota
Jason Cowles	38	Jeff Schneider
Carol Dickman	39	Karen Shanley
Angelo Fernandez	40	Ed Trainer
Todd Fessenden	41	James Wilkins
Catherine Hayes	42	<u>Consultants</u>
Leslie Isom	43	Eric Jorgenson, Collins Cockrel & Cole
Diane Johnson	44	Glenn Porzak, Porzak Browning & Bushong LLP

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:15 a.m.

Gore Creek RICD – Chairman Sackbauer called attention to a photo in the May 13 issue of the Vail Daily that showed kayakers competing in a Vail Recreation District event, noting the importance of the recreational in-channel diversion (RICD) in Gore Creek. He thanked Mr. Porzak for his ongoing efforts in securing water rights for recreational flows in the March – October period and making flows absolute.

ACTION ITEMS

Meeting Minutes – The minutes of the Regular Meeting of March 26, 2015, were considered. Upon motion duly made and seconded, it was unanimously

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

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1 **Rockledge Road IGA** – On behalf of project manager John Cahill, Ms. Isom discussed the board
2 action request and intergovernmental agreement with the town of Vail to coordinate
3 improvements on Rockledge and Forest Roads, copies of which are attached hereto as **Exhibits**
4 **A and B**, respectively, and incorporated herein by this reference. After discussion and upon
5 motion duly made and seconded, the Board unanimously

6 **RESOLVED** that the intergovernmental agreement with the town of Vail for Rockledge
7 and Forest Roads be and hereby is approved as presented.

8 **Rules and Regulations Revisions** – Mr. Birk presented a board action request form regarding minor
9 revisions to the Rules and Regulations, a copy of which is attached hereto as **Exhibit C** and
10 incorporated herein by this reference. He explained the revisions were being proposed to maintain
11 consistency with an updated application for the construction review process. In response to a question,
12 Ms. Brooks clarified that some of the changes were made in response to developer feedback. After
13 discussion and upon motion duly made and seconded, it was unanimously

14 **RESOLVED** that the Rules and Regulations revisions be and hereby are approved as
15 presented.

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

18 **Quarterly Financial Report** – Mr. Wilkins discussed the quarterly financial report, a copy of
19 which is attached hereto as **Exhibit E** and incorporated herein by this reference. He noted project
20 costs remained within budget, but timing changes did necessitate budget transfers from 2014 to
21 2015. He called attention to a significant variance in personnel costs due to the transition to ADP,
22 the District's new payroll processing company. Costs for the first payroll in 2015 were debited in
23 2014. Mr. Wilkins noted operations were in the black with no deficit spending projected. He also
24 called attention to higher-than-budgeted first quarter water sales, though the precipitation in May
25 could translate into lower second quarter sales. The Board acknowledged receipt of the report.

26 **STRATEGY ITEMS**

27 **Wastewater General Obligation Bond Update** – Mr. Wilkins discussed his memo regarding the
28 wastewater GO bonds, a copy of which is attached hereto as **Exhibit F** and incorporated herein
29 by this reference. He said bond issuance would likely be in early 2016 as there was no pressing
30 need to get the bonds earlier. Mr. Wilkins met with the audit/budget committee earlier in the
31 month, members of which were satisfied with the later bond issue date.

32 **Wilderness Discussion with the Pew Charitable Trusts** – Chairman Sackbauer discussed a
33 recent meeting with Rick Ridder representing the Pew Charitable Trusts regarding wilderness and
34 the District's position. Ms. Brooks said she provided the attendees a history of wilderness and
35 reasons for designating wilderness. Ms. Brooks noted Bob Weaver was drafting a memo
36 summarizing his investigation on wilderness issues in preparation for a Board discussion of a
37 wilderness policy. Ms. Brooks shared a draft statement proposed to be used while the final policy

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1 is being developed. The Board requested any policy to clearly state that the District must maintain
2 its ability to access current and future facilities for mitigation or restoration efforts, and watershed
3 concerns must be adequately addressed if the District is to support such legislation.

4 **REPORT BY WATER COUNSEL**

5 **Federal Legislation Update** – Mr. Porzak discussed the Water Rights Protection Act and a list of
6 the Act’s cosponsors, a copy of which is attached hereto as **Exhibit G** and incorporated herein by
7 this reference. He noted many cosponsors are from states without ski areas on Forest Service
8 land, showing the widespread support for the Act. He also said the Colorado congressional
9 delegation supports the legislation.

10 **Clean Water Act Update** – In response to a question, Mr. Porzak noted the Environmental
11 Protection Agency (EPA) and Army Corps of Engineers released the revised Waters of the United
12 States (WOTUS) rule, which is part of the Clean Water Act. Bob Weaver will review the rule on
13 behalf of the Authority and District and report back to the Boards on the potential effects. Mr.
14 Porzak said a recent hearing on the Water Rights Protection Act also included discussion of the
15 WOTUS rule; many congressional delegates did not view this and other EPA regulations favorably.

16 **Forest Service Directive Update** – Mr. Porzak discussed three Forest Service directives. The
17 groundwater directive received much negative feedback and was withdrawn. The two other
18 directives are in various states of revision. Mr. Porzak called attention to a recent revision of the
19 water rights permit clause, which would give the Forest Service ownership of water rights used on
20 Forest Service land – whether or not the water originated on that land. The feedback on the
21 revision from the National Ski Areas Association was very negative, and the Forest Service is
22 again rewriting the directive.

23 **2015 State Legislation Summary** – Mr. Porzak discussed the summary, a copy of which is
24 attached hereto as **Exhibit H** and incorporated herein by this reference. He said most of the
25 water bills introduced during the legislative session were killed due to tension between the House
26 and Senate, which were under control of different parties.

27 **Senate Bill 15-183** – Mr. Porzak discussed the bill, a copy of which is attached hereto as **Exhibit I**
28 and incorporated herein by this reference. The bill would ensure that the Water Courts could not
29 requantify water rights previously quantified except in unique cases with new circumstances;
30 otherwise the Court would be bound by the previous quantification. Mr. Porzak detailed the many past
31 efforts of the State Engineer to reduce historic consumptive use credits along with any water rights
32 changes. He said this was important legislation, especially for water rights that will be used for future
33 growth or may be needed only during drought years, for example.

34 **Authority’s Seniors First Supreme Court Appeal** – Mr. Porzak discussed the Authority’s
35 appeal, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this
36 reference. He summarized the case, in which the State Engineer mandated the Authority divert a
37 senior water right prior to diverting a junior one. Mr. Porzak said the rights have many differences

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1 and based on past precedent, the Authority should be able to divert whichever right it chooses.

2 The District may wish to file an amicus brief in the case.

3 **REPORT BY GENERAL COUNSEL**

4 **Easement Project** – Mr. Jorgenson, attending on behalf of Mr. Collins, discussed Mr. Collins’
5 recommendation that the easement project be scaled back to pursue only easements for which
6 there is a pressing need. In response to a question, Ms. Brooks confirmed that the District
7 received almost every easement for which it asks. The Board felt that the level of aggressiveness
8 of the program was an administrative consideration to be left to the General Manager.

9 **Mountain Star Sewer Cost Recovery Funds** – Mr. Jorgenson discussed the needed Mountain
10 Star tank, which would be built in the Authority’s service area. The Mountain Star developer, Jen
11 Wright, donated the \$105,000 from his sewer cost recovery fund for the tank. Mr. Jorgenson
12 noted these funds should be held by the District as the wastewater provider. After discussion and
13 upon motion duly made and seconded, it was unanimously

14 **RESOLVED** that the District hereby does authorize the holding of \$105,000 for the
15 Mountain Star tank on behalf of the Authority.

16 The Board took a short recess for lunch at 12:25 p.m. The regular meeting resumed at 12:40 p.m.

17 **REPORT BY GENERAL MANAGER**

18 **Eagle River MOU Projects** – Ms. Brooks discussed a recent meeting with some ERMOU
19 principals for a presentation from the technical group studying the various project options. Viable
20 projects were identified, including an Eagle Park Reservoir enlargement, Bolts Lake development;
21 and potential Whitney Creek, Blodgett, and Wolcott reservoirs. A summary and scope of work for
22 each possibility will be drafted to move forward. Mr. Porzak said the project review was a creative
23 process that included a wide range of alternatives. The Board discussed Wolcott, which could
24 feasibly provide in-basin storage if a pumpback was constructed, but this would likely be cost
25 prohibitive. It was noted that this would not be an MOU project but could be used to store
26 consumptive use credits to meeting future Colorado River Compact calls.

27 **Water Rights Hydrology Model** – Ms. Brooks said the model is near completion and is
28 producing data. She noted the importance of including historical data to capture unique events
29 like droughts. Staff is researching whether additional effort to include a longer period of historical
30 data will be worth the added cost.

31 **Packet Delivery** – Ms. Brooks requested feedback on staff’s current practice of emailing
32 relevant, time-sensitive consultant items to the Board on the Tuesday before the Board meeting.
33 The Board said this was fine, and it would be okay to receive the regular packet later if it allowed
34 the inclusion of more time-sensitive information; however, the current practice of regular packet
35 delivery one week before the meeting is sufficient.

36 **Authority Matters** – Ms. Brooks discussed a leak in the Traer Creek Tank, which the Authority
37 now owns. The tank was leaking at approximately 425 gallons/minute on May 25 and has since

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1 been drained; it will be offline for the foreseeable future. A June 1 meeting of involved parties is
2 scheduled to determine next steps. In response to a question, Mr. Fessenden confirmed that the
3 tank passed stringent tests prior to acceptance.

4 **REPORT BY DIRECTOR OF OPERATIONS**

5 Mr. Fessenden presented his report, a copy of which is attached hereto as **Exhibit K** and incorporated
6 herein by this reference.

7 **Camp Hale Stakeholders Group Update** – Mr. Fessenden said the Authority and District joint letter
8 of support regarding the Camp Hale Restoration was submitted to the U.S. Forest Service. Main
9 points included the need for continued stream and water rights access and the inclusion of a wetlands
10 bank there. He noted Aurora and Colorado Springs also submitted letters addressing those same
11 points on which the USFS scoping letter was silent.

12 **EWWTFF Project Status** – Mr. Fessenden updated on the project at the Edwards Wastewater
13 Treatment Facility. A contractor change order request was denied in the absence of sufficient
14 supporting data. The project is moving ahead as scheduled, although weather-related challenges
15 have occurred due to above-average rainfall in May.

16 **Urban Runoff Group/Stormwater Update** – Mr. Fessenden said the town of Vail is taking
17 leadership regarding urban runoff and stormwater issues, including efforts to upgrade the East
18 Vail interchange to reduce the effects of I-70 runoff in the area. A contractor was also hired to
19 remap Vail's stormwater system and trace any outfalls upstream to determine where pipes
20 branch off and whether any connections between the storm and sanitary systems exist.

21 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

22 Mr. Fernandez presented his report, a copy of which is attached hereto as **Exhibit L** and incorporated
23 herein by this reference.

24 **New Website** – Mr. Fernandez discussed the scheduled launch of the District's new website on
25 June 1. The site will feature easy and intuitive navigation, comply with the District's new branding,
26 and provide analytics regarding visitors and usage. Mr. Fernandez gave a site demonstration.

27 **Online Bill Pay** – Mr. Fernandez said the District's online bill payment system was being tested
28 by employees who reside in the District's service area; it will be ready for Board member testing
29 prior to a full release to District customers. He introduced Ms. Jones and Mr. McCaulley from the
30 Customer Service department and called attention to a related memo regarding online bill pay, a
31 copy of which is attached hereto as **Exhibit M** and incorporated herein by this reference. Mr.
32 McCaulley gave a history of the District's bill pay system, including automated customer
33 payments and various security and compliance requirements. Ms. Jones gave a demonstration of
34 the site. She noted 50% of calls to Customer Service deal with credit card-related or payment
35 requests; an online bill pay is expected to reduce the amount of time spent on these requests and
36 free up Customer Service Specialists for more high-level tasks.

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

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1 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit N** and incorporated
2 herein by this reference.

3 **State of the River Public Meeting** – Ms. Johnson said about 65 people attended the May 21 event
4 to hear about priorities for the Eagle and Colorado river basins, within the context of Colorado’s Water
5 Plan. The program was recorded and will be available to view on Channel 5 and its website.

6 **Colorado Water Plan update** – Ms. Johnson updated the Board on the plan, public comments for
7 which were reviewed at the May 20 – 21 Colorado Water Conservation Board meeting. She said over
8 24,000 comments were received, although a majority were form letters circulated by environmental
9 and other interest groups. In response to a question, Ms. Johnson said the basis of many comments
10 was feedback from the agriculture, river health, and recreation communities, as well as concerns
11 about maintaining Colorado’s system of prior appropriation. The final plan is due to the governor in
12 December.

13 **Denver Metro Chamber Leadership Foundation** – Ms. Johnson discussed the foundation’s
14 “Colorado Experience” program held April 16 – 17. About 110 Denver metro business leaders
15 participated to learn about transportation, housing, and water infrastructure along I-70 and in Summit
16 County and Vail. Ms. Johnson and Ms. Brooks addressed the group in Keystone; a snowstorm
17 prevented the delegation from traveling to Avon for planned tours of District and Authority facilities.

18 **EXECUTIVE SESSION**

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

23 **RESOLVED** to enter executive session at 2:08 p.m. to discuss attorney-client privileged
24 issues concerning the Shoshone Acquisition, property evaluations, and insurance claims,
25 pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak
26 opined the contents of the discussion would contain privileged attorney-client
27 communications.*

28 The regular meeting resumed at 2:43 p.m.
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:44 p.m.

3 Respectfully submitted,

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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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23 **Stephen Friedman, Treasurer**

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27 **Kimberly Langmaid, Director**

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

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35 **Bill Simmons, Director**

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39 **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 **Eric Jorgenson, General Counsel**

Glenn Porzak, Water Counsel

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