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:

1. Tom Allender
2. Debbie Buckley
3. Steve Friedman
4. Bill Simmons
5. Frederick P. Sackbauer IV
6. Paul Testwuide

The following Directors were absent and excused:

7. 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

1. 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:

- District Staff
  - Tug Birk
  - Linn Brooks
  - Jason Cowles
  - Carol Dickman
  - Angelo Fernandez
  - Todd Fessenden
  - Catherine Hayes
  - Leslie Isom
  - Diane Johnson

- Consultants
  - Glenn Porzak

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

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

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

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

STRATEGY ITEMS

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

Wilderness Discussion with the Pew Charitable Trusts – Chairman Sackbauer discussed a recent meeting with Rick Ridder representing the Pew Charitable Trusts regarding wilderness and the District’s position. Ms. Brooks said she provided the attendees a history of wilderness and reasons for designating wilderness. Ms. Brooks noted Bob Weaver was drafting a memo summarizing his investigation on wilderness issues in preparation for a Board discussion of a wilderness policy. Ms. Brooks shared a draft statement proposed to be used while the final policy
is being developed. The Board requested any policy to clearly state that the District must maintain its ability to access current and future facilities for mitigation or restoration efforts, and watershed concerns must be adequately addressed if the District is to support such legislation.

REPORT BY WATER COUNSEL

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

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

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

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

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

Authority’s Seniors First Supreme Court Appeal – Mr. Porzak discussed the Authority’s appeal, a copy of which is attached hereto as Exhibit J and incorporated herein by this reference. He summarized the case, in which the State Engineer mandated the Authority divert a senior water right prior to diverting a junior one. Mr. Porzak said the rights have many differences
and based on past precedent, the Authority should be able to divert whichever right it chooses. The District may wish to file an amicus brief in the case.

REPORT BY GENERAL COUNSEL

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

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

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

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

REPORT BY GENERAL MANAGER

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

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

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

Authority Matters – Ms. Brooks discussed a leak in the Traer Creek Tank, which the Authority now owns. The tank was leaking at approximately 425 gallons/minute on May 25 and has since
been drained; it will be offline for the foreseeable future. A June 1 meeting of involved parties is scheduled to determine next steps. In response to a question, Mr. Fessenden confirmed that the tank passed stringent tests prior to acceptance.

REPORT BY DIRECTOR OF OPERATIONS

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

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

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

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

REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT

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

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

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

REPORT BY COMMUNICATIONS AND PUBLIC AFFAIRS MANAGER
Ms. Johnson presented her report, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference.

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

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

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

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Shoshone Acquisition, property evaluations, and insurance claims, pursuant to §24-6-402(4)(a)(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 2:08 p.m. to discuss attorney-client privileged issues concerning the Shoshone Acquisition, property evaluations, and insurance claims, pursuant to §24-6-402(4)(a)(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.*

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

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

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Debbie Buckley, Secretary

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Stephen Friedman, Treasurer

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Kimberly Langmaid, Director

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Frederick P. Sackbauer IV, President/Chairman

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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.

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Eric Jorgenson, General Counsel

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Glenn Porzak, Water Counsel