

Eagle River Water & Sanitation District
Board of Directors Meeting
June 25, 2015
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 25, 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
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV
Paul Testwuide

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>	33	Diane Johnson
Tug Birk	34	Glen Phelps
Linn Brooks	35	Siri Roman
Jason Cowles	36	Jeff Schneider
Carol Dickman	37	Ed Trainer
Angelo Fernandez	38	James Wilkins
Todd Fessenden	39	<u>Consultants</u>
Catherine Hayes	40	Jim Collins, Collins Cockrel & Cole
Leslie Isom	41	Glenn Porzak, Porzak Browning & Bushong LLP

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:23 a.m.

ACTION ITEMS

Meeting Minutes – The minutes of the Regular Meeting of May 28, 2015, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the May 28, 2015, Regular Meeting be accepted and hereby are approved as amended.

FY2014 Audited Financial Statements – Mr. Wilkins presented a board action request form and the 2014 Audited Financial Statements, copies of which are attached hereto as **Exhibits A and B** and incorporated herein by this reference. He noted it was a quiet year with no bond offerings. Treasurer Friedman said he appreciated the continuity of a high level of service in light of the transition to a new Finance Director. Mr. Wilkins noted discussion in the Authority meeting regarding the depreciation rate of Authority capital assets compared to other utilities, including

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1 Denver Water, which depreciates some assets at a much slower rate. Mr. Wilkins will discuss this
2 further with his counterpart at Denver Water and report back to the Board. Mr. Porzak noted the
3 value of the District's water rights is not accurately reflected in the audit, but the document does
4 reference the true value in an Appendix. After discussion and upon motion duly made and
5 seconded, it was unanimously

6 **RESOLVED** that the FY2014 audited financial statement be and hereby is approved as
7 presented.

8 **Water Sales** – Mr. Wilkins discussed the May water sales report, a copy of which is attached hereto as
9 **Exhibit C** and incorporated herein by this reference. As expected, sales were lower than projected due
10 to the wet month. Mr. Wilkins will continue to closely track sales in the coming months and will apprise
11 the Board of any needed action should the lower sales continue.

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

14 STRATEGY ITEMS

15 **Wilderness Policy** – Ms. Brooks said at their May meetings, both the District and Authority
16 Boards approved language for wilderness policy talking points. The main points were shared at a
17 meeting earlier in the week with the staffs of Sens. Bennett and Polis. Ms. Brooks requested the
18 Boards hold a joint meeting on July 23 to further discuss the matter, which will better prepare both
19 Boards to respond to future wilderness proposals. The Board agreed to hold such a meeting.

20 REPORT BY WATER COUNSEL

21 **Colorado Water Plan Meeting with James Eklund** – Mr. Porzak discussed the Plan, an
22 updated draft of which is forthcoming. He noted his acceptance of an August meeting with James
23 Eklund and a group of Colorado water attorneys to discuss the plan; an invitation is attached
24 hereto as **Exhibit E** and incorporated herein by this reference. Mr. Porzak said the group will
25 follow the Chatham House Rules, meaning the attendees can use information exchanged at the
26 meeting but cannot disclose the identity or affiliation of the speaker(s).

27 **Forest Service Water Right Permit Clause** – Mr. Porzak said the Forest Service was making
28 progress on a revision of the clause that should include the most recent comments of Mr. Porzak
29 and others who weighed in on the draft. He noted the Forest Service still needs to perform a legal
30 review. He summarized the history of the clause, by which the Forest Service originally wanted
31 to take ownership of any water rights that originated on Forest Service land.

32 **Summary of Horne vs. Dept. of Agriculture** – Mr. Porzak discussed the recent Supreme Court
33 ruling regarding a requirement that raisin farmers using federal land must turn over a percentage
34 of their annual crop to the government. He distributed a summary of the case, a copy of which is
35 attached hereto as **Exhibit F** and incorporated herein by this reference. The U.S. Supreme Court
36 ruled in favor of Horne, the farmer, noting that the constitutional provision prohibiting the taking of
37 property without paying compensation applies to both real and personal property. Mr. Porzak

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1 discussed the similarities between this case and the Forest Service's attempted water rights
2 takings and with respect to bypass flows; the raisin case puts forth the precedent that in any
3 taking of real or personal property, the loss must be compensated.

4 **Interim Water Resources Review Committee and Senate Bill 64** – In response to a question,
5 Mr. Porzak suggested an updated version Senate Bill 64, to prevent Forest Service takings of
6 private water rights, be introduced in the next legislative session instead of to the Interim Water
7 Resources Review Committee this summer.

8 **REPORT BY GENERAL COUNSEL**

9 **Traer Creek Tank Update** – Mr. Collins and Ms. Brooks reported on steps taken after
10 discovering a leak in the tank. Litigation counsel Kyle Kreischer was hired, and notice was given
11 to all involved parties and has been accepted by each surety or bonding company. Ms. Brooks
12 noted Close and Associates of Lakewood was hired as the forensic engineer based on staff
13 research and recommendations. Mr. Close has a history of neutrality on these matters and works
14 mainly in mediation and settlement situations. Ms. Brooks said he has specific ideas for the Traer
15 Creek Tank regarding damage minimization and potential fixes. Ms. Brooks recommended the
16 Authority perform the entire investigation of site, tank, and related items and proceed with a report
17 to all sureties and liability carriers, which should negate the need for the individual parties to
18 engage their own experts. In response to questions, Ms. Brooks said the estimated cost for
19 forensic engineering is \$150,000 – \$200,000 and will take approximately six months, and the
20 contracts for construction litigation engagement are with the Authority.

21 The Board took a short recess for lunch at 12:00 p.m. The regular meeting resumed at 12:12 p.m.

22 Mr. Cowles presented a brief presentation of the tank, including current state, leak location, and
23 photographic images of some damaged areas.

24 **REPORT BY GENERAL MANAGER**

25 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
26 herein by this reference.

27 **August System Tour** – Ms. Brooks discussed the Colorado Water Congress summer meeting,
28 which is being held in Vail starting August 19. She suggested hosting an abbreviated system tour
29 and dinner on August 18 for select attendees to showcase aspects of the District's system.

30 Director Testwuide agreed to speak at the dinner regarding snowmaking and early District
31 partnerships that laid the foundation for where the District is today. After discussion and upon
32 motion duly made and seconded, it was unanimously

33 **RESOLVED** that staff is authorized to spend up to \$2500 on a system tour and dinner for
34 Colorado Water Congress attendees.

35 **REPORT BY DIRECTOR OF OPERATIONS**

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

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1 **System Shutdowns** – Mr. Fessenden reported on a system shutdown in Beaver Creek to replace
2 pressure reducing valves (PRVs); the replacement valves are less prone to corrosion and increase
3 the safety of District staff working in the PRV vaults, as well as ensuring fire flows to the area when
4 needed. Discussion ensued regarding communication of the shutdown and additional people to
5 include on similar future notices. Mr. Fessenden also noted an upcoming shutdown at the Walking
6 Mountains Science Center.

7 **Mountain Star Update** – Mr. Fessenden said a recent water supply issue in Mountain Star was the
8 result of a malfunctioning motor, not excessive use. The equipment was replaced and operations
9 there are back to normal.

10 **Forest/Rockledge Road Project** – Mr. Fessenden said work is currently being done on Forest
11 Road and will move to Rockledge Road after that. Mr. Fessenden said all involved parties were
12 notified regarding an insurance claim in the area that is unrelated to the project.

13 **Operations Facility RFQ** – Mr. Fessenden said Montgomery Watson was selected for the Avon
14 Operations Facility expansion project; this contractor is also the general contractor for the
15 Edwards Wastewater Treatment Facility expansion.

16 **Eagle River MOU Projects Update** – Mr. Fessenden said the Phase 2 work plan for the Eagle
17 River MOU projects was still in progress but is expected soon. He believes the money budgeted
18 by the District and Authority should be sufficient to cover the proposed projects.

19 **Eagle Park Reservoir Company Update** – Mr. Fessenden said Eagle Park Reservoir filled in
20 May. He also noted the annual shareholders meeting would be held later in the day, during which
21 the FY2016 budget would be approved.

22 **Urban Runoff Group/Stormwater Update** – Mr. Fessenden discussed the town of Vail's
23 strategic action plan to improve Gore Creek, which will be reviewed by the Urban Runoff Group
24 members prior to finalization. He also noted that Wastewater Manager Siri Roman and town of
25 Vail Environmental Manager Kristen Bertuglia would host a bike tour along Gore Creek in
26 September to coincide with the annual Colorado Association of Stormwater and Floodplain
27 Managers Conference.

28 **Edwards Wastewater Treatment Facility Project Update** – Mr. Fessenden updated on the
29 project, noting that wall pours were scheduled every week and that staff dismissed the change
30 order requested by the contractor, however the contractor continues to challenge that
31 determination. Ms. Brooks showed a schematic of the proposed new paint colors for the facility,
32 which will be completed in conjunction with the rest of the project.

33 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

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

36 **Water Demand Management Pilot Study** – Mr. Fernandez discussed the study and noted some
37 water use regulation variances were being granted to homeowners based on their use of

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1 advanced technology that uses weather, evapotranspiration, and microclimate data.. Mr.
2 Fernandez clarified that the pilot studies include mainly Authority accounts, but a few Vail
3 customers are participating. Mr. Fernandez also said staff is working with Eagle County regarding
4 potential landscape regulation changes; data from the pilot projects will also be provided to the
5 County for review.

6 **Online Bill Pay Update** – Mr. Fernandez updated on the online bill pay, which is in the final
7 stages of testing. Directors will soon receive an email inviting them to set up online accounts,
8 receive e-bills, and set up recurring credit card payments. It was clarified that customers who
9 already have recurring payments set up do not need to take further action unless they want to
10 receive an e-bill instead of a paper one.

11 **Board Packet Process BOI Event** – Mr. Fernandez said a business optimization event was
12 recently held with staff regarding the internal process of developing, assembling, and distributing
13 packets. During a later phase of the project, staff will seek Board input on the parts of the process
14 that directly affect them.

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

16 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit J** and incorporated
17 herein by this reference.

18 **Consumer Confidence Report (CCR)** – Ms. Johnson said the annual water quality report is posted
19 on the District website and is being mailed to every customer account as required by the Colorado
20 Department of Public Health and Environment (CDPHE) and Environmental Protection Agency
21 (EPA). The report shows that District drinking water surpasses all federal and state drinking water
22 standards and had no violations during the Jan. 1 – Dec. 31, 2014, monitoring period. A copy of the
23 District CCR is attached hereto as **Exhibit K** and incorporated herein by this reference. Ms. Brooks
24 thanked the Water Department employees, including former and current department managers Glen
25 Phelps and Brian Tracy, respectively, for their diligence in ensuring the District had no violations in
26 2014.

27 **Colorado Water Plan and Basin Roundtable Update** – Ms. Johnson said pending the early July
28 release of the second draft of the Plan, the Colorado Basin Roundtable created definitions for some
29 terms used in the Interbasin Compact Committee (IBCC) developed “conceptual framework,” since
30 the group is concerned about the inclusion of the framework in the Colorado Water Plan. She also
31 briefly reviewed the balance of the Colorado Water Conservation Board’s Water Supply Reserve
32 Account (WSRA), which funds activities and projects associated with the 2005 legislation that created
33 the IBCC and basin roundtables.

34 **WISE Partnership** – Ms. Johnson said the Water Infrastructure and Supply Efficiency (WISE)
35 Partnership is applying for a WSRA grant, from both the statewide account and the basin accounts.
36 The WISE Partnership is a regional water supply project between Aurora Water, Denver Water, and
37 the South Metro WISE Authority to combine available water supplies and system capacities to create

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1 a sustainable new water supply for the WISE Authority and its members. The purpose of the WISE
2 Authority is to implement the WISE Project, including developing new infrastructure, which will reduce
3 the South Metro area's reliance on the Denver Basin Aquifer. The Board requested that staff
4 schedule a presentation on WISE at a future meeting.

5 EXECUTIVE SESSION

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

10 **RESOLVED** to enter executive session at 1:05 p.m. to discuss attorney-client privileged
11 issues concerning Compact Water Banking, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.
12 with no electronic record created as Mr. Porzak opined the contents of the discussion would
13 contain privileged attorney-client communications.*

14 Mr. Collins requested the Board continue Executive Session to receive legal advice regarding the Traer Creek
15 Tank, Vail Intermountain Lot 14, insurance claims, and a personnel matter, pursuant to §24-6-402(4)(a)(b)
16 and (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged
17 attorney-client communications. Upon motion duly made and seconded, it was unanimously

18 **RESOLVED** to enter executive session at 10:45 a.m. to discuss attorney-client privileged
19 issues concerning the Traer Creek Tank, Vail Intermountain Lot 14, insurance claims, and a
20 personnel matter, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record
21 created as Mr. Collins opined the contents of the discussion would contain privileged
22 attorney-client communications.*

23 The regular meeting resumed at 2:05 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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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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46 **Eric Jorgenson, General Counsel**

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46 **Glenn Porzak, Water Counsel**