

Eagle River Water & Sanitation District
Board of Directors Meeting
July 23, 2015
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 23, 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
Steve Friedman
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV
Paul Testwuide

The following Director was absent and excused:

Debbie Buckley

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>	37	
Linn Brooks	38	Siri Roman
Jason Cowles	39	Ed Trainer
Leah Cribari	40	James Wilkins
Carol Dickman	41	<u>Consultants</u>
Angelo Fernandez	42	Jim Collins, Collins Cockrel & Cole
Todd Fessenden	43	Glenn Porzak, Porzak Browning & Bushong LLP
Catherine Hayes	44	Bob Weaver, Leonard Rice Engineers
Leslie Isom	45	<u>Public</u>
Diane Johnson	46	Kristen Bertuglia, town of Vail
Melisa Marts	47	Susie Kincade, Coalition of Wilderness Advocates
Melissa Mills McLoota	48	Seth Mason, Lotic Hydrological

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:10 a.m.

PUBLIC COMMENT

Ms. Kincade spoke on behalf of the Coalition of Wilderness Advocates, noting her interest in working with the District and Authority on policy and local wilderness designations. She offered a field trip or flyover of proposed wilderness areas for interested Board members.

GENERAL MANAGERS REPORT

Ms. Brooks discussed the General Managers Report, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

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1 ACTION ITEMS

2 **Meeting Minutes** – The minutes of the Regular Meeting of June 25, 2015, were considered. Upon
3 motion duly made and seconded, it was unanimously

4 **RESOLVED** that the minutes of the June 25, 2015, Regular Meeting be accepted and hereby are
5 approved as presented.

6 **Mobile Pumping Equipment** – Mr. Fessenden presented a board action request form and
7 related information regarding the purchase of mobile pumping equipment, copies of which are
8 attached hereto as **Exhibit B** and incorporated herein by this reference. He said the equipment
9 would be custom made for the District and Authority system with a lead time of up to a year, thus
10 the need for approval of the expenditure prior to adoption of the 2016 budget. Purchasing the
11 equipment will be more cost effective than renting, and it will provide systemwide redundancy. It
12 will also be used for upcoming projects, including the Mountain Star booster pump station
13 upgrade, for which the District would charge the Authority a usage fee. After discussion and upon
14 motion duly made and seconded, it was unanimously

15 **RESOLVED** that the allocation of \$300,000 from the general fund and purchase of
16 mobile pumping equipment be and hereby are approved as presented.

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

19 STRATEGY ITEMS

20 **Wilderness Process Plan** – Ms. Brooks suggested forming a joint Board committee to discuss
21 wilderness policy and work with staff and consultants to ultimately recommend direction to the Board.
22 She noted the complex background information to consider and recommended the Board take its time
23 on a thorough review to arrive at a defensible policy. Ms. Brooks suggested a policy recommendation
24 for the full Board was unlikely to be ready until at least the September Board meeting. Treasurer
25 Friedman and Director Langmaid volunteered to serve on the joint committee along with Authority
26 representatives Chairman Gregory and Director Woodworth.

27 **Updated Nutrient Information and MMI Scores** – Ms. Roman and Mr. Weaver presented information
28 regarding results of the latest sampling in Gore Creek and the Eagle River. This is the sixth year of the
29 study that monitors bug populations in the streams; the results indicate the health of the river at the
30 designated sampling sites. Mr. Weaver said he continues to observe mostly failing scores along Gore
31 Creek and noted poor scores at many sample sites along the Eagle River as well. He also discussed
32 proposed changes to the state's 303(d) list of impaired streams; he is reviewing the changes and will
33 respond to the state accordingly, as data does not appear to support some of the proposed revisions. In
34 response to a question, Mr. Weaver noted that the town of Vail took the lead in Gore Creek
35 improvements through its Water Quality Improvement Plan and ongoing efforts to implement a Strategic
36 Action Plan. Similar work is needed for the Eagle River. Mr. Weaver also noted that the District is the

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1 only point source discharger in the area, so more stringent standards could be imposed on the District if
2 upstream water quality impacts are not addressed.

3 The Board took a short recess for lunch at 12:13 p.m. The regular meeting resumed at 12:25 p.m.

4 **FINANCE REPORT**

5 **June Water Sales** – Mr. Wilkins discussed the May water sales report, a copy of which is attached
6 hereto as **Exhibit D** and incorporated herein by this reference. He noted the District's actual May and
7 June sales were 5% and 15% below projections, respectively, likely due to the wet weather. Mr. Wilkins
8 said he is modeling to determine how lower projections throughout the summer could affect revenue,
9 debt service, and TABOR enterprise status, among other items. He is also determining which usage
10 tiers are being most affected by the lower sales. Ms. Brooks noted the District's shift to base fees in
11 recent years, which should somewhat insulate revenue from weather-related fluctuations. Discussion
12 ensued regarding whether the shift to base rates is equitable for all ratepayers. Ms. Brooks also noted
13 the District's robust fund balance, which serves as a buffer against lower water sales. Mr. Wilkins will
14 continue to monitor the situation and report back to the Board with revenue models in August.

15 **OPERATIONS REPORT**

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

18 **Traer Creek Tank Update** – Mr. Fessenden updated on the Traer Creek Tank failure. He noted a
19 forensic engineer was hired, and walls are being shored up to minimize damage due to floor
20 settlement and lack of support.

21 **ERMOU Projects Status Update** – Mr. Fessenden discussed the Eagle River Memorandum of
22 Understanding (ERMOU) Phase 1 study, which looked at various in-basin storage options, the
23 most viable of which appear to be the Eagle Park Reservoir expansion and the Whitney Creek
24 Forebay. He noted Eagle Park Reservoir Company (EPRC) budgeted funds for the current
25 proposal on behalf of the Authority and District. Current cost estimates are roughly \$318,000, with
26 EPRC covering a fourth of the cost. In response to a question, Ms. Brooks said staff apprises the
27 town of Minturn of developments regarding the ERMOU projects, but the town's involvement has
28 been minimal. She also noted much groundwork is complete regarding Bolts Lake, which is why it
29 was included in the list of feasible ERMOU projects.

30 **Eagle Mine Tour** – Mr. Fessenden reminded Directors of an upcoming tour of the Eagle Mine.
31 Though the tour is full, he suggested interested Directors contact the Eagle River Watershed
32 Council to be put on a waitlist.

33 **Edwards Wastewater Treatment Facility Project Update** – Mr. Fessenden reported on the
34 project, which is progressing on time and on budget. Staff continues to work with the contractor
35 on a change order request. Mr. Fessenden noted a theft of tools occurred at the construction site
36 the past weekend, and other similar burglaries were reported in the valley.

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1 ORGANIZATIONAL DEVELOPMENT REPORT

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

4 **Water Demand Management**– Mr. Fernandez discussed recent articles in the Special District
5 Association’s July newsletter, copies of which are attached hereto as **Exhibit G** and incorporated
6 herein by this reference. The articles highlighted Ms. Brooks and information on District water
7 demand management efforts, including water service agreements to ensure properties are only
8 using the water for which they paid.

9 **Wild and Scenic Record of Decision** – Mr. Fernandez reported that the US Forest Service and
10 Bureau of Land Management issued a record of decision accepting the Alternate Management
11 Plan for the Upper Colorado River segments 4 – 7. He said the Plan specifically references
12 ERMOU projects and said Mr. Porzak worked diligently to ensure these were included.

13 COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

14 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit H** and incorporated
15 herein by this reference.

16 **Gore Canyon Whitewater Park** – Ms. Johnson said the grand opening celebration took place July
17 13 and included representatives from the Colorado Water Conservation Board (CWCB). The park
18 was made possible, in part, due to agreements related to the Colorado River Cooperative Agreement.
19 She said the CWCB supported the Gore Canyon Park and recently voted against a proposed
20 Glenwood Springs park at an administrative hearing.

21 **Drinking Fountains** – Ms. Johnson mentioned a recent article that addresses long-term changes in
22 the public perception of America’s water supply. District employees regularly engage people at the
23 Vail Farmers’ Market in discussions of this nature and work to convey the stringent standards to
24 which water providers are held.

25 REPORT BY GENERAL COUNSEL

26 **Succession Planning** – Mr. Collins discussed his succession plan, which he annually updates.

27 REPORT BY WATER COUNSEL

28 **Colorado Water Plan Update** – Mr. Porzak and Ms. Johnson discussed the second draft of the
29 Plan. They highlighted policy information added to chapter 9, the action plan in chapter 10, and
30 the ongoing discussion about the “7 points”/“conceptual framework.” Mr. Porzak noted the goals
31 of the action plan support in-basin reservoir development and align with District and Authority
32 efforts in this area. The draft Plan also indicates opposition to Forest Service efforts to take
33 ownership of water rights that originate or are used on Forest Service land, including Forest
34 Service attempts to implement bypass flows. Mr. Porzak also said there was a disproportionate
35 Plan focus on municipal conservation as such a small amount of water used falls into this
36 category. Ms. Johnson referenced studies about the increasing efficiency of agricultural water
37 use, which could result in farmers using more water as they increase crop yields. Mr. Porzak

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1 emphasized the importance of continued work towards a Compact Water Bank, as lower basin
2 states involved in the Compact are taking steps to protect themselves. He also noted that as a
3 whole, the Colorado River Basin has a very small number of absolute water rights senior to the
4 Compact.

5 **Roaring Fork Club Supreme Court Decision** – Mr. Porzak discussed a recent Supreme Court
6 ruling regarding the Roaring Fork Club in Carbondale, a copy of which is attached hereto as
7 **Exhibit I** and incorporated herein by this reference. The Court ruled that the Club's aesthetic,
8 recreational, and piscatorial water diversion is not a beneficial use. Mr. Porzak noted a number of
9 District and Authority decrees in which the above-referenced uses were considered beneficial. He
10 also clarified that the ruling did not apply to storage rights.

11 **Waters of the US (WOTUS) Revised Rules** – Mr. Porzak noted multiple lawsuits filed on behalf
12 of 26 states, including Colorado, in seven different federal courts regarding the revised WOTUS
13 rules. The new rules subject nearly every water source to Environmental Protection Agency
14 (EPA) regulations, posing a variety of potential issues. Messrs. Porzak and Weaver will discuss
15 this in more detail at the August Board meeting.

16 **State Legislation** – In response to a question, Mr. Porzak noted a bill was drafted to introduce
17 during the upcoming legislative session. This is an update to Senate Bill 64, which was killed in
18 the House during the last session. The draft bill will be discussed at the next board meeting.

19 EXECUTIVE SESSION

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

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

28 The regular meeting resumed at 2:03 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:04 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 **Glenn Porzak, Water Counsel**

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