

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**September 24, 2015**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held September 24, 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 Director was 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, and 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>	41	<u>Consultants</u>
Linn Brooks	42	Jim Collins, Collins Cockrel & Cole
Carol Dickman	43	Glenn Porzak, Porzak Browning & Bushong LLP
Angelo Fernandez	44	<u>Public</u>
Todd Fessenden	45	Matt Donovan, Vail Honeywagon
Leslie Isom	46	Jennie Fancher, Avon Council
Diane Johnson	47	Kristi Ferraro, Avon resident
Melissa Mills McLoota	48	Eric Hecox, South Metro Water Authority
Glen Phelps	49	Holly Loff, Eagle River Watershed Council (ERWC)
Siri Roman	50	Alan Nottingham, Avon resident
Jeff Schneider	51	Cici Nottingham, Avon resident
Brian Tracy	52	Tamra Nottingham-Underwood
James Wilkins	53	Brian Sipes, Avon resident
	54	Sarah Smith Hymes, Avon Council

**CALL TO ORDER**

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

**INTRODUCTIONS**

Ms. Johnson introduced Mr. Hecox, who would be presenting information regarding the South Metro WISE project.

**PUBLIC COMMENT**

Mr. Donovan discussed a possible partnership between Vail Honeywagon and the District for a compost facility at the District's Biosolids Containment Facility at the Eagle County landfill. According to

## Eagle River Water & Sanitation District

1 Mr. Donovan, this would help both entities meet waste diversion goals and could help market the District's  
2 biosolids. Ms. Brooks is working to set up a meeting to further discussion of this topic.

3 Chairman Sackbauer discussed a Vail Daily story regarding the economic impact of the Eagle  
4 County Airport; he noted the District's predecessor organization, Vail Valley Consolidated Water District,  
5 originally provided water service to the airport, without which it would not have been a viable entity.

### 6 **ACTION ITEMS**

7 **Meeting Minutes** – The minutes of the Special Meeting of August 27, 2015, were considered. Upon  
8 motion duly made and seconded, it was unanimously

9 **RESOLVED** that the minutes of the August 27, 2015, Special Meeting be accepted and hereby  
10 are approved as presented.

11 The minutes of the Joint Special Meeting with the Upper Eagle Regional Water Authority of August 27,  
12 2015, were considered. Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the minutes of the August 27, 2015, Joint Special Meeting with the Authority be  
14 accepted and hereby are approved as presented.

15 **Gore Valley Trail IGA with Town of Vail** – Ms. Brooks discussed a board action request and related  
16 intergovernmental agreement with the town of Vail, copies of which are attached hereto as **Exhibits A**  
17 and **B**, respectively, and incorporated herein by this reference. This is an agreement to cost share with  
18 the town for design of repairs to the stream bank, which supports the bike path and District's underlying  
19 sewer trunk line through Dowd Junction; erosion has caused the need for this work. Design is estimated  
20 at \$60,000, with the District and town each paying \$30,000. Repair costs will then be determined; if  
21 existing capital funds cannot cover the cost, a budget variance will be requested. After discussion and  
22 upon motion duly made and seconded, it was unanimously

23 **RESOLVED** that the Intergovernmental Agreement with the town of Vail be and hereby is  
24 approved as presented.

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

### 27 **STRATEGY ITEM: Hahnewald Barn**

28 Hahnewald Barn stakeholders introduced themselves, including Ms. Nottingham-Underwood, Mr. Sipes,  
29 Avon Mayor Fancher, Mr. and Mrs. Nottingham, Ms. Smith Hymes, and Ms. Ferraro. Ms. Brooks  
30 discussed the District's current operational needs, some of which are being evaluated by consultants.  
31 Presently, she expects the earliest need for removal of the barn is anticipated to be in spring 2017;  
32 however, operational needs and potential state nutrient regulations could require earlier removal. Ms.  
33 Nottingham-Underwood spoke on behalf of the barn stakeholders and discussed a previous meeting  
34 between the District and Avon representatives regarding the barn. The group wishes to nominate the barn  
35 to the state registry of historical structures and apply for grants to preserve the barn. Ms. Nottingham-  
36 Underwood would like to invite a preservation expert to the District's October meeting to provide  
37 information on preservation and grant funding. Discussion ensued regarding the state registry process

## Eagle River Water & Sanitation District

1 and what the ramifications would be for the District and its future operational needs. Mr. Collins  
2 suggested he and Ms. Nottingham-Underwood meet with a preservation expert to determine ramifications  
3 for the District, so long as an initial meeting does not constitute any District commitment to take any future  
4 steps towards preservation. Discussion ensued regarding whether the process should be undertaken if  
5 operational expansion ultimately dictates that the barn must be moved regardless; the insight that an  
6 expert could provide on the matter; and the need to move forward with this to allow the District, town, and  
7 citizens group to take any needed actions. Ms. Roman noted certain state regulations regarding  
8 wastewater treatment could add urgency to expansion needs or operational changes. Mr. Collins  
9 suggested the town and District could each contribute \$5,000 to have an architect review the barn for  
10 eligibility for the state historical designation. He suggested further discussion be reserved for Executive  
11 Session.

12 The barn stakeholders group left the meeting at 11:34 a.m.

13 **Water Infrastructure and Supply Efficiency (WISE) Project** – Mr. Hecox of the South Metro Water  
14 Supply Authority presented information about the SMWSA, the South Metro WISE Authority, the WISE  
15 Partnership, and the WISE Project. Mr. Hecox and Ms. Johnson provided background information in a  
16 related memo, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference.  
17 Mr. Hecox said the Project is a regional water supply project between Aurora Water, Denver Water, and  
18 the WISE Authority to combine available water supplies and system capacities to create a sustainable  
19 new water supply for the WISE Authority and its members. He highlighted provisions in the Colorado  
20 River Cooperative Agreement that pertain to the WISE project and noted the Authority's involvement in  
21 the CRCA.

22 A short recess for lunch was taken at 12:15 p.m., and the meeting resumed at 12:25 p.m.

23 **Eagle River Watershed Council Update and 2016 Funding Request** – Ms. Loff, executive director of  
24 the Watershed Council, discussed background information on the organization, a copy of which is  
25 attached hereto as **Exhibit E** and incorporated herein by this reference. She noted the Watershed  
26 Council is focused on the health and quality of all local rivers and tributaries. She noted the organization  
27 focuses on research, education, and projects towards this end. She demonstrated the current water  
28 quality report card for all local rivers and tributaries; prior to creation of this database and water quality  
29 report card, the data was not accessible in one location and was difficult to interpret and understand.  
30 Ms. Loff outlined specific projects for river health, including Vail Pass traction sand sedimentation  
31 basins and cleaning of the basins; involvement in the Urban Runoff Group efforts; continued work to  
32 ensure mitigation of the Eagle Mine Superfund site; and Watershed Wednesday presentations. Ms. Loff  
33 requested \$50,000 from the Authority for 2016 Watershed Council efforts; \$25,000 would be for water  
34 quality monitoring and \$25,000 would be for general operating support. Ms. Brooks noted the request  
35 would be added to the 2016 budget for Board approval.

36 **Wilderness Process Plan** – Mr. Porzak discussed the Policy on Future Wilderness and Roadless Area  
37 Designations, a copy of which is attached hereto as **Exhibit F** and incorporated herein by this

## Eagle River Water & Sanitation District

1 reference. This included a general statement of intent, background information regarding roadless  
2 areas vs. wilderness designations, a breakdown of current designations, and policy and criteria for  
3 future designations. Mr. Porzak explained that wilderness areas are much more restrictive than  
4 roadless areas. Discussion ensued regarding the high level of public interest on the District's proposed  
5 wilderness policy, and solicitation of written public comment from interested stakeholders. The Board  
6 agreed to hold a joint meeting with the Upper Eagle Regional Water Authority to consider the policy.  
7 The Board determined that written public comments would be requested one week prior to the October  
8 22 Board meeting and clarified that the meeting would not include a public hearing on the matter.

### 9 **GENERAL MANAGERS REPORT**

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

12 **Vail Village Filing 2, Tract A** – Ms. Brooks discussed the District-owned parcel of land, which is  
13 between the Vail Valley Medical Center and Dobson Ice Arena. Background information is attached  
14 hereto as **Exhibit H** and incorporated herein by this reference. Discussion ensued regarding riparian  
15 work the town of Vail wishes to do there and whether the District should deed the property to the town.  
16 The Board directed staff to have the parcel appraised before further action is taken.

17 **Interim Funding for Camp Hale Project** – Mr. Fessenden said some stream delineation by the Forest  
18 Service occurred in the lower part of Camp Hale and delineation was also needed in the upper part. He  
19 noted \$45,000 was needed for the additional work and requested the District provide a bridge loan on  
20 behalf of the Eagle Park Reservoir Company so contracts can be executed tomorrow; the Company  
21 meets on October 22 and can repay the loan at that time. The planned work could count towards  
22 advance credit towards wetlands there. After discussion and upon motion duly made and seconded, it  
23 was unanimously

24 **RESOLVED** that the District provide a bridge loan in the amount of \$45,000 on behalf of the  
25 Eagle Park Reservoir Company for wetlands delineation in the upper Camp Hale area.

26 **Special District Association (SDA) District of the Year** – Ms. Brooks distributed an article from  
27 the SDA newsletter regarding the District as recipient of the SDA District of the Year Award, a  
28 copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. She  
29 noted Directors could still RSVP to attend tomorrow's luncheon at which the District will be  
30 recognized.

### 31 **FINANCE REPORT**

32 **August Water Sales** – Mr. Wilkins discussed the August water sales report, a copy of which is  
33 attached hereto as **Exhibit J** and incorporated herein by this reference. He noted August sales  
34 were 10% above projections; the extra \$165,000 in sales offset shortfalls earlier in the summer.  
35 The Authority also experienced higher-than-projected sales, but their shortfalls were not  
36 completely covered by the extra revenue.

## Eagle River Water & Sanitation District

1       **Development Impact Fee Revenue Report** - Mr. Wilkins discussed the report, a copy of which  
2 is attached hereto as **Exhibit K** and incorporated herein by this reference. He noted the Vail  
3 Water fund was below projections, though the Vail sewer fund was above projections.

4       **Budget Committee Update** – Mr. Wilkins said the budget committee was meeting with staff next  
5 week to review the draft budget. He plans to present the proposed budget to the full Board at its  
6 October 22 meeting, with Board approval requested after a public budget hearing at the  
7 November meeting.

### 8       **OPERATIONS REPORT**

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

11       **Traer Creek Tank Update** – Mr. Fessenden updated on the Traer Creek Tank failure, noting that  
12 the investigation is ongoing. Supports have been placed to prevent further tank shifting.  
13 Additional discussion was reserved for executive session.

14       **Urban Runoff Group Update** - Mr. Fessenden noted the Town of Vail was making progress on  
15 its strategic plan to address Gore Creek water quality issues. He also called attention to the  
16 efforts of the Eagle River Watershed Council, which Ms. Loff had previously discussed.

17       **Edwards Wastewater Treatment Facility Project** – Mr. Fessenden updated on the project,  
18 which is on schedule. All walls are up and roofing will be placed soon. He also noted the new  
19 exterior color scheme at the facility, which is more modern and visually pleasing than the previous  
20 colors.

21       **Instream Flow (ISF) on Eagle River** – Mr. Fessenden said ISF levels were reached on the  
22 Eagle River near Avon; Eagle Park releases and operational changes were started immediately,  
23 even though there was not a call on the river. There were minor complications because the  
24 Edwards Drinking Water Facility was offline for repairs at that time. Mr. Fessenden noted the  
25 operational flexibility of the Authority and District systems allowed the needed changes to be  
26 made in response to the ISF. Mr. Fessenden said minimal releases were made over a 48-hour  
27 period, as Homestake Reservoir releases began in response to some transmountain diversions.

28       **Gage Calibration** – Director Testwuide asked how often river profiles are calibrated in relation to  
29 the gages, as river profiles can change after events like high runoff. Ms. Johnson noted that  
30 stream profiles are checked regularly by the US Geological Survey (USGS).

31       **Colorado Springs Utilities Tour** – Mr. Fessenden noted he attended a two-day tour of the  
32 Colorado Springs Utilities system. He presented information to other tour attendees regarding the  
33 Eagle River Memorandum of Understanding.

### 34       **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

35       Ms. Johnson presented the Communications and Public Affairs Report, a copy of which is attached  
36 hereto as **Exhibit M** and incorporated herein by this reference.

## Eagle River Water & Sanitation District

1       **National Prescription Drug Take Back Day** – Ms. Johnson reminded Directors of the  
2       September 26 drug take back event, which she helps coordinate locally. Law enforcement  
3       partners are hosting collection sites in Vail, Edwards, and Gypsum. The event keeps  
4       pharmaceuticals out of the waste stream, in part to protect water quality.

5       **Club 20** – Ms. Johnson reported on Club 20's Fall Meeting that included a session facilitated by  
6       Building a Better Colorado. The new non-profit is working to engage elected officials and  
7       community leaders in discussions about Colorado's election systems, initiative process, and  
8       financial future – which may lead to 2016 ballot issues.

9       **Colorado Basin Round Table Update** – Ms. Johnson briefly reported on the September 17  
10      meeting.

### 11      REPORT BY GENERAL COUNSEL

12      Mr. Collins noted that his report involved items which would be discussed in Executive Session.

### 13      REPORT BY WATER COUNSEL

14      **Colorado Water Plan Second Draft Comment Letter** – Mr. Porzak discussed the Authority and  
15      District's comment letter regarding the second draft of the Plan, a copy of which is attached  
16      hereto as **Exhibit N** and incorporated herein by this reference. The letter was supportive of the  
17      state's strategic goals and actions outlined in the Plan. The letter also noted support for the  
18      portion of the Plan that wishes to ensure separation of control between state and local entities  
19      and particularly with regard to the Plan's denouncement of the Forest Service's attempt to gain  
20      ownership of water rights that originate on Forest Service land. Mr. Porzak also pointed out that  
21      the municipal water gap discussed in the Plan is overestimated. The Plan discusses diversion  
22      amounts instead of consumptive use; diversions may be considerable but the actual consumption  
23      is far less in the care of municipal uses, where the gap has primarily been identified.

24      **State Legislation** – Mr. Porzak noted the most recent iteration of the state legislation to prevent  
25      water rights takings. He noted Democratic Rep. K.C. Becker agreed to sponsor the bill in the  
26      House. If the bill passes in the House, Democratic Sen. Sonnenberg will then cosponsor the bill in  
27      the Senate with Democratic Sen. Donovan if she agrees to support the bill. Mr. Porzak outlined  
28      upcoming meetings to discuss the legislation prior to the start of the legislative session with many  
29      involved parties. The text of the proposed bill is attached hereto as **Exhibit O** and incorporated  
30      herein by this reference.

31      **Eagle River MOU Projects** – Mr. Porzak discussed recent meetings to discuss potential ERMOU  
32      projects, including an Eagle Park Reservoir enlargement and potential Whitney Creek Forebay.  
33      Mr. Porzak said involved parties were surprised that the engineers didn't plan to complete the  
34      preliminary engineering until March 2016; the engineers have since agreed to complete phases of  
35      the work more quickly to facilitate moving forward with the projects analysis by the ERMOU  
36      group. The Board agreed to schedule a meeting of ERMOU principals to further speed the  
37      process.

## Eagle River Water & Sanitation District

1   **EXECUTIVE SESSION**

2   Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek  
3   Tank and Hahnewald Barn, pursuant to §24-6-402(4)(a)(b)(e) and (f) C.R.S. He asked that no electronic  
4   record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion  
5   duly made and seconded, it was unanimously

6                   **RESOLVED** to enter executive session at 2:00 p.m. to discuss attorney-client privileged  
7                   issues concerning the Traer Creek Tank and Hahnewald Barn, pursuant to §24-6-  
8                   402(4)(a)(b)(e) and (f) C.R.S. with no electronic record created as Mr. Collins opined the  
9                   contents of the discussion would contain privileged attorney-client communications.\*

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

14                   **RESOLVED** to continue executive session at 2:25 p.m. to discuss attorney-client privileged  
15                   issues concerning the Shoshone Acquisition, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.  
16                   with no electronic record created as Mr. Porzak opined the contents of the discussion would  
17                   contain privileged attorney-client communications.\*

18   The regular meeting resumed at 2:55 p.m.

19  
20

# Eagle River Water & Sanitation District

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:00 p.m.

3 Respectfully submitted,

4  
5  
6  
7 \_\_\_\_\_  
8 Secretary to the Meeting

9 **MINUTES APPROVED, FORMAL CALL, AND**  
10 **NOTICE OF MEETING WAIVED**

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14 \_\_\_\_\_  
15 **Tom Allender, Director**

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18 \_\_\_\_\_  
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**

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

47 \_\_\_\_\_  
**Jim Collins, General Counsel**