

Eagle River Water & Sanitation District
Board of Directors Meeting
October 22, 2015
MINUTES

A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held October 22, 2015, at 12:00 p.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
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV
Paul Testwuide

The following Director was absent and excused:

Debbie Buckley
Steve Friedman

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>	36	Jeff Schneider
Linn Brooks	37	Jason Sica
Jason Cowles	38	James Wilkins
Carol Dickman	39	<u>Consultants</u>
Angelo Fernandez	40	Jim Collins, Collins Cockrel & Cole
Todd Fessenden	41	Glenn Porzak, Porzak Browning & Bushong LLP
Catherine Hayes	42	<u>Public</u>
Leslie Isom	43	Tommy King, the Paint Man
Diane Johnson	44	Shelley Nottingham, Save the Hahnewald Barn
Melissa Mills McLoota	45	Tamra Nottingham-Underwood, Save the Hahnewald Barn
Siri Roman	46	Brooke Ranney, Eagle River Watershed Council (ERWC)

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 1:02 p.m.

INTRODUCTIONS

The attendees from Save the Hahnewald Barn introduced themselves. Ms. Brooks welcomed the District's new IT manager, Jason Sica.

PUBLIC COMMENT

Chairman Sackbauer presented photographs of I-70 and the Frontage Road in Vail during Vail Golf Course construction in 1969, including a backhoe and dump truck in Gore Creek. He also showed an image of the finished hole #10. Board and Staff noted that regulation of such activities has come a long way since then.

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1 ACTION ITEMS

2 **Meeting Minutes** – The minutes of the Regular Meeting of September 24, 2015, were considered.

3 Upon motion duly made and seconded, it was unanimously

4 **RESOLVED** that the minutes of the September 24, 2015, Regular Meeting be accepted and
5 hereby are approved as presented.

6 **Major Facilities Policy** – Mr. Schneider discussed his board action request and related major facilities
7 policy, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by
8 this reference. He briefly outlined the policy and the importance of the District and Authority being solely
9 in charge of all major facilities project management. In response to questions, he confirmed that the policy
10 constitutes best management practice and that the Authority approved the same policy. After discussion
11 and upon motion duly made and seconded, it was unanimously

12 **RESOLVED** that the Major Facilities Policy be and hereby is approved as presented.

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

15 GENERAL MANAGERS REPORT

16 FINANCE REPORT

17 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit D** and incorporated herein
18 by this reference.

19 **September Water Sales** – Mr. Wilkins discussed the September water sales report, a copy of
20 which is attached hereto as **Exhibit E** and incorporated herein by this reference. September
21 sales were 9% below projections for the District. He expects the remainder of the year to track
22 closely with projections as the irrigation season ended in September.

23 **Development Impact Fee Revenue Report** – Mr. Wilkins discussed the report, a copy of which
24 is attached hereto as **Exhibit F** and incorporated herein by this reference. The water fund is
25 below projections, but the wastewater fund is above projections by enough to offset the water
26 fund, with a total positive balance of about \$50,000.

27 **Budget Committee Update** – Mr. Wilkins discussed recent meetings with the budget committee,
28 Treasurer Friedman and Director Allender. Director Allender summarized the discussions, noting
29 staff was asked to improve tracking for capital planning. Spreadsheet tracking improvements
30 were also put in place for ease of review by the Board. The budget will be presented at a public
31 hearing at its November meeting; staff and the budget committee recommend approval.

32 HAHNEWALD BARN DISCUSSION

33 Mr. Collins requested the Hahnewald Barn be discussed out of order to accommodate the meeting
34 attendees there solely for this discussion. He noted the barn will not be left onsite, therefore it would be
35 disingenuous to request a listing with the state historical registry and/or related grant funds for an
36 analysis. Mr. Collins instead recommended the District contribute any funds that would have been spent
37 on teardown for relocation of the barn if such a project moves forward. Ms. Nottingham-Underwood

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1 requested the Board contribute funds towards a qualified historic preservation architect updating the
2 District's existing barn relocation report, which was completed by a local contractor. Mr. Collins suggested
3 the group enlist an architect recommended by the state historic registry at a cost not to exceed \$10,000,
4 with the District agreeing to pay half of the cost, up to \$5,000. Discussion ensued regarding participation
5 and funding from the town of Avon. Mr. Collins and Ms. Nottingham-Underwood will jointly write a request
6 letter to the town on the matter. After discussion and upon motion duly made and seconded, it was
7 unanimously

8 **RESOLVED** that the District contribute up to \$5,000 in matching funds for an assessment
9 of the Hahnewald Barn by a historic preservation architect.

10 Ms. Nottingham and Ms. Nottingham-Underwood left the meeting at 1:25 p.m.

11 **OPERATIONS REPORT**

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

14 **ISO Rating** – Mr. Fessenden said the town of Vail received an improved fire safety rating from
15 the International Standards Organization (ISO), which could result in lower insurance rates for
16 residents within the town boundaries.

17 **Eagle River MOU and Camp Hale Updates** – Mr. Fessenden noted a recent meeting with the
18 Camp Hale and MOU partners; though many of the players are the same, the meetings are
19 conducted separately due to Forest Service permitting requirements. He discussed the in-lieu fee
20 program, which is slated to begin in 2016 and would have many beneficiaries, including the
21 District and Authority. Mr. Fessenden said local participants requested that Eagle Park Reservoir
22 Company be the third party in line for wetlands credits, behind Climax Mine and the Homestake
23 Partners (Aurora and Colorado Springs). This request was based on additional funds contributed
24 by the Company for delineation, which has now been completed in the entire Camp Hale area.
25 Mr. Fessenden also discussed an agreement intended to ensure sufficient water is available to
26 support the created wetlands, which an Aurora representative will draft for the in-lieu fee program,
27 and for ERMOU participants to review. Discussion ensued regarding the appropriate flushing flow
28 and design considerations for a channel to accommodate such flows. Director Allender further
29 discussed the flushing flows and how Eagle Park Reservoir yield could be affected.

30 Mr. Fessenden also discussed the potential in-basin storage projects, including an Eagle
31 Park Reservoir expansion and the proposed Whitney Creek Forebay, geological information on
32 which is key for determining reservoir and intake locations, as well as the overall feasibility of the
33 reservoir. Any project proposed will be subject to permitting requirements, including public input
34 processes.

35 **East Vail Inflow and Infiltration (I&I) Programs** – Mr. Fessenden said staff was looking for I&I
36 in East Vail sewer lines using a new technology. A pilot project with this technology was
37 performed and the presence of leakage was confirmed using District sewer line cameras. The

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1 technology is only for sewer lines, but a similar technology is available for water lines. This sort of
2 program will help staff prioritize high leakage areas and better plan capital projects to address
3 these issues.

4 **Vehicle Auction Update** – Mr. Fessenden discussed a recent District vehicle and equipment
5 auction, a memo on which is attached hereto as **Exhibit H**. The District received more money
6 than anticipated from the sale of its equipment on the public auction site.

7 **Edwards Wastewater Treatment Facility Update** – Mr. Fessenden said the roof pour on the
8 facility is more than half complete, with recent wet weather causing delays. Masonry work is also
9 being completed, with the overall project on budget and on schedule.

10 **Water Emergencies** – Mr. Fessenden called attention to recent water emergencies, including
11 one in the Cortina pressure system resulting from town of Vail work on a new I-70 guardrail. A
12 generator was quickly put in place to restore service, but a Holy Cross power outage caused
13 another water outage a few days later.

14 **Solid Waste Composting Request** – Ms. Roman discussed last month's request from Matt
15 Donovan of Vail Honeywagon regarding a joint solid waste composting facility. A related memo is
16 attached hereto as **Exhibit I** and incorporated herein by this reference. She cited permitting and
17 regulatory issues that make a joint facility problematic. The Board directed her to communicate
18 these reasons to Matt Donovan but to continue to explore other partnership opportunities, as
19 appropriate.

20 **303(d) List Update** – Ms. Roman discussed various stream segments that are listed,
21 provisionally or otherwise, on the 303(d) list and others that are proposed for listing. She noted
22 some of the listings could negatively affect total maximum daily load (TMDL) levels and in turn,
23 wastewater permitting and required facility upgrades for nutrient removal. Staff and consultants
24 continue to evaluate the listings and will take appropriate steps to protect the District and
25 Authority, as well as continuing to collect and provide data to the state regarding the listings.

26 **Urban Runoff Group/Stormwater Update** – Ms. Roman discussed a suspicious-looking outfall
27 that turned out to be an illicit connection to a town stormwater outfall dumping raw sewage into
28 Gore Creek. Ms. Roman will keep the Board apprised as staff and the town work to determine the
29 location of the connection.

30 **Town of Vail Water Quality Efforts** – Ms. Roman reported on town of Vail water quality
31 improvement efforts from the Gore Creek Strategic Action Plan, including a proposal to limit
32 pesticide use that will be referred to the town council after it is vetted by the Planning and
33 Environmental Commission (PEC). The town has also completed storm sewer mapping and will
34 now prioritize areas that require additional research based on observations during the mapping
35 efforts. In response to a question, Ms. Roman and Ms. Brooks noted a new CDOT outfall under I-
36 70 in East Vail will have treatment at the end of the pipe before the water is released into Gore

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1 Creek. Additional treatment could be added later as well, as treatment at the end of the pipe is
2 not the District's preferred method.

3 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

6 **Fluoride** – Ms. Johnson reported that the Snowmass Village Water & Sanitation District
7 (SVWSD) board voted yesterday to resume fluoridation of their community water system after a
8 non-binding survey of the district's customers showed that 64 percent favored fluoride. The
9 SVWSD board had voted in July to stop fluoridating the water supply. She also said Denver
10 Water reaffirmed fluoridation of its water supply in August.

11 **Colorado Water Plan** – Ms. Johnson discussed an Aspen Journalism story concerning new
12 items being added to the plan, a copy of which is attached hereto as **Exhibit K** and incorporated
13 herein by this reference. She mentioned Front Range and West Slope groups are doing last
14 minute lobbying concerning water plan specifics as the Colorado Water Conservation Board
15 (CWCB) prepares the final draft for its Nov. 18-19 board meeting. She will ask CWCB staff to
16 release any proposed plan additions for public comment and review. Ms. Johnson also said the
17 CWCB requested footage for a short video they are producing for release with the final plan; she
18 arranged the shoot with District staff at several District and Authority facilities.

19 **Vail Farmers' Market** – Ms. Johnson said the water station at the Farmers' Market was a great
20 success and thanked involved staff – who dispensed more than 2,000 gallons in nearly 21,000
21 compostable cups and thousands of water bottles, which equates to about 1,500 interactions
22 every Sunday from June 21 to October 4. She also thanked managers and the board for its
23 support of these efforts.

24 **Senate Bill 13-019** – Ms. Johnson referenced the legislation, passage of which the District and
25 Authority Boards helped secure in 2013. The legislation allows water rights owners to leave water
26 in streams without risking a potential future reduction in their historic consumptive use calculation.
27 The legislation was put to use by a Granby rancher late last spring and has garnered several
28 media stories of late.

29 **Colorado River System operations** – Ms. Johnson mentioned a memo written by John McClow
30 concerning the Colorado River Compact, the 2007 Interim Guidelines, contingency planning, and
31 the structural deficit that exists in the Colorado River supply and storage levels at Lakes Powell
32 and Mead, a copy of which is attached hereto as **Exhibit L** and incorporated herein by this
33 reference.

34 **REPORT BY GENERAL COUNSEL**

35 **Traer Creek Tank Insurance Claim** – Mr. Collins noted a discussion on the matter would take
36 place in Executive Session in the absence of all staff and consultants except Ms. Brooks.

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1 **Eagle Park Reservoir Company Operations Agreement** – Mr. Collins discussed the
2 agreement, a copy of which is attached hereto as **Exhibit M** and incorporated herein by this
3 reference. In response to a question, Ms. Isom said the Exhibit B rates are the District's actual
4 costs, which are applied to in-District work completed; these are the same rates charged to the
5 Authority. After discussion and upon motion duly made and seconded, it was unanimously

6 **RESOLVED** that the Operations Agreement with the Eagle Park Reservoir Company be
7 and hereby is approved as presented.

8 **REPORT BY WATER COUNSEL**

9 **Piney River Unit Water Right** – Mr. Porzak discussed the Piney River Unit Water Right
10 Diligence filing, a copy of which is attached hereto as **Exhibit N** and incorporated herein by this
11 reference. He said a favorable ruling was received from the water referee and reminded Directors
12 that this was the right received from Denver water as part of that overall settlement. He expects
13 the judge to sign the filing shortly.

14 **Eagle River MOU Projects** – Mr. Porzak discussed the proposed projects, which Mr. Fessenden
15 also commented on previously. At its later meeting, the Eagle Park Reservoir Company will
16 consider a development agreement with the National Forest Foundation (NFF) to grant the
17 Company the option for wetlands credits to mitigate wetlands for any ERMOU projects. The NFF
18 has already entered into similar agreements with Climax Mine and the Homestake Partners,
19 Aurora and Colorado Springs. He said involved engineers have agreed to accelerate their
20 timeline for review of the proposed projects so cost estimates are available sooner. Meetings are
21 also being coordinated with project principals.

22 **State Legislation** – Mr. Porzak noted recent meetings with elected officials, including Sen.
23 Donovan and Rep. Mitsch-Bush, as well as environmental representatives. Mr. Porzak discussed
24 ongoing issues with the legislation related to bypass flows. He plans to get consensus on the
25 language and other issues by the end of November so the bill can quickly move forward when the
26 upcoming legislative session begins.

27 **Revised Groundwater Directive** – Mr. Porzak said the Forest Service is again moving forward
28 with a modified version of its groundwater directive. A Forest Service point person in Washington
29 D.C. was designated. Mr. Porzak will continue to monitor progress and report to the Board.

30 **Wilderness Bill** – Mr. Porzak discussed the timeline for Rep. Polis's wilderness bill as discussed
31 by his staff members at the joint meeting prior to the District meeting. Mr. Porzak noted without
32 support from both the House and Senate, the bill is not likely to move quickly.

33 **EXECUTIVE SESSION**

34 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Colorado River
35 Cooperative Agreement matters, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no electronic
36 record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion
37 duly made and seconded, it was unanimously

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1 **RESOLVED** to enter executive session at 2:19 p.m. to discuss attorney-client privileged
2 issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-
3 402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
4 contents of the discussion would contain privileged attorney-client communications.*
5 Mr. Collins requested the Board continue Executive Session to receive legal advice regarding the Traer Creek
6 Tank, pursuant to §24-6-402(4)(a)(b)(e) and (f) C.R.S. He asked that no electronic record be made, as the
7 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
8 seconded, it was unanimously

9 **RESOLVED** to continue executive session at 2:30 p.m. to discuss attorney-client privileged
10 issues concerning the Traer Creek Tank, pursuant to §24-6-402(4)(a)(b)(e) and (f) C.R.S.
11 with no electronic record created as Mr. Collins opined the contents of the discussion would
12 contain privileged attorney-client communications.*

13 The regular meeting resumed at 2:45 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:46 p.m.

3 Respectfully submitted,

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7 _____
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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34 _____
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 **Glenn Porzak, Water Counsel**

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Jim Collins, General Counsel