

Eagle River Water & Sanitation District
Board of Directors Meeting
November 19, 2015
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held November 19, 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
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV, *via phone*
Paul Testwuide

The following Director was absent and excused:

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>	37	Jeff Schneider
Garrett Antill	38	Jason Sica
Linn Brooks	39	Brian Tracy
Jason Cowles	40	James Wilkins
Carol Dickman	41	<u>Consultants</u>
Catherine Hayes	42	Jim Collins, Collins Cockrel & Cole
Leslie Isom	43	Glenn Porzak, Porzak Browning & Bushong LLP
Diane Johnson	44	<u>Public</u>
Elena Jones	45	Susie Kincade, the Wilderness Coalition
John McCaulley	46	Tommy King, the Paint Man
Melissa Mills McLoota	47	Margaret Rogers, citizen
Siri Roman		

CALL TO ORDER

Acting Chair Buckley called the meeting to order at 11:08 a.m.

INTRODUCTIONS

Public attendees introduced themselves.

PUBLIC COMMENT

Wilderness Discussion – Staff summarized actions taken at the October joint meeting regarding consideration of Rep. Polis's latest wilderness bill. Discussion ensued regarding discussions since the October meeting, including the prior day's conference call with District staff, Mr. Porzak, and Rep. Polis staff. Mr. Porzak noted that the prior day's call necessitated further discussion with the District Board and revisions to the proposed policy language. He said he was not able to discuss anything further until he

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1 could brief the Board on the recent developments in Executive Session. Acting Chair Buckley thanked
2 Ms. Kincade and Ms. Rogers for their attendance and continued interest in the matter.

3 **Legislative Update** – Mr. Porzak noted that due to the weather, the legislative update from Peggi
4 O’Keefe was postponed.

5 **ACTION ITEMS**

6 **Meeting Minutes** – The minutes of the Special Meeting of October 22, 2015, were considered. Upon
7 motion duly made and seconded, it was unanimously

8 **RESOLVED** that the minutes of the October 22, 2015, Special Meeting be accepted and hereby
9 are approved as amended.

10 The minutes of the Joint Special Meeting with the Upper Eagle Regional Water Authority (Authority) of
11 October 22, 2015, were considered. Upon motion duly made and seconded, it was unanimously

12 **RESOLVED** that the minutes of the October 22, 2015, Joint Special Meeting with the Authority be
13 accepted and hereby are approved as presented.

14 **PUBLIC HEARING: 2016 PROPOSED RATES**

15 Acting Chair Buckley opened a public hearing at 11:28 a.m. to discuss the 2016 rate sheet, a copy of
16 which is attached hereto as **Exhibit A** and incorporated herein by this reference. A call for public input
17 solicited no response. Mr. Collins noted the District had posted the required formal notice of the public
18 hearing at which the Board would consider a rate change at least 30 days in advance. A copy of the
19 notice is attached hereto as **Exhibit B** and incorporated herein by this reference. The public hearing was
20 closed at 11:29 a.m. Mr. Wilkins presented a resolution to adopt the 2016 rates, a copy of which is
21 attached hereto as **Exhibit C** and incorporated herein by this reference. Upon motion duly made and
22 seconded, it was unanimously

23 **RESOLVED** that resolution to adopt the 2016 rates be and hereby is approved as
24 presented.

25 **PUBLIC HEARING: 2016 PROPOSED BUDGET**

26 Acting Chair Buckley opened a public hearing at 11:30 a.m. to discuss the 2016 budget, a copy of which
27 is attached hereto as **Exhibit D** and incorporated herein by this reference. A call for public input solicited
28 no response. The public hearing was closed at 11:31 a.m. Mr. Wilkins presented Resolutions to Adopt the
29 2016 Budget, Appropriate Sums of Money, and Certify Mill Levies, copies of which are attached hereto as
30 **Exhibits E, F, and G**, respectively, and incorporated herein by this reference. After discussion and upon
31 motion duly made and seconded, it was unanimously

32 **RESOLVED** that the Resolutions to Adopt the 2016 Budget, Appropriate Sums of Money,
33 and Certify Mill Levies be and hereby are approved as presented.

34 The 2016 rates for service charges and tap fees are set as follows:
35
36
37

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1 **Vail Water Service Rates:**

Base Rate		Monthly per Single Family Equivalent (SFE)	
\$14.98		Base Service Rate, 0% increase	
\$ 5.25		Capital Replacement Program (CRP) Base Rate (new rate)	
\$ 7.27		Debt Service Base Rate (Increased from \$7.24)	
Water Usage per 1,000 Gallons, 0% increase in tiers; 13.1% increase with CRP Rate			
Beginning of Tier (1,000 gallons)	Tier Cutoff (1,000 gallons)	Rate	
0	10	\$2.58 per 1,000 gallons	
11	40	\$4.38 per 1,000 gallons	
41	Over	\$6.57 per 1,000 gallons	

2 **Wastewater Service Fees:**

3 \$5.06 per 1,000 gallons of water used from January to April, with a minimum of 5,000 gallons per SFE per
 4 month. The average water usage for January to April will be used to calculate the wastewater charges for
 5 May to December. In addition, a \$3.29 and \$5.97 base rate per SFE is assessed for the debt service on
 6 the 2009 and 2012 Bonds, respectively. Usage rates are the same as the 2015 levels, and there is a
 7 \$0.14 increase per SFE to the Debt Service base rate.

8 **Vail Water Tap Fees:**

9 \$4.45 per square foot for residential properties and 3% increase in the commercial fees, which are based
 10 on meter size. A 3% increase over 2015.

11 **Wastewater Tap Fees:**

12 \$3.53 per square foot for residential properties and 3% increase in the commercial fees, which are based
 13 on fixture count and meter flow. A 3% increase over 2015.

14 **Property Tax mill levies for taxes to be collected in 2016:**

	11/23/2015 Net AV	Mill	Revenue
ERWSD – Wastewater Ops.	\$2,214,842,850	0.231	\$511,629
ERWSD – Vail Water Ops.	\$1,011,063,110	0.445	\$448,912
ERWSD – Wastewater Debt	\$2,214,842,850	0.621	\$ 1,375,417
ERWSD – Vail Water Debt	\$1,011,063,110	0.931	\$941,300

15 *Mill levies and/or revenues are adjusted once the final Assessed Valuation is received and TABOR limits*
 16 *are reviewed.*
 17

18 **Sanitation Maintenance Warranty Deductible Endorsement** – Ms. Isom presented her Board
 19 Action Request and the Sanitation Maintenance Warranty Deductible Endorsement for 2016,
 20 copies of which are attached hereto as **Exhibits H** and **I**, respectively, and incorporated herein by
 21 this reference. She said approval of the Endorsement would reduce the District’s 2016 liability
 22 premiums by 33%. After discussion and upon motion duly made and seconded, it was
 23 unanimously

24 **RESOLVED** that the Sewer Maintenance Warranty Deductible Endorsement for 2016 be
 25 and hereby is approved as presented.

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1 **Major Facilities Policy Rules and Regulations Amendment** – Mr. Schneider discussed the major
2 facilities policy adopted by the Board at its October meeting. He noted the Rules and Regulations are
3 proposed to align with the new policy and presented a board action request form, updated sections of the
4 Rules and Regulations, and the major facilities policy, copies of which are attached hereto as **Exhibits J,**
5 **K,** and **L,** respectively, and incorporated herein by this reference. Mr. Schneider also noted an
6 amendment to the proposed wording in the Rules and Regulations to more explicitly state the District and
7 Authority would work collaboratively with the developer in major facilities construction. This was
8 suggested by the Authority in its earlier meeting. After discussion and upon motion duly made and
9 seconded, it was unanimously

10 **RESOLVED** that the Rules and Regulations be and hereby are approved as presented.

11 **Employee Recognition** – The Board approved an annual holiday bonus for employees in recognition of
12 their efforts throughout the year.

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

15 **Resolution Designating Use of Eagle County Housing Guidelines as Reference Material for**
16 **Definition of Affordable Housing** – Mr. McCaulley presented a board action request and Resolution
17 Designating Use of Eagle County Housing Guidelines as Reference Material for Definition of Affordable
18 Housing, copies of which are attached hereto as **Exhibits N** and **O,** respectively, and incorporated herein
19 by this reference. He noted Eagle County uses formulas and multiple factors in its definition, which is
20 updated at least every two years based on federal and state changes to affordable housing guidelines.
21 Mr. Collins noted that tap fees for affordable housing are based on square footage and are therefore
22 lower than if tap fees were based on 3,000 square feet per single family equivalent as they were in the
23 past. After discussion and upon motion duly made and seconded, it was unanimously

24 **RESOLVED** to approve Exhibit O, the Resolution Designating Use of Eagle County Housing
25 Guidelines as Reference Material for Definition of Affordable Housing, as presented.

26 STRATEGY ITEMS

27 **Water Demand Management Program** – Mr. McCaulley and Ms. Jones presented the results of
28 the water demand management program pilot study in the Authority's service area, a copy of
29 which is attached hereto as **Exhibit P** and incorporated herein by this reference. The program
30 goals included developing a vision; determining the effectiveness of new water use technologies;
31 and reducing water use/lowering monthly water bills in Mountain Star while still allowing residents
32 to maintain quality landscapes. The initial results were positive, demonstrating a marked
33 reduction in water use for the properties involved in the pilot study compared to those not
34 involved in the Mountain Star area. Staff will continue to track progress at the involved properties
35 for at least two additional irrigation seasons. Mr. McCaulley discussed expansion of the pilot
36 program for summer 2016 and distributed a draft application, a copy of which is attached hereto
37 as **Exhibit Q** and incorporated herein by this reference. He noted infrastructure was being

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1 installed in the Vail water service area but would likely not be fully functional for another year. Mr.
2 McCaulley and Ms. Jones also summarized future program plans, including development of web
3 resources, addition of a water demand management coordinator position, and additional
4 conservation strategies.

5 **Irrigation and Sprinkler Account Impact Fee Draft Policy** – Mr. McCaulley and Ms. Jones
6 discussed a board action request and Joint Resolution to Authorize a Public Hearing for Adoption
7 of Impact Fees for New Irrigation and Sprinkler Accounts, copies of which are attached hereto as
8 **Exhibit R** and **S**, respectively, and incorporated herein by this reference. Mr. McCaulley said
9 while staff was completing the water system impact fee study this past summer, they discovered
10 that irrigation systems that were independent of any associated structure have a capacity impact
11 to the water supply system for which the District and Authority are not being compensated; thus,
12 the recommended consideration of a new irrigation and sprinkler account impact fee. Mr.
13 McCaulley and Ms. Jones presented a PowerPoint on the topic, a copy of which is attached
14 hereto as **Exhibit T** and incorporated herein by this reference. The new fee would take into
15 account irrigable area and irrigation intensity, which would be an incentive for developers to
16 reduce irrigated area and utilize drought-tolerant plants. The Board tabled consideration of the
17 Resolution to set a 30-day notice for a rate hearing while staff further refines the policy.

18 **GENERAL MANAGER REPORT**

19 **Operations Report** – In Mr. Fessenden's absence, Ms. Brooks presented the operations report,
20 a copy of which is attached hereto as **Exhibit U** and incorporated herein by this reference. She
21 noted ongoing work with the Eagle River Valley mobile home park with the eventual intent to tap
22 into the Authority's system and a recent Eagle Mine superfund site tour with parties affected by
23 the Gold King Mine spill near Durango. Local experts, including Mr. Fessenden, comprised a
24 panel for the tour attendees.

25 **303(d) Listings** –Ms. Roman noted that the District supported the Water Quality Control
26 Division's recently proposed 303(d) listings with two exceptions. The District suggested listing the
27 Eagle River segment from Martin Creek through the Gore Creek confluence for dissolved iron
28 and arsenic since it affects District and Authority treatment operations. Staff also suggested listing
29 the Eagle River from Berry Creek to Squaw Creek as provisional rather than on the
30 monitoring/evaluation list since the cause of impairment there is unknown. Ms. Roman also noted
31 that an improperly plumbed sewer line that was discharging wastewater into Gore Creek was
32 traced to the Arrabelle and will be fixed by the Arrabelle shortly.

33 **Gore Creek Strategic Action Plan** – Ms. Roman said the plan is still undergoing review and
34 refinement by the town of Vail and will be presented to the District and Authority Boards upon
35 final approval by the town.

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1 **Proposed 2016 Meeting Schedule** – Ms. Brooks discussed the proposed 2016 meeting
2 schedule, a copy of which is attached hereto as **Exhibit V** and incorporated herein by this
3 reference. She noted a few instances in which meetings will be held on the third Thursday of the
4 month instead of the fourth to accommodate staff and consultant attendance at Colorado Water
5 Congress events. The Board agreed on the schedule, which will be formally adopted along with
6 the meeting place and time at the January 21, 2016 meeting.

7 **Pipeline Condition Assessment** – Mr. Phelps referenced a memo about the recent sewer main
8 assessment project in East Vail, a copy of which is attached hereto as **Exhibit W** and
9 incorporated herein by this reference. New technology was used that helps to identify pipe
10 defects and other possible sources of inflow and infiltration, which staff is seeking to reduce as it
11 takes up capacity in the wastewater system and could trigger a required costly facility expansion.
12 Mr. Phelps noted the new technology was very effective and corrective projects will be planned
13 based on the findings; it will also be used in other areas of the wastewater collection system. He
14 also noted similar technology may be available for water mains that would help detect leaks to
15 reduce water loss and emergency repairs in the Authority and District water distribution systems.

16 **Traer Creek Update** – Mr. Cowles updated on the Traer Creek tank, investigation of which is
17 ongoing. He noted that Traer Creek is taking the lead on working with other involved parties.

18 **Edwards Wastewater Treatment Facility Update** – Mr. Schneider said the project is going well
19 and appears ahead of schedule based on his last update from the contractor.

20 **Monthly Reports** – Monthly reports were acknowledged, including the contract log, October
21 meeting summary, and Authority and District committees list. Copies of the monthly reports are
22 attached hereto as **Exhibit X** and incorporated herein by this reference.

23 **FINANCE REPORT**

24 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit Y** and incorporated herein
25 by this reference.

26 **October Water Sales** – Mr. Wilkins discussed the October water sales report and noted sales
27 were higher than projected for both the District and Authority.

28 **Development Impact Fee Revenue Report** – Mr. Wilkins discussed the report and noted actual
29 sales were tracking closely to projected sales. Development is picking up, and Mr. Wilkins expects
30 to see additional revenues as developers take advantage of 2015 rates before they increase in
31 2016.

32 **Quarterly Financial Report** – Mr. Wilkins discussed the report and pointed out revenues in 2015
33 show the District is covering its operations and debt service expenses with operating revenues.
34 That trend is expected to continue in 2016, meaning the District should have to bond less often
35 and for less money.

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1 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

4 **Fire Hydrant Communications** – Ms. Johnson reported on local government coordination to
5 disseminate information about snow removal around fire hydrants and maintaining cleared
6 spaces. These communications are sent out annually and as reminders after big snowstorms.

7 **Colorado Water Plan** – Ms. Johnson noted the plan was delivered to Gov. Hickenlooper that
8 day, with much media attention devoted to the topic. She reminded Directors that many parties
9 were concerned over late additions to the Plan and said the Colorado Water Conservation Board
10 summarized the final changes in an October update that was attached to her report. Ms. Johnson
11 said since the final Plan was just released, it would still need another review.

12 **REPORT BY GENERAL COUNSEL**

13 **Settlement and Waiver Agreement with Traer Creek Metropolitan District** – Mr. Collins
14 discussed the agreement with TCMD, a copy of which is attached hereto as **Exhibit AA** and
15 incorporated herein by this reference. TCMD is repaying the agreed upon 10% of the cost of
16 alternative outfall (equal to \$42,759.75) that was constructed by the District in 1999 within the
17 Authority's service area. The system routes effluent from the Avon Wastewater Treatment Plant
18 to a new outfall located with 25 feet of the Avon Booster Pump Station intake to avoid the
19 requirement to augment 100% of the intake's diversions per agreement with the Colorado Water
20 Conservation Board. TCMD requested District approval of the agreement and that the Authority
21 acknowledges it is not due any money for the work described in the agreement. Mr. Collins
22 confirmed that the Authority made such an acknowledgment at its morning meeting. After
23 discussion and upon motion duly made and seconded, it was unanimously

24 **RESOLVED** to approve the Settlement and Waiver Agreement with Traer Creek
25 Metropolitan District.

26 **Hahnewald Barn Update** – Mr. Collins discussed recent correspondence with the Save the
27 Hahnewald Barn coordinator, Tamra Nottingham-Underwood. The Board reaffirmed its position
28 that the Barn must move from its current location on the District's Avon Wastewater Treatment
29 Plant property and directed Mr. Collins to relay this information to Ms. Nottingham-Underwood.

30 **REPORT BY WATER COUNSEL**

31 **Eagle River MOU Projects** – Mr. Porzak updated the Board on recent meetings regarding
32 proposed ERMOU projects. He discussed involved consultants, who advised the ERMOU parties
33 that they expect to have meaningful data by the end of the year. Upcoming meetings will be
34 scheduled to get new staff members up to speed at Aurora and Colorado Springs, as well as to
35 present findings. Ms. Brooks clarified that prior to project permitting, all ERMOU partners will
36 need to submit "statements of need" for the water. She reminded directors of the water rights
37 hydrology model that is still in progress.

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1 **Forest Service Water Right Directives** – Mr. Porzak discussed recent correspondence
2 regarding the directives, a copy of which is attached hereto as **Exhibit BB** and incorporated
3 herein by this reference. He emphasized that the latest revisions underscore the need to pass
4 legislation to ensure similar directives will not accompany each changing administration.

5 **State Legislation Update** – Mr. Porzak updated on the state legislation, noting that all involved
6 groups are nearing agreement on the proposed language, including neutral language regarding
7 bypass flows. He said the most recent version of the legislation includes language specifying that
8 the state engineer cannot spend any funds to carry out directives from the federal government
9 that would reduce the value of any privately owned water rights. Mr. Porzak is hopeful that the bill
10 will be introduced as soon as the next legislative session begins.

11 **EXECUTIVE SESSION**

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

16 **RESOLVED** to enter executive session at 1:40 p.m. to discuss attorney-client privileged
17 issues concerning employee housing matters, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.
18 with no electronic record created as Mr. Collins opined the contents of the discussion would
19 contain privileged attorney-client communications.*

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

24 **RESOLVED** to enter executive session at 1:45 p.m. to discuss attorney-client privileged
25 issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-
26 402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
27 contents of the discussion would contain privileged attorney-client communications.*

28 The regular meeting resumed at 2:30 p.m.
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:31 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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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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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.

43
44
45 _____
46 **Glenn Porzak, Water Counsel**

47 _____
Jim Collins, General Counsel