

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**December 17, 2015**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held December 17, 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, 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>		<u>Consultants</u>
Linn Brooks	40	Jim Collins, Collins Cockrel & Cole
Jason Cowles	41	Jonathan Heroux, Piper Jaffray
Carol Dickman	42	Peggi O'Keefe, Clear Strategies, LLC
Catherine Hayes	43	Glenn Porzak, Porzak Browning & Bushong LLP
Leslie Isom	44	<u>Public</u>
Diane Johnson	45	Greg Aplet, the Wilderness Society
Elena Jones	46	Scott Braden, Conservation Colorado
John McCaulley	47	Nissa Erickson, Rep. Polis staff
Siri Roman	48	David Gorsuch, citizen and customer
Jeff Schneider	49	Kevin Hocht, citizen and customer
Jason Sica	50	Susie Kincade, the Wilderness Coalition
Brian Tracy	51	Josh Kuhn, Conservation Colorado
James Wilkins	52	Scott Miller, the Wilderness Society
	53	Brooke Ranney, Eagle River Watershed Council
	54	Will Roush, Wilderness Workshop
	55	Stan Zemler, town of Vail
	56	

**CALL TO ORDER**

Acting Chair Buckley called the meeting to order at 11:02 a.m.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session with the Upper Eagle Regional Water Authority Board, which was already in an Executive Session, to receive legal advice regarding Colorado River Cooperative Agreement matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** to enter the executive session at 11:03 a.m. to discuss attorney-client privileged  
2 issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-  
3 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents  
4 of the discussion would contain privileged attorney-client communications.\*

5 Ms. Brooks and Ms. Johnson were the only staff members present for the Executive Session. At 11:21  
6 a.m. the regular meeting resumed. The Authority Board of Directors adjourned its meeting at 11:24 a.m.  
7 The District Board of Directors remained in regular session. All remaining staff, consultants, and public  
8 entered the room at that time with the exception of Mr. Collins.

### 9 **INTRODUCTIONS**

10 Public attendees, staff, and consultants introduced themselves.

### 11 **PUBLIC COMMENT**

12 Chairman Sackbauer welcomed public attendees. Public comment was received from the following  
13 attendees: Messrs. Braden and Miller, Ms. Erickson, Ms. Kincade, and Messrs. Roush, Hochtli, Aplet, and  
14 Gorsuch. Messrs. Braden and Miller submitted comments on the most recent version of the District and  
15 Authority's proposed wilderness policy and position on H.R. 2554, copies of which are attached hereto as  
16 **Exhibits A** and **B**, respectively, and incorporated herein by this reference. Mr. Porzak noted the District  
17 and Authority's proposed language is consistent with the Colorado Water Plan chapter on flooding and  
18 natural disaster mitigation. The Board also responded to the public input, noting the potential need for  
19 natural disaster mitigation in the proposed wilderness area to ensure the District and Authority can still  
20 provide quality water service; the differences between the District and Authority service area and the area  
21 in which the Hayman fire occurred; and the Board's continued commitment to finalizing its wilderness  
22 policy and position statement on H.R. 2554 using consultant and public input. The Board thanked the  
23 public attendees for their comments. At 12:17 p.m. all public attendees left the meeting.

24 **Legislative Update** – Mr. Porzak introduced Peggi O'Keefe, the District and Authority's lobbyist. Ms.  
25 O'Keefe discussed her background and experience. She also gave an update on the proposed state  
26 legislation, the Colorado Water Rights Protection Act. Additional information is attached hereto as **Exhibit**  
27 **C** and incorporated herein by this reference. She explained the process by which proposed bills become  
28 law and efforts towards gaining support for the Colorado Water Rights Protection Act. The Board thanked  
29 her for attending. Mr. Porzak gave further information on the Act; after discussion and upon motion duly  
30 made and seconded, it was unanimously

31           **RESOLVED** that the Board supports the Colorado Water Rights Protection Act.

32 Ms. O'Keefe and Mr. Heroux left the meeting at 12:30 p.m., at which time the Board took a recess for  
33 lunch. The regular meeting resumed at 12:56 p.m.

### 34 **ACTION ITEMS**

35           **Meeting Minutes** – The minutes of the regular meeting of November 19, 2015, were considered. Upon  
36 motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the minutes of the November 19, 2015, regular meeting be accepted and  
2           hereby are approved as presented.

3           **2016 Operations Agreements** – Ms. Isom presented a board action request regarding the District’s 2016  
4           Operations Agreements with the Upper Eagle Regional Water Authority and the town of Minturn, a copy  
5           of which is attached hereto as **Exhibit D** and incorporated herein by this reference. She discussed the  
6           changes to the Exhibits to the Operations Agreement with the Authority, noting inclusion of the Authority’s  
7           2016 capital projects in Exhibit A and some minor price increases in Exhibit F, the Laboratory Price List;  
8           Exhibit E, Basic Compensation, was unchanged from 2015. Ms. Isom said the Authority had approved the  
9           agreement at its morning meeting. After discussion and upon motion duly made and seconded, it was  
10          unanimously

11          **RESOLVED** to approve the 2016 Operations Agreement with the Authority as presented.  
12          A copy of the Operations Agreement is attached hereto as **Exhibit E** and incorporated herein by this  
13          reference. Ms. Isom also discussed the Operations Agreement with Minturn that includes billing for  
14          Minturn’s water and trash collection services in conjunction with the District’s sewer service charge  
15          billings. The agreement was unchanged from 2015. After discussion and upon motion duly made and  
16          seconded, it was unanimously

17          **RESOLVED** to approve the 2016 Operations Agreement with the town of Minturn.  
18          A copy of the Operations Agreement is attached hereto as **Exhibit F** and incorporated herein by this  
19          reference.

20          **January 2016 Public Hearing for Cash in Lieu of Water Rights Fee Increase** – Ms. Brooks noted  
21          staff’s request for a public hearing at the January 21 meeting to consider a cash in lieu of water rights fee  
22          increase for 2016 commensurate with Denver/Boulder consumer price index (CPI) increase. The Board  
23          authorized holding the hearing at the January 21, 2016, meeting to consider the new fee.

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

### 26          **REPORT BY WATER COUNSEL**

27          **Piney River Unit Water Right Diligence** – Mr. Porzak discussed the diligence filing for the Piney  
28          River Unit Water Right. He noted Judge Boyd entered the decree granting diligence for the right.  
29          The next diligence filing is due in 2021.

30          **Authority Seniors First Supreme Court Appeal** – Mr. Porzak discussed the previous week’s  
31          oral argument in the Authority’s Seniors First case. He summarized the case, in which the  
32          Authority chose to divert the junior of two water rights because of differences in the terms and  
33          conditions and supporting augmentation plans of each right. Mr. Porzak said the Authority is  
34          obligated to provide water to its constituents, which makes it uniquely suited to make decisions  
35          regarding use of its water rights. The state is arguing that the senior right must be diverted first.  
36          Mr. Porzak noted the state’s only role is to administer water rights. He will continue to provide  
37          updates on the case.

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1 **Colorado Water Plan** – Mr. Porzak said the final draft of the plan was delivered to Gov.  
2 Hickenlooper last month and discussed related information, a copy of which is attached hereto as  
3 **Exhibit H** and incorporated herein by this reference. Mr. Porzak pointed out an entire chapter of  
4 the plan devoted to flooding and natural disaster management planning and emphasized the  
5 importance of natural disaster mitigation as it relates to the District's position on the Polis  
6 wilderness bill. The plan also indicated its opposition to federal bypass flows and noted the state  
7 and its agencies will defend water rights in the state against federal intrusion, which is important  
8 in light of the ongoing proposals of federal water directives of the Forest Service.

9 **Cash in Lieu Fee Increase** – Mr. Porzak discussed the upcoming public hearing to consider a  
10 CPI increase of the District's cash in lieu of water rights fees. He suggested a 5% increase in  
11 2016 for both winter storage water and summertime consumptive use credits, bringing the price  
12 for each to \$26,250 and \$8,300 per acre foot, respectively. Mr. Porzak also noted the ongoing  
13 engineering work for proposed Eagle River MOU projects would be complete in the spring and  
14 would provide good data for the cash in lieu fee increases for 2017 to ensure the District is  
15 receiving equitable compensation for cash in lieu of water rights. Ms. Brooks noted that in the  
16 future, the cash in lieu fees would be approved during the District's regular budget process, so a  
17 separate public hearing would not be needed after the January one for this purpose.

18 **Vail Whitewater Park Diligence/Absolute Application** – Mr. Porzak noted he will meet the end  
19 of January deadline to file for diligence and to make the Vail Whitewater Park water right  
20 absolute.

21 Messrs. Collins and Simmons returned to the meeting at 1:20 p.m.

### 22 **STRATEGY ITEMS**

23 **Sprinkler and Irrigation Account Tap Fees** – Mr. McCaulley and Ms. Jones presented  
24 information regarding the rational nexus for the proposed new irrigation account impact fee, a  
25 copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. They  
26 requested the Board hold a public hearing at its January 21 meeting to consider adoption of the  
27 new fee. Mr. McCaulley said the fee encourages developers to use more native and drought  
28 tolerant vegetation, which uses less water and would presumably decrease irrigation costs for  
29 new developments. The Board directed staff to post the required 30-day notice of the public  
30 hearing to be held at the January 21, 2016, meeting to consider the new fee.

### 31 **REPORT BY GENERAL COUNSEL**

32 **Joint Resolution re Alpine Engineering** – Mr. Collins presented a joint resolution with the  
33 Authority to allow the continued use of Alpine Engineering following Ms. Brooks' disclosure that  
34 her husband, Gary, is now a co-owner of the company. A copy of the resolution is attached  
35 hereto as **Exhibit J** and incorporated herein by this reference. Mr. Collins confirmed Ms. Brooks

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1 is not involved in the District's contract award process. After discussion and upon motion duly  
2 made and seconded, it was unanimously

3 **RESOLVED** to approve the joint resolution with the Authority on the policy regarding  
4 Alpine Engineering.

5 **Hahnewald Barn Update** – Mr. Collins reported that discussions are moving along with the  
6 citizens group regarding the needed removal of the barn from the District's Avon Wastewater  
7 Treatment Plant property.

8 **Wastewater Bond Issuance** – Mr. Collins said staff and consultants are on schedule to get the  
9 preliminary bond offering statement out in the next month. Further updates will follow at  
10 subsequent meetings.

### 11 **GENERAL MANAGER REPORT**

12 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit K** and incorporated  
13 herein by this reference.

14 **2016 Board Meeting Schedule** – The Board agreed to start its regular meetings at 11:30 a.m. to  
15 accommodate the Authority meetings, which often took longer than expected in 2015.

16 **Employee Bonuses** – Ms. Brooks noted a new program in 2015 designed to recognize and  
17 reward employees whose work activities have created efficiencies, improved public perception or  
18 District culture, or provided a measureable financial impact. She said the results were very  
19 positive, with savings of \$207,000 realized and the award of \$10,500 to involved employees. A  
20 future presentation will give the Board more specific details on the program and its results, which  
21 are part of the business optimization initiative.

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

### 25 **FINANCE REPORT**

26 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit M** and incorporated herein  
27 by this reference, including the November water sales and development impact fee revenue reports.

### 28 **OPERATIONS REPORT**

29 In Mr. Fessenden's absence, Ms. Brooks presented the operations report, a copy of which is attached  
30 hereto as **Exhibit N** and incorporated herein by this reference.

31 **Edwards Wastewater Treatment Facility Update** – Mr. Schneider noted the project is slightly  
32 behind schedule due to weather and other factors. He still expects timely completion of the  
33 project and will keep the Board apprised of developments.

34 **Urban Runoff Group/Stormwater Update** – Ms. Roman discussed Monday's 303(d) list hearing  
35 and related outcomes. She noted all District and Authority concerns were addressed.

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1       **Arrabelle Faulty Connection Update** – Ms. Roman said the cross connection that caused raw  
2       sewage to be discharged directly into Gore Creek had been traced to the Lionshead Children’s  
3       Ski School and was fixed. Mr. Allender stated that the cross connection was made at the direction  
4       of the engineer who designed the system. Ms. Roman noted various points in the construction  
5       process at which such a mistake could occur and that the Town of Vail was reviewing their  
6       processes to ensure this type of mistake does not occur in the future.

7       **Avon Drinking Water Facility Power Outage** – Mr. Tracy discussed a recent power outage at  
8       the ADWF during which the backup generators did not turn on as expected. Mr. Tracy said some  
9       residual power may have been flowing and preventing the automatic generator startup; the  
10      generators were scheduled for immediate service to ensure the issue is identified and remedied.

11      **Eagle Mine Update** – Mr. Tracy discussed the Gold King Mine spill in Durango and whether such  
12      an incident is likely with the local Eagle Mine. He summarized the Eagle Mine situation, in which  
13      eight concrete walls hold back millions of gallons of water. The District and Authority continue to  
14      request more preventative maintenance, real-time data monitoring, and review of historical data  
15      and maps to allow interested parties to gain better knowledge of the mine. In response to a  
16      question and speaking from information provided in a Colorado Department of Public Health and  
17      Environment (CDPHE) report on Eagle Mine, Mr. Tracy said there is no way to physically inspect  
18      the bulkheads at the mine, but that he would follow up with CDPHE’s Wendy Naugle to learn  
19      more about this. He also noted the District has worked to establish relationships with involved  
20      parties and now is notified of potential mine issues earlier than in the past. Mr. Tracy also  
21      discussed habitual arsenic exceedances in the District and Authority water system due to mine  
22      discharges.

23      **Marriott Streamside Pretreatment Application** – Ms. Brooks noted this topic was tabled to a  
24      future meeting.

### 25      **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

26      Ms. Johnson presented the Communications and Public Affairs Report, a copy of which is attached  
27      hereto as **Exhibit O** and incorporated herein by this reference. Due to time constraints, she just noted  
28      most of her recent work has supported matters covered by others at the meeting, including the Vail  
29      Whitewater Park diligence filing, wilderness matters, and the Lionshead Children’s Ski School cross  
30      connection/Gore Creek issue.

31             At 2:00 p.m., all remaining staff and public left the meeting, with the exception of Ms. Brooks.

### 32      **EXECUTIVE SESSION**

33      Mr. Collins requested the Board enter Executive Session to receive legal advice regarding a personnel  
34      matter, pursuant to §24-6-402(4)(f) C.R.S. He asked that no electronic record be made, as the discussion  
35      would be entirely privileged attorney-client communications. Upon motion duly made and seconded, it was  
36      unanimously

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1           **RESOLVED** to enter executive session at 2:01 p.m. to discuss attorney-client privileged  
2           issues concerning a personnel matter, pursuant to §24-6-402(4)(f) C.R.S. with no electronic  
3           record created as Mr. Collins opined the contents of the discussion would contain privileged  
4           attorney-client communications.\*

5           Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding wilderness  
6           matters and the Pre-Compact water storage project, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked  
7           that no electronic record be made, as the discussion would be entirely privileged attorney-client  
8           communications. Upon motion duly made and seconded, it was unanimously

9           **RESOLVED** to enter executive session at 2:05 p.m. to discuss attorney-client privileged  
10          issues concerning wilderness matters and the Pre-Compact water storage project, pursuant  
11          to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the  
12          contents of the discussion would contain privileged attorney-client communications.\*

13          The regular meeting resumed at 3:30 p.m.

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# Eagle River Water & Sanitation District

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:31 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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45 \_\_\_\_\_  
46 **Glenn Porzak, Water Counsel**

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