

Eagle River Water & Sanitation District
Board of Directors Meeting
January 21, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 21, 2016, 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
Debbie Buckley
Steve Friedman
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV, *via phone*

The following Director was absent and excused:

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 also serves on the Board of the Upper Eagle Regional Water Authority (Authority). 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 and an alternate Director for the Authority. 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>	34	Siri Roman
Linn Brooks	35	Brian Tracy
Jason Cowles	36	James Wilkins
Carol Dickman	37	<u>Consultants</u>
Catherine Hayes	38	Jim Collins, Collins Cockrel & Cole
Leslie Isom	39	Glenn Porzak, Porzak Browning & Bushong LLP
Diane Johnson	40	<u>Public</u>
Elena Jones	41	Susie Kincade, the Wilderness Coalition
John McCaulley	42	Chris Treese, Colorado River Water Conservation District
Melissa Mills McLoota		

CALL TO ORDER

Acting Chair Buckley called the meeting to order at 12:28 p.m.

INTRODUCTIONS

Public attendees, staff, and consultants introduced themselves.

WILDERNESS DISCUSSION

Mr. Porzak discussed work on the wilderness policy since the December meeting, including communications to interested parties made at the direction of the Board. Revisions to the policy included revisions requested by Messrs. Scott Braden and Scott Miller, who represented members of the environmental coalition. This language was also provided to Rep. Polis's staff, from whom Mr. Porzak is awaiting feedback. Ms. Kincade said she would take this message of cooperation and collaboration back to her coalition. The Board thanked those involved, particularly Mr. Porzak, for getting the Boards to this point. Ms. Kincade left the meeting at 12:37 p.m.

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PUBLIC HEARINGS

Irrigation Account Impact Fee – Mr. McCaulley and Ms. Jones discussed their board action request and associated joint resolution, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference. The board opened a public hearing at 12:37 p.m. to discuss the proposed irrigation impact fee. The hearing was noticed on the Eagle River Water and Sanitation District website 30 days in advance of the meeting. No public comment was received, and the hearing was closed at 12:38 p.m. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Irrigation Account Impact Fee be and hereby is approved as presented.

Cash in Lieu of Water Rights Fee Increase – The Board opened another public hearing at 12:39 p.m. to consider a cash in lieu of water rights fee increase of 5% for both winter storage water and summertime consumptive use credits, bringing the price for each to \$26,250 and \$8,300 per acre foot, respectively. An updated water dedication policy is attached hereto as **Exhibit C** and incorporated herein by this reference. No public comment was received and the public hearing was closed at 12:40 p.m. Mr. Porzak noted the increase is slightly higher than the Consumer Price Index (CPI) because the value of water is increasing more quickly than the CPI. He said ongoing engineering studies for the proposed ERMOU projects would be complete in the spring and provide good data for the 2017 cash in lieu fee increases. In response to a question, Mr. Porzak said he was certain the 5% increase was equitable, if not less than the actual value of the water. Mr. Treese noted the River District increases its cash in lieu fees each year up to CPI plus growth. Ms. Brooks noted that in the future, this fee increase would be done with the next year's budget and be included in the Rules and Regulations Appendix A table of Rates and Fees. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the cash in lieu of water rights fee increase be and hereby is approved as presented.

ACTION ITEMS

Meeting Minutes – The minutes of the regular meeting of December 17, 2015, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the December 17, 2015, regular meeting be accepted and hereby are approved as presented.

Resolution regarding Meeting Place and Posting Location – Ms. Hayes presented a Resolution designating the Authority's meeting place and posting location for 2016, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

RESOLVED that the Resolution Designating Meeting Place and Posting Location be and hereby is approved as presented.

Election Resolution – Ms. Isom discussed her board action request and the resolution calling for a May 3, 2016, polling place election, copies of which are attached hereto as **Exhibits E** and **F**, respectively,

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1 and incorporated herein by this reference. In response to a question, Ms. Isom said voters who wish to
2 receive an absentee ballot can request one and can also request to be placed on a list to permanently
3 receive absentee ballots. She noted that there was no requirement to hold a mail ballot election if the only
4 item on the ballot is election of directors. Ms. Isom also confirmed that the District has historically held
5 polling place elections in the absence of a TABOR question on the ballot. After discussion and upon
6 motion duly made and seconded, it was unanimously

7 **RESOLVED** that the Election Resolution be and hereby is approved as presented.

8 **Gelvin Contract Renewal** – Ms. Brooks discussed the 2016 services agreement with former
9 general manager Dennis Gelvin, a copy of which is attached hereto as **Exhibit G** and
10 incorporated herein by this reference. She noted he was still working on the Authority tap fee
11 study and Vail Golf Course easements project, both of which require his unique historical
12 perspective and specific knowledge. In response to a question, Ms. Brooks said she expects
13 these to be his final projects. Upon motion duly made and seconded, it was unanimously

14 **RESOLVED** that Dennis Gelvin's 2016 Services Contract be and hereby is approved as
15 presented.

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

18 **GENERAL MANAGER REPORT**

19 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit I** and incorporated herein
20 by this reference.

21 **Rules and Regulations Amendments** – Ms. Brooks explained administrative changes to the Rules and
22 Regulations related to the Construction Review Process. The changes make the process more efficient
23 and are beneficial to the developer. The Rules and Regulations board subcommittee reviewed the
24 proposed changes and recommends approval. The Board tabled further discussion to the February
25 meeting so the entire Board could review the proposed changes.

26 **Current Alpine Engineering Contracts** – Ms. Brooks discussed outstanding contracts with
27 Alpine Engineering and said Alpine does tap fee calculations for the District on an as-needed
28 basis. She also said Alpine is subcontracted to land planner Rick Pylman for work on the District's
29 Stillwater PUD employee housing project. She reminded the Board that her husband, Gary
30 Brooks, is now a principal with Alpine, which is the reason for the disclosures.

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

34 **Todd Fessenden's Departure** – In response to a question, Ms. Brooks said staff is working on
35 delegating Mr. Fessenden's duties and discussing needs with individual departments as well.

36 **FINANCE REPORT**

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1 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit K** and incorporated herein
2 by this reference. He noted December water sales were slightly higher than projected, while year-to-date
3 sales were slightly lower than budgeted. These observations were likely due to high visitor numbers over
4 the holidays and a very wet summer season, respectively. Mr. Wilkins also noted much higher-than-
5 anticipated development impact fee revenues, a likely sign of the observed economic recovery locally.
6 The Board questioned the disparity between the projected and actual development revenues and
7 requested staff look more closely at how these projections are made for future budgets.

8 **Wastewater Bond Update** – Mr. Wilkins discussed the upcoming bond, issuance for which is
9 anticipated in April 2016. A draft official statement should be completed next week and will be
10 reviewed by management staff. Mr. Wilkins can send the draft statement to interested Board
11 members as well.

12 OPERATIONS REPORT

13 Ms. Roman presented the operations report, a copy of which is attached hereto as **Exhibit L** and
14 incorporated herein by this reference.

15 **Snow Storage Photos** – Chairman Sackbauer discussed snow storage near Gore Creek in
16 various locations throughout Vail, some photos of which are included in the General Managers
17 report. Ms. Roman and Ms. Langmaid both noted the issue is discussed in the Gore Creek
18 Strategic Action Plan. Ms. Langmaid expects the Vail Town Council to review the plan at its next
19 meeting, at which time suggestions can be made about prioritization of the various actions. She
20 also suggested testing the snowpiles to see what kind of pollutants may be present. The Board
21 agreed that the proximity of the piles to the stream is concerning and should be addressed.

22 **Avon Water Plant Generator Update** – Ms. Roman updated on a power failure at the plant and
23 noted low coolant levels prevented the generators from powering on. The generators are serviced
24 annually at which time coolant is filled; however, staff will add a sight glass and start checking the
25 levels more frequently to prevent this issue in the future.

26 **Avon Ammonia Exceedance** – Ms. Roman discussed an ammonia exceedance at the Avon
27 Wastewater Treatment Plant in January. As soon as the mistake was realized, treatment
28 processes were immediately adjusted; staff is implementing a plan to ensure this does not
29 happen again, hosting additional staff trainings, and adding an alarm on SCADA. The
30 exceedance was a violation of the District's permit and will be reported to the state on the
31 January Discharge Monitoring Report.

32 **Streamside Marriott Pretreatment Application** – Ms. Roman said the Marriott is having
33 corrosion issues in its copper pipes and applied for a pretreatment application to add
34 phosphorous to the water to mitigate future pinholes in the pipes. The District denied its
35 application and will instead work with the Marriott on the corrosion issues, which are complicated.

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1 **Nutrient Grant Closeout** – Ms. Roman reminded Directors of the \$1.32M grant received from
2 the Colorado Department of Public Health and Environment (CDPHE) for projects related to
3 compliance with nutrient regulations for phosphorous and nitrogen. A letter closing out the grant
4 is attached hereto as **Exhibit M** and incorporated herein by this reference.

5 **Avon Heat Recovery System Tour** – Ms. Roman noted a recent tour of the system with Denver
6 Metro Wastewater, which is considering a similar project to heat the National Western Stock
7 Show building. She said the attendees were very complimentary of the innovative system, which
8 was installed in 2010 as a joint project with the Town of Avon.

9 **EPRC Quarterly Report** – Mr. Tracy discussed the Eagle Park Reservoir Company Quarterly
10 report and noted a quarterly meeting scheduled for Jan. 26. Mr. Porzak noted he and Director
11 Testwuide would give a presentation on the history of Eagle Park Reservoir and that interested
12 staff members were welcome to attend.

13 **Eagle Mine Update** – Mr. Tracy discussed the Mine and the low risk of a Gold King Mine-type
14 spill occurring there. The Mine tunnels are collapsed, so staff relies on instrumentation to monitor
15 the bulkhead water levels. Ms. Brooks noted the area behind the bulkheads is constantly
16 dewatered and treated at the Mine. Mr. Tracy said the District and Authority keep continuous
17 pressure on Mine staff to ensure proper sampling and maintenance there. He also noted the
18 existence of thousands of similar mines in Colorado and said it is rare to have a responsible
19 party, as Eagle Mine does with CBS as its owner.

20 **ERMOU Issues** – Mr. Porzak suggested Director Allender be the Board's point person on Eagle
21 River MOU issues.

22 Director Simmons and Mr. Collins entered the meeting at 1:58 p.m.

23 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

26 **Microbeads Ban** – Ms. Johnson said the federal Microbead-Free Waters Act of 2015 was signed
27 Dec. 28. The new law phases out the manufacture of personal care products containing plastic
28 microbeads by July 1, 2017, and the sale of such products by July 1, 2018. The federal law takes
29 effect sooner than a similar Colorado law that was signed in March 2015, which phased out
30 microbeads by Jan. 1, 2020. Microbeads end up as wastewater sludge or pass through the
31 treatment process into waterways where they enter the food chain when eaten by fish.

32 **Rain Barrel Legislation** – Ms. Johnson said House Bill 16-1005 is this year's iteration of rain
33 barrel legislation. The bill would allow homeowners to collect some of the rainwater on their
34 property, which is currently prohibited by Colorado water law. The overall effect of the legislation
35 is small for each homeowner; however, it builds awareness of water issues and the need to use

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1 water efficiently. The board agreed the District could again appear on the proponents list of
2 supporters.

3 **Building a Better Colorado** – Ms. Johnson discussed the project, which is gathering statewide
4 input on how Colorado might improve its initiative process, election process, and fiscal policy. The
5 latest community meeting was held Jan. 14 in Vail and all meeting results are online. Legislation
6 or a ballot question is likely to result from the effort.

7 **Community Engagement** – Ms. Johnson informed directors about Eagle County’s “community
8 conversations” series, an offer by the Vail Valley Medical Center to host a tour of their facilities,
9 and the March 8 town of Vail annual community meeting.

10 REPORT BY GENERAL COUNSEL

11 **Traer Creek Tank Failure** – Mr. Collins and Mr. Cowles reported on the tank failure. Traer Creek
12 has denied responsibility for the tank failure and believes it has met the conditions of the warranty
13 obligation. The Authority disagreed and sent a Notice of Default to Traer Creek and is ready to
14 commence replacement or reconstruction of the tank should Traer Creek fail to cure its default.
15 Mr. Cowles discussed the various “layers” of tank storage required by American Waterworks
16 Association Regulations as well as the needed equalization storage for the Authority as a whole,
17 as calculated by SGM in 2009. He also discussed Authority-wide operational issues now that the
18 tank is offline. The EagleVail tank is nearing the end of its useful life but cannot be taken offline
19 for replacement without the Traer Creek tank being online. New development in Traer Creek,
20 Eagle Vail, Avon, and Beaver Creek will be limited without access to the water and additional
21 SFEs provided by the Traer Creek tank. In addition, the impact of the Traer Creek Tank has been
22 to remove storage: the Authority is serving 300 SFEs in Traer Creek that were contingent upon a
23 functioning tank in that area, as was the Authority’s modifications to the Avon 1 Tank, which
24 removed 500,000 gallons from the system to facilitate water service to Buffalo Ridge.

25 **Review of Copier Contract Bidding Process** – Mr. Collins noted the engagement of Paul
26 Backes of McMahan and Associates to review the bidding process and bids received for the
27 District’s recent copier contract RFP, which resulted in changing vendors for copier service.

28 **Hahnewald Barn Update** – Mr. Collins said a conference call regarding the barn was set for
29 Tuesday. It appears that Ms. Nottingham-Underwood has transferred authority for this project to
30 Sarah Smith Hymes of the Avon Council. The call will focus on the physical structure, as the
31 historical nature of the barn has previously been well established.

32 REPORT BY WATER COUNSEL

33 **Federal Water Right Directives** – Mr. Porzak discussed three Forest Service directives,
34 including recent changes to the ski area water rights clause, asking ski areas to inventory their
35 water rights necessary for sufficient operations and have such inventory certified by an expert;
36 the rights would then potentially be encumbered. Related materials are attached hereto as

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1 **Exhibit O** and incorporated herein by this reference. He also discussed the release of a 1,300
2 page BMP directive technical manual right before Thanksgiving and the short review deadline.
3 The technical manual is heavily referenced in the BMP directive; Vail Resorts sent a comment
4 letter requesting all references to the technical manual be deleted from the directive first, as it
5 was never officially noticed in the Federal Register and because of the insufficient review time for
6 the technical manual. Mr. Porzak also said the groundwater directive had been withdrawn, but he
7 expects another revised version will be issued in the future.

8 **Federal Legislation Update** – Mr. Porzak noted a letter was issued on behalf of the District and
9 Authority and signed by Ms. Brooks, reaffirming the entities' support for the legislation.

10 **State Legislation Update** – Mr. Porzak said the Colorado Water Rights Protection Act was
11 introduced by the legislature the previous day and was assigned to the House Agriculture
12 Committee. He will continue to monitor the status of this bill. Related materials are attached
13 hereto as **Exhibit P** and incorporated herein by this reference.

14 **Support of Bolts Ditch Legislation** – Mr. Porzak discussed a letter and supporting documents
15 related to Bolts Ditch legislation, copies of which are attached hereto as **Exhibit Q** and
16 incorporated herein by this reference. Bolts Ditch was inadvertently included in the boundaries of
17 the Holy Cross Wilderness. Minturn's efforts to gain continued access to the site have been
18 denied by the Forest Service. The Board agreed to sign the letter of support to Rep. Polis
19 regarding legislation that would allow Minturn's continued access to Bolts Ditch.

20 **Minturn's Option for Eagle Park Reservoir Water** – Mr. Porzak reminded the Board of
21 Minturn's agreement to receive up to 50 acre-feet of Eagle Park water, for which they pay the
22 District annually.

23 **Diligence/Absolute Application for Vail Whitewater Park** – Mr. Porzak discussed the
24 application, a copy of which is attached hereto as **Exhibit R** and incorporated herein by this
25 reference. This would make all but a small portion of the water absolute. After discussion and
26 upon motion duly made and seconded, it was unanimously

27 **RESOLVED** to approve filing of the Application to make Conditional Rights Absolute for
28 the Vail Whitewater Park.

29 **Pre-Compact Water Storage Project** – Mr. Porzak discussed a recent meeting with Colorado
30 Water Conservation Board Director James Eklund. Mr. Eklund said the state generally supports
31 the project, which aligns with many goals of the Colorado Water Plan. Mr. Eklund is scheduling a
32 meeting with interested parties, all of whom previously participated in a Wolcott Reservoir
33 feasibility study. Mr. Porzak will continue to participate in meetings and update the Board on
34 progress. At a minimum, he hopes to at least move forward with a pilot project.

35 **Colorado River Cooperative Agreement Cost Sharing Agreement** – Mr. Porzak discussed the
36 common interest cost sharing agreement, which was part of the Colorado River Cooperative Agreement

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1 (CRCA). The District originally contributed \$13,333 and that bill is coming due. Additionally, a proposed
2 amendment would add additional parties to the agreement and also increase the budget for the project.
3 The Board directed Mr. Porzak to sign the updated agreement on its behalf and authorized an additional
4 contribution to the project cost, not to exceed \$15,000.

5 All staff except Ms. Brooks, Ms. Isom, and Ms. Johnson left the meeting at 2:45 p.m.

6 EXECUTIVE SESSION

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

11 **RESOLVED** to enter executive session at 2:46 p.m. to discuss attorney-client privileged
12 issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-
13 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
14 of the discussion would contain privileged attorney-client communications.*

15 All staff reentered the room at 3:10 p.m.

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

20 **RESOLVED** to enter executive session at 3:11 p.m. to discuss attorney-client privileged
21 issues concerning a real estate matter, pursuant to §24-6-402(4)(f) C.R.S. with no electronic
22 record created as Mr. Collins opined the contents of the discussion would contain privileged
23 attorney-client communications.*

24 All staff besides Ms. Brooks and Ms. Isom left the room at 3:15 p.m.

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

29 **RESOLVED** to continue executive session at 3:16 p.m. to discuss attorney-client privileged
30 issues concerning personnel matter, pursuant to §24-6-402(4)(f) C.R.S. with no electronic
31 record created as Mr. Collins opined the contents of the discussion would contain privileged
32 attorney-client communications.*

33 The regular meeting resumed at 3:19 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:20 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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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.

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

47 _____
Jim Collins, General Counsel