

Eagle River Water & Sanitation District
Board of Directors Meeting
February 25, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held February 25, 2016, at 11:30 a.m., in the District's Walter Kirch Room, 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

The following Directors were present, thereby constituting a quorum:

Tom Allender
Debbie Buckley
Steve Friedman
Bill Simmons
Frederick P. Sackbauer IV
Paul Testwuide

The following Director was absent and excused:

Kim Langmaid

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

The Board noted it had received more than 72 hours prior to the meeting certain disclosures of Potential Conflicts of Interest Statements for the following Directors indicating the following conflicts:

Director Allender disclosed that he also serves on the Board of the Upper Eagle Regional Water Authority (Authority). He also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other ski areas. 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 Authority Director, and serves on the boards of the Edwards 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	Siri Roman
Tug Birk	37	Jason Sica
Linn Brooks	38	<u>Consultants</u>
Carol Dickman	39	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	40	Jonathan Heroux, Piper Jaffray
Leslie Isom	41	Paul Lamb, MRP
Diane Johnson	42	Glenn Porzak, Porzak Browning & Bushong LLP
John McCaulley	43	<u>Public</u>
Connie Nunley	44	Brooke Ranney, Eagle River Watershed Council
Glen Phelps		

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:30 a.m.

CONFLICTS OF INTEREST

Updated conflict of interest letters for Directors Allender and Simmons were filed with the Secretary of State, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference.

INTRODUCTIONS

Introductions were made, including Mr. Heroux and Ms. Ranney. Ms. Isom noted Mr. Lamb would be attending to give the District's annual pension report.

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1 PRESENTATIONS

2 **Town of Vail Strategic Action Plan** – Ms. Brooks noted a scheduled presentation of the plan
3 was tabled due to illness of one presenter. Ms. Roman discussed the plan, which identifies and
4 prioritizes Gore Creek water quality issues. Staff reviewed the plan and recommended higher
5 prioritization of certain projects like snow storage mitigation near Gore Creek, but overall, is
6 supportive of the plan. The Board requested review of a draft letter of support from staff prior to
7 sending it to the town council, which will vote on the plan at its March 15 meeting.

8 **Annual Pension Report** – Ms. Isom introduced Mr. Lamb, who distributed the pension report, a
9 copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference. He
10 discussed the 401(a) and 457 plans, noting high staff participation in the voluntary 457 plan;
11 lower distributions in 2015 than 2014; and ongoing employee outreach and education. Treasurer
12 Friedman called attention to Ms. Isom's commitment to the plan administration and called on staff
13 to ensure this commitment continues after Ms. Isom's retirement in April.

14 ACTION ITEMS

15 **Consideration of Minutes** – The minutes of the joint special meeting with Upper Eagle Regional Water
16 Authority of January 21, 2016, were considered. Upon motion duly made and seconded, it was

17 **RESOLVED** that the minutes of the January 21, 2016, joint special meeting be accepted and
18 hereby are approved as presented.

19 The minutes of the special meeting of January 21, 2016, were considered. Upon motion duly made and
20 seconded, it was

21 **RESOLVED** that the minutes of the January 21, 2016, special meeting be accepted and hereby
22 are approved as presented.

23 **Bond Resolution** – Ms. Brooks discussed the board action request and bond resolution, copies of
24 which are attached hereto as **Exhibits D** and **E**, respectively, and incorporated herein by this reference.
25 She noted passage of the resolution would be the first formal step in issuing the bonds contemplated in
26 the May 2014 election. These general obligation bonds will fund needed wastewater system upgrades
27 to meet nutrient regulations, which are part of the Edwards Wastewater Treatment Facility master plan.
28 Mr. Heroux noted the resolution authorized moving forward with the bond issue, not to exceed \$25
29 million or an interest rate of 6% annually. He discussed a recent meeting with Standard & Poor's to
30 determine the District's bond rating. He expects to hear back shortly and anticipates the District will be
31 in the market by March 15, expecting to close at the end of March. In response to a question, Mr.
32 Heroux said interested parties could contact him about purchasing the bonds.

33 The Board took a short recess for lunch at 12:05 p.m. The meeting resumed at 12:21 p.m.

34 **Public Hearing: Request for Inclusion** – The Board opened a public hearing at 12:23 p.m. to consider
35 the inclusion of property into the District for sewer services, notice of which had been published for this
36 place and time. A copy of the notice is attached hereto as **Exhibit F** and incorporated herein by this
37 reference. Ms. Isom presented her board action request and inclusion resolution for the Angler's PUD,

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1 copies of which are attached hereto as **Exhibits G** and **H**, respectively, and incorporated herein by this
2 reference. The resolution includes the PUD into the District boundaries for sewer service. No public
3 comment was received, and the public hearing was closed at 12:24 p.m. Upon motion duly made and
4 seconded, it was unanimously

5 **RESOLVED** that the Resolution for Inclusion of Angler's PUD be approved as presented.

6 **Amended Election Resolution** – Ms. Hayes presented the amended election resolution, which changes
7 the town of Vail polling place to the Grand View Room in Lionshead. A copy of the resolution is attached
8 hereto as **Exhibit I** and incorporated herein by this reference. After discussion and upon motion duly
9 made and seconded, it was unanimously

10 **RESOLVED** that the Amended Election Resolution is hereby approved as presented.

11 **Rules and Regulations Amendment** – Ms. Brooks discussed the requested amendments to the
12 Rules and Regulations and a related board action request, a copy of which is attached hereto as
13 **Exhibit J** and incorporated herein by this reference. The amendments were discussed at the
14 January board meeting, and the board requested review of the changes prior to approval. After
15 discussion and upon motion duly made and seconded, it was unanimously

16 **RESOLVED** that the Rules and Regulations amendments are hereby approved as
17 presented.

18 **Upper Colorado River Wild and Scenic Management Plan Agreement** – Ms. Brooks discussed the
19 management plan and noted it was ready for execution after the approval of all involved stakeholders,
20 which include east and west slope parties. Mr. Porzak noted the importance of the plan grandfathering in
21 the Eagle River MOU; without this stipulation, a wild and scenic designation on the Upper Colorado River
22 could have acted as an additional call on the river. A copy of the agreement is attached hereto as **Exhibit**
23 **K** and incorporated herein by this reference. After discussion and upon motion duly made and seconded,
24 it was unanimously

25 **RESOLVED** that the Upper Colorado River Wild and Scenic Management Plan Agreement was
26 approved as presented.

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

29 All staff except Ms. Brooks and Ms. Johnson left the meeting at 12:30 p.m.

30 **EXECUTIVE SESSION**

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

35 **RESOLVED** to enter executive session at 12:31 p.m. to discuss attorney-client privileged
36 issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no

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1 electronic record created as Mr. Porzak opined the contents of the discussion would contain
2 privileged attorney-client communications.*

3 The regular meeting resumed at 1:00 p.m., at which time staff reentered the room.

4 REPORT BY WATER COUNSEL

5 **Colorado Water Rights Protection Act** – Mr. Porzak updated on the legislation and ongoing
6 efforts to resolve issues regarding bypass flows; impact of the bill on county 1041 powers; and
7 language regarding how the federal government can obtain water rights in Colorado. He
8 presented related information, copies of which are attached hereto as **Exhibit M** and incorporated
9 herein by this reference. Mr. Porzak said the bill was scheduled for a committee hearing a week
10 from Monday and will continue to update the board on progress.

11 **Legislation Confirming Recreation as a Beneficial Water Use** – Mr. Porzak discussed a
12 recent Supreme Court ruling that recreational water use was not a beneficial use and presented
13 related information, a copy of which is attached hereto as **Exhibit N** and incorporated herein by
14 this reference. He discussed the proposed legislation, which would recognize recreation as a
15 beneficial water use and noted the District and Authority have numerous decrees for such uses.
16 The Board directed Mr. Porzak to support the bill on its behalf. Discussion ensued regarding
17 leaving water in the river for environmental purposes, meeting nutrient and water quality
18 standards, and for dilution flows, all of which are beneficial uses.

19 **Update on HR 2554: Continental Divide Wilderness and Recreation Act** – Mr. Porzak
20 updated the board on the bill and presented related information, a copy of which is attached
21 hereto as **Exhibit O** and incorporated herein by this reference. He also discussed a recently
22 received letter to the Boards from Rep. Polis, a copy of which is attached hereto as **Exhibit P** and
23 incorporated herein by this reference. The letter states that the District and Authority's suggested
24 language for the bill is unacceptable to the staff of the House and Senate Natural Resource
25 Committees. Discussion ensued regarding the various exceptions provided in other wilderness
26 bills; the amount of time the board, staff, and consultants have spent on this issue; and the
27 likelihood of this bill becoming law. A motion to send a letter to Rep. Polis stating the board would
28 not oppose the bill but would sit on the sidelines going forward died for lack of a second. Another
29 motion was made to schedule a meeting with Rep. Polis and the District and Authority chairmen
30 to make clear their position that the boards are requesting language in the bill to cover the
31 eventuality of flooding, among other clarifications. After discussion and upon motion duly made
32 and seconded, it was unanimously

33 **RESOLVED** that if the District and Authority are not able to agree on language with Rep.
34 Polis, the Boards will communicate to him that they will take no position on the bill.

35 **Updated Water Rights Appraisal** – Mr. Porzak reviewed the updated water rights appraisal, a
36 copy of which is attached hereto as **Exhibit Q** and incorporated herein by this reference. He

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1 noted that the ERMOU engineering study has indicated the District's storage/acre-foot costs
2 might be slightly low.

3 **Minturn Lease of Eagle Park Reservoir Water** – Mr. Porzak summarized a 2010 settlement
4 agreement with Minturn by which Minturn could reserve the right to lease up to 50 acre feet of
5 water from Eagle Park or Homestake Reservoir from the District. Minturn reserved the right using
6 an annual payment to the District, which started at \$10,000 and increased by \$10,000 increments
7 each year. Mr. Porzak noted receipt of a letter that Minturn wished to exercise its right to the
8 lease, a copy of which is attached hereto as **Exhibit R** and incorporated herein by this reference.
9 Mr. Porzak said Minturn was current on the payments and will discuss the lease with town
10 representatives.

11 **Eagle River MOU Projects Update** – Mr. Porzak updated the Board on a meeting with ERMOU
12 parties regarding potential joint projects, associated cost per acre foot for the various project
13 options, and needed wetlands studies to determine project feasibility. The Board authorized staff
14 to engage Bob Weaver of Leonard Rice Engineers to complete a wetlands feasibility study in the
15 spring and summer.

16 **Texas Supreme Court Ruling re Prior Appropriation** – Mr. Porzak discussed a recent Texas
17 Supreme Court ruling that upholds the prior appropriation law for privately held water rights; the
18 state cannot give preference to cities or power providers over longstanding water rights holders
19 even if the state declares it necessary for health and public welfare of the people. He noted this
20 could be a precedent for future compact curtailment administration.

21 **Customer Request re Private Well at 2414 Elliott Ranch Road** – Mr. Porzak discussed a
22 request from the owner of 2414 Elliott Ranch Road in Intermountain for approval of a private well,
23 which would facilitate permitting of the well by the state engineer. The property also receives
24 water service from the District. The Authority has dealt with similar issues previously, and has
25 refused to approve a well in an area that is already served by a public water system. Discussion
26 ensued regarding multiple staff members receiving requests on this matter. Staff will further
27 explore the request and report back to the Board.

28 **REPORT BY GENERAL COUNSEL**

29 Mr. Collins presented his report, noting that the Hahnewald Barn and Traer Creek matters were moving
30 forward with no new information to report.

31 **Review of Copier Contract Bidding Process** – Mr. Collins noted Paul Backes of McMahan and
32 Associates completed his review of the bidding process for the District's copier services contract.
33 Mr. Collins said Mr. Backes found the process was fair, competitive, and reasonably provided the
34 District with the best value. Mr. Collins will relay this information to Chris Aubel of High Country
35 Copiers, who requested the review.

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GENERAL MANAGER REPORT

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

Organizational Changes – Ms. Brooks discussed recent organizational changes in light of the departures of Todd Fessenden and Angelo Fernandez, as well as Ms. Isom’s upcoming retirement in April. She noted the duties of all three were being reassigned, with new positions being added in other areas of the organization. This resulted in a net of zero positions created, and a budget analysis showed no increase in salary or benefits to the budget. She also noted a flattening of the organizational structure, with no executive team; all managers will report directly to Ms. Brooks. In response to a question, Ms. Brooks said a period of adjustment would give everyone involved the needed time to ensure the changes were beneficial and manageable for all involved.

2015 Annual Housing Report – Ms. Isom presented the 2015 housing report, a copy of which is attached hereto as **Exhibit T** and incorporated herein by this reference. She expressed thanks for the contributions of Directors Buckley and Langmaid on the housing committee in the past few years, as well as Ms. Nunley for her housing administration efforts. Ms. Isom summarized the history of the program, which originated to ensure some on-call operators lived east of Dowd Junction and evolved into the current program, which helps attract and retain employees. She also noted a high demand for rental housing at the district and countywide; there are no vacancies in the District’s units presently, though several units will be available at the end of March. Discussion ensued regarding plans to expand the District’s housing program in the next five years. Staff will bring a proposal to the Board in the coming months.

FINANCE REPORT

In the absence of Mr. Wilkins, Ms. Reiter presented the finance report, a copy of which is attached hereto as **Exhibit U** and incorporated herein by this reference. She noted that slightly lower-than-budgeted water sales to date may be the result of fewer visitors. Lower than expected wastewater flows also indicate lower tourist numbers so far in 2016.

OPERATIONS REPORT

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

Fats, Oil, and Grease (FOG) Presentation – Mr. Birk presented information on FOG, a copy of which is attached hereto as **Exhibit W** and incorporated herein by this reference. He noted the impacts of FOG on the District’s wastewater collection system and wastewater treatment plants and discussed the need for a District FOG program beyond the Rules and Regulations sections that govern FOG. Mr. Birk notified the board of staff’s plan to gather information from local businesses and said he would keep the Board apprised of progress but was not asking for Board action at this time.

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1 **Edwards Ammonia Exceedance** – Ms. Roman discussed an ammonia exceedance at the
2 Edwards Wastewater Treatment Plant. She said staff and some wastewater experts were
3 investigating the incident, which resulted from a die off of “bugs” in the nitrification system. Ms.
4 Roman assured the Board that staff was looking carefully at root causes, operator education and
5 reactions, and construction impacts. The exceedance will be reported to the state.

6 **Wastewater Operations and Nutrient Optimization Update** – Ms. Roman discussed the
7 District’s requirement to meet upcoming nutrient regulations regarding nitrogen and phosphorus
8 removal. She said the District’s three wastewater plants each use different treatment systems
9 because of the unique operations of each plant. Carollo Engineers was hired to review plant
10 operations and believes the District can optimize current plant operations to largely meet the
11 standards, requiring less money spent on plant upgrades. Ms. Roman showed graphs depicting
12 the reduction of total inorganic nitrogen and phosphorus at the three plants in 2014, after
13 optimization efforts were underway.

14 **PUBLIC AFFAIRS REPORT**

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

17 **Legislative Issues** – Ms. Johnson discussed HB16-1283 on water loss audit reporting, which
18 would require the Authority and District, as covered entities, to report data on non-revenue water.
19 It is similar to a 2010 bill that mandated reporting of water use and water conservation data. In
20 response to a question, Ms. Johnson said it would require some additional staff time to prepare
21 and submit the report. She also discussed upcoming legislation to be introduced by the Colorado
22 River Water Conservation District that provides an alternative mechanism for creation of
23 subdistricts within the River District, which could then be used to finance some of the projects
24 recommended in the Colorado Basin Implementation Plan and Colorado Water Plan.

25 **Annual State of the River Meeting** – Ms. Johnson noted the annual Eagle River Valley meeting will be
26 held either May 12 or May 16, from 5:15 to 8 p.m. at Colorado Mountain College in Edwards.

27 **Colorado Basin Roundtable** – Ms. Johnson said the River District is leading the effort to fund
28 the Colorado River Development and Curtailment Risk Study with support from the four west
29 slope roundtables and the Southwest Water Conservation District.

30 **Stakeholder Group Update** – In response to a question, Ms. Johnson said wilderness advocates
31 are primarily focused on the board’s position towards Rep. Polis’ legislation, with the goal being
32 District support of the bill.

33 **Testing and Regulations Related to lead in Drinking Water** – Ms. Johnson referenced the
34 lead in drinking water issue in Flint, Mich. where many homes still have old lead service lines.
35 She contrasted this with the relatively young age of the water system and homes in the District’s
36 service area, which consistently show results of lead sampling at levels well below the “action

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1 level” defined under the federal Safe Drinking Water Act. She said the District and Authority were
2 on a reduced monitoring schedule due to the low risk. She also presented a memo, a copy of
3 which is attached hereto as **Exhibit Y** and incorporated herein by this reference. Ms. Brooks
4 pointed out the unique nature of the Environmental Protection Agency’s lead regulation: water
5 providers are required to measure lead levels at the household tap, even though the providers
6 have no ownership of the portion of the system that is within individual the properties of individual
7 homes and businesses that could be the source of the problem. Discussion ensued about various
8 materials used in pipes, their potential for corrosion, and what District staff looks for during meter
9 change outs at customer homes and businesses; the District’s rules and regulations, which
10 stipulate use of certain pipe materials; and how lead’s removal from solder, flux, and brass
11 components has steadily reduced the risk of lead exposure.
12
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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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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**

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Jim Collins, General Counsel