

Eagle River Water & Sanitation District
Board of Directors Meeting
March 24, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held March 24, 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
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 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>	47	Hazel Selander
Tug Birk	48	Karen Shanley
Linn Brooks	49	Jason Sica
Carol Dickman	50	Evette Smits
Patty Domenico	51	Julie Stuck
Steven Douglas	52	Brian Tracy
Jim Edwards	53	Lonnie Ward
John Friestad	54	James Wilkins
Catherine Hayes	55	Bob Will
Debbie Hoffman	56	Jeff Wright
Angie Horn	57	<u>Consultants</u>
Leslie Isom	58	Jim Collins, Collins Cockrel & Cole
Diane Johnson	59	Dennis Gelvin, independent consultant
John McCaulley	60	Kristin Moseley, Porzak Browning & Bushong LLP
Melissa Mills McLoota	61	Glenn Porzak, Porzak Browning & Bushong LLP
Parker Newbanks	62	Rick Pylman, Pylman and Associates
Connie Nunley	63	<u>Public</u>
Becky Peterson	64	Anne Esson, citizen
Glen Phelps	65	Susie Kincade, the Wilderness Coalition
Sherry Raile	66	Stan McElderry, former employee
Louise Reiter	67	Brooke Ranney, Eagle River Watershed Council
Siri Roman		
Cindy Schmidt		

CALL TO ORDER

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

INTRODUCTIONS

Ms. Brooks introduced Ms. Hoffman, the District's new construction manager.

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1 PUBLIC COMMENT

2 Ms. Esson addressed the Board, noting that she supports Rep. Polis's wilderness bill and urged the
3 Board to support it as well. She also provided a related letter, a copy of which is attached hereto as
4 **Exhibit A** and incorporated herein by this reference. Ms. Kincade also commented on the bill and urged
5 support. Treasurer Friedman commented on some procedural items regarding the upcoming March 28
6 meeting with Rep. Polis and District and Authority Chairmen Sackbauer and Gregory, respectively.
7 Discussion ensued about who should attend the meeting, with the Board agreeing that a small group was
8 preferable to ensure a resolution to the issue. Chairman Sackbauer promised the meeting would be
9 conducted in good faith on behalf of the community with regard to the negotiations. Additional letters of
10 support for the bill from community members are attached hereto as **Exhibit B** and incorporated herein
11 by this reference. Ms. Esson and Ms. Kincade left the meeting at 11:57 a.m.

12 STILLWATER PUD PRESENTATION

13 Mr. Wilkins outlined the history of the employee housing program and noted all District properties are
14 currently occupied. Staff is exploring additional employee housing options, including development of four
15 District-owned lots that make up the Stillwater and Haselhorst subdivisions – the Stillwater PUD. Mr.
16 Pylman introduced himself and presented information on the Stillwater PUD, a copy of which is attached
17 hereto as **Exhibit C** and incorporated herein by this reference. A related memo is also attached hereto as
18 **Exhibit D** and incorporated herein by this reference. Mr. Pylman noted the shortage of employee
19 housing in Eagle County, as well as a lack of affordable housing overall. He said the Stillwater PUD was
20 an excellent opportunity for deed-restricted employee housing and said preliminary planning discussions
21 with Eagle County indicated support for such a project. The Board discussed the proposed schedule and
22 estimated planning costs as well as the need for an employee housing master plan. Upon motion duly
23 made and seconded, it was unanimously

24 **RESOLVED** that staff is authorized to proceed with initial site planning at an estimated cost of
25 \$41,000.

26 Ms. Brooks noted Board input would be sought after site planning tasks were completed and confirmed
27 that employee feedback would also be obtained to assist with determining unit specifics like size, type,
28 and other details.

29 HONORING LESLIE ISOM

30 Additional guests entered the meeting to honor Ms. Isom, including Ms. Domenico, Messrs. Douglas,
31 Edwards, Friestad, Ms. Horn, Messrs. McCaulley and Newbanks, Ms. Peterson, Ms. Raile, Ms. Reiter,
32 Ms. Schmidt, Ms. Selander, Ms. Shanley, Ms. Stuck, and Messrs. Ward, Will, and Wright.

33 Ms. Brooks outlined Ms. Isom's many accomplishments in her 33+ years with the District,
34 including leading a successful effort to keep the District as an employee-run government instead of being
35 purchased and operated by a private corporation; transitioning the District from Social Security to its
36 current pension plan; and establishing the employee benefits program. A related document is attached
37 hereto as **Exhibit E** and incorporated herein by this reference. Ms. Isom was also presented with a

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1 scrapbook outlining her time at the District and with signatures from current and former employees, board
2 members, and consultants.

3 Guests departed and the Board took a short recess for lunch at 12:40 p.m. The meeting resumed at
4 1:00 p.m.

5 **WATER COUNSEL REPORT**

6 **Colorado Water Rights Protection Act (HB16-1109)** – Mr. Porzak and Ms. Moseley discussed
7 the proposed bill and said involved parties appeared close to reaching consensus on bypass flow
8 language, which is largely unrelated to the substance of the bill. Mr. Porzak reported that the bill
9 passed unanimously in the House Committee on Agriculture, which is unusual.

10 **St. Jude’s Recreation Bill** – Mr. Porzak discussed the bill, which was proposed in response to
11 and to override a ruling by the Colorado Supreme Court in 2015 that the Roaring Fork Club’s
12 aesthetic, recreational, and piscatorial water diversion was not a beneficial water use. Mr. Porzak
13 said he filed support of the bill on behalf of the District and Authority, as both entities have
14 multiple such rights decreed conditionally. If the St. Jude’s Bill is not passed, conditional water
15 rights could be affected; the state engineer could deny diligence filings, change cases, or
16 attempts to make the rights absolute. Mr. Porzak said numerous other water rights owners have
17 filed similar support for the bill in response to the proposed legislation. After discussion and upon
18 motion duly made and seconded, it was unanimously

19 **RESOLVED** to contribute \$1,000 for a lobbyist to support the bill on its behalf.

20 **Update on HR 2554: Continental Divide Wilderness and Recreation Act** – Mr. Porzak and
21 Ms. Moseley summarized a recent meeting that counsel, staff, and Board chairmen had with Sen.
22 Bennet’s chief of staff to discuss Rep. Polis’s proposed wilderness bill. Ms. Moseley said Ms.
23 Brooks and Ms. Johnson were very helpful in discussing the Boards’ history with wilderness and
24 previous iterations of the wilderness bill; prior experiences and issues with the Forest Service;
25 and the complexity of the District and Authority’s integrated systems. Mr. Porzak noted it was
26 clear to Sen. Bennet’s staff that the Authority and District based the requested flooding language
27 on previous experience and the Boards’ responsibility to provide high quality water to customers.
28 Information related to the bill and rationale for the District and Authority’s requested language is
29 attached hereto as **Exhibit F** and incorporated herein by this reference. Ms. Moseley added that
30 Sen. Bennet’s staff believed the timing was favorable for passage of a wilderness bill during
31 Congress’s lame-duck period before President Obama’s successor takes office.

32 **ACTION ITEMS**

33 **Consideration of Minutes** – The minutes of the regular meeting of February 25, 2016, were
34 considered. Upon motion duly made and seconded, it was

35 **RESOLVED** that the minutes of the February 25, 2016, regular meeting be accepted and hereby
36 are approved as presented.

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1 **Reassignment of Responsibilities** – Ms. Brooks noted Ms. Isom’s upcoming retirement and discussed
2 the need to reassign some of her responsibilities, including designation of new District contacts for the
3 Colorado Special Districts Property and Liability Pool contacts and the District’s custodian of records. A
4 related board action request is attached hereto as **Exhibit G** and incorporated herein by this reference.
5 After discussion and upon motion duly made and seconded, it was unanimously

6 **RESOLVED** that Evette Smits and Linn Brooks are the Colorado Special Districts Property and
7 Liability Pool primary and secondary contacts, respectively; and
8 further **RESOLVED** that Catherine Hayes is the Custodian of Records.

9 Copies of the Colorado Special Districts Property and Liability Pool designation and Custodian of Records
10 Resolution are attached hereto as **Exhibits H** and **I**, respectively, and incorporated herein by this
11 reference.

12 **Bridge Road Sewer Main Relocation IGA** – Mr. Birk presented his board action request and the
13 intergovernmental agreement with the town of Vail, a copy of which is attached hereto as **Exhibit J** and
14 incorporated herein by this reference. Mr. Birk discussed planned work by the town of Vail that will
15 affect the sewer main. The main located within the town of Vail’s right of way so the District is
16 responsible for its relocation. Mr. Birk also noted District staff performs maintenance on this main
17 monthly, so relocation would alleviate the need for such frequent maintenance. After discussion and
18 upon motion duly made and seconded, it was unanimously

19 **RESOLVED** that the Intergovernmental Agreement regarding the Bridge Road Sewer Main be
20 and hereby is approved as presented.

21 **2414 Elliott Ranch Road Well Permit Request** – Mr. Birk presented his board action request and a
22 draft letter to the Division of Water Resources regarding a requested private well permit at 2414 Elliott
23 Ranch Road. Copies are attached hereto as **Exhibits K** and **L**, respectively, and incorporated herein by
24 this reference. The Board requested revisions to the letter to clarify that the District has no objection to
25 the well permit so long as the water is used in-house only and in connection with one single family
26 residence located on that lot. After discussion and upon motion duly made and seconded, it was
27 unanimously

28 **RESOLVED** that the amended letter to the Division of Water Resources approving the well
29 permit request be and hereby is approved as presented.

30 A copy of the amended letter is attached hereto as **Exhibit M** and incorporated herein by this reference.

31 **Becky Bultemeier Services Agreement** – Mr. Wilkins presented a board action request and services
32 agreement for Becky Bultemeier, the District’s former CFO, copies of which are attached hereto as
33 **Exhibits N** and **O**, respectively, and incorporated herein by this reference. In response to a question,
34 Mr. Wilkins said he expects he will need fewer than 40 hours of Ms. Bultemeier’s time and cited her
35 specific experience with and knowledge of previous District bond issues and audits as the reason to use
36 her services. After discussion and upon motion duly made and seconded, it was unanimously

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1 **RESOVLED** that the services agreement with Becky Bultemeier be and hereby is approved as
2 presented.

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

5 **STRATEGY ITEMS**

6 **Vacant Director District 3 Appointment** – Ms. Brooks discussed the vacancy that will exist in
7 director district 3 after the May 3 election date, as Ms. Langmaid did not run for the remainder
8 two-year term in that district. Ms. Brooks presented related information, a copy of which is
9 attached hereto as **Exhibit Q** and incorporated herein by this reference. Discussion ensued
10 regarding advertising the vacancy and interviewing applicants. The Board directed staff to issue a
11 press release on the vacancy and cite an April 18 deadline for potential applicants to submit
12 letters of interest and qualifications to Ms. Hayes. The entire Board would like to review the
13 application materials, but only the organizational development subcommittee, Directors Simmons
14 and Testwuide, will interview applicants. The Board would like to appoint the new director at its
15 May 26 meeting.

16 **Bond Issue and Premium Options** – Mr. Wilkins discussed the upcoming issuance of
17 wastewater general obligation bonds, which District voters approved in the May 2014 election. A
18 3.0602 interest rate for the bonds was locked in on March 17, and the bonds will be issued on
19 March 31 for a total of \$25 million. The Board directed staff to issue a press release on the matter
20 to note these voter-approved bonds were issued.

21 **GENERAL MANAGER REPORT**

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

24 **Gore Creek Strategic Action Plan** – Ms. Brooks said the Vail town council adopted the plan at
25 its March 15 meeting. District and town staff continue to work together to partner on high priority
26 projects designated in the plan, including riparian restoration and winter snow storage locations.
27 Director Langmaid thanked staff and the Board for support of the plan and their collaborative
28 efforts with the town of Vail.

29 **Organizational Update** – Ms. Brooks noted the District was undertaking another employee
30 survey in May. Directors Simmons and Testwuide said they would postpone Ms. Brooks' annual
31 review until survey results were received. They noted the major changes the District was
32 undergoing with its recent reorganization and said the survey results would be an indicator of how
33 things were progressing to date.

34 **Monthly Reports** – The monthly reports were acknowledged, copies of which are attached
35 hereto as **Exhibit S** and incorporated herein by this reference.

36

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1 FINANCE REPORT

2 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit T** and incorporated herein
3 by this reference. He noted lower-than-projected January water sales were likely due to lower tourism
4 numbers. February water sales were in line with projections, as were the development impact fees paid.

5 OPERATIONS REPORT

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

8 **Eagle Mine Update** – Ms. Roman said the Eagle Mine Ltd. Board dissolved as a technical
9 assistant grant (TAG) recipient; the group will retain their 501(c)(3) charitable organization status
10 and become a sub-committee of the Eagle River Watershed Council. This committee will continue
11 its efforts to provide information and facilitate public input related to the Eagle Mine Superfund
12 site. Ms. Roman also reported that the Colorado Department of Public Health and Environment's
13 Hazardous Materials and Waste Management Division submitted a technical impracticability (TI)
14 waiver of the arsenic standard to the Environmental Protection Agency, and it is currently under
15 review. Staff and consultants are following this development and making comments as needed,
16 as the proposed limit is much higher than normal background levels and could adversely affect
17 District and Authority water quality and treatment operations.

18 **Regulation 31 Update** – Ms. Roman reviewed Regulation 31, which includes the Water Quality
19 Control Commission's proposed changes for surface water standards and methodologies,
20 including those for temperature and certain metals in the Eagle River Basin. She noted issues of
21 concern regarding how the standards are applied in the District and Authority service area. Party
22 status was requested on behalf of the District, Authority, and Eagle Park Reservoir Company, and
23 consultants Steve Bushong and Bob Weaver will monitor the rulemaking process and determine if
24 any comments or other actions are appropriate.

25 **Wastewater Operations Update** – Ms. Roman said wastewater operations were running
26 smoothly after the ammonia exceedance in February. She said current levels of ammonia at the
27 Edwards Wastewater Treatment Plant were below the limit.

28 **Black Gore Creek Steering Committee** – Ms. Roman updated the board on a recent meeting of
29 this committee. She reported that CDOT aims to pick up as much traction sand as it puts down
30 each year and hired a contractor last fall to retrieve the sand in the harder to reach areas. CDOT
31 is designing a more permanent access road to remove sediment from the Basin of Last Resort on
32 Vail Pass. The basin was last cleaned in 2009, and it cost over \$1 million for a specialized
33 contractor to access the basin.

34 PUBLIC AFFAIRS REPORT

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

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1 **Legislative Update** – Ms. Johnson discussed bills the Authority and District are following,
2 including the rain barrel bill (HB16-1005) and a bill regarding water loss audit reporting (HB16-
3 1283). She said the Colorado Water Congress is also monitoring proposed public trust initiatives.
4 Ms. Johnson also discussed Senate Bill 16-145, which provides an alternative mechanism for
5 creation of subdistricts within the Colorado River Water Conservation District. The subdistricts
6 could be used as funding mechanisms for projects related to the Colorado Basin Implementation
7 Plan and Colorado Water Plan. After discussion and upon motion duly made and seconded, it
8 was unanimously

9 **RESOLVED** to support Senate Bill 16-145, Colorado River District Subdistrict formation.

10 **Statewide Tap Fee Article** – Ms. Johnson noted an article about a possible statewide 'tap fee,' a
11 copy of which is attached hereto as **Exhibit W** and incorporated herein by this reference. This
12 proposed statewide surcharge could be used to fund projects identified in the Colorado Water
13 Plan; many questions remain as to how the funds would be collected, distributed, and utilized.

14 **Building a Better Colorado Initiatives** – Ms. Johnson said the organization submitted several
15 variations of possible ballot initiatives (related to their three focus areas) to the Title Board, but
16 only one version for each topic will be placed on the November statewide ballot. One possible
17 initiative would require petition signatures from all 35 state Senate districts for proposed state
18 constitution amendments.

19 **Curtailment Risk Study** – Ms. Johnson said the River District is leading the effort on the
20 Colorado River Development and Curtailment Risk Study to investigate Colorado River
21 operations, hydrology, climate, development pressures, and the implications on Lakes Powell and
22 Mead. East Slope parties are now participating in the effort, along with the four West Slope
23 roundtables and the Southwest Water Conservation District.

24 **Forest Service Water Right Directives** – Ms. Johnson noted the Western Governors'
25 Association sent a letter to the U.S. Forest Service outlining concerns about the shortened public
26 process in USFS directives – such as the Groundwater Resource Management and Ski Resort
27 Water Rights Clause directives – and also seeking a role for states as full partners in the process.

28 **Vail SNOTEL Site Visit** – Ms. Johnson reported on a March 14 Vail SNOTEL site visit with
29 employees of the USDA Natural Resources Conservation Service (NRCS), which manages the
30 site, and a Vail ski patroller. The site became more exposed with the removal of beetle-killed
31 trees about five years ago, subjecting it to more solar and wind effects; this makes comparisons
32 between current and historical data more difficult. The NRCS employees took manual site
33 measurements to compare to the automated data. Initial findings indicated the site may be
34 underreporting snow water equivalent.

35 All staff except Ms. Brooks and Ms. Johnson left the meeting at 2:10 p.m.
36

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1 **EXECUTIVE SESSION**

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

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

10 The regular meeting resumed at 2:34 p.m.

11

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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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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.

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

47 _____
Jim Collins, General Counsel