

Eagle River Water & Sanitation District
Board of Directors Meeting
April 28, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held April 28, 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
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV, *via phone*

The following Directors were absent and excused:

Steve Friedman
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>	33	Brian Tracy
Linn Brooks	34	<u>Consultants</u>
Jason Cowles	35	Jim Collins, Collins Cockrel & Cole
Carol Dickman	36	Glenn Porzak, Porzak Browning & Bushong LLP
Catherine Hayes	37	<u>Public</u>
Diane Johnson	38	George Gregory, board member elect
John McCaulley		
Siri Roman		

CALL TO ORDER

Acting Chair Buckley called the meeting to order at 11:30 a.m.

PUBLIC COMMENT

Acting Chair Buckley called for public comment and there was none.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of March 24, 2016, were considered. Upon motion duly made and seconded, it was

RESOLVED that the minutes of the March 24, 2016, regular meeting be accepted and hereby are approved as amended.

Execution of Documents – Ms. Brooks discussed the need to update the District's policy regarding execution of certain documents, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. The resolution authorizes Ms. Brooks to execute certain documents on behalf of the

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1 Board, or in her absence, James Wilkins or John McCaulley. After discussion and upon motion duly made
2 and seconded, it was unanimously

3 **RESOLVED** that the Resolution Authorizing Execution of Documents be and hereby is approved
4 as presented.

5 **Purchase of Red Sandstone Creek Unit A9** – Ms. Brooks presented a board action request and
6 resolution to purchase the unit back from a former employee, copies of which are attached hereto as
7 **Exhibits B** and **C**, respectively, and incorporated herein by this reference. Mr. Collins noted that staff
8 bring such resolutions before the Board because this document assists with the closing process.
9 Discussion ensued regarding the limit for depreciation and appreciation on employee housing units, per
10 the deed restriction. Upon motion duly made and seconded, it was unanimously

11 **RESOLVED** that the resolution to purchase Red Sandstone Creek Unit A9 be and hereby is
12 approved as presented.

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

15 STRATEGY ITEMS

16 **Vacant Director District 3 Appointment** – Ms. Brooks reported that the organizational
17 development committee was scheduling interviews for two candidates who expressed interest in
18 the open seat. She expects the committee to present its recommendation at the May meeting.

19 **Real Estate Matters** – Ms. Brooks said the Eagle Valley Land Trust contacted her regarding the
20 District-owned Intermountain Lot 14 and the tract of land between Dobson Arena and Vail Valley
21 Medical Center. The Land Trust indicated it would research the value of these properties as open
22 space; the District is interested in selling both of these properties.

23 GENERAL MANAGER REPORT

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

26 **Bennie's Breakfast Invitation** – Ms. Brooks reminded the Board of the 25th Annual Bennie's
27 Breakfast scheduled for May 25 at 7:30 a.m. at the Antler's at Vail. The gathering honors
28 employees for longevity and other achievements.

29 **Water Work Session with Avon Town Council** – Ms. Brooks reported that staff was preparing a
30 memo and presentations for a May 10 water work session with the Avon Town Council. Items for
31 discussion include regional and local water supply issues; the Authority's water demand
32 management program; and water tap fees. Discussion ensued regarding the District and
33 Authority's longstanding practice of having growth pay for growth, which is based on industry best
34 practices. She also noted that discussion with town representatives indicated they may ask for
35 complete waiver of tap fees for a future employee housing project. Mr. Collins said past

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1 precedent has been to defer payment for such projects up to 10 years, but the Colorado Revised
2 Statutes do allow waiver of tap fees for employee housing.

3 **Monthly Reports** – The monthly reports were acknowledged, copies of which are attached
4 hereto as **Exhibit F** and incorporated herein by this reference. Ms. Brooks pointed out the new
5 development report, which was compiled by the Planning Department using a new software
6 program. This will assist staff and developers in tracking development applications and keeping
7 records of all related documents.

8 **FINANCE REPORT**

9 In the absence of Mr. Wilkins, Ms. Brooks presented the finance report, a copy of which is attached
10 hereto as **Exhibit G** and incorporated herein by this reference. Water sales were lower than projected in
11 March, and few tap fees have been collected to date, which is normal for this time of year.

12 **OPERATIONS REPORT**

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

15 **Technical Impracticability Evaluation Report and Waiver for Arsenic** – Ms. Roman discussed
16 a letter to Wendy Naugle of the Colorado Department of Public Health and Environment (CDPHE)
17 regarding the proposed Technical Impracticability (TI) Waiver for arsenic and staff's request to
18 include stakeholders in the review process. A copy of the letter is attached hereto as **Exhibit I**
19 and incorporated herein by this reference. At the April 15, 2016, Eagle Mine Stakeholder meeting,
20 Ms. Naugle clarified that they are recommending that the arsenic level be 3 µg/L. The District and
21 Authority understand that the water + fish standard of 0.02 µg /L is not attainable; however, they
22 objected to the proposed standard, as it would accommodate significant future degradation. Ms.
23 Naugle communicated that CDPHE is awaiting the results of a focused feasibility study from CBS,
24 the Mine owner, prior to distributing the TI Waiver to Stakeholders. Staff and consultants continue
25 to closely monitor this situation.

26 **Eagle Park Reservoir Company Quarterly Report** – Mr. Tracy discussed the quarterly report.
27 He noted Climax Mine's 404 permit application to construct an overburden storage facility to store
28 fill materials; the permit identifies seven possible sites near the Mine, one of which would
29 encroach on Eagle Park Reservoir property and could adversely affect reservoir water quality. Mr.
30 Tracy said additional discussion would take place at the afternoon EPRC quarterly meeting.

31 **PUBLIC AFFAIRS REPORT**

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

34 **Prescription Drug Take Back Event** – Ms. Johnson reminded Directors of the April 30 drug take
35 back event, which she helps coordinate locally. Law enforcement partners are hosting collection

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1 sites in Vail, Edwards, and Gypsum. The event keeps pharmaceuticals out of the waste stream,
2 in part to protect water quality.

3 **Gore Creek Strategic Action Plan** – Ms. Johnson noted that staff continues to support town of
4 Vail efforts to complete high priority items from the plan. She helped develop the program for the
5 April 7 “sustainable landscape workshop” and was both a presenter and a participant. The District
6 sponsored lunch for about 50 people who attended the all-day training. In response to a question,
7 she said the town is still considering regulatory measures; town staff is focusing first on education
8 and outreach.

9 **Colorado Water Plan** – Ms. Johnson said discussion is ongoing regarding how to fund projects
10 identified in the plan and said she hadn’t heard further discussion of a statewide ‘tap fee’ since
11 the last meeting. She noted Gov. John Hickenlooper’s recent endorsement of the Windy Gap
12 Firming project as a “model of the type of project needed for Colorado’s Water Plan.”

13 **Colorado Water Institute (CWI) Report** – Ms. Johnson mentioned a recent report issued by the
14 CWI to address common myths and concerns about the “use it or lose it” notion of Colorado
15 water law. The report has garnered attention related to a key finding: that water users’ beliefs that
16 they must use every drop of water available in priority or risk losing a valuable portion of a water
17 right are, to a large extent, unfounded. Mr. Porzak said the subject is complicated and the value
18 of a water right is still tied to the amount of water put to beneficial use.

19 GENERAL COUNSEL REPORT

20 **Hahnewald Barn Update** – Mr. Collins noted the same historian who completed the 2010
21 summary was under contract to provide an updated report on the barn; Mr. Collins emphasized
22 that the barn must be moved from its current location on District property in Avon. He also noted
23 a local rancher was interested in moving the barn to his private property and rebuilding it as
24 showpiece to be used for special events.

25 **Angler’s Preserve** – Mr. Collins reported on a needed easement to bring water and sewer mains
26 through the adjacent Miller’s Creek property to serve the Angler’s Preserve development. An
27 appraisal will be sought, and Mr. Collins expects the compensation to the property owner will be
28 minimal due to an existing utilities easement in the area.

29 **Lodge at Vail** – Mr. Collins discussed a situation at the Lodge at Vail by which all of the roof
30 drains were connected to the sewer system, likely during original construction in the 1960s. This
31 issue must be corrected, as the District is not permitted to treat stormwater. Additionally,
32 remediation of this issue will likely substantially reduce peak inflows at the Vail Wastewater
33 Treatment Plant; plant expansion requirements are based on peak flows and can be very costly.
34 Discussion ensued regarding options to remedy this situation, as well as the lodge owner, Vail
35 Resorts. Staff will continue to work on the matter and report back to the Board.

36 The Board took a short recess for lunch at 12:05 p.m. The meeting resumed at 12:25 p.m.

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WATER COUNSEL REPORT

Colorado Water Rights Protection Act (HB 16-1109) – Mr. Porzak discussed the legislation and related information, a copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference. He reported that the Act passed unanimously in the House and Senate and was signed into law by Gov. Hickenlooper on April 21. The bill provides a financial deterrent to the federal government taking or impacting water rights; confirms that the federal government must defer to state water law to secure water rights; and prevents state enforcement of restrictions that the federal government may place on water rights. Mr. Porzak noted several legislators who were integral in the bill's passage and said thank you notes were issued accordingly. He also discussed the counterpart federal legislation regarding water rights protection, which is still in progress. Chairman Sackbauer thanked Mr. Porzak, his associates, and District staff members who worked tirelessly to get the legislation passed.

Amicus Brief – Mr. Porzak discussed an amicus brief filed on behalf of the District and Authority in the Denver Reuse Case, a copy of which is attached hereto as **Exhibit L** and incorporated herein by this reference. Consolidated Ditches argues that Denver Water cannot reuse return flows from any of its transmountain diversions (TMDs), not just the TMD referenced in the 1940 agreement between the two entities. The brief supports Denver Water's full reuse of water diverted from the West Slope to minimize future transbasin diversions.

Climax 404 Permit Application – Mr. Porzak discussed the application and a related comment letter, copies of which are attached hereto as **Exhibits M** and **N**, respectively, and incorporated herein by this reference. He noted the importance of being attentive to this issue to ensure protection of Eagle Park Reservoir water quality and future expansion plans.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle River MOU projects, water banking, and CRCA 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

RESOLVED to enter executive session at 12:50 p.m. to discuss attorney-client privileged issues concerning Eagle River MOU projects, water banking, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion would contain privileged attorney-client communications.*

At 1:10 p.m., prior to the discussion of water banking and CRCA matters, all staff left the meeting, with the exception of Ms. Brooks and Ms. Johnson.

The regular meeting resumed at 1:20 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:21 p.m.

3 Respectfully submitted,

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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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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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35 **Bill Simmons, Director**

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39 **Paul Testwuide, Director**

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41 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
42 in Executive Session not recorded constituted privileged attorney-client communications.

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46 **Glenn Porzak, Water Counsel**

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Jim Collins, General Counsel