

Eagle River Water & Sanitation District
Board of Directors Meeting
May 26, 2016
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held May 26, 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
Steve Friedman
George Gregory
Bill Simmons
Frederick P. Sackbauer IV

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:

Directors Allender and Gregory disclosed that they also serve on the Board of the Upper Eagle Regional Water Authority (Authority). Director Allender 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 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 board of the Edwards Metropolitan District. 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>	32	John McCaulley
Linn Brooks	33	Wade McCaulley
Jason Cowles	34	Siri Roman
Camille Cuypers	35	Brian Tracy
Carol Dickman	36	Travis Young
Sage Ebel	37	<u>Consultants</u>
Maureen Egan	38	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	39	Glenn Porzak, Porzak Browning & Bushong LLP
Diane Johnson	40	<u>Public</u>
Elena Jones	41	Noah Koerper, Sen. Bennet regional director

CALL TO ORDER

Director Sackbauer called the meeting to order at 11:37 a.m.

INTRODUCTIONS

New District employees were introduced, including Ms. Egan, Water Demand Management Coordinator, and Ms. Ebel and Ms. Cuypers, Customer Service interns. Mr. Koerper, Sen. Bennet's central mountain regional director, was also introduced.

ACTION ITEMS

Oaths of Office – Oaths of Office were administered to newly elected Directors Friedman and Gregory, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference. It was noted that Director Testwuide, who was also elected, had previously been administered his oath of office, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference.

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1 **Election of Officers** – The Board discussed the election of officers. Upon motion duly made and
2 seconded, it was unanimously

3 **RESOLVED** that Rick Sackbauer serve as Chair/President and District representative to Eagle
4 Park Reservoir Company.

5 After discussion and upon motion duly made and seconded, it was unanimously

6 **RESOLVED** that Steve Friedman serve as Vice Chair.

7 After discussion and upon motion duly made and seconded, it was unanimously

8 **RESOLVED** that George Gregory serve as Secretary.

9 After discussion and upon motion duly made and seconded, it was unanimously

10 **RESOLVED** that Tom Allender serve as Treasurer.

11 After discussion and upon motion duly made and seconded, it was unanimously

12 **RESOLVED** that Paul Testwuide and Bill Simmons serve as Assistant Secretary and Treasurer.

13 **District Committees** – The Board discussed vacancies on various committees due to changes in
14 Board membership. The topic was tabled to the June meeting.

15 **Consideration of Minutes** – The minutes of the regular meeting of April 28, 2016, were considered.

16 Upon motion duly made and seconded, it was

17 **RESOLVED** that the minutes of the April 28, 2016, regular meeting be accepted and hereby are
18 approved as presented. Secretary Gregory abstained.

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

21 **PUBLIC COMMENT**

22 Ms. Johnson introduced Mr. Koerper, Sen. Bennet's central mountains regional director, to the Board. Mr.
23 Koerper distributed a letter, attached hereto as **Exhibit E** and incorporated herein by this reference,
24 concerning federal water conservation programs in the Colorado River Basin. He gave an overview of
25 Sen. Bennet's work on Good Samaritan legislation, the drought bill, the Bolts Ditch in Minturn (about
26 which the Authority and District wrote letters of support), and a proposed public lands bill that would be a
27 companion to Rep. Polis' Continental Divide Wilderness and Recreation Act. He said Senate Committee
28 on Energy and Natural Resources staffers are reviewing the Authority and District's proposed flooding
29 language for the companion bill. The proposal would create a new designation for the Camp Hale area
30 and Mr. Koerper clarified that it would not affect water rights. Mr. Porzak urged support for H.R. 3189, the
31 Water Rights Protection Act, and accepted Mr. Koerper's offer to discuss the matter further with Sen.
32 Bennet's staff in Washington, D.C. The Board thanked Mr. Koerper for his time.

33 **STRATEGY ITEMS**

34 **Vacant Director District 3 Appointment** – Director Simmons briefly discussed the interviews he
35 and Director Testwuide conducted on May 17 with two interested applicants for Director District 3.
36 Director Simmons said both were qualified and would serve the Board well; however, they

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1 recommended appointment of Steve Coyer to fill the vacancy. After discussion and upon motion
2 duly made and seconded, it was unanimously

3 **RESOLVED** that Steve Coyer be and hereby is appointed to fill the Director District 3
4 vacancy; and

5 **FURTHER RESOLVED** that Steve Coyer serve as Assistant Secretary and Treasurer.

6 The Board took a short recess for lunch at 12:06 p.m. The regular meeting resumed at 12:20 p.m.

7 **Tap Fee Presentation** – Mr. Cowles presented information regarding the District and Authority
8 impact fees, in addition to fees charged by Authority members and other local entities. This
9 presentation was recently given to the Avon town council. Mr. Cowles emphasized that all fees
10 charged by the District and Authority have a rational nexus and are based on extensive data
11 analysis and best industry practices, including a ‘growth pays for growth’ philosophy. In response
12 to a question, Mr. Cowles said Avon, Edwards and Traer Creek are the most likely places for
13 significant growth to occur in the Authority. In response to another question, Mr. John McCaulley
14 noted an efficiency unit is assigned a 0.5 single family equivalent (SFE) for billing purposes. A
15 copy of the presentation is attached hereto as **Exhibit F** and incorporated herein by this
16 reference.

17 **GENERAL MANAGER REPORT**

18 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
19 herein by this reference. The monthly reports were also acknowledged, copies of which are attached
20 hereto as **Exhibit H** and incorporated herein by this reference.

21 **American Waterworks Association Partnership for Safe Water** – Mr. Tracy introduced Wade
22 McCaulley, lead water operator, and Travis Young, water superintendent, to discuss the
23 partnership for safe water, which is a voluntary program. The partnership is being implemented at
24 the Avon Drinking Water Facility (ADWF), with plans to expand to other District and Authority
25 water treatment facilities in the future. Mr. McCaulley discussed the program, which helps control
26 microbial contaminants, provides protection that goes above regulations and legislation governing
27 drinking water treatment, and evaluates and optimizes treatment to protect public health. Mr.
28 Young then discussed how the program is specifically being implemented into the treatment
29 process at the ADWF in the four recommended phases. Mr. Wade McCaulley and Mr. Young left
30 the meeting at 12:50 p.m. A copy of the presentation is attached hereto as **Exhibit I** and
31 incorporated herein by this reference.

32 **Paymentus Status Update and Risk Reduction** – Ms. Jones and Mr. John McCaulley
33 discussed their memo regarding the Paymentus online customer bill pay system, a copy of which
34 is attached hereto as **Exhibit J** and incorporated herein by this reference. Use of the system has
35 resulted in significant cost savings due to printing fewer bills and postage savings, switching bill
36 print vendors to accommodate online billing, and reduced need for software add-on subscriptions.

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1 In addition, the new system complies with red flag requirements to protect personal information.
2 Ms. Jones left the meeting at 1:00 p.m.

3 **Summary of Work Session with Town of Avon Council** – Ms. Brooks discussed a May 10
4 work session with the Council to review water compact issues; water demand management; and
5 impact fees. Mr. Collins noted the Town’s representative for the Authority, Sarah Smith Hymes,
6 has been very helpful and collaborative in moving forward items of mutual concern.

7 **FINANCE REPORT**

8 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit K** and
9 incorporated herein by this reference.

10 **Water Sales and Development Impact Fee Revenues** – Mr. Wilkins noted May water sales
11 were slightly lower than projections and development impact fee revenues are expected to
12 increase as summer construction projects commence. Discussion ensued regarding budgeting
13 water sales. Currently, projections are based on the prior year’s usage, so unless weather
14 patterns are similar from year to year, the projections will likely be inaccurate. Treasurer Allender
15 suggested the closing dates for Vail and Beaver Creek should also be taken into account when
16 budgeting, especially for the District.

17 **Quarterly Financial Report** – Mr. Wilkins also discussed the quarterly report, a copy of which is
18 attached hereto as **Exhibit L** and incorporated herein by this reference. He noted wastewater and
19 water revenues are both trending close to projections. He noted a premium of \$1.7 million
20 received on the wastewater bond issuance. He also discussed staff’s continued efforts to manage
21 project fund rollovers; this is especially difficult for multiyear projects.

22 **OPERATIONS REPORT**

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

25 **Wastewater Treatment Plant Sanitary Surveys by CDPHE** – Ms. Roman discussed a recent
26 compliance evaluation inspection completed by the Colorado Department of Public Health and
27 Environment (CDPHE) at the District’s three wastewater treatment plants, the laboratory, the
28 collection system and the lift stations; the inspector gave the District an excellent review. Ms.
29 Brooks noted this was a great accomplishment, especially since there are so many small
30 components included in the evaluation.

31 **Urban Runoff Group Update** – Ms. Roman said the town of Vail received a CDPHE “319”
32 nonpoint source grant to help fund a stormwater control project at the Vail public works facility.
33 The grant money will be used to install multiple best management practices there, including
34 bioswales, rain gardens, permeable pavers, filtration stormwater quality vaults and hydrodynamic
35 separation devices, all of which will reduce industrial runoff there. Upon completion, the site will
36 be used for educational and demonstration purposes. Ms. Roman also reported that the Eagle
37 River Watershed Council received a grant from the town of Vail for riparian restoration of Gore

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1 Creek west of Lionshead skier bridge. Social trails to the creek will be removed, leaving one
2 delineated access to the stream.

3 **Town of Vail Outreach** – Ms. Roman noted that the Town was hosting a free monthly lunch and
4 learn events. The May program was held yesterday, and presenters discussed Gore Creek
5 stream ecology and aquatic health.

6 **Red Sandstone Pilot Projects** – Ms. Roman said that she is scheduled to walk Red Sandstone
7 Creek with Town of Vail and Eagle River Watershed Council employees to discuss a potential
8 water quality pilot project.

9 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

12 **Eagle River Valley State of the River Public Meeting** – Ms. Johnson said about 85 people
13 attended the May 16 event to hear from ten different local and regional speakers. She said the
14 program is available on demand on the Channel 5 website and each presentation is available in
15 PDF on the district website.

16 **Colorado River Basin Planning** – Ms. Johnson noted articles included with her report regarding
17 water supply planning in the Colorado River Basin. The topic is receiving much media attention,
18 and these articles provide a good overview of current efforts and concerns.

19 **Water Use Regulations** – Ms. Johnson said the water use regulations brochure was included in
20 the May billing statements. The regulations are annually sent to customers and are in effect year
21 round. A copy of the regulations is attached hereto as **Exhibit O** and incorporated herein by this
22 reference.

23 **Meeting with U.S. Rep. Polis** – Ms. Johnson reminded Directors that the March 28 meeting with
24 Rep. Polis and the Board chairs had been postponed due to conflicts in Rep. Polis' schedule. He
25 recently offered dates in late June and July to reschedule the meeting. Ms. Johnson will
26 coordinate with the chairs and Rep. Polis's office.

27 **Water Law Classes** – Ms. Johnson informed the Board of several upcoming opportunities to
28 participate in a water law class and will work to host a local class with former division 4 water
29 referee Aaron Clay in early September.

30 **Colorado Supreme Court Decisions re Severance Taxes** – In response to a question, Ms.
31 Johnson briefly discussed the April 25 ruling holding that the state improperly assessed
32 severance taxes to oil and gas operators. Consequently, the state will have to repay the funds,
33 estimated to be hundreds of millions of dollars. It is unclear how the yet to be determined
34 changes in the state budget may affect the District and Authority.

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GENERAL COUNSEL REPORT

Hahnewald Barn Update – Mr. Collins said all parties are now in agreement that the barn must be moved. Discussion ensued regarding a possible location and funding to move the barn within Avon; the interested rancher and his potential timeline for moving and restoring the barn; and the need to provide a deadline for resolution of the entire matter to Avon. The Board directed Ms. Brooks and Mr. Collins to communicate to Avon that a plan must be in place to relocate the barn by Dec. 31, 2016.

Avon Drinking Water Facility Leased Property – Mr. Collins updated the Board on the property, which the Authority leases from the town of Avon. The lease is being amended shortly to extend through 2084 and include the property on which the facility now encroaches, which is not included in the current lease.

Angler's Preserve Easement – Mr. Collins said it appeared that the needed easement was being handled between the developer and property owner; the District's assistance is not needed at this time.

Traer Creek Tank Update – Mr. Collins reported that the Authority had filed a motion for declaratory judgment, which will help determine who has the warranty obligation for the tank. The Authority is considering its options for moving forward with a plan for repair or replacement in the interim; in the absence of a functioning tank in that area, the Authority is limited in its ability to provide water service for new development in Avon, EagleVail, and Traer Creek.

Mountain Star Tank Update – Mr. Collins reported that the tank is under construction and expected to be online by the end of summer. Ms. Brooks noted that the tank would be concrete, which is unusual for an above-ground tank; however, this will result in significant operations and maintenance cost savings over the lifetime of the tank.

WATER COUNSEL REPORT

Mountain Town News Article – Mr. Porzak distributed an article from *Mountain Town News*, regarding the Colorado Water Rights Protection Act, a copy of which is attached hereto as **Exhibit P** and incorporated herein by this reference. He indicated that the Directors might want to consider subscribing to the publication, which contains news from all Western Slope mountain towns.

Federal Water Rights Protection Act – Mr. Porzak discussed letters and information sent to Colorado senators and representatives urging support of the federal water rights protection act and outlining the unanimous passage of the Colorado water rights protection act. Copies of this information are attached hereto as **Exhibit Q** and incorporated herein by this reference.

Wolford Mountain Reservoir Update – Mr. Porzak said the River District released information from a thorough investigation of Ritschard Dam at Wolford Mountain Reservoir; the latest evaluation indicates the dam is safe and can resume normal operations. A copy of this

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1 information is attached hereto as **Exhibit R** and incorporated herein by this reference. Mr. Porzak
2 reminded Directors that Wolford Mountain Reservoir is a major source of out-of-basin
3 augmentation water for the Authority and District.

4 **Eagle River MOU Projects Update** – Mr. Porzak discussed recent meetings with staff,
5 consultants, and other ERMOU partners on the Western Slope to ensure consensus among
6 these stakeholders. Project alternatives being considered by all stakeholders include an Eagle
7 Park Reservoir enlargement and proposed Whitney Creek reservoir. Discussion ensued
8 regarding the environmental and permitting issues that would be likely with the Whitney Creek
9 option; a wetlands investigation will begin there soon. In response to a question, Mr. Porzak
10 noted a pumping system would be needed to get water to the east slope parties if the Eagle Park
11 enlargement was the chosen project.

12 At 1:44 p.m. all remaining staff, with the exception of Ms. Brooks and Ms. Johnson, left the meeting.

13 **EXECUTIVE SESSION**

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

18 **RESOLVED** to enter executive session at 1:45 p.m. to discuss attorney-client privileged
19 issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
20 electronic record created as Mr. Porzak opined the contents of the discussion would contain
21 privileged attorney-client communications.*

22 The regular meeting resumed at 2:05 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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7 _____
8 Secretary to the Meeting

9 **MINUTES APPROVED, FORMAL CALL, AND**
10 **NOTICE OF MEETING WAIVED**

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14 **Tom Allender, Treasurer**

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18 **Steve Coyer, Director**

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22 **Stephen Friedman, Vice Chair**

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26 **George Gregory, Secretary**

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30 **Frederick P. Sackbauer IV, President/Chair**

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34 **Bill Simmons, Director**

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38 **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