

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

A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 28, 2016, at 12:45 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
Steve Coyer
Steve Friedman
George Gregory
Bill Simmons, *via phone*
Frederick P. Sackbauer IV, *via phone*
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 Gregory also serves on the board of the Berry Creek Metropolitan District and occasionally undertakes development and construction activities within the District and Authority service areas. 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	Melissa Mills McLoota
Tug Birk	33	Siri Roman
Linn Brooks	34	Jason Sica
Jason Cowles	35	James Wilkins
Camille Cuypers	36	<u>Consultants</u>
Wenli Dickinson	37	Kristin Moseley, Porzak Browning & Bushong LLP
Carol Dickman	38	<u>Public</u>
Catherine Hayes	39	Holly Loff, Eagle River Watershed Council
Diane Johnson		

CALL TO ORDER

Acting Chair Friedman called the meeting to order at 12:45 p.m.

Conflict of Interest Disclosure – It was noted that an updated conflict of interest letter was filed on behalf of Director Gregory, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

ACTION ITEMS

2015 Audited Financial Statements – Mr. Wilkins discussed the FY 2015 audit, which was performed by McMahan and Associates. A related board action request and copy of the audit are attached hereto as **Exhibits B** and **C**, respectively, and incorporated herein by this reference. Mr. Wilkins discussed some minor procedural changes suggested by the auditors to ensure appropriate checks and balances. The audit committee, Vice Chair Friedman and Treasurer Allender, also discussed the audit, which was clean; they recommended approval. After discussion and upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the FY2015 audited financial statement be and hereby is approved as
2 presented.

3 The Board complimented staff on the clean audit.

4 **Resolution Approving Sale of Real Property** – The Board discussed a board action request and
5 resolution to sell Red Sandstone Creek unit A7, copies of which are attached hereto as **Exhibits D** and
6 **E**, respectively, and incorporated herein by this reference. In response to a question, Mr. Wilkins said
7 the unit was governed by the town of Vail's deed restriction. Discussion ensued regarding the history of
8 the program; current policies and procedures; and an upcoming onboarding session for the housing
9 committee, Chair Sackbauer and Director Coyer. After discussion and upon motion duly made and
10 seconded, it was unanimously

11 **RESOLVED** that the resolution to sell Red Sandstone Creek unit A7 be and hereby is approved
12 as presented.

13 **Consideration of Minutes** – The minutes of the regular meeting of June 23, 2016, were considered.
14 Upon motion duly made and seconded, it was unanimously

15 **RESOLVED** that the minutes of the June 23, 2016, regular meeting be accepted and hereby are
16 approved as presented. Directors Coyer and Testwuide abstained.

17 **Vacation of Easement** – Mr. Birk discussed his board action request and related resolution to vacate
18 the District's right to an easement between 103 and 107 Rockledge Road in Vail, copies of which are
19 attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference. He
20 explained the existing easement has multiple directional changes and does not meet the District's
21 current width requirement, nor will the easement be needed for future use. In response to a question,
22 he said the easement will remain for any other utility providers. After discussion and upon motion duly
23 made and seconded, it was unanimously

24 **RESOLVED** that the vacation of easement between 103 and 107 Rockledge Road be and
25 hereby is approved as presented.

26 **Public Hearing for Inclusion of Property for Sewer Service** – Mr. Birk presented his board action
27 request and related materials regarding the request for inclusion of 23600 Highway 24 in Minturn into
28 the District boundaries for sewer service, copies of which are attached hereto as **Exhibits H** and **I**,
29 respectively, and incorporated herein by this reference. A notice of inclusion was published in the Eagle
30 Valley Enterprise, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this
31 reference. The public hearing was opened at 1:10 p.m. Public comment was called for and there was
32 none. The public hearing was closed at 1:11 p.m. After discussion and upon motion duly made and
33 seconded, it was unanimously

34 **RESOLVED** that the resolution for inclusion of 23600 Highway 24 in Minturn be and hereby is
35 approved as presented.

36 **Nomination for 2016 Special District Association (SDA) Board of Directors** – The Board discussed
37 the nomination of Director Simmons for the SDA Board of Directors representing District 2. A copy of

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1 the nomination is attached hereto as **Exhibit K** and incorporated herein by this reference. Director
2 Simmons previously represented the Edwards Metropolitan District on the SDA Board. After discussion
3 and upon motion duly made and seconded, it was unanimously

4 **RESOLVED** that the Board nominates Bill Simmons to serve on the Special District Association
5 Board of Directors on behalf of the Eagle River Water and Sanitation District, pursuant to the
6 election held at the September 22, 2016, annual business meeting of the SDA.

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

9 **STRATEGY ITEMS**

10 **Board Member Input** – Ms. Brooks noted the new standing agenda item was added to allow board
11 member input on topics they wished to discuss that may have transpired since board materials were
12 issued the week prior. Director Gregory summarized the recent meeting with Rep. Polis and his staff that
13 he, District Chair Sackbauer, and Mses. Brooks and Johnson attended regarding Rep. Polis's wilderness
14 bill. Rep. Polis and his staff seemed amenable to the new language proposed by the Authority and
15 District, which addresses process rather than an amendment to the wilderness act. No final approval on
16 the language has been given, but attendees agreed the meeting was positive.

17 **GENERAL MANAGER REPORT**

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

21 **ERMOU Event Update** – Ms. Brooks discussed the recent event held July 25 – 26 in Vail with the
22 Eagle River MOU partners. Attendance included executives from the partner entities, whereas
23 much previous communication has been at lower staff levels. July 25 included visits to potential
24 project sites and a welcome dinner. July 26 featured a meeting to discuss statements of water
25 needs from each partner, with plans to develop a joint statement of purpose and need
26 cooperatively. Discussion ensued regarding the terms of the Eagle River MOU and how this will
27 ultimately inform the chosen project(s). Director Gregory complimented staff on arranging the event.

28 **FINANCE REPORT**

29 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit O** and
30 incorporated herein by this reference. He noted June water sales were close to projections.

31 **OPERATIONS REPORT**

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

34 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

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1 **CWCB Budget** – Ms. Johnson cited a Colorado Water Conservation Board (CWCB) memo
2 regarding an April Colorado Supreme Court ruling concerning severance taxes, its impact to the
3 Department of Natural Resources and the CWCB, and the CWCB’s proposed funding plan, a
4 copy of which is attached hereto as **Exhibit R** and incorporated herein by this reference.

5 **Colorado River Water Conservation District Meeting** – Ms. Johnson reported on topics
6 discussed at the July 20 River District board meeting.

7 **Club 20 Policy Committee Meeting** – Ms. Johnson reported that the Club 20 water policy
8 committee updated several policies at its July 21 meeting, including two with new language that
9 reflects HB16-1109, the Colorado Water Rights Protection Act, which was signed into law in April.
10 Specifically, Club 20 added provisions stating that water rights and water quality matters should
11 remain within state jurisdiction and federal agencies should defer to state law.

12 **Edwards Medical Center Water Quality** – Ms. Johnson reported that a meeting is scheduled
13 August 1 with Vail Valley Medical Center staff to discuss their testing and notification processes
14 as a follow up to the July 18 incident within the Edwards Medical Center campus..

15 GENERAL COUNSEL REPORT

16 Ms. Brooks noted that Mr. Collins was on vacation and did not include a July packet report.

17 WATER COUNSEL REPORT

18 **Federal Water Rights Protection Act** – Ms. Moseley discussed two federal water rights
19 protection bills that are pending, one each in the House and Senate, copies of which are attached
20 hereto as **Exhibits S** and **T**, respectively, and incorporated herein by this reference. The House
21 bill was introduced by Colorado Rep. Tipton. The Senate bill is an omnibus bill sponsored by ten
22 Republicans, containing a wide range of items, including some on controversial topics.

23 **Red Sandstone Reservoir Diligence Case** – Ms. Moseley discussed the diligence filing, a copy
24 of which is attached hereto as **Exhibit U** and incorporated herein by this reference. In response
25 to a question, she noted the state engineer has begun to focus on the summary of consultation
26 for diligence cases rather than outright opposition.

27 **Vail Whitewater Park Diligence Case** – Ms. Moseley discussed the diligence filing, a copy of
28 which is attached hereto as **Exhibit V** and incorporated herein by this reference. The case will
29 make over 300 acre feet of water absolute during spring months, since documented recreational
30 activities are taking place then. She noted the CWCB was an objector in the case, though they
31 are close to settlement. Ms. Moseley noted the CWCB had recently gotten involved in all
32 whitewater and/or recreational in-channel diversion cases.

33 **Wolcott Diligence Case** – Ms. Moseley discussed the diligence filing, a copy of which is
34 attached hereto as **Exhibit W** and incorporated herein by this reference. She said potential
35 opposers have until the end of September to file opposition. This is the first diligence filing for

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1 these rights, so plenty of supporting activity has taken place as the District works to make these
2 water rights absolute.

3 **Red Sky Ranch Water Facility** – In response to a question, Ms. Brooks said the Red Sky Ranch
4 water facility would be improved once the Wolcott development is moving forward. There is
5 currently much unused capacity in the system, as it is serving a small population.

6 At 1:45 p.m., Ms. Dickinson, Ms. Loff, and Messrs. Sica and Wilkins left the meeting.

7 **EXECUTIVE SESSION**

8 Ms. Moseley requested the Board enter Executive Session to receive legal advice regarding Eagle River
9 MOU and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. She asked that no electronic record be
10 made, as the discussion would be entirely privileged attorney-client communications. Upon motion duly made
11 and seconded, it was unanimously

12 **RESOLVED** to enter executive session at 1:46 p.m. to discuss attorney-client privileged
13 issues concerning Eagle River MOU and CRCA matters, pursuant to §24-6-402(4)(b) and (e)
14 C.R.S. with no electronic record created as Ms. Moseley opined the contents of the
15 discussion would contain privileged attorney-client communications.*

16 At 1:59 p.m., before the discussion of CRCA matters, all staff left the meeting, with the exception of Ms.
17 Brooks and Ms. Johnson.

18 The regular meeting resumed at 2:15 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:16 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, Treasurer**

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19 **Steve Coyer, Director**

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23 **Stephen Friedman, Vice Chair**

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27 **George Gregory, Secretary**

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

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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 **Kristin Moseley, Water Counsel**
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