

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**September 22, 2016**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held September 22, 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 Coyer  
Steve Friedman  
George Gregory  
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:

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>	33	Dan Siebert
Linn Brooks	34	Brian Tracy
Jason Cowles	35	James Wilkins
Carol Dickman	36	<u>Consultants</u>
Maureen Egan	37	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	38	Glenn Porzak, Porzak Browning & Bushong LLP
Debbie Hoffman	39	<u>Public</u>
Diane Johnson	40	Kim Langmaid, Walking Mountains Science Center
Melissa Mills McLoota		
Siri Roman		

**CALL TO ORDER**

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

**ACTION ITEMS**

**Consideration of Minutes** – The minutes of the regular meeting of August 18, 2016, were considered. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the August 18, 2016, regular meeting with the Upper Eagle Regional Water Authority be accepted and hereby are approved as presented.

**Resolution Regarding Designation of Wilderness for Spraddle Creek, No Name Watershed**

**Areas** – The Board discussed the resolution and a Sept. 21 letter from Rep. Polis agreeing to either include the Authority and District's requested language in an amendment to Rep. Polis's wilderness bill or a reintroduced version in the 115<sup>th</sup> Congress. The resolution and letter are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference.

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

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1           **RESOLVED** that the resolution be and hereby is approved as presented.

2           **Vacation of Easement: Basecamp Development** – Mr. Cowles discussed the board action request  
3 and related information regarding the Basecamp development, copies of which are attached hereto as  
4 **Exhibits C** and **D** and incorporated herein by this reference. He explained the requested easement  
5 vacation, noting that the water and sewer lines will be located in a different area of the parcel.  
6 Discussion ensued regarding whether there should be a cost to the requestor of easement  
7 abandonment. The Board directed staff to consider the cost/value of abandonment in the future. Upon  
8 motion duly made and seconded, it was unanimously

9           **RESOLVED** that the vacation of easement be and hereby is approved as presented.

10          **Resolution in Support of Amendment 71: Raise the Bar, Protect our Constitution** –Ms. Johnson  
11 discussed the resolution and related board action request regarding Amendment 71, copies of which are  
12 attached hereto as **Exhibits E** and **F**, respectively, and incorporated herein by this reference. She  
13 clarified that Amendment 71 would make it more difficult to amend the Colorado constitution by requiring  
14 that “any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the  
15 registered electors who reside in each state senate district for the amendment to be placed on the ballot”  
16 and that the percentage of votes needed to pass any proposed constitutional amendment would be  
17 increased “from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional  
18 amendment only repeals, in whole or in part, any provision of the constitution.” Currently there is no  
19 requirement for geographical signature representation, and only a simple majority vote is required for  
20 approval. Ms. Johnson clarified that the Amendment does not affect the process to amend state statute.  
21 Mr. Collins clarified that the board members are elected officials and empowered to take such actions if  
22 they so choose. Upon motion duly made and seconded, by a vote of 6 –1, it was

23          **RESOLVED** that the resolution be and hereby is approved as presented.

24          **Resolution in Support of Ballot Issue 1A: Affordable Workforce Housing** – The Board discussed a  
25 board action request and related resolution regarding ballot issue 1A, which would add 3/10 Eagle County  
26 sales tax to be earmarked for affordable workforce housing; copies are attached hereto as **Exhibits G**  
27 and **H**, respectively, and incorporated herein by this reference. Discussion ensued regarding the vague  
28 plan for spending the collected funds. A motion was made and seconded, but failed by a vote of 2 – 5.

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

31 The board took a short recess for lunch at 12:000 p.m. The regular meeting resumed at 12:05 p.m.

### 32 **STRATEGY ITEMS**

33          **District Sustainability Efforts** – Mr. Tracy discussed the District’s sustainability committee and  
34 introduced interim chair Dan Siebert. Mr. Siebert noted the Authority and District combined are the  
35 second largest energy user in Eagle County. He also discussed District sustainability efforts, including the  
36 history of the District’s sustainability committee and energy improvements to employee housing units and  
37 District facilities. The District is implementing efficiency programs using established frameworks and

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1 standards, including the environmental management system and Actively Green through the Walking  
2 Mountains Science Center. Mr. Siebert also noted the District recently received the Colorado Department  
3 of Public Health and Environment's bronze level certification in its Environmental Leadership Program,  
4 the only such municipality on the West Slope to achieve this designation. The Board thanked Mr. Siebert  
5 for his presentation, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this  
6 reference.

7 **Eagle County Climate Action Plan** – Ms. Langmaid was introduced and presented information  
8 regarding the Climate Action Plan (CAP), a copy of which is attached hereto as **Exhibit K** and  
9 incorporated herein by this reference. This climate change mitigation plan is being drafted through a  
10 stakeholder process and spearheaded by Walking Mountains Science Center. Ms. Langmaid noted more  
11 frost-free days in the area, the higher per capita energy usage in Eagle County, and that climate change  
12 is simple, serious, and solvable. Discussion ensued regarding the achievability of the plan's goals for  
13 energy reduction; Ms. Langmaid noted that an energy transition is underway and market forces would  
14 play a large role in shifting the balance between renewable and non-renewable energy sources in the  
15 future. The Board indicated it supports the development of the CAP in concept.

16 **Vail Sustainable Destination** – Ms. Langmaid also discussed Vail's efforts to become the first certified  
17 sustainable travel destination in the United States under the Global Sustainable Tourism Council. A  
18 related presentation is attached hereto as **Exhibit L** and incorporated herein by this reference. She noted  
19 a pre-assessment was completed with local stakeholders, including the District. The town must meet 40  
20 criteria for the certification and is on track for summer 2017 completion. Ms. Langmaid said the town  
21 would stay within the generic global criteria but was also customizing some of the framework for mountain  
22 resort communities. The Board thanked Ms. Langmaid for the information.

### 23 **GENERAL MANAGER REPORT**

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

### 27 **FINANCE REPORT**

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

### 30 **OPERATIONS REPORT**

31 The operations report was presented, a copy of which is attached hereto as **Exhibit P** and incorporated  
32 herein by this reference.

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## GENERAL COUNSEL REPORT

**Email Discussions Reminder** – Mr. Collins reminded directors that any meeting or discussion of more than two Board members in which public business is discussed constitutes a public meeting that must be noticed accordingly. This includes any email received by all Board members to which a Board member then replies to all. Mr. Collins also noted that any email communication among Board members or staff is considered a discoverable public record.

## WATER COUNSEL REPORT

**Denver Water Reuse Case** – Mr. Porzak discussed the case, which was a complete victory for Denver Water. The District and Authority wrote an amicus brief in support of Denver Water's continued reuse of return flows from its transmountain diversions, with the exception of one specific 1940s TMD. The ruling limits Denver Water's need for future TMDs.

**District Water Rights Report** – Mr. Porzak presented the first-ever water rights report for the District, a copy of which is attached hereto as **Exhibit Q** and incorporated herein by this reference. The report summarizes such details as all Vail-area water rights, including groundwater and direct diversions; the interconnect between the District and Authority systems; in-basin and out-of-basin augmentation water; the agreements and contracts associated with the rights; and diligence schedules, among other items. The report also details the water rights and water demands in the Wolcott service area at full build out. Mr. Porzak discussed various scenarios that could affect the amount of unallocated water available to the District for future development; he also noted the numbers in the report reflect worst-case scenarios, as the District must commit to serve in the driest years.

**Vail Whitewater Park Ruling** – Mr. Porzak presented the final decree in the Vail Whitewater Park case, a copy of which is attached hereto as **Exhibit R** and incorporated herein by this reference. He noted the ruling makes absolute all but a very small portion of the water right.

**St. Jude's Recreation Water Bill** – Mr. Porzak discussed the proposed St. Jude's legislation, a copy of which is attached hereto as **Exhibit S** and incorporated herein by this reference. The bill would recognize recreational, aesthetic and piscatorial water rights as beneficial uses of decreed water rights. In 2015, the Colorado Supreme Court ruled that such uses were not beneficial. The District and Authority expressed support for such legislation, along with numerous other water providers.

All guests and staff left the meeting, with the exception of Ms. Brooks, Ms. Hayes, Ms. Johnson and Mr. Wilkins at 1:29 p.m.

## **EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding water rights Eagle River MOU and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic

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1 record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion  
2 duly made and seconded, it was unanimously

3 **RESOLVED** to enter executive session at 1:30 p.m. to discuss attorney-client privileged  
4 issues concerning Eagle River MOU and CRCA matters, pursuant to §24-6-402(4)(b) and (e)  
5 C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion  
6 would contain privileged attorney-client communications.\*

7 At 1:39 p.m., before the discussion of CRCA matters, all staff left the meeting, with the exception of Ms.  
8 Brooks and Ms. Johnson.

9 The regular meeting resumed at 1: 42 p.m.

**Eagle River Water & Sanitation District**

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:43 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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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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46 **Glenn Porzak, Water Counsel**

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