Eagle River Water & Sanitation District

Board of Directors Meeting

December 15, 2016

MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held December 15, 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:

1. Tom Allender
2. Steve Coyer
3. Steve Friedman
4. George Gregory
5. Bill Simmons
6. Frederick P. Sackbauer IV, via phone
7. Paul Testwuide

Also in attendance were:

8. District Staff
9. Tug Birk
10. Linn Brooks
11. Jason Cowles
12. Carol Dickman
13. Maureen Egan
14. Catherine Hayes
15. Debbie Hoffman
16. Diane Johnson
17. Ali Kelkenberg
18. Melissa Mills McLoota
19. Glen Phelps
20. Connie Nunley

21. Siri Roman
22. Micah Schuette
23. James Wilkins
24. Consultants
25. Jim Collins, Collins Cockrel & Cole
26. Glenn Porzak, Porzak Browning & Bushong LLP
27. Public
28. Pam Hopkins, Hopkins Architecture
29. Whitney Hopkins, Hopkin Architecture
30. Leah Mayer, LKSM Design
31. Larissa Read, Common Ground Environmental Consulting
32. Rick Pylman, Pylman & Associates

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 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.

CALL TO ORDER

Acting Chair Friedman called the meeting to order at 11:54 a.m.

INTRODUCTIONS/PUBLIC COMMENT

Guests were introduced, including those in attendance to discuss the Stillwater PUD: the Hopkins, Ms. Mayer, Ms. Read, and Mr. Pylman. The newest District planner, Mr. Schuette, was also introduced.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of November 17, 2016, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the November 17, 2016, regular meeting be accepted and hereby are approved as presented. Acting Chair Friedman abstained.
Proposed 2017 Meeting Schedule – Ms. Brooks discussed a memo regarding the proposed 2017 meeting schedule, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Discussion ensued regarding staff conflicts during certain months with the regular meeting schedule for the fourth Thursday of the month; however, moving such meetings to the third Thursday can cause scheduling conflicts for Directors. The Board requested all meetings remain on the fourth Thursday of the month, with the exception of November and December, when the meetings will be held on the third Thursday. The Board also requested Ms. Brooks appoint another staff member to attend any meetings in her absence. Staff will communicate the schedule to the Authority Board.

Resolution for Joint Regional Water Efficiency Plan with Upper Eagle Regional Water Authority – Ms. Egan presented a board action request and related resolution regarding a joint regional water efficiency plan for the Authority and District, copies of which are attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference. The Board discussed the efficiencies of doing a regional plan. In response to a question, Ms. Egan noted the Authority and District would apply for a Colorado Water Conservation Board (CWCB) grant to complete the plan and said the CWCB would request such a resolution to confirm that both entities were moving forward with the joint plan. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the resolution for a Joint Regional Water Efficiency Plan with the Upper Eagle Regional Water Authority be and hereby is approved as presented.

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

GENERAL MANAGER REPORT

Ms. Brooks discussed her report, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as Exhibit F and incorporated herein by this reference.

Lead and Copper Sampling – Ms. Brooks summarized the Safe Drinking Water Act's Lead and Copper Rule requirements and said the Authority and District systems have been on reduced monitoring due to low or no levels of detection. The Authority's scheduled monitoring period was earlier this year; results from each sampled home remained low or non-detected. Sampling results were communicated to customers with some information about lead in drinking water – which usually comes from a home's own plumbing. However, some required language was inadvertently omitted from the letters to customers, which could result in a violation. A follow-up letter will be sent to participating customers, and staff will notify state regulators. Ms. Brooks proposed a public outreach effort to inform customers about lead in drinking water; the Board agreed that transparency is best and noted some related issues to include. The Environmental Protection Agency has increased its focus on lead in drinking water and has been updating the
Lead and Copper Rule. Colorado regulators have notified staff that the sampling frequency for lead and copper will increase from the current once every three years to at least annually. Ms. Brooks informed the Board that this increase may require an additional employee to complete the sampling and reporting.

The Board took a short recess for lunch at 12:21 p.m. at which time Mr. Sackbauer left the teleconference. The regular meeting resumed at 12:30 p.m., and Mr. Collins entered the meeting at 12:41 p.m.

STILLWATER PUD PRESENTATION

Mr. Wilkins welcomed consultants involved in planning for the Stillwater PUD development. He discussed the report included in packets, a copy of which is attached hereto as Exhibit G, and incorporated herein by this reference. He gave an overview of the Stillwater project, the history of the District’s employee housing program, and the current local housing crisis, by which median home price increases have far exceeded the median family income increases. This has made home ownership financially unfeasible for many locals. The situation is further compounded by the lack of affordable rental housing, as short-term vacation rentals have gained popularity locally, and the pool of long-term rental is shrinking.

Mr. Pylman discussed the predevelopment analysis he and his colleagues undertook after receiving Board direction in March. Ms. Mayer presented a PowerPoint, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. The presentation included information on data gathering, employee-driven insights for design, proposed unit mix, and next steps. Discussion ensued regarding the unit mix, potential infrastructure changes dependent upon the unit mix, employee feedback on the housing program and proposed development, and the importance of employee housing availability for recruitment and retention. Mr. Pylman also noted the site plan, which must accommodate the grade on the property and the access point, which needs to align with the Vail Interfaith Chapel entrance, even though this is not the preferred location. He also discussed the benefits of including some upgraded finishes and amenities, which will require less frequent replacement and add to the appeal of the units.

The Board also discussed project financing, which would likely include bonding through the wastewater subdistrict because of the project scope and size; historically fund balance has been used for employee housing projects. The Board agreed that the employee housing program is essential to the District’s ability to recruit and retain employees. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED to authorize the consultants to spend up to $190,000 to move forward with the conceptual plan, further evaluate inclusion of additional units in the development, and prepare the application to Eagle County for the Board’s review prior to submittal.
The Board requested a progress report from the consultants in three months, at the Board’s March meeting. Ms. Egan, Ms. McLoota, Ms. Nunley, Ms. Roman, and all consultants for the Stillwater PUD left the meeting at 1:51 p.m.

FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference. He noted Authority water sales were slightly above projections and District sales were slightly below, though both entities were well within year-to-date expectations. Tap fees are above projections and expected to increase further in 2016 as developers pay before 2017 increases go into effect.

OPERATIONS REPORT

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

Drought and Lakes Powell and Mead – In response to a question, Ms. Brooks discussed the most recent graph of Lake Mead, water levels in which continue to decline, making additional drought years more difficult to weather. Staff noted Lake Powell was last full in 1999, and this was largely why the 2003/2004 drought was successfully endured. Lake Powell’s level has increased slightly in recent years due to above-average total water generated in its watershed. Current conditions are concerning for a variety of reasons, especially as lower basin states, including California, continue to use more water than their allocation of water per the Colorado River Compact.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

Ms. Johnson noted she did not include a written report for the monthly packets.

Gore Creek Hotline – Ms. Johnson informed the Board of the town of Vail’s newly established hotline, 970-476-GORE (4673), to anonymously report suspected spills or potential hazards to Gore Creek. Such events can be reported 24/7 and will be received by the town’s environmental sustainability office during business hours and directed to the Vail Police department afterhours.

GENERAL COUNSEL REPORT

Tap Fee Policy for Public Use Facilities – Mr. Collins discussed the District and Authority’s tap fee policy for public use facilities. The Board reaffirmed the policy, which allows financing of tap fees for public use facilities for up to ten years. Per the policy, the District and Authority will not waive the fees, as such facilities have a measurable impact on the system and both entities have a “growth pays for growth” philosophy. Staff also noted the fees are based on square footage; thus, smaller units pay lower fees.
WATER COUNSEL REPORT

Water Rights Appraisals – Mr. Porzak discussed the most recent water rights appraisals for the District and Authority of approximately $49 million and $50 million, respectively. A related breakdown of water rights and their values is attached hereto as Exhibit K and incorporated herein by this reference.

Colorado River Compact Update – Mr. Porzak discussed the State Engineer’s recently submitted draft rules regarding compliance with the Republican River Compact. He noted the draft rules do not exclude pre-Compact water rights and do not administer post-Compact rights according to the priority system. He suggested the District and Authority work with the River District to oppose the rules, as they could set an adverse precedent for future State Engineer rules governing the administration of the Colorado River Compact. Mr. Porzak also presented related materials, including a letter written to the State Engineer regarding the Republican River Compact call and a memo regarding the impact of a Colorado River Compact Call on pre-Compact water rights, copies of which are attached hereto as Exhibits L and M, respectively, and incorporated herein by this reference.

Eagle River MOU Projects – Mr. Porzak discussed a recent Colorado Supreme Court ruling in the Ivanhoe-Buske case, which will prevent Aurora and Colorado Springs from expanding the use of existing Homestake Reservoir transmountain diversions by storing those diversions in new east slope storage facilities. A copy is attached hereto as Exhibit N and incorporated herein by this reference. He also noted this makes the Eagle River MOU projects even more important to the East Slope stakeholders.

Ms. Hoffman and Mr. Schuette left the meeting at 2:17 p.m.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle Park Reservoir matters, Eagle River MOU projects, 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 2:18 p.m. to discuss attorney-client privileged issues concerning Eagle Park Reservoir matters, Eagle River MOU projects, 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 2:38 p.m., before the discussion of CRCA matters, all staff left the meeting, with the exception of Ms. Brooks and Ms. Johnson.

The regular meeting resumed at 2:41 p.m.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 2:42 p.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

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Tom Allender, Treasurer

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Steve Coyer, Director

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Stephen Friedman, Vice Chair

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George Gregory, Secretary

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Frederick P. Sackbauer IV, President/Chair

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Bill Simmons, Director

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Paul Testwuide, Director

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

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James P. Collins, General Counsel

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Glenn Porzak, Water Counsel