

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**January 26, 2017**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 26, 2017, 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

**The following Director was absent and excused:**

Paul Testwuide

**Also in attendance were:**

District Staff	18	James Wilkins
Jason Cowles	19	<u>Consultants</u>
Carol Dickman	20	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	21	Glenn Porzak, Porzak Browning & Bushong LLP
Diane Johnson	22	<u>Public</u>
Micah Schuette	23	Janet Hawkinson, town of Minturn
Brian Tracy	24	Cliff Thompson, IKS Consulting

**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.

**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 December 15, 2016, were considered. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the December 15, 2016, regular meeting be accepted and hereby are approved as presented.

The minutes of the special meeting of December 15, 2016, were considered. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the minutes of the December 15, 2016, special meeting be accepted and hereby are approved as presented.

**Resolution Designating Meeting Place and Posting Location** – Ms. Hayes presented a Resolution designating the District's meeting place and posting location for 2017, a copy of which is attached hereto

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1 as **Exhibit A** and incorporated herein by this reference. Upon motion duly made and seconded, it was  
2 unanimously

3 **RESOLVED** that the Resolution Designating Meeting Place and Posting Location be and hereby  
4 is approved as presented.

5 **2017 Operations Agreement with Upper Eagle Regional Water Authority** – Ms. Hayes  
6 discussed a board action request regarding the 2017 operations agreements with the Authority,  
7 Minturn, and Eagle Park, a copy of which is attached hereto as **Exhibit B** and incorporated herein  
8 by this reference. Copies of the operations agreements are attached hereto as **Exhibits C, D,**  
9 and **E**, respectively, and incorporated herein by this reference. She noted various exhibits to the  
10 Authority and Eagle Park agreements were updated to reflect the costs and fees from the  
11 previously adopted 2017 budgets of those entities; the main body of the agreements did not  
12 change. In response to a question, Ms. Hayes confirmed that the District charges in-district rates  
13 for any work performed at Eagle Park Reservoir. After discussion and upon motion duly made  
14 and seconded, it was unanimously

15 **RESOLVED** that the 2017 Operations Agreements with the Upper Eagle Regional Water  
16 Authority, town of Minturn, and Eagle Park Reservoir Company be and hereby are  
17 approved as presented.

18 **Resolution Approving the Sale of Real Property** – Mr. Wilkins presented a board action  
19 request and related resolution regarding the sale of Red Sandstone Creek unit A9 to an  
20 interested employee who currently rents the unit. Copies of the request and resolution are  
21 attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference. Mr.  
22 Wilkins clarified that the unit falls under the town of Vail's deed restriction and if the employee left  
23 the District, she could remain in the unit if she continued to work in Eagle County. After  
24 discussion and upon motion duly made and seconded, it was unanimously

25 **RESOLVED** that the resolution to sell Red Sandstone Creek unit A9 be and hereby is  
26 approved as presented.

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

### 29 STRATEGY ITEMS

30 **Director District 2 Vacancy** – Mr. Collins reported that Director Testwuide sold his home in Vail  
31 and no longer resides in District 2; therefore, he is resigning, effective immediately. He wished to  
32 tell the Board in person but was unavailable due to illness. Ms. Johnson discussed a prepared  
33 press release to encourage interested candidates to apply for the vacancy by Feb. 8. Directors  
34 Simmons and Coyer offered to serve on an ad hoc committee to interview applicants, and Ms.  
35 Hayes will ensure applicants meet the eligibility requirements for that district. The Board  
36 expressed appreciation for Director Testwuide's contributions.

37

# Eagle River Water & Sanitation District

## 1 GENERAL MANAGER REPORT

2 Ms. Johnson referenced Ms. Brooks' report, a copy of which is attached hereto as **Exhibit I** and  
3 incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached  
4 hereto as **Exhibit J** and incorporated herein by this reference.

5 **Staff Promotion** – Ms. Johnson shared that Mr. Cowles was recently promoted to Engineering  
6 Manager; his previous position was Planning Supervisor. Mr. Cowles will now oversee the capital  
7 improvement program, planning, and construction review functions. The Board congratulated him  
8 on the promotion.

## 9 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

10 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit K** and incorporated  
11 herein by this reference.

12 **Legislative Update** – Ms. Johnson noted the state legislature convened Jan. 11; of primary  
13 concern is the budget shortfall due to the April 2016 Colorado Supreme Court decision on  
14 severance taxes. The District and Authority are not directly involved in any legislation this  
15 session, but staff and consultants will monitor local government and water-related bills.

16 **Colorado River Basin Water Supply** – Ms. Johnson discussed water supply in Lakes Powell  
17 and Mead, noting the recent wet weather in the Colorado River basin will likely prevent  
18 curtailment of water use by the beneficiaries of Lake Mead for another year. She said the  
19 abundant snow in northern California has eased the surface water drought, but groundwater  
20 supply continues to decline due to excessive groundwater pumping. Such pumping is causing the  
21 ground to sink in many areas.

## 22 **ENGINEERING REPORT**

23 **Rules and Regulations Update** – Mr. Cowles noted staff is updating the Rules and Regulations,  
24 particularly the appendices that relate to standard specifications for water and sewer mains, as  
25 well as requirements for earthwork. He said the changes are mostly for clarification purposes and  
26 expects to present a draft for approval at the March meeting.

27 **Fats, Oils, and Grease (FOG) Survey** – Mr. Cowles said staff is surveying food service  
28 establishments and grease pumping companies to gain data for FOG program implementation.  
29 He noted that food service establishments are regulated by the International Plumbing Code for  
30 pumping, cleaning, and disposing of grease from traps; if traps are not maintained, they are not  
31 effective. Mr. Cowles said the survey results will allow the District to better manage FOG within  
32 the sewage collection system. FOG issues can cause costly sewer backups into structures and  
33 sewer overflows to the surrounding environment.

34 **Minturn Affordable Housing** – The Board welcomed Janet Hawkinson from the town of Minturn,  
35 who is working on affordable housing options there. She and Mr. Cowles reported on mutual

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1 topics of concern, including the need to include some properties into the District for sewer  
2 service; a reimbursement agreement with the District to cover District costs associated with the  
3 planning effort, and Minturn's available water to serve such development.

4 **Lodge at Vail Storm Drains** – Mr. Cowles updated on the situation at the Lodge at Vail by which  
5 the roof drains are connected to the sewer system, which likely happened during original  
6 construction in the 1960s. The Board was first apprised of the issues in March 2016, and since  
7 then, staff has worked with Lodge representatives to discuss both short and long-term  
8 remediation. The roof will be replaced in approximately six years, at which time the issue could be  
9 permanently resolved; however, interim measures must be taken, as the District is not permitted  
10 to treat stormwater. Additionally, the District could receive a costly permit violation if a large rain  
11 event substantially increased inflows to the Vail wastewater plant and could also require a plant  
12 expansion based on such inflows. Staff is coordinating a meeting with Lodge representatives and  
13 will update the Board when more information is available.

14 **Bighorn Mutual Recreation and Sanitation Company (BMRSC) Inclusion** – Mr. Cowles  
15 discussed the BMRSC's request for inclusion into the District due to ongoing issues with its  
16 private sewer system. Mr. Cowles and Mr. Collins discussed the requirements for inclusion,  
17 financing and payment options, and a likely November TABOR election, for which a petition  
18 would be required by the District to ensure sufficient homeowner support for subdistrict formation.

19 The Board took a short recess for lunch at 12:13 p.m. The regular meeting resumed at 12:25 p.m.

### 20 **FINANCE REPORT**

21 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit L** and  
22 incorporated herein by this reference. Year-end water sales for the Authority were 1% above projections,  
23 while District sales were about 3% below expectations, though neither variance was significant since the  
24 District and Authority used a fixed base rate system. Mr. Wilkins confirmed that some developers did pay  
25 fees in 2016 for upcoming projects, prior to implementation of 2017 fee increases.

26 **Update on Bond Refunding** – Mr. Wilkins noted interest rates were not favorable at the time of  
27 the planned refunding, so the consultant did not proceed with the refunding, per the parameters  
28 resolution the board passed in December 2016. Mr. Wilkins and the District's bond counsel  
29 continue to watch market conditions and could do a refunding later this year if conditions become  
30 more favorable.

### 31 **WATER COUNSEL REPORT**

32 **Republican River Compact Rules Update** – Mr. Porzak discussed a letter sent to the State  
33 Engineer regarding the recently submitted draft rules for compliance with the Republican River  
34 Compact. A copy of the letter is attached hereto as **Exhibit M** and incorporated herein by this  
35 reference. Mr. Porzak noted the draft rules do not exclude pre-Compact water rights and do not  
36 administer post-Compact rights according to the priority system. Mr. Porzak will continue to  
37 monitor the matter on the Authority and District's behalf.

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1       **St. Jude's Recreation Water Bill** – Mr. Porzak discussed the proposed bill, intended to overturn  
2       the Colorado Supreme Court decision in a 2015 case in which the judge ruled that the  
3       Carbondale-based Roaring Fork Club's recreational and aesthetic water rights did not constitute  
4       beneficial use. This was surprising due to the previous decree of over 1,000 such water rights in  
5       the state that predate the 2015 decision. The bill preserves existing water rights decreed for  
6       recreational, piscatorial, and aesthetic use and deems recreational releases appropriate uses. A  
7       third tenet of the bill allows for recreational water rights in the future, and Glenn and other  
8       proponents of the bill suggest this tenet should be removed due to its controversial nature to  
9       make passage of this important legislation more likely. A copy of the draft legislation is attached  
10      hereto as **Exhibit N** and incorporated herein by this reference.

11      **Wolcott Municipal Diversion Decree** – Mr. Porzak presented a copy of the decree for the  
12      Wolcott Municipal Diversion, a copy of which is attached hereto as **Exhibit O** and incorporated  
13      herein by this reference. There were no remaining objectors, the protest period was over, and the  
14      ruling of the referee was entered. Mr. Porzak expected the judge to sign the decree shortly.

15      Ms. Hawkinson and Messrs. McCaulley, Schuette, and Thompson left the meeting at 12:46 p.m.

### 16      **EXECUTIVE SESSION**

17      Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Wolcott, Eagle  
18      Park Reservoir matters, Eagle River MOU projects, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that  
19      no electronic record be made, as the discussion would be entirely privileged attorney-client communications.  
20      Upon motion duly made and seconded, it was unanimously

21                   **RESOLVED** to enter executive session at 12:47 p.m. to discuss attorney-client privileged  
22                   issues concerning Wolcott, Eagle Park Reservoir matters, Eagle River MOU projects,  
23                   pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak  
24                   opined the contents of the discussion would contain privileged attorney-client  
25                   communications.\*

26      Mr. Collins requested the Board continue Executive Session to receive legal advice regarding term limits and  
27      director districts, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as  
28      the discussion would be entirely privileged attorney-client communications. Upon motion duly made and  
29      seconded, it was unanimously

30                   **RESOLVED** to continue executive session at 1:18 p.m. to discuss attorney-client privileged  
31                   issues concerning term limits and director districts, pursuant to §24-6-402(4)(b) and (e)  
32                   C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion  
33                   would contain privileged attorney-client communications.\*

34      The regular meeting resumed at 1:24 p.m.

### 35      **OPERATIONS REPORT**

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

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1        **Lead and Copper Sampling** – Mr. Tracy followed up on Ms. Brooks' December discussion of  
2        lead and copper sampling in the District and Authority systems. Mr. Tracy confirmed an increase  
3        in the required frequency of lead and copper sampling due to new regulations associated with  
4        ongoing issues in Flint, Michigan; the District and Authority must now annually sample 30 homes  
5        each. A temporary position has been budgeted for this purpose in 2017 and will likely require a  
6        full-time employee in future years. In response to a question, Mr. Tracy said the sampling itself is  
7        not time intensive; the related activities of identifying homes that meet the sampling criteria,  
8        analysis, record keeping, and public messaging add to the total staff time needed.

9        **Holiday Season Wastewater Treatment** – Ms. Johnson discussed the graph in the operations  
10       report showing flows to the District's wastewater treatment facilities over the holidays, which were  
11       consistent with years past. Also, this was the first holiday season during which all solids were  
12       treated at the newly upgraded Edwards WWTP. Facility staff reported smooth operations, with no  
13       odor complaints, and passed along their appreciation to the board for supporting such robust odor  
14       control measures as part of the recently completed project.

### 15       GENERAL COUNSEL REPORT

16       **Heritage Parcel Update** – Mr. Collins discussed the Heritage Parcel, for which the developer  
17       needs access through the Country Club of the Rockies in Arrowhead to connect to the District's  
18       sewer system. Mr. Collins is facilitating discussions and offering other assistance to the involved  
19       parties; none of the work is at the expense of the District.  
20

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**ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 1:30 p.m.

Respectfully submitted,

\_\_\_\_\_  
Secretary to the Meeting

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

\_\_\_\_\_  
**Tom Allender, Treasurer**

\_\_\_\_\_  
**Steve Coyer, Director**

\_\_\_\_\_  
**Stephen Friedman, Vice Chair**

\_\_\_\_\_  
**George Gregory, Secretary**

\_\_\_\_\_  
**Frederick P. Sackbauer IV, President/Chair**

\_\_\_\_\_  
**Bill Simmons, 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.

\_\_\_\_\_  
**James P. Collins, General Counsel**

\_\_\_\_\_  
**Glenn Porzak, Water Counsel**