

Eagle River Water & Sanitation District
Board of Directors Meeting
June 22, 2017
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 22, 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

1 **The following Directors were present, thereby constituting a quorum:**

2 Tom Allender
3 Bob Armour
4 Steve Friedman
5 George Gregory
6 Frederick P. Sackbauer IV

7 **The following Directors were absent and excused:**

8 Steve Coyer
9 Bill Simmons

10 **Also in attendance were:**

11 <u>District Staff</u>	19	Jeff Schneider
12 Linn Brooks	20	Amy Schweig
13 Jason Cowles	21	Brian Tracy
14 Carol Dickman	22	Pam Wegener
15 Catherine Hayes	23	James Wilkins
16 Debbie Hoffman	24	<u>Consultants</u>
17 John McCaulley	25	Glenn Porzak, Porzak Browning & Bushong LLP
18 Glen Phelps		Kathryn Winn, Collins Cockrel & Cole

26 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

27 The Board noted it had received more than 72 hours prior to the meeting certain disclosures of Potential Conflicts of Interest
28 Statements for the following Directors indicating the following conflicts:

29 Directors Allender and Gregory disclosed that they also serve on the Board of the Upper Eagle Regional Water Authority (Authority).
30 Directors Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and
31 District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other
32 ski areas. Director Armour disclosed that he is employed by Vail Resorts and the Vail Recreation District. Director Friedman serves
33 on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Gregory also serves on the board
34 of the Berry Creek Metropolitan District and occasionally undertakes development and construction activities within the District and
35 Authority service areas. Director Sackbauer is employed by Vail Resorts, Inc., which has significant land ownership and business
36 interests within the District. Director Simmons disclosed that he is the General Manager of the Beaver Creek Metropolitan District,
37 an alternate Authority Director, and serves on the board of the Edwards Metropolitan District.

38 **CALL TO ORDER**

39 Acting Chair Gregory called the meeting to order at 11:30 a.m.

40 **INTRODUCTIONS**

41 Mr. McCaulley introduced Customer Service intern Ms. Wegener, who is assisting with water demand
42 management for the summer. Chair Sackbauer entered the meeting at 11:33 a.m.

43 **STRATEGY**

44 **Board Member Input** – Chair Sackbauer thanked Mr. Wilkins for his innovative idea for potential
45 additional housing units. Staff and the board will further explore this in the coming months.

46 **Integrated Project Delivery Overview** – Mr. Schneider discussed recent board resolutions by
47 which staff requested approval for use of integrated project delivery (IPD) methods rather than a
48 traditional design-bid-build (DBB) methodology. The engineering department wished to give the
49 board additional information regarding IPD; a related memo is attached hereto as **Exhibit A** and
50 incorporated herein by this reference. Mr. Schneider gave an overview of construction law;
51 various methods of project delivery; and a matrix by which each delivery method can be rated in

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1 response to the different aspects of a project. A sample matrix is attached hereto as **Exhibit B**
2 and incorporated herein by this reference. Ms. Hoffman discussed possible benefits of IPD,
3 including reducing risk, increasing transparency and collaboration, and potential cost savings.
4 She referenced the 2015 Mountain Star tank project, which successfully utilized IPD and came in
5 on time and under budget, allowing a refund to the Mountain Star residents of more than
6 \$300,000. In a traditional DBB scenario, the savings would have remained with the contractor.
7 Mr. Schneider and Ms. Hoffman discussed current projects, noting that a majority were being
8 executed as DBB projects, as this was still the best fit for many projects. They also reminded the
9 directors that the board must approve IPD each time it is proposed, so there will continue to be
10 opportunities for board input and questions. Discussion ensued regarding the possibility of having
11 a contractor on staff; staff's ongoing desire to keep the competitive nature of the bid process
12 while getting the best value for the District, regardless of the delivery method; and in the future,
13 inclusion of estimated cost savings when using IPD if feasible. The board thanked them for their
14 presentation, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this
15 reference.

16 The Board took a recess for lunch at 12:23 p.m. The meeting resumed at 12:45 p.m.

17 **ACTION ITEMS**

18 **Consideration of Minutes** – The minutes of the regular meeting of May 25, 2017, were considered.
19 Upon motion duly made and seconded, it was unanimously

20 **RESOLVED** that the minutes of the May 25, 2017, regular meeting be accepted and hereby are
21 approved as presented.

22 **Resolution for Integrated Project Delivery: Radio and Telemetry System Upgrade** – Ms. Hoffman
23 referenced her request and resolution, copies of which are attached hereto as **Exhibits D** and **E**,
24 respectively, and incorporated herein by this reference. She noted the multidepartment interest in this
25 project, along with a high level of coordination and scheduling for shutdowns. Ms. Brooks clarified that the
26 project will standardize the Authority and District's radio system to enable more in-house programming
27 and maintenance and increase safety and security. The project is expected to finish by Nov. 1. After
28 discussion and upon motion duly made and seconded, it was unanimously

29 **RESOLVED** that the Resolution Authorizing Integrated Project Delivery for the Radio and
30 Telemetry System Upgrade be and hereby is approved as presented.

31 **Resolution for Integrated Project Delivery: Lift Station #4 Improvements Project** – The board
32 considered a request and resolution regarding the needed improvements at Lift Station #4, copies of
33 which are attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference.
34 Discussion ensued regarding the age and size of the lift station, as well as potential future expansion of
35 the facility to meet projected demands if the Battle Mountain development is realized. After discussion
36 and upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the Resolution Authorizing Integrated Project Delivery for the Lift Station #4
2 Improvements Project be and hereby is approved as presented.

3 **Lease Agreement with Eagle County** – Ms. Winn discussed the lease agreement between the District
4 and Eagle County, which grants the County use of District-owned property west of the Edwards
5 Wastewater Treatment Facility as a park and ride area. A copy of the lease is attached hereto as **Exhibit**
6 **H** and incorporated herein by this reference. After discussion and upon motion duly made and seconded,
7 it was unanimously

8 **RESOLVED** that the Lease Agreement with Eagle County be and hereby is approved as
9 presented.

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

12 **GENERAL MANAGER REPORT**

13 Ms. Brooks noted she did not include a written report in packets. Monthly reports were acknowledged,
14 copies of which are attached hereto as **Exhibit J** and incorporated herein by this reference. She also
15 noted the inclusion of a Water Demand Management Update from Ms. Egan, a copy of which is attached
16 hereto as **Exhibit K** and incorporated herein by this reference.

17 **Homestake Creek Homeowners Picnic** – Ms. Brooks reported that she and Diane Johnson
18 would attend the July 1 upcoming picnic as a meet and greet opportunity with the homeowners.
19 Homeowners are interested in Authority and District activities in the area, including Eagle River
20 MOU project evaluation and Camp Hale wetlands restoration efforts.

21 **Eagle Park Reservoir Company Update** – Ms. Brooks noted the EPRC annual shareholders
22 meeting and a board of directors meeting would be held later today. During the meetings, the FY
23 2018 budget would be considered, in addition to the 2018 Operations Agreement with the District.

24 **Stillwater PUD Update** – Ms. Brooks said a meeting was held with the Stillwater architect
25 yesterday. The site layout changed slightly due to the site grade, but this added variety to the
26 development, which is a favorable outcome. Renderings were available for review as well.

27 **FINANCE REPORT**

28 Mr. Wilkins presented the monthly finance report, a copy of which is attached hereto as **Exhibit L** and
29 incorporated herein by this reference. He noted water sales for both the District and Authority were
30 tracking close to projections, though two large hotels in Vail remain offline for upgrades, which had been
31 expected to finish prior to now. Revenue and expenses are on track as well, with the exception of bond
32 payments, which only occur twice yearly and thus skew the numbers until payment is made. Mr. Wilkins
33 updated on various development projects, including Chamonix, for which development fees have not yet
34 been paid. The Vail Marriott is expected to come online in 2018; staff is researching whether additional
35 fees will be required because of added density for that development.

36

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1 OPERATIONS REPORT

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

4 ENGINEERING REPORT

5 Mr. Cowles noted he did not include a written report in packets.

6 **Lodge at Vail Storm Drains** – Mr. Cowles updated on the matter, referencing the disagreement
7 between the co-owners, Vail Resorts and the Lodge Apartments and Condo Association (LACA),
8 over which entity should pay for damage resulting from deferred roof maintenance. Until the
9 matter is settled, LACA will not consent to restrict the flow to the roof drains, which was the
10 agreed-upon short-term solution to prevent infiltration of the Vail Wastewater Treatment Facility
11 during large rain events. Per last month's discussion, both Vail Resorts and LACA were given an
12 Aug. 15 deadline for installation of the roof drains, after which daily penalty use fines will be levied
13 per the District's Rules and Regulations, of which both parties are in violation.

14 **Gold Peak Expansion** – Mr. Cowles updated the Board on a meeting with Vail Resorts
15 representatives regarding the proposed Gold Peak expansion and snowmaking water. An
16 agreement is already in place with Vail Resorts for its current snowmaking operation at Gold
17 Peak; however, the delivery method is via pump station, and only a fixed flow rate can be
18 delivered. Mr. Cowles confirmed that water is available for additional snowmaking, but the ability
19 to make that snow is limited by how much water can be physically delivered. Alternate delivery
20 methods may need to be researched by Vail Resorts depending on its timeline for the additional
21 snow. Also, the current agreement states that the water delivery can be terminated at any time by
22 the District.

23 **Eagle River MOU Alternatives and Boring Permit** – Mr. Cowles discussed an application for a
24 boring permit that was submitted to the Forest Service in relation to the Whitney Creek Reservoir
25 alternative. Discussion ensued regarding the environmental impacts and lengthy permitting
26 process that would be required for any projects in the Homestake area, and whether a project
27 there was even feasible. Ms. Brooks noted that any ERMOU project that is selected for
28 implementation would have to include an alternatives analysis that clearly shows other options,
29 such as the Whitney Creek Reservoir, were not the best option.

30 COMMUNICATION AND PUBLIC AFFAIRS REPORT

31 Ms. Schweig presented her report, a copy of which is attached hereto as **Exhibit N** and incorporated
32 herein by this reference.

33 **Consumer Confidence Reports** – In response to a question, Mr. Tracy said the Authority's
34 violation was a Tier 3, administrative violation related to three missed raw water intake samples.
35 This is the least stringent type of violation and no public notification was required, as no public
36 health risk was posed. Such violations must be reported in the Consumer Confidence Report,

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1 which is a required annual communication to customers from their water provider regarding the
2 quality of local drinking water.

3 GENERAL COUNSEL REPORT

4 **Hahnewald Barn** – In response to a question, Ms. Brooks said the town of Avon received
5 notification that the Hahnewald Barn, which is located on the District's Avon WWTF property,
6 must be moved by Spring 2018 or it will be removed by the District, as this land will be needed at
7 that time for expansion per the updated Wastewater Master Plan. Discussion ensued regarding
8 notifying public and especially interested stakeholders about this timeline at an upcoming Avon
9 Town Council meeting. In response to another question, Ms. Brooks said the rancher who
10 originally wanted to move the barn to his private property was unable to do this, but offered to
11 share his knowledge of the process with the Barn stakeholders group.

12 WATER COUNSEL REPORT

13 **Federal Water Rights Protection Act** – Mr. Porzak said Rep. Tipton recently reintroduced the
14 Federal Water Rights Protection Act. Related information is attached hereto as **Exhibit O** and
15 incorporated herein by this reference. It is similar to the previous iteration of the bill, but it includes
16 additional language that would further protect private water rights from unauthorized and
17 uncompensated takings. This would include preventing the Forest Service from conditioning
18 special use permits on the title transfer of water rights, or terms that would restrict the amount of
19 the decreed water right.

20 **Recreational Water Rights** – Chair Sackbauer referenced his recent Vail Daily editorial, a copy
21 of which is attached hereto as **Exhibit P** and incorporated herein by this reference. He
22 highlighted the importance of recreational water rights that make possible events like the recent
23 Go Pro Games.

24 Ms. Hoffman, Mr. Schneider, and Ms. Wegener left the meeting at 1:30 p.m.

25 **EXECUTIVE SESSION**

26 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle River MOU
27 matters, Bolts Lake, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
28 electronic record be made, as the discussion would be entirely privileged attorney-client communications.

29 Upon motion duly made and seconded, it was unanimously

30 **RESOLVED** to enter executive session at 1:31 p.m. to discuss attorney-client privileged
31 issues concerning Eagle River MOU matters, Bolts Lake, and CRCA matters, pursuant to
32 §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
33 contents of the discussion would contain privileged attorney-client communications.*

34 At 2:00 p.m., prior to the discussion of CRCA matters, all remaining staff left the room, with the exception of
35 Ms. Brooks. The regular meeting resumed at 2:20 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:21 p.m.

3 Respectfully submitted,

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6 _____
7 Secretary to the Meeting

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

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14 **Tom Allender, Treasurer**

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18 **Bob Armour, Director**

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21 _____
22 **Steve Coyer, Director**

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25 _____
26 **Stephen Friedman, Vice Chair**

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29 _____
30 **George Gregory, Secretary**

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33 _____
34 **Frederick P. Sackbauer IV, President/Chair**

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37 _____
38 **Bill Simmons, 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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