

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**September 28, 2017**  
**MINUTES**

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held September 28, 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 Coyer  
5           Steve Friedman  
6           George Gregory  
7           Frederick P. Sackbauer IV  
8           Bill Simmons

9           **Also in attendance were:**

10 <u>District Staff</u>	21	Amy Schweig
11          Tug Birk	22	Brian Tracy
12          Linn Brooks	23	James Wilkins
13          Jason Cowles	24	<u>Consultants</u>
14          Carol Dickman	25	Jim Collins, Collins Cockrel & Cole
15          Catherine Hayes	26	Kristin Moseley, Porzak Browning & Bushong LLP
16          Diane Johnson	27	Glenn Porzak, Porzak Browning & Bushong LLP
17          John McCaulley	28	<u>Public</u>
18          Siri Roman	29	Fritz Bratschie, citizen
19          Jeff Schneider		

20

30           **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

42           **CALL TO ORDER**

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

44           **INTRODUCTIONS**

45           The Board welcomed Mr. Bratschie, who was attending to learn more about the board and the District.

46           **ACTION ITEMS**

47           **Consideration of Minutes** – The minutes of the regular meeting of September 28, 2017, were  
48           considered. Upon motion duly made and seconded, it was unanimously

49                       **RESOLVED** that the minutes of the September 28, 2017, regular meeting be accepted and  
50                       hereby are approved as presented.

51           **Keltner Parcel Inclusion** – Mr. Birk discussed the request for inclusion and presented a board action  
52           request and related information, copies of which are attached hereto as **Exhibits A** and **B**, respectively,  
53           and incorporated herein by this reference. Staff provided background on the parcel, including that the

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1 property may be included into the Fox Hollow PUD; it currently receives water service from the Authority.  
2 After discussion and upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the resolution for inclusion of the Keltner Parcel be and hereby is approved as  
4 presented.

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

### 7 **STRATEGY ITEMS**

8 **Board Member Input** – Director Allender noted it was his last meeting, as he moving outside  
9 director district 5 this weekend. Staff will advertise the vacancy and set up interviews for the  
10 organizational development subcommittee (Directors Simmons and Armour) with interested  
11 candidates.

### 12 **GENERAL MANAGER REPORT**

13 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit D** and incorporated  
14 herein by this reference. The monthly reports were also acknowledged, copies of which are attached  
15 hereto as **Exhibit E** and incorporated herein by this reference.

16 **Edwards Wastewater Treatment Facility Open House** – Chair Sackbauer also thanked staff for  
17 the effort put forth to host a successful open house at the Edwards Wastewater Treatment  
18 Facility. Ms. Brooks noted the excellent turnout and also thanked staff.

19 **Services Agreement with Tom Allender** – Mr. Allender noted it was his last meeting, as he is  
20 moving out of the district he was elected to represent. Ms. Brooks discussed the services  
21 agreement, which would allow the boards and staff to continue their professional relationships  
22 with Director Allender as an on-demand consultant. Discussion ensued regarding Director  
23 Allender's unique expertise related to ongoing projects and permitting, especially as related to the  
24 Eagle River MOU projects. Ms. Brooks clarified that Mr. Allender would perform work at her  
25 request, and other board members would be brought up to speed on issues simultaneously, to  
26 eventually preclude the need for consulting services. After discussion and upon motion duly made  
27 and seconded, it was unanimously

28 **RESOLVED** that the services agreement with Mr. Allender be and hereby is approved as  
29 presented. Directors Allender and Friedman abstained.

30 A copy of the agreement is attached hereto as **Exhibit E** and incorporated herein by this  
31 reference.

32 **Request re Ballot Issue 1A** – Ms. Brooks said Eagle County requested the Board consider  
33 support of ballot issue 1A, which involves use of a marijuana tax to support county mental health  
34 services. The Board declined to take action, as directors believe it is outside the scope of a water  
35 and sanitation district's purview to take action on such issues.

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## 1 FINANCE REPORT

2 Mr. Wilkins presented the monthly finance report, a copy of which is attached hereto as **Exhibit F** and  
3 incorporated herein by this reference. Mr. Wilkins noted capital spending lagged projections, and staff is  
4 working on reducing rollovers due to the timing of capital expenditures. He also said water sales were  
5 tracking close to projections for the year. Mr. Wilkins reported budget committee meetings were ongoing,  
6 with a draft budget to be presented in October and the formal budget hearing and request for approval in  
7 November.

## 8 OPERATIONS REPORT

9 The Operations Report was presented, a copy of which is attached hereto as **Exhibit G** and incorporated  
10 herein by this reference.

11 **Dowd Junction Lift Station** – In response to a question, staff noted the lift station repair involved  
12 multiple projects; the total cost for the project was mentioned in the operations report, but only the  
13 current project to bypass the station and then drain it was included in the contract log. Repairs are a  
14 required temporary fix until the entire lift station is replaced in 2019.

## 15 ENGINEERING REPORT

16 Mr. Cowles discussed his report, a copy of which is attached hereto as **Exhibit H** and incorporated herein  
17 by this reference.

## 18 PUBLIC AFFAIRS REPORT

19 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit I** and incorporated  
20 herein by this reference.

21 **Colorado River Compact, Minute 323** – Ms. Johnson reported Minute 323 of the Colorado River  
22 Compact was recently signed. This minute deals with conservation drought contingency, and  
23 among other provisions, it allows Mexico to store water in Lake Mead, which will help stave off a  
24 water shortfall there. In response to a question, Ms. Johnson said the “Fill Lake Mead First”  
25 campaign was discussed at the recent Colorado River District seminar. She acknowledged that  
26 such a proposal is unlikely and unsustainable, but the campaign received enough press that the  
27 River District thought it was worthwhile to bring in a speaker to address it.

28 **California WaterFix** – Ms. Johnson discussed this proposed initiative by California’s governor. It  
29 entails billions of dollars in infrastructure to bring water from northern California to the central and  
30 southern parts of the state, making water supply more secure there and protecting aquatic life,  
31 wildlife, and critical habitat. The proposal will be voted on by the agencies that purchase water  
32 imported from northern California; one large agricultural water provider has withdrawn support for  
33 the project, which could jeopardize approval.

34 **Vail Farmers’ Market** – Ms. Johnson noted the last Vail Farmers’ Market of the year would be  
35 Oct. 1. She thanked Ms. Schweig for organizing employees to staff the booth each week and

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1 noted another successful season of distributing the District's tap water and interacting with market  
2 attendees.

3 **Edwards Wastewater Treatment Facility Open House Press** – Ms. Johnson noted a front-  
4 page photo and related story in the Vail Daily about the EWWTF open house. She was pleased  
5 with the article written by Scott Miller, who also attended the open house, along with nearly 80  
6 other people.

7 **Town of Vail's Sustainable Destination Initiative** – Ms. Johnson said she and Ms. Roman met  
8 with the initiative's evaluator, along with town of Vail staff, to discuss relevant topics, including the  
9 security of the water supply, as well as the health of the Gore Creek and surrounding watersheds.

10 **River District Staffing** – Ms. Johnson noted Andy Mueller will be the new director of the River  
11 District, taking over for Eric Kuhn, who is retiring at the end of the year. She briefly discussed his  
12 background and qualifications.

13 The board took a recess for lunch at 12:10 p.m. The regular meeting resumed at 12:35 p.m.

### 14 GENERAL COUNSEL REPORT

15 **Authority of General Manager** – Mr. Collins discussed the action items that require board  
16 approval and other actions the general manager can take and report to the board later. Mr.  
17 Collins asked for input on these items, which can be added to the bylaws.

18 **Randy Fischer Dispute** – Mr. Collins noted no response was received from Mr. Fischer  
19 regarding the District's offer of \$10,000 to move his parking pad project and include footings to  
20 protect a District sewer line on his property. Mr. Collins confirmed the District has a claim for a  
21 prescriptive easement per Colorado law; Mr. Fischer originally agreed that no compensation for  
22 the easement or project costs would be granted, but he later changed his mind.

23 **Hahnewald Barn Update** – Mr. Collins reported the town of Avon allocated \$10,000 to  
24 investigate options for moving the barn.

25 The board took a short recess for lunch at 12:17 p.m. The regular meeting resumed at 12:24 p.m. Mr.  
26 Collins left the meeting at 12:30 p.m.

### 27 WATER COUNSEL REPORT

28 **CJC Water Rights Change Joint Application** – Mr. Porzak discussed the renewed possibility of  
29 a joint application seeking to change and quantify the Chris Joufflas irrigation water rights for the  
30 future development of the Joufflas property in the Wolcott area. The Joufflas family is again  
31 interested in pursuing this option. Ms. Moseley noted ongoing discussions regarding delayed  
32 return flows associated with the historic irrigation on the property, as well as the requirement to  
33 replicate the timing and location of such delayed return flows. If this requirement were to be met  
34 by an on-site reservoir, it would need to be full in the fall and drawn down by the end of  
35 November. If not onsite, such requirement could be met by payment of a cash-in-lieu fee, even  
36 though it is not demand-related, with value based on Eagle Park or Wolford Mountain water

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1 prices. Discussion ensued regarding the amount of water (total volume in question is 18.4 acre  
2 feet); how to value the water and the potential price difference during different times of year; and  
3 a possible policy related to demand (though technically this is not a demand, it is a delayed return  
4 flow). Additionally, this would be a one-time payment, but the water would be provided in  
5 perpetuity. Ms. Moseley said the Joufflas family wants to file the application by December. Mr.  
6 Porzak said none of the District's other historic consumptive use credits have delayed return  
7 flows. Mr. Porzak and Ms. Moseley will return to the Board with a recommendation on cost for the  
8 water rights. The Board rejected the idea of an onsite pond.

9 **Diligence Application for Gore Creek Intake for the Booth Creek Treatment Plant, First**  
10 **Enlargement** – Mr. Porzak noted diligence was filed for this water right; the protest period  
11 remains open, though no statements of opposition have been filed thus far. A copy of the  
12 application is attached hereto as **Exhibit J** and incorporated herein by this reference.

13 **District Court and 9<sup>th</sup> Circuit Court Decisions on Minimum/Bypass Flows** – Mr. Porzak  
14 discussed a case in Bend, OR, by which environmental groups there wanted the Forest Service  
15 to impose minimum bypass flows as a special use permit condition. Such requirement would  
16 have subordinated state-issued water rights to a federal bypass flow. Mr. Porzak reminded the  
17 board that Colorado private water rights owners fought against a similar requirement. In Oregon,  
18 the District Court and 9<sup>th</sup> Circuit Court both denied the environmental groups' arguments. More  
19 information is attached hereto as **Exhibit K** and incorporated herein by this reference.

20 At 1:04 p.m., Mr. Bratschie left the meeting.

### 21 EXECUTIVE SESSION

22 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle Park  
23 Reservoir expansion, Bolts Lake, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked  
24 that no electronic record be made, as the discussion would be entirely privileged attorney-client  
25 communications. Upon motion duly made and seconded, it was unanimously

26 **RESOLVED** to enter executive session at 1:04 p.m. to discuss attorney-client privileged  
27 issues concerning Eagle Park Reservoir expansion, Bolts Lake, and CRCA matters, pursuant  
28 to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the  
29 contents of the discussion would contain privileged attorney-client communications.\*

30 The regular meeting resumed at 1:56 p.m. and all other staff returned to the meeting.  
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:57 p.m.

3 Respectfully submitted,

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7 \_\_\_\_\_  
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 **Bob Armour, Director**

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23 **Steve Coyer, Director**

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27 **Stephen Friedman, Vice Chair**

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31 **George Gregory, Secretary**

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

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38 \_\_\_\_\_  
39 **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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