

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

A special meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held October 26, 2017, at 1:00 p.m., in the Cortina I Ballroom of the Arrabelle at Vail Square at 675 Lionshead Place, 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           Bob Armour  
3           Steve Coyer, *via phone*  
4           Steve Friedman  
5           George Gregory  
6           Frederick P. Sackbauer IV  
7           Bill Simmons  
8           Brian Sipes

9           **Also in attendance were:**

10 <u>District Staff</u>	21	<u>Consultants</u>
11           Linn Brooks	22	Steve Bushong, Porzak Browning & Bushong LLP
12           Jason Cowles	23	Jim Collins, Collins Cockrel & Cole
13           Carol Dickman	24	Jonathan Heroux, Piper Jaffray
14           Catherine Hayes	25	Kristin Moseley, Porzak Browning & Bushong LLP
15           Diane Johnson	26	Glenn Porzak, Porzak Browning & Bushong LLP
16           John McCaulley	27	<u>Public</u>
17           Siri Roman	28	Kristi Hochtl, Vail resident
18           Amy Schweig	29	Steve Spessard, Gore Creek Partners
19           Brian Tracy		
20           James Wilkins		

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 1:34 p.m.

44           **ACTION ITEMS**

45           **Recommendation of Organizational Development Committee re Board Vacancy** – Director  
46           Simmons discussed the vacancy and noted four excellent candidates had applied to serve on the  
47           board. After interviews with all four, Directors Simmons and Armour suggested Brian Sipes to fill the  
48           vacancy in director district 5, which was left after former Director Allender moved out of the district. After  
49           discussion and upon motion duly made and seconded, it was unanimously

50           **RESOLVED** that Brian Sipes be and hereby is appointed to fill the director district 5 vacancy.

51           **Oath of Office** – Mr. Collins administered the oath of office to newly appointed Director Sipes, a copy of  
52           which is attached hereto as **Exhibit A** and incorporated herein by this reference.

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

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1           **RESOLVED** that the minutes of the September 28, 2017, regular meeting be accepted and  
2           hereby are approved as presented. Director Sipes abstained.

3           **Sanitation Maintenance Warranty Deductible** – Mr. Wilkins discussed the board action request  
4           and Sanitation Maintenance Warranty Deductible for 2018, copies of which are attached hereto  
5           as **Exhibits B** and **C**, respectively, and incorporated herein by this reference. Mr. Wilkins noted  
6           that approval of the endorsement would reduce the District's liability premiums by 33%. After  
7           discussion and upon motion duly made and seconded, it was unanimously

8           **RESOLVED** that the endorsement be and hereby is approved as presented.

9           **West Edwards Sewer Encumbrance Fee Revision** – Mr. Cowles discussed the board action request  
10          and modified notice of encumbrance, copies of which are attached hereto as **Exhibits D** and **E**,  
11          respectively, and incorporated herein by this reference. As density has increased in the west Edwards  
12          area, there was a decrease in the fee per SFE for developers to repay the District for the cost of a sewer  
13          main to provide service in the area. Another fee reduction was proposed, as planned development in the  
14          area increased, and such reduction will still allow the District's costs to be fully recovered. Mr. Collins  
15          clarified that such fee reductions were allowable. After discussion and upon motion duly made and  
16          seconded, it was unanimously

17          **RESOLVED** that the West Edwards Sewer Encumbrance Fee be and hereby us set at  
18          \$1,000/SFE, effectively immediately.

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

21          **Request for Modification of Tap Fee Deferral by 6 West Developer** – Mr. Cowles discussed as  
22          request from the 6 West developer for the Authority to modify its tap fee for affordable housing policy, a  
23          copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference. Mr. Spessard  
24          introduced himself as the project developer and explained that he expected a ten-year deferral of Eagle  
25          County's property tax, which did not come to fruition and which is now affecting the development's cash  
26          flow. Mr. Spessard requested deferral of the District's tap fee for ten years or upon sale of the  
27          development, whichever occurred sooner. The board discussed the request and declined to modify its  
28          current policy. Staff also pointed out the District's fee structure is based on square footage, which is  
29          equitable and advantageous to high-density projects. The Board further clarified that only the affordable  
30          housing portion of any project would qualify for tap fee deferral.

### 31    **STRATEGY ITEMS**

32    There were no strategy items for discussion.

### 33    **WATER COUNSEL REPORT**

34    Mr. Bushong presented water quality information out of order.

35          **Climax Mine and Molybdenum Standards** – Mr. Bushong discussed Climax's request to  
36          increase statewide molybdenum standards for domestic water supplies and agriculture

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1 significantly from their current allowable levels. He noted molybdenum standards around the  
2 world range from 50 – 250 parts per billion (ppb) to protect human health and aquatic life. Climax  
3 is suggesting an upper limit of 9,000 ppb for human health and 1,000 ppb for agricultural stream  
4 standards. Toxicology experts are reviewing the proposed standards on behalf of the District,  
5 Authority, and other stakeholders. Mr. Bushong noted the singular study Climax is using as  
6 evidence to support its request is concerning on many levels. He also said Climax does not meet  
7 the current standards; upgrading its treatment processes to do so would cost an estimated \$100  
8 million. The opponents of the increased standards will submit a consolidated pre-hearing  
9 statement by the following day's deadline.

10 Ms. Hochtl entered the meeting at 1:50 p.m.

11 **Eagle Mine Update** – Mr. Bushong also reported on the recent record of decision regarding the  
12 Eagle Mine cleanup efforts. He discussed the history of the Eagle Mine, and cleanup efforts in the  
13 90s. Despite such cleanup, the Mine still adds heavy metals to the surrounding environment and  
14 stream, affecting aquatic life and complicating Authority and District treatment operations. The  
15 Environmental Protection Agency (EPA) and Colorado Department of Public Health and  
16 Environment (CDPHE) recently ruled on the Mine's proposed cleanup plans, for which the  
17 Authority and District submitted extensive comments. Many of the comments were included in the  
18 required cleanup measures, with an emphasis on being proactive instead of reactive as it relates  
19 to the mine. The Eagle Mine water treatment system will be expanded, further reducing metals  
20 loading to the stream. The system will also undergo more rigorous inspection and maintenance.  
21 Additionally, at operational unit 3, contaminated soils in the area will be removed and buried at  
22 the consolidated tailings pile with a three-foot layer of soil to preclude human contact. Mr.  
23 Bushong cautioned that any water supply development projects at or near the Eagle Mine would  
24 need to avoid the contaminated soils. Staff and consultants will continue to monitor the conditions  
25 at the Mine and the water quality there, but are pleased with the increased cleanup requirements.  
26 Ms. Brooks thanked staff and consultants for their efforts with the matter.

27 Ms. Hochtl left the meeting at 2:05 p.m.

28 **Piper Jaffray Update on 2009 Wastewater Build America Bonds (BABs) Crossover Refund** – Mr.  
29 Heroux was welcomed to the meeting. He discussed his report included in packets, a copy of which is  
30 attached hereto as **Exhibit H** and incorporated herein by this reference. He explained the Build American  
31 Bonds, which were provided by the government during the economic downturn as a way to stimulate the  
32 economy. The government subsidized these taxable bonds and allowed tax-exempt entities like the  
33 District to issue them. The bonds have a call date of Dec. 1, 2019, and are refundable using a crossover  
34 refunding because of the District's tax-exempt status vs. the taxable nature of the BABs. Discussion  
35 ensued regarding the process by which this could be done, as well as the estimated savings for the  
36 District, about \$1 million over the life of the bonds with current market conditions. The Board agreed to

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1 move forward with the crossover refund; staff and bond counsel will bring a parameters resolution to the  
2 November board meeting.

### 3 **GENERAL MANAGER REPORT**

4 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit H** and incorporated  
5 herein by this reference. The monthly reports were also acknowledged, copies of which are attached  
6 hereto as **Exhibit I** and incorporated herein by this reference.

7 **Employee Engagement Survey Results** – In response to a question, Ms. Brooks said staff  
8 would present the results to the entire board at a future meeting. Directors Armour and Simmons  
9 of the Organizational Development Committee will be given more detail on the results at an  
10 upcoming committee meeting.

11 **Regional Water Efficiency Plan Update** – Ms. Brooks reported that a draft of the regional water  
12 efficiency plan is nearing completion. She requested a comprehensive review from the water  
13 demand management committee, District Director Coyer and Authority Director Woodworth. She  
14 noted the plan would provide important supporting information for future water supply projects of  
15 the District and Authority.

### 16 **FINANCE REPORT**

17 Mr. Wilkins presented the monthly finance report, a copy of which is attached hereto as **Exhibit I** and  
18 incorporated herein by this reference.

19 **Draft 2018 Budget** – Mr. Wilkins discussed the draft FY 2018 budget and related materials,  
20 copies of which are attached hereto as **Exhibit J** and incorporated herein by this reference. Vice  
21 Chair Friedman requested a board-level discussion to determine the appropriate level of fund  
22 balance. Discussion ensued regarding funding the first year of the Stillwater project from fund  
23 balance, communication of the project and funding sources to constituents, and other related  
24 information. Mr. Wilkins said no rate increases were recommended for FY 2018. In response to a  
25 question, Ms. Brooks said that although steady, small rate increases are most palatable to  
26 customers, rather than flat rates most years with larger increases occasionally, an increase for  
27 2018 does not appear justified. Mr. Wilkins reminded directors that the November meeting was  
28 noticed for the public budget hearing, at which formal approval of the budget would be  
29 considered.

### 30 **OPERATIONS REPORT**

31 The Operations Report was presented, a copy of which is attached hereto as **Exhibit K** and incorporated  
32 herein by this reference.

33 **Lead and Copper Sampling** – Mr. Tracy noted the District's required lead and copper sampling was  
34 completed for 2017, and required communication letters were sent to all sample participants. He

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1 noted **none** of the homes tested exceeded the limit of allowable lead; however, about 50% of the  
2 homes sampled had detectable levels of lead.

### 3 **ENGINEERING REPORT**

4 Mr. Cowles discussed his report, a copy of which is attached hereto as **Exhibit L** and incorporated herein  
5 by this reference.

### 6 **PUBLIC AFFAIRS REPORT**

7 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit M** and incorporated  
8 herein by this reference.

### 9 **WATER COUNSEL REPORT**

10 **Proposed 2018 Cash-in-Lieu of Water Rights Fees** – Mr. Porzak presented an updated water  
11 dedication policy that included proposed 2018 cash-in-lieu of water rights fees, a copy of which is  
12 attached hereto as **Exhibit N** and incorporated herein by this reference. The changes would be  
13 approved with the 2018 budget, and the consideration of rate increase was noticed for the  
14 November meeting. The policy includes increases for summertime water (\$9,000/acre foot) and  
15 wintertime storage water (\$35,000/acre foot). Such fees reflect the projected cost of enlarging  
16 Eagle Park Reservoir.

17 **Golden Peak Snowmaking Water Agreement** – Mr. Porzak presented a revised agreement, a  
18 copy of which is attached hereto as **Exhibit O** and incorporated herein by this reference. He  
19 discussed the changes, including the limit of 120 acre feet of water for snowmaking. He  
20 emphasized that this and previous agreements maintain that this is an interruptible supply of  
21 water at any time. In response to a question, staff confirmed that the pricing was equitable and  
22 reflected the actual cost of providing it. After discussion and upon motion duly made and  
23 seconded, it was unanimously

24 **RESOLVED** that the Golden Peak Snowmaking Water Agreement be and hereby is  
25 approved as presented.

26 Staff will schedule a meeting with the director of Ski and Snowboard Club Vail to review the  
27 agreement and execute the revised agreement.

28 A planned presentation on cybersecurity during Executive Session was tabled to November due to time  
29 constraints.

### 30 **EXECUTIVE SESSION**

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

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1           **RESOLVED** to enter executive session at 2:40 p.m. to discuss attorney-client privileged  
2           issues concerning Eagle Park Reservoir expansion and Bolts Lake, pursuant to §24-6-  
3           402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents  
4           of the discussion would contain privileged attorney-client communications.\*

5           The regular meeting resumed at 3:10 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 3:11 p.m.

3 Respectfully submitted,

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6  
7 \_\_\_\_\_  
8 Secretary to the Meeting

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

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13 \_\_\_\_\_  
14 **Bob Armour, Director**

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17 \_\_\_\_\_  
18 **Steve Coyer, Director**

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

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25 \_\_\_\_\_  
26 **George Gregory, Secretary**

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

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33 \_\_\_\_\_  
34 **Brian Sipes, Director**

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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**  
47