

Eagle River Water & Sanitation District
Board of Directors Meeting
January 25, 2018
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 25, 2018, 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 Bob Armour
3 Steve Coyer
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 | Jeff Schneider |
| 11 Tug Birk | 22 | Micah Schuette |
| 12 Linn Brooks, <i>via Skype</i> | 23 | Amy Schweig |
| 13 Shane Cerny | 24 | Jason Sica |
| 14 Jason Cowles | 25 | James Wilkins |
| 15 Carol Dickman | 26 | <u>Consultants</u> |
| 16 Catherine Hayes | 27 | Jim Collins, Collins Cockrel & Cole |
| 17 Diane Johnson | 28 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 18 John McCaulley | 29 | <u>Public</u> |
| 19 Maureen Mulcahy | 29 | Pete Wadden, town of Vail |
| 20 Siri Roman | 30 | |

31 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

34 Director Armour disclosed that he is employed by Vail Resorts and the Vail Recreation District. Director Friedman serves on the
35 Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Gregory disclosed that he serves on the
36 Boards of the Upper Eagle Regional Water Authority (Authority and the Berry Creek Metropolitan District and occasionally
37 undertakes development and construction activities within the District and Authority service areas. Director Sackbauer is employed
38 by Vail Resorts, Inc., which has significant land ownership and business interests within the District. Director Simmons disclosed
39 that he is the General Manager of the Beaver Creek Metropolitan District, an alternate Authority Director, and serves on the board of
40 the Edwards Metropolitan District.

41 **CALL TO ORDER**

42 Chair Sackbauer called the meeting to order at 12:47 p.m. Mr. Collins noted that he and Directors Sipes
43 had discussed any potential conflicts of interest to be disclosed, per the Colorado Revised Statutes. Mr.
44 Collins confirmed that Director Sipes had no conflicts of interest to disclose.

45 **INTRODUCTIONS**

46 The Board welcomed Pete Wadden, watershed education coordinator with the town of Vail.

47 **ACTION ITEMS**

48 **Consideration of Minutes** – The minutes of the special meeting of December 14, 2017, to discuss the
49 annual review of the general manager were considered. Upon motion duly made and seconded, it was
50 unanimously

51 **RESOLVED** that the minutes of the December 14, 2017, special meeting to discuss the annual
52 review of the general manager be accepted and hereby are approved as presented.

53 **Consideration of Minutes** – The minutes of the special meeting of December 14, 2017 were
54 considered. Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the minutes of the December 14, 2017, special meeting be accepted and
2 hereby are approved as presented.

3 **2018 Resolutions** – Ms. Hayes discussed a board action request form regarding various 2018
4 resolutions, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

5 **Resolution Designating Meeting Place and Posting Location** – The Board discussed the resolution to
6 set the meeting place, posting location for meeting notices, and adopt a regular meeting schedule, a copy
7 of which is attached hereto as **Exhibit B** and incorporated herein by this reference. After discussion and
8 upon motion duly made and seconded, it was unanimously

9 **RESOLVED** that the 2018 resolution to set the meeting place, posting location, and adopt a
10 regular meeting schedule be and hereby is approved as presented.

11 **Election Resolution** – The Board discussed the 2018 election resolution, which called for a polling place
12 election on May 8, 2018, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this
13 reference. After discussion and upon motion duly made and seconded, it was unanimously

14 **RESOLVED** that the 2018 election resolution be and hereby is approved as presented.

15 **2018 Operations Agreements** – The Board discussed its operations agreements with the Upper Eagle
16 Regional Water Authority and town of Minturn, copies of which are attached hereto as **Exhibits D** and **E**,
17 respectively, and incorporated herein by this reference. In response to a question, Ms. Hayes confirmed
18 that staff will determine the actual cost for services provided to Minturn and increase the monthly fees in
19 2019 accordingly. After discussion and upon motion duly made and seconded, it was unanimously

20 **RESOLVED** that the 2018 Operations Agreements with the Upper Eagle Regional Water
21 Authority and town of Minturn be and hereby are approved as presented.

22 **Rules and Regulations Updates** – Mr. Birk discussed his board action request and the clean and
23 redlined versions of the Rules and Regulations, copies of which are attached hereto as **Exhibits F, G,**
24 and **H**, respectively, and incorporated herein by this reference. He reminded directors that the document
25 underwent a major overhaul in 2017; at that time, staff committed to annually updating the document with
26 minor revisions for board consideration. Mr. Birk also clarified that Appendix A included rates and fees
27 and was approved with the Authority's budget in Nov. 2017. After discussion and upon motion duly made
28 and seconded, it was unanimously

29 **RESOLVED** that the revised Rules and Regulations for 2018 be and hereby are approved as
30 presented.

31 Mr. Birk left the meeting at 11:40 p.m.

32 **Stillwater Development Water Rights Dedication** – Mr. Cowles discussed the board action request and
33 supporting documentation regarding a water rights dedication from the District to the Authority for the
34 District's Stillwater PUD, an employee housing project in Edwards. Copies of the documents are attached
35 hereto as **Exhibit I** and incorporated herein by this reference. Mr. Cowles clarified that the Authority will
36 be serving the District's project, and the Authority's water dedication policy stated its preference for the
37 developer to dedicate water if sufficient supply is available. The District has Eagle Park Reservoir water to

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1 dedicate for these project's water needs, which include augmentation of full diversions from December –
2 February and August – September. Mr. Cowles reminded directors that the dedication amounts were
3 calculated at 100% of the anticipated project demand of 200 gallons per unit per day, per a recent policy
4 approved by the board. This calculation method is sufficient because it is also coupled with water use
5 enforcement mechanisms, measurement capabilities, and a water service agreement, all of which are
6 detailed in the PUD guide for the development. After discussion and upon motion duly made and
7 seconded, it was unanimously

8 **RESOLVED** that the dedication of 1.68789 acre-feet of Eagle Park Reservoir water to the
9 Authority by the District for its Stillwater project be and hereby is approved as presented.

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

12 STRATEGY ITEMS

13 **Board Member Input** – Chair Sackbauer called for board member input. Director Armour
14 requested the board secretary begin numbering each resolution passed by the board in 2018. Ms.
15 Johnson reminded directors to get updated parking permits from Ms. Hayes, as weekend parking
16 enforcement will be stricter than years past. Directors are still welcome to park in the District lot
17 on weekends to access Vail Mountain; however, weekday skier parking can no longer be
18 accommodated, due to the number of employees who need to park at the office during the week.

19 **Regulation 93 Rulemaking Hearing** – Ms. Roman reported on the recent rulemaking hearing for
20 Regulation 93, which is the process for monitoring the 303(d) list of impaired streams and also for
21 listing and delisting stream segments. Ms. Roman said the District's permits to discharge
22 wastewater plant effluent to streams are calculated based on ambient water quality, which is why
23 the District pays close attention to this and provides data to the state. She noted some previously
24 listed stream segments within the Authority and District watershed were removed from the 303(d)
25 list, which was an excellent outcome. The Board congratulated her on this accomplishment.

26 The board took a short recess for lunch at 12:10; the regular meeting resumed at 12:22 p.m.

27 **Restore the Gore Presentation** – Ms. Roman introduced Mr. Wadden, the town of Vail's
28 Watershed Education Coordinator. He noted that in 2010, failing bug scores in Gore Creek *above*
29 the Vail Wastewater Treatment Facility indicated the creek would be listed on the state's 303(d)
30 list of impaired waterways. A water quality improvement plan was subsequently funded, out of
31 which Mr. Wadden's position was created. He presented information on the town's Restore the
32 Gore campaign, which is part of the effort to improve the health of Gore Creek; the creek has
33 been adversely impacted by landscaping/pesticide use near the creek, untreated stormwater
34 runoff, and an increase in impervious surfaces in Vail. Mr. Wadden has reached out to
35 landscapers, homeowners, and the community at large to increase awareness of the need to
36 protect and improve the health of the creek. The board thanked Mr. Wadden for his informative
37 presentation.

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1 **Water Demand Management Update** – Ms. Mulcahy, the District’s water demand management
2 coordinator, discussed her memo, a copy of which is attached hereto as **Exhibit K** and
3 incorporated herein by this reference. She presented an update on recent water demand
4 management efforts of the District and Authority. She also summarized recent efforts to improve
5 water use efficiency, including reduction of water use of customers that have a disproportionate
6 impact on the system, and pilot projects in high-demand and high-use areas. Pilot project goals
7 included establishing water budgets for each property, improved customer access to water use
8 information, and aligning District and Authority processes with local land use authorities. She also
9 noted completion of a draft of the regional water efficiency plan for the Authority and District.
10 Such a plan was required because of 2004 legislation, and a grant was received from the
11 Colorado Water Conservation Board to assist with plan costs. Ms. Mulcahy outlined a schedule
12 for plan adoption and hopes to bring the final plan to the board in July for consideration and
13 approval.

14 Mr. Wadden left the meeting at 12:45 p.m.

15 **GENERAL MANAGER REPORT**

16 In Ms. Brooks’ absence, Ms. Johnson presented the General Manager report, a copy of which is attached
17 hereto as **Exhibit L** and incorporated herein by this reference. Monthly reports were acknowledged,
18 copies of which are attached hereto as **Exhibit M** and incorporated herein by this reference.

19 **Colorado River District General Manager** – Ms. Johnson reported that Eric Kuhn officially
20 retired as GM of the Colorado River Water Conservation District, though he is still performing
21 contract work on behalf of the River District to provide continuity during the transition. Ms.
22 Johnson, Ms. Brooks, and Mr. Porzak recently met with the new GM, Andy Mueller, to provide
23 background on the Authority and District and their relationship with the River District. Ms.
24 Johnson said meetings with Mr. Mueller ensure a continued strong relationship with the River
25 District as items of mutual concern are addressed.

26 **Housing Agreement** – In response to a question regarding Ms. Brooks’ report, staff clarified the
27 purpose of a housing agreement currently being drafted. Such agreement would be executed by
28 the new owner upon purchase and will ensure that Red Sandstone units are always sold back to
29 the District when a resident leaves District employment. Without such an agreement, a resident
30 owner could leave District employment but is only required to meet the town of Vail’s deed
31 restriction in order to remain in the property. Mr. Wilkins expects to bring the agreement to the
32 February meeting for board consideration.

33 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

34 Ms. Johnson discussed her report, a copy of which is attached hereto as **Exhibit N** and incorporated
35 herein by this reference.

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1 **Colorado Basin Roundtable Update** – Ms. Johnson discussed the history of the basin
2 roundtables, which were established by state legislation in part due to the 2002 drought. House
3 Bill 1177 created the nine roundtables in 2005, and the roundtables began meeting in 2006. The
4 Authority and District have had a roundtable presence at the Colorado Basin monthly meetings
5 since inception, with board members or staff attending on their behalf. Ms. Johnson also
6 discussed funding that the roundtables can provide for various water-related projects. The
7 roundtables can also recommend such projects for statewide funding, though statewide funding
8 has decreased in recent years due to declining severance taxes as well as a settlement with BP,
9 by which the state must repay BP a large sum of money.

10 **Waters of the US (WOTUS) Update** – Ms. Johnson updated the board on recent developments
11 regarding the WOTUS rule. She gave a brief history of the rule, noting that the Obama
12 administration issued the WOTUS rule in 2015 to clarify items related to a 2006 U.S. Supreme
13 Court decision. The 2015 rule resulted in lawsuits filed against the Environmental Protection
14 Agency (EPA) by 23 states, including Colorado, as it appeared such legislation would expand the
15 EPA’s jurisdiction and include waters that were not covered bodies of water under the previous
16 rule. Though the 2015 update was meant to provide clarity, it raised many questions for water
17 providers and others. The Supreme Court recently ruled that any challenge should be heard by
18 federal district, rather than appellate, courts.

19 **Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act** – Ms. Johnson said
20 Rep. Polis unveiled an updated wilderness bill on Tuesday that includes Sen. Bennet’s previous
21 draft legislation. The release coincided with the Outdoor Retailer + Snow Show in Denver, which
22 moved there from its previous location in Utah, in part because of elected officials in Utah
23 advocating for the reduction of protected land for national monuments. Ms. Johnson and Ms.
24 Brooks received assurance from Sen. Bennet’s aide, Noah Koerper, that the bill included the
25 agreed-upon language requested by the Authority and District in the bill’s previous iteration; such
26 language gives the Authority and District broad authority to exercise needed remediation in the
27 event of a natural disaster within the watershed, even in the proposed wilderness areas. Mr.
28 Porzak said one addition to the current legislation included recognition of the non-wilderness
29 status of Bolts Ditch in Minturn, which was mistakenly included in the Holy Cross wilderness
30 boundary when the maps were drawn in 1980. Mr. Porzak would also like to include language in
31 the bill that Bolts Ditch could be used to fill Bolts Lake. Staff will continue to monitor the bill
32 throughout the legislative process.

33 **FINANCE REPORT**

34 In Mr. Wilkins’ absence, Ms. Johnson presented the monthly finance report, a copy of which is attached
35 hereto as **Exhibit O** and incorporated herein by this reference. She noted there are still many invoices
36 coming in for 2017 expenses, so the fund balance will be lower than what is shown on the report. She

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1 also called attention to the development impact fees, which for the Authority, Vail water subdistrict, and
2 Vail sewer district, exceeded projections by about \$777,000. Ms. Johnson noted this was a variety of
3 smaller projects paying tap fees at year-end, not one or two large projects. She also reminded directors
4 that in 2018, water sales would be presented quarterly instead of monthly.

5 **OPERATIONS REPORT**

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

8 **ENGINEERING REPORT**

9 Mr. Cowles discussed his report, a copy of which is attached hereto as **Exhibit Q** and incorporated herein
10 by this reference.

11 **GENERAL COUNSEL REPORT**

12 **Bighorn Subdistricts Update** – Mr. Collins reported that upon further review by staff, it appears
13 there is past precedent in the Bighorn area for District-funded water main replacement; therefore,
14 the Bighorn Terrace Water Subdistrict is no longer needed. Staff will continue with the necessary
15 actions to move forward with the Bighorn Terrace Sewer Subdistrict, as this is clearly a private
16 sewer line and the homeowners are responsible for its replacement. Mr. Collins reminded the
17 board that the Bighorn homeowners originally approached the District to request sewer line
18 replacement.

19 **Stillwater PUD Hearing** – Mr. Collins noted the Stillwater PUD received its 1041 approval from
20 Eagle County and complimented staff on the effort.

21 **WATER COUNSEL REPORT**

22 **Gore Creek Intake for Booth Creek Treatment Facility** – Mr. Porzak discussed the diligence
23 decree for the Booth Creek Treatment Facility, a copy of which is attached hereto as **Exhibit R**
24 and incorporated herein by this reference. He noted the water court granted a finding of diligence
25 for this water right.

26 **District and CJC Properties Water Right Change Case and Augmentation Plan** – Mr. Porzak
27 discussed the joint application filed by the District and CJC properties to quantify the senior water
28 rights owned by the Chris Joufflas family in the Wolcott area and to utilize those rights in an
29 augmentation plan to replace out-of-priority depletions in the District's Wolcott service area.
30 Related documentation is attached hereto as **Exhibit S** and incorporated herein by this reference.
31 Mr. Porzak said with this decree, the District will have a complete portfolio of water rights to
32 augment full build out in Wolcott. The board directed Chair Sackbauer to sign the document on
33 the District's behalf.

34 Ms. Brooks joined the meeting via Skype at 1:35 p.m.
35

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1 **EXECUTIVE SESSION**

2 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Eagle River
3 MOU matters, water quality, District water for Vail Mountain snowmaking, and CRCA matters, pursuant to
4 §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be
5 entirely privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

6 **RESOLVED** to enter executive session at 2:06 p.m. to discuss attorney-client privileged
7 issues concerning Eagle River MOU matters, water quality, District water for Vail Mountain
8 snowmaking, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
9 electronic record created as Mr. Porzak opined the contents of the discussion would contain
10 privileged attorney-client communications.*

11 At 2:13 p.m., Messrs. Cerny, Porzak, Schneider, and Sica, as well as Mses. Mulcahy, Roman and
12 Schweig left the meeting.

13 Mr. Collins requested the Board continue Executive Session to receive legal advice regarding Eagle Park
14 Reservoir Company and cost-sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
15 electronic record be made, as the discussion would be entirely privileged attorney-client communications
16 and requested that the record reflect that Mr. Porzak was abstaining from any participation in the subject
17 and reaffirmed that he had left the meeting. Upon motion duly made and seconded, it was unanimously

18 **RESOLVED** to continue Executive Session at 2:01 p.m. to discuss attorney-client privileged
19 issues concerning Eagle Park Reservoir Company and cost-sharing, pursuant to §24-6-
20 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents
21 of the discussion would contain privileged attorney-client communications.*

22 At 2:30 p.m., prior to discussion of the personnel matter, all remaining staff left the meeting, with the
23 exception of Ms. Brooks.

24 The regular meeting resumed at 2:55 p.m.

25

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:56 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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14 _____
15 **Bob Armour, Director**

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19 **Steve Coyer, Treasurer**

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22 _____
23 **Stephen Friedman, Vice Chair**

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26 _____
27 **George Gregory, Secretary**

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30 _____
31 **Frederick P. Sackbauer IV, President/Chair**

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34 _____
35 **Bill Simmons, Director**

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38 _____
39 **Brian Sipes, Director**

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41
42 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
43 in Executive Session not recorded constituted privileged attorney-client communications.

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45
46 _____
47 **Jim Collins, General Counsel**

48 _____
Glenn Porzak, Water Counsel