Eagle River Water & Sanitation District
Board of Directors Meeting
February 22, 2018
MINUTES

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

The following Directors were present, thereby constituting a quorum:
1. Steve Coyer, via phone
2. Steve Friedman
3. George Gregory
4. Frederick P. Sackbauer IV
5. Bill Simmons
6. Brian Sipes

The following Director was absent and excused:
7. Bob Armour

Also in attendance were:
8. District Staff
9. Carol Dickman
10. Catherine Hayes
11. Diane Johnson
12. John McCaulley
13. Louise Reiter
14. Jeff Schneider
15. Amy Schweig
16. Brian Tracy

Consultants
17. Jim Collins, Collins Cockrel & Cole
18. Leah Mayer, LKSM Design
19. Kristin Moseley, Porzak Browning & Bushong LLP
20. Glenn Porzak, Porzak Browning & Bushong LLP
21. Rick Pylman, Pylman & Associates
22. Public
23. Cliff Thompson, IKS Consulting
24. Dick Cleveland, Vail resident

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:

Director Armour disclosed that he is employed by Vail Resorts and the Vail Recreation District. Director Friedman serves on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Gregory disclosed that he serves on the Boards of the Upper Eagle Regional Water Authority (Authority and 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 11:35 a.m.

INTRODUCTIONS

The Board welcomed Vail resident Mr. Cleveland as well as Ms. Mayer and Mr. Pylman, who would update the board on the Stillwater development later in the meeting.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of January 25, 2018, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the January 25, 2018, regular meeting be accepted and hereby are approved as presented.

The minutes of the joint special meeting of February 13, 2018, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the February 13, 2018, joint special meeting with the Upper Eagle Regional Water Authority be accepted and hereby are approved as presented.
Consent Agenda – The Board unanimously approved the Consent agenda, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

STRATEGY ITEMS

Board Member Input – Chair Sackbauer called for board member input and there was none.

Director Coyer joined the meeting at 11:37 a.m. via phone.

Stillwater Update – Ms. Mayer and Mr. Pylman updated the board on the Stillwater employee housing development. County approval was received on Dec. 19, 2017, and included an emergency-only access easement for adjacent properties, which will be reflected on the plat. The development timeline was discussed, with site grading scheduled for March 1 and groundbreaking expected in April. Ms. Mayer discussed the design process and noted development highlights, including energy efficiency measures like solar panels and electric vehicle charging stations. Mr. Pylman and Ms. Mayer will present guaranteed maximum price (GMP) documents for board approval in March. The board thanked them for the presentation.

GENERAL MANAGER REPORT

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

District Email Addresses – Ms. Johnson reminded directors about the District email addresses that were issued to directors for security and access purposes. She noted if any directors had not yet brought in a device to set up access to the new addresses to please do so or set up an appointment with the IT department to do so. Staff would like to begin exclusively using these email addresses to contact directors in the near future.

Tiny Homes – Ms. Johnson noted the Avon town manager expects an application for tiny homes in an area of Avon that is currently occupied by modular trailers, some of which include offices leased by the District. This is of interest due to the expected need for additional office space for staff at some future time. Also, the District is considering the logistics of providing water to this type of development, such as expected usage, tap fees, and base rates.

Town of Vail Community Meeting – Ms. Johnson said the town of Vail annual meeting was scheduled for March 13 at 5:00 p.m. She is unsure of the meeting format, but she and Ms. Schweig plan to attend on the District’s behalf.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

Gypsum Water Summit and Local Water Supply – Ms. Johnson said she received notice that the town of Gypsum is holding a water summit on Feb. 27 to discuss current water supply conditions, the potential for drought, and expected water use restrictions if drought conditions
ensue. Ms. Johnson said Gypsum’s town manager, Jeff Shroll, wants to disseminate such information early, as the town’s population has roughly doubled since the 2012 drought. She noted the Authority and District are not yet actively preparing for drought, though monitoring conditions is part of routine operations. Staff will continue to keep the board apprised of local water supply conditions and any operational changes for drought if and when they are warranted.

Stream Access Lawsuit – Ms. Johnson discussed a stream access lawsuit, the outcome of which will likely determine whether riverbanks and the river bottom are considered public or private property; this is a very controversial topic. In response to a question, Ms. Moseley said the outcome of the lawsuit would not affect District operations. However, many District constituents and businesses within the District’s boundaries likely have an interest in the outcome.

New Town Managers – Ms. Johnson reported that various local organizations have had recent changes in leadership, including new town managers in Vail and Minturn. Ms. Johnson, Ms. Brooks, and other staff members have met with the new managers to update them on District and Authority operations and to continue forging strong relationships with local entities.

Legislative Update – Ms. Moseley updated the board on various legislative issues. She specifically discussed a water sheparding bill, which was in response to the passage of St. Jude’s legislation; entities like the Authority and District want to ensure environmental reservoir releases continue to be beneficial uses of water, which the St. Jude’s legislation calls into question. She also discussed HB 1073, which would expressly permit water districts, authorities, and reservoir companies to enter into contracts for reservoir space, not just the purchase of actual water. She also outlined a bill regarding 811 utility locate calls, which would establish a new commission to set forth rules and regulations for such calls. The effect on utilities like the Authority and District is unknown, though many large utilities are opposed, as the cost of compliance could be high. Ms. Moseley also highlighted a proposed deficit irrigation project, which would expand current legislation to include agricultural water leasing or fallowing projects as allowable pilot projects for Colorado Water Conservation Board approval; certain other types of pilot projects are already allowable. In the past, agricultural efficiency increases assumed that prior water use was wasteful; the legislation would exempt these water rights from decreases in historical consumptive use that results from efficiency or fallowing projects. The current proposal would apply to water divisions 2 and 3 within the boundaries of the Upper Gunnison Water Conservancy District.

FINANCE REPORT

In Mr. Wilkins’ absence, Ms. Reiter presented the monthly finance report, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. Ms. Reiter left the meeting at 12:04 p.m.
OPERATIONS REPORT
The operations report was presented, a copy of which is attached hereto as Exhibit F and incorporated herein by this reference.

Eagle Park Reservoir Company Update – Mr. Tracy briefly discussed a recent tabletop exercise held in Eagle that simulated a response to a dam breach at Eagle Park Reservoir. The exercise was well attended by local emergency managers. Mr. Tracy thanked Pete Miller, the District’s raw water resources operator, for planning the event. Mr. Tracy also discussed a recent Eagle Park water quality report, which showed good water quality. The reservoir is drawn down further than in previous years, and staff expects to use the East Fork pump station in the spring to fill the reservoir.

Mr. Porzak entered the meeting at 12:05 p.m.

ENGINEERING REPORT
In Mr. Cowles’ absence, there was no engineering report for the month.

GENERAL COUNSEL REPORT
Mr. Collins noted that all of his items would be discussed in Executive Session.

The board took a short recess for lunch at 12:11 p.m., and the regular meeting resumed at 12:35 p.m. At 12:36 p.m. Messrs. Cleveland, Schneider, and Thompson left the meeting.

WATER COUNSEL REPORT
Mr. Porzak noted that all of his items would be discussed in Executive Session.

EXECUTIVE SESSION
Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Eagle Park Reservoir enlargement and Vail Resorts Snowmaking Water, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client communications. Mr. Porzak was abstaining from any participation in these subjects and had left the meeting.

Upon motion duly made and seconded, it was unanimously RESOLVED to enter executive session at 12:37 p.m. to discuss attorney-client privileged issues concerning the Eagle Park Reservoir enlargement and Vail Resorts Snowmaking Water, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion would contain privileged attorney-client communications.*

Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Bolts Lake, Eagle River MOU matters, CRCA matters, the Black Lakes lease, and personnel matters, pursuant to §24-6-402(4)(b) (e) and (f) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client. Upon motion duly made and seconded, it was unanimously RESOLVED to continue Executive Session at 2:01 p.m. to discuss attorney-client privileged issues concerning Bolts Lake, Eagle River MOU matters, CRCA matters, the Black Lakes
lease, and personnel matters, pursuant to §24-6-402(4)(b) (e) and (f) C.R.S. He with no
electronic record created as Mr. Collins opined the contents of the discussion would contain
privileged attorney-client communications.*

At 1:45 p.m., prior to discussion of the personnel matters, all remaining staff left the meeting.

The regular meeting resumed at 2:00 p.m.

**Eagle Park Reservoir Enlargement** – The board discussed the proposed Eagle Park Reservoir enlargement
and related issues, including the apparent desire of Vail Associates Inc. (VAI) to purchase enlargement water
at 1993 prices, as well as to retain its majority shareholder status regardless of the extent to which VAI
participates in the enlargement. Discussion ensued, and Mr. Collins opined that Mr. Porzak does not have a
conflict of interest regarding the enlargement and its various disagreements, as the subject does not involve
any confidences. Moreover, Mr. Porzak engaged independent ethics counsel, which confirmed that he has no
conflict of interest in the matter. He will continue to serve the District and Authority in his water counsel
capacity, but has resigned as VAI water rights counsel. Notwithstanding, Mr. Porzak did not participate in this
discussion.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 2:01 p.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

________________________________________
Bob Armour, Director

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Steve Coyer, Treasurer

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Stephen Friedman, Vice Chair

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George Gregory, Secretary

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Frederick P. Sackbauer IV, President/Chair

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Bill Simmons, Director

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Brian Sipes, 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.

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Jim Collins, General Counsel

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Glenn Porzak, Water Counsel