

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

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

2 Steve Coyer, *via phone*
3 Steve Friedman
4 George Gregory
5 Frederick P. Sackbauer IV
6 Bill Simmons
7 Brian Sipes

8 **The following Director was absent and excused:**

9 Bob Armour

10 **Also in attendance were:**

<u>District Staff</u>		<u>Consultants</u>
11 Carol Dickman	20	21 Jim Collins, Collins Cockrel & Cole
12 Catherine Hayes	21	22 Leah Mayer, LKSM Design
13 Diane Johnson	22	23 Kristin Moseley, Porzak Browning & Bushong LLP
14 John McCaulley	23	24 Glenn Porzak, Porzak Browning & Bushong LLP
15 Louise Reiter	24	25 Rick Pylman, Pylman & Associates
16 Jeff Schneider	25	
17 Amy Schweig	26	<u>Public</u>
18 Brian Tracy	27	27 Cliff Thompson, IKS Consulting
19	28	28 Dick Cleveland, Vail resident

29 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

39 **CALL TO ORDER**

40 Chair Sackbauer called the meeting to order at 11:35 a.m.

41 **INTRODUCTIONS**

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

44 **ACTION ITEMS**

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

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

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

51 **RESOLVED** that the minutes of the February 13, 2018, joint special meeting with the Upper
52 Eagle Regional Water Authority be accepted and hereby are approved as presented.

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

3 **STRATEGY ITEMS**

4 **Board Member Input** – Chair Sackbauer called for board member input and there was none.
5 Director Coyer joined the meeting at 11:37 a.m. via phone.

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

14 **GENERAL MANAGER REPORT**

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

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

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

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

31 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

34 **Gypsum Water Summit and Local Water Supply** – Ms. Johnson said she received notice that
35 the town of Gypsum is holding a water summit on Feb. 27 to discuss current water supply
36 conditions, the potential for drought, and expected water use restrictions if drought conditions

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1 ensue. Ms. Johnson said Gypsum’s town manager, Jeff Shroll, wants to disseminate such
2 information early, as the town’s population has roughly doubled since the 2012 drought. She
3 noted the Authority and District are not yet actively preparing for drought, though monitoring
4 conditions is part of routine operations. Staff will continue to keep the board apprised of local
5 water supply conditions and any operational changes for drought if and when they are warranted.

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

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

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

32 **FINANCE REPORT**

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

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1 OPERATIONS REPORT

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

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

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

12 ENGINEERING REPORT

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

14 GENERAL COUNSEL REPORT

15 Mr. Collins noted that all of his items would be discussed in Executive Session.

16 The board took a short recess for lunch at 12:11 p.m., and the regular meeting resumed at 12:35 p.m. At
17 12:36 p.m. Messrs. Cleveland, Schneider, and Thompson left the meeting.

18 WATER COUNSEL REPORT

19 Mr. Porzak noted that all of his items would be discussed in Executive Session.

20 EXECUTIVE SESSION

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

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

31 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Bolts Lake,
32 Eagle River MOU matters, CRCA matters, the Black Lakes lease, and personnel matters, pursuant to
33 §24-6-402(4)(b) (e) and (f) C.R.S. He asked that no electronic record be made, as the discussion would
34 be entirely privileged attorney-client. Upon motion duly made and seconded, it was unanimously

35 **RESOLVED** to continue Executive Session at 2:01 p.m. to discuss attorney-client privileged
36 issues concerning Bolts Lake, Eagle River MOU matters, CRCA matters, the Black Lakes

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1 lease, and personnel matters, pursuant to §24-6-402(4)(b) (e) and (f) C.R.S. He with no
2 electronic record created as Mr. Collins opined the contents of the discussion would contain
3 privileged attorney-client communications.*

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

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

6 **Eagle Park Reservoir Enlargement** – The board discussed the proposed Eagle Park Reservoir enlargement
7 and related issues, including the apparent desire of Vail Associates Inc. (VAI) to purchase enlargement water
8 at 1993 prices, as well as to retain its majority shareholder status regardless of the extent to which VAI
9 participates in the enlargement. Discussion ensued, and Mr. Collins opined that Mr. Porzak does not have a
10 conflict of interest regarding the enlargement and its various disagreements, as the subject does not involve
11 any confidences. Moreover, Mr. Porzak engaged independent ethics counsel, which confirmed that he has no
12 conflict of interest in the matter. He will continue to serve the District and Authority in his water counsel
13 capacity, but has resigned as VAI water rights counsel. Notwithstanding, Mr. Porzak did not participate in this
14 discussion.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:01 p.m.

3 Respectfully submitted,

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8 Secretary to the Meeting

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

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15 **Bob Armour, Director**

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19 **Steve Coyer, Treasurer**

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23 **Stephen Friedman, Vice Chair**

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27 **George Gregory, Secretary**

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

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35 **Bill Simmons, Director**

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39 **Brian Sipes, Director**

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

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Glenn Porzak, Water Counsel