EAGLE RIVER WATER & SANITATION DISTRICT
Board of Directors Meeting
January 22, 2015
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 22, 2015, at 11:00 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. Tom Allender
2. Debbie Buckley
3. Steve Friedman
4. Kim Langmaid
5. Bill Simmons
6. Frederick P. Sackbauer IV

The following Directors were absent and excused:

7. Paul Testwuide

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 Allender disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership and business interests within the District and Authority. He also serves on the Boards of the Upper Eagle Regional Water Authority, Eagle Park Reservoir Company, and the Clinton Ditch and Reservoir Company. Director Friedman serves on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation. Director Langmaid disclosed that she founded and is employed by Walking Mountains Science Center, which receives funding from parties with which the District does business, including the US Forest Service, Vail Resorts, Towns of Vail and Avon, Vail Recreation District, Eagle County, and Holy Cross Energy. Directors Sackbauer and Simmons are employed by Vail Resorts, Inc., which has significant land ownership and business interests within the District. Directors Simmons also serves on the Boards of the Upper Eagle Regional Water Authority, and the Edwards, Holland Creek, and Red Sky Ranch Metropolitan Districts. Director Testwuide disclosed that he performs consulting for Vail Resorts, his former employer, owns water rights in two states, and occasionally uses the District’s water counsel, Glenn Porzak, as his personal attorney.

Also in attendance were:

- District Staff
  - Linn Brooks
  - Becky Bultemeier
  - Jason Cowles
  - Carol Dickman
  - Angelo Fernandez
  - Todd Fessenden
  - Catherine Hayes
  - Leslie Isom
  - Diane Johnson
- Melissa Mills McLoota
- Glen Phelps
- Siri Roman
- Steve Sego
- Ed Trainer
- consultants
- Jim Collins, Collins Cockrel & Cole
- Glenn Porzak, Porzak Browning & Bushong LLP
- Public
- Cliff Thompson, IKS Consulting

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:13 a.m.

PUBLIC COMMENT

Chairman Sackbauer called for public comment of items not on the agenda, and there was none.

ACTION ITEMS

The minutes of the Regular Meeting of December 18, 2014, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the December 18, 2014, Regular Meeting be accepted and hereby are approved as presented.
Meeting Place and Posting Location – Ms. Hayes presented a Resolution Designating the 2015 Meeting Place and Posting Location, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

RESOLVED that the Resolution Designating the 2015 Meeting Place and Posting Location be and hereby is approved as presented.

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

2015 Operations Agreements – Ms. Isom discussed her board action request regarding the District’s 2015 Operations Agreements with the Authority and Town of Minturn, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference. Ms. Brooks discussed the budgets for Vail water, wastewater, and the Authority water funds, a summary of which is attached hereto as Exhibit D and incorporated herein by this reference. She noted that the funds are operated and tracked separately, although there is interaction at times. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED to approve the 2015 Operations Agreement with the Authority as presented; and

BE IT FURTHER RESOLVED to approve the 2015 Operations Agreement with the Town of Minturn as presented.

Committees Review – The Board reviewed its committee membership, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. Director Simmons will replace Chairman Sackbauer on the Organizational Performance Committee.

STRATEGY ITEMS

Ms. Brooks noted a new effort by staff to present policies to the Board, which will facilitate discussion and allow staff to understand the Board’s position on various issues. Ms. Brooks clarified that policies are made and modified at the Board’s discretion; they serve as direction for staff.

Amendment to Water Dedication Policy – Ms. Brooks presented a board action request and related water dedication policy amendment, copies of which are attached hereto as Exhibits F and G, respectively, and incorporated herein by this reference. She noted that any new development within the District’s service area must dedicate water rights or pay a cash-in-lieu fee sufficient to cover the proposed water use. District consultants calculate the amount of needed water based on a water demand worksheet, the expense for which is paid by the
applicant. The final amount is 120% of the estimated water needed and includes a 20% safety factor in case the development uses more water than estimated. Ms. Brooks reminded Directors of the water demand management plan approved in 2014 to reduce excessive demand on the system. She noted the water demand worksheet for cash-in-lieu calculation sometimes overestimates the amount of water needed for a development, especially in the case of high-density developments, which tend to use much less water per SFE than large single-family homes. The proposed amendment to the Water Dedication Policy allows for an alternate method for calculating cash-in-lieu of water rights dedication fees with a smaller safety factor if the development can demonstrate lower water use. This new calculation method was used in three District and Authority pilot projects with positive results. Notwithstanding, Mr. Porzak emphasized that the norm will still be to base the water dedication and cash in lieu fee on 120% of the estimated water need absent compelling evidence to support a lower safety factor. Moreover, the final decision as to whether to reduce the water dedication or cash in lieu fee to an amount less than 120% is still up to the Board’s discretion and will be considered on a case by case basis.

**Water Services Agreement Policy** – Ms. Brooks also discussed her board action request and proposed Water Services Agreement policy, copies of which are attached hereto as Exhibits H and I, respectively, and incorporated herein by this reference. She noted that the policy would be used in conjunction with the amended water dedication policy. If the alternate calculation method for cash-in-lieu is used and approved by the Board, a Water Services Agreement policy will be executed with the developer and recorded against the property, limiting the development to only the water for which it paid. In response to a question, Ms. Brooks clarified that the new policy is intended to increase customer accountability; address excessive use; get certainty of the amount of water the District agrees to serve; better understand the amount of District unallocated water; and demonstrate that the District is proactively managing it system water demands. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Water Dedication Policy amendment be and hereby is approved as presented; and

**BE IT FURTHER RESOLVED** that the Water Services Agreement Policy be and hereby is approved as presented.
Plant Investment Fee Study Update – Mr. Cowles updated the Board on the study, which will help the Board set appropriate fees to cover the cost of replacing existing infrastructure and assets. The plant investment fee (PIF), also known as a tap fee, is the charge to a customer when they connect to the District’s system. Most of the work is being completed internally, and a consultant will be utilized to help communicate these changes to customers once the fees are agreed upon. In response to a question, Ms. Brooks said if tap fees have increased since the time a customer originally paid and when the system is actually tapped, the customer must pay the difference. Tap fees generally increase 3% annually. A similar study for the Authority is close to completion.

The Board took a short recess for lunch at 12:10 p.m. The meeting resumed at 12:30 p.m.

REPORT BY WATER COUNSEL

Federal Water Right Directives and Status of Negotiations – Mr. Porzak discussed the impacts of the Forest Service’s three proposed mandates on the Authority and District’s water rights. He also discussed a clause that was presented to the Forest Service on behalf of potentially affected water users, a copy of which is attached hereto as Exhibit J and incorporated herein by this reference. Mr. Porzak noted the three mandates Forest Service directives as currently drafted cover all water: onsite, offsite, groundwater, surface water, and storage water.

State Legislation – Mr. Porzak presented the latest draft of the state legislation, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference. The legislation was introduced by Sen. Sonnenberg, who said this was his first priority during the legislative session. Mr. Porzak noted the bill would codify existing water law and deem actions such as the current directives an administrative taking. A detailed description of the Sonnenberg bill is attached as Exhibit L and incorporated herein by this reference.

State Water Plan Update – Mr. Porzak said the Colorado Water Conservation Board received many comments on the draft plan, including the joint letter from the District and Authority, which noted that the plan lacked substance. Mr. Porzak discussed the plan’s indication that future transmountain diversions to the East Slope are still being considered to meet Front Range water demand. He noted this could put Colorado’s Compact Compliance at risk, as the wet years enhance the rolling average of water delivered to the lower basin states.

Shoshone Acquisition – Mr. Porzak expects to give a preliminary report to the Board in March.
Eagel Park Reservoir Water Quality – Mr. Porzak noted a report from Leonard Rice Engineers discussing elevated levels of molybdenum in the monitoring well above Eagle Park Reservoir. Staff and consultants will closely monitor this, especially in light of Climax’s upcoming request to the state for a 1000% increase in the molybdenum standards in streams near the Climax Mine.

Water Rights Appraisal – Mr. Porzak discussed the District’s most recent water rights appraisal, a copy of which is attached hereto as Exhibit M and incorporated herein by this reference. The rights total $40,430,776 but are not included on the District’s balance sheet; however, the appraisal supports the value of the District’s water and supports the cash-in-lieu fees.

REPORT BY LEGAL COUNSEL

Legal Counsel Update – Mr. Collins noted staff is working on audit completion and preparing for the wastewater bond issue, which should be complete before interest rates rise. A settlement was reached with Solaris regarding relocation of a sewer line.

Operations Facility Site – Mr. Collins and Mr. Fessenden discussed staff’s determination that the eastern portion of the Avon Wastewater Treatment Facility is the best site for a new operations facility. An engineer is reviewing the site and associated documents to ensure there are no encroachments or other issues.

REPORT BY GENERAL MANAGER

West Slope Basin Roundtable Meeting Update – Ms. Brooks discussed the December 18 meeting, which fell short of its goal of achieving West Slope consensus on the Colorado Water Plan. She noted good discussion, however, and the formation of committees to meet outside of the larger group to align the four basins’ conservation goals. Another meeting is scheduled for February 2.

Colorado Water Congress Update – Ms. Brooks noted the Colorado Water Congress (CWC) annual convention is January 28 – 30 in Denver. She said the Colorado Water Plan would be a main topic of discussion; Gov. Hickenlooper will be the keynote speaker at the event.

REPORT BY DIRECTOR OF OPERATIONS

Mr. Fessenden presented his report, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference.
Fire Hydrant Maintenance Plan – Mr. Fessenden discussed his memo regarding fire hydrant maintenance, a copy of which is attached hereto as Exhibit O and incorporated herein by this reference. The maintenance plan includes assistance from the two local fire departments. Staff is looking for other partners in hydrant clearing as well, especially during heavy snowfall situations.

Edwards Wastewater Treatment Facility Master Plan Project and Operations – Mr. Fessenden updated on the project, noting that the odor system addition would come online prior to the 2015 World Alpine Ski Championships (2015s). Staff has confirmed that installation will not disrupt the existing odor control system and has adjusted the project schedule accordingly. Mr. Fessenden also discussed major wastewater operational issues that occurred over the Christmas holiday. Staff quickly remedied very complex issues with no service interruptions and minimal odor issues. Because of this, staff is confident going into the 2015s.

Eagle Park Reservoir Company Quarterly Report – Mr. Fessenden discussed the Eagle Park Reservoir Company quarterly report.

Eagle River MOU Planning Update – Mr. Fessenden summarized six potential ERMOU projects undergoing further review by the planning group, including an Eagle Park Reservoir expansion and investigation of the proposed Whitney Creek Forebay.

REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT

Organizational Development Update – Mr. Fernandez noted staff was working on 2014 year-end reporting and wrapping up other related items. Managers’ 2015 work plans are also in progress, and manager reviews are ongoing. Mr. Fernandez also welcomed back Wastewater Manager Siri Roman, who had been on maternity leave.

COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

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

Colorado Water Plan Update – Ms. Johnson reported on the December 18 joint meeting of the four West Slope basin roundtables where the group discussed the Conceptual Agreement, among other topics. She said many opposed the Conceptual Agreement being included in the draft Plan as it is not an agreement, but rather “Seven Points” at the core of transmountain diversion discussions.
2015 Legislative Update – Ms. Johnson gave an overview of introduced bills relevant to
District interests and summarized ones that are expected in the 2015 legislative session.
She noted the District keeps abreast of developments through various channels.

EXECUTIVE SESSION
Mr. Collins requested the Board enter Executive Session to receive legal advice regarding pending
negotiations, 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. Upon motion duly made and
seconded, it was unanimously

RESOLVED to enter executive session at 1:25 p.m. to discuss attorney-client privileged
issues concerning personnel matters, 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.*

The regular meeting resumed at 1:45 p.m.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 1:46 p.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

__________________________________________
Tom Allender, Director

__________________________________________
Debbie Buckley, Secretary

__________________________________________
Stephen Friedman, Treasurer

__________________________________________
Kimberly Langmaid, Director

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Frederick P. Sackbauer IV, President/Chairman

__________________________________________
Bill Simmons, Director

__________________________________________
Paul Testwuide, 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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James P. Collins, General Counsel