

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:

Tom Allender
Debbie Buckley
Steve Friedman
Kim Langmaid
Bill Simmons
Frederick P. Sackbauer IV

The following Directors were absent and excused:

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:

<u>District Staff</u>	34	Melissa Mills McLoota
Linn Brooks	35	Glen Phelps
Becky Bultemeier	36	Siri Roman
Jason Cowles	37	Steve Segoe
Carol Dickman	38	Ed Trainer
Angelo Fernandez	39	<u>Consultants</u>
Todd Fessenden	40	Jim Collins, Collins Cockrel & Cole
Catherine Hayes	41	Glenn Porzak, Porzak Browning & Bushong LLP
Leslie Isom	42	<u>Public</u>
Diane Johnson	43	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.

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1 **Meeting Place and Posting Location** – Ms. Hayes presented a Resolution Designating the
2 2015 Meeting Place and Posting Location, a copy of which is attached hereto as **Exhibit A**
3 and incorporated herein by this reference. Upon motion duly made and seconded, it was
4 unanimously

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

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

9 **2015 Operations Agreements** – Ms. Isom discussed her board action request regarding the
10 District’s 2015 Operations Agreements with the Authority and Town of Minturn, a copy of
11 which is attached hereto as **Exhibit C** and incorporated herein by this reference. Ms. Brooks
12 discussed the budgets for Vail water, wastewater, and the Authority water funds, a summary
13 of which is attached hereto as **Exhibit D** and incorporated herein by this reference. She noted
14 that the funds are operated and tracked separately, although there is interaction at times. After
15 discussion and upon motion duly made and seconded, it was unanimously

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

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

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

23 **STRATEGY ITEMS**

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

27 **Amendment to Water Dedication Policy** – Ms. Brooks presented a board action request and
28 related water dedication policy amendment, copies of which are attached hereto as **Exhibits**
29 **F** and **G**, respectively, and incorporated herein by this reference. She noted that any new
30 development within the District’s service area must dedicate water rights or pay a cash-in-
31 lieu fee sufficient to cover the proposed water use. District consultants calculate the amount
32 of needed water based on a water demand worksheet, the expense for which is paid by the

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1 applicant. The final amount is 120% of the estimated water needed and includes a 20% safety
2 factor in case the development uses more water than estimated. Ms. Brooks reminded
3 Directors of the water demand management plan approved in 2014 to reduce excessive
4 demand on the system. She noted the water demand worksheet for cash-in-lieu calculation
5 sometimes overestimates the amount of water needed for a development, especially in the
6 case of high-density developments, which tend to use much less water per SFE than large
7 single-family homes. The proposed amendment to the Water Dedication Policy allows for an
8 alternate method for calculating cash-in-lieu of water rights dedication fees with a smaller
9 safety factor if the development can demonstrate lower water use. This new calculation
10 method was used in three District and Authority pilot projects with positive results.
11 Notwithstanding, Mr. Porzak emphasized that the norm will still be to base the water
12 dedication and cash in lieu fee on 120% of the estimated water need absent compelling
13 evidence to support a lower safety factor. Moreover, the final decision as to whether to
14 reduce the water dedication or cash in lieu fee to an amount less than 120% is still up to the
15 Board’s discretion and will be considered on a case by case basis.

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

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

30 **BE IT FURTHER RESOLVED** that the Water Services Agreement Policy be and
31 hereby is approved as presented.

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

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

11 **REPORT BY WATER COUNSEL**

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

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

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

31 **Shoshone Acquisition** – Mr. Porzak expects to give a preliminary report to the Board in March.

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1 **Eagle Park Reservoir Water Quality** – Mr. Porzak noted a report from Leonard Rice
2 Engineers discussing elevated levels of molybdenum in the monitoring well above Eagle
3 Park Reservoir. Staff and consultants will closely monitor this, especially in light of Climax’s
4 upcoming request to the state for a 1000% increase in the molybdenum standards in streams
5 near the Climax Mine.

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

11 **REPORT BY LEGAL COUNSEL**

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

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

19 **REPORT BY GENERAL MANAGER**

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

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

29 **REPORT BY DIRECTOR OF OPERATIONS**

30 Mr. Fessenden presented his report, a copy of which is attached hereto as **Exhibit N** and incorporated
31 herein by this reference.

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

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

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

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

19 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

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

24 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

27 **Colorado Water Plan Update** – Ms. Johnson reported on the December 18 joint meeting
28 of the four West Slope basin roundtables where the group discussed the Conceptual
29 Agreement, among other topics. She said many opposed the Conceptual Agreement being
30 included in the draft Plan as it is not an agreement, but rather “Seven Points” at the core
31 of transmountain diversion discussions.

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1 **2015 Legislative Update** – Ms. Johnson gave an overview of introduced bills relevant to
2 District interests and summarized ones that are expected in the 2015 legislative session.
3 She noted the District keeps abreast of developments through various channels.

4 **EXECUTIVE SESSION**

5 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding pending
6 negotiations, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as
7 the discussion would be entirely privileged attorney-client communications. Upon motion duly made and
8 seconded, it was unanimously

9 **RESOLVED** to enter executive session at 1:25 p.m. to discuss attorney-client privileged
10 issues concerning personnel matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
11 electronic record created as Mr. Collins opined the contents of the discussion would
12 contain privileged attorney-client communications.*

13 The regular meeting resumed at 1:45 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 1:46 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 **Tom Allender, Director**

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19 **Debbie Buckley, Secretary**

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23 **Stephen Friedman, Treasurer**

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27 **Kimberly Langmaid, Director**

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

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35 **Bill Simmons, Director**

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39 **Paul Testwuide, Director**

40 *The undersigned attorney for the applicable Executive Session affirms that the portion of the
41 discussion in Executive Session not recorded constituted privileged attorney-client communications.
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45 **James P. Collins, General Counsel**

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