

Eagle River Water & Sanitation District
Board of Directors Meeting
May 24, 2018
MINUTES

A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held May 24, 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, *outgoing Director District 2 director*
3 Dick Cleveland
4 Steve Coyer
5 Steve Friedman
6 George Gregory
7 Frederick P. Sackbauer IV, *outgoing Director District 1 director*
8 Bill Simmons
9 Brian Sipes
- 10 **Also in attendance were:**
- | | | |
|------------------------------|----|--|
| 11 <u>District Staff</u> | 26 | Nick Tessmer |
| 12 Linn Brooks | 27 | Brian Tracy |
| 13 Jason Cowles | 28 | James Wilkins |
| 14 Carol Dickman | 29 | Lizzie Williams |
| 15 Catherine Hayes | 30 | <u>Consultants</u> |
| 16 Diane Johnson | 31 | Jim Collins, Collins Cockrel & Cole |
| 17 Gusty Kanakis | 32 | Glenn Porzak, Porzak Browning & Bushong LLP |
| 18 Carter Keller | 33 | <u>Public</u> |
| 19 John McCaulley | 34 | Randy Fischer, Vail property owner |
| 20 Siri Roman | 35 | Paula Fischer, Vail property owner |
| 21 Sherry Raile | 36 | Konrad Oberlohr, Vail property owner |
| 22 Jeff Schneider | 37 | Dennis Scalise, Vail property owner |
| 23 Meghan Schultz | 38 | Rob Sperberg, Attorney for Randy and Paula Fischer |
| 24 Monique Stevens | | |
| 25 Bill Sullivan | | |

39 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

49 **CALL TO ORDER**

50 Acting Chair Friedman called the meeting to order at 11:30 a.m.

51 **INTRODUCTIONS**

52 Ms. Jones introduced customer service interns working on smart meter installation, Mses. Schultz,
53 Stevens, and Williams. Public attendees included those interested in the public hearing regarding the
54 claim of easement program. Outgoing Director Sackbauer discussed the accomplishments of Jay
55 Peterson, a former District board member who recently passed away. Ms. Brooks noted the District
56 recently received the Vail Valley Partnership's Actively Green Business of the Year Award. She
57 highlighted efforts of the District's Sustainability Committee in recent years that led to this award and
58 introduced members of the committee in attendance, including Mses. Hayes and Raile and Messrs.
59 Kanakis, Keller, Sullivan, Tessmer, and Tracy. Brooks also complimented Maureen Mulcahy, Amy

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1 Schweig, and Ms. Johnson, who have received excellent feedback as they present the draft Water
2 Efficiency Plan to local entities. At 11:36 a.m., Ms. Raile and Messrs. Kanakis, Keller, and Sullivan left the
3 meeting.

4 **ACTION ITEMS**

5 **Consideration of Minutes** – The minutes of the regular meeting of April 26, 2018, were considered.
6 Upon motion duly made and seconded, it was unanimously

7 **RESOLVED** that the minutes of the April 26, 2018, regular meeting be accepted and hereby are
8 approved as presented.

9 **Public Hearing: Intermountain Claim of Easements Project** – Ms. Peterson gave background on the
10 claim of easements program, which has been occurring throughout the District's service area for over a
11 decade and involves identifying sewer mains, water mains, and other District infrastructure that crosses
12 properties and for which the District has no formal platted or recorded easement. The project identifies
13 the easements, surveys the legal description, and a notice of claim of easement and the date and time of
14 a public hearing on the matter is then sent to the property owner. If approved by the Board following a
15 public hearing, a claim of easement is then recorded. Copies of the notice of public hearing and board
16 action request are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this
17 reference. A public hearing was opened at 11:42 a.m. Acting Chair Friedman called for public comment.
18 Mr. Sperberg introduced himself, representing property owners Mr. and Mrs. Fischer of 2636 Davos Trail
19 in Vail. Mr. Sperberg discussed his clients' view that there is no district infrastructure on their property.
20 Ms. Winn noted that district staff has a differing opinion with regard to the matter. Mr. Scalise, of 2617
21 Arosa Drive in Vail, also expressed concern with the claim of easement project. He also did not believe
22 there is a sewer main on his property and felt he was owed compensation for the land upon which the
23 District is claiming an easement, especially since he did construction in the proposed easement area. In
24 response to a question, Ms. Winn clarified the easement signatory would be the District, not the property
25 owner. Discussion ensued regarding the notification process for the claim of easements project, whether
26 the District's easement and encroachment requirements align with the town of Vail's, and that some
27 easements in the Intermountain area predate its inclusion into the town boundaries. After discussion and
28 upon motion duly made and seconded, it was unanimously

29 **RESOLVED** that the proposed easements for 2636 Davos Trail in Vail and 2617 Arosa Drive in
30 Vail, be and hereby are tabled to the June 28 board meeting; and

31 **FURTHER RESOLVED** that the claim of the eight other Intermountain easements be and hereby
32 is approved as presented.

33 Mr. and Mrs. Fischer, Mr. Oberlohr, Mr. Scalise, and Mr. Sperberg left the meeting at 12:14 p.m.

34 **Resolution to Sell 96 Stratton Circle** – Mr. Wilkins discussed his board action request regarding an
35 employee's request to purchase 96 Stratton Circle in Gypsum, a copy of which is attached hereto as
36 **Exhibit C** and incorporated herein by this reference. Mr. Wilkins discussed the purchase price, which was
37 based on the appreciation model approved in 2016. He also noted the unit was deed-restricted with the

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1 District having first right of refusal to repurchase the home if the employee sells it, or if the employee
2 leaves the District. After discussion and upon motion duly made and seconded, it was unanimously
3 **RESOLVED** that the resolution to sell 96 Stratton Flats in Gypsum be and hereby is approved as
4 presented.

5 A copy of the resolution is attached hereto as **Exhibit D** and incorporated herein by this reference.
6 The board took a short recess for lunch at 12:19 p.m. The meeting resumed at 12:33 p.m.

7 **Dry-Year Management Policies** – Ms. Brooks discussed her memo regarding management and
8 operations during dry years, a copy of which is attached hereto as **Exhibit E** and incorporated herein by
9 this reference. The proposed policies were based on the lessons learned in 2012 and the Drought
10 Management Plan drafted following that drought. Ms. Johnson discussed precipitation figures at SNOTEL
11 sites during the past winter. Ms. Brooks and Ms. Johnson discussed the summer weather and
12 precipitation outlook, current streamflow conditions (including that local flows peaked on May 17), and
13 staff planning efforts for this dry year. Ms. Brooks said the current “dry year” conditions may be the new
14 “normal,” which was why staff was not calling such conditions “drought.” The Board discussed the dry-
15 year management policies to direct staff in managing fire risk and water supply in 2018, including
16 activating the incident command system. In response to a question, Mr. McCaulley reported about 25% of
17 all customers have smart meters, but he didn’t anticipate using such smart meters to issue water use
18 violations. Ms. Brooks also noted that dry-year messaging is being presented to local entities concurrently
19 with the Water Efficiency Plan. After discussion and upon motion duly made and seconded, it was
20 unanimously

21 **RESOLVED** that the dry-year management policies be and hereby are approved as presented.

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

24 STRATEGY ITEMS

25 Mr. Sackbauer left the meeting at 12:49 p.m.

26 **Director District 1 Vacancy Recommendation** – Directors Armour and Simmons (the
27 organizational development subcommittee) discussed the Director District 1 vacancy, for which
28 they interviewed two candidates – Rick Sackbauer and Timm Paxson. Directors Armour and
29 Simmons each discussed the qualifications of both candidates, as well as recommending their
30 preferred candidate for the open seat. Discussion ensued, and the board decided to invite Mr.
31 Sackbauer and Mr. Paxson to the June 28 board meeting so the full board could interview both
32 candidates. At Ms. Winn’s recommendation, the board kept its current slate of officers until the
33 June 28 meeting.

34 Mr. Armour left the meeting at 1:10 p.m.

35 **Board Member Input** – Acting chair Friedman called for public comment and there was none.
36

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GENERAL MANAGER REPORT

Ms. Brooks presented the General Manager report, a copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit H** and incorporated herein by this reference.

Hahnwald Barn Update – Ms. Brooks said the town of Avon was concerned about inclement weather affecting the barn removal deadline, which is spring 2019. The town originally planned to dismantle the barn in fall 2018 and store it until spring, but such storage was determined to be cost prohibitive. Ms. Roman confirmed the barn property was not needed in spring 2019, so some flexibility could be accommodated if weather is uncooperative.

July Joint Meeting – The board agreed to hold a joint meeting with the District board on July 26 to discuss the Eagle River MOU and proposed Eagle Park Reservoir enlargement project.

Water Releases for GoPro Games – Ms. Brooks gave background on a request for a water release for the GoPro Games in Vail from the Vail Valley Foundation. Though the District and Authority have not released their water to prop up streamflows for this event, they have helped Vail Resorts to release its Homestake water in the past. Staff can again assist with this if needed, and the board reaffirmed its position that none of its Black Lakes or Homestake water will be released for this purpose. Discussion ensued regarding water releases in general; Ms. Brooks said the full amount released from a reservoir does not show up downstream due to attenuation; the source from which the water is released also affects the percentage of the released water that actually makes it to downstream locations.

Stillwater Groundbreaking – Ms. Johnson said the Stillwater Groundbreaking was planned for Friday, June 1 at the construction site in West Edwards. Invitations for this District employee housing development will be sent out later in the day.

FINANCE REPORT

Quarterly Financial Report – Mr. Wilkins presented the quarterly financial report, a copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. He noted District water sales were slightly lower than projected, perhaps due to lower skier visits during the winter. Mr. Wilkins also pointed out improved budgeting and spending projections by the CIP department, which have greatly improved financial planning efforts.

Authority Budget Amendment – Mr. Wilkins discussed his request and supporting documentation regarding an amendment to the Authority's 2017 budget, a copy of which was included as an FYI to the District; it is attached hereto as **Exhibit J** and incorporated herein by this reference. Mr. Wilkins explained the need for the amendment, as the amount of District staff time and expenditures for Authority-related items exceeded budgeted amounts. Authority spending on other items was largely under budget, so the overall discrepancy is around \$65,000. However, the District will receive a payment of roughly \$875,000 from the Authority, so Mr. Wilkins wanted the board to be aware of the reasoning. Mr. Wilkins said the annual contracted

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1 amount the Authority pays to the District has not been updated since 2014; staff will take a closer
2 look at this as the 2019 budgets are prepared.

3 **OPERATIONS REPORT**

4 The operations report was presented, a copy of which is attached hereto as **Exhibit K** and incorporated
5 herein by this reference.

6 **ENGINEERING REPORT**

7 Mr. Cowles noted he did not include a written report in the packets.

8 **Update on District Sewer Projects** – Mr. Schneider discussed various high-impact sewer
9 projects with the board. He noted the West Vail sewer main improvements project required
10 single-lane traffic and the installation of a traffic light on the South Frontage Road west of the
11 West Vail roundabout for the duration of the first phase of the two-phase project. The subsequent
12 phase will occur east of the West Vail roundabout on the South Frontage Road and be more
13 disruptive to traffic and include digging through a private parking lot, for which an easement is in
14 place. Ms. Brooks noted the high level of planning, communication, and detail the project required
15 and was impressed with staff's efforts. In response to a question, Ms. Brooks noted the District
16 would replace "like" with "like" regarding the private parking lot. Mr. Schneider also discussed the
17 Bridge Road Sewer project, which is being done in partnership with the town of Vail, to reroute a
18 District sewer main. Mr. Schneider said a few days ago, a contractor found diesel fuel in the soil,
19 which was excavated according to best management practices, as it was approximately 30' from
20 Gore Creek. CDOT is responsible for the mitigation costs.

21 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

24 **GENERAL COUNSEL REPORT**

25 **Traer Creek Update** – Ms. Winn, attending in place of general counsel Jim Collins, said Traer Creek had
26 complied with additional revisions requested by the District and Authority for water and sewer easements.

27 **WATER COUNSEL REPORT**

28 **Water Rights Appraisal** – Mr. Porzak discussed the most recent District water rights appraisal, a copy of
29 which is attached hereto as **Exhibit M** and incorporated herein by this reference. The appraisal is
30 included annually as an exhibit to the audit. The District's water rights portfolio is worth an estimated \$54
31 million. Combined with the Authority, the two entities have over \$100 million in water rights.

32 At 1:40 p.m., Mses. Stevens, Schultz, Williams, and Mr. Schneider left the meeting.

33 **EXECUTIVE SESSION**

34 Ms. Winn requested the Board enter Executive Session to receive legal advice regarding the Intermountain
35 Claim of Easement project, real estate matters, and Wolcott, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.

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1 He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client
2 communications. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to enter executive session at 1:42 p.m. to discuss attorney-client privileged
4 issues concerning Intermountain Claim of Easement project, real estate matters, and Wolcott,
5 pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Ms. Winn
6 opined the contents of the discussion would contain privileged attorney-client
7 communications.*

8 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle
9 River MOU, Bolts Lake, Black Lakes, CRCA matters, and water service notice, pursuant to §24-6-
10 402(4)(b) and (f), C.R.S. He asked that no electronic record be made, as the discussion would be entirely
11 privileged attorney-client. Upon motion duly made and seconded, it was unanimously

12 **RESOLVED** to continue Executive Session at 2:04 p.m. to discuss attorney-client privileged
13 issues concerning Eagle River MOU, Bolts Lake, Black Lakes, CRCA matters, and water
14 service notice, pursuant to §24-6-402(4)(b) and (f) C.R.S. with no electronic record created
15 as Mr. Porzak opined the contents of the discussion would contain privileged attorney-client
16 communications.*

17 The regular meeting resumed at 2:37 p.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 2:38 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 **Dick Cleveland, 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 **Bill Simmons, Director**

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35 **Brian Sipes, Director**

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

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43 _____
44 **Kathryn Winn, General Counsel**

45 _____
Glenn Porzak, Water Counsel