A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 23, 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. Steve Friedman
3. Kim Langmaid
4. Bill Simmons
5. Frederick P. Sackbauer IV
6. Paul Testwuide

The following Director was absent and excused:

7. Debbie Buckley

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 (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. 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 Director for the Authority, and on the Boards of 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
Jason Cowles
Leah Cribari
Carol Dickman
Angelo Fernandez
Todd Fessenden
Catherine Hayes
Leslie Isom
Diane Johnson
Melisa Marts
Melissa Mills McLoota
Siri Roman
Ed Trainer
James Wilkins
Consultants
Jim Collins, Collins Cockrel & Cole
Glenn Porzak, Porzak Browning & Bushong LLP
Bob Weaver, Leonard Rice Engineers
Public
Kristen Bertuglia, town of Vail
Susie Kincade, Coalition of Wilderness Advocates
Seth Mason, Lotic Hydrological

CALL TO ORDER

Chairman Sackbauer called the meeting to order at 11:10 a.m.

PUBLIC COMMENT

Ms. Kincade spoke on behalf of the Coalition of Wilderness Advocates, noting her interest in working with the District and Authority on policy and local wilderness designations. She offered a field trip or flyover of proposed wilderness areas for interested Board members.

GENERAL MANAGERS REPORT

Ms. Brooks discussed the General Managers Report, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.
ACTION ITEMS

Meeting Minutes – The minutes of the Regular Meeting of June 25, 2015, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the June 25, 2015, Regular Meeting be accepted and hereby are approved as presented.

Mobile Pumping Equipment – Mr. Fessenden presented a board action request form and related information regarding the purchase of mobile pumping equipment, copies of which are attached hereto as Exhibit B and incorporated herein by this reference. He said the equipment would be custom made for the District and Authority system with a lead time of up to a year, thus the need for approval of the expenditure prior to adoption of the 2016 budget. Purchasing the equipment will be more cost effective than renting, and it will provide systemwide redundancy. It will also be used for upcoming projects, including the Mountain Star booster pump station upgrade, for which the District would charge the Authority a usage fee. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED that the allocation of $300,000 from the general fund and purchase of mobile pumping equipment be and hereby are approved as presented.

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

STRATEGY ITEMS

Wilderness Process Plan – Ms. Brooks suggested forming a joint Board committee to discuss wilderness policy and work with staff and consultants to ultimately recommend direction to the Board. She noted the complex background information to consider and recommended the Board take its time on a thorough review to arrive at a defensible policy. Ms. Brooks suggested a policy recommendation for the full Board was unlikely to be ready until at least the September Board meeting. Treasurer Friedman and Director Langmaid volunteered to serve on the joint committee along with Authority representatives Chairman Gregory and Director Woodworth.

Updated Nutrient Information and MMI Scores – Ms. Roman and Mr. Weaver presented information regarding results of the latest sampling in Gore Creek and the Eagle River. This is the sixth year of the study that monitors bug populations in the streams; the results indicate the health of the river at the designated sampling sites. Mr. Weaver said he continues to observe mostly failing scores along Gore Creek and noted poor scores at many sample sites along the Eagle River as well. He also discussed proposed changes to the state’s 303(d) list of impaired streams; he is reviewing the changes and will respond to the state accordingly, as data does not appear to support some of the proposed revisions. In response to a question, Mr. Weaver noted that the town of Vail took the lead in Gore Creek improvements through its Water Quality Improvement Plan and ongoing efforts to implement a Strategic Action Plan. Similar work is needed for the Eagle River. Mr. Weaver also noted that the District is the
Eagle River Water & Sanitation District

only point source discharger in the area, so more stringent standards could be imposed on the District if
upstream water quality impacts are not addressed.
The Board took a short recess for lunch at 12:13 p.m. The regular meeting resumed at 12:25 p.m.

FINANCE REPORT

June Water Sales – Mr. Wilkins discussed the May water sales report, a copy of which is attached
hereto as Exhibit D and incorporated herein by this reference. He noted the District’s actual May and
June sales were 5% and 15% below projections, respectively, likely due to the wet weather. Mr. Wilkins
said he is modeling to determine how lower projections throughout the summer could affect revenue,
debt service, and TABOR enterprise status, among other items. He is also determining which usage
tiers are being most affected by the lower sales. Ms. Brooks noted the District’s shift to base fees in
recent years, which should somewhat insulate revenue from weather-related fluctuations. Discussion
ensued regarding whether the shift to base rates is equitable for all ratepayers. Ms. Brooks also noted
the District’s robust fund balance, which serves as a buffer against lower water sales. Mr. Wilkins will
continue to monitor the situation and report back to the Board with revenue models in August.

OPERATIONS REPORT

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

Traer Creek Tank Update – Mr. Fessenden updated on the Traer Creek Tank failure. He noted a
forensic engineer was hired, and walls are being shored up to minimize damage due to floor
settlement and lack of support.

ERMOU Projects Status Update – Mr. Fessenden discussed the Eagle River Memorandum of
Understanding (ERMOU) Phase 1 study, which looked at various in-basin storage options, the
most viable of which appear to be the Eagle Park Reservoir expansion and the Whitney Creek
Forebay. He noted Eagle Park Reservoir Company (EPRC) budgeted funds for the current
proposal on behalf of the Authority and District. Current cost estimates are roughly $318,000, with
EPRC covering a fourth of the cost. In response to a question, Ms. Brooks said staff apprises the
town of Minturn of developments regarding the ERMOU projects, but the town’s involvement has
been minimal. She also noted much groundwork is complete regarding Bolts Lake, which is why it
was included in the list of feasible ERMOU projects.

Eagle Mine Tour – Mr. Fessenden reminded Directors of an upcoming tour of the Eagle Mine.
Though the tour is full, he suggested interested Directors contact the Eagle River Watershed
Council to be put on a waitlist.

Edwards Wastewater Treatment Facility Project Update – Mr. Fessenden reported on the
project, which is progressing on time and on budget. Staff continues to work with the contractor
on a change order request. Mr. Fessenden noted a theft of tools occurred at the construction site
the past weekend, and other similar burglaries were reported in the valley.
ORGANIZATIONAL DEVELOPMENT REPORT

Mr. Fernandez presented his report, a copy of which is attached hereto as Exhibit F and incorporated herein by this reference.

Water Demand Management – Mr. Fernandez discussed recent articles in the Special District Association’s July newsletter, copies of which are attached hereto as Exhibit G and incorporated herein by this reference. The articles highlighted Ms. Brooks and information on District water demand management efforts, including water service agreements to ensure properties are only using the water for which they paid.

Wild and Scenic Record of Decision – Mr. Fernandez reported that the US Forest Service and Bureau of Land Management issued a record of decision accepting the Alternate Management Plan for the Upper Colorado River segments 4 – 7. He said the Plan specifically references ERMOU projects and said Mr. Porzak worked diligently to ensure these were included.

COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

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

Gore Canyon Whitewater Park – Ms. Johnson said the grand opening celebration took place July 13 and included representatives from the Colorado Water Conservation Board (CWCB). The park was made possible, in part, due to agreements related to the Colorado River Cooperative Agreement. She said the CWCB supported the Gore Canyon Park and recently voted against a proposed Glenwood Springs park at an administrative hearing.

Drinking Fountains – Ms. Johnson mentioned a recent article that addresses long-term changes in the public perception of America’s water supply. District employees regularly engage people at the Vail Farmers’ Market in discussions of this nature and work to convey the stringent standards to which water providers are held.

REPORT BY GENERAL COUNSEL

Succession Planning – Mr. Collins discussed his succession plan, which he annually updates.

REPORT BY WATER COUNSEL

Colorado Water Plan Update – Mr. Porzak and Ms. Johnson discussed the second draft of the Plan. They highlighted policy information added to chapter 9, the action plan in chapter 10, and the ongoing discussion about the “7 points”/conceptual framework.” Mr. Porzak noted the goals of the action plan support in-basin reservoir development and align with District and Authority efforts in this area. The draft Plan also indicates opposition to Forest Service efforts to take ownership of water rights that originate or are used on Forest Service land, including Forest Service attempts to implement bypass flows. Mr. Porzak also said there was a disproportionate Plan focus on municipal conservation as such a small amount of water used falls into this category. Ms. Johnson referenced studies about the increasing efficiency of agricultural water use, which could result in farmers using more water as they increase crop yields. Mr. Porzak
emphasized the importance of continued work towards a Compact Water Bank, as lower basin
states involved in the Compact are taking steps to protect themselves. He also noted that as a
whole, the Colorado River Basin has a very small number of absolute water rights senior to the
Compact.

**Roaring Fork Club Supreme Court Decision** – Mr. Porzak discussed a recent Supreme Court
ruling regarding the Roaring Fork Club in Carbondale, a copy of which is attached hereto as
**Exhibit I** and incorporated herein by this reference. The Court ruled that the Club’s aesthetic,
recreational, and piscatorial water diversion is not a beneficial use. Mr. Porzak noted a number of
District and Authority decrees in which the above-referenced uses were considered beneficial. He
also clarified that the ruling did not apply to storage rights.

**Waters of the US (WOTUS) Revised Rules** – Mr. Porzak noted multiple lawsuits filed on behalf
of 26 states, including Colorado, in seven different federal courts regarding the revised WOTUS
rules. The new rules subject nearly every water source to Environmental Protection Agency
(EPA) regulations, posing a variety of potential issues. Messrs. Porzak and Weaver will discuss
this in more detail at the August Board meeting.

**State Legislation** – In response to a question, Mr. Porzak noted a bill was drafted to introduce
during the upcoming legislative session. This is an update to Senate Bill 64, which was killed in
the House during the last session. The draft bill will be discussed at the next board meeting.

**EXECUTIVE SESSION**
Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Shoshone
Acquisition, pursuant to §24-6-402(4)(a)(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 1:05 p.m. to discuss attorney-client privileged
issues concerning the Shoshone Acquisition, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.
with no electronic record created as Mr. Porzak opined the contents of the discussion would
contain privileged attorney-client communications.*

The regular meeting resumed at 2:03 p.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:04 p.m.

Respectfully submitted,

__________________________________________
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

__________________________________________
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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Glenn Porzak, Water Counsel