A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 21, 2016, at 12:00 p.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, via phone

The following Director was 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 also serves on the Board of the Upper Eagle Regional Water Authority (Authority). 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 and an alternate Director for the Authority. 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: Siri Roman, Brian Tracy, James Wilkins, Consultants, Jim Collins, Collins Cockrel & Cole, Glenn Porzak, Porzak Browning & Bushong LLP, Public
- Consultants: Chris Treese, Colorado River Water Conservation District
- Public: Susie Kincade, the Wilderness Coalition
- Staff: Linn Brooks, Jason Cowles, Carol Dickman, Catherine Hayes, Leslie Isom, Diane Johnson, Elena Jones, John McCaulley, Melissa Mills McLoota

CALL TO ORDER

Acting Chair Buckley called the meeting to order at 12:28 p.m.

INTRODUCTIONS

Public attendees, staff, and consultants introduced themselves.

WILDERNESS DISCUSSION

Mr. Porzak discussed work on the wilderness policy since the December meeting, including communications to interested parties made at the direction of the Board. Revisions to the policy included revisions requested by Messrs. Scott Braden and Scott Miller, who represented members of the environmental coalition. This language was also provided to Rep. Polis’s staff, from whom Mr. Porzak is awaiting feedback. Ms. Kincade said she would take this message of cooperation and collaboration back to her coalition. The Board thanked those involved, particularly Mr. Porzak, for getting the Boards to this point. Ms. Kincade left the meeting at 12:37 p.m.
PUBLIC HEARINGS

Irrigation Account Impact Fee – Mr. McCaulley and Ms. Jones discussed their board action request and associated joint resolution, copies of which are attached hereto as Exhibits A and B, respectively, and incorporated herein by this reference. The board opened a public hearing at 12:37 p.m. to discuss the proposed irrigation impact fee. The hearing was noticed on the Eagle River Water and Sanitation District website 30 days in advance of the meeting. No public comment was received, and the hearing was closed at 12:38 p.m. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED that the Irrigation Account Impact Fee be and hereby is approved as presented.

Cash in Lieu of Water Rights Fee Increase – The Board opened another public hearing at 12:39 p.m. to consider a cash in lieu of water rights fee increase of 5% for both winter storage water and summertime consumptive use credits, bringing the price for each to $26,250 and $8,300 per acre foot, respectively. An updated water dedication policy is attached hereto as Exhibit C and incorporated herein by this reference. No public comment was received and the public hearing was closed at 12:40 p.m. Mr. Porzak noted the increase is slightly higher than the Consumer Price Index (CPI) because the value of water is increasing more quickly than the CPI. He said ongoing engineering studies for the proposed ERMOU projects would be complete in the spring and provide good data for the 2017 cash in lieu fee increases. In response to a question, Mr. Porzak said he was certain the 5% increase was equitable, if not less than the actual value of the water. Mr. Treese noted the River District increases its cash in lieu fees each year up to CPI plus growth. Ms. Brooks noted that in the future, this fee increase would be done with the next year’s budget and be included in the Rules and Regulations Appendix A table of Rates and Fees. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED that the cash in lieu of water rights fee increase be and hereby is approved as presented.

ACTION ITEMS

Meeting Minutes – The minutes of the regular meeting of December 17, 2015, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the December 17, 2015, regular meeting be accepted and hereby are approved as presented.

Resolution regarding Meeting Place and Posting Location – Ms. Hayes presented a Resolution designating the Authority’s meeting place and posting location for 2016, a copy of which is attached hereto as Exhibit D and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously RESOLVED that the Resolution Designating Meeting Place and Posting Location be and hereby is approved as presented.

Election Resolution – Ms. Isom discussed her board action request and the resolution calling for a May 3, 2016, polling place election, copies of which are attached hereto as Exhibits E and F, respectively,
and incorporated herein by this reference. In response to a question, Ms. Isom said voters who wish to receive an absentee ballot can request one and can also request to be placed on a list to permanently receive absentee ballots. She noted that there was no requirement to hold a mail ballot election if the only item on the ballot is election of directors. Ms. Isom also confirmed that the District has historically held polling place elections in the absence of a TABOR question on the ballot. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Election Resolution be and hereby is approved as presented.

Gelvin Contract Renewal – Ms. Brooks discussed the 2016 services agreement with former general manager Dennis Gelvin, a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. She noted he was still working on the Authority tap fee study and Vail Golf Course easements project, both of which require his unique historical perspective and specific knowledge. In response to a question, Ms. Brooks said she expects these to be his final projects. Upon motion duly made and seconded, it was unanimously

RESOLVED that Dennis Gelvin’s 2016 Services Contract 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 H and incorporated herein by this reference.

GENERAL MANAGER REPORT

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

Rules and Regulations Amendments – Ms. Brooks explained administrative changes to the Rules and Regulations related to the Construction Review Process. The changes make the process more efficient and are beneficial to the developer. The Rules and Regulations board subcommittee reviewed the proposed changes and recommends approval. The Board tabled further discussion to the February meeting so the entire Board could review the proposed changes.

Current Alpine Engineering Contracts – Ms. Brooks discussed outstanding contracts with Alpine Engineering and said Alpine does tap fee calculations for the District on an as-needed basis. She also said Alpine is subcontracted to land planner Rick Pylman for work on the District’s Stillwater PUD employee housing project. She reminded the Board that her husband, Gary Brooks, is now a principal with Alpine, which is the reason for the disclosures.

Monthly Reports – Monthly reports were acknowledged, including the contract log, October meeting summary, and Authority and District committees list. Copies of the monthly reports are attached hereto as Exhibit J and incorporated herein by this reference.

Todd Fessenden’s Departure – In response to a question, Ms. Brooks said staff is working on delegating Mr. Fessenden’s duties and discussing needs with individual departments as well.

FINANCE REPORT
Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference. He noted December water sales were slightly higher than projected, while year-to-date sales were slightly lower than budgeted. These observations were likely due to high visitor numbers over the holidays and a very wet summer season, respectively. Mr. Wilkins also noted much higher-than-anticipated development impact fee revenues, a likely sign of the observed economic recovery locally. The Board questioned the disparity between the projected and actual development revenues and requested staff look more closely at how these projections are made for future budgets.

**Wastewater Bond Update** – Mr. Wilkins discussed the upcoming bond, issuance for which is anticipated in April 2016. A draft official statement should be completed next week and will be reviewed by management staff. Mr. Wilkins can send the draft statement to interested Board members as well.

**OPERATIONS REPORT**

Ms. Roman presented the operations report, a copy of which is attached hereto as **Exhibit L** and incorporated herein by this reference.

**Snow Storage Photos** – Chairman Sackbauer discussed snow storage near Gore Creek in various locations throughout Vail, some photos of which are included in the General Managers report. Ms. Roman and Ms. Langmaid both noted the issue is discussed in the Gore Creek Strategic Action Plan. Ms. Langmaid expects the Vail Town Council to review the plan at its next meeting, at which time suggestions can be made about prioritization of the various actions. She also suggested testing the snowpiles to see what kind of pollutants may be present. The Board agreed that the proximity of the piles to the stream is concerning and should be addressed.

**Avon Water Plant Generator Update** – Ms. Roman updated on a power failure at the plant and noted low coolant levels prevented the generators from powering on. The generators are serviced annually at which time coolant is filled; however, staff will add a sight glass and start checking the levels more frequently to prevent this issue in the future.

**Avon Ammonia Exceedance** – Ms. Roman discussed an ammonia exceedance at the Avon Wastewater Treatment Plant in January. As soon as the mistake was realized, treatment processes were immediately adjusted; staff is implementing a plan to ensure this does not happen again, hosting additional staff trainings, and adding an alarm on SCADA. The exceedance was a violation of the District’s permit and will be reported to the state on the January Discharge Monitoring Report.

**Streamside Marriott Pretreatment Application** – Ms. Roman said the Marriott is having corrosion issues in its copper pipes and applied for a pretreatment application to add phosphorous to the water to mitigate future pinholes in the pipes. The District denied its application and will instead work with the Marriott on the corrosion issues, which are complicated.
Nutrient Grant Closeout – Ms. Roman reminded Directors of the $1.32M grant received from the Colorado Department of Public Health and Environment (CDPHE) for projects related to compliance with nutrient regulations for phosphorous and nitrogen. A letter closing out the grant is attached hereto as Exhibit M and incorporated herein by this reference.

Avon Heat Recovery System Tour – Ms. Roman noted a recent tour of the system with Denver Metro Wastewater, which is considering a similar project to heat the National Western Stock Show building. She said the attendees were very complimentary of the innovative system, which was installed in 2010 as a joint project with the Town of Avon.

EPRC Quarterly Report – Mr. Tracy discussed the Eagle Park Reservoir Company Quarterly report and noted a quarterly meeting scheduled for Jan. 26. Mr. Porzak noted he and Director Testwuide would give a presentation on the history of Eagle Park Reservoir and that interested staff members were welcome to attend.

Eagle Mine Update – Mr. Tracy discussed the Mine and the low risk of a Gold King Mine-type spill occurring there. The Mine tunnels are collapsed, so staff relies on instrumentation to monitor the bulkhead water levels. Ms. Brooks noted the area behind the bulkheads is constantly dewatered and treated at the Mine. Mr. Tracy said the District and Authority keep continuous pressure on Mine staff to ensure proper sampling and maintenance there. He also noted the existence of thousands of similar mines in Colorado and said it is rare to have a responsible party, as Eagle Mine does with CBS as its owner.

ERMU Issues – Mr. Porzak suggested Director Allender be the Board’s point person on Eagle River MOU issues.

Microbeads Ban – Ms. Johnson said the federal Microbead-Free Waters Act of 2015 was signed Dec. 28. The new law phases out the manufacture of personal care products containing plastic microbeads by July 1, 2017, and the sale of such products by July 1, 2018. The federal law takes effect sooner than a similar Colorado law that was signed in March 2015, which phased out microbeads by Jan. 1, 2020. Microbeads end up as wastewater sludge or pass through the treatment process into waterways where they enter the food chain when eaten by fish.

Rain Barrel Legislation – Ms. Johnson said House Bill 16-1005 is this year’s iteration of rain barrel legislation. The bill would allow homeowners to collect some of the rainwater on their property, which is currently prohibited by Colorado water law. The overall effect of the legislation is small for each homeowner; however, it builds awareness of water issues and the need to use...
water efficiently. The board agreed the District could again appear on the proponents list of
supporters.

**Building a Better Colorado** – Ms. Johnson discussed the project, which is gathering statewide
input on how Colorado might improve its initiative process, election process, and fiscal policy. The
latest community meeting was held Jan. 14 in Vail and all meeting results are online. Legislation
or a ballot question is likely to result from the effort.

**Community Engagement** – Ms. Johnson informed directors about Eagle County’s “community
conversations” series, an offer by the Vail Valley Medical Center to host a tour of their facilities,
and the March 8 town of Vail annual community meeting.

**REPORT BY GENERAL COUNSEL**

**Traer Creek Tank Failure** – Mr. Collins and Mr. Cowles reported on the tank failure. Traer Creek
has denied responsibility for the tank failure and believes it has met the conditions of the warranty
obligation. The Authority disagreed and sent a Notice of Default to Traer Creek and is ready to
commence replacement or reconstruction of the tank should Traer Creek fail to cure its default.
Mr. Cowles discussed the various “layers” of tank storage required by American Waterworks
Association Regulations as well as the needed equalization storage for the Authority as a whole,
as calculated by SGM in 2009. He also discussed Authority-wide operational issues now that the
tank is offline. The EagleVail tank is nearing the end of its useful life but cannot be taken offline
for replacement without the Traer Creek tank being online. New development in Traer Creek,
Eagle Vail, Avon, and Beaver Creek will be limited without access to the water and additional
SFEs provided by the Traer Creek tank. In addition, the impact of the Traer Creek Tank has been
to remove storage: the Authority is serving 300 SFEs in Traer Creek that were contingent upon a
functioning tank in that area, as was the Authority’s modifications to the Avon 1 Tank, which
removed 500,000 gallons from the system to facilitate water service to Buffalo Ridge.

**Review of Copier Contract Bidding Process** – Mr. Collins noted the engagement of Paul
Backes of McMahan and Associates to review the bidding process and bids received for the
District’s recent copier contract RFP, which resulted in changing vendors for copier service.

**Hahnewald Barn Update** – Mr. Collins said a conference call regarding the barn was set for
Tuesday. It appears that Ms. Nottingham-Underwood has transferred authority for this project to
Sarah Smith Hymes of the Avon Council. The call will focus on the physical structure, as the
historical nature of the barn has previously been well established.

**REPORT BY WATER COUNSEL**

**Federal Water Right Directives** – Mr. Porzak discussed three Forest Service directives,
including recent changes to the ski area water rights clause, asking ski areas to inventory their
water rights necessary for sufficient operations and have such inventory certified by an expert;
the rights would then potentially be encumbered. Related materials are attached hereto as
Exhibit O and incorporated herein by this reference. He also discussed the release of a 1,300 page BMP directive technical manual right before Thanksgiving and the short review deadline. The technical manual is heavily referenced in the BMP directive; Vail Resorts sent a comment letter requesting all references to the technical manual be deleted from the directive first, as it was never officially noticed in the Federal Register and because of the insufficient review time for the technical manual. Mr. Porzak also said the groundwater directive had been withdrawn, but he expects another revised version will be issued in the future.

Federal Legislation Update – Mr. Porzak noted a letter was issued on behalf of the District and Authority and signed by Ms. Brooks, reaffirming the entities’ support for the legislation.

State Legislation Update – Mr. Porzak said the Colorado Water Rights Protection Act was introduced by the legislature the previous day and was assigned to the House Agriculture Committee. He will continue to monitor the status of this bill. Related materials are attached hereto as Exhibit P and incorporated herein by this reference.

Support of Bolts Ditch Legislation – Mr. Porzak discussed a letter and supporting documents related to Bolts Ditch legislation, copies of which are attached hereto as Exhibit Q and incorporated herein by this reference. Bolts Ditch was inadvertently included in the boundaries of the Holy Cross Wilderness. Minturn’s efforts to gain continued access to the site have been denied by the Forest Service. The Board agreed to sign the letter of support to Rep. Polis regarding legislation that would allow Minturn’s continued access to Bolts Ditch.

Minturn’s Option for Eagle Park Reservoir Water – Mr. Porzak reminded the Board of Minturn’s agreement to receive up to 50 acre-feet of Eagle Park water, for which they pay the District annually.

Diligence/Absolute Application for Vail Whitewater Park – Mr. Porzak discussed the application, a copy of which is attached hereto as Exhibit R and incorporated herein by this reference. This would make all but a small portion of the water absolute. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED to approve filing of the Application to make Conditional Rights Absolute for the Vail Whitewater Park.

Pre-Compact Water Storage Project – Mr. Porzak discussed a recent meeting with Colorado Water Conservation Board Director James Eklund. Mr. Eklund said the state generally supports the project, which aligns with many goals of the Colorado Water Plan. Mr. Eklund is scheduling a meeting with interested parties, all of whom previously participated in a Wolcott Reservoir feasibility study. Mr. Porzak will continue to participate in meetings and update the Board on progress. At a minimum, he hopes to at least move forward with a pilot project.

Colorado River Cooperative Agreement Cost Sharing Agreement – Mr. Porzak discussed the common interest cost sharing agreement, which was part of the Colorado River Cooperative Agreement
Eagle River Water & Sanitation District

(CRCA). The District originally contributed $13,333 and that bill is coming due. Additionally, a proposed amendment would add additional parties to the agreement and also increase the budget for the project. The Board directed Mr. Porzak to sign the updated agreement on its behalf and authorized an additional contribution to the project cost, not to exceed $15,000.

All staff except Ms. Brooks, Ms. Isom, and Ms. Johnson left the meeting at 2:45 p.m.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Colorado River Cooperative Agreement matters 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 2:46 p.m. to discuss attorney-client privileged issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-402(4)(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.*

All staff reentered the room at 3:10 p.m.

Mr. Collins requested the Board continue Executive Session to receive legal advice regarding a real estate matter, pursuant to §24-6-402(4)(f) 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 3:11 p.m. to discuss attorney-client privileged issues concerning a real estate matter, pursuant to §24-6-402(4)(f) C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion would contain privileged attorney-client communications.*

All staff besides Ms. Brooks and Ms. Isom left the room at 3:15 p.m.

Mr. Collins requested the Board continue Executive Session to receive legal advice regarding a personnel matter, pursuant to §24-6-402(4)(f) 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 continue executive session at 3:16 p.m. to discuss attorney-client privileged issues concerning personnel matter, pursuant to §24-6-402(4)(f) 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 3:19 p.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:20 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.

________________________________________
Glenn Porzak, Water Counsel

________________________________________
Jim Collins, General Counsel