A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held February 23, 2017, 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

The following Directors were present, thereby constituting a quorum:

1. Tom Allender
2. Steve Coyer
3. Steve Friedman
4. George Gregory
5. Bill Simmons
6. Frederick P. Sackbauer IV

Also in attendance were:

7. District Staff
8. Linn Brooks
9. Jason Cowles
10. Carol Dickman
11. Catherine Hayes
12. Diane Johnson
13. John McCaulley
14. Siri Roman
15. Micah Schuette
16. Amy Schweig
17. James Wilkins
18. Consultants
20. Glenn Porzak, Porzak Browning & Bushong LLP

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 and Gregory disclosed that they also serve on the Board of the Upper Eagle Regional Water Authority (Authority).
- Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other ski areas.
- Director Friedman serves on the Boards of the Beaver Creek Metropolitan District and the Vail Valley Foundation.
- Director Gregory also serves on the board of the Berry Creek Metropolitan District and occasionally undertakes development and construction activities within the District and Authority service areas. 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 Authority Director, and serves on the board of the Edwards Metropolitan District.

CALL TO ORDER

Chair Sackbauer called the meeting to order at 11:30 a.m.

INTRODUCTIONS

Ms. Johnson introduced Ms. Schweig, the new Community Relations Assistant.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of January 26, 2017, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the January 26, 2017, regular meeting be accepted and hereby are approved as amended.

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

STRATEGY ITEMS

Director District 2 Vacancy – Directors Coyer and Simmons reported on the recent interviews they held for the vacancy in Director District 2 created by Paul Testwuide’s resignation after he moved out of the district. The board discussed the upcoming 2018 election, in which five seats
will be up for election. After discussion and upon motion duly made and seconded, it was
unanimously
RESOLVED that Bob Armour be and hereby is appointed to fill the Director District 2
vacancy. He will serve until 2018, at which time, he can run for the remaining two years
of the term. An oath of office and notice of appointment are attached hereto as Exhibits
B and C, respectively, and incorporated herein by this reference.

March Joint Meeting – The Board agreed to hold a joint meeting with the Authority Board on
March 23 at the recommendation of Chair Sackbauer and Authority Chair Gregory. John Currier
of the Colorado River District will present information on the Homestake Project and Eagle River
MOU matters. Mr. Cowles and consultant Bob Weaver will also present related information.

GENERAL MANAGER REPORT
Ms. Brooks presented her report, a copy of which is attached hereto as Exhibit D and incorporated
herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as
Exhibit E and incorporated herein by this reference.

Uniformity Program – In response to a question, Ms. Brooks discussed the Uniformity Program,
which has been underway for several years in the Customer Service department. When
properties are bought, sold, or undergo major improvements, customer service specialists
conduct audits to ensure the proper tap fees and base rates are associated with the property.
Discussion ensued regarding the purpose of the program and affected customers. Mr. McCaulley
entered the meeting at 11:46 a.m. and offered to address the topic more fully at a subsequent
meeting.

FINANCE REPORT
Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit F and
incorporated herein by this reference. He noted changes to water sales projections, including use of a
five-year historical distribution model, and efforts to compare past water sales with weather patterns in
those years. He also discussed the unaudited year-end financials and ongoing efforts to improve budget
projections, especially for capital projects.

OPERATIONS REPORT
The operations report was presented, a copy of which is attached hereto as Exhibit G and incorporated
herein by this reference.

Eagle Mine Update – Ms. Roman reported that CDPHE notified water manager Brian Tracy via
email of a recent 3,000-gallon spill from the Mine in the Rex Flats area, which was the result of a
pipeline leak. Mr. Tracy was notified the following day, not immediately, because the spill did not
reach the river. According to Mr. Tracy, the District and Authority had recently commented on the
Mine’s maintenance plan for its pipes and infrastructure. The recent spill demonstrates the need
for continued improvements there.
Ms. Roman also reported Colorado Department of Public Health and Environment (CDHPE) recently released the draft discharge permit for the Mine, which expired three years ago and was administratively extended by CDHPE. She explained that the delay for the renewal may have been due to a lack of available administrative resources at CDPHE. She also explained that permits tend to be ‘administratively extended’ by CDPHE if they are not renewed prior to the expiration date. A meeting of local stakeholders will be convened to review the permit and make comments to CDPHE.

ENGINEERING REPORT

Rules and Regulations Update – Mr. Cowles noted staff was updating the Rules and Regulations, particularly the appendices that relate to standard specifications for water and sewer mains, as well as requirements for earthwork. The Rules and Regulations joint subcommittee, Directors Allender and Simmons, will review the draft prior to presentation at the March 23 board meeting.

Fats, Oils, and Grease (FOG) Program – Mr. Cowles reported that staff continued to gather feedback from the letters and survey sent to local food service establishments and pumping services to collect data regarding FOG practices within the District service area. Once all data is collected, staff will analyze the results and move forward with implementation of a FOG program. He noted that FOG issues can cause costly sewer backups into structures and sewer overflows to the surrounding environment.

Lodge at Vail Storm Drains – Mr. Cowles updated on the situation at the Lodge at Vail by which the roof drains are connected to the sewer system, which likely happened during original construction in the 1960s. He recently met with Lodge representatives, and the group settled on a low-cost fix for the summer, which involves plugging roof drains to prevent large rain events from infiltrating the Vail wastewater treatment plant, as they have in the past. Discussion ensued regarding possible issues with the temporary fix as well as the timeline for permanent removal of the illicit connections.

Heritage Parcel Update – Mr. Cowles said the issue between the developer and Country Club of the Rockies (CCR) was resolved to the satisfaction of both parties. Mr. Collins assisted as needed on behalf of the District to ensure the developer was able to gain an easement through the CCR to establish sewer service for his property.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

Ms. Johnson noted she did not include a written packet report.

Water Supply in Lower Basin States – Ms. Johnson said the recent heavy rains in northern California are improving the surface water supply situation in that area while also allowing for delivery of more water to southern California. This allows California to rely less on water from the Colorado River, so they can leave more water in Lake Mead, which likely means lower basin
states will avoid curtailment in 2018. She noted that California’s groundwater supply issues continue. Mr. Porzak added that California has not integrated surface and groundwater supplies, despite the clear interaction between the two sources.

**Waters of the US (WOTUS)** – Ms. Johnson said the Trump administration ordered the Environmental Protection Agency and the Army Corps of Engineers to review the Obama administration’s “Clean Water Rule: Definition of ‘Waters of the United States’” that defined which water bodies are regulated by the Clean Water Act. The rule was put on hold in October 2015 due to legal challenges from 26 states, including Colorado (which the district and authority supported), and farm lobbies. The order charges EPA and ACE with developing a new rule to replace the Obama rule, which will also need to address the 2006 U.S. Supreme Court *Rapanos* ruling concerning the scope of the CWA.

**Town of Vail Community Meeting** – Ms. Johnson reminded directors of the town’s annual community meeting scheduled for 5 – 7 p.m. March 14 at Donovan Pavilion. The District is once again a partner in the event and staff will provide general information as well as specific information about the District’s FOG efforts.

**Colorado Senate Joint Resolution re New Nutrient Regulations** – Ms. Johnson reported that state Sen. Coram is sponsoring a Joint Resolution concerning public input and general assembly review before new nutrient regulations could be issued. The resolution calls attention to the cost, effects on providers and ratepayers, technical feasibility, and burdens to smaller treatment providers, among other difficulties, with the nutrient regulations (Regulation 85) – which are driving the District’s wastewater projects and master planning efforts. The Colorado Water Congress is considering support of the resolution; Ms. Johnson will check with staff and consultants who represent the District in a related work group as to whether the District has a position on the resolution.

**Rep. Polis Wilderness Legislation** – In response to a question, Ms. Johnson said the introduced wilderness legislation by Rep. Polis in the 2016 legislative session did not move forward and she has heard nothing further on the matter this year.

The board took a recess for lunch at 12:12 p.m. The meeting resumed at 12:37 p.m.

**WATER COUNSEL REPORT**

**Republican River Compact Rules Update** – Mr. Porzak discussed letters sent to the State Engineer regarding the draft rules for compliance with the Republican River Compact, as well as a revised version of the rules, copies of which are attached hereto as Exhibit H and incorporated herein by this reference. The State Engineer revised the relevant parts of the Republican River Compact Rules in response to concerns raised by the Authority, District, and other entities. The revised rules distinguished between pre and post compact water rights; included the seniority system; and added language to state the rules were not to be used as a precedent for future
compact calls. In response to a question, Mr. Porzak clarified that the Republican River Compact language was not as explicit as the Colorado River Compact in addressing pre and post Compact water rights.

**St. Jude's Recreation Water Bill** – Mr. Porzak discussed a revised version of the bill, which is meant to overturn a 2015 Colorado Supreme Court decision in which the judge ruled that recreational and aesthetic water rights did not constitute beneficial use. A copy is attached hereto as Exhibit I and incorporated herein by this reference. Mr. Porzak said there are 1,000s of such water rights already decreed in Colorado. Mr. Porzak said Rep. KC Becker sponsored the bill with Rep. Diane Mitsch Bush cosponsoring.

**Amicus Brief in Consolidated Ditches Case** – Mr. Porzak discussed the 2016 case, in which the Water Court found in Denver Water’s favor. The Court ruled that Denver Water could reuse any of its water besides that from the Moffat system, which was specifically prohibited by a 1940s agreement between Denver Water and Consolidated Ditches. Consolidated Ditches appealed the decision to the Colorado Supreme Court. The Board unanimously approved joining in an amicus brief on Denver Water’s behalf with a number of other West Slope entities. A related email is attached hereto as Exhibit J and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the District join in an amicus brief with other interested parties to support Denver Water’s position in the case. Mr. Porzak was authorized to draft the brief.

**GENERAL COUNSEL REPORT**

**Hahnewald Barn Update** – Mr. Collins reported that the rancher who previously expressed interest in moving the barn to his property was not ready to commit. The town of Avon is now considering space for the barn in its master plan, with representatives touring of the barn later in the day. Mr. Collins will continue to monitor the issue.

Ms. Schweig and Mr. Schuette left the meeting at 12:54 p.m.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Eagle Park Reservoir acquisition and Eagle River MOU projects, 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 12:55 p.m. to discuss attorney-client privileged issues concerning the Eagle Park Reservoir acquisition, Eagle River MOU projects, 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.*

Mr. Collins requested the Board continue Executive Session to receive legal advice regarding a land acquisition, pursuant to §24-6-402(4)(a) 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 1:18 p.m. to discuss attorney-client privileged
issues concerning term limits and director districts, pursuant to §24-6-402(4)(a) 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 2:15 p.m.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 2:16 p.m.

Respectfully submitted,

__________________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

______________________________
Tom Allender, Treasurer

______________________________
Steve Coyer, Director

______________________________
Stephen Friedman, Vice Chair

______________________________
George Gregory, Secretary

______________________________
Frederick P. Sackbauer IV, President/Chair

______________________________
Bill Simmons, 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

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Glenn Porzak, Water Counsel