A Special Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held March 23, 2017, at 1:00 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. Bob Armour
3. Steve Coyer
4. Steve Friedman
5. George Gregory
6. Bill Simmons
7. Frederick P. Sackbauer IV

Also in attendance were:

9. District Staff
10. Tug Birk
11. Linn Brooks
12. Jason Cowles
13. Carol Dickman
14. Catherine Hayes
15. Diane Johnson
16. John McCaulley
17. Connie Nunley
18. Becky Peterson
19. Siri Roman
20. Micah Schuette
21. Amy Schweig
22. James Wilkins
23. Consultants
25. Glenn Porzak, Porzak Browning & Bushong LLP
26. Kathryn Winn, Collins Cockrel & Cole

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:

1. Directors Allender and Gregory disclosed that they also serve on the Board of the Upper Eagle Regional Water Authority (Authority).
2. 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 Armour disclosed that he is employed by Vail Resorts and the Vail Recreation District. 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 1:40 p.m.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Eagle Park Reservoir acquisition and CRCA 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 1:41 p.m. to discuss attorney-client privileged issues concerning the Eagle Park Reservoir acquisition and CRCA 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.*

At 2:00 p.m., prior to the discussion of CRCA matters, Mr. Collins, Ms. Winn, and all remaining staff left the room, with the exception of Ms. Brooks and Ms. Johnson. The regular meeting resumed at 2:07 p.m. at which time staff, Mr. Collins, and Ms. Winn reentered the meeting.
WATER COUNSEL REPORT

Changes to State Water Staff – Mr. Porzak noted state engineer Dick Wolfe is retiring. Additionally, the director of the Colorado Water Conservation Board (CWCB), James Eklund, is resigning his post to pursue private legal practice. The state engineer is a governor-appointed post, while the head of the Department of Natural Resources will appoint the new CWCB director. Mr. Porzak noted an abundance of new employees in the state attorney general’s office.

St. Jude’s Recreation Water Bill – Mr. Porzak updated on the bill, which passed the House of Representatives Agriculture Committee, where it originated. He expected the bill to pass the House and that the final form of the bill will preserve all existing decreed recreational water rights. Additional provisions of the bill may or may not survive because they do not have wide support in the Senate.

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. With the approval of the District and Authority Boards, Mr. Porzak submitted an amicus brief in support of Denver Water on the boards’ behalf, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. In response to a question, Mr. Porzak said if the decision was reversed, Denver Water could lose 10,000 AF of water, which could put increased pressure on West Slope water.

Piney River Unit and Wolcott Reservoir – Mr. Porzak presented a memo regarding the Piney River Unit water right, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. He also outlined the history of the water right and the proposed Wolcott Reservoir. When Denver abandoned its water rights in the Eagle River valley, it retained the rights to a joint use reservoir along with the Authority and District and the Colorado River Water Conservation District, for which the Authority and District have veto power. If Denver Water no longer wishes to pursue the Wolcott Reservoir, the Board authorized Mr. Porzak to commence discussions with Denver to obtain the land Denver owns near 4 Eagle Ranch. Mr. Porzak noted a meeting on March 28 with Denver Water at which this and other topics of mutual interest will be discussed.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of February 23, 2017, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the February 23, 2017, regular meeting be accepted and hereby are approved as presented. Director Armour abstained.

Rules and Regulations Revisions – Mr. Birk discussed revisions to the Rules and Regulations and presented a related board action request and redlined copy of the document, copies of which are
attached hereto as Exhibits C and D, respectively, and incorporated herein by this reference. Staff extensively updated the appendices, especially those related to water and wastewater materials, as well as the addition of a new appendix regarding earthwork. The revisions were reviewed by staff, legal counsel, and the rules and regulations board subcommittee. Discussion ensued regarding specific provisions regarding land use authorities and variances. Mr. McCaulley clarified that a new state regulation only requires annual testing of known backflow devices, which make up roughly 15% of the Authority and District accounts. Staff must report the percentages of verified vs. non-verified backflow devices. The regulation does not require a retrofit program for non-verified devices. Upon motion duly made and seconded, it was unanimously 

RESOLVED that the revised Rules and Regulations be and hereby are approved as amended.

Alpine Drive Easement – The Board tabled the easement vacation to a future meeting.

Claim of Easement Program – Ms. Peterson presented a board action request and related forms, copies of which are attached hereto as Exhibits E and F, respectively, and incorporated herein by this reference. She and Mr. Collins explained the history of the easement program and its purpose, which is to ensure that District and Authority infrastructure on private property is accessible. Because each situation is unique, such easements are handled on a case-by-case basis. Mr. Collins clarified that the District can and does offer permanent encroachment authorizations for cases in which infrastructure runs under buildings or extensive landscaping or other improved areas. After discussion and upon motion duly made and seconded, it was unanimously 

RESOLVED that the Claim of Easement program, including the processes and forms, 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 G and incorporated herein by this reference.

STRATEGY ITEMS

Director District 2 Appointee – The Board welcomed newly appointed Director Armour to his first meeting. He thanked staff and board members for getting him up to speed on his new position.

Board Committee Appointments – The Board discussed committee vacancies and appointed Director Armour to the Organizational Development Committee.

Stillwater PUD Update – Mr. Wilkins discussed the Stillwater PUD and a related memo, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. Discussion ensued regarding progress on the development, including a request for proposal for a general contractor; potential for undertaking a construction manager at risk (CMAR) approach to the project; and the need for a board-level review of the project at an upcoming meeting.
FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference. He noted District and Authority water sales were below projections, which are now based on the five-year model. The town of Vail also saw decreased sales tax for February, which it attributed to the unavailability of rooms at the Vail Cascade and Holiday Inn. This could be one reason for lower water sales in the District’s service area. Visitor numbers valley-wide appear similar to past years, so the disparity in water sales is somewhat of an anomaly, especially for the Authority. Discussion ensued regarding potential revenue impacts of the shortfall. Mr. Wilkins also stated that he expects impact fee revenues to increase as builders begin projects in the springtime, as the number of connection applications received by the Customer Service department recently increased.

GENERAL MANAGER REPORT

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

Succession Planning Update — Ms. Brooks noted annual discussions and ongoing dialogue regarding succession plans for the District and Authority’s key consultants. She said she was satisfied with the current succession plans for each of the four main consultants.

OPERATIONS REPORT

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

COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

Town of Vail Community Meeting — Ms. Johnson discussed the town of Vail’s annual community meeting the prior week. She and Ms. Schweig shared information on Fats, Oils, and Grease (FOG) and their effects on the wastewater system with attendees, as well as engaging in discussion regarding various topics of interest related to water and wastewater service.

Vail Mountain SNOTEL Data — Ms. Johnson noted a delay in the snow water equivalent data for the Vail Mountain SNOTEL site; increases or decreases of a certain size within a day’s time trigger a manual review of the numbers before official release. In the current case, the data was adjusted before its eventual release. Ms. Johnson and Ms. Brooks also discussed snowpack in general, runoff scenarios, and various factors that affect water supply availability on the Front Range and West Slope. In response to a question, Ms. Johnson discussed a small portion of conditional Recreational In-Channel Diversion (RICD) water rights on Gore Creek; depending on spring runoff and resulting streamflows, some of the water rights could be made absolute if streamflows are robust enough to support recreation in April.
Edwards Odor Issues – Ms. Johnson discussed recent odor issues in Edwards that attracted many comments and feedback from residents in the Miller Ranch and surrounding area over the past week. Staff monitored the feedback via various social media channels throughout the week; simultaneously District field operations crews searched the wastewater system for overflows and backups, as well as storm sewer issues (for which the District is not responsible). These searches turned up no odor-causing issues, nor did searches by local fire crews and gas utility companies. Earlier in the day, staff discovered a pond east of the west entrance to Arrowhead that was emitting a strong odor, was visibly discolored, and contained dead fish. Staff is following up with Eagle County Environmental Health Department, as well as other stakeholders to conduct testing and discuss a plan of action to ensure mitigation of the odors and protect local waterways.

At 3:16 p.m., Mr. Schuette and Ms. Schweig left the meeting.

EXECUTIVE SESSION

Mr. Collins requested the Board enter 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 enter executive session at 3:17 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 3:22 p.m.
Eagle River Water & Sanitation District

ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 3:23 p.m.

Respectfully submitted,

________________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

________________________________________
Tom Allender, Treasurer

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Bob Armour, Director

________________________________________
Steve Coyer, Director

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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.

________________________________________
James P. Collins, General Counsel

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Glenn Porzak, Water Counsel