A special meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held October 26, 2017, at 1:00 p.m., in the Cortina I Ballroom of the Arrabelle at Vail Square at 675 Lionshead Place, 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. Bob Armour
2. Steve Coyer, via phone
3. Steve Friedman
4. George Gregory
5. Frederick P. Sackbauer IV
6. Bill Simmons
7. Brian Sipes

Also in attendance were:

8. District Staff
9. Linn Brooks
10. Jason Cowles
11. Carol Dickman
12. Catherine Hayes
13. Diane Johnson
14. John McCaulley
15. Siri Roman
16. Amy Schweig
17. Brian Tracy
18. James Wilkins

Consultants

19. Steve Bushong, Porzak Browning & Bushong LLP
20. Jim Collins, Collins Cockrel & Cole
21. Jonathan Heroux, Piper Jaffray
22. Kristin Moseley, Porzak Browning & Bushong LLP
23. Glenn Porzak, Porzak Browning & Bushong LLP

24. Kristi Hochtl, Vail resident
25. Steve Spessard, Gore Creek Partners

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 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. Directors 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 1:34 p.m.

ACTION ITEMS

Recommendation of Organizational Development Committee re Board Vacancy – Director Simmons discussed the vacancy and noted four excellent candidates had applied to serve on the board. After interviews with all four, Directors Simmons and Armour suggested Brian Sipes to fill the vacancy in director district 5, which was left after former Director Allender moved out of the district. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that Brian Sipes be and hereby is appointed to fill the director district 5 vacancy.

Oath of Office – Mr. Collins administered the oath of office to newly appointed Director Sipes, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

Consideration of Minutes – The minutes of the regular meeting of September 28, 2017, were considered. Upon motion duly made and seconded, it was unanimously
RESOLVED that the minutes of the September 28, 2017, regular meeting be accepted and hereby are approved as presented. Director Sipes abstained.

Sanitation Maintenance Warranty Deductible – Mr. Wilkins discussed the board action request and Sanitation Maintenance Warranty Deductible for 2018, copies of which are attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference. Mr. Wilkins noted that approval of the endorsement would reduce the District’s liability premiums by 33%. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the endorsement be and hereby is approved as presented.

West Edwards Sewer Encumbrance Fee Revision – Mr. Cowles discussed the board action request and modified notice of encumbrance, copies of which are attached hereto as Exhibits D and E, respectively, and incorporated herein by this reference. As density has increased in the west Edwards area, there was a decrease in the fee per SFE for developers to repay the District for the cost of a sewer main to provide service in the area. Another fee reduction was proposed, as planned development in the area increased, and such reduction will still allow the District’s costs to be fully recovered. Mr. Collins clarified that such fee reductions were allowable. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the West Edwards Sewer Encumbrance Fee be and hereby us set at $1,000/SFE, effectively immediately.

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

Request for Modification of Tap Fee Deferral by 6 West Developer – Mr. Cowles discussed as request from the 6 West developer for the Authority to modify its tap fee for affordable housing policy, a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. Mr. Spessard introduced himself as the project developer and explained that he expected a ten-year deferral of Eagle County’s property tax, which did not come to fruition and which is now affecting the development’s cash flow. Mr. Spessard requested deferral of the District’s tap fee for ten years or upon sale of the development, whichever occurred sooner. The board discussed the request and declined to modify its current policy. Staff also pointed out the District’s fee structure is based on square footage, which is equitable and advantageous to high-density projects. The Board further clarified that only the affordable housing portion of any project would qualify for tap fee deferral.

STRATEGY ITEMS
There were no strategy items for discussion.

WATER COUNSEL REPORT
Mr. Bushong presented water quality information out of order.

Climax Mine and Molybdenum Standards – Mr. Bushong discussed Climax’s request to increase statewide molybdenum standards for domestic water supplies and agriculture
significantly from their current allowable levels. He noted molybdenum standards around the
world range from 50 – 250 parts per billion (ppb) to protect human health and aquatic life. Climax
is suggesting an upper limit of 9,000 ppb for human health and 1,000 ppb for agricultural stream
standards. Toxicology experts are reviewing the proposed standards on behalf of the District,
Authority, and other stakeholders. Mr. Bushong noted the singular study Climax is using as
evidence to support its request is concerning on many levels. He also said Climax does not meet
the current standards; upgrading its treatment processes to do so would cost an estimated $100
million. The opponents of the increased standards will submit a consolidated pre-hearing
statement by the following day’s deadline.

Ms. Hochtl entered the meeting at 1:50 p.m.

Eagle Mine Update – Mr. Bushong also reported on the recent record of decision regarding the
Eagle Mine cleanup efforts. He discussed the history of the Eagle Mine, and cleanup efforts in the
90s. Despite such cleanup, the Mine still adds heavy metals to the surrounding environment and
stream, affecting aquatic life and complicating Authority and District treatment operations. The
Environmental Protection Agency (EPA) and Colorado Department of Public Health and
Environment (CDPHE) recently ruled on the Mine’s proposed cleanup plans, for which the
Authority and District submitted extensive comments. Many of the comments were included in the
required cleanup measures, with an emphasis on being proactive instead of reactive as it relates
to the mine. The Eagle Mine water treatment system will be expanded, further reducing metals
loading to the stream. The system will also undergo more rigorous inspection and maintenance.
Additionally, at operational unit 3, contaminated soils in the area will be removed and buried at
the consolidated tailings pile with a three-foot layer of soil to preclude human contact. Mr.
Bushong cautioned that any water supply development projects at or near the Eagle Mine would
need to avoid the contaminated soils. Staff and consultants will continue to monitor the conditions
at the Mine and the water quality there, but are pleased with the increased cleanup requirements.

Ms. Brooks thanked staff and consultants for their efforts with the matter.

Ms. Hochtl left the meeting at 2:05 p.m.

Piper Jaffray Update on 2009 Wastewater Build America Bonds (BABs) Crossover Refund – Mr.
Heroux was welcomed to the meeting. He discussed his report included in packets, a copy of which is
attached hereto as Exhibit H and incorporated herein by this reference. He explained the Build American
Bonds, which were provided by the government during the economic downturn as a way to stimulate the
economy. The government subsidized these taxable bonds and allowed tax-exempt entities like the
District to issue them. The bonds have a call date of Dec. 1, 2019, and are refundable using a crossover
refunding because of the District’s tax-exempt status vs. the taxable nature of the BABs. Discussion
ensued regarding the process by which this could be done, as well as the estimated savings for the
District, about $1 million over the life of the bonds with current market conditions. The Board agreed to
move forward with the crossover refund; staff and bond counsel will bring a parameters resolution to the
November board meeting.

GENERAL MANAGER REPORT

Ms. Brooks presented her report, a copy of which is attached hereto as Exhibit H and incorporated
herein by this reference. The monthly reports were also acknowledged, copies of which are attached
hereto as Exhibit I and incorporated herein by this reference.

Employee Engagement Survey Results – In response to a question, Ms. Brooks said staff
would present the results to the entire board at a future meeting. Directors Armour and Simmons
of the Organizational Development Committee will be given more detail on the results at an
upcoming committee meeting.

Regional Water Efficiency Plan Update – Ms. Brooks reported that a draft of the regional water
efficiency plan is nearing completion. She requested a comprehensive review from the water
demand management committee, District Director Coyer and Authority Director Woodworth. She
noted the plan would provide important supporting information for future water supply projects of
the District and Authority.

FINANCE REPORT

Mr. Wilkins presented the monthly finance report, a copy of which is attached hereto as Exhibit I and
incorporated herein by this reference.

Draft 2018 Budget – Mr. Wilkins discussed the draft FY 2018 budget and related materials,
copies of which are attached hereto as Exhibit J and incorporated herein by this reference. Vice
Chair Friedman requested a board-level discussion to determine the appropriate level of fund
balance. Discussion ensued regarding funding the first year of the Stillwater project from fund
balance, communication of the project and funding sources to constituents, and other related
information. Mr. Wilkins said no rate increases were recommended for FY 2018. In response to a
question, Ms. Brooks said that although steady, small rate increases are most palatable to
customers, rather than flat rates most years with larger increases occasionally, an increase for
2018 does not appear justified. Mr. Wilkins reminded directors that the November meeting was
noticed for the public budget hearing, at which formal approval of the budget would be
considered.

OPERATIONS REPORT

The Operations Report was presented, a copy of which is attached hereto as Exhibit K and incorporated
herein by this reference.

Lead and Copper Sampling – Mr. Tracy noted the District’s required lead and copper sampling was
completed for 2017, and required communication letters were sent to all sample participants. He
noted none of the homes tested exceeded the limit of allowable lead; however, about 50% of the homes sampled had detectable levels of lead.

ENGINEERING REPORT

Mr. Cowles discussed his report, a copy of which is attached hereto as Exhibit L and incorporated herein by this reference.

PUBLIC AFFAIRS REPORT

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

WATER COUNSEL REPORT

Proposed 2018 Cash-in-Lieu of Water Rights Fees – Mr. Porzak presented an updated water dedication policy that included proposed 2018 cash-in-lieu of water rights fees, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference. The changes would be approved with the 2018 budget, and the consideration of rate increase was noticed for the November meeting. The policy includes increases for summertime water ($9,000/acre foot) and wintertime storage water ($35,000/acre foot). Such fees reflect the projected cost of enlarging Eagle Park Reservoir.

Golden Peak Snowmaking Water Agreement – Mr. Porzak presented a revised agreement, a copy of which is attached hereto as Exhibit O and incorporated herein by this reference. He discussed the changes, including the limit of 120 acre feet of water for snowmaking. He emphasized that this and previous agreements maintain that this is an interruptible supply of water at any time. In response to a question, staff confirmed that the pricing was equitable and reflected the actual cost of providing it. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED that the Golden Peak Snowmaking Water Agreement be and hereby is approved as presented.

Staff will schedule a meeting with the director of Ski and Snowboard Club Vail to review the agreement and execute the revised agreement.

A planned presentation on cybersecurity during Executive Session was tabled to November due to time constraints.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Eagle Park Reservoir expansion and Bolts Lake, 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 2:40 p.m. to discuss attorney-client privileged issues concerning Eagle Park Reservoir expansion and Bolts Lake, 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.*

The regular meeting resumed at 3:10 p.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:11 p.m.

Respectfully submitted,

________________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

________________________________________
Bob Armour, Director

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Steve Coyer, Director

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Stephen Friedman, Vice Chair

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George Gregory, Secretary

________________________________________
Frederick P. Sackbauer IV, President/Chair

________________________________________
Brian Sipes, Director

________________________________________
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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Glenn Porzak, Water Counsel