A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held January 25, 2018, 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. Bob Armour
2. Steve Coyer
3. Steve Friedman
4. George Gregory
5. Frederick P. Sackbauer IV
6. Bill Simmons
7. Brian Sipes

Also in attendance were:

9. District Staff
10. Tug Birk
11. Linn Brooks, via Skype
12. Shane Cerny
13. Jason Cowles
14. Carol Dickman
15. Catherine Hayes
16. Diane Johnson
17. John McCaulley
18. Maureen Mulcahy
19. Siri Roman
20. Jeff Schneider
21. Micah Schuette
22. Amy Schweig
23. Jason Sica
24. James Wilkins
25. Consultants
27. Glenn Porzak, Porzak Browning & Bushong LLP
28. Public
29. Pete Wadden, town of Vail

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:

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 disclosed that he serves on the Boards of the Upper Eagle Regional Water Authority (Authority) and 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 12:47 p.m. Mr. Collins noted that he and Directors Sipes had discussed any potential conflicts of interest to be disclosed, per the Colorado Revised Statutes. Mr. Collins confirmed that Director Sipes had no conflicts of interest to disclose.

INTRODUCTIONS

The Board welcomed Pete Wadden, watershed education coordinator with the town of Vail.

ACTION ITEMS

Consideration of Minutes – The minutes of the special meeting of December 14, 2017, to discuss the annual review of the general manager were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the December 14, 2017, special meeting to discuss the annual review of the general manager be accepted and hereby are approved as presented.

Consideration of Minutes – The minutes of the special meeting of December 14, 2017 were considered. Upon motion duly made and seconded, it was unanimously
RESOLVED that the minutes of the December 14, 2017, special meeting be accepted and hereby are approved as presented.

2018 Resolutions – Ms. Hayes discussed a board action request form regarding various 2018 resolutions, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

Resolution Designating Meeting Place and Posting Location – The Board discussed the resolution to set the meeting place, posting location for meeting notices, and adopt a regular meeting schedule, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the 2018 resolution to set the meeting place, posting location, and adopt a regular meeting schedule be and hereby is approved as presented.

Election Resolution – The Board discussed the 2018 election resolution, which called for a polling place election on May 8, 2018, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the 2018 election resolution be and hereby is approved as presented.

2018 Operations Agreements – The Board discussed its operations agreements with the Upper Eagle Regional Water Authority and town of Minturn, copies of which are attached hereto as Exhibits D and E, respectively, and incorporated herein by this reference. In response to a question, Ms. Hayes confirmed that staff will determine the actual cost for services provided to Minturn and increase the monthly fees in 2019 accordingly. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the 2018 Operations Agreements with the Upper Eagle Regional Water Authority and town of Minturn be and hereby are approved as presented.

Rules and Regulations Updates – Mr. Birk discussed his board action request and the clean and redlined versions of the Rules and Regulations, copies of which are attached hereto as Exhibits F, G, and H, respectively, and incorporated herein by this reference. He reminded directors that the document underwent a major overhaul in 2017; at that time, staff committed to annually updating the document with minor revisions for board consideration. Mr. Birk also clarified that Appendix A included rates and fees and was approved with the Authority’s budget in Nov. 2017. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the revised Rules and Regulations for 2018 be and hereby are approved as presented.

Mr. Birk left the meeting at 11:40 p.m.

Stillwater Development Water Rights Dedication – Mr. Cowles discussed the board action request and supporting documentation regarding a water rights dedication from the District to the Authority for the District’s Stillwater PUD, an employee housing project in Edwards. Copies of the documents are attached hereto as Exhibit I and incorporated herein by this reference. Mr. Cowles clarified that the Authority will be serving the District’s project, and the Authority’s water dedication policy stated its preference for the developer to dedicate water if sufficient supply is available. The District has Eagle Park Reservoir water to
dedicate for these project’s water needs, which include augmentation of full diversions from December – February and August – September. Mr. Cowles reminded directors that the dedication amounts were calculated at 100% of the anticipated project demand of 200 gallons per unit per day, per a recent policy approved by the board. This calculation method is sufficient because it is also coupled with water use enforcement mechanisms, measurement capabilities, and a water service agreement, all of which are detailed in the PUD guide for the development. After discussion and upon motion duly made and seconded, it was unanimously
RESOLVED that the dedication of 1.68789 acre-feet of Eagle Park Reservoir water to the Authority by the District for its Stillwater project 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 J and incorporated herein by this reference.

STRATEGY ITEMS

Board Member Input – Chair Sackbauer called for board member input. Director Armour requested the board secretary begin numbering each resolution passed by the board in 2018. Ms. Johnson reminded directors to get updated parking permits from Ms. Hayes, as weekend parking enforcement will be stricter than years past. Directors are still welcome to park in the District lot on weekends to access Vail Mountain; however, weekday skier parking can no longer be accommodated, due to the number of employees who need to park at the office during the week.

Regulation 93 Rulemaking Hearing – Ms. Roman reported on the recent rulemaking hearing for Regulation 93, which is the process for monitoring the 303(d) list of impaired streams and also for listing and delisting stream segments. Ms. Roman said the District’s permits to discharge wastewater plant effluent to streams are calculated based on ambient water quality, which is why the District pays close attention to this and provides data to the state. She noted some previously listed stream segments within the Authority and District watershed were removed from the 303(d) list, which was an excellent outcome. The Board congratulated her on this accomplishment.

The board took a short recess for lunch at 12:10; the regular meeting resumed at 12:22 p.m.

Restore the Gore Presentation – Ms. Roman introduced Mr. Wadden, the town of Vail’s Watershed Education Coordinator. He noted that in 2010, failing bug scores in Gore Creek above the Vail Wastewater Treatment Facility indicated the creek would be listed on the state’s 303(d) list of impaired waterways. A water quality improvement plan was subsequently funded, out of which Mr. Wadden’s position was created. He presented information on the town’s Restore the Gore campaign, which is part of the effort to improve the health of Gore Creek; the creek has been adversely impacted by landscaping/pesticide use near the creek, untreated stormwater runoff, and an increase in impervious surfaces in Vail. Mr. Wadden has reached out to landscapers, homeowners, and the community at large to increase awareness of the need to protect and improve the health of the creek. The board thanked Mr. Wadden for his informative presentation.
**Water Demand Management Update** – Ms. Mulcahy, the District’s water demand management coordinator, discussed her memo, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference. She presented an update on recent water demand management efforts of the District and Authority. She also summarized recent efforts to improve water use efficiency, including reduction of water use of customers that have a disproportionate impact on the system, and pilot projects in high-demand and high-use areas. Pilot project goals included establishing water budgets for each property, improved customer access to water use information, and aligning District and Authority processes with local land use authorities. She also noted completion of a draft of the regional water efficiency plan for the Authority and District. Such a plan was required because of 2004 legislation, and a grant was received from the Colorado Water Conservation Board to assist with plan costs. Ms. Mulcahy outlined a schedule for plan adoption and hopes to bring the final plan to the board in July for consideration and approval.

Mr. Wadden left the meeting at 12:45 p.m.

**GENERAL MANAGER REPORT**

In Ms. Brooks’ absence, Ms. Johnson presented the General Manager report, a copy of which is attached hereto as Exhibit L and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as Exhibit M and incorporated herein by this reference.

**Colorado River District General Manager** – Ms. Johnson reported that Eric Kuhn officially retired as GM of the Colorado River Water Conservation District, though he is still performing contract work on behalf of the River District to provide continuity during the transition. Ms. Johnson, Ms. Brooks, and Mr. Porzak recently met with the new GM, Andy Mueller, to provide background on the Authority and District and their relationship with the River District. Ms. Johnson said meetings with Mr. Mueller ensure a continued strong relationship with the River District as items of mutual concern are addressed.

**Housing Agreement** – In response to a question regarding Ms. Brooks’ report, staff clarified the purpose of a housing agreement currently being drafted. Such agreement would be executed by the new owner upon purchase and will ensure that Red Sandstone units are always sold back to the District when a resident leaves District employment. Without such an agreement, a resident owner could leave District employment but is only required to meet the town of Vail’s deed restriction in order to remain in the property. Mr. Wilkins expects to bring the agreement to the February meeting for board consideration.

**COMMUNICATION AND PUBLIC AFFAIRS REPORT**

Ms. Johnson discussed her report, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference.
Colorado Basin Roundtable Update – Ms. Johnson discussed the history of the basin roundtables, which were established by state legislation in part due to the 2002 drought. House Bill 1177 created the nine roundtables in 2005, and the roundtables began meeting in 2006. The Authority and District have had a roundtable presence at the Colorado Basin monthly meetings since inception, with board members or staff attending on their behalf. Ms. Johnson also discussed funding that the roundtables can provide for various water-related projects. The roundtables can also recommend such projects for statewide funding, though statewide funding has decreased in recent years due to declining severance taxes as well as a settlement with BP, by which the state must repay BP a large sum of money.

Waters of the US (WOTUS) Update – Ms. Johnson updated the board on recent developments regarding the WOTUS rule. She gave a brief history of the rule, noting that the Obama administration issued the WOTUS rule in 2015 to clarify items related to a 2006 U.S. Supreme Court decision. The 2015 rule resulted in lawsuits filed against the Environmental Protection Agency (EPA) by 23 states, including Colorado, as it appeared such legislation would expand the EPA’s jurisdiction and include waters that were not covered bodies of water under the previous rule. Though the 2015 update was meant to provide clarity, it raised many questions for water providers and others. The Supreme Court recently ruled that any challenge should be heard by federal district, rather than appellate, courts.

Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act – Ms. Johnson said Rep. Polis unveiled an updated wilderness bill on Tuesday that includes Sen. Bennet’s previous draft legislation. The release coincided with the Outdoor Retailer + Snow Show in Denver, which moved there from its previous location in Utah, in part because of elected officials in Utah advocating for the reduction of protected land for national monuments. Ms. Johnson and Ms. Brooks received assurance from Sen. Bennet’s aide, Noah Koerper, that the bill included the agreed-upon language requested by the Authority and District in the bill’s previous iteration; such language gives the Authority and District broad authority to exercise needed remediation in the event of a natural disaster within the watershed, even in the proposed wilderness areas. Mr. Porzak said one addition to the current legislation included recognition of the non-wilderness status of Bolts Ditch in Minturn, which was mistakenly included in the Holy Cross wilderness boundary when the maps were drawn in 1980. Mr. Porzak would also like to include language in the bill that Bolts Ditch could be used to fill Bolts Lake. Staff will continue to monitor the bill throughout the legislative process.

FINANCE REPORT

In Mr. Wilkins’ absence, Ms. Johnson presented the monthly finance report, a copy of which is attached hereto as Exhibit O and incorporated herein by this reference. She noted there are still many invoices coming in for 2017 expenses, so the fund balance will be lower than what is shown on the report. She
also called attention to the development impact fees, which for the Authority, Vail water subdistrict, and Vail sewer district, exceeded projections by about $777,000. Ms. Johnson noted this was a variety of smaller projects paying tap fees at year-end, not one or two large projects. She also reminded directors that in 2018, water sales would be presented quarterly instead of monthly.

OPERATIONS REPORT

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

ENGINEERING REPORT

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

GENERAL COUNSEL REPORT

Bighorn Subdistricts Update – Mr. Collins reported that upon further review by staff, it appears there is past precedent in the Bighorn area for District-funded water main replacement; therefore, the Bighorn Terrace Water Subdistrict is no longer needed. Staff will continue with the necessary actions to move forward with the Bighorn Terrace Sewer Subdistrict, as this is clearly a private sewer line and the homeowners are responsible for its replacement. Mr. Collins reminded the board that the Bighorn homeowners originally approached the District to request sewer line replacement.

Stillwater PUD Hearing – Mr. Collins noted the Stillwater PUD received its 1041 approval from Eagle County and complimented staff on the effort.

WATER COUNSEL REPORT

Gore Creek Intake for Booth Creek Treatment Facility – Mr. Porzak discussed the diligence decree for the Booth Creek Treatment Facility, a copy of which is attached hereto as Exhibit R and incorporated herein by this reference. He noted the water court granted a finding of diligence for this water right.

District and CJC Properties Water Right Change Case and Augmentation Plan – Mr. Porzak discussed the joint application filed by the District and CJC properties to quantify the senior water rights owned by the Chris Jouflas family in the Wolcott area and to utilize those rights in an augmentation plan to replace out-of-priority depletions in the District’s Wolcott service area. Related documentation is attached hereto as Exhibit S and incorporated herein by this reference. Mr. Porzak said with this decree, the District will have a complete portfolio of water rights to augment full build out in Wolcott. The board directed Chair Sackbauer to sign the document on the District’s behalf.

Ms. Brooks joined the meeting via Skype at 1:35 p.m.
EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Eagle River MOU matters, water quality, District water for Vail Mountain snowmaking, 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 2:06 p.m. to discuss attorney-client privileged issues concerning Eagle River MOU matters, water quality, District water for Vail Mountain snowmaking, 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 2:13 p.m., Messrs. Cerny, Porzak, Schneider, and Sica, as well as Mses. Mulcahy, Roman and Schweig left the meeting.

Mr. Collins requested the Board continue Executive Session to receive legal advice regarding Eagle Park Reservoir Company and cost-sharing, 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 and requested that the record reflect that Mr. Porzak was abstaining from any participation in the subject and reaffirmed that he had left the meeting. Upon motion duly made and seconded, it was unanimously

RESOLVED to continue Executive Session at 2:01 p.m. to discuss attorney-client privileged issues concerning Eagle Park Reservoir Company and cost-sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion would contain privileged attorney-client communications.*

At 2:30 p.m., prior to discussion of the personnel matter, all remaining staff left the meeting, with the exception of Ms. Brooks.

The regular meeting resumed at 2:55 p.m.
Eagle River Water & Sanitation District

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:56 p.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

______________________________
Bob Armour, Director

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Steve Coyer, Treasurer

______________________________
Stephen Friedman, Vice Chair

______________________________
George Gregory, Secretary

______________________________
Frederick P. Sackbauer IV, President/Chair

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Bill Simmons, Director

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Brian Sipes, 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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Jim Collins, General Counsel

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Glenn Porzak, Water Counsel