A Regular Meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held August 23, 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. Dick Cleveland
2. Steve Coyer, via phone and in person
3. Steve Friedman
4. George Gregory
5. Timm Paxson
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. Jeff Schneider
17. Micah Schuette
18. Amy Schweig
19. James Wilkins
20. Consultants
22. Kristin Moseley, Porzak Browning & Bushong LLP
23. 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 Cleveland disclosed that he serves on the board of Vail Health. 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 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 Friedman called the meeting to order at 11:30 a.m.

INTRODUCTIONS

There were no introductions.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of July 26, 2018, were considered.

Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the July 26, 2018, regular meeting be accepted and hereby are approved as amended.

Water Efficiency Plan – Mr. McCaulley discussed the board action request and joint regional Water Efficiency Plan of the Authority and District, copies of which are attached hereto as Exhibits A and B, respectively, and incorporated herein by this reference. The required public comment period for the plan ended on July 30. Staff presented the plan to over 30 local organizations with only one comment received. Mr. McCaulley explained the efficiency goals, which are modest but achievable. Coupled with planned water budgeting for individual properties, future reductions in use are likely to exceed expectations. Upon motion duly made and seconded, it was unanimously...
RESOLVED that the Joint Regional Water Efficiency Plan of the Authority and District be and hereby is approved as presented.

A copy of the resolution approving the plan is attached hereto as Exhibit C and incorporated herein by this reference.

Public Hearing for Inclusion – Mr. Schuette presented his board action request and related information regarding the proposed inclusion for water service at 3700 North Frontage Road West in Vail, which is owned by the Vail Corporation. Copies of the documents are attached hereto as Exhibits D and E, respectively, and incorporated herein by this reference. A public hearing was opened at 11:42 a.m. Public comment was requested and there was none. Mr. Collins explained that the board can approve such a request despite the parcel’s end use being unknown. Mr. Cowles said once the Vail Corporation moves to develop the parcel, the District would consider its ability to serve the project. He also noted Vail Resorts has water rights to devote to any proposed project. The public hearing was closed at 11:45 a.m. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the request for inclusion of 3700 North Frontage Road West in Vail be and hereby is approved as presented.

The inclusion resolution is attached hereto as Exhibit F and incorporated herein by this reference.

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. Staff answered various questions regarding the contracts included on the log.

STRATEGY ITEMS

Board Member Input – Board member input was requested and there was none.

GENERAL MANAGER REPORT

Ms. Brooks presented the General Manager report, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as Exhibit I and incorporated herein by this reference.

Easement Request from Town of Avon – Ms. Brooks and Mr. Cowles discussed a request from the town of Avon regarding a desired easement east of the Avon WWTF, a copy of which is attached hereto as Exhibit J and incorporated herein by this reference. East West Resorts is developing the property and Avon requested a trail connector from Riverfront Lane to the recreation path below. The needed easement was discussed at the July 26 board meeting, and requested by the developer; the town now believes it should be granted at no cost to the town, as it is part of Avon’s trails plan. Discussion ensued regarding prior easements, costs, and benefits. The board directed staff to work with the town on the details and bring such request before the Board in September.
FINANCE REPORT

Quarterly Financial Report – Mr. Wilkins presented the quarterly financial report, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference. Revenue projections for the District will likely be exceeded as the drought conditions led to increased outdoor irrigation. Mr. Wilkins specifically noted the May water sales were as high as a summer watering month, as the dry weather prompted early use of irrigation water. This amount of usage in May was never seen before in District historical records. The Board acknowledged receipt of the report.

OPERATIONS REPORT

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

Letter of Support to CDOT for West Vail Pass Auxiliary Lane Project – Ms. Roman discussed her memo and a letter of support to the Colorado Department of Transportation (CDOT) regarding its West Vail Pass Auxiliary Lane Project, copies of which are attached hereto as Exhibits M and N, respectively, and incorporated herein by this reference. CDOT is moving forward quickly with analysis of this project using a streamlined National Environmental Protection Agency (NEPA) process. The project construction and permanent expansion of the highway may be very impactful to water quality in the area, and a unified community voice is important regarding protection and enhancement of water quality and the surrounding areas. The board unanimously approved sending the letter to CDOT regarding the project.

Eagle Park Reservoir Company Operations Report – In response to a question, Ms. Brooks noted the dam inspection was found to be satisfactory, and the Board was pleased that the inspector classified the dam as “well-maintained.” Ms. Brooks also said the meeting scheduled for later that day was cancelled and would be rescheduled for September.

ENGINEERING REPORT

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

Red Sandstone Sewer Main – Mr. Cowles elaborated on his report. He discussed a 23’ deep water transmission main in the area of Red Sandstone school, which is undergoing reconstruction and the addition of a parking garage. Staff would like to enter into an intergovernmental agreement with Eagle County School District for relocation of the entire water main, with the school district paying for the portion of the main that it would have had to relocate on its own to facilitate the project and the District picking up the remainder of the costs. Mr. Cowles said the current line likely predated the construction of I-70, which could explain the depth and location of the line. Discussion ensued, and it was clarified that the funds would come from the capital replacement budget. Upon motion duly made and seconded, it was unanimously
RESOLVED that staff be and hereby is approved to enter into an Intergovernmental Agreement with the Eagle County School District for relocation of the water main.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

Ms. Johnson noted she did not include a written report in packets. Her work has focused on the ongoing drought communications and other related efforts that Ms. Brooks would discuss.

Ms. Dickman left the meeting at 12:30 p.m.

GENERAL MANAGER REPORT (CONT.)

Drought Update – Ms. Brooks discussed current weather and water supply conditions and compared them to previous dry years in 2002 and 2012. Stream temperatures are coming down, and recent rain has helped, though forecasters predict hot, dry weather in the weeks to come. Ms. Brooks also discussed customer outreach and communication, including newspaper, radio, and web messaging, in addition to recent letters to excessive users. The letters and a simultaneous Vail Daily article on drought resulted in a drastic increase in call volume to customer service in the following days, and Ms. Brooks complimented staff on handling those calls efficiently and professionally. She also noted large irrigators have significantly reduced water use; these relationships are critical to managing demand in drought years. Using new smart meter technology, staff was able to query any accounts using irrigation water on Mondays, a day when outdoor irrigation is prohibited. Once all customers have smart meters in the coming years, such enforcement will be more widely used to ensure compliance with the outdoor water use rules. The threshold for determining “high use” was discussed, and staff noted that enforcement activities were somewhat limited by the ability of staff to assist such customers after they were notified of their excessive uses. Ms. Brooks also noted there were more excessive users in the Authority than the District, and accordingly, reductions by excessive users in the Authority were larger than in the District.

Rules and Regulations Amendment – Ms. Brooks discussed a board action request and proposed amendment to the Rules and Regulations, copies of which are attached hereto as Exhibits P and Q, respectively, and incorporated herein by this reference. This amendment, which would comprise Article XI, codifies the water supply response plan policies the board verbally approved at the July 26 board meeting. Discussion ensued regarding the balance between the regulations for excessive use, and limitations of the available technology and staff to enforce such regulations and fines. Ms. Brooks and Mr. McCaulley discussed current accounting and enforcement mechanisms available to staff, as well as future plans to improve monitoring and enforcement. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the amendment to the Rules and Regulations be and hereby is approved as presented.
Ms. Brooks noted once water budgeting is fully implemented in the years to come, this section of the Rules and Regulations can be updated accordingly with stricter regulations and enforcement. A copy of the Resolution to Amend the Rules and Regulations is attached hereto as Exhibit R and incorporated herein by this reference.

GENERAL COUNSEL REPORT

Mr. Collins referred to his confidential legal report in the confidential packet.

Construction Projects Update – Mr. Schneider briefly discussed the West Vail Sewer project, which required a large change order due to unforeseen circumstances by which the sewer main was in a much different location than records suggested. Staff was authorized to move forward, and Mr. Schneider was pleased with the coordination between staff, CDOT, and the town of Vail.

Randy Fischer Dispute – Mr. Collins updated on the suit filed against the District by Mr. Fischer, who is suing the District for expenses he claims were incurred when he built a car platform in a modified location due to the presence of sewer main in the area. The law firm of Nathan, Dumm and Mayer is representing the District in this ongoing matter.

WATER COUNSEL REPORT

Mr. Porzak referred to his confidential legal reports in the confidential packet.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding Eagle River MOU, Bolts Lake and Minturn water matters, CRCA matters, and the Pando Feeder Canal, pursuant to §24-6-402(4)(b) and (f), C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 1:04 p.m. to discuss attorney-client privileged issues concerning Eagle River MOU, Bolts Lake and Minturn water matters, CRCA matters, and the Pando Feeder Canal, pursuant to §24-6-402(4)(b) and (f) 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 1:55 p.m.

Response Letter to Homestake Partners – After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that sending a joint response letter from the District and Authority to the Homestake Partners regarding their 90-day phase II Eagle River MOU project notice be and hereby is approved as presented.

Bolts Lake – After the Executive Session discussion with staff and counsel, the Board unanimously
RESOLVED that the District staff and water and general counsel should continue pursuit of the development of a Bolts Lake agreement and a bulk water services agreement with Minturn and Battle Mountain as presented.

Pando Feeder Canal Diligence Application – After the Executive Session discussion about this critical water right, the Board unanimously

RESOLVED that Mr. Porzak be and hereby is authorized to draft and submit a diligence application on the District and Authority's behalf for the Pando Feeder Canal Water Right.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 3:00 p.m.
Respectfully submitted,

__________________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

__________________________________________
Dick Cleveland, Director

__________________________________________
Steve Coyer, Treasurer

__________________________________________
Stephen Friedman, Chair

__________________________________________
George Gregory, Secretary

__________________________________________
Timm Paxson, Director

__________________________________________
Bill Simmons, Director

__________________________________________
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.

__________________________________________
Jim Collins, General Counsel

__________________________________________
Glenn Porzak, Water Counsel