A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held December 17, 2015, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District (District), 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:

- Tom Allender, EagleVail Metropolitan District
- Geoff Dreyer, Arrowhead Metropolitan District
- Sarah Smith Hymes, Town of Avon
- George Gregory, Berry Creek Metropolitan District
- Jim Power, Beaver Creek Metropolitan District

The following Director was absent and excused:

- Mick Woodworth, Edwards Metropolitan District

The following Alternate Director was present and acting:

- Kara Heide, Edwards Metropolitan District

Also in attendance were:

- ERWSD Staff
- Linn Brooks
- Jason Cowles
- Carol Dickman
- Catherine Hayes
- Leslie Isom
- Diane Johnson
- Elena Jones
- John McCaulley
- Jason Sica
- Brian Tracy
- James Wilkins
- Consultants
- Jim Collins, Collins Cockrel & Cole
- Glenn Porzak, Porzak Browning & Bushong LLP
- Peggi O'Keefe, Clear Strategies, LLC
- Public
- Greg Aplet, the Wilderness Society
- Scott Braden, Conservation Colorado
- Pam Elsner, Authority Alternate Director
- Nissa Erickson, Rep. Polis staff
- David Gorsuch, citizen and customer
- Kevin Hochtl, citizen and customer
- Josh Kuhn, Conservation Colorado
- Scott Miller, the Wilderness Society
- Brooke Ranney, Eagle River Watershed Council
- Margaret Rogers, citizen
- Will Roush, Wilderness Workshop
- Bill Simmons, Authority Alternate Director

**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 disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership and business interests within the Authority. Also, he is appointed by Vail Associates, Inc. to serve as a Director of both the Eagle Park Reservoir Company and the Clinton Ditch and Reservoir Company; he also serves on the Eagle River Water & Sanitation District Board of Directors, which manages the Authority. Director Woodworth disclosed that he is employed by the Eagle River Fire Protection District, which operates within the Authority’s service area.

**CALL TO ORDER**

Chairman Gregory called the meeting to order at 8:30 a.m.

**AUTHORITY REPRESENTATION**

Ms. Brooks noted that Sarah Smith Hymes was recently appointed to represent the town of Avon on the Authority Board. She replaces Todd Goulding, and Ms. Brooks noted his years of service. The town’s appointment is attached hereto as Exhibit A and incorporated herein by this reference.

**PUBLIC COMMENT**

Chairman Gregory welcomed public attendees and noted receipt of a letter from the Hochtl family urging the board to support H.R. 2554, Rep. Polis’s proposed wilderness legislation, a copy of which is attached
hereto as Exhibit B and incorporated herein by this reference. Chairman Gregory noted a discussion of wilderness would be undertaken in Executive Session during the meeting to receive the advice of counsel, not to avoid transparency. He also noted the Authority supports wilderness but qualified the statement with the entity’s narrow scope, stating that the Authority’s main focus is to provide high quality water service to its customers. Chairman Gregory said the board wanted to ensure a wilderness designation would not preclude quick and effective remediation of any natural disasters within the Authority’s watershed that may affect the ability to provide high quality drinking water. Public comment was received from the following attendees: Messrs. Hochtl, Aplet, Miller, and Braden, Ms. Erickson, Ms. Rogers, Mr. Roush, Ms. Ranney, and Mr. Gorsuch. Messrs. Braden and Miller submitted comments on the most recent version of the Authority and District’s proposed wilderness policy and position on H.R. 2554, copies of which are attached hereto as Exhibits C and D, respectively, and incorporated herein by this reference. The Board thanked the public attendees for their comments.

At 9:05 a.m., all public attendees left the meeting, with the exception of Ms. Elsner and Mr. Simmons.

**ACTION ITEMS**

**Consideration of Minutes** – The minutes of the special meeting of November 19, 2015, were considered. Upon motion duly made and seconded, it was RESOLVED that the minutes of the November 19, 2015, special meeting be accepted and hereby are approved as presented.

**Operations Agreement with District** – Ms. Isom presented a board action request regarding the Authority’s 2016 Operations Agreement with the District, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. She noted a few changes to the Exhibits, including inclusion of the Authority’s 2016 capital projects in Exhibit A and some minor price increases in Exhibit F, the Laboratory Price List; Exhibit E, Basic Compensation, is unchanged from 2015. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED to approve the 2016 Operations Agreement with the District as presented.

A copy of the Operations Agreement is attached hereto as Exhibit F and incorporated herein by this reference.

**Committee Assignments** – Ms. Brooks discussed committee membership and suggested changes in light of Ms. Hymes’ recent appointment to the Board. She recommended Ms. Hymes replace Mr. Goulding on the Traer Creek Tank committee and not reappoint anyone to fill Mr. Goulding’s vacancies on the other committees, all of which will have at least one director remaining. After discussion and upon motion duly made and seconded, it was unanimously RESOLVED to approve the committee membership changes as presented.

**January 2016 Public Hearings** – Ms. Brooks noted staff’s request for two public hearings at the January 21 meeting: one to consider a cash in lieu of water rights fee increase for 2016 commensurate with
Denver/Boulder consumer price index (CPI) increase and one to consider the addition of an impact fee for new irrigation accounts. Mr. McCaulley and Ms. Jones presented additional information regarding the rational nexus for the new impact fee, a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. The Board authorized holding public hearings at the January 21, 2016, meeting to consider the fees and directed staff to post the required 30-day notice for such hearings.

**GENERAL MANAGER REPORT**

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

**Mountain Star Update** – Mr. Cowles updated the Board on the needed tank in Mountain Star, and Chairman Gregory gave a brief history of the project for the benefit of new and alternate Board members. Mr. Cowles noted costs are lower than originally projected and said the town of Avon, Mountain Star HOA, and developer Jen Wright have agreed to participate in funding the tank design. Mr. Cowles also discussed staff’s recommendation to build a concrete tank due to higher life cycle costs related to steel tanks; a concrete tank would require less maintenance, have a longer life expectancy, and would be less likely to have freezing issues. Mr. Cowles said this would increase the cost and suggested the Authority could contribute funds towards the price difference. The Board authorized the expenditure of up to $135,000 towards the project, with the understanding that this was the Authority’s final contribution to the cost of the tank. Ms. Brooks noted the Mountain Star HOA believes it can pay its portion of the tank cost using its capital funds and an increase in 2016 homeowner dues, if the homeowners agree. In response to a question, Ms. Brooks confirmed that the Authority would build the tank and said an agreement would be drafted in lieu of a final bill of sale. She also noted the maintenance would be the responsibility of the Authority.

Mr. Cowles also discussed the Mountain Star booster pump station (BPS) upgrade, the cost for which has increased about $500,000 – $700,000 from original estimates. This is due to increased effort and scope of work to upgrade electrical and safety equipment and demolition of an old pressure tank, among other items. Ms. Brooks said the additional safety and electrical work must be completed and it would be most economical to do all the BPS improvements at the same time. She noted the Authority collected more tap fees than budgeted in 2015 and suggested putting the additional funds towards the increased BPS project cost. Mr. Collins noted the amount of effort and cooperation that has gone into the Mountain Star projects and said the Board has shown a commitment to collaborate with the multiple involved parties.

**GENERAL COUNSEL REPORT**

Due to a scheduling conflict, Mr. Collins presented his report out of order.
Joint Resolution re Alpine Engineering – Mr. Collins presented a joint resolution with the
District to allow the continued use of Alpine Engineering following Ms. Brooks’ disclosure that her
husband, Gary, is now a co-owner of the company. A copy of the resolution is attached hereto as
Exhibit I and incorporated herein by this reference. Mr. Collins confirmed Ms. Brooks is not
involved in the District’s contract award process. After discussion and upon motion duly made
and seconded, it was unanimously

RESOLVED to approve the joint resolution with the District on the policy regarding Alpine
Engineering.

Lake Creek Wells Update – Mr. Collins said the Authority is close to procuring the needed
easements in the Lake Creek area.

Traer Creek Tank Update – Mr. Collins noted discussions and remediation of the tank failure are
ongoing. Mr. Cowles continues to coordinate on this matter.

Mr. Collins left the meeting at 10:00 a.m.

WATER COUNSEL REPORT

Piney River Unit Water Right Diligence – Mr. Porzak discussed the diligence filing for the Piney
River Unit Water Right. He noted Judge Boyd entered the decree granting diligence for the right.
The next diligence filing is due in 2021.

Seniors First Supreme Court Appeal – Mr. Porzak discussed the previous week’s oral
argument in the Seniors First case. He summarized the case, in which the Authority chose to
divert the junior of two water rights because of differences in the terms and conditions and
supporting augmentation plans of each right. Mr. Porzak said the Authority is obligated to provide
water to its constituents, which makes it uniquely suited to make decisions regarding use of its
water rights. The state is arguing that the senior right must be diverted first. Mr. Porzak noted the
state’s only role is to administer water rights. He will continue to provide updates on the case.

Colorado Water Plan – Mr. Porzak said the final draft of the plan was delivered to Gov.
Hickenlooper last month and discussed related information, a copy of which is attached hereto as
Exhibit J and incorporated herein by this reference. Mr. Porzak pointed out an entire chapter of
the plan devoted to flooding and natural disaster management planning and emphasized the
importance of natural disaster mitigation as it relates to the Authority’s position on the Polis
wilderness bill. The plan also indicated its opposition to federal bypass flows and noted the state
and its agencies will defend water rights in the state against federal intrusion, which is important
in light of the ongoing federal water directives of the Forest Service.

Cash in Lieu Fee Increase – Mr. Porzak discussed the upcoming public hearing to consider a
consumer price index (CPI) increase of the Authority’s cash in lieu of water rights fees. He
suggested a 5% increase in 2016 for both winter storage water and summertime consumptive
use credits, bringing the price for each to $26,250 and $8,300 per acre foot, respectively. Mr.
Porzak also noted the ongoing engineering work for proposed Eagle River MOU projects would
be complete in the spring and would provide good data for the cash in lieu fee increases for 2017
to ensure the Authority is receiving equitable compensation for cash in lieu of water rights.

Legislative Update – Mr. Porzak introduced Peggi O’Keefe, the Authority and District’s lobbyist.
Ms. O’Keefe discussed her background and experience. She also gave an update on the
proposed state legislation, the Colorado Water Rights Protection Act. Additional information is
attached hereto as Exhibit K and incorporated herein by this reference. She explained the
process by which proposed bills become law and efforts towards gaining support for the Colorado
Water Rights Protection Act. The Board thanked her for attending. Mr. Porzak gave further
information on the act; after discussion and upon motion duly made and seconded, it was
unanimously

RESOLVED that the Board supports the Colorado Water Rights Protection Act.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding wilderness issues,
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 the executive session at 10:22 a.m. to discuss attorney-client privileged
issues concerning wilderness issues, 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 10:53 a.m., all remaining staff with the exception of Ms. Brooks and Ms. Johnson left the meeting.
At 10:54 a.m., the Board continued its Executive Session to receive legal advice regarding Colorado
River Cooperative Agreement matters pursuant to §24-6-402(4)(b) and (e) C.R.S. Mr. Porzak again asked
that no electronic record be made, as the discussion would be entirely privileged attorney-client
communications.

The Board of the Eagle River Water and Sanitation District was invited into the Executive Session as
well. Acting Chair Buckley called the District meeting to order at 11:02 a.m. Upon motion duly made and
seconded, it was unanimously

RESOLVED to enter the executive session at 11:03 a.m. to discuss attorney-client privileged
issues concerning Colorado River Cooperative Agreement 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.*

The regular meeting resumed at 11:21 a.m.
Wilderness Discussion – Authority Chairman Gregory welcomed public attendees who were there to comment on wilderness issues with the District Board. He reiterated the Board’s desire to maintain transparency in its discussion of wilderness and other topics, as well as the Board’s highest priority, which is to provide quality water service to its constituents. He again emphasized that the Board is not opposed to wilderness; however, he also stressed the need to ensure the Authority can continue to plan effectively for the future, including building and maintenance of future facilities, in addition to any natural disaster mitigation that could affect the Authority’s ability to provide water to its customers.

Staff Reports – Staff reports were tabled to the January meeting due to time constraints. Copies of the finance report, operations report, and public affairs report are attached hereto as Exhibits L, M, and N, respectively, and incorporated herein by this reference.

Monthly Reports – Monthly reports were acknowledged, including the contract log, November meeting summary, and Authority and District committees list. Copies of the monthly reports are attached hereto as Exhibit O and incorporated herein by this reference.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:24 a.m.

Respectfully submitted,

___________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

______________________________
Arrowhead Metropolitan District

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Town of Avon

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Beaver Creek Metropolitan District

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Berry Creek Metropolitan District

______________________________
EagleVail Metropolitan District

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Edwards Metropolitan District

*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