A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held January 21, 2016, 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
- George Gregory, Berry Creek Metropolitan District
- Mick Woodworth, Edwards Metropolitan District

The following Directors were absent and excused:

- Jim Power, Beaver Creek Metropolitan District
- Sarah Smith Hymes, Town of Avon

The following Alternate Directors were present and acting:

- Buz Reynolds, Town of Avon
- Bill Simmons, Beaver Creek Metropolitan District

Also in attendance were:

- ERWS District Staff
- Linn Brooks
- Jason Cowles
- Carol Dickman
- Catherine Hayes
- Leslie Isom
- Diane Johnson
- Elena Jones
- John McCaulley
- Siri Roman
- Evette Smits
- Brian Tracy
- James Wilkins
- Consultants
- Jim Collins, Collins Cockrel & Cole
- 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 Allender and Simmons disclosed that they also serve on the Board of the Eagle River Water and Sanitation District.
- Director Simmons also noted he is employed by Beaver Creek Metropolitan District, an Authority member. 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 8:32 a.m.

PUBLIC COMMENT

Chairman Gregory noted receipt of a letter from Josh Lautenberg, a Vail business owner, regarding the Authority and District’s proposed wilderness policy. A copy of the letter is attached hereto as Exhibit A and incorporated herein by this reference.

PUBLIC HEARINGS

Irrigation Account Impact Fee — Mr. McCaulley and Ms. Jones discussed their board action request and associated joint resolution, copies of which are attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference. The board opened a public hearing at 8:33 a.m. to discuss the proposed irrigation impact fee. The hearing was noticed on the Eagle River Water and Sanitation District website in accordance with the guidelines set forth in the Authority Agreement. No public comment was received, and the hearing was closed at 8:34 a.m. In response to a comment, Mr. McCaulley noted the
irrigation fee was only for open space irrigation; single family homes would not be affected. After
discussion and upon motion duly made and seconded, it was unanimously
RESOLVED that the Irrigation Account Impact Fee be and hereby is approved as
presented. Alternate Director Reynolds abstained.

Cash in Lieu of Water Rights Fee Increase – The Board opened another public hearing at 8:39 a.m. to
consider a cash in lieu of water rights fee increase of 5% 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. An
updated water dedication policy is attached hereto as Exhibit D and incorporated herein by this
reference. No public comment was received and the public hearing was closed at 8:40 a.m. Mr. Porzak
noted the increase is slightly higher than the Consumer Price Index (CPI) because the value of water is
increasing more quickly than the CPI. He said ongoing engineering studies for the proposed ERMOU
projects would be complete in the spring and provide good data for the 2017 cash in lieu fee increases. In
response to a question, Mr. Porzak said he was certain the 5% increase was equitable, if not less than
the actual value of the water. Ms. Brooks noted that in the future, this fee increase would be done with the
next year’s budget and be included in the Rules and Regulations Appendix A table of Rates and Fees.
After discussion and upon motion duly made and seconded, it was unanimously
RESOLVED that the cash in lieu of water rights fee increase be and hereby is approved
as presented.

ACTION ITEMS

Consideration of Minutes – The minutes of the special meeting of December 17, 2015, were
considered. Upon motion duly made and seconded, it was
RESOLVED that the minutes of the December 17, 2015, special meeting be accepted and
hereby are approved as presented. Alternate Director Reynolds abstained.

Resolution regarding Meeting Place and Posting Location – Ms. Hayes presented a Resolution
designating the Authority’s meeting place and posting location for 2016, a copy of which is attached
hereto as Exhibit E and incorporated herein by this reference. Upon motion duly made and seconded, it
was unanimously
RESOLVED that the Resolution Designating Meeting Place and Posting Location be and hereby
is approved as presented.

Angler’s PUD Cash in Lieu Request – Ms. Smits presented her board action request and related
materials regarding the Angler’s PUD request, a copy of which is attached hereto as Exhibit F and
incorporated herein by this reference. She explained the request and noted the development would be in
the “medium” water use category. Discussion ensued regarding whether full diversions must be
augmented for the development, as well as Avon’s concerns regarding completion of the Authority’s
unallocated water policy prior to approval of the request. The Board tabled the discussion to a later
meeting so staff can communicate questions and concerns to the developer and return to the Board with
updated information. Ms. Smits noted the developer began the application process in 2015; therefore, fees were calculated at 2015 costs.

Resolution regarding Annexation of Mountain Star Tank Site – Mr. Collins explained the resolution, a copy of which is attached hereto as Exhibit G and incorporated herein by this reference. The resolution annexes the tank site into the town of Avon boundaries. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Resolution Initiating the Annexation of the Mountain Star Tank site be and hereby is approved as presented.

Rules and Regulations Amendments – Ms. Brooks explained administrative changes to the Rules and Regulations related to the Construction Review Process. The changes make the process more efficient and are beneficial to the developer. The Rules and Regulations board subcommittee reviewed the proposed changes and recommends approval. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the proposed amendments to the Rules and Regulations be and hereby are approved as presented.

Mountain Star Request for Additional Funding – Ms. Brooks referenced an email from the Mountain Star Association (MSA) to the Authority Board, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. The MSA is requesting an additional contribution from the Authority towards construction of the needed Mountain Star tank. Discussion ensued regarding the Authority’s previous contributions to the project, including procurement of the tank site and PRV upgrades in the area. The Board agreed that it would not contribute anything further to the project and directed staff and Counsel to draft a letter to the POA reiterating this position.

GENERAL COUNSEL REPORT

Due to a scheduling conflict, Mr. Collins presented his report out of order.

EXECUTIVE SESSION

Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek Tank, 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 9:05 a.m. to discuss attorney-client privileged issues concerning the Traer Creek Tank, 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 9:43 a.m., all remaining staff except of Ms. Brooks, Ms. Isom, and Ms. Johnson left the meeting.

At 9:44 a.m., Mr. Porzak requested the Board continue 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 regular meeting resumed at 9:58 a.m.

Resolution Concerning Enhancements to Water Storage Capacity Required as a Result of the Failure of the Traer Creek Water Storage Tank – Mr. Collins discussed the resolution, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference. Mr. Collins summarized the current situation, in which Traer Creek has denied responsibility for the tank failure and believes it has met the conditions of the warranty obligation. The Authority disagreed and sent a Notice of Default to Traer Creek. Discussion ensued regarding the operational issues the Authority is experiencing as the Traer Creek tank is offline. The EagleVail tank is nearing the end of its useful life but cannot be taken offline for replacement without the Traer Creek tank being online. New development in Traer Creek, Eagle Vail, Avon, and Beaver Creek will be limited without access to the water and additional SFEs provided by the Traer Creek tank. In addition, the impact of the Traer Creek Tank has been to remove storage: the Authority is serving 300 SFEs in Traer Creek that were contingent upon a functioning tank in that area, as was the Authority’s modifications to the Avon 1 Tank, which removed 500,000 gallons from the system to facilitate water service to Buffalo Ridge. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Resolution Concerning Enhancements to Water Storage Capacity Required as a Result of the Failure of the Traer Creek Water Storage Tank be and hereby is approved as presented. Alternate Director Reynolds abstained.

The Board noted the critical nature of the direction given in the resolution to move forward with whatever means are necessary to effect repair or replacement of the tank, as there are critical risk issues associated with the failure of the tank. These risks must be addressed and managed in the best interest of all Authority facilities. Discussion ensued regarding funding the project. Mr. Wilkins noted a budget transfer from the Lake Creek Wells project, which is on hold, could be completed when needed. However, this budget transfer would not affect funds necessary to secure the necessary easements for the Lake Creek well field.

Resolution on Action for Declaratory Judgment – Mr. Collins again noted that the Notice of Default was sent to Traer Creek and, if after 30 days, Traer Creek has not cured its default, the Authority can bring a Declaratory Judgment action against Traer Creek. Upon motion duly made and seconded, it was unanimously

RESOLVED to authorize Mr. Collins to proceed with an action for declaratory judgment if needed.

Alternate Director Reynolds abstained.

Colorado River Cooperative Agreement Cost Sharing Agreement – Mr. Porzak discussed the common interest cost sharing agreement, which was part of the Colorado River Cooperative Agreement (CRCA). The Authority originally contributed $13,333 and that bill is coming due. Additionally, a proposed
amendment would add additional parties to the agreement and also increase the budget for the project.
The Board directed Mr. Porzak to sign the updated agreement on its behalf and authorized an additional
contribution to the project cost, not to exceed $15,000.

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

Current Alpine Engineering Contracts – Ms. Brooks discussed outstanding contracts with
Alpine Engineering and noted Alpine would also work on the Mountain Star tank project. She
reminded the Board that her husband, Gary Brooks, is now a principal with Alpine, which is the
reason for the disclosure.

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

FINANCE REPORT
Mr. Wilkins presented his report, a copy of which is attached hereto as Exhibit L and incorporated herein
by this reference. He noted December water sales were slightly higher than projected, while year-to-date
sales were slightly lower than budgeted. These observations were likely due to high visitor numbers over
the holidays and a very wet summer season, respectively. Mr. Wilkins also noted much higher-than-
anticipated development impact fee revenues, a likely sign of the observed economic recovery locally.

Traer Creek Tank Project Budget Transfer – Mr. Wilkins said when and if funds are needed for
repair or replacement of the Traer Creek tank, money could be transferred from the Lake Creek
easement project back to the general fund prior to being allocated to the Traer Creek tank project.
Ms. Brooks confirmed the transfer could be done incrementally, and Mr. Wilkins said it may be
possible to increase the planned 2017 Authority revenue bond to include the Traer Creek project
and seek reimbursement for any related expenses.

WATER COUNSEL REPORT
Wilderness Policy and Position Statement – Mr. Porzak discussed the proposed policy, which
will be considered at a joint meeting of the Authority and District that morning. A copy of the policy
is attached hereto as Exhibit M and incorporated herein by this reference. With regard to the
position statement, Mr. Porzak noted recent discussions related to the Authority and District’s
proposed language, which is now being reviewed by the House subcommittee to which the bill
was assigned, per communication from Rep. Polis’s office. Mr. Porzak emphasized that the
Authority and District want language in the bill to include mitigation of natural disasters including
flooding, not just wildfire.
Support of Bolts Ditch Legislation – Mr. Porzak discussed a letter and supporting documents related to Bolts Ditch legislation, copies of which are attached here as Exhibit N and incorporated herein by this reference. Bolts Ditch was inadvertently included in the boundaries of the Holy Cross Wilderness. Minturn’s efforts to gain continued access to the site have been denied by the Forest Service. The Board agreed to sign the letter of support to Rep. Polis regarding legislation that would allow Minturn’s continued access to Bolts Ditch.

Federal Water Right Directives – Mr. Porzak discussed three Forest Service directives, including recent changes to the ski area water rights clause, asking ski areas to inventory their water rights necessary for sufficient operations and have such inventory certified by an expert; the rights would then potentially be encumbered. Related materials are attached hereto as Exhibit O and incorporated herein by this reference. He also discussed the release of a 1,300 page BMP directive technical manual right before Thanksgiving and the short review deadline. The technical manual is heavily referenced in the BMP directive; Vail Resorts sent a comment letter requesting all references to the technical manual be deleted from the directive first, as it was never officially noticed in the Federal Register and because of the insufficient review time for the technical manual. Mr. Porzak also said the groundwater directive had been withdrawn, but he expects another revised version will be issued in the future.

Federal Legislation Update – Mr. Porzak noted a letter was issued on behalf of the Authority and District and signed by Ms. Brooks, reaffirming the entities’ support for the legislation.

State Legislation Update – Mr. Porzak said the Colorado Water Rights Protection Act was introduced by the legislature the previous day and was assigned to the House Agriculture Committee. He will continue to monitor the status of this bill. Related materials are attached hereto as Exhibit P and incorporated herein by this reference.

Pre-Compact Water Storage Project – Mr. Porzak discussed a recent meeting with Colorado Water Conservation Board Director James Eklund. Mr. Eklund said the state generally supports the project, which aligns with many goals of the Colorado Water Plan. Mr. Eklund is scheduling a meeting with interested parties, all of whom previously participated in a Wolcott Reservoir feasibility study. Mr. Porzak will continue to participate in meetings and update the Board on progress.

OPERATIONS REPORT

Ms. Roman presented the Operations Report, a copy of which is attached here as Exhibit Q and incorporated herein by this reference.

Streamside Marriott Pretreatment Application – Ms. Roman said the Marriott is having corrosion issues in its copper pipes and applied for a pretreatment application to add
phosphorous to the water to mitigate future pinholes in the pipes. The District denied its application and will instead work with the Marriott on the corrosion issues, which are complicated.

**Avon Heat Recovery System Tour** – Ms. Roman noted a recent tour of the system with Denver Metro Wastewater, which is considering a similar project to heat the National Western Stock Show building. She said the attendees were very complimentary of the innovative system, which was installed in 2010 as a joint project with the Town of Avon.

**Gore Creek Strategic Action Plan** – Ms. Roman said the Vail Town Council will begin reviewing the plan, which identifies over 220 actions for Gore Creek remediation. The council is expected to allot $7 million in its budget over the next five years to address these items, which will be prioritized for completion. In response to a question, Ms. Roman confirmed that CDOT still applies magnesium chloride to roadways during inclement weather.

**Eagle Mine Update** – Mr. Tracy discussed the Mine and the low risk of a Gold King Mine-type spill occurring there. The Mine tunnels are potentially collapsed, so staff relies on instrumentation to monitor the bulkhead water levels. Ms. Brooks noted the area behind the bulkheads is constantly dewatered and treated at the Mine. Mr. Tracy said the Authority and District keep continuous pressure on Mine staff to ensure proper sampling and maintenance there. He also noted the existence of thousands of similar mines in Colorado and said it is rare to have a responsible party, as Eagle Mine does with CBS as its owner.

**EPRC Quarterly Report** – Mr. Tracy discussed the Eagle Park Reservoir Company Quarterly report and noted a quarterly meeting scheduled for Jan. 26.

**PUBLIC AFFAIRS REPORT**

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

**Microbeads Ban** – Ms. Johnson said the federal Microbead-Free Waters Act of 2015 was signed Dec. 28. The new law phases out the manufacture of personal care products containing plastic microbeads by July 1, 2017, and the sale of such products by July 1, 2018. The federal law takes effect sooner than a similar Colorado law that was signed in March 2015, which phased out microbeads by Jan. 1, 2020. Microbeads end up as wastewater sludge or pass through the treatment process into waterways where they enter the food chain when eaten by fish.

**Rainbarrel Legislation** – Ms. Johnson said House Bill 16-1005 is this year’s iteration of rain barrel legislation. The bill would allow homeowners to collect some of the rainwater on their property, which is currently prohibited by Colorado water law. The overall effect of the legislation is small for each homeowner; however, it builds awareness of water issues and the need to use water efficiently. The Board agreed the Authority could again appear on the proponents list of supporters.
Building a Better Colorado – Ms. Johnson discussed the project, which is gathering statewide input on how Colorado might improve its initiative process, election process, and fiscal policy. The latest community meeting was held Jan. 14 in Vail and all meeting results are online. Legislation or a ballot question is likely to result from the effort.

Community Engagement – Ms. Johnson informed directors about Eagle County’s "community conversations" series as well as an offer by the Vail Valley Medical Center to host a tour of their facilities.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:13 a.m.

Respectfully submitted,

___________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

___________________________________
Arrowhead Metropolitan District

___________________________________
Town of Avon

___________________________________
Beaver Creek Metropolitan District

___________________________________
Berry Creek Metropolitan District

___________________________________
EagleVail Metropolitan District

___________________________________
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.

__________________________________  __________________________________
James P. Collins, General Counsel       Glenn Porzak, Water Counsel