A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held February 25, 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
- Sarah Smith Hymes, Town of Avon
- Jim Power, Beaver Creek Metropolitan District
- Mick Woodworth, Edwards Metropolitan District

Also in attendance were:

- ERWSD Staff
- Linn Brooks
- Carol Dickman
- Catherine Hayes
- Diane Johnson
- John McCaulley
- Glen Phelps
- Louise Reiter
- Jason Sica
- Evette Smits
- Consultants
- Jim Collins, Collins Cockrel & Cole
- Glenn Porzak, Porzak Browning & Bushong LLP
- Public
- Pam Elsner, Beaver Creek Metropolitan District
- Mike Reisinger, Berry Creek Metropolitan District

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 alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation District. Director 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. Alternate Director Simmons also noted he serves on the boards of the Edwards and Red Sky Ranch Metropolitan Districts and 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 8:30 a.m.

INTRODUCTIONS

Introductions were made, including Mr. Sica, the District IT manager, and Mr. Reisinger, a Berry Creek Metropolitan District board member.

CONFLICTS OF INTEREST

Updated conflict of interest letters for Director Allender and Alternate Director Simmons were filed with the Secretary of State, copies of which are attached hereto as Exhibits A and B, respectively, and incorporated herein by this reference.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of January 21, 2016, were considered. Upon motion duly made and seconded, it was RESOLVED that the minutes of the January 21, 2016, regular meeting be accepted and hereby are approved as presented. Directors Hymes and Power abstained.
The minutes of the joint special meeting with Eagle River Water and Sanitation District of January 21, 2016, were considered. Upon motion duly made and seconded, it was

**RESOLVED** that the minutes of the January 21, 2016, joint special meeting be accepted and hereby are approved as presented. Directors Hymes and Power again abstained.

**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 C and incorporated herein by this reference. She explained the request and noted the development would be in the “medium” water use category. Mr. Porzak noted his review of the request and agreed that the cash-in-lieu calculation was appropriate. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Angler’s PUD cash in lieu request be approved as presented.

**Upper Colorado River Wild and Scenic Management Plan Agreement** – Mr. Porzak discussed the management plan and said the plan grandfathered in the Eagle River MOU; he recommended approval. A copy of the agreement is attached hereto as Exhibit D and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Upper Colorado River Wild and Scenic Management Plan Agreement was approved as presented.

**STRATEGY ITEMS**

**Treated Water Storage Fee Elimination** – Ms. Brooks noted a discussion of the treated water storage fee a few months prior. She presented a related board action request form, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. Ms. Brooks noted the fee was incorporated into the Authority’s water system impact fee (WSIF), which was adopted in 2015. The WSIF recognizes the benefit that all customers receive from regional storage tanks; therefore, the treated water storage fee is no longer needed. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Treated Water Storage Fee be eliminated.

**GENERAL MANAGER REPORT**

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

**Mountain Star Tank Update** – Mr. Collins said the Board was very clear in its communication to the Mountain Star Property Owners Association regarding the Authority’s maximum contribution of $135,000 to the tank. Despite this, Mountain Star again requested additional funds from the Authority. After discussion and upon motion duly made and seconded, it was unanimously
RESOLVED to approve execution of an agreement with Mountain Star that will include the parameters previously agreed upon, including the Authority’s maximum contribution of $135,000. Director Power abstained.

Traer Creek Tank Update – Mr. Collins noted Traer Creek was investigating remediation for the failed tank. If Traer Creek’s proposed cure is unsatisfactory, the Authority can file for declaratory judgment for failure to meet the tank warranty obligation. In response to a question, Mr. Collins said the Authority’s tank expert was uncertain of the viability of the potential repair plan. In response to another question, Mr. Collins said the Authority could be prejudicing itself if it did not give Traer Creek time to pursue the proposed cure. A press release on the tank failure was issued earlier in the month, at the Board’s request.

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

FINANCE REPORT
In the absence of Mr. Wilkins, Ms. Reiter presented the finance report, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. She noted that slightly lower than budgeted water sales to date may be the result of fewer visitors. Lower-than-normal wastewater flows also indicate lower tourist numbers.

OPERATIONS REPORT
Ms. Brooks presented the Operations Report, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference.

Town of Vail Strategic Action Plan – Ms. Brooks noted a scheduled presentation of the plan was delayed due to illness of one presenter. She briefly discussed the plan, which identifies and prioritizes Gore Creek water quality issues. The town has committed to funding the plan. District staff reviewed the plan and is supportive overall, but recommended higher prioritization of certain projects, including mitigation of snow storage near Gore Creek and its tributaries.

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

Legislative Issues – Ms. Johnson discussed HB16-1283 on water loss audit reporting, which would require the Authority and District, as covered entities, to report data on non-revenue water. It is similar to a 2010 bill that mandated reporting of water use and water conservation data. In response to a question, Ms. Johnson said it would require some additional staff time to prepare and submit the report. She also discussed upcoming legislation to be introduced by the Colorado River Water Conservation District that provides an alternative mechanism for creation of
subdistricts within the River District, which could then be used to finance some of the projects recommended in the Colorado Basin Implementation Plan and Colorado Water Plan.

**Colorado Basin Roundtable** – Ms. Johnson said the River District is leading the effort to fund the Colorado River Development and Curtailment Risk Study with support from the four west slope roundtables and the Southwest Water Conservation District.

**State of the River Public Meeting** – Ms. Johnson noted the annual Eagle River Valley meeting will be held either May 12 or May 16, from 5:15 to 8 p.m. at Colorado Mountain College in Edwards.

**Authority U: Testing and Regulations Related to Lead in Drinking Water** – Ms. Johnson referenced the lead in drinking water issue in Flint, Mich. where many homes still have old lead service lines. She contrasted this with the relatively young age of the water system and homes in the Authority’s service area, which consistently show results of lead sampling at levels well below the “action level” defined under the federal Safe Drinking Water Act. She said the District and Authority were on a reduced monitoring schedule due to the low risk. She also presented a memo, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference. Ms. Brooks pointed out the unique nature of the Environmental Protection Agency’s lead regulation: water providers are required to measure lead levels at the household tap, even though the providers have no ownership of the portion of the system that is within the properties of individual homes and businesses that could be the source of the problem. Discussion ensued about various materials used in pipes, their potential for corrosion, and what District staff looks for during meter change outs at customer homes and businesses; the District’s Rules and Regulations, which stipulate use of certain pipe materials; and how lead’s removal from solder, flux, and brass components has steadily reduced the risk of lead exposure.

**Walking Mountains Climate Change Action Plan** – The Board discussed a letter from Walking Mountains regarding a local climate change action plan, a copy of which is attached hereto as Exhibit L and incorporated herein by this reference. Director Allender said the length of the local ski season had not changed in recent decades, though some other areas within the U.S. are certainly experiencing shorter winter recreation seasons.

**GENERAL COUNSEL REPORT**

**Avon Drinking Water Facility (ADWF) Leased Property** – Mr. Collins discussed the ADWF property, which is leased from the town of Avon. District and town staff will meet to discuss appraisal instructions and potentially engage an appraiser, beginning the process by which the Authority could purchase the property. He noted a previous purchase effort resulted in differing appraisals by the District and town’s appraisers, so agreeing upon the instructions beforehand will add an element of efficiency at the beginning of the process.
WATER COUNSEL REPORT

Colorado Water Rights Protection Act – Mr. Porzak updated on the legislation and ongoing efforts to resolve issues regarding bypass flows; impact of the bill on county 1041 powers; and language regarding how the federal government can obtain water rights in Colorado. He presented related information, copies of which are attached hereto as Exhibit M and incorporated herein by this reference. Mr. Porzak said the bill was scheduled for a committee hearing a week from Monday and will continue to update the board on progress.

Legislation Confirming Recreation as a Beneficial Water Use – Mr. Porzak discussed a recent Supreme Court ruling that recreational water use was not a beneficial use and presented related information, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference. He discussed the proposed legislation, which would recognize recreation as a beneficial water use and noted the Authority and District have numerous decrees for such uses. The Board directed Mr. Porzak to support the bill on its behalf. Discussion ensued regarding leaving water in the river for environmental purposes, meeting nutrient and water quality standards, and for dilution flows, all of which are beneficial uses.

Update on HR 2554: Continental Divide Wilderness and Recreation Act – Mr. Porzak updated the board on the bill and presented related information, a copy of which is attached hereto as Exhibit O and incorporated herein by this reference. He also discussed a recently received letter to the Boards from Rep. Polis, a copy of which is attached hereto as Exhibit P and incorporated herein by this reference. The letter states that the District and Authority’s suggested language for the bill is unacceptable to the staff of the House and Senate Natural Resource Committees. Discussion ensued regarding the various exceptions provided in other wilderness bills; the amount of time the board, staff, and consultants have spent on this issue; and the likelihood of this bill becoming law. The Board directed Mr. Porzak to draft a letter to Rep. Polis clarifying its position and requesting a meeting.

Eagle River MOU Projects Update – Mr. Porzak updated the Board on a meeting with ERMOU parties regarding potential joint projects, associated cost per acre foot for the various project options, and needed wetlands studies to determine project feasibility. The Board authorized staff to engage Bob Weaver of Leonard Rice Engineers to complete a wetlands feasibility study in the spring and summer.

Unallocated Water Policy Update – Mr. Porzak discussed the Authority unallocated water policy and related comments from a productive meeting with town of Avon representatives and their water attorney. He noted comments that were not incorporated included an acre-foot limit on cash-in-lieu of water rights and giving preference to low income housing, both of which are beyond the scope of the Authority’s power since the Authority is not a land use agency. Mr.
Porzak clarified that per the updated Authority Agreement, a “contracting party” is one of the six Authority members. Another meeting is scheduled to discuss the policy.

**Updated Water Rights Appraisal** – Mr. Porzak reviewed the updated water rights appraisal, a copy of which is attached hereto as Exhibit Q and incorporated herein by this reference. He noted that the ERMOU engineering study has indicated the Authority’s storage/acre-foot costs might be slightly low.

**Texas Supreme Court Ruling re Prior Appropriation** – Mr. Porzak discussed a recent Texas Supreme Court ruling that upholds the prior appropriation law for privately held water rights; the state cannot give preference to cities or power providers over longstanding water rights holders even if the state declares it necessary for health and public welfare of the people. He noted this could be a precedent for future compact curtailment administration.

At 10:28 a.m., all remaining staff except of Ms. Brooks and Ms. Johnson left the meeting.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding 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 the executive session at 10:29 a.m. to discuss attorney-client privileged issues concerning 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.*

The regular meeting resumed at 10:49 a.m.
ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 10:50 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

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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