Upper Eagle Regional Water Authority  
Board of Directors Meeting  
December 15, 2016  
MINUTES

A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held December 15, 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
- Pam Eisner, Beaver Creek Metropolitan District
- George Gregory, Berry Creek Metropolitan District
- Sarah Smith Hymes, town of Avon

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:

- District Staff
- Linn Brooks
- Jason Cowles
- Carol Dickman
- Catherine Hayes
- Debbie Hoffman
- Diane Johnson
- John McCaulley
- Siri Roman

- Jeff Schneider
- Micah Schuette
- James Wilkins
- Consultants
- Jim Collins, Collins Cockrel & Cole
- Glenn Porzak, Porzak Browning & Bushong LLP
- Public
- Eric Applegate, Traer Creek Metropolitan District
- Mike Reisinger, Berry Creek Metropolitan District
- John McCaulley
- Siri Roman

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:

- Directors Allender and Gregory 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. Director Eisner disclosed her membership with the Vilar Performing Arts Center Guild, which operates within the Authority’s service area. Director Gregory also disclosed that he occasionally undertakes small development and construction activities within the Authority and District service areas. Alternate Director Simmons noted he serves on the Edwards Metropolitan District board 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

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

PUBLIC COMMENT

Mr. Schuette, the District’s newest planner, and Mr. Applegate of Traer Creek Metropolitan District were introduced.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of November 17, 2016, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the November 17, 2016, regular meeting be accepted and hereby are approved as presented. Director Dreyer abstained.
Proposed 2017 Meeting Schedule – Ms. Brooks discussed a memo regarding the proposed 2017 meeting schedule, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Discussion ensued regarding staff conflicts during certain months with the regular meeting schedule for the fourth Thursday of the month; however, moving such meetings to the third Thursday can cause scheduling conflicts for Directors. The Board tabled any action pending the outcome of the District Board’s discussion of the matter, as maintaining the same meeting dates for both Boards is preferable and efficient.

Resolution for Joint Regional Water Efficiency Plan with Eagle River Water & Sanitation District – Mr. McCaulley presented a board action request and related resolution regarding a joint regional water efficiency plan for the Authority and District, copies of which are attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference. The Board discussed the efficiencies of doing a regional plan. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the resolution for a Joint Regional Water Efficiency Plan with the Eagle River Water & Sanitation District be and hereby is approved as presented.

2017 Operations Agreement with Eagle River Water & Sanitation District – Mr. Collins discussed the 2017 operations agreement with the District and a related board action request, copies of which are attached hereto as Exhibits D and E, respectively. He noted various exhibits to the agreement were updated to reflect the costs and fees from the previously adopted 2017 budget; the main body of the agreement did not change. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the 2017 Operations Agreement with the Eagle River Water & Sanitation District be and hereby is approved as presented.

STRATEGY ITEMS

Avon Hotel Approval – Secretary Smith Hymes noted the Avon Town Council recently approved a hotel to be constructed between West Beaver Creek Blvd and Avon’s Main Street Mall, in the space now occupied by a parking lot. Discussion ensued regarding timing and parking, among other topics.

GENERAL MANAGER REPORT

Ms. Brooks discussed her report, a copy of which is attached hereto as Exhibit F and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as Exhibit G and incorporated herein by this reference.

Lead and Copper Sampling – Ms. Brooks summarized the Safe Drinking Water Act’s Lead and Copper Rule requirements and said the Authority and District systems have been on reduced monitoring due to low or no levels of detection. The Authority’s scheduled monitoring period was earlier this year; results from each sampled home remained low or non-detected. Sampling
results were communicated to customers with some information about lead in drinking water – which usually comes from a home’s own plumbing. However, some required language was inadvertently omitted from the letters to customers, which could result in a violation. A follow-up letter will be sent to participating customers and staff will notify state regulators. Ms. Brooks proposed a public outreach effort to inform customers about lead in drinking water; the Board agreed that transparency is best and noted some related issues to include. The Environmental Protection Agency has increased its focus on lead in drinking water and has been updating the Lead and Copper Rule. Colorado regulators have notified staff that the sampling frequency for lead and copper will increase from the current once every three years to at least annually. Ms. Brooks informed the Board that this increase may require an additional employee to complete the sampling and reporting.

FINANCE REPORT
Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. He noted Authority water sales were slightly above projections and District sales were slightly below, though both entities were well within year-to-date expectations. Tap fees are above projections and expected to increase further in 2016 as developers pay before 2017 increases go into effect.

COMMUNICATION AND PUBLIC AFFAIRS REPORT
Ms. Johnson noted she did not include a written report for the monthly packets.

Gore Creek Hotline – Ms. Johnson informed the Board of the town of Vail’s newly established hotline, 970-476-GORE (4673), to anonymously report suspected spills or potential hazards to Gore Creek. Such events can be reported 24/7 and will be received by the town’s environmental sustainability office during business hours and directed to the Vail Police department afterhours.

Mountain Star Tank Dedication – Ms. Johnson said the Dec. 8 ribbon-cutting event to celebrate the completion of Mountain Star Tank 5 was well attended and thanked involved Board, staff, and community members.

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

Drought and Lakes Powell and Mead – The Board discussed the most recent graph of Lake Mead, water levels in which continue to decline, making additional drought years more difficult to weather. Staff noted Lake Powell was last full in 1999, and this was largely why the 2003/2004 drought was successfully endured. Lake Powell’s level has increased slightly in recent years due to above-average total water generated in its watershed. Current conditions are concerning for a
variety of reasons, especially as lower basin states, including California, continue to use more
water than their allocation of water per the Colorado River Compact.

**GENERAL COUNSEL REPORT**

**Traer Creek Update** – Mr. Collins summarized recent developments with Traer Creek related to
the 2015 tank failure. Per the court’s request, the Authority served all involved parties with a
motion to join the proceedings. Mr. Collins noted the Authority continues to believe Traer Creek is
responsible for the two-year warranty and does not think all parties fully understand this position.
He recommended getting attorneys and non-attorneys for all parties together to effectively
communicate the Authority’s position and said such a meeting would also help determine whether
mediation efforts would be fruitful. The Board directed staff to facilitate the meeting.

**Traer Creek Tank Reconstruction** – Mr. Cowles said a draft request for proposal was prepared
by staff to solicit engineers for a tank redesign, per the integrated project delivery resolution
approved by the Board at its Nov. 17 meeting. He expects tank removal to commence in spring or
summer 2017.

**Lake Creek Wells Update** – Mr. Collins said Lake Creek Wells monitoring and testing was
complete, with results expected soon.

**Cordillera Metro District Surcharge Analysis** – Mr. Collins and Mr. Cowles discussed
communication with Cordillera regarding its surcharge to its customers. There was previous
discussion of terminating the charge; however, staff recommends keeping the charge, as the
future funds collected may be needed to purchase additional water rights. Cordillera also
proposed some additional water system projects for which the surcharge funds could be used.
Mr. Porzak suggested staff prepare a presentation for the Board regarding the history of the
Cordillera development and its contractual relationship with the Authority.

**Tap Fee Policy for Public Use Facilities** – Mr. Collins discussed the Authority and District’s tap
fee policy for public use facilities. The Board reaffirmed the policy, which allows financing of tap
fees for public use facilities for up to ten years. Per the policy, the Authority and District will not
waive the fees, as such facilities have a measurable impact on the system and both entities have
a “growth pays for growth” philosophy. Staff also noted the fees are based on square footage;
thus, smaller units pay lower fees.

Mr. Applegate, Ms. Hoffman, and Mr. Shuette left the meeting at 9:20 a.m.

**EXECUTIVE SESSION**

Mr. Collins requested the Board enter into Executive Session to receive legal advice regarding
the Traer Creek tank and Cordillera surcharge, 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 9:21 a.m. to discuss attorney-client privileged issues concerning Traer Creek tank and Cordillera surcharge, 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.*

The regular meeting resumed at 9:45 a.m., at which time Mr. Applegate, Ms. Hoffman, and Mr. Schuette reentered the meeting.

WATER COUNSEL REPORT

Eagle River Meadows Update – Mr. Porzak discussed the estimated water demand for the Eagle River Meadows development. A related memo is attached hereto as Exhibit J and incorporated herein by this reference. The development would have to augment 100% of diversions during certain times of year due to the two mile gap in the Eagle River between the Edwards Drinking Water Facility and the Edwards wastewater treatment plant. Mr. Porzak discussed the potential for serving this development during instream flow calls from the Lake Creek well field and developing a modified pumpback from the Edwards wastewater treatment plant to the confluence of Lake Creek and the Eagle River to eliminate the need to augment diversions rather than just the consumptive use. This would free up Eagle Park Reservoir water, effectively expanding the Authority’s unallocated in-basin water supply. Discussion ensued regarding possible cost and funding scenarios, as well as work previously done to analyze such a pumpback. The Board authorized staff to facilitate an additional study on the modified pumpback, the cost for which would be paid at least partially by the developer.

Water Rights Appraisals – Mr. Porzak discussed the most recent water rights appraisals for the Authority and District of approximately $50 million and $49 million, respectively. A related breakdown of water rights and their values is attached hereto as Exhibit K and incorporated herein by this reference.

Colorado River Compact Update – Mr. Porzak discussed the State Engineer’s recently submitted draft rules regarding compliance with the Republican River Compact. He noted the draft rules do not exclude pre-Compact water rights and do not administer post-Compact rights according to the priority system. He suggested the Authority and District work with the River District to oppose the rules, as they could set an adverse precedent for future State Engineer rules governing the administration of the Colorado River Compact. Mr. Porzak also presented related materials, including a letter written to the State Engineer regarding the Republican River Compact call and a memo regarding the impact of a Colorado River Compact Call on pre-Compact water rights, copies of which are attached hereto as Exhibits L and M, respectively, and incorporated herein by this reference.
**Eagle River MOU Projects** – Mr. Porzak discussed a recent Colorado Supreme Court ruling in the Ivanhoe-Buske case, which will prevent Aurora and Colorado Springs from expanding the use of existing Homestake Reservoir transmountain diversions by storing those diversions in new east slope storage facilities. A copy is attached hereto as Exhibit N and incorporated herein by this reference. He also noted this makes the Eagle River MOU projects even more important to the East Slope stakeholders.

Mr. Applegate, Ms. Hoffman, and Mr. Schuette left the meeting at 10:22 a.m.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding Eagle Park Reservoir water rights 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 10:23 a.m. to discuss attorney-client privileged issues concerning Eagle Park Reservoir water rights 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.*

All remaining staff left the meeting at 10:40 a.m., prior to discussion of the CRCA matters, with the exception of Ms. Brooks and Ms. Johnson.

The regular meeting resumed at 10:55 a.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:56 a.m.

Respectfully submitted,

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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

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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