Upper Eagle Regional Water Authority  
Board of Directors Meeting  
January 26, 2017  
MINUTES  

A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held January 26, 2017, 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:
- Pam Elsner, Beaver Creek Metropolitan District
- Sarah Smith Hymes, town of Avon

The following Alternate Directors were present and acting:
- Amy Phillips, town of Avon
- Bill Simmons, Beaver Creek Metropolitan District

Also in attendance were:
- District Staff
- Jason Cowles
- Carol Dickman
- Catherin Hayes
- Debbie Hoffman
- Diane Johnson
- John McCaulley
- Jeff Schneider
- Micah Schuette
- Brian Tracy
- James Wilkins
- Consultants
- Jim Collins, Collins Cockrel & Cole
- Glenn Porzak, Porzak Browning & Bushong LLP
- Public
- 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:
- 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 Elsner 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.

INTRODUCTIONS AND PUBLIC COMMENT

Chair Gregory noted Ms. Brooks was attending the Colorado Water Congress Annual Convention in Denver. Ms. Johnson was sitting in on her behalf.

ACTION ITEMS

Oath of Office – Chair Gregory administered the oath of office to Ms. Phillips, attending on behalf of the town of Avon. A copy of the oath is attached hereto as Exhibit A and incorporated herein by this reference.

Consideration of Minutes – The minutes of the regular meeting of December 15, 2016, were considered. Upon motion duly made and seconded, it was unanimously
RESOLVED that the minutes of the December 15, 2016, regular meeting be accepted and hereby are approved as presented.

Resolution Designating Meeting Place and Posting Location – Ms. Hayes presented a Resolution designating the Authority’s meeting place and posting location for 2017, a copy of which is attached hereto as Exhibit B 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.

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 C and D, 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.

Trail Easement Near Mountain Star Tank Site – Chair Gregory explained the purpose of the easement, which will allow Mountain Star residents to continue using the tank site for recreational activities, as they had done before the Authority took ownership of the site. A copy of the easement is attached hereto as Exhibit E and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Trail Easement be and hereby is approved as presented.

STRATEGY ITEMS

Eagle River Village (ERV) Mobile Home Park Water Supply System – Director Woodworth asked about the ERV’s water supply system, which is not part of the Authority’s system. Ms. Brooks is scheduled to meet with interested parties to discuss their historical water quality and supply issues.

Private Water Systems – The Board discussed the various “private” water systems within the Authority’s service area and the status of the distribution system within those areas.

GENERAL MANAGER REPORT

Ms. Johnson referenced Ms. Brooks’ 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.

Staff Promotion – Ms. Johnson shared that Mr. Cowles was recently promoted to Engineering Manager; his previous position was Planning Supervisor. Mr. Cowles will now oversee the capital
improvement program, planning, and construction review functions. The Board congratulated him on the promotion.

**Work Plans** – Treasurer Allender noted the focus areas for manager work plans in 2017 and asked why budgeting was not included as a goal for each manager. Mr. Wilkins said budgeting was one of the main areas of focus for his finance work plan, and that staff would conduct quarterly reviews of capital project budgeting.

**COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

**Legislative Update** – Ms. Johnson noted the state legislature convened Jan. 11; of primary concern is the budget shortfall due to the April 2016 Colorado Supreme Court decision on severance taxes. The Authority and District are not directly involved in any legislation this session, but staff and consultants will monitor local government and water-related bills. The Board briefly discussed the new administration and how it could affect past issues of concern with the Environmental Protection Agency and U.S. Forest Service. Mr. Porzak said some stalled legislation the Authority and District supported in the past that related to those agencies would be reintroduced this session, principally through Rep. Tipton and Sen. Gardner.

**Colorado River Basin Water Supply** – Ms. Johnson discussed water supply in Lakes Powell and Mead, noting the recent wet weather in the Colorado River basin will likely prevent curtailment of water use by the beneficiaries of Lake Mead for another year. She said the abundant snow in northern California has eased the surface water drought, but groundwater supply continues to decline due to excessive groundwater pumping. Such pumping is causing the ground to sink in many areas.

**ENGINEERING REPORT**

**Rules and Regulations Update** – Mr. Cowles noted staff is updating the Rules and Regulations, particularly the appendices that relate to standard specifications for water and sewer mains, as well as requirements for earthwork. He expects to present a draft for approval at the March meeting.

**Fats, Oils, and Grease (FOG) Survey** – Mr. Cowles said staff is surveying food service establishments and grease pumping companies to gain data for implementation of a FOG program. He noted that food service establishments are regulated by the International Plumbing Code; however, the survey results will allow the District to better manage FOG within the sewage collection system through a District-wide program. FOG issues can cause costly sewer backups into structures and sewer overflows to the surrounding environment.
Traer Creek Tank Update – Mr. Cowles discussed a pre-bid meeting for tank construction. Although Traer Creek representatives believe the current tank can be repaired, the Authority’s insurer will not insure a refurbished tank, nor do the Authority’s experts believe this is a viable option. Mr. Collins said coordination of a meeting with all involved experts was underway to discuss the path forward and noted such meeting discussions would be protected, so none of the involved parties could use that information against the others in litigation.

FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit J and incorporated herein by this reference. Year-end water sales for the Authority were 1% above projections, while District sales were about 3% below expectations. Mr. Wilkins confirmed that some developers did pay fees in 2016 for upcoming projects, prior to implementation of 2017 fee increases.

OPERATIONS REPORT

Mr. Tracy discussed the operations report, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference.

Lead and Copper Sampling – Mr. Tracy followed up on Ms. Brooks’ December discussion of lead and copper sampling in the Authority system. He said the Authority will not be issued a violation for the inadvertent omission of some required language in a 2016 letter to owners of homes sampled for lead and copper. Mr. Tracy confirmed an increase in the frequency of lead and copper sampling due to new regulations associated with ongoing issues in Flint, Michigan; the Authority and District must now annually sample 30 homes each. A temporary position has been budgeted for this purpose in 2017 and will likely require a full-time employee in future years.

Safe Drinking Water Act (SDWA) Modification – Mr. Tracy discussed a modification of the Safe Drinking Water Act, adopted in 2006, that required more stringent surface water sampling due to a 1993 cryptosporidium outbreak in Milwaukee, WI, that resulted in 104 deaths. The Authority’s first round of sampling was completed in 2010, found no crypto, and confirmed the adequacy of the current treatment process. The second round of sampling began in 2016; due to an administrative oversight, there was a failure to monitor E. coli in raw water sources as required, which resulted in a tier 3 violation from CDPHE that must be reported to Authority customers in the annual Consumer Confidence Report. Mr. Tracy emphasized there was never a threat the Authority drinking water, the quality of which remains high. The water department enacted various redundant systems to ensure this does not happen again.

Eagle Park Reservoir Company Operations Update – In response to a question, Mr. Tracy said the reduction of release rate from 7.5 cfs to 7.0 from the reservoir was a natural decline in the release rate due to less pressure on the reservoir slide gate as the water level in the reservoir receded.
GENERAL COUNSEL REPORT

Lake Creek Wells Update – Mr. Collins reported that the Lake Creek test wells report should be available soon, and the results are expected to show that the wells will produce the anticipated capacity. Mr. Porzak said the Authority will not need all of the sites immediately.

Letter to State Engineer re Well Locations – Mr. Collins updated on a letter sent to the State Engineer, which requested the Department of Natural Resources stop publishing well locations of water providers as a security precaution. Mr. Collins has not received a response and consequently sent a follow-up letter as a reminder.

WATER COUNSEL REPORT

Republican River Compact Rules Update – Mr. Porzak discussed a letter sent to the State Engineer regarding the recently submitted draft rules for compliance with the Republican River Compact. A copy of the letter is attached hereto as Exhibit J and incorporated herein by this reference. Mr. Porzak noted the draft rules do not exclude pre-Compact water rights and do not administer post-Compact rights according to the priority system. Mr. Porzak will continue to monitor the matter on the Authority and District’s behalf.

St. Jude’s Recreation Water Bill – Mr. Porzak discussed the proposed bill, intended to overturn the Colorado Supreme Court decision in a 2015 case in which the judge ruled that the Carbondale-based Roaring Fork Club’s recreational and aesthetic water rights did not constitute beneficial use. This was surprising due to the previous decree of over 1,000 such water rights in the state that predate the 2015 decision. The bill preserves existing water rights decreed for recreational, piscatorial, and aesthetic use and deems recreational releases appropriate uses. A third tenet of the bill allows for recreational water rights in the future, and Mr. Porzak and other proponents suggest this tenet should be removed due to its controversial nature to make passage of this important legislation more likely. A copy of the draft legislation is attached hereto as Exhibit K and incorporated herein by this reference.

Cordillera Water Service Issues – Mr. Porzak explained the Authority’s history with the Cordillera development, including the agreement to serve the development via contract when it was discovered that Cordillera had insufficient water rights. He also noted a reduction in irrigation water used by certain Cordillera properties, after which a refund was issued; this reduction was only recently accounted for, resulting in more Authority unallocated water than previously calculated. Supporting documentation is attached hereto as Exhibit L and incorporated herein by this reference. Messrs. Porzak and Cowles discussed the Cordillera surcharge that continues to be collected and potential water supply projects for which the funds could be used.

Edwards Pumpback – Mr. Porzak discussed last month’s request to serve the Eagle River Meadows (ERM) development of 550 proposed units. The development would have to augment
100% of diversions during certain times of year due to a gap in the river, which would require much water and expense. A modified pumpback could be constructed to at least partially fill the gap, freeing up Eagle Park water and effectively expanding the Authority’s unallocated in-basin water supply. Supporting documentation is attached hereto as Exhibit M and incorporated herein by this reference. Staff and consultants will work to get the needed easements for a modified or full pumpback scenario. Mr. Cowles confirmed that Eagle County will not approve the required permitting for the ERM development without the Authority’s commitment to provide water service.

**Traer Creek Conditional Water Rights** – Mr. Porzak discussed the motion for diligence for the Traer Creek water rights, a copy of which is attached hereto as Exhibit N and incorporated herein by this reference. The motion was filed jointly with the town of Avon and is expected to be granted shortly.

Ms. Hoffman, and Messrs. McCaulley, Schneider, and Schuette left the meeting at 10:13 a.m.

**EXECUTIVE SESSION**

Mr. Collins requested the Board enter into 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 Executive Session at 10:14 a.m. to discuss attorney-client privileged issues concerning 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.*

Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle River MOU matters and Eagle Park Reservoir water rights, 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 10:18 a.m. to discuss attorney-client privileged issues concerning Eagle River MOU matters and Eagle Park Reservoir water rights, 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 10:37 a.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:38 a.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

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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

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