A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held February 23, 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
- Pam Elsner, Beaver Creek Metropolitan District
- George Gregory, Berry Creek Metropolitan District
- Sarah Smith Hymes, town of Avon
- Mick Woodworth, Edwards Metropolitan District

Also in attendance were:
- District Staff
- Linn Brooks
- Jason Cowles
- Carol Dickman
- Maureen Egan
- Catherine Hayes
- Diane Johnson
- Siri Roman
- Micah Schuette
- Amy Schweig

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

Ms. Johnson introduced Ms. Schweig, the new Community Relations Assistant.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of January 26, 2017, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the January 26, 2017, regular meeting be accepted and hereby are approved as presented. Directors Elsner and Hymes abstained.

STRATEGY ITEMS

March Joint Meeting – The Board agreed to hold a joint meeting with the District Board on March 23 at the recommendation of Chair Gregory and District Chair Sackbauer. John Currier of
the Colorado River District will present information on the Homestake Project and Eagle River MOU matters. Mr. Cowles and consultant Bob Weaver will also present related information.

GENERAL MANAGER REPORT

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

Eagle River Village (ERV) Mobile Home Park Water Supply System – Ms. Brooks provided historical information on the ERV’s private water system, related water quality concerns, and fire hydrant issues, among other items noted by Eagle County, ERV residents, Eagle River Fire Protection District, and the local non-profit, Our Community Fund. Tap fees to connect the ERV to the Authority’s system would be expensive, and the ERV owner declined connection in the past. Ms. Brooks discussed alternate scenarios by which the interested parties could assist with improved water availability, including installing filling stations and extending the Authority’s fireflow system. She also clarified that some scenarios do not fit the standard water demand formulas; in such cases, calculations based on actual impact can be performed. The water supply to the ERV may be such an instance.

Private Water Systems in Authority Service Area – Ms. Brooks explained the difficulties associated with private water systems within the Authority’s service area, including fire protection issues and possible lack of maintenance, among other concerns.

Aspens Mobile Home Park Water Use – Secretary Hymes reported that water use management at the Aspens was added to the town of Avon’s strategic plan as a Tier 1 priority due to lost water, fire flow issues, and possible lead pipes. The park is on the Authority’s water system but only has a master meter, so it is difficult to understand individual mobile home usage.

Staff Initiatives and 2017 Budgets – In response to a question, Ms. Brooks clarified that managers continue to focus on operational budgets within their respective departments. Mr. Wilkins noted there are certain factors that change throughout the fiscal year, including energy and materials prices. Additionally, unanticipated events can adversely affect the budget, but are paid for via the general fund and not included in the annual budget because they are rare. However, such occurrences can dramatically affect the projected to actual figures in the budget.

FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference. He noted changes to water sales projections, including use of a five-year historical distribution model, and efforts to compare past water sales with weather patterns in those years. He also discussed the unaudited year-end financials and ongoing efforts to improve budget projections, especially for capital projects.
OPERATIONS REPORT

The operations report was presented, a copy of which is attached hereto as Exhibit D and incorporated herein by this reference.

Eagle Mine Draft Discharge Permit – Ms. Roman reported receipt of the Eagle Mine draft discharge permit from the Colorado Department of Public Health and Environment (CDHPE). A meeting of local stakeholders will be convened to review the permit and make comments to CDPHE. In response to a question, Ms. Roman noted the draft status of the permit was related to lack of available administrative resources at CDPHE to review the permit application.

Eagle Mine Spill – Mr. Tracy reported that CDPHE notified him via email of a recent 3,000-gallon spill from the Mine in the Rex Flats area, which was the result of a pipeline leak. Mr. Tracy was notified the following day, not immediately, because the spill did not reach the river. Ms. Brooks clarified that the spilled metals are now in the environment and will eventually get into the river naturally.

ENGINEERING REPORT

Rules and Regulations Update – Mr. Cowles noted staff was updating the Rules and Regulations, particularly the appendices that relate to standard specifications for water and sewer mains, as well as requirements for earthwork. The Rules and Regulations joint subcommittee, Directors Allender and Simmons, will review the draft prior to presentation at the March 23 board meeting.

Traer Creek Tank Update – Mr. Cowles reported that HDR was chosen as the design engineer for the tank rebuild following an RFP process. He clarified that the tank structure will need to be reevaluated and redesigned based upon the design team’s recommended approach to the foundation.

Cordillera Surcharge Update – Mr. Cowles said the Cordillera Metro District would like to terminate the $18/month surcharge the Authority is collecting on its behalf. He will work with staff to compile a list of needed system improvements there, which could be funded by the fees collected by Cordillera to date.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

Ms. Johnson noted she did not include a written report in packets.

Water Supply in Lower Basin States – Ms. Johnson said the recent heavy rains in northern California are improving the surface water supply situation in that area while also allowing for delivery of more water to southern California. This allows California to rely less on water from the Colorado River, so they can leave more water in Lake Mead, which likely means lower basin states will avoid curtailment in 2018. She noted that California’s groundwater supply issues continue. Mr. Porzak added that California has not integrated surface and groundwater supplies,
despite the clear interaction between the two sources. In response to a question, Ms. Johnson said California is seeking to upgrade water infrastructure in addition to increasing storage capacity.

Waters of the US (WOTUS) – Ms. Johnson said the Trump administration ordered the Environmental Protection Agency and the Army Corps of Engineers to review the Obama administration’s “Clean Water Rule: Definition of ‘Waters of the United States’” that defined which water bodies are regulated by the Clean Water Act. The rule was put on hold in October 2015 due to legal challenges from 26 states, including Colorado (which the district and authority supported), and farm lobbies. The order charges EPA and ACE with developing a new rule to replace the Obama rule, which will also need to address the 2006 U.S. Supreme Court Rapanos ruling concerning the scope of the CWA.

GENERAL COUNSEL REPORT

Traer Creek Legal Update – Mr. Collins said almost all parties had joined the lawsuit, per the direction of the District Court. In January 2017, the Authority’s insurance issued a full opinion denying its claim for the failed tank; the Authority requested a reconsideration of the denial and is awaiting a response. The Authority also retained coverage counsel to review the case and issue a legal opinion.

Bachelor Gulch Water Rights – Mr. Collins issued a claim letter to the Smith Creek Metropolitan District, which is the entity with which the Authority entered into the water service agreement for the Bachelor Gulch service area. Bachelor Gulch is served by the Authority via this water service agreement and the agreement between the two entities limits the amount of water service to the lesser of 887 EQRs (equivalent residential usage) or a certain defined amount of consumption. Water utilized by the area already exceeds the use limit and expected build out will further surpass the agreed-upon unit limit. More water rights and additional cash in lieu will likely be required. Mr. Porzak stated the shortfall is considerable and without the addition of water rights or cash in lieu payment, outdoor irrigation in the area would have to cease to account for the deficit. A response to the letter has not been received.

WATER COUNSEL REPORT

Republican River Compact Rules Update – Mr. Porzak discussed letters sent to the State Engineer regarding the draft rules for compliance with the Republican River Compact, as well as a revised version of the rules, copies of which are attached hereto as Exhibit E and incorporated herein by this reference. The State Engineer revised the relevant parts of the Republican River Compact Rules in response to concerns raised by the Authority, District, and other entities. The revised rules distinguished between pre and post compact water rights; included the seniority system; and added language to state the rules were not to be used as a precedent for future compact calls. In response to a question, Mr. Porzak clarified that the Republican River Compact
language was not as explicit as the Colorado River Compact in addressing pre and post Compact water rights.

**St. Jude’s Recreation Water Bill** – Mr. Porzak discussed a revised version of the bill, which is meant to overturn a 2015 Colorado Supreme Court decision in which the judge ruled that recreational and aesthetic water rights did not constitute beneficial use. A copy is attached hereto as Exhibit F and incorporated herein by this reference. Mr. Porzak said there are 1,000s of such water rights already decreed in Colorado. Mr. Porzak said Rep. KC Becker sponsored the bill with Rep. Diane Mitsch Bush cosponsoring.

**Amicus Brief in Consolidated Ditches Case** – Mr. Porzak discussed the 2016 case, in which the Water Court found in Denver Water’s favor. The Court ruled that Denver Water could reuse any of its water besides that from the Moffat system, which was specifically prohibited by a 1940s agreement between Denver Water and Consolidated Ditches. Consolidated Ditches appealed the decision to the Colorado Supreme Court. The Board unanimously approved joining in an amicus brief on Denver Water’s behalf with a number of other West Slope entities. A related email is attached hereto as Exhibit G and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Authority join in an amicus brief with other interested parties to support Denver Water’s position in the case. Mr. Porzak was authorized to draft the brief.

**Revised Authority Water Rights Report** – Mr. Porzak discussed the revised Authority water rights report, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. The report was updated in light of recent findings, including a reduction in augmentation water needed by Cordillera; and an increase in the yield of Eagle Park Reservoir based on the Aurora Delivery Agreement, which gives the Authority access to additional Homestake water if Eagle Park drops below a certain level. These updates bring the Authority’s unallocated water amount to 309 acre feet.

**Eagle River Meadows Update** – Mr. Porzak reported that the aforementioned changes to the Authority water rights report show sufficient water rights are available to serve the Eagle River Meadows development as previously requested. Mr. Porzak also noted the Edwards Pumpback, which was discussed in January, is not needed at this time. Additional discussion was reserved for Executive Session.

Ms. Egan, Ms. Schweig, and Mr. Schuette left the meeting at 9:46 a.m.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding the Eagle River Meadows, Lake Creek Wells, Eagle Park Reservoir Acquisition, and Eagle River MOU projects, 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 9:47 a.m. to discuss attorney-client privileged issues concerning Eagle River Meadows, Lake Creek Wells, Eagle Park Reservoir Acquisition, and Eagle River MOU projects, 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.*

Director Elsner left the meeting at 10:15 a.m.

Mr. Collins requested the Board continue Executive Session to receive legal advice regarding Eagle River Meadows and Traer Creek, 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 10:17 a.m. to discuss attorney-client privileged issues concerning Eagle River Meadows and Traer Creek, 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 10:59 a.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:00 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.

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