A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held February 22, 2018, 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.

The following Directors were present, thereby constituting a quorum:

- Geoff Dreyer, Arrowhead Metropolitan District
- Pam Elsner, Beaver Creek Metropolitan District
- George Gregory, Berry Creek Metropolitan District
- Sarah Smith Hymes, Town of Avon
- Kim Bell Williams, EagleVail Metropolitan District
- Mick Woodworth, Edwards Metropolitan District

Also in attendance were:

- District Staff
- Jason Cowles
- Carol Dickman
- Catherine Hayes
- Diane Johnson
- John McCaulley
- Louise Reiter
- Jeff Schneider
- Amy Schweig
- Brian Tracy
- Consultants
- Jim Collins, Collins Cockrel & Cole
- Kristin Moseley, Porzak Browning & Bushong LLP
- Glenn Porzak, Porzak Browning & Bushong LLP
- Public
- Paul Currier, water resource engineer
- Mike Reisinger, Berry Creek Metropolitan District
- Ulf Lindroth, ULFBUILT

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 for the following Directors indicating the following conflicts:

- Director Elsner disclosed her membership with the Vilar Performing Arts Center Guild, which operates within the Authority’s service area.
- Director Gregory and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation District. Director Gregory also disclosed that he occasionally undertakes small development and construction activities within the Authority and District service areas. Alternate Director Simmons noted that he serves on the Edwards Metropolitan District board and is employed by Beaver Creek Metropolitan District, an Authority member. Director Williams disclosed that she is the Eagle County Housing Director.
- 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

The Board welcomed Messrs. Currier and Lindroth, attending on behalf of the owner of 594 Winchester Trail regarding requested water service, which would be discussed later in the meeting.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of January 25, 2018, were considered.

Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the January 25, 2018, regular meeting be accepted and hereby are approved as presented.

The minutes of the special joint meeting of February 13, 2018, were considered. Upon motion duly made and seconded, it was unanimously
RESOLVED that the minutes of the February 13, 2018, special joint meeting with the Eagle River Water & Sanitation District be and hereby are approved as amended.

Winchester Trail Water Service – Mr. Cowles discussed his board action request regarding water service to 594 Winchester Trail, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Mr. Cowles explained that the board previously issued a notice that service could not be provided in the area due to its location at one of the furthest ends of the Authority’s system, which presents water quality issues. Mr. Tracy noted the water there meets Colorado Department of Public Health and Environment standards but not the Authority’s desired, voluntary, more restrictive standards. The board approved the provision of water service to the property on the condition that a water service agreement with the owner is executed; such agreement will require owner acknowledgment of the water quality issues, water use limitations, and will absolve the Authority of any responsibility and liability from such issues. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the board hereby approves the provision of water service to the property at 594 Winchester Trail with the following conditions: execution of a water service agreement with the owner; the owner’s acknowledgment of the water quality issues; limitations on water use, and absolution of the Authority for any responsibility and liability from such issues.

Messrs. Currier and Lindroth left the meeting at 8:48 a.m.

STRATEGY

Board Member Input – Chair Gregory called for board member input and there was none.

GENERAL MANAGER REPORT

In Ms. Brooks’ absence, Ms. Johnson presented the General Manager report, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as Exhibit C and incorporated herein by this reference.

District Email Addresses – Ms. Johnson reminded directors about the District email addresses that were issued to directors for security and access purposes. She noted if any directors had not yet brought in a device to set up access to the new addresses to please do so or set up an appointment with the IT department to do so. Staff would like to begin exclusively using these email addresses to contact directors in the near future.

Tiny Homes – Ms. Johnson noted the Avon town manager expects an application for tiny homes in an area of Avon that is currently occupied by modular trailers, some of which include offices leased by the District. This is of interest due to the expected need for additional office space for staff at some future time. Also, the District is considering the logistics of providing water to this type of development, such as expected usage, tap fees, and base rates.
COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

Gypsum Water Summit and Local Water Supply – Ms. Johnson said she received notice that the town of Gypsum is holding a water summit on Feb. 27 to discuss current water supply conditions, the potential for drought, and expected water use restrictions if drought conditions ensue. Ms. Johnson said Gypsum’s town manager, Jeff Shroll, wants to disseminate such information early, as the town’s population has roughly doubled since the 2012 drought. She noted the Authority and District are not yet actively preparing for drought, though monitoring is part of routine operations. Staff will continue to keep the board apprised of local water supply conditions and any operational changes for drought if and when they are warranted.

Stream Access Lawsuit – Ms. Johnson discussed a stream access lawsuit, the outcome of which will likely determine whether riverbanks and the river bottom are considered public or private property. Mr. Porzak confirmed ongoing disagreements regarding this matter; the decision in the lawsuit is likely to be controversial.

Legislative Update – Ms. Moseley updated the board on various legislative issues. She specifically discussed a water sheparding bill, which was in response to the passage of St. Jude’s legislation; entities like the Authority and District want to ensure environmental reservoir releases continue to be beneficial uses of water, which the St. Jude’s legislation calls into question. She also discussed HB 1073, which would expressly permit water districts, authorities, and reservoir companies to enter into contracts for reservoir space, not just the purchase of actual water. She also outlined a bill regarding 811 utility locate calls, which would establish a new commission to set forth rules and regulations for such calls. The effect on utilities like the Authority and District is unknown, though many large utilities are opposed, as the cost of compliance could be high. Ms. Moseley also highlighted a proposed deficit irrigation project, which would expand current legislation to include agricultural water leasing or fallowing projects as allowable pilot projects for Colorado Water Conservation Board approval; certain other types of pilot projects are already allowable. In the past, agricultural efficiency increases assumed that prior water use was wasteful; the legislation would exempt these water rights from decreases in historical consumptive use that results from efficiency or fallowing projects. The current proposal would apply to water divisions 2 and 3 within the boundaries of the Upper Gunnison Water Conservancy District.

FINANCE REPORT

In Mr. Wilkins’ absence, Ms. Reiter presented the monthly finance report, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. Ms. Reiter left the meeting at 9:09 a.m.
OPERATIONS REPORT

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

Eagle Park Reservoir Tabletop Exercise – Mr. Tracy briefly discussed a recent tabletop exercise that simulated an emergency response to a dam breach at Eagle Park Reservoir. The exercise was well attended by local emergency managers. Mr. Tracy thanked Pete Miller, the District’s raw water resources operator, for planning the event. The emergency action plan for the Eagle Park Reservoir will be updated as a result of the exercise.

ENGINEERING REPORT

Mr. Cowles noted he did not have a written report for this month.

Proposed Avon Development – Mr. Cowles said the town of Avon denied a development proposal for the recently purchased Folson parcel, which is east of the Ascent in Avon.

Fireflow Study – Mr. Cowles said field operations staff was working with the Eagle River Fire Protection District on an Insurance Service Office (ISO) study regarding fireflow capabilities. Since the Mountain Star tank upgrade, no such studies have occurred; the results could help lower insurance costs in the area, if the tank upgrade has improved fireflow.

GENERAL COUNSEL REPORT

Traer Creek Update – Mr. Collins and Mr. Cowles discussed Traer Creek and noted receipt of a proposed repair plan, though such plan is not in final form as more specifics are needed from the engineer. Mr. Collins noted Andy Nathan, the Authority’s special counsel for the Traer Creek matter, would attend the March board meeting to meet the members and provide a verbal update. The next mediation with Traer Creek and other parties is scheduled for April 24.

WATER COUNSEL REPORT

Mr. Porzak noted all of his items would be discussed in Executive Session.

Mr. Schneider left the meeting at 9:19 a.m.

EXECUTIVE SESSION

Mr. Collins requested the Board enter Executive Session to receive legal advice regarding Traer Creek tank and the Eagle Park Reservoir enlargement, 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. Mr. Porzak did not participate. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter Executive Session at 9:20 a.m. to discuss attorney-client privileged issues concerning the Traer Creek tank and the Eagle Park Reservoir enlargement, 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, CRCA matters, and the Black Lakes Lease, 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 continue Executive Session at 10:11 a.m. to discuss attorney-client privileged issues concerning Eagle River MOU matters, CRCA matters, and the Black Lakes Lease, 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 10:27 a.m.

Eagle Park Reservoir Enlargement – The board discussed the proposed Eagle Park Reservoir enlargement and related issues, including the apparent desire of Vail Associates Inc. (VAI) to purchase enlargement water at 1993 prices, as well as to retain its majority shareholder status regardless of the extent to which VAI participates in the enlargement. Discussion ensued, and Mr. Collins opined that Mr. Porzak does not have a conflict of interest regarding the enlargement and its various disagreements, as the subject does not involve any confidences. Moreover, Mr. Porzak engaged independent ethics counsel, which confirmed that he has no conflict of interest in the matter. He will continue to serve the Authority and District in his water counsel capacity, but has resigned as VAI water rights counsel. Notwithstanding, Mr. Porzak did not participate in this discussion.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:06 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.

__________________________________
__________________________________
Jim Collins, General Counsel      Glenn Porzak, Water Counsel