

Upper Eagle Regional Water Authority

Board of Directors Meeting

January 21, 2016

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held January 21, 2016, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation
3 District (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable
4 statutes of the State of Colorado.

5 ATTENDANCE

6 The following Directors were present, thereby constituting a quorum:

7 Tom Allender, EagleVail Metropolitan District
8 Geoff Dreyer, Arrowhead Metropolitan District
9 George Gregory, Berry Creek Metropolitan District
10 Mick Woodworth, Edwards Metropolitan District

11 The following Directors were absent and excused:

12 Jim Power, Beaver Creek Metropolitan District
13 Sarah Smith Hymes, Town of Avon

14 The following Alternate Directors were present and acting:

15 Buz Reynolds, Town of Avon
16 Bill Simmons, Beaver Creek Metropolitan District

17 Also in attendance were:

| | | | |
|----|--------------------|----|---|
| 18 | <u>ERWSD Staff</u> | 26 | John McCaulley |
| 19 | Linn Brooks | 27 | Siri Roman |
| 20 | Jason Cowles | 28 | Evette Smits |
| 21 | Carol Dickman | 29 | Brian Tracy |
| 22 | Catherine Hayes | 30 | James Wilkins |
| 23 | Leslie Isom | 31 | <u>Consultants</u> |
| 24 | Diane Johnson | 32 | Jim Collins, Collins Cockrel & Cole |
| 25 | Elena Jones | 33 | Glenn Porzak, Porzak Browning & Bushong LLP |

34 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

35 The Board noted it had received more than 72 hours prior to the meeting certain disclosures of Potential Conflicts of Interest
36 Statements for the following Directors indicating the following conflicts:

37 Directors Allender and Simmons disclosed that they also serve on the Board of the Eagle River Water and Sanitation District.
38 Director Simmons also noted he is employed by Beaver Creek Metropolitan District, an Authority member. Director Woodworth
39 disclosed that he is employed by the Eagle River Fire Protection District, which operates within the Authority's service area.

40 CALL TO ORDER

41 Chairman Gregory called the meeting to order at 8:32 a.m.

42 PUBLIC COMMENT

43 Chairman Gregory noted receipt of a letter from Josh Lautenberg, a Vail business owner, regarding the
44 Authority and District's proposed wilderness policy. A copy of the letter is attached hereto as **Exhibit A**
45 and incorporated herein by this reference.

46 PUBLIC HEARINGS

47 **Irrigation Account Impact Fee** – Mr. McCaulley and Ms. Jones discussed their board action request and
48 associated joint resolution, copies of which are attached hereto as **Exhibits B** and **C**, respectively, and
49 incorporated herein by this reference. The board opened a public hearing at 8:33 a.m. to discuss the
50 proposed irrigation impact fee. The hearing was noticed on the Eagle River Water and Sanitation District
51 website in accordance with the guidelines set forth in the Authority Agreement. No public comment was
52 received, and the hearing was closed at 8:34 a.m. In response to a comment, Mr. McCaulley noted the

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1 irrigation fee was only for open space irrigation; single family homes would not be affected. After
2 discussion and upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the Irrigation Account Impact Fee be and hereby is approved as
4 presented. Alternate Director Reynolds abstained.

5 **Cash in Lieu of Water Rights Fee Increase** – The Board opened another public hearing at 8:39 a.m. to
6 consider a cash in lieu of water rights fee increase of 5% for both winter storage water and summertime
7 consumptive use credits, bringing the price for each to \$26,250 and \$8,300 per acre foot, respectively. An
8 updated water dedication policy is attached hereto as **Exhibit D** and incorporated herein by this
9 reference. No public comment was received and the public hearing was closed at 8:40 a.m. Mr. Porzak
10 noted the increase is slightly higher than the Consumer Price Index (CPI) because the value of water is
11 increasing more quickly than the CPI. He said ongoing engineering studies for the proposed ERMOU
12 projects would be complete in the spring and provide good data for the 2017 cash in lieu fee increases. In
13 response to a question, Mr. Porzak said he was certain the 5% increase was equitable, if not less than
14 the actual value of the water. Ms. Brooks noted that in the future, this fee increase would be done with the
15 next year's budget and be included in the Rules and Regulations Appendix A table of Rates and Fees.
16 After discussion and upon motion duly made and seconded, it was unanimously

17 **RESOLVED** that the cash in lieu of water rights fee increase be and hereby is approved
18 as presented.

19 **ACTION ITEMS**

20 **Consideration of Minutes** – The minutes of the special meeting of December 17, 2015, were
21 considered. Upon motion duly made and seconded, it was

22 **RESOLVED** that the minutes of the December 17, 2015, special meeting be accepted and
23 hereby are approved as presented. Alternate Director Reynolds abstained.

24 **Resolution regarding Meeting Place and Posting Location** – Ms. Hayes presented a Resolution
25 designating the Authority's meeting place and posting location for 2016, a copy of which is attached
26 hereto as **Exhibit E** and incorporated herein by this reference. Upon motion duly made and seconded, it
27 was unanimously

28 **RESOLVED** that the Resolution Designating Meeting Place and Posting Location be and hereby
29 is approved as presented.

30 **Angler's PUD Cash in Lieu Request** – Ms. Smits presented her board action request and related
31 materials regarding the Angler's PUD request, a copy of which is attached hereto as **Exhibit F** and
32 incorporated herein by this reference. She explained the request and noted the development would be in
33 the "medium" water use category. Discussion ensued regarding whether full diversions must be
34 augmented for the development, as well as Avon's concerns regarding completion of the Authority's
35 unallocated water policy prior to approval of the request. The Board tabled the discussion to a later
36 meeting so staff can communicate questions and concerns to the developer and return to the Board with

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1 updated information. Ms. Smits noted the developer began the application process in 2015; therefore,
2 fees were calculated at 2015 costs.

3 **Resolution regarding Annexation of Mountain Star Tank Site** – Mr. Collins explained the resolution, a
4 copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference. The resolution
5 annexes the tank site into the town of Avon boundaries. After discussion and upon motion duly made and
6 seconded, it was unanimously

7 **RESOLVED** that the Resolution Initiating the Annexation of the Mountain Star Tank site be and
8 hereby is approved as presented.

9 **Rules and Regulations Amendments** – Ms. Brooks explained administrative changes to the Rules and
10 Regulations related to the Construction Review Process. The changes make the process more efficient
11 and are beneficial to the developer. The Rules and Regulations board subcommittee reviewed the
12 proposed changes and recommends approval. After discussion and upon motion duly made and
13 seconded, it was unanimously

14 **RESOLVED** that the proposed amendments to the Rules and Regulations be and hereby are
15 approved as presented.

16 **Mountain Star Request for Additional Funding** – Ms. Brooks referenced an email from the Mountain
17 Star Association (MSA) to the Authority Board, a copy of which is attached hereto as **Exhibit H** and
18 incorporated herein by this reference. The MSA is requesting an additional contribution from the Authority
19 towards construction of the needed Mountain Star tank. Discussion ensued regarding the Authority's
20 previous contributions to the project, including procurement of the tank site and PRV upgrades in the
21 area. The Board agreed that it would not contribute anything further to the project and directed staff and
22 Counsel to draft a letter to the POA reiterating this position.

23 **GENERAL COUNSEL REPORT**

24 Due to a scheduling conflict, Mr. Collins presented his report out of order.

25 **EXECUTIVE SESSION**

26 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek
27 Tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
28 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
29 seconded, it was unanimously

30 **RESOLVED** to enter the executive session at 9:05 a.m. to discuss attorney-client privileged
31 issues concerning the Traer Creek Tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
32 electronic record created as Mr. Collins opined the contents of the discussion would contain
33 privileged attorney-client communications.*

34 At 9:43 a.m., all remaining staff except of Ms. Brooks, Ms. Isom, and Ms. Johnson left the meeting.

35 At 9:44 a.m., Mr. Porzak requested the Board continue its Executive Session to receive legal advice regarding
36 Colorado River Cooperative Agreement matters pursuant to §24-6-402(4)(b) and (e) C.R.S. Mr. Porzak again

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1 asked that no electronic record be made, as the discussion would be entirely privileged attorney-client
2 communications.

3 The regular meeting resumed at 9:58 a.m.

4 **Resolution Concerning Enhancements to Water Storage Capacity Required as a Result of the**
5 **Failure of the Traer Creek Water Storage Tank** – Mr. Collins discussed the resolution, a copy of which
6 is attached hereto as **Exhibit I** and incorporated herein by this reference. Mr. Collins summarized the
7 current situation, in which Traer Creek has denied responsibility for the tank failure and believes it has
8 met the conditions of the warranty obligation. The Authority disagreed and sent a Notice of Default to
9 Traer Creek. Discussion ensued regarding the operational issues the Authority is experiencing as the
10 Traer Creek tank is offline. The EagleVail tank is nearing the end of its useful life but cannot be taken
11 offline for replacement without the Traer Creek tank being online. New development in Traer Creek,
12 Eagle Vail, Avon, and Beaver Creek will be limited without access to the water and additional SFEs
13 provided by the Traer Creek tank. In addition, the impact of the Traer Creek Tank has been to remove
14 storage: the Authority is serving 300 SFEs in Traer Creek that were contingent upon a functioning tank in
15 that area, as was the Authority's modifications to the Avon 1 Tank, which removed 500,000 gallons from
16 the system to facilitate water service to Buffalo Ridge. After discussion and upon motion duly made and
17 seconded, it was unanimously

18 **RESOLVED** that the Resolution Concerning Enhancements to Water Storage Capacity Required
19 as a Result of the Failure of the Traer Creek Water Storage Tank be and hereby is approved as
20 presented. Alternate Director Reynolds abstained.

21 The Board noted the critical nature of the direction given in the resolution to move forward with whatever
22 means are necessary to effect repair or replacement of the tank, as there are critical risk issues
23 associated with the failure of the tank. These risks must be addressed and managed in the best interest
24 of all Authority facilities. Discussion ensued regarding funding the project. Mr. Wilkins noted a budget
25 transfer from the Lake Creek Wells project, which is on hold, could be completed when needed. However,
26 this budget transfer would not affect funds necessary to secure the necessary easements for the Lake
27 Creek well field.

28 **Resolution on Action for Declaratory Judgment** – Mr. Collins again noted that the Notice of Default
29 was sent to Traer Creek and, if after 30 days, Traer Creek has not cured its default, the Authority can
30 bring a Declaratory Judgment action against Traer Creek. Upon motion duly made and seconded, it was
31 unanimously

32 **RESOLVED** to authorize Mr. Collins to proceed with an action for declaratory judgment if needed.
33 Alternate Director Reynolds abstained.

34 **Colorado River Cooperative Agreement Cost Sharing Agreement** – Mr. Porzak discussed the
35 common interest cost sharing agreement, which was part of the Colorado River Cooperative Agreement
36 (CRCA). The Authority originally contributed \$13,333 and that bill is coming due. Additionally, a proposed

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1 amendment would add additional parties to the agreement and also increase the budget for the project.
2 The Board directed Mr. Porzak to sign the updated agreement on its behalf and authorized an additional
3 contribution to the project cost, not to exceed \$15,000.

4 **GENERAL MANAGER REPORT**

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

7 **Current Alpine Engineering Contracts** – Ms. Brooks discussed outstanding contracts with
8 Alpine Engineering and noted Alpine would also work on the Mountain Star tank project. She
9 reminded the Board that her husband, Gary Brooks, is now a principal with Alpine, which is the
10 reason for the disclosure.

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

14 **FINANCE REPORT**

15 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit L** and incorporated herein
16 by this reference. He noted December water sales were slightly higher than projected, while year-to-date
17 sales were slightly lower than budgeted. These observations were likely due to high visitor numbers over
18 the holidays and a very wet summer season, respectively. Mr. Wilkins also noted much higher-than-
19 anticipated development impact fee revenues, a likely sign of the observed economic recovery locally.

20 **Traer Creek Tank Project Budget Transfer** – Mr. Wilkins said when and if funds are needed for
21 repair or replacement of the Traer Creek tank, money could be transferred from the Lake Creek
22 easement project back to the general fund prior to being allocated to the Traer Creek tank project.
23 Ms. Brooks confirmed the transfer could be done incrementally, and Mr. Wilkins said it may be
24 possible to increase the planned 2017 Authority revenue bond to include the Traer Creek project
25 and seek reimbursement for any related expenses.

26 **WATER COUNSEL REPORT**

27 **Wilderness Policy and Position Statement** – Mr. Porzak discussed the proposed policy, which
28 will be considered at a joint meeting of the Authority and District that morning. A copy of the policy
29 is attached hereto as **Exhibit M** and incorporated herein by this reference. With regard to the
30 position statement, Mr. Porzak noted recent discussions related to the Authority and District's
31 proposed language, which is now being reviewed by the House subcommittee to which the bill
32 was assigned, per communication from Rep. Polis's office. Mr. Porzak emphasized that the
33 Authority and District want language in the bill to include mitigation of natural disasters including
34 flooding, not just wildfire.

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1 **Support of Bolts Ditch Legislation** – Mr. Porzak discussed a letter and supporting documents
2 related to Bolts Ditch legislation, copies of which are attached hereto as **Exhibit N** and
3 incorporated herein by this reference. Bolts Ditch was inadvertently included in the boundaries of
4 the Holy Cross Wilderness. Minturn’s efforts to gain continued access to the site have been
5 denied by the Forest Service. The Board agreed to sign the letter of support to Rep. Polis
6 regarding legislation that would allow Minturn’s continued access to Bolts Ditch.

7 **Federal Water Right Directives** – Mr. Porzak discussed three Forest Service directives,
8 including recent changes to the ski area water rights clause, asking ski areas to inventory their
9 water rights necessary for sufficient operations and have such inventory certified by an expert;
10 the rights would then potentially be encumbered. Related materials are attached hereto as
11 **Exhibit O** and incorporated herein by this reference. He also discussed the release of a 1,300
12 page BMP directive technical manual right before Thanksgiving and the short review deadline.
13 The technical manual is heavily referenced in the BMP directive; Vail Resorts sent a comment
14 letter requesting all references to the technical manual be deleted from the directive first, as it
15 was never officially noticed in the Federal Register and because of the insufficient review time for
16 the technical manual. Mr. Porzak also said the groundwater directive had been withdrawn, but he
17 expects another revised version will be issued in the future.

18 **Federal Legislation Update** – Mr. Porzak noted a letter was issued on behalf of the Authority
19 and District and signed by Ms. Brooks, reaffirming the entities’ support for the legislation.

20 **State Legislation Update** – Mr. Porzak said the Colorado Water Rights Protection Act was
21 introduced by the legislature the previous day and was assigned to the House Agriculture
22 Committee. He will continue to monitor the status of this bill. Related materials are attached
23 hereto as **Exhibit P** and incorporated herein by this reference.

24 **Pre-Compact Water Storage Project** – Mr. Porzak discussed a recent meeting with Colorado
25 Water Conservation Board Director James Eklund. Mr. Eklund said the state generally supports
26 the project, which aligns with many goals of the Colorado Water Plan. Mr. Eklund is scheduling a
27 meeting with interested parties, all of whom previously participated in a Wolcott Reservoir
28 feasibility study. Mr. Porzak will continue to participate in meetings and update the Board on
29 progress.

30 **OPERATIONS REPORT**

31 Ms. Roman presented the Operations Report, a copy of which is attached hereto as **Exhibit Q** and
32 incorporated herein by this reference.

33 **Streamside Marriott Pretreatment Application** – Ms. Roman said the Marriott is having
34 corrosion issues in its copper pipes and applied for a pretreatment application to add

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1 phosphorous to the water to mitigate future pinholes in the pipes. The District denied its
2 application and will instead work with the Marriott on the corrosion issues, which are complicated.

3 **Avon Heat Recovery System Tour** – Ms. Roman noted a recent tour of the system with Denver
4 Metro Wastewater, which is considering a similar project to heat the National Western Stock
5 Show building. She said the attendees were very complimentary of the innovative system, which
6 was installed in 2010 as a joint project with the Town of Avon.

7 **Gore Creek Strategic Action Plan** – Ms. Roman said the Vail Town Council will begin reviewing
8 the plan, which identifies over 220 actions for Gore Creek remediation. The council is expected to
9 allot \$7 million in its budget over the next five years to address these items, which will be
10 prioritized for completion. In response to a question, Ms. Roman confirmed that CDOT still
11 applies magnesium chloride to roadways during inclement weather.

12 **Eagle Mine Update** – Mr. Tracy discussed the Mine and the low risk of a Gold King Mine-type
13 spill occurring there. The Mine tunnels are potentially collapsed, so staff relies on instrumentation
14 to monitor the bulkhead water levels. Ms. Brooks noted the area behind the bulkheads is
15 constantly dewatered and treated at the Mine. Mr. Tracy said the Authority and District keep
16 continuous pressure on Mine staff to ensure proper sampling and maintenance there. He also
17 noted the existence of thousands of similar mines in Colorado and said it is rare to have a
18 responsible party, as Eagle Mine does with CBS as its owner.

19 **EPRC Quarterly Report** – Mr. Tracy discussed the Eagle Park Reservoir Company Quarterly
20 report and noted a quarterly meeting scheduled for Jan. 26.

21 PUBLIC AFFAIRS REPORT

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

24 **Microbeads Ban** – Ms. Johnson said the federal Microbead-Free Waters Act of 2015 was signed
25 Dec. 28. The new law phases out the manufacture of personal care products containing plastic
26 microbeads by July 1, 2017, and the sale of such products by July 1, 2018. The federal law takes
27 effect sooner than a similar Colorado law that was signed in March 2015, which phased out
28 microbeads by Jan. 1, 2020. Microbeads end up as wastewater sludge or pass through the
29 treatment process into waterways where they enter the food chain when eaten by fish.

30 **Rainbarrel Legislation** – Ms. Johnson said House Bill 16-1005 is this year's iteration of rain
31 barrel legislation. The bill would allow homeowners to collect some of the rainwater on their
32 property, which is currently prohibited by Colorado water law. The overall effect of the legislation
33 is small for each homeowner; however, it builds awareness of water issues and the need to use
34 water efficiently. The Board agreed the Authority could again appear on the proponents list of
35 supporters.

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1 **Building a Better Colorado** – Ms. Johnson discussed the project, which is gathering statewide
2 input on how Colorado might improve its initiative process, election process, and fiscal policy. The
3 latest community meeting was held Jan. 14 in Vail and all meeting results are online. Legislation
4 or a ballot question is likely to result from the effort.

5 **Community Engagement** – Ms. Johnson informed directors about Eagle County’s “community
6 conversations” series as well as an offer by the Vail Valley Medical Center to host a tour of their
7 facilities.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:13 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.

James P. Collins, General Counsel

Glenn Porzak, Water Counsel