

Upper Eagle Regional Water Authority

Board of Directors Meeting

March 24, 2016

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held March 24, 2016, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District
3 (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of
4 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 Sarah Smith Hymes, Town of Avon
11 Jim Power, Beaver Creek Metropolitan District
12 Mick Woodworth, Edwards Metropolitan District

13 Also in attendance were:

14 <u>District Staff</u>	23	James Wilkins
15 Linn Brooks	24	<u>Consultants</u>
16 Jason Cowles	25	Jim Collins, Collins Cockrel & Cole
17 Carol Dickman	26	Kristin Moseley, Porzak Browning & Bushong LLP
18 Catherine Hayes	27	Glenn Porzak, Porzak Browning & Bushong LLP
19 Debbie Hoffman	28	<u>Public</u>
20 Leslie Isom	29	Dan Godec, Berry Creek Metropolitan District
21 Diane Johnson	30	Mike Reisinger, Berry Creek Metropolitan District
22 Brian Tracy		

31 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

34 Director Allender and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation
35 District. Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and
36 District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other
37 ski areas. Alternate Director Simmons also noted he serves on the boards of the Edwards and Red Sky Ranch Metropolitan Districts
38 and is employed by Beaver Creek Metropolitan District, an Authority member. Director Woodworth disclosed that he is employed by
39 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 8:30 a.m.

42 INTRODUCTIONS

43 Ms. Brooks introduced Ms. Hoffman, the District's new construction manager.

44 ACTION ITEMS

45 **Consideration of Minutes** – The minutes of the regular meeting of February 25, 2016, were
46 considered. Upon motion duly made and seconded, it was unanimously

47 **RESOLVED** that the minutes of the February 25, 2016, regular meeting be accepted and hereby
48 are approved as presented.

49 **Reassignment of Responsibilities** – Ms. Brooks noted Ms. Isom's upcoming retirement and discussed
50 the need to reassign some of her responsibilities, including the designation of new Colorado Special
51 Districts Property and Liability Pool contacts for the Authority and a new Authority custodian of records. A
52 related board action request is attached hereto as **Exhibit A** and incorporated herein by this reference.

53 After discussion and upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that Evette Smits and Linn Brooks are the Colorado Special Districts Property and
2 Liability Pool primary and secondary contacts, respectively; and
3 further **RESOLVED** that Catherine Hayes is the Custodian of Records.

4 Copies of the Colorado Special Districts Property and Liability Pool designation and Custodian of Records
5 Resolution are attached hereto as **Exhibits B** and **C**, respectively, and incorporated herein by this
6 reference.

7 **GENERAL MANAGER REPORT**

8 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit D** and incorporated
9 herein by this reference.

10 **Gore Creek Strategic Action Plan** – Ms. Brooks said the Vail town council adopted the plan at
11 its March 15 meeting. District and town staff continue to work together to partner on high priority
12 projects designated in the plan, including riparian restoration and winter snow storage locations.

13 **Traer Creek Tank Update** – Mr. Cowles noted a previous letter to Traer Creek stating its
14 proposed tank fixes were inadequate and giving Traer Creek until March 9 to adequately update
15 the repair plan; the date passed without such an update. Further discussion was saved for
16 Executive Session.

17 **Mountain Star Tank Update** – Mr. Cowles noted the town of Avon and Mountain Star POA
18 approved the tank funding agreement. Staff is working on annexation of the tank site, completion
19 of which is expected on April 12. Tank construction is expected to commence on April 18.

20 **Organizational Changes** – Ms. Brooks acknowledged Ms. Isom’s many contributions to the
21 Authority and District as she is retiring; Ms. Isom’s accomplishments include efforts towards
22 organizational stability, procuring excellent employee benefits, the employee housing program,
23 and employee pension plans. Ms. Isom thanked the Board for the opportunities she had in
24 working with the Authority and District.

25 **Monthly Reports** – Monthly reports were acknowledged, including the contract log, January
26 meeting summary, and Authority and District committees list. Copies of the monthly reports are
27 attached hereto as **Exhibit E** and incorporated herein by this reference.

28 **FINANCE REPORT**

29 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit F** and
30 incorporated herein by this reference. He noted lower-than-projected January water sales were likely due
31 to lower tourism numbers. February sales were in line with projections, as were the development impact
32 fees received. In response to a question, Mr. Cowles discussed the VIA development, which is a 70-unit
33 affordable housing development in west Edwards. He also summarized the West End development in
34 Edwards, which is a 75-unit multifamily residential development. The developer has a water service

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1 agreement and has paid cash in lieu of water rights, but the amount of water is likely to be reduced, so a
2 partial refund may be needed.

3 OPERATIONS REPORT

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

6 **Eagle Mine Update** – Ms. Roman said the Eagle Mine Ltd. Board dissolved as a technical
7 assistant grant (TAG) recipient; the group will retain their 501(c)(3) charitable organization status
8 and become a subcommittee of the Eagle River Watershed Council. This committee will continue
9 its efforts to provide information and facilitate public input related to the Eagle Mine Superfund
10 site. Ms. Roman also reported that the Colorado Department of Public Health and Environment's
11 Hazardous Materials and Waste Management Division submitted a technical impracticability (TI)
12 waiver of the arsenic standard to the Environmental Protection Agency, and it is currently under
13 review. Staff and consultants are following this development and making comments as needed,
14 as the proposed limit is much higher than normal background levels and could adversely affect
15 Authority water quality and treatment operations.

16 **Black Gore Creek Steering Committee** – Ms. Roman updated the board on a recent meeting of
17 this committee. She reported that CDOT aims to pick up as much traction sand as it puts down
18 each year and hired a contractor last fall to retrieve the sand in the harder to reach areas. CDOT
19 is designing a more permanent access road to remove sediment from the Basin of Last Resort on
20 Vail Pass. The basin was last cleaned in 2009, and it cost over \$1 million for a specialized
21 contractor to access the basin.

22 **Regulation 31 Update** – Ms. Roman reviewed Regulation 31, which includes the Water Quality
23 Control Commission's proposed changes for surface water standards and methodologies,
24 including those for temperature and certain metals in the Eagle River Basin. She noted issues of
25 concern regarding how the standards are applied in the Authority and District service area. Party
26 status was requested on behalf of the Authority, District, and Eagle Park Reservoir Company, and
27 consultants Steve Bushong and Bob Weaver will monitor the rulemaking process and determine if
28 any comments or other actions are appropriate.

29 PUBLIC AFFAIRS REPORT

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

32 **Legislative Update** – Ms. Johnson discussed bills the Authority and District are following,
33 including the rain barrel bill (HB16-1005) and a bill regarding water loss audit reporting (HB16-
34 1283). She said the Colorado Water Congress is also monitoring proposed public trust initiatives.
35 Ms. Johnson also discussed Senate Bill 16-145, which provides an alternative mechanism for

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1 creation of subdistricts within the Colorado River Water Conservation District. The subdistricts
2 could be used as funding mechanisms for projects related to the Colorado Basin Implementation
3 Plan and Colorado Water Plan. After discussion and upon motion duly made and seconded, it
4 was unanimously

5 **RESOLVED** to support Senate Bill 16-145, Colorado River District Subdistrict formation.

6 **Statewide Tap Fee Article** – Ms. Johnson noted an article about a possible statewide ‘tap fee,’ a
7 copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. This
8 proposed statewide surcharge could be used to fund projects identified in the Colorado Water
9 Plan; many questions remain as to how the funds would be collected, distributed, and utilized.

10 **Building a Better Colorado Initiatives** – Ms. Johnson said the organization submitted several
11 variations of possible ballot initiatives (related to their three focus areas) to the Title Board, but
12 only one version for each topic will be placed on the November statewide ballot. One possible
13 initiative would require petition signatures from all 35 state Senate districts for proposed state
14 constitution amendments.

15 **Curtailment Risk Study** – Ms. Johnson said the River District is leading the effort on the
16 Colorado River Development and Curtailment Risk Study to investigate Colorado River
17 operations, hydrology, climate, development pressures, and the implications on Lakes Powell and
18 Mead. East Slope parties are now participating in the effort, along with the four West Slope
19 roundtables and the Southwest Water Conservation District.

20 **Vail SNOTEL Site Visit** – Ms. Johnson reported on a March 14 Vail SNOTEL site visit with
21 employees of the USDA Natural Resources Conservation Service (NRCS), which manages the
22 site, and a Vail ski patroller. The site became more exposed with the removal of beetle-killed
23 trees about five years ago, subjecting it to more solar and wind effects; this makes comparisons
24 between current and historical data more difficult. The NRCS employees took manual site
25 measurements to compare to the automated data. Initial findings indicated the site may be
26 underreporting snow water equivalent.

27 GENERAL COUNSEL REPORT

28 **Avon Drinking Water Facility (ADWF) Leased Property** – Mr. Collins noted staff and counsel
29 are working with the town of Avon to extend the Authority’s current lease for the Avon Drinking
30 Water Facility property. District and town staff are also working to agree upon appraisal
31 instructions for the Authority’s purchase of the land, approval of which is required from Avon
32 voters and may be sought in the November election.

33 WATER COUNSEL REPORT

34 **Update on HR 2554: Continental Divide Wilderness and Recreation Act** – Mr. Porzak and
35 Ms. Moseley summarized a recent meeting that counsel, staff, and Board chairmen had with Sen.

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1 Bennet's chief of staff to discuss Rep. Polis's proposed wilderness bill. Chairman Gregory
2 complimented Ms. Brooks and Ms. Johnson on their presentation of the Boards' history with
3 wilderness and previous iterations of the wilderness bill; prior experiences and issues with the
4 Forest Service; and the complexity of the Authority and District's integrated systems. Mr. Porzak
5 noted it was clear to Sen. Bennet's staff that the Authority and District are basing the requested
6 flooding language on previous experience and the Boards' responsibility to provide high quality
7 water to their customers. Information related to the bill and rationale for the Authority and
8 District's requested language is attached hereto as **Exhibit J** and incorporated herein by this
9 reference. Ms. Moseley added that Sen. Bennet's staff believed the timing was favorable for
10 passage of a wilderness bill during Congress's lame-duck period before President Obama's
11 successor takes office.

12 An additional meeting to discuss the bill is scheduled for Monday, March 28 at the
13 District's Vail office at 5:45 p.m. Attendees will include staff, Rep. Polis, and Authority and District
14 Chairmen Gregory and Sackbauer, respectively.

15 **Unallocated Water Policy** – Mr. Porzak discussed the proposed policy and related information, a
16 copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference. He
17 noted the Authority's strong portfolio of water rights and said it would be unlikely for a developer
18 to provide its own water rights to the Authority; any future developments will likely pay cash in lieu
19 of water rights. Discussion ensued regarding the requirement for future developments to comply
20 with the Authority's water demand management plan and water dedication policy; minor
21 amendments to the policy requested by the town of Avon; and the requirement to review the
22 unallocated water policy if the amount of unallocated rights is reduced by 150 acre feet *or*
23 reaches less than 50 acre feet of storage water. Staff agreed to schedule a study session with the
24 Board and town of Avon representatives to gain an understanding of the SFEs that the Authority
25 is committed to serve under its agreement with Avon. The Board noted it would like to consider
26 the final version for approval at its May meeting.

27 **State Legislation Update** – In response to a question, Mr. Porzak said a proposed water
28 banking bill had much opposition from both political parties as well as the Colorado Water
29 Congress. Mr. Porzak will continue to monitor the bill. He also discussed the status of HB 16-
30 1109.

31 At 10:00 a.m., all remaining staff except of Ms. Brooks and Ms. Johnson left the meeting.

32 EXECUTIVE SESSION

33 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding CRCA matters,
34 pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion
35 would be entirely privileged attorney-client communications. Upon motion duly made and seconded, it was
36 unanimously

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1 **RESOLVED** to enter the executive session at 10:01 a.m. to discuss attorney-client privileged
2 issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
3 electronic record created as Mr. Porzak opined the contents of the discussion would contain
4 privileged attorney-client communications.*

5 The regular meeting resumed at 10:20 a.m., at which time staff returned to the meeting.

6 **Colorado Water Rights Protection Act (HB16-1109)** – Mr. Porzak and Ms. Moseley discussed
7 the proposed bill and said involved parties appeared close to reaching consensus on bypass flow
8 language, which is largely unrelated to the substance of the bill. Mr. Porzak reported that the bill
9 passed unanimously in the House Committee on Agriculture, which is unusual.

10 **St. Jude’s Recreation Bill** – Mr. Porzak discussed the bill, which was proposed in response to
11 and to override a ruling by the Colorado Supreme Court in 2015 that the Roaring Fork Club’s
12 aesthetic, recreational, and piscatorial water diversion was not a beneficial water use. Mr. Porzak
13 said he filed support of the bill on behalf of the Authority and District, as both entities have
14 multiple such rights decreed conditionally. If the St. Jude’s Bill is not passed, conditional water
15 rights could be affected; the state engineer could deny diligence filings, change cases, or
16 attempts to make the rights absolute. Mr. Porzak said numerous other water rights owners have
17 filed similar support for the bill in response to the proposed legislation. After discussion and upon
18 motion duly made and seconded, it was unanimously

19 **RESOLVED** to contribute \$1,000 for a lobbyist to support the bill on its behalf.

20 **Thank you to Jim Power** – Director Power noted this was his last meeting, as he would be
21 absent in April and he was term-limited with the Beaver Creek Metropolitan District. The Board
22 thanked him for his service and the engineering knowledge he brought to the Board.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:37 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