

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

January 26, 2017

### MINUTES

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

##### 14 The following Alternate Directors were present and acting:

15 Amy Phillips, town of Avon  
16 Bill Simmons, Beaver Creek Metropolitan District

##### 17 Also in attendance were:

18 <u>District Staff</u>	26	Micah Schuette
19 Jason Cowles	27	Brian Tracy
20 Carol Dickman	28	James Wilkins
21 Catherine Hayes	29	<u>Consultants</u>
22 Debbie Hoffman	30	Jim Collins, Collins Cockrel & Cole
23 Diane Johnson	31	Glenn Porzak, Porzak Browning & Bushong LLP
24 John McCaulley	32	<u>Public</u>
25 Jeff Schneider	33	Mike Reisinger, Berry Creek Metropolitan District

#### 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 Gregory and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water  
38 and Sanitation District. Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with  
39 the Authority and District, as well as being employed part time by SE Group, which does planning and environmental work for Vail  
40 Resorts and other ski areas. Director Elsner disclosed her membership with the Vilar Performing Arts Center Guild, which operates  
41 within the Authority's service area. Director Gregory also disclosed that he occasionally undertakes small development and  
42 construction activities within the Authority and District service areas. Alternate Director Simmons noted he serves on the Edwards  
43 Metropolitan District board and is employed by Beaver Creek Metropolitan District, an Authority member. Director Woodworth  
44 disclosed that he is employed by the Eagle River Fire Protection District, which operates within the Authority's service area.

#### 45 CALL TO ORDER

46 Chair Gregory called the meeting to order at 8:30 a.m.

#### 47 INTRODUCTIONS AND PUBLIC COMMENT

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

#### 50 ACTION ITEMS

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

54 **Consideration of Minutes** – The minutes of the regular meeting of December 15, 2016, were  
55 considered. Upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the minutes of the December 15, 2016, regular meeting be accepted and  
2 hereby are approved as presented.

3           **Resolution Designating Meeting Place and Posting Location** – Ms. Hayes presented a Resolution  
4 designating the Authority’s meeting place and posting location for 2017, a copy of which is attached  
5 hereto as **Exhibit B** and incorporated herein by this reference. Upon motion duly made and seconded, it  
6 was unanimously

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

9           **2017 Operations Agreement with Eagle River Water & Sanitation District** – Mr. Collins  
10 discussed the 2017 operations agreement with the District and a related board action request,  
11 copies of which are attached hereto as **Exhibits C** and **D**, respectively. He noted various exhibits  
12 to the agreement were updated to reflect the costs and fees from the previously adopted 2017  
13 budget; the main body of the agreement did not change. After discussion and upon motion duly  
14 made and seconded, it was unanimously

15           **RESOLVED** that the 2017 Operations Agreement with the Eagle River Water &  
16 Sanitation District be and hereby is approved as presented.

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

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

### 23 **STRATEGY ITEMS**

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

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

### 30 **GENERAL MANAGER REPORT**

31 Ms. Johnson referenced Ms. Brooks’ report, a copy of which is attached hereto as **Exhibit F** and  
32 incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached  
33 hereto as **Exhibit G** and incorporated herein by this reference.

34           **Staff Promotion** – Ms. Johnson shared that Mr. Cowles was recently promoted to Engineering  
35 Manager; his previous position was Planning Supervisor. Mr. Cowles will now oversee the capital

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1 improvement program, planning, and construction review functions. The Board congratulated him  
2 on the promotion.

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

### 7 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

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

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

### 24 **ENGINEERING REPORT**

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

29 **Fats, Oils, and Grease (FOG) Survey** – Mr. Cowles said staff is surveying food service  
30 establishments and grease pumping companies to gain data for implementation of a FOG  
31 program. He noted that food service establishments are regulated by the International Plumbing  
32 Code; however, the survey results will allow the District to better manage FOG within the sewage  
33 collection system through a District-wide program. FOG issues can cause costly sewer backups  
34 into structures and sewer overflows to the surrounding environment.

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1           **Traer Creek Tank Update** – Mr. Cowles discussed a pre-bid meeting for tank construction.  
2           Although Traer Creek representatives believe the current tank can be repaired, the Authority's  
3           insurer will not insure a refurbished tank, nor do the Authority's experts believe this is a viable  
4           option. Mr. Collins said coordination of a meeting with all involved experts was underway to  
5           discuss the path forward and noted such meeting discussions would be protected, so none of the  
6           involved parties could use that information against the others in litigation.

### 7           **FINANCE REPORT**

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

### 12          **OPERATIONS REPORT**

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

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

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

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

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## GENERAL COUNSEL REPORT

1 **Lake Creek Wells Update** – Mr. Collins reported that the Lake Creek test wells report should be  
2 available soon, and the results are expected to show that the wells will produce the anticipated  
3 capacity. Mr. Porzak said the Authority will not need all of the sites immediately.  
4

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

## WATER COUNSEL REPORT

9 **Republican River Compact Rules Update** – Mr. Porzak discussed a letter sent to the State  
10 Engineer regarding the recently submitted draft rules for compliance with the Republican River  
11 Compact. A copy of the letter is attached hereto as **Exhibit J** and incorporated herein by this  
12 reference. Mr. Porzak noted the draft rules do not exclude pre-Compact water rights and do not  
13 administer post-Compact rights according to the priority system. Mr. Porzak will continue to  
14 monitor the matter on the Authority and District's behalf.  
15

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

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

34 **Edwards Pumpback** – Mr. Porzak discussed last month's request to serve the Eagle River  
35 Meadows (ERM) development of 550 proposed units. The development would have to augment

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1 100% of diversions during certain times of year due to a gap in the river, which would require  
2 much water and expense. A modified pumpback could be constructed to at least partially fill the  
3 gap, freeing up Eagle Park water and effectively expanding the Authority's unallocated in-basin  
4 water supply. Supporting documentation is attached hereto as **Exhibit M** and incorporated herein  
5 by this reference. Staff and consultants will work to get the needed easements for a modified or  
6 full pumpback scenario. Mr. Cowles confirmed that Eagle County will not approve the required  
7 permitting for the ERM development without the Authority's commitment to provide water service.

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

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

### 13 EXECUTIVE SESSION

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

18 **RESOLVED** to enter Executive Session at 10:14 a.m. to discuss attorney-client privileged  
19 issues concerning Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no  
20 electronic record created as Mr. Collins opined the contents of the discussion would contain  
21 privileged attorney-client communications.\*

22 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle  
23 River MOU matters and Eagle Park Reservoir water rights, pursuant to §24-6-402(4)(b) and (e)  
24 C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged  
25 attorney-client communications. Upon motion duly made and seconded, it was unanimously

26 **RESOLVED** to enter Executive Session at 10:18 a.m. to discuss attorney-client privileged  
27 issues concerning Eagle River MOU matters and Eagle Park Reservoir water rights, pursuant  
28 to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the  
29 contents of the discussion would contain privileged attorney-client communications.\*

30 The regular meeting resumed at 10:37 a.m.

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1 **ADJOURNMENT**

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

3 Respectfully submitted,

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5  
6 \_\_\_\_\_  
7 Secretary to the Meeting

8 **MINUTES APPROVED, FORMAL CALL, AND**  
9 **NOTICE OF MEETING WAIVED**

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12 \_\_\_\_\_  
13 **Arrowhead Metropolitan District**

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17 **Town of Avon**

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21 **Beaver Creek Metropolitan District**

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25 **Berry Creek Metropolitan District**

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29 **EagleVail Metropolitan District**

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33 **Edwards Metropolitan District**

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35  
36 \*The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion  
37 in Executive Session not recorded constituted privileged attorney-client communications.

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41 \_\_\_\_\_  
42 **James P. Collins, General Counsel**

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44 \_\_\_\_\_  
**Glenn Porzak, Water Counsel**