

Upper Eagle Regional Water Authority

Board of Directors Meeting

April 27, 2023

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held April 27, 2023, 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.

ATTENDANCE

The following Directors were present and acting:

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8 Geoff Dreyer, Arrowhead Metropolitan District
9 George Gregory, Berry Creek Metropolitan District
10 Kevin Hillgren, Beaver Creek Metropolitan District
11 Mike Trueblood, Edwards Metropolitan District
12 Tamra Underwood, Town of Avon

The following Director was absent and excused:

13
14 Kim Bell Williams, EagleVail Metropolitan District

Also in attendance were:

| | | | |
|----|-----------------------|----|---|
| 15 | <u>District Staff</u> | 25 | Brian Thompson |
| 16 | Jim Cannava | 26 | Brad Zachman |
| 17 | Tim Friday | 27 | |
| 18 | Jesse Hooker | 28 | <u>Consultants</u> |
| 19 | Diane Johnson | 29 | Kristin Moseley, Somach Simmons & Dunn |
| 20 | Kira Koppel | 30 | Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC |
| 21 | Chuck Owen | 31 | |
| 22 | Siri Roman | 32 | <u>Public</u> |
| 23 | Jeff Schneider | 33 | Mike Towler, Beaver Creek Metropolitan District Alternate |
| 24 | | | |

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

28 Director Gregory disclosed that he serves on the board of the Eagle River Water & Sanitation District; also that he occasionally
29 undertakes small development and construction activities within the Authority and District service areas. Director Bell Williams
30 disclosed that she is the Eagle County Housing Director.

CALL TO ORDER

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32 Having determined that quorum was established, Chair Gregory called the meeting to order at 8:30 a.m.

PUBLIC COMMENT

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34 Public comment was called for and there was none.

ACTION ITEMS

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36 **Consideration of Minutes** – The minutes of the Mar. 23, 2023, regular meeting were considered. Upon
37 motion duly made and seconded, it was unanimously

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39 **RESOLVED** that the minutes of the Mar. 23, 2023, regular meeting be accepted and hereby are
40 approved as presented.

41
42 **Amended and Restated Joint Resolution Establishing a No-Fault Damages Program** – Ms. Winn
43 presented the resolution, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this
44 reference. She said this amended and restated resolution, which supersedes the original resolution
45 enacted Aug. 25, 2022, clarifies that the No-Fault Damages Program applies only to residential
46 structures and does not apply to areas such as driveways, landscaping, or easements. She also said the

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1 cap on total combined payments under section 1(e) would remain at \$200,000 per fiscal year. Upon
2 motion duly made and seconded, it was unanimously

3 **RESOLVED** to approve and accept Amended and Restated Joint Resolution 2023-01,
4 Establishing a No-Fault Damages Program, as presented.

5 **Augmentation water for Eagle County Airport construction project** – Mr. Friday presented Jason
6 Cowles’ memorandum, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this
7 reference. He said Eagle County is requesting use of Eagle Park Reservoir water previously conveyed
8 by Eagle County to the Authority, which has yet to be committed, to provide augmentation water for a
9 construction project at Eagle County Airport. The Authority will charge Eagle County for the direct costs
10 to operate the releases. In response to a suggestion, he said if project delays require additional water,
11 another request would come to the board. Upon motion duly made and seconded, it was unanimously

12 **RESOLVED** to approve the temporary use of 23.75 acre feet of Eagle Park Reservoir water,
13 which was conveyed to the Authority to meet various Eagle County goals, as a source of
14 augmentation for the 2023 Eagle County Regional Airport construction projects subject to the
15 payment of direct costs to the Authority for operation of the releases.

16 **INFORMATION REPORTS**

17 Directors reviewed the development report, board committees, March meeting summary, and contract log, copies
18 of which are attached hereto as **Exhibits C, D, E, and F**, respectively, and incorporated herein by this reference.
19 Directors discussed the West End PUD Amendment and its status in the development approval process. Directors
20 also discussed the development report and requested a work session at the May meeting so that the board can
21 better understand the development process and report content.

22 **BOARD MEMBER INPUT**

23 Director Trueblood asked about OSHA incident rate reporting and Ms. Roman said the District is not subject to
24 OSHA reporting requirements. Treasurer Dreyer asked about the suspension of issuing special irrigation permits
25 and whether that affected a customer’s ability to water more than three days due to new plantings. Ms. Johnson
26 said water conservation staff are developing a form for customers to notify the Authority of added irrigation needs
27 and there will be no formal permit or staff process to document and follow up on such requests.

28 **GENERAL MANAGER REPORT**

29 Ms. Roman reported on a leak in a Vail Resorts (VR) snowmaking line and said VR is not required to
30 sample the discharge because algaecide has not been applied to Vail’s snowmaking pond since 2021.
31 She also provided updates on the District’s participation in community presentations and work sessions.

32 **Senate Bill 23-213, Land Use** – Ms. Roman presented a memorandum, an Apr. 5, 2023, letter
33 from her to Senator Dylan Roberts, a Fiscal Note Response Form (LLS# 23-0890.01), an Apr. 14,
34 2023, letter from her to Senator Roberts, and an Apr. 17, 2023, letter from Colorado Water
35 Congress to Members of the Senate Local Government and Housing Committee (“Committee”),
36 copies of which are attached hereto as **Exhibit G, H, I, J, and K**, respectively, and incorporated

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1 herein by this reference. She provided updates on SB 23-213 and recognized Ms. Moseley, Ms.
2 Winn, Ms. Johnson, Mr. Schneider, Mr. Cowles, and Mr. Norris for their coordinated response to
3 the bill's Mar. 22 introduction. Ms. Moseley said Senator Roberts referenced the District's analysis
4 during the Apr. 6 Committee hearing and it had been widely circulated. She also said there have
5 been several proposed amendments and a vote has not been scheduled. Director Underwood
6 acknowledged the District and Authority for being the only water service providers to testify and for
7 their collaborative work with the Colorado Association of Ski Towns on proposed amendments.

BUSINESS ADMINISTRATION REPORT

8 **Quarterly financials** – Mr. Cannava presented the report, a copy of which is attached hereto as **Exhibit**
9 **L** and incorporated herein by this reference. He said operating expenses are on track with the FY 2023
10 budget. In response to a question, he said increased tier 5 water usage was primarily due to a leak in
11 EagleVail.
12

OPERATIONS REPORT

13 Mr. Zachman presented the report, a copy of which is attached hereto as **Exhibit M** and is incorporated
14 herein by this reference. He said annual pumping at the East Fork Pump Station will begin in early May.
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16 **Merging water systems for regulatory compliance** – Mr. Zachman presented a memorandum, a copy
17 of which is attached hereto as **Exhibit N** and incorporated herein by this reference. He said the Colorado
18 Department of Public Health & Environment approved the District and Authority's request to merge their
19 individual public water systems (PWSs) for regulatory compliance purposes. As of Apr. 1, the systems
20 are now formally regulated as a single PWS. He also said the combined PWS is identified as "Eagle
21 River Water & Sanitation District" (ERWSD) and the District and Authority are listed as co-owners. He
22 further noted that ERWSD is now the second largest community water system on the western slope and
23 twenty-fifth largest system in Colorado with the third most facilities.

ENGINEERING AND WATER RESOURCES REPORT

24 The board noted the written report from Mr. Cowles, a copy of which is attached hereto as **Exhibit O** and
25 incorporated herein by this reference.
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27 **Sustainability statistics and progress** – Ms. Koppel presented a PowerPoint, a copy of which is
28 attached hereto as **Exhibit P** and incorporated herein by this reference. She reviewed 2022
29 sustainability achievements and data. Highlights include reductions in natural gas and electricity use and
30 continued progress in energy-efficient transportation. She also said the District received the Actively
31 Green and Colorado Green Business Network certifications, and the Edwards Wastewater Treatment
32 Facility was awarded the Rocky Mountain Water Environment Association's Sustainability Award. In
33 response to a question, she said the District participates in Holy Cross Energy's PuRE program.

COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

34 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit Q** and incorporated herein
35 by this reference. She said Senate Bill 23-150, Require Labeling Disposable Wipes, was signed by
36

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1 Governor Polis on April 11. She also said the research, outreach, and committee testimony provided by
2 District staff and consultants were critical to getting this law enacted. In response to a question, Ms.
3 Moseley said the law will take effect in August and compliance will likely take additional time until current
4 inventories of non-labeled wipes are exhausted. Ms. Johnson noted that the water use regulations brochure
5 will be included in customers' May billing statements and is in both Spanish and English. Communications
6 about water conservation are ramping up as the seasons change and include community presentations and
7 outreach such as the May 10 town of Vail Lunch with the Locals program, Sustainability Fairs with the town
8 of Avon and Singletree, and the annual State of the River event on June 1.

WATER COUNSEL REPORT

9 Ms. Moseley presented a memorandum and the Authority water rights appraisal, copies of which are
10 attached hereto as **Exhibit R** and **S**, respectively, and incorporated herein by this reference. She said the
11 appraisal is needed for the annual financial audit and is based on current cash in lieu rates, which greatly
12 increased since the last appraisal due to the estimated costs to design, permit and construct Bolts Lake.
13 She also said there is no longer a price difference between summer and winter water for cash-in-lieu of
14 water rights purchases. She further noted that she utilized the price used in the 2022 cash in lieu rates as
15 the appraised value for historic consumptive use credits, which will likely need to be increased in future
16 appraisals to keep pace with market values.

GENERAL COUNSEL REPORT

17 The board noted Ms. Winn's privileged written report. She had no items to discuss in open session.

EXECUTIVE SESSION

18 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related
19 to Senate Bill 23-213, Land Use. Upon motion duly made and seconded, it was unanimously

20 **RESOLVED** to enter into Executive Session at 10:12 a.m. to discuss matters related to
21 Senate Bill 23-213 pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created
22 as Ms. Moseley opined the contents of the discussion would contain privileged attorney-
23 client communications.*

24 Ms. Winn requested the board move into Executive Session to receive legal advice of counsel and discuss
25 matters in negotiation related to a major facilities agreement. Upon motion duly made and seconded, it
26 was unanimously

27 **RESOLVED** to enter into Executive Session at 10:13 a.m. to discuss matters related to a
28 major facilities agreement pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic
29 record created as Ms. Winn opined the contents of the discussion would contain privileged
30 attorney-client communications.*

31 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related
32 to Senate Bill 23-295, Colorado River Drought Task Force. Upon motion duly made and seconded, it was
33 unanimously

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1 **RESOLVED** to enter into Executive Session at 10:27 a.m. to discuss matters related to
2 Senate Bill 23-295 pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created
3 as Ms. Moseley opined the contents of the discussion would contain privileged attorney-
4 client communications.*

5 The open session resumed at 10:39 a.m. During the executive session, the board did not take any formal
6 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

7 **ACTION AS A RESULT OF EXECUTIVE SESSION**

8 Ms. Moseley discussed Senate Bill 23-295, Colorado River Drought Task Force. Upon motion duly moved
9 and seconded, it was unanimously

10 **RESOLVED** to direct counsel to express the board's position in favor of Senate Bill 23-295.

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ADJOURNMENT

There being no further business to come before the board at this meeting and upon motion duly moved and seconded, it was unanimously

RESOLVED, that the signing of the minutes of this meeting shall be deemed to constitute full and complete adoption, ratification, and approval of the business conducted and the resolutions passed; and be it

FURTHER RESOLVED, that the meeting be adjourned at 10:40 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.

Kristin Moseley, Water Counsel

Kathryn Winn, General Counsel