

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

May 25, 2023

### MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was  
2 held May 25, 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:

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  
13 Kim Bell Williams, EagleVail Metropolitan District

##### Also in attendance were:

15 <u>District Staff</u>	27 Micah Schuette
16 Leah Cribari	28 Brian Thompson
17 Alison Ebbets	29 Brad Zachman
18 Tim Friday	30
19 Justin Hildreth	31 <u>Consultants</u>
20 Jesse Hooker	32 Kristin Moseley, Somach Simmons & Dunn
21 Diane Johnson	33 Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
22 Niko Nemcanin	34
23 David Norris	35 <u>Public</u>
24 Chuck Owen	36 Eric Heil, Town of Avon Alternate
25 Siri Roman	37 Joanna Kerwin, Edwards resident
26 Jeff Schneider	38 Mike Towler, Beaver Creek Metropolitan District Alternate

#### DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

41 The board noted it had received more than 72 hours prior to the meeting certain disclosures of potential conflicts of interest for the  
42 following Directors indicating the following conflicts: Director Gregory disclosed that he occasionally undertakes minor development  
43 and construction activities within the Authority's service area. Director Bell Williams disclosed that she is the Housing Director for Eagle  
44 County and works with the Eagle County Housing and Development Authority Advisory Committee.

#### CALL TO ORDER

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

#### ORGANIZATIONAL ITEMS

49 Mr. Thompson presented a memorandum, a copy of which is attached hereto as **Exhibit A** and  
50 incorporated herein by this reference. He reviewed organizational items that are typically considered by the  
51 board at the first meeting following special district elections. He noted that officer terms expire in May 2024.

52 **Disclosures of Potential Conflict of Interest** – Ms. Winn presented a memorandum and the  
53 Disclosure of Potential Conflicts of Interest Questionnaire (“Questionnaire”), copies of which are  
54 attached hereto as **Exhibit B** and **C**, respectively, and incorporated herein by this reference.  
55 Discussion ensued regarding potential conflicts of interest. Ms. Winn recommended that all  
56 directors complete a Questionnaire annually and reviewed the disclosure process, which includes:  
57 1) Each director submits their Questionnaire to the Authority's general counsel; 2) Counsel reviews  
58 Questionnaires and provides guidance to individual directors on whether a potential conflict should

## Upper Eagle Regional Water Authority

1 be disclosed; 3) Counsel consults with the disclosing director to create a Conflict of Interest  
2 Disclosure and file with the Secretary of State (SOS); 4) SOS responds to the disclosing director  
3 with a Conflict Disclosure Letter and Certificate, which are posted on the SOS website; 5) The  
4 potential conflict is disclosed to the board by publishing the disclosure in meeting minutes; 6) The  
5 disclosing director abstains on discussing and voting on matters related to the conflict unless their  
6 vote is needed to establish quorum.

### **PUBLIC COMMENT**

8 Chair Gregory called for public comment. Joanna Kerwin, an Edwards resident and customer, expressed  
9 concerns regarding the removal of grass using herbicides. She suggested that the Authority review lawn  
10 removal methods and work with community entities to promote methods that protect water quality. Chair  
11 Gregory said the joint board Water Conservation Committee will discuss and provide recommendations to  
12 the full board at the June 22 meeting.

### **ACTION ITEMS**

14 **Consideration of Minutes** – The minutes of the Apr. 27, 2023, regular meeting were considered.  
15 Director Trueblood asked for the minutes to reflect that Mr. Schneider responded to his question  
16 regarding employee safety metrics after the meeting. He further noted that Mr. Schneider said the  
17 District's 2022 Experience Modification Rating was 0.71, which is better than the industry average of 1.00.  
18 Director Underwood asked for the minutes to reflect that board members requested a work session on the  
19 development report. Upon motion duly made and seconded, it was

20 **RESOLVED** that the minutes of the Apr. 27, 2023, regular meeting be accepted and hereby are  
21 approved as amended, with Secretary Bell Williams abstaining as she was not present at the  
22 meeting.

23 **Resolution Setting a Revised Regular Meeting Schedule** – Mr. Thompson presented a memorandum  
24 and the resolution with its Exhibit A: Revised 2023 Regular Meeting Schedule, copies of which are  
25 attached hereto as **Exhibit D** and **E**, respectively, and incorporated herein by this reference. He said  
26 replacing the Nov. 17 and Dec. 21 meetings with one meeting on Dec. 7 will allow staff to prioritize end-  
27 of-year work plans and employee evaluations. Upon motion duly made and seconded, it was  
28 unanimously

29 **RESOLVED** to approve Resolution 2023-04, Resolution Setting a Revised Regular Meeting  
30 Schedule, with its Exhibit A, as presented.

31 **Amended and Restated Joint Resolution Establishing a No-Fault Damages Program** – Mr.  
32 Thompson presented a memorandum and the resolution, copies of which are attached hereto as **Exhibits**  
33 **F** and **G**, respectively, and incorporated herein by this reference. Ms. Winn said this amended and  
34 restated resolution, which supersedes both the original resolution enacted Aug. 25, 2022, and the  
35 amended and restated resolution approved by the Authority board on Apr. 27, 2023 (Joint Res. 2023-01),  
36 adds additional language clarifying that the program will be used to cover the gap that may exist between

## Upper Eagle Regional Water Authority

1 insurance limits and restoration costs up to the maximum allowed under the program, and that the  
2 program is not intended to refund homeowners for deductibles that may apply to their insurance  
3 coverage. She also said the District board approved this amendment at its Apr. 27 meeting after the  
4 Authority board approved Joint Res. No. 2023-01. Because joint resolutions must be adopted in the same  
5 form by both boards, Joint Res. No. 2023-01 was not enacted and the new Joint Res. No. 2023-02  
6 incorporating this amendment was approved by the District board, subject to the approval of the Authority  
7 board. Upon motion duly made and seconded, it was unanimously

8 **RESOLVED** to approve and accept Amended and Restated Joint Resolution 2023-02,  
9 Establishing a No-Fault Damages Program, as presented.

10 **Designating Eagle Park Reservoir Company (EPRC) board representative** – Mr. Thompson  
11 presented a memorandum, a copy of which is attached hereto as **Exhibit H** and incorporated herein by  
12 this reference. Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** to appoint Geoff Dreyer to serve as the Authority's representative on the EPRC  
14 board of directors for the 2024 fiscal year term.

### 15 **INFORMATION REPORTS**

16 Directors reviewed the development report, board committees, and April meeting summary, copies of which are  
17 attached hereto as **Exhibits I, J, and K**, respectively, and incorporated herein by this reference. The board noted  
18 there are no contracts to report at this meeting. In response to a question, Ms. Roman said the development report  
19 work session, which is postponed from today due to the unexpected absence of Jason Cowles, will help staff adapt  
20 the report to the informational needs of the board. In response to another question, Ms. Johnson said Authority  
21 meeting summaries are intended to be a brief review of staff reports and actions for member entities, and are a  
22 subset of meeting minutes, which capture all meeting topics including executive session.

### 23 **BOARD MEMBER INPUT**

24 Secretary Bell Williams thanked Chair Gregory and District staff for attending the Governor's bill signing ceremony  
25 for Senate Bill 23-001 at the Dowd Junction parcel. Director Trueblood said he appreciated the bike path reopening  
26 near the Avon Wastewater Treatment Facility and thanked staff for their work on facility upgrades.

### 27 **GENERAL MANAGER REPORT**

28 Ms. Roman provided updates on community presentations and work sessions. Chair Gregory recognized Mr.  
29 Cowles for his presentation to the Eagle Board of County Commissioners. Directors discussed how the Authority  
30 allocates water and suggested a review of policies. Ms. Winn said she will discuss the legal anchoring of Authority  
31 policies at a future meeting.

### 32 **BUSINESS ADMINISTRATION REPORT**

33 Mr. Norris presented a memorandum, a copy of which is attached hereto as **Exhibit L** and incorporated herein by  
34 this reference. He said a disconnection policy is stated in the Rules and Regulations and applies only to  
35 customers with unpaid balances for more than 45 days. In practice, the District has implemented the policy on  
36 unpaid balances of greater than 90 days and prioritized high-balance accounts. In response to a question, he said

## Upper Eagle Regional Water Authority

1 insolvent customers receive at least nine communications from the District during this 90-day period that include  
2 referrals to financial assistance programs and opportunities to set up payment plans; however, these customers  
3 are overwhelmingly unresponsive and are not pursuing assistance. In response to another question, he said field  
4 operations staff and appropriate fire entities are notified when service is disconnected. Finally, he said three  
5 accounts have been in the process and one account is scheduled for disconnection for the month of May.

### 6 **OPERATIONS REPORT**

7 Mr. Zachman presented the report, a copy of which is attached hereto as **Exhibit M** and is incorporated  
8 herein by this reference. He said Eagle Park Reservoir is about 60% filled since pumping began at the East  
9 Fork Pump Station on May 4, which is ahead of pace compared to 2022. He also said both Black Lakes are  
10 on track to fill.

11 **Water Main Repair** – Mr. Nemcanin presented a PowerPoint, a copy of which is attached hereto as  
12 **Exhibit N** and is incorporated herein by this reference. He provided updates on a recent water main  
13 repair in Cordillera. Directors thanked field operations staff for completing the repairs without any  
14 service disruptions.

15 **Regulation 93** – Ms. Cribari presented a memorandum and a PowerPoint, copies of which are attached  
16 hereto as **Exhibits O** and **P**, respectively, and incorporated herein by this reference. She said the Water  
17 Quality Control Commission ruled that Eagle River Segment 9c from a point immediately below the  
18 confluence with Rube Creek to the confluence with the Colorado River will be listed on the 303(d) List of  
19 Impaired Waters due to occurrences of water temperatures being higher than the standard in two years  
20 out of four. She also said warming trends, which are not accounted for in Regulation 93, suggest that  
21 other segments may become out of compliance under the current standards. She further noted that the  
22 implications of a 303(d) listing for temperature have yet to be determined and may require costly cooling  
23 infrastructure that will not impact stream temperatures due to discharged effluent being a small portion of  
24 overall streamflow.

### 25 **ENGINEERING AND WATER RESOURCES REPORT**

26 The board noted the written report by Mr. Cowles, a copy of which is attached hereto as **Exhibit Q** and is  
27 incorporated herein by this reference.

28 **Construction cost and market update** – Mr. Schneider presented a memorandum and a PowerPoint,  
29 copies of which are attached hereto as **Exhibits R** and **S**, respectively, and incorporated herein by this  
30 reference. He said construction costs have nearly doubled locally since 2020, which will continue to  
31 impact capital projects and master planning. Discussion ensued regarding strategies to overcome these  
32 ongoing marketwide challenges.

### 33 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

34 Ms. Johnson reminded directors of the annual State of the River event on June 1 and upcoming Special  
35 District Association board member workshops. She also said staff will request member entities update  
36 appointments to the Authority board on an annual basis. Finally, she provided an update on negotiations

## Upper Eagle Regional Water Authority

1 amongst the Colorado Basin states. Specifically, she said California, Arizona, and Nevada reached a deal to  
2 cut three million acre-feet of water use over three years, and the U.S. Department of Interior is now  
3 temporarily withdrawing the draft Supplemental Environmental Impact Statement it published last month so  
4 that it can fully analyze the effects of the proposal.

### WATER COUNSEL REPORT

5 Ms. Moseley presented a memorandum and Senate Bill 23-295, Colorado River Drought Task Force,  
6 copies of which are attached hereto as **Exhibit T** and **U**, respectively, and incorporated herein by this  
7 reference. She said this bill, which passed in both chambers and is not anticipated to be vetoed, would  
8 create a task force to develop recommendations that address drought in the Colorado River basin.  
9

### GENERAL COUNSEL REPORT

10 The board noted Ms. Winn's privileged written report. She said Senate Bill 23-286, Access to Government  
11 Records, passed in both chambers and is awaiting the Governor's signature. She also said Senate Bill 23-  
12 303, Reduce Property Taxes and Voter-approved Revenue Change, was signed by the Governor and its  
13 associated Proposition HH will be considered by voters in the 2023 general election.  
14

### EXECUTIVE SESSION

15 Ms. Winn requested the board move into Executive Session to receive legal advice of counsel related to  
16 Senate Bill 23-213, Land Use. Upon motion duly made and seconded, it was unanimously  
17

18 **RESOLVED** to enter into Executive Session at 10:54 a.m. to discuss matters related to  
19 Senate Bill 23-213 pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created  
20 as Ms. Winn opined the contents of the discussion would contain privileged attorney-client  
21 communications.\*

22 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and  
23 discuss matters in negotiation related to Colorado River Cooperative Agreement matters. Upon motion duly  
24 made and seconded, it was unanimously

25 **RESOLVED** to enter into Executive Session at 11:26 a.m. to discuss matters related to  
26 Colorado River Cooperative Agreement matters pursuant to §24-6-402(4)(b) and (e),  
27 C.R.S., with no electronic record created as Ms. Moseley opined the contents of the  
28 discussion would contain privileged attorney-client communications.\*

29 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and  
30 discuss matters in negotiation related to water supply contracts. Upon motion duly made and seconded, it  
31 was unanimously

32 **RESOLVED** to enter into Executive Session at 11:28 a.m. to discuss matters related to  
33 water supply contracts pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic  
34 record created as Ms. Moseley opined the contents of the discussion would contain  
35 privileged attorney-client communications.\*

# Upper Eagle Regional Water Authority

1 The open session resumed at 11:34 a.m. During the executive session, the board did not take any formal  
2 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

3 **ADJOURNMENT**

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

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

9 **FURTHER RESOLVED**, that the meeting be adjourned at 11:34 a.m.

10  
11 Respectfully submitted,

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15 \_\_\_\_\_  
16 Secretary to the Meeting

17  
18 **MINUTES APPROVED, FORMAL CALL, AND**  
19 **NOTICE OF MEETING WAIVED**

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23 \_\_\_\_\_  
24 **Arrowhead Metropolitan District**

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28 **Town of Avon**

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32 **Beaver Creek Metropolitan District**

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36 **Berry Creek Metropolitan District**

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40 **EagleVail Metropolitan District**

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44 **Edwards Metropolitan District**

45 \*The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion in  
46 Executive Session not recorded constituted privileged attorney-client communications.  
47  
48  
49

50 \_\_\_\_\_  
**Kristin Moseley, Water Counsel**

\_\_\_\_\_ **Kathryn Winn, General Counsel**