

Upper Eagle Regional Water Authority

Board of Directors Meeting

October 26, 2023

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held October 26, 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 the
4 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
13 Kim Bell Williams, EagleVail Metropolitan District

Also in attendance were:

District Staff

14
15 Viktoria Beardsley
16 Jim Cannava
17 Jason Cowles
18 Allison Ebbets
19 Tim Friday
20 Justin Hildreth
21 Diane Johnson
22 David Norris
23 Chuck Owen
24 Siri Roman
25 Jeffrey Schneider
26 Shane Swartwout
27 Brian Thompson
28 Brad Zachman
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Consultants

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31 Steve Bushong, Bushong & Holleman PC
32 Kim Crawford, Butler Snow LLP
33 Maria Harwood, Butler Snow LLP
34 Dalton Kelley, Butler Snow LLP
35 Andrew Ma, Piper Sandler Companies
36 Robyn Moore, Piper Sander Companies
37 Kristin Moseley, Somach Simmons & Dunn
38 Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
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40 Public
41 Eric Heil, Town of Avon Alternate
42 Joanna Kerwin, Edwards Metropolitan District Alternate
43 Mike Towler, Beaver Creek Metropolitan District Alternate

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

45 The board noted it had received more than 72 hours prior to the meeting certain disclosures of potential conflicts of interest for the
46 following Directors indicating the following conflicts: Director Gregory disclosed that he occasionally undertakes minor development and
47 construction activities within the Authority's service area. Director Bell Williams disclosed that she is the Housing Director for Eagle
48 County and works with the Eagle County Housing and Development Authority Advisory Committee. Director Dreyer disclosed that he is a
49 board member and secretary of Bachelor Springs Homeowners' Association.
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CALL TO ORDER

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53 The board noted that Chair Gregory was attending remotely and requested to temporarily assign his duties so
54 that this meeting could be presided over in-person; Secretary Bell Williams assumed the role of presiding
55 officer for this meeting, in alignment with §8(h) of the Authority Bylaws. Having determined that quorum was
56 established, Secretary Bell Williams called the meeting to order at 8:30 a.m.

INTRODUCTIONS AND SUMMARY OF AGENDA ITEMS

57
58 Secretary Bell Williams welcomed bond consultants and water quality counsel. Mr. Thompson presented a
59 memorandum, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. He
60 discussed plans for updates and regular review of board-adopted policies. He also reminded directors that the
61 next regular board meeting is on Dec. 7.

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PUBLIC COMMENT

Secretary Bell Williams called for public comment and there was none.

PUBLIC HEARING CONCERNING FY 2024 RATES & FEES

Secretary Bell Williams opened the public hearing. Mr. Cannava and Mr. Norris presented a memorandum and Resolution to Adopt the 2024 Rates and Fees with its Exhibit A, copies of which are attached hereto as **Exhibits B and C**, respectively, and incorporated herein by this reference. This public meeting was noticed pursuant to § 32-1-1006(1)(h), C.R.S. Mr. Norris said there were no changes from the proposed rate and fees presented at the Sept. 28 board work session. He also said a typical customer will see a combined increase of 10.9% in their monthly water and wastewater bill. Discussion ensued regarding the rate implications of the proposed revenue bond, which the board considered later in the meeting. After board discussion, Secretary Bell Williams called for public input; hearing none, she closed the public hearing. Upon motion duly made a seconded, it was unanimously

RESOLVED to approve and adopt Res. 2023-05, Resolution to Adopt 2024 Rates and Fees, with its Exhibit A, as presented

PUBLIC HEARING CONCERNING FY 2024 BUDGET

Secretary Bell Williams opened the public hearing. Mr. Cannava and Mr. Norris presented a memorandum, Resolution to Adopt the 2024 Budget, Resolution to Appropriate Sums of Money, and updated 2024 proposed budget packet, copies of which are attached hereto as **Exhibit D, E, F, and G**, respectively, and incorporated herein by this reference. This public hearing was noticed pursuant to § 29-1-108(1), C.R.S. Mr. Norris said the only changes from the proposed budget presented at the Sept. 28 board work session were driven by an overall decrease to the bond issuance and increase to the bond allocation for the Bolts Lake project. Discussion ensued regarding the budget implications of the proposed fund balance and water dedication policies, which the board discussed later in the meeting. In response to a question, Mr. Norris discussed increased staffing reflected in the District's budget to address irrigation audit needs, as supported by the joint board water conservation committee. After board discussion, Secretary Bell Williams called for public input. Alternate Director Kerwin thanked staff for contributing to the informative article regarding rate changes and restructurings that was published in the Vail Daily on Oct. 26. Secretary Bell Williams closed the public hearing. Upon motion duly made a seconded, it was unanimously

RESOLVED to approve and adopt Res. 2023-06, Resolution to Adopt the FY 2024 Budget, as presented; and be it

FURHTER RESOLVED to approve and adopt Res. 2023-07, Resolution to Appropriate Sums of Money, as presented

ACTION ITEMS

Consideration of Minutes – The minutes of the Sept. 28, 2023, regular meeting were considered. Treasurer Dreyer requested the minutes be amended to memorialize the board's robust discussion

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1 reaffirming that the completion of Bolts Lake Reservoir is the Authority's top priority. Upon motion duly
2 made and seconded, it was unanimously

3 **RESOLVED** that the minutes of the Sept. 28, 2023, regular meeting be accepted and hereby
4 are approved as amended.

5 **Resolution Authorizing the Issuance and Sale of Enterprise Water Revenue Bond** – Mr. Cannava
6 and Mr. Norris presented the resolution, a copy of which is attached hereto as **Exhibit H** and incorporated
7 herein by this reference. In response to a question, Ms. Moore said this parameters resolution would
8 allow the General Manager and Finance Manager to set the bond principal, interest rate, and annual debt
9 service amounts at or below the stated maximums; in the unlikely event of an exceedance, the board
10 would need to consider a new parameters resolution. She also provided updates on the municipal bond
11 market, and Ms. Crawford provided updates on the Authority's outstanding bonds and insurance history.
12 Upon discussion and motion duly made and seconded, it was unanimously

13 **RESOLVED** to approve and accept Resolution No. 2023-08, Authorizing the Issuance and Sale
14 of Enterprise Water Revenue Bond, as presented.

15 **Water supplies** – The board discussed the ongoing prioritization of shoring up supplies until Bolts Lake
16 Reservoir (Bolts Lake) becomes operational through purchasing and leasing water. Ms. Moseley
17 reminded the board that the Authority could purchase 250 shares of the District's Class A, Series 2, stock
18 in Eagle Park Reservoir Company (EPRC) by exercising the option prescribed in the Dec. 17, 2020,
19 Option Agreement, which would entitle the Authority to 25 acre-feet of water. She also said the cash in
20 lieu price would escalate beginning in 2024.

21 Separate from this purchase, the board referred to previous discussions regarding potential lease
22 options with the District or the Colorado River Water Conservation District (CRWCD). In reference to the
23 Oct. 2 ad-hoc committee meeting between representatives from the District and Authority boards, Director
24 Trueblood said the District board expressed willingness to lease 25-acre feet to the Authority for a term of
25 the shorter of 10 years or until Bolts Lake becomes operational. Ms. Moseley reminded the board that
26 there is inherent risk that Bolts Lake may not be constructed and operational within 10-years, and a 10-
27 year lease of Eagle Park water without a right of renewal creates risk of shortage for the Authority in the
28 event that Bolts Lake is not constructed. Moreover, a 10-year lease would likely face significant opposition
29 in Water Court because of the short lease term. Director Trueblood and Chair Gregory said the ad-hoc
30 committee members were not aware of this parameter prior to their meeting. Upon discussion, directors
31 unanimously supported pursuing a long-term lease from CRWCD with an early termination clause.

32 Mr. Norris then presented the Resolution to Exercise an Option to Purchase 25 Acre-feet of Eagle
33 Park Reservoir Water from the District, a copy of which is attached hereto as **Exhibit I** and incorporated
34 herein by this reference. In response to a question, Ms. Moseley said the defined terms embedded in the
35 Resolution clarifies the stock purchase. Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** to approve and accept Resolution No. 2023-09, To Exercise an Option to
2 Purchase 25 Acre-Feet of Eagle Park Reservoir Water from ERWSD, as presented.

3 Further discussion ensued regarding leasing water from CRWCD. In response to a question, Ms.
4 Moseley said this lease and the option purchase could be incorporated into one Water Court case as the
5 combined supplies would serve as the augmentation source. Upon motion duly made and seconded, it
6 was unanimously

7 **RESOLVED** to authorize the General Manager to negotiate a lease of at least 25 acre-
8 feet and up to 50 acre-feet of water from the Colorado River Water Conservation District,
9 for a long-term lease with an option to terminate at any time, at the River District's current
10 lease rate; and be it

11 **FURTHER RESOLVED** to authorize counsel to prepare and file documents necessary to
12 effectuate these water rights by Dec. 31, 2023

13 **INFORMATION REPORTS**

14 Directors reviewed board committees and September meeting summary, copies of which are attached hereto
15 as **Exhibits J** and **K**, respectively, and incorporated herein by this reference. Secretary Bell Williams said
16 there was no contract log to review because there were no new Authority contracts.

17 **BOARD MEMBER INPUT**

18 Secretary Bell Williams discussed the Oct. 20 joint board work session, community lunch, and radio program
19 featuring Colorado River Commissioner Becky Mitchell. Directors thanked staff for organizing these events
20 and commended Commissioner Mitchell for her passionate service.

21 **GENERAL MANAGER REPORT**

22 Ms. Roman said she and Mr. Norris recently presented the 2024 rate changes and restructures to the boards
23 of Arrowhead, Bachelor Gulch, Beaver Creek, EagleVail, and Edwards Metro Districts; additional
24 presentations to metro districts, associations, and town councils are scheduled through January. She thanked
25 directors for their support at these presentations. Director Hillgren and Secretary Bell Williams praised the
26 insights and impacts of this outreach.

27 **BUSINESS ADMINISTRATION REPORT**

28 Mr. Norris did not have a written report or verbal updates.

29 **Water conservation program updates** –The board noted the memorandum by Ms. Ebbets, a copy
30 of which is attached hereto as **Exhibit L** and incorporated herein by this reference. Director
31 Trueblood and Director Underwood reported on the joint board water conservation committee's
32 discussions regarding the landscape transformation program, irrigation audits, efficiency audits, and
33 smart controllers.

34 **Quarterly financial report** – Mr. Cannava presented the report, a copy of which is attached hereto
35 as **Exhibit M** and incorporated herein by this reference. In response to a question, he said the 9%

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1 increase in water consumption by tiers 3-5 in the third quarter is due primarily to lowering the usage
2 levels in each tier; he also noted a decrease in total water consumption.

3 **Draft of fund balance policy** – Mr. Cannava and Mr. Norris presented the policy draft, a copy of
4 which is attached hereto as **Exhibit N** and incorporated herein by this reference. Mr. Norris said the
5 policy would set the fund balance target at a minimum of six months and a maximum of twelve
6 months of annual budgeted operating costs. He also said this policy would improve the Authority's
7 credit worthiness, provide strategic direction for budget planning, and lessen the burden on
8 ratepayers by growing reserves to fund capital projects in lieu of bonding. Upon discussion, Mr. Norris
9 requested the board consider this policy for adoption at the Dec. 7 board meeting.

10 OPERATIONS REPORT

11 Mr. Zachman presented the report, a copy of which is attached hereto as **Exhibit O** and incorporated herein
12 by this reference. He said the triennial Compliance Evaluation Inspection of the District's wastewater program
13 will be administered on Dec. 12.

14 **Water Quality Control Commission's Denial of Town of Eagle's Request for Reconsideration of**
15 **Regulation 93** – Ms. Roman and Mr. Zachman presented a memorandum, a copy of which is
16 attached hereto as **Exhibit P** and incorporated herein by this reference. Ms. Roman said the decision
17 made by State's Water Quality Control Division and Water Quality Control Commission does not
18 account for natural climate variability, even though the Town's exceedances of Regulation 93
19 standards were caused by uncontrollable drought conditions.

20 **Backflow Prevention and Cross Connection Control (BPCCC) program update** – Mr. Swartwout
21 discussed the BPCCC program and the challenges that many utilities face to comply with backflow
22 regulations. Mr. Zachman recognized the District's significant progress in compliance since 2019. Mr.
23 Swartwout's presentation was tabled until the Dec. 7 board meeting due to technical issues.

24 ENGINEERING AND WATER RESOURCES REPORT

25 Mr. Cowles presented the Engineering and Water Resources Report and the Development Report, copies of
26 which are attached hereto as **Exhibits Q** and **R**, respectively, and incorporated herein by this reference. He
27 provided updates on the Cairns Townhome, Margaux PUD, and Edwards River Park PUD projects.

28 **Water allocation for State Land Board (SLB) parcel** – Mr. Cowles presented a PowerPoint, a copy
29 of which is attached hereto as **Exhibit S** and incorporated herein by this reference. He said District,
30 SLB, Town of Avon, and County representatives discussed the proposed plan to annex the SLB
31 property in Dowd Junction into the Town of Avon and rezone it for workforce housing, and a potential
32 allocation of water from the County's water dedicated to the Authority for workforce housing projects.
33 He also said Eagle County Commissioners seemed to indicate support for the allocation of water to
34 the property. Director Underwood and Alternate Director Heil discussed the project and the
35 importance of collaborative approaches to affordable housing.

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1 **Extended Shoshone Power Plant Outage** – Mr. Cowles presented a memorandum, a copy of which
2 is attached hereto as **Exhibit T** and incorporated herein by this reference. He said the Oct. 19
3 request by Division 5 and the U.S. Bureau of Reclamation (USBR) to allocate Green Mountain
4 Reservoir (GMR) water to support the Shoshone Outage Protocol will not impact the Authority's
5 supplies because a Shoshone call is not anticipated this winter due to the extended outage of the
6 power plant. He also suggested that the Authority might request an administrative substitution of
7 WMR water for any of the Authority's augmentation plans that relied on GMR water. Ms. Moseley said
8 approving this request will be beneficial to stream health and building cooperation with Division 5 and
9 USBR. Upon motion duly made and seconded, it was unanimously

10 **RESOLVED** to authorize staff and counsel to negotiate terms with the Bureau of
11 Reclamation and Division of Engineers for the allocation of the Authority's remaining 475
12 acre-feet of contracted water supplies in Green Mountain Reservoir to support the Shoshone
13 Outage Protocol.

14 **Bolts Lake Update** – Mr. Hildreth presented a memorandum with its attached project schedule, a
15 copy of which is attached hereto as **Exhibit U** and incorporated herein by this reference. Directors
16 had no questions, and Director Underwood thanked staff for the level of detail and accountability
17 provided in this update.

18 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

19 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit V** and incorporated herein
20 by this reference. She had no further items to discuss.

21 **WATER COUNSEL REPORT**

22 **Draft of revised water dedication policy** – Ms. Moseley presented a memorandum with its attached policy
23 draft, a copy of which is attached hereto as **Exhibit W** and incorporated herein by this reference. She said
24 cash in lieu fees would increase based on inflation, the anticipated construction costs of Bolts Lake, and the
25 elimination of a summer water price. Upon discussion, Ms. Moseley requested the board consider this policy
26 for adoption at the Dec. 7 board meeting.

27 **WATER QUALITY COUNSEL REPORT**

28 Mr. Bushong presented a memorandum, a copy of which is attached hereto as **Exhibit X** and incorporated
29 herein by this reference. He discussed the Authority's status in the per- and polyfluorinated (PFAS) class
30 action settlements described in Exhibit X, as well as the complexities in assessing settlement implications due
31 to the limited understanding of the scale and scope of PFAS contamination. He suggested that he consult
32 with an attorney specializing in PFAS to learn more about specific issues and develop a report with a
33 recommended course of action for the board to consider. Directors agreed that this recommendation would be
34 sent to board members via email with a deadline to respond with objections or questions. If an objection or
35 question requiring discussion is raised by the stated deadline, a special board meeting will be scheduled; if no
36 such board objections or questions are raised, Mr. Bushong would be authorized to file necessary documents

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1 based on his recommendation. Ms. Winn stressed the importance of the board providing direction with ample
2 time for counsel to meet relevant deadlines. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to authorize Mr. Bushong to engage and consult with special PFAS counsel in order to
4 develop a report with a recommended course of action regarding certain PFAS class action
5 settlements and present the report to the board in the above-stated manner; and be it

6 **FURTHER RESOLVED** to authorize Mr. Bushong to file necessary documents based on this
7 recommendation, provided that the board does not raise objections or questions requiring a special
8 board meeting in the above-stated manner.

9 **GENERAL COUNSEL REPORT**

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

11 **EXECUTIVE SESSION**

12 Ms. Moseley requested the board move into Executive Session to discuss matters in negotiation regarding
13 Eagle Park Reservoir water lease options. Upon motion duly made and seconded, it was unanimously

14 **RESOLVED** to enter into Executive Session at 11:19 a.m. to discuss matters in negotiation
15 regarding Eagle Park Reservoir water lease options pursuant to §24-6-402(4)(b), C.R.S., with
16 an electronic record created and retained pursuant to §24-6-402(2)(d.5)(II)(E), C.R.S.

17 Ms. Moseley requested the board move into Executive Session to receive legal advice regarding Colorado
18 River Cooperative Agreement matters. Upon motion duly made and seconded, it was unanimously

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

23 The open session resumed at 11:35 a.m. During the executive session, the board did not take any formal
24 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

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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 11:35 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