

Upper Eagle Regional Water Authority

Board of Directors Meeting

May 28, 2015

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held May 28, 2015, 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 Todd Goulding, Town of Avon
10 George Gregory, Berry Creek Metropolitan District
11 Jim Power, Beaver Creek Metropolitan District

12 The following Director was absent and excused:

13 Mick Woodworth, Edwards Metropolitan District

14 The following Alternate Director was present and acting:

15 Kara Heide, Edwards Metropolitan District

16 Also in attendance were:

17	<u>ERWSD Staff</u>	27	Melissa Mills McLoota
18	Tug Birk	28	Ed Trainer
19	Linn Brooks	29	James Wilkins
20	Jason Cowles	30	<u>Consultants</u>
21	Carol Dickman	31	Eric Jorgenson, Collins Cockrel & Cole
22	Angelo Fernandez	32	Glenn Porzak, Porzak Browning & Bushong LLP
23	Todd Fessenden	33	<u>Public</u>
24	Catherine Hayes	34	Pam Elsner, Beaver Creek Metropolitan District
25	Leslie Isom	35	Sarah Smith Hymes, Town of Avon
26	Diane Johnson		

36 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

39 Director Allender disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership
40 and business interests within the Authority. Also, he is appointed by Vail Associates, Inc. to serve as a Director of both the Eagle
41 Park Reservoir Company and the Clinton Ditch and Reservoir Company; he also serves on the Eagle River Water & Sanitation
42 District Board of Directors, which manages the Authority. Director Goulding disclosed that he serves on the Boards of the Eagle
43 County Health Service District and Vail Mountain Rescue, which have occasional dealings with the Authority. He also disclosed he
44 is the owner of Goulding Development Advisors, LLC, which may have occasional dealings with the Authority and its member
45 districts. Director Woodworth disclosed that he is employed by the Eagle River Fire Protection District, which operates within the
46 Authority's service area; he also serves on the Edwards Metropolitan District Board.

47 CALL TO ORDER

48 Chairman Gregory called the meeting to order at 8:30 a.m.

49 ACTION ITEMS

50 **Consideration of Minutes** – The minutes of the Regular Meeting of April 23, 2015, were considered.

51 Upon motion duly made and seconded, it was unanimously

52 **RESOLVED** that the minutes of the April 23, 2015, Regular Meeting be accepted and hereby are
53 approved as presented.

54 **Easement Vacation: Buck Creek Lot 1A** – Mr. Birk discussed a proposed vacation of easement
55 and presented a board action request form, map of the parcel, and a resolution for easement
56 vacation, copies of which are attached hereto as **Exhibits A, B, and C**, respectively, and

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1 incorporated herein by this reference. After discussion and upon motion duly made and
2 seconded, it was unanimously

3 **RESOLVED** that the vacation of the easement for Buck Creek Lot 1A be and hereby is
4 approved as presented.

5 **Oath of Office** – Chairman Gregory administered the Oath of Office to Alternate Director Heide, a copy
6 of which is attached hereto as **Exhibit D** and incorporated herein by this reference.

7 **Rules and Regulations Revisions** – Mr. Birk presented a board action request form regarding minor
8 revisions to the Rules and Regulations, a copy of which is attached hereto as **Exhibit E** and
9 incorporated herein by this reference. He explained the revisions were being proposed to maintain
10 consistency with an updated application for the construction review process. After discussion and upon
11 motion duly made and seconded, it was unanimously

12 **RESOLVED** that the Rules and Regulations revisions be and hereby are approved as
13 presented.

14 **Quarterly Financial Report** – Mr. Wilkins presented the quarterly financial report, a copy of which is
15 attached hereto as **Exhibit F** and incorporated herein by this reference. He noted many budget
16 transfers occurred from 2014 to 2015 due to timing shifts. He called attention to a significant variance in
17 personnel costs due to the transition to ADP, the District's new payroll processing company. Costs for
18 the first payroll were debited in 2014 rather than 2015. Mr. Wilkins also called attention to higher-than-
19 budgeted first quarter water sales, though the precipitation in May could translate into lower second
20 quarter sales. The Board acknowledged receipt of the report.

21 **REPORT BY WATER COUNSEL**

22 **Federal Legislation Update** – Mr. Porzak discussed the Water Rights Protection Act and a list of
23 the Act's cosponsors, a copy of which is attached hereto as **Exhibit G** and incorporated herein by
24 this reference. He noted many cosponsors are from states without ski areas on Forest Service
25 land, showing the widespread support for the Act. He also said the Colorado congressional
26 delegation supports the legislation.

27 **Forest Service Directive Update** – Mr. Porzak discussed three Forest Service directives. The
28 groundwater directive received much negative feedback and was withdrawn. The two other
29 directives are in various states of revision. Mr. Porzak called attention to a recent revision of the
30 water rights permit clause, which would give the Forest Service ownership of water rights used on
31 Forest Service land – whether or not the water originated on that land. The feedback on the
32 revision from the National Ski Areas Association was very negative, and the Forest Service is
33 again rewriting the directive.

34 **2015 State Legislation Summary** – Mr. Porzak discussed the summary, a copy of which is
35 attached hereto as **Exhibit H** and incorporated herein by this reference. He said most of the

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1 water bills introduced during the legislative session were killed due to tension between the House
2 and Senate, which were under control of different parties.

3 **Senate Bill 15-183** – Mr. Porzak discussed the bill, a copy of which is attached hereto as **Exhibit I**
4 and incorporated herein by this reference. The bill would ensure that the Water Courts could not
5 requantify water rights previously quantified except in unique cases with new circumstances. Mr.
6 Porzak said this was important legislation, especially for water rights that will be used for future
7 growth or may be needed only during drought years, for example.

8 **Seniors First Supreme Court Appeal** – Mr. Porzak discussed the appeal, a copy of which is
9 attached hereto as **Exhibit J** and incorporated herein by this reference. He summarized the case,
10 in which the State Engineer mandated the Authority divert a senior water right prior to diverting a
11 junior one. Mr. Porzak said the rights have many differences and based on past precedent, the
12 Authority should be able to divert whichever right it chooses. He also noted the importance of
13 knowledge of the service area and customer base with regard to water rights administration.

14 **Lake Creek Wells Augmentation Plan** – Mr. Porzak discussed the augmentation plan, a copy of
15 which is attached hereto as **Exhibit K** and incorporated herein by this reference. He summarized
16 the Authority's need to develop the Lake Creek well field and said the plan was filed. The wells
17 could be augmented with historic consumptive use credits and will be important for future
18 development, especially in the Edwards area.

19 **Clean Water Act Update** – Mr. Porzak noted the Environmental Protection Agency (EPA) and
20 Army Corps of Engineers released the revised Waters of the United States (WOTUS) rule, which
21 is part of the Clean Water Act. Bob Weaver will review the rule on behalf of the Authority and
22 District and report back to the Boards on the potential effects. Mr. Porzak said a recent hearing
23 on the Water Rights Protection Act also included discussion of the WOTUS rule and many
24 congressional delegates did not view this and other EPA regulations favorably.

25 **California Drought Discussion** – In response to a question, Mr. Porzak said Governor
26 Hickenlooper could not issue an executive order similar to that of California's Governor Brown, in
27 which Brown mandated reduced water usage throughout the state. Mr. Porzak also said
28 California has been exceeding its Compact entitlement for years.

29 **REPORT BY GENERAL COUNSEL**

30 **Authority Agreement Update** – Mr. Jorgenson, attending on behalf of Mr. Collins, noted the
31 Authority Agreement was executed by all Authority member districts. A copy of the fully executed
32 Agreement is attached hereto as **Exhibit L** and incorporated herein by this reference.

33 **Water System Impact Fee Update** – Mr. Jorgenson reported that the Water System Impact Fee
34 (formerly called a plant investment fee), was approved by all Authority member districts.
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1 REPORT BY GENERAL MANAGER

2 **Tuesday Packet Email** – Ms. Brooks requested feedback on staff’s current practice of emailing
3 relevant, time-sensitive consultant items to the Board on the Tuesday before the Board meeting.
4 The Board agreed that this was okay, but Directors may or may not be able to consider these
5 additional items prior to the meeting due to the short turnaround time. The Board also confirmed
6 that packet delivery one week prior to the meeting was preferred.

7 **Mountain Star Tank Update** – Ms. Brooks discussed the \$105,000 donated from the sewer cost
8 recovery fund of the developer, Jen Wright, to be used towards tank costs. Ms. Brooks noted Mr.
9 Collins recommended holding the funds to include in tank financing. The Board approved the
10 expenditure of Authority funds for tank design, so long as these and any related expenses are
11 accounted for in the financing package. In response to a question, Mr. Fessenden noted the tank
12 design would help determine a tank cost estimate. This figure would be helpful for the town of
13 Avon and Mountain Star in their discussions to determine tank financing.

14 **Eagle River MOU Projects** – Ms. Brooks discussed a recent meeting with some ERMOU
15 principals for a presentation from the technical group studying the various project options. Viable
16 projects were identified, including an Eagle Park Reservoir enlargement, Bolts Lake development;
17 and potential Whitney Creek, Blodgett, and Wolcott reservoirs. A summary and scope of work for
18 each possibility will be drafted to move forward. Mr. Porzak said the project review was a creative
19 process that included a wide range of alternatives.

20 **Water Rights Hydrology Model** – Ms. Brooks said the model is near completion and is
21 producing data. She noted the importance of including historical data to capture unique events
22 like droughts. Staff is researching whether additional effort to include a longer period of historical
23 data will be worth the added cost.

24 **Wilderness Policy Update** – Ms. Brooks noted Bob Weaver was drafting a memo summarizing
25 his investigation on wilderness issues in preparation for a Board discussion of a wilderness
26 policy. Ms. Brooks shared a draft statement that could be used while the final policy is developed.
27 Director Allender requested changes to explicitly state that the Board could not support any
28 wilderness designation that would preclude the Authority’s ability to access current and even
29 future facilities for mitigation or restoration efforts.

30 REPORT BY DIRECTOR OF OPERATIONS

31 Mr. Fessenden presented the Operations Report, a copy of which is attached hereto as **Exhibit M** and
32 incorporated herein by this reference.

33 **Traer Creek Tank Update** – Mr. Fessenden said water department staff noticed on May 25 that the
34 tank was leaking at approximately 425 gallons/minute. A June 1 meeting of involved staff and
35 contractors is scheduled to discuss issues related to this leak. The tank will remain drained and
36 offline for the foreseeable future.

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1 **Mountain Star BPS Project Update** – Mr. Fessenden updated the Board on the planned booster
2 pump station (BPS) projects, design for which is moving forward. Cost estimates have increased for
3 the needed BPS upgrades due to rising construction costs and the need for an additional BPS to be
4 upgraded, due to a revision to the demand calculation.

5 **Camp Hale Stakeholders Group Update** – Mr. Fessenden said the Authority and District joint letter
6 of support regarding the Camp Hale Restoration was submitted to the U.S. Forest Service. Main
7 points included the need for continued stream and water rights access and the inclusion of a wetlands
8 bank there. He noted Aurora and Colorado Springs also submitted letters addressing those same
9 points, on which the USFS scoping letter was silent.

10 **Urban Runoff Group/Stormwater Update** – Mr. Fessenden said the town of Vail is taking
11 leadership regarding urban runoff and stormwater issues, including efforts to upgrade the East
12 Vail interchange to reduce the effects of I-70 runoff in the area. A contractor was also hired to
13 remap Vail's stormwater system and trace any outfalls upstream to determine where pipes
14 branch off and whether any connections between the storm and sanitary systems exist.

15 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

16 Mr. Fernandez presented his report, a copy of which is attached hereto as **Exhibit N** and incorporated
17 herein by this reference.

18 **Online Bill Pay** – Mr. Fernandez said the District's online bill payment system was being tested
19 by employees who reside in the District's service area; it will be ready for Board member testing
20 prior to a full release to District customers.

21 **New Website** – Mr. Fernandez discussed the scheduled launch of the District's new website on
22 June 1. The site will feature easy and intuitive navigation, comply with the District's new branding,
23 and provide analytics regarding visitors and usage. Mr. Fernandez gave a demonstration of the
24 site as well.

25 **REPORT BY COMMUNICATIONS AND PUBLIC AFFAIRS MANAGER**

26 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit O** and incorporated
27 herein by this reference.

28 **State of the River Public Meeting** – Ms. Johnson said about 65 people attended the May 21 event
29 to hear about priorities for the Eagle and Colorado river basins, within the context of Colorado's Water
30 Plan. The program was recorded and will be available to view on Channel 5 and its website.

31 **Colorado Water Plan update** – Ms. Johnson updated the Board on the plan, public comments for
32 which were reviewed at the May 20 – 21 Colorado Water Conservation Board meeting. She said over
33 24,000 comments were received, although a majority were form letters circulated by environmental
34 and other interest groups. In response to a question, Ms. Johnson said the basis of many comments
35 was feedback from the agriculture, river health, and recreation communities, as well as concerns

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1 about maintaining Colorado's system of prior appropriation. The final plan is due to the governor in
2 December.

3 **Town of Vail Water Quality Project** – Ms. Johnson mentioned media coverage of the town's project
4 to map and database all storm sewer infrastructure and drainage basin information, which is part of
5 its strategic action plan to improve water quality in Gore Creek. Upstream improvements may benefit
6 downstream users such as the Authority.

7 **Authority U: Online payment and e-billing** – Authority U was tabled to the June meeting due to a
8 CenturyLink outage that prevented staff from showing the online bill pay site.

9 **EXECUTIVE SESSION**

10 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding the Shoshone
11 Acquisition and Forest Service permitting of historic ditches, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He
12 asked that no electronic record be made, as the discussion would be entirely privileged attorney-client
13 communications. Upon motion duly made and seconded, it was unanimously

14 **RESOLVED** to enter executive session at 10:06 a.m. to discuss attorney-client privileged
15 issues concerning the Shoshone Acquisition and Forest Service ditch permitting, pursuant to
16 §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
17 contents of the discussion would contain privileged attorney-client communications.*

18 Mr. Jorgenson requested the Board continue Executive Session to receive legal advice regarding the Traer
19 Creek Tank, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no electronic record be made, as
20 the discussion would be entirely privileged attorney-client communications. Upon motion duly made and
21 seconded, it was unanimously

22 **RESOLVED** to enter executive session at 10:25 a.m. to discuss attorney-client privileged
23 issues concerning the Traer Creek Tank, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with
24 no electronic record created as Mr. Jorgenson opined the contents of the discussion would
25 contain privileged attorney-client communications.*

26 The regular meeting resumed at 11:04 a.m.
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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:28 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.

Eric Jorgenson, General Counsel

Glenn Porzak, Water Counsel