

Upper Eagle Regional Water Authority

Board of Directors Meeting

June 25, 2015

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held June 25, 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 Mick Woodworth, Edwards Metropolitan District

13 Also in attendance were:

14	<u>ERWSD Staff</u>	23	Elena Jones
15	Linn Brooks	24	John McCaulley
16	Jason Cowles	25	Glen Phelps
17	Carol Dickman	26	Brian Tracy
18	Angelo Fernandez	27	Ed Trainer
19	Todd Fessenden	28	James Wilkins
20	Catherine Hayes	29	<u>Consultants</u>
21	Leslie Isom	30	Jim Collins, Collins Cockrel & Cole
22	Diane Johnson	31	Glenn Porzak, Porzak Browning & Bushong LLP

32 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

43 CALL TO ORDER

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

45 ACTION ITEMS

46 **Consideration of Minutes** – The minutes of the Regular Meeting of May 28, 2015, were considered.

47 Upon motion duly made and seconded, it was unanimously

48 **RESOLVED** that the minutes of the May 28, 2015, Regular Meeting be accepted and hereby are
49 approved as presented.

50 **FY2014 Audit** – Mr. Wilkins presented a board action request form and the 2014 audited financial
51 statement, copies of which are attached hereto as **Exhibits A** and **B** and incorporated herein by
52 this reference. He discussed the depreciation rate of Authority assets and compared this to other
53 utilities, including Denver Water, which depreciates some assets at a much slower rate.
54 Discussion ensued regarding whether to investigate and implement a slower depreciation rate for
55 future assets and the true value of the Authority's capital assets. Mr. Porzak noted the value of

Upper Eagle Regional Water Authority

1 the Authority's water rights is not accurately reflected in the audit, but the document does
2 reference the true value in an Appendix. The Board also discussed minor suggested revisions to
3 certain parts of the audit commentary. After discussion and upon motion duly made and
4 seconded, it was unanimously

5 **RESOLVED** that the FY2014 audited financial statement be and hereby is approved as
6 amended.

7 **Water Sales** – Mr. Wilkins discussed the May water sales report, a copy of which is attached hereto as
8 **Exhibit C** and incorporated herein by this reference. As expected, sales were lower than projected due
9 to the wet month. Mr. Wilkins will continue to closely track sales in the coming months and will apprise
10 the Board of any needed action should the lower sales continue.

11 **Traer Creek Tank Committee** – Ms. Brooks said Directors Allender and Goulding volunteered to serve
12 on a committee regarding the Traer Creek Tank. After discussion and upon motion duly made and
13 seconded, it was unanimously

14 **RESOLVED** that the Board hereby does approve the appointment of Directors Allender and
15 Goulding to serve on the Traer Creek Tank Committee.

16 STRATEGY ITEMS

17 **Unallocated Water Committee Update** – Ms. Brooks noted a meeting of the Unallocated Water
18 Committee is scheduled for July 10. She and Mr. Porzak compiled a list of topics for the group, and
19 they will report back to the Board on the discussion.

20 **Wilderness Policy Update** – Ms. Brooks said at their May meetings, both the Authority and District
21 Boards approved language for wilderness policy talking points. Ms. Brooks requested the Boards hold a
22 joint meeting on July 23 to further discuss the matter, which will better prepare both Boards to respond
23 to future wilderness proposals. The Board agreed to hold such a meeting.

24 REPORT BY WATER COUNSEL

25 **Colorado Water Plan Meeting with James Eklund** – Mr. Porzak discussed the Plan, an
26 updated draft of which is forthcoming. He noted his acceptance of an August meeting with James
27 Eklund and a group of Colorado water attorneys to discuss the plan; an invitation is attached
28 hereto as **Exhibit D** and incorporated herein by this reference. Mr. Porzak said the group will
29 follow the Chatham House Rules, meaning the attendees can use information exchanged at the
30 meeting but cannot disclose the identity or affiliation of the speaker(s).

31 **Forest Service Water Right Permit Clause** – Mr. Porzak said the Forest Service was making
32 progress on a revision of the clause that should include the most recent comments of Mr. Porzak
33 and others who weighed in on the draft. He noted the Forest Service still needs legal review. He
34 summarized the history of the clause, by which the Forest Service originally wanted to take
35 ownership of any water rights that originated on Forest Service land.

Upper Eagle Regional Water Authority

1 **Summary of Horne vs. Dept. of Agriculture** – Mr. Porzak discussed the recent Supreme Court
2 ruling regarding a requirement that raisin farmers using federal land must turn over a percentage
3 of their annual crop to the government. He distributed a summary of the case, a copy of which is
4 attached hereto as **Exhibit E** and incorporated herein by this reference. The U.S. Supreme Court
5 ruled in favor of Horne, the farmer, noting that the constitutional provision prohibiting the taking of
6 property without paying compensation applies to both real and personal property. Mr. Porzak
7 discussed the similarities between this case and the Forest Service’s attempted water rights
8 takings and with respect to bypass flows; the raisin case puts forth the precedent that in any
9 taking of real or personal property, the loss must be compensated.

10 **REPORT BY GENERAL COUNSEL**

11 **Water Agreement with Vail/Arrowhead Inc.** – Mr. Collins presented a water agreement
12 between the Authority and Vail/Arrowhead Inc., a copy of which is attached hereto as **Exhibit F**
13 and incorporated herein by this reference. Mr. Collins discussed the old agreement between the
14 Arrowhead Metropolitan District and Vail/Arrowhead Inc., which was set to expire and outlined the
15 need for additional water rights should the McCoy Springs property ever be developed. Mr.
16 Collins suggested it was more desirable that the Authority execute a new agreement with the
17 water-providing entity. After discussion and upon motion duly made and seconded, it was
18 unanimously

19 **RESOLVED** that the Water Agreement between the Authority and Vail/Arrowhead Inc. be
20 and hereby is approved as presented.

21 **Authority Agreement Effective Date** – Mr. Collins said the Authority Agreement was last
22 executed by Arrowhead Metropolitan District on May 27 and suggested this was the most logical
23 effective date of the Agreement. After discussion and upon motion duly made and seconded, it
24 was unanimously

25 **RESOLVED** that the effective date of May 27 for the Authority Agreement be and hereby
26 is approved as presented.

27 **Mountain Star Update** – Mr. Collins discussed the Mountain Star Tank and related
28 developments, including a positive meeting the previous week with Mountain Star HOA president
29 Steve Coyer. Mr. Collins suggested staff proceed with tank design using the \$105,000 donated by
30 Jen Wright, which will inform estimates of tank cost and should allow the HOA to hold a vote
31 concerning tank financing. Ms. Brooks said the town of Avon will be asked to release about
32 \$97,000 in Mountain Star tap fees collected, as design fees are estimated to be around \$200,000.
33 Mr. Cowles noted design completion was expected in March 2016. After discussion and upon
34 motion duly made and seconded, it was unanimously

35 **RESOLVED** that the Board hereby approves the use of \$105,000 donated by Jen Wright
36 to proceed with tank design.

Upper Eagle Regional Water Authority

1 **Traer Creek Tank Update** – Mr. Collins and Ms. Brooks reported on steps taken after
2 discovering a leak in the tank. Litigation counsel Kyle Kreischer was hired, and notice was given
3 to all involved parties and has been accepted by each surety or bonding company. Ms. Brooks
4 noted Close and Associates of Lakewood was hired as the forensic engineer based on staff
5 research and recommendations. Mr. Close has a history of neutrality on these matters and works
6 mainly in mediation and settlement situations. Ms. Brooks said he has specific ideas for the Traer
7 Creek Tank regarding damage minimization and potential fixes. Ms. Brooks recommended the
8 Authority perform the entire investigation of site, tank, and related items and proceed with a report
9 to all sureties and liability carriers, which should negate the need for the individual parties to
10 engage their own experts. In response to a question, Mr. Collins said any other needed
11 subcontractors for this investigation would be contracted by Close and Associates. After
12 discussion and upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the Authority fund up to \$200,000 for forensic sampling by Close and
14 Associates, with the expectation of recovery of the costs.

15 Mr. Cowles presented a brief presentation of the tank, including current state, leak location, and
16 photographic images of some damaged areas.

17 **REPORT BY GENERAL MANAGER**

18 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
19 herein by this reference.

20 **August System Tour** – Ms. Brooks discussed the Colorado Water Congress summer meeting,
21 which is being held in Vail starting August 19. She suggested hosting an abbreviated system tour
22 and dinner on August 18 for select attendees to showcase aspects of the District's system. After
23 discussion and upon motion duly made and seconded, it was unanimously

24 **RESOLVED** that staff is authorized to spend up to \$2500 on a system tour and dinner for
25 Colorado Water Congress attendees.

26 **REPORT BY DIRECTOR OF OPERATIONS**

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

29 **System Shutdowns** – Mr. Fessenden reported on a system shutdown in Beaver Creek to replace
30 pressure reducing valves (PRVs); the replacement valves are less prone to corrosion and increase
31 the safety of District staff working in the PRV vaults, as well as ensuring fire flows to the area when
32 needed. Discussion ensued regarding communication of the shutdown and additional people to
33 include on similar future notices. Mr. Fessenden also noted an upcoming shutdown at the Walking
34 Mountains Science Center.

35 **Mountain Star Update** – Mr. Fessenden said a recent water supply issue in Mountain Star was the
36 result of a malfunctioning motor, not excessive use. The equipment was replaced and operations

Upper Eagle Regional Water Authority

1 there are back to normal. Mr. Fernandez noted the advanced metering infrastructure (AMI)
2 installation in Mountain Star will be complete soon, allowing staff to provide residents with daily
3 water usage figures for their properties. Mr. Fessenden also noted that planned booster pump
4 station upgrades in the area were around 60% design; the project is planned to begin in 2016.

5 **Eagle River MOU Project Status Update** – Mr. Fessenden said the Phase 2 work plan for the
6 ERMOU projects was still in progress but is expected soon. He believes the money budgeted by the
7 Eagle Park Reservoir Company will be sufficient to cover the proposed projects.

8 **Urban Runoff Group/Stormwater Update** – Mr. Fessenden discussed the town of Vail's
9 strategic action plan to improve Gore Creek, which will be reviewed by Urban Runoff Group
10 members prior to finalization. He also noted that Wastewater Manager Siri Roman and town of
11 Vail Environmental Manager Kristen Bertuglia would host a bike tour along Gore Creek in
12 September to coincide with the annual Colorado Association of Stormwater and Floodplain
13 Managers Conference.

14 **Eagle Park Reservoir Company Quarterly Update** – Mr. Fessenden said Eagle Park Reservoir
15 filled in May. He also noted the annual shareholders meeting would be held later in the day,
16 during which the FY2016 budget would be considered.

17 **Forest Service Fuel Mitigation Project** – Mr. Fessenden clarified that a planned Forest Service
18 fuel mitigation project in Intermountain would begin in 2016.

19 **Lake Creek Wells Update** – Mr. Fessenden reported on the proposed well field, for which a
20 water rights application has been filed and a 1041 permit is being drafted. The project involves
21 working with South Fork Meadows HOA and Eagle River Meadows owners. Mr. Fessenden noted
22 some difficulty in working with the Eagle River Meadows owners to gain access to the area to do
23 wetlands impact monitoring via some monitoring wells. He also said staff has worked to minimize
24 the planned footprint in the area. Discussion ensued regarding possible action to help move the
25 study along.

26 **Eagle Mine Update** – Mr. Fessenden said improvements at the Mine are being made, though
27 they are reactive, not proactive. He suggested the Authority and District provide comments to the
28 Colorado Department of Public Health and Environment (CDPHE) and the Environmental
29 Protection Agency (EPA) regarding the desire to see more preventative and predictive
30 maintenance at the site. In response to a question, Mr. Fessenden said Eagle Mine Ltd received
31 an EPA grant for presenting technical data from the Mine and there are strict rules regarding
32 grant fundees commenting on related matters.

33 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

34 Mr. Fernandez presented his report, a copy of which is attached hereto as **Exhibit I** and incorporated
35 herein by this reference.

Upper Eagle Regional Water Authority

1 **Water Demand Management Pilot Study** – Mr. Fernandez discussed the study and noted some
2 water use regulation variances were being granted to homeowners based on their use of
3 advanced technology that uses weather, evapotranspiration, and microclimate data. Mr.
4 Fernandez clarified that the pilot studies include mainly Authority accounts, but a few Vail
5 customers are participating. Mr. McCaulley discussed the AMI installation in Wildridge; upon
6 completion, it will be deployed in Mountain Star first.

7 **BOI Board Packet Process Event** – Mr. Fernandez said a business optimization event was
8 recently held with staff regarding the internal process of developing, assembling, and distributing
9 packets. During a later phase of the project, staff will seek Board input on the parts of the process
10 that directly affect them.

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

12 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit J** and incorporated
13 herein by this reference.

14 **Consumer Confidence Report (CCR)** – Ms. Johnson said the annual water quality report is posted on
15 the District website and is being mailed to every customer account as required by the Colorado
16 Department of Public Health and Environment (CDPHE) and Environmental Protection Agency (EPA).
17 The report shows that Authority drinking water surpasses all federal and state drinking water standards
18 and had no violations during the Jan. 1 – Dec. 31, 2014, monitoring period. A copy of the Authority CCR
19 is attached hereto as **Exhibit K** and incorporated herein by this reference. Ms. Brooks thanked the
20 Water Department employees, including former and current department managers Glen Phelps and
21 Brian Tracy, respectively, for their diligence in ensuring the Authority had no violations in 2014.

22 **Colorado Water Plan and Basin Roundtable Update** – Ms. Johnson said pending the early July
23 release of the second draft of the Plan, the Colorado Basin Roundtable created definitions for some
24 terms used in the Interbasin Compact Committee (IBCC) developed “conceptual framework,” since
25 the group is concerned about the inclusion of the framework in the Colorado Water Plan. She also
26 briefly reviewed the balance of the Colorado Water Conservation Board’s Water Supply Reserve
27 Account (WSRA), which funds activities and projects associated with the 2005 legislation that created
28 the IBCC and basin roundtables.

29 **WISE Partnership** – Ms. Johnson said the Water Infrastructure and Supply Efficiency (WISE)
30 Partnership is applying for a WSRA grant, from both the statewide account and the basin accounts.
31 The WISE Partnership is a regional water supply project between Aurora Water, Denver Water, and
32 the South Metro WISE Authority to combine available water supplies and system capacities to create
33 a sustainable new water supply for the WISE Authority and its members. The purpose of the WISE
34 Authority is to implement the WISE Project, including developing new infrastructure, which will reduce
35 the South Metro area’s reliance on the Denver Basin Aquifer. The Board requested that staff
36 schedule a presentation on WISE at a future meeting.

Upper Eagle Regional Water Authority

1 **Authority U: Online payment and E-Billing** – Ms. Jones and Mr. McCaulley discussed a memo and
2 presented information on the upcoming e-billing and online bill pay system, the history of the
3 technology and testing required to ensure the safety and accuracy of customer information, and the
4 current and future automated payment options. A copy of the memo is attached hereto as **Exhibit L**
5 and incorporated herein by this reference. E-billing and online payments are being tested internally
6 and will be available to customers soon.

7 **EXECUTIVE SESSION**

8 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek
9 Tank and a personnel matter, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no electronic
10 record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion
11 duly made and seconded, it was unanimously

12 **RESOLVED** to enter executive session at 10:37 a.m. to discuss attorney-client privileged
13 issues concerning the Traer Creek Tank and a personnel matter, pursuant to §24-6-
14 402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the
15 contents of the discussion would contain privileged attorney-client communications.*

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

20 **RESOLVED** to enter executive session at 10:45 a.m. to discuss attorney-client privileged
21 issues concerning Compact Water Banking, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S.
22 with no electronic record created as Mr. Porzak opined the contents of the discussion would
23 contain privileged attorney-client communications.*

24 The regular meeting resumed at 11:09 a.m.

Upper Eagle Regional Water Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:10 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