

Upper Eagle Regional Water Authority

Board of Directors Meeting

July 23, 2015

MINUTES

1 A special meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held July 23, 2015, at 8:00 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	Melissa Mills McLoota
15 Linn Brooks	24	Siri Roman
16 Jason Cowles	25	Brian Tracy
17 Carol Dickman	26	Ed Trainer
18 Angelo Fernandez	27	James Wilkins
19 Todd Fessenden	28	<u>Consultants</u>
20 Catherine Hayes	29	Jim Collins, Collins Cockrel & Cole
21 Leslie Isom	30	Glenn Porzak, Porzak Browning & Bushong LLP
22 Diane Johnson	31	Bob Weaver, Leonard Rice Engineers

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.

43 CALL TO ORDER

44 Chairman Gregory called the meeting to order at 8:00 a.m.

45 GENERAL MANAGERS REPORT

46 Ms. Brooks discussed the General Managers Report, a copy of which is attached hereto as **Exhibit A**
47 and incorporated herein by this reference.

48 ACTION ITEMS

49 **Consideration of Minutes** – The minutes of the Regular Meeting of June 25, 2015, were considered.

50 Upon motion duly made and seconded, it was unanimously

51 **RESOLVED** that the minutes of the June 25, 2015, Regular Meeting be accepted and hereby are
52 approved as amended.

53 STRATEGY ITEMS

54 **Wilderness Process Plan** – Ms. Brooks suggested forming a joint Board committee to discuss
55 wilderness policy and work with staff and consultants to ultimately recommend direction to the Board.

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1 She noted the complex background information to consider and recommended the Board take its time
2 on a thorough review to arrive at a defensible policy. Ms. Brooks suggested a policy recommendation
3 for the full Board was unlikely to be ready until at least the September Board meeting. Chairman
4 Gregory and Director Woodworth volunteered to serve on the joint committee.

5 **FINANCE REPORT**

6 **June Water Sales** – Mr. Wilkins discussed the June water sales report, a copy of which is
7 attached hereto as **Exhibit B** and incorporated herein by this reference. He noted the Authority's
8 actual May and June sales were 10% and 20% below projections, respectively, likely due to the
9 wet weather. Mr. Wilkins said he is modeling to determine how lower projections throughout the
10 summer could affect revenue and debt service, among other items. He is also determining which
11 usage tiers are being most affected by the lower sales. Ms. Brooks noted the Authority's shift to
12 base fees in recent years, which should somewhat insulate revenue from weather-related
13 fluctuations. She also said tap fees are stronger than projected. Mr. Wilkins will continue to
14 monitor the situation and report back to the Board with revenue models in August.

15 **Development Impact Fee Revenue** – Mr. Wilkins discussed the development impact fee
16 revenue report, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this
17 reference. He said impact fee revenue had surpassed projections and was expected to further
18 increase later in the summer as more construction projects commence.

19 **OPERATIONS REPORT**

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

22 **Mobile Pumping Facility** – Mr. Fessenden noted the District Board would be asked to purchase
23 a mobile pumping facility, which would benefit the Authority in various upcoming projects,
24 including the Mountain Star booster pump station (BPS) upgrade. Purchasing the equipment will
25 be more cost effective than renting, and it will provide systemwide redundancy.

26 **Traer Creek Tank Update** – Mr. Fessenden updated on the Traer Creek Tank failure. He noted a
27 forensic engineer was hired, and walls are being shored up to minimize damage due to floor
28 settlement and lack of support.

29 **Eagle River MOU Projects Update** – Mr. Fessenden discussed the Eagle River Memorandum of
30 Understanding (ERMOU) Phase 1 study, which looked at various in-basin storage options, the
31 most viable of which appear to be the Eagle Park Reservoir expansion and the Whitney Creek
32 Forebay. He noted Eagle Park Reservoir Company (EPRC) budgeted funds for the current
33 proposal on behalf of the Authority and District. Current cost estimates are roughly \$318,000, with
34 EPRC covering a fourth of the cost. In response to a question, Mr. Weaver said a Reudi
35 Reservoir expansion could be controversial and would draw much public scrutiny.

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1 **Updated Nutrient Information and MMI Scores** – Ms. Roman and Mr. Weaver presented
2 information regarding results of the latest sampling in Gore Creek and the Eagle River. This is the
3 sixth year of the study that monitors bug populations in the streams; the results indicate the
4 health of the river at the designated sampling sites. Mr. Weaver said he continues to observe
5 mostly failing scores along Gore Creek and noted poor scores at many sample sites along the
6 Eagle River as well. He also discussed proposed changes to the state’s 303(d) list of impaired
7 streams; he is reviewing the changes and will respond to the state accordingly, as data does not
8 appear to support some of the proposed revisions.

9 **ORGANIZATIONAL DEVELOPMENT REPORT**

10 Mr. Fernandez presented the Organizational Development Report, a copy of which is attached hereto as
11 **Exhibit E** and incorporated herein by this reference.

12 **Wild and Scenic Stakeholders Group** – Mr. Fernandez reported that the US Forest Service and
13 Bureau of Land Management issued a record of decision accepting the Alternate Management
14 Plan for the Upper Colorado River segments 4 – 7. He said the Plan specifically references
15 ERMOU projects and said Mr. Porzak worked diligently to ensure these were included.

16 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

17 Ms. Johnson presented the Communications and Public Affairs Report, a copy of which is attached
18 hereto as **Exhibit F** and incorporated herein by this reference.

19 **Gore Canyon Whitewater Park** – Ms. Johnson said the grand opening celebration took place
20 July 13 and included representatives from the Colorado Water Conservation Board (CWCB). The
21 park was made possible, in part, due to agreements related to the Colorado River Cooperative
22 Agreement. She said the CWCB supported the Gore Canyon Park and recently voted against a
23 proposed Glenwood Springs park at an administrative hearing.

24 **GENERAL COUNSEL REPORT**

25 **Lake Creek Test Wells** – Mr. Collins noted an upcoming meeting with involved parties to discuss
26 gaining the needed access to the well sites, which have been appraised. He expects to bring a
27 condemnation resolution to the Board in August, as other methods attempting access have not
28 been successful.

29 **Mountain Star Update** – Mr. Collins and Mr. Fessenden discussed design work for the needed
30 Mountain Star tank. Mr. Fessenden said the work is being phased, with the most cost-sensitive
31 items being addressed first, including geotechnical issues. Mr. Collins said \$20,000 from both the
32 town of Avon and Jen Wright’s sewer cost recovery fund would be used to study the geotechnical
33 issues.

34 **WATER COUNSEL REPORT**

35 **Colorado Water Plan Update** – Mr. Porzak and Ms. Johnson discussed the second draft of the
36 Plan. They highlighted policy information added to chapter 9, the action plan in chapter 10, and

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1 the ongoing discussion about the “7 points”/“conceptual framework.” Mr. Porzak noted the goals
2 of the action plan support in-basin reservoir development and align with District and Authority
3 efforts in this area. The draft Plan also indicates opposition to Forest Service efforts to take
4 ownership of water rights that originate or are used on Forest Service land, including Forest
5 Service attempts to implement bypass flows. Mr. Porzak also said there was a disproportionate
6 Plan focus on municipal conservation as such a small amount of water used falls into this
7 category. Ms. Johnson referenced studies about the increasing efficiency of agricultural water
8 use, which could result in farmers using more water as they increase crop yields. Mr. Porzak
9 emphasized the importance of continued work towards a Compact Water Bank, as lower basin
10 states involved in the Compact are taking steps to protect themselves.

11 **Seniors First Supreme Court Appeal** – Mr. Porzak said the state filed its reply to the appeal, to
12 which he will reply with another brief. The case involves a mandate from the state engineer that
13 the Authority divert a senior water right prior to a junior one, despite the differences in the rights
14 and past precedent that a water provider should be able to divert whichever right it chooses.

15 **Lake Creek Well Augmentation Plan** – Mr. Porzak said the augmentation plan was filed; ten
16 objectors have been identified. Mr. Porzak noted all objections are general in scope; he will
17 address issues and concerns.

18 **Roaring Fork Club Supreme Court Decision** – Mr. Porzak discussed a recent Supreme Court
19 ruling regarding the Roaring Fork Club in Carbondale, a copy of which is attached hereto as
20 **Exhibit G** and incorporated herein by this reference. The Court ruled that the Club’s aesthetic,
21 recreational, and piscatorial water diversion is not a beneficial use. Mr. Porzak noted a number of
22 Authority and District decrees in which the above-referenced uses were considered beneficial. He
23 also clarified that the ruling did not apply to storage rights.

24 **Compact Water Bank Update** – Mr. Porzak discussed an upcoming meeting with CWCB
25 Director James Eklund to discuss a storage bank of pre-Compact water rights to protect the
26 Authority, District, and other Colorado entities from a compact call. He noted other states are
27 taking similar measures to protect themselves.

28 **Waters of the US (WOTUS) Revised Rules** – Mr. Porzak noted multiple lawsuits filed on behalf
29 of 26 states, including Colorado, in seven different federal courts regarding the revised WOTUS
30 rules. The new rules subject nearly every water source to Environmental Protection Agency
31 (EPA) regulations, posing a variety of potential issues. Messrs. Porzak and Weaver will discuss
32 this in more detail at the August Board meeting.

33 **Lake Mead Levels** – Mr. Porzak said Lake Mead levels are still dropping despite above-average
34 precipitation because California continues to exceed its allotment of water under the Colorado
35 River Compact. He noted Lake Powell is also low, due to the ongoing drought. Lake Powell is an
36 equalizer between wet and dry years and can release water to Lake Mead if needed. Mr. Porzak

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1 said the lower basin states' overuse is now contributing to issues affecting the dynamic between
2 Lakes Powell and Mead, which is in turn affecting the upper basin states.

3 EXECUTIVE SESSION

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

8 **RESOLVED** to enter executive session at 9:55 a.m. to discuss attorney-client privileged
9 issues concerning the Traer Creek Tank, Mountain Star Water System, and Lake Creek
10 Wells, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr.
11 Collins opined the contents of the discussion would contain privileged attorney-client
12 communications.*

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

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

21 The regular meeting resumed at 10:55 a.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 10:56 a.m.

3 Respectfully submitted,

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7 Secretary to the Meeting

8 **MINUTES APPROVED, FORMAL CALL, AND**
9 **NOTICE OF MEETING WAIVED**

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13 **Arrowhead Metropolitan District**

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17 **Town of Avon**

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21 **Beaver Creek Metropolitan District**

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25 **Berry Creek Metropolitan District**

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29 **EagleVail Metropolitan District**

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33 **Edwards Metropolitan District**

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36 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
37 in Executive Session not recorded constituted privileged attorney-client communications.

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41 **Jim Collins, General Counsel**

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41 **Glenn Porzak, Water Counsel**

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