

Upper Eagle Regional Water Authority

Board of Directors Meeting

October 22, 2015

MINUTES

1 A special meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held October 22, 2015, at 8:00 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation
3 District (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable
4 statutes of 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 **The following Alternate Director was present:**

14 Sarah Smith Hymes, Town of Avon

15 **Also in attendance were:**

16 <u>ERWSD Staff</u>	26	Siri Roman
17 Linn Brooks	27	Brian Tracy
18 Jason Cowles	28	James Wilkins
19 Carol Dickman	29	<u>Consultants</u>
20 Angelo Fernandez	30	Jim Collins, Collins Cockrel & Cole
21 Todd Fessenden	31	Glenn Porzak, Porzak Browning & Bushong LLP
22 Leslie Isom	32	Kyle Kreisler, Special Counsel, <i>via phone</i>
23 Diane Johnson	33	<u>Public</u>
24 Melissa Mills McLoota	34	Holly Loff, Eagle River Watershed Council

35 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

46 **CALL TO ORDER**

47 Chairman Gregory called the meeting to order at 8:10 a.m.

48 **GENERAL MANAGERS REPORT**

49 Ms. Brooks discussed the General Managers Report.

50 **ACTION ITEMS**

51 **Consideration of Minutes** – The minutes of the Special Meeting of September 25, 2015, were
52 considered. Upon motion duly made and seconded, it was

53 **RESOLVED** that the minutes of the September 25, 2015, Special Meeting be accepted and
54 hereby are approved as presented.

55 Director Power abstained.

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1 **Major Facilities Policy** – Mr. Schneider discussed his board action request and related major facilities
2 policy, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by
3 this reference. He briefly outlined the policy and the importance of the Authority and District being solely
4 in charge of all major facilities project management. In response to questions, he confirmed that the policy
5 constitutes best management practice and that staff will recommend the District adopt the same policy.
6 After discussion and upon motion duly made and seconded, it was unanimously

7 **RESOLVED** that the Major Facilities Policy be and hereby is approved as presented.

8 Mr. Schneider noted the Rules and Regulations would be updated to reflect the information contained in
9 the new policy. The amended Rules and Regulations will be presented to the Board for approval at its
10 November meeting.

11 **FINANCE REPORT**

12 Mr. Wilkins presented his report, a copy of which is attached hereto as **Exhibit C** and incorporated herein
13 by this reference.

14 **September Water Sales** – Mr. Wilkins discussed the September water sales report, a copy of
15 which is attached hereto as **Exhibit D** and incorporated herein by this reference. He noted
16 September water sales for the Authority were 3% lower than projected. Now that the irrigation
17 season is over, he expects sales for the remainder of the year to track closely to projections. Mr.
18 Wilkins noted that the District's water sales revenues were 9% below projections for September.

19 **Development Impact Fee Revenue** – Mr. Wilkins discussed the development impact fee
20 revenue report, a copy of which is attached hereto as **Exhibit E** and incorporated herein by this
21 reference. Year-to-date impact fee revenues are above projections.

22 **Budget Committee Update** – Mr. Wilkins discussed information regarding the 2016 proposed
23 budget, a copy of which is attached hereto as **Exhibit F** and incorporated herein by this
24 reference. He noted recent meetings with the Authority Budget Committee, which recommended
25 approval of the 2016 budget as presented. The Board will consider adoption of the 2016 Budget
26 at its November meeting, during which a public hearing on the matter will be held. Mr. Wilkins
27 invited Board members to contact him with any questions. Mr. Collins noted the public hearing, at
28 which rate increases will be considered, was properly posted on the District's website at least 30
29 prior to the meeting date, per statutory regulations.

30 **OPERATIONS REPORT**

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

33 **Lake Creek Wells Update** – Mr. Fessenden noted staff continues to work to establish easements
34 on the South Fork Meadows and Eagle River Meadows sites. Further discussion was reserved for
35 Executive Session.

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1 **Eagle River MOU and Camp Hale Updates** – Mr. Fessenden noted a recent meeting with the
2 Camp Hale and MOU partners; though many of the players are the same, the meetings are
3 conducted separately due to Forest Service permitting requirements. He discussed the in-lieu fee
4 program, which is slated to begin in 2016 and would have many beneficiaries, including the
5 District and Authority. Mr. Fessenden said local participants requested that Eagle Park Reservoir
6 Company be the third party in line for wetlands credits, behind Climax Mine and the Homestake
7 Partners (Aurora and Colorado Springs). This request was based on additional funds contributed
8 by the Company for delineation, which has now been completed in the entire Camp Hale area.
9 Mr. Fessenden also discussed an agreement intended to ensure sufficient water is available to
10 support the created wetlands, which an Aurora representative will draft for the in-lieu fee program,
11 and for ERMOU participants to review. Discussion ensued regarding the appropriate flushing flow
12 and design considerations for a channel to accommodate such flows. Director Allender further
13 discussed the flushing flows and how Eagle Park Reservoir yield could be affected.

14 Mr. Fessenden also discussed the potential in-basin storage projects, including an Eagle
15 Park Reservoir expansion and the proposed Whitney Creek Forebay, geological information on
16 which is key for determining reservoir and intake locations, as well as the overall feasibility of the
17 reservoir. Any project proposed will be subject to permitting requirements, including public input
18 processes.

19 **Urban Runoff Group** – Ms. Roman discussed a suspicious-looking outfall that turned out to be
20 an illicit connection to a town stormwater outfall dumping raw sewage into Gore Creek. Ms.
21 Roman will keep the Board apprised as staff and the town work to determine the location of the
22 connection. She also noted the town of Vail continues to work on recommendations from the
23 Gore Creek Strategic Action Plan.

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

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

27 **Fluoride** – Ms. Johnson reported that the Snowmass Village Water & Sanitation District
28 (SVWSD) board voted yesterday to resume fluoridation of their community water system after a
29 non-binding survey of the district's customers showed that 64 percent favored fluoride. The
30 SVWSD board had voted in July to stop fluoridating the water supply. She also said Denver
31 Water reaffirmed fluoridation of its water supply in August.

32 **Colorado Water Plan** – Ms. Johnson discussed an Aspen Journalism story concerning new
33 items being added to the plan, a copy of which is attached hereto as **Exhibit I** and incorporated
34 herein by this reference. She mentioned Front Range and West Slope groups are doing last
35 minute lobbying concerning water plan specifics as the Colorado Water Conservation Board
36 (CWCB) prepares the final draft for its Nov. 18-19 board meeting. She will ask CWCB staff to

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1 release any proposed plan additions for public comment and review. Ms. Johnson also said the
2 CWCB requested footage for a short video they are producing for release with the final plan; she
3 arranged the shoot with District staff at several District and Authority facilities.

4 **Vail Farmers' Market** – Ms. Johnson said the water station at the Farmers' Market was a great
5 success and thanked involved staff – who dispensed more than 2,000 gallons in nearly 21,000
6 compostable cups and thousands of water bottles, which equates to about 1,500 interactions
7 every Sunday from June 21 to October 4. She also thanked managers and the board for its
8 support of these efforts.

9 **Senate Bill 13-019** – Ms. Johnson referenced the legislation, passage of which the District and
10 Authority Boards helped secure in 2013. The legislation allows water rights owners to leave water
11 in streams without risking a potential future reduction in their historic consumptive use calculation.
12 The legislation was put to use by a Granby rancher late last spring and has garnered several
13 media stories of late.

14 **Colorado River System operations** – Ms. Johnson mentioned a memo written by John McClow
15 concerning the Colorado River Compact, the 2007 Interim Guidelines, contingency planning, and
16 the structural deficit that exists in the Colorado River supply and storage levels at Lakes Powell
17 and Mead, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this
18 reference.

19 **GENERAL COUNSEL REPORT**

20 Mr. Collins noted his topics for discussion in Executive Session, including the Lake Creek Wells
21 and the Traer Creek Tank.

22 **Highlands Ranch Metropolitan District and Centennial Water and Sanitation District** – Mr.
23 Collins noted his firm was now representing the Highlands Ranch Metropolitan District and
24 Centennial Water and Sanitation District.

25 **WATER COUNSEL REPORT**

26 **Seniors First Appeal** – Mr. Porzak noted the Seniors First appeal hearing date was set for
27 December 8.

28 **Piney River Unit Water Right** – Mr. Porzak discussed the Piney River Unit Water Right
29 Diligence filing, a copy of which is attached hereto as **Exhibit K** and incorporated herein by this
30 reference. He said a favorable ruling was received from the water referee and reminded Directors
31 that this was the right received from Denver water as part of that overall settlement. He expects
32 the judge to sign the filing shortly.

33 **Eagle River MOU Projects** – Mr. Porzak discussed the proposed projects, which Mr. Fessenden
34 also commented on previously. At its later meeting, the Eagle Park Reservoir Company will
35 consider a development agreement with the National Forest Foundation (NFF) to grant the
36 Company the option for wetlands credits to mitigate wetlands for any ERMOU projects. The NFF

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1 has already entered into similar agreements with Climax Mine and the Homestake Partners,
2 Aurora and Colorado Springs. He said involved engineers have agreed to accelerate their
3 timeline for review of the proposed projects so cost estimates are available sooner. Meetings are
4 also being coordinated with project principals.

5 **State Legislation** – Mr. Porzak noted recent meetings with elected officials, including Sen.
6 Donovan and Rep. Mitsch-Bush, as well as environmental representatives. Mr. Porzak discussed
7 ongoing issues with the legislation related to bypass flows. He plans to get consensus on the
8 language and other issues by the end of November so the bill can quickly move forward when the
9 upcoming legislative session begins.

10 **Revised Groundwater Directive** – Mr. Porzak said the Forest Service is again moving forward
11 with a modified version of its groundwater directive. A Forest Service point person in Washington
12 D.C. was designated. Mr. Porzak will continue to monitor progress and report to the Board.

13 EXECUTIVE SESSION

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

18 **RESOLVED** to enter the executive session at 9:00 a.m. to discuss attorney-client privileged
19 issues concerning the Lake Creek Wells easements, pursuant to §24-6-402(4)(a)(b) and (e)
20 C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion
21 would contain privileged attorney-client communications.*

22 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the Colorado
23 River Cooperative Agreement matters, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no
24 electronic record be made, as the discussion would be entirely privileged attorney-client communications.
25 Upon motion duly made and seconded, it was unanimously

26 **RESOLVED** to continue executive session at 9:20 a.m. to discuss attorney-client privileged
27 issues concerning the Colorado River Cooperative Agreement matters, pursuant to §24-6-
28 402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the
29 contents of the discussion would contain privileged attorney-client communications.*

30 The regular meeting resumed at 9:40 a.m.

31 **Condemnation Resolution** – Mr. Collins discussed the needed easement for the Lake Creek wells and
32 noted all other options to procure the easement had been exhausted with Eagle River Meadows. He
33 presented a joint resolution with the Edwards Metropolitan District for condemnation, a copy of which is
34 attached hereto as **Exhibit L** and incorporated herein by this reference. Upon motion duly made and
35 seconded, it was unanimously

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1 **RESOLVED** that the joint resolution with the Edwards Metropolitan District for
2 condemnation be and hereby is approved as presented.

3 Mr. Collins requested the Board reenter Executive Session to receive legal advice regarding the Traer Creek
4 Tank, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no electronic record be made, as the
5 discussion would be entirely privileged attorney-client communications, and that only the Board and water
6 attorney Glenn Porzak remained. Upon motion duly made and seconded, it was unanimously

7 **RESOLVED** to reenter the executive session at 9:42 a.m. to discuss attorney-client privileged
8 issues concerning the Traer Creek Tank with special litigation counsel Kyle Kreischer,
9 pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. with no electronic record created as Mr. Collins
10 opined the contents of the discussion would contain privileged attorney-client
11 communications, Mr. Collins did not remain in the room.*

12 Director Allender left the meeting at 9:42 a.m., recusing himself from the discussion, as he is a member of
13 both the Authority and District Boards. All staff and Mr. Collins left the meeting as well.

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15 The regular meeting resumed at 10:41 a.m.
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 10:42 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** **Glenn Porzak, Water Counsel**

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