

Upper Eagle Regional Water Authority

Board of Directors Meeting

December 17, 2015

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held December 17, 2015, at 8:30 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 Sarah Smith Hymes, 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>	32	Peggi O'Keefe, Clear Strategies, LLC
18 Linn Brooks	33	<u>Public</u>
19 Jason Cowles	34	Greg Aplet, the Wilderness Society
20 Carol Dickman	35	Scott Braden, Conservation Colorado
21 Catherine Hayes	36	Pam Elsner, Authority Alternate Director
22 Leslie Isom	37	Nissa Erickson, Rep. Polis staff
23 Diane Johnson	38	David Gorsuch, citizen and customer
24 Elena Jones	39	Kevin Hocht, citizen and customer
25 John McCaulley	40	Josh Kuhn, Conservation Colorado
26 Jason Sica	41	Scott Miller, the Wilderness Society
27 Brian Tracy	42	Brooke Ranney, Eagle River Watershed Council
28 James Wilkins	43	Margaret Rogers, citizen
29 <u>Consultants</u>	44	Will Roush, Wilderness Workshop
30 Jim Collins, Collins Cockrel & Cole	45	Bill Simmons, Authority Alternate Director
31 Glenn Porzak, Porzak Browning & Bushong LLP		

46 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

49 Director Allender disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership
50 and business interests within the Authority. Also, he is appointed by Vail Associates, Inc. to serve as a Director of both the Eagle
51 Park Reservoir Company and the Clinton Ditch and Reservoir Company; he also serves on the Eagle River Water & Sanitation
52 District Board of Directors, which manages the Authority. Director Woodworth disclosed that he is employed by the Eagle River Fire
53 Protection District, which operates within the Authority's service area.

54 CALL TO ORDER

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

56 AUTHORITY REPRESENTATION

57 Ms. Brooks noted that Sarah Smith Hymes was recently appointed to represent the town of Avon on the
58 Authority Board. She replaces Todd Goulding, and Ms. Brooks noted his years of service. The town's
59 appointment is attached hereto as **Exhibit A** and incorporated herein by this reference.

60 PUBLIC COMMENT

61 Chairman Gregory welcomed public attendees and noted receipt of a letter from the Hocht family urging
62 the board to support H.R. 2554, Rep. Polis's proposed wilderness legislation, a copy of which is attached

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1 hereto as **Exhibit B** and incorporated herein by this reference. Chairman Gregory noted a discussion of
2 wilderness would be undertaken in Executive Session during the meeting to receive the advice of
3 counsel, not to avoid transparency. He also noted the Authority supports wilderness but qualified the
4 statement with the entity's narrow scope, stating that the Authority's main focus is to provide high quality
5 water service to its customers. Chairman Gregory said the board wanted to ensure a wilderness
6 designation would not preclude quick and effective remediation of any natural disasters within the
7 Authority's watershed that may affect the ability to provide high quality drinking water. Public comment
8 was received from the following attendees: Messrs. Hocht, Aplet, Miller, and Braden, Ms. Erickson, Ms.
9 Rogers, Mr. Roush, Ms. Ranney, and Mr. Gorsuch. Messrs. Braden and Miller submitted comments on
10 the most recent version of the Authority and District's proposed wilderness policy and position on H.R.
11 2554, copies of which are attached hereto as **Exhibits C** and **D**, respectively, and incorporated herein by
12 this reference. The Board thanked the public attendees for their comments.

13 At 9:05 a.m., all public attendees left the meeting, with the exception of Ms. Elsner and Mr.
14 Simmons.

ACTION ITEMS

15
16 **Consideration of Minutes** – The minutes of the special meeting of November 19, 2015, were
17 considered. Upon motion duly made and seconded, it was

18 **RESOLVED** that the minutes of the November 19, 2015, special meeting be accepted and
19 hereby are approved as presented.

20 **Operations Agreement with District** – Ms. Isom presented a board action request regarding the
21 Authority's 2016 Operations Agreement with the District, a copy of which is attached hereto as **Exhibit E**
22 and incorporated herein by this reference. She noted a few changes to the Exhibits, including inclusion of
23 the Authority's 2016 capital projects in Exhibit A and some minor price increases in Exhibit F, the
24 Laboratory Price List; Exhibit E, Basic Compensation, is unchanged from 2015. After discussion and upon
25 motion duly made and seconded, it was unanimously

26 **RESOLVED** to approve the 2016 Operations Agreement with the District as presented.

27 A copy of the Operations Agreement is attached hereto as **Exhibit F** and incorporated herein by this
28 reference.

29 **Committee Assignments** – Ms. Brooks discussed committee membership and suggested changes in
30 light of Ms. Hymes' recent appointment to the Board. She recommended Ms. Hymes replace Mr.
31 Goulding on the Traer Creek Tank committee and not reappoint anyone to fill Mr. Goulding's vacancies
32 on the other committees, all of which will have at least one director remaining. After discussion and upon
33 motion duly made and seconded, it was unanimously

34 **RESOLVED** to approve the committee membership changes as presented.

35 **January 2016 Public Hearings** – Ms. Brooks noted staff's request for two public hearings at the January
36 21 meeting: one to consider a cash in lieu of water rights fee increase for 2016 commensurate with

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1 Denver/Boulder consumer price index (CPI) increase and one to consider the addition of an impact fee for
2 new irrigation accounts. Mr. McCaulley and Ms. Jones presented additional information regarding the
3 rational nexus for the new impact fee, a copy of which is attached hereto as **Exhibit G** and incorporated
4 herein by this reference. The Board authorized holding public hearings at the January 21, 2016, meeting
5 to consider the fees and directed staff to post the required 30-day notice for such hearings.

6 **GENERAL MANAGER REPORT**

7 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit H** and incorporated
8 herein by this reference.

9 **Mountain Star Update** – Mr. Cowles updated the Board on the needed tank in Mountain Star,
10 and Chairman Gregory gave a brief history of the project for the benefit of new and alternate
11 Board members. Mr. Cowles noted costs are lower than originally projected and said the town of
12 Avon, Mountain Star HOA, and developer Jen Wright have agreed to participate in funding the
13 tank design. Mr. Cowles also discussed staff's recommendation to build a concrete tank due to
14 higher life cycle costs related to steel tanks; a concrete tank would require less maintenance,
15 have a longer life expectancy, and would be less likely to have freezing issues. Mr. Cowles said
16 this would increase the cost and suggested the Authority could contribute funds towards the price
17 difference. The Board authorized the expenditure of up to \$135,000 towards the project, with the
18 understanding that this was the Authority's final contribution to the cost of the tank. Ms. Brooks
19 noted the Mountain Star HOA believes it can pay its portion of the tank cost using its capital funds
20 and an increase in 2016 homeowner dues, if the homeowners agree. In response to a question,
21 Ms. Brooks confirmed that the Authority would build the tank and said an agreement would be
22 drafted in lieu of a final bill of sale. She also noted the maintenance would be the responsibility of
23 the Authority.

24 Mr. Cowles also discussed the Mountain Star booster pump station (BPS) upgrade, the
25 cost for which has increased about \$500,000 – \$700,000 from original estimates. This is due to
26 increased effort and scope of work to upgrade electrical and safety equipment and demolition of
27 an old pressure tank, among other items. Ms. Brooks said the additional safety and electrical
28 work must be completed and it would be most economical to do all the BPS improvements at the
29 same time. She noted the Authority collected more tap fees than budgeted in 2015 and
30 suggested putting the additional funds towards the increased BPS project cost. Mr. Collins noted
31 the amount of effort and cooperation that has gone into the Mountain Star projects and said the
32 Board has shown a commitment to collaborate with the multiple involved parties.

33 **GENERAL COUNSEL REPORT**

34 Due to a scheduling conflict, Mr. Collins presented his report out of order.

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1 **Joint Resolution re Alpine Engineering** – Mr. Collins presented a joint resolution with the
2 District to allow the continued use of Alpine Engineering following Ms. Brooks' disclosure that her
3 husband, Gary, is now a co-owner of the company. A copy of the resolution is attached hereto as
4 **Exhibit I** and incorporated herein by this reference. Mr. Collins confirmed Ms. Brooks is not
5 involved in the District's contract award process. After discussion and upon motion duly made
6 and seconded, it was unanimously

7 **RESOLVED** to approve the joint resolution with the District on the policy regarding Alpine
8 Engineering.

9 **Lake Creek Wells Update** – Mr. Collins said the Authority is close to procuring the needed
10 easements in the Lake Creek area.

11 **Traer Creek Tank Update** – Mr. Collins noted discussions and remediation of the tank failure are
12 ongoing. Mr. Cowles continues to coordinate on this matter.

13 Mr. Collins left the meeting at 10:00 a.m.

14 **WATER COUNSEL REPORT**

15 **Piney River Unit Water Right Diligence** – Mr. Porzak discussed the diligence filing for the Piney
16 River Unit Water Right. He noted Judge Boyd entered the decree granting diligence for the right.
17 The next diligence filing is due in 2021.

18 **Seniors First Supreme Court Appeal** – Mr. Porzak discussed the previous week's oral
19 argument in the Seniors First case. He summarized the case, in which the Authority chose to
20 divert the junior of two water rights because of differences in the terms and conditions and
21 supporting augmentation plans of each right. Mr. Porzak said the Authority is obligated to provide
22 water to its constituents, which makes it uniquely suited to make decisions regarding use of its
23 water rights. The state is arguing that the senior right must be diverted first. Mr. Porzak noted the
24 state's only role is to administer water rights. He will continue to provide updates on the case.

25 **Colorado Water Plan** – Mr. Porzak said the final draft of the plan was delivered to Gov.
26 Hickenlooper last month and discussed related information, a copy of which is attached hereto as
27 **Exhibit J** and incorporated herein by this reference. Mr. Porzak pointed out an entire chapter of
28 the plan devoted to flooding and natural disaster management planning and emphasized the
29 importance of natural disaster mitigation as it relates to the Authority's position on the Polis
30 wilderness bill. The plan also indicated its opposition to federal bypass flows and noted the state
31 and its agencies will defend water rights in the state against federal intrusion, which is important
32 in light of the ongoing federal water directives of the Forest Service.

33 **Cash in Lieu Fee Increase** – Mr. Porzak discussed the upcoming public hearing to consider a
34 consumer price index (CPI) increase of the Authority's cash in lieu of water rights fees. He
35 suggested a 5% increase in 2016 for both winter storage water and summertime consumptive

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1 use credits, bringing the price for each to \$26,250 and \$8,300 per acre foot, respectively. Mr.
2 Porzak also noted the ongoing engineering work for proposed Eagle River MOU projects would
3 be complete in the spring and would provide good data for the cash in lieu fee increases for 2017
4 to ensure the Authority is receiving equitable compensation for cash in lieu of water rights.

5 **Legislative Update** – Mr. Porzak introduced Peggi O’Keefe, the Authority and District’s lobbyist.
6 Ms. O’Keefe discussed her background and experience. She also gave an update on the
7 proposed state legislation, the Colorado Water Rights Protection Act. Additional information is
8 attached hereto as **Exhibit K** and incorporated herein by this reference. She explained the
9 process by which proposed bills become law and efforts towards gaining support for the Colorado
10 Water Rights Protection Act. The Board thanked her for attending. Mr. Porzak gave further
11 information on the act; after discussion and upon motion duly made and seconded, it was
12 unanimously

13 **RESOLVED** that the Board supports the Colorado Water Rights Protection Act.

14 EXECUTIVE SESSION

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

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

23 At 10:53 a.m., all remaining staff with the exception of Ms. Brooks and Ms. Johnson left the meeting.

24 At 10:54 a.m., the Board continued its Executive Session to receive legal advice regarding Colorado
25 River Cooperative Agreement matters pursuant to §24-6-402(4)(b) and (e) C.R.S. Mr. Porzak again asked
26 that no electronic record be made, as the discussion would be entirely privileged attorney-client
27 communications.

28 The Board of the Eagle River Water and Sanitation District was invited into the Executive Session as
29 well. Acting Chair Buckley called the District meeting to order at 11:02 a.m. Upon motion duly made and
30 seconded, it was unanimously

31 **RESOLVED** to enter the executive session at 11:03 a.m. to discuss attorney-client privileged
32 issues concerning Colorado River Cooperative Agreement matters, pursuant to §24-6-
33 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
34 of the discussion would contain privileged attorney-client communications.*

35 The regular meeting resumed at 11:21 a.m.

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1 **Wilderness Discussion** – Authority Chairman Gregory welcomed public attendees who were there to
2 comment on wilderness issues with the District Board. He reiterated the Board’s desire to maintain
3 transparency in its discussion of wilderness and other topics, as well as the Board’s highest priority, which is
4 to provide quality water service to its constituents. He again emphasized that the Board is not opposed to
5 wilderness; however, he also stressed the need to ensure the Authority can continue to plan effectively for the
6 future, including building and maintenance of future facilities, in addition to any natural disaster mitigation that
7 could affect the Authority’s ability to provide water to its customers.

8 **Staff Reports** – Staff reports were tabled to the January meeting due to time constraints. Copies of the
9 finance report, operations report, and public affairs report are attached hereto as **Exhibits L, M, and N**,
10 respectively, and incorporated herein by this reference.

11 **Monthly Reports** – Monthly reports were acknowledged, including the contract log, November meeting
12 summary, and Authority and District committees list. Copies of the monthly reports are attached hereto as
13 **Exhibit O** and incorporated herein by this reference.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:24 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.

Glenn Porzak, Water Counsel