

Upper Eagle Regional Water Authority
Board of Directors Meeting
February 25, 2016
MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held February 25, 2016, 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 George Gregory, Berry Creek Metropolitan District
10 Sarah Smith Hymes, Town of Avon
11 Jim Power, Beaver Creek Metropolitan District
12 Mick Woodworth, Edwards Metropolitan District

13 **Also in attendance were:**

14 <u>ERWSD Staff</u>	22	Jason Sica
15 Linn Brooks	23	Evette Smits
16 Carol Dickman	24	<u>Consultants</u>
17 Catherine Hayes	25	Jim Collins, Collins Cockrel & Cole
18 Diane Johnson	26	Glenn Porzak, Porzak Browning & Bushong LLP
19 John McCaulley	27	<u>Public</u>
20 Glen Phelps	28	Pam Elsner, Beaver Creek Metropolitan District
21 Louise Reiter	29	Mike Reisinger, Berry Creek Metropolitan District

30 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

33 Director Allender and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation
34 District. Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with the Authority and
35 District, as well as being employed part time by SE Group, which does planning and environmental work for Vail Resorts and other
36 ski areas. Alternate Director Simmons also noted he serves on the boards of the Edwards and Red Sky Ranch Metropolitan Districts
37 and is employed by Beaver Creek Metropolitan District, an Authority member. Director Woodworth disclosed that he is employed by
38 the Eagle River Fire Protection District, which operates within the Authority's service area.

39 **CALL TO ORDER**

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

41 **INTRODUCTIONS**

42 Introductions were made, including Mr. Sica, the District IT manager, and Mr. Reisinger, a Berry Creek
43 Metropolitan District board member.

44 **CONFLICTS OF INTEREST**

45 Updated conflict of interest letters for Director Allender and Alternate Director Simmons were filed with the
46 Secretary of State, copies of which are attached hereto as **Exhibits A** and **B**, respectively, and
47 incorporated herein by this reference.

48 **ACTION ITEMS**

49 **Consideration of Minutes** – The minutes of the regular meeting of January 21, 2016, were
50 considered. Upon motion duly made and seconded, it was

51 **RESOLVED** that the minutes of the January 21, 2016, regular meeting be accepted and hereby
52 are approved as presented. Directors Hymes and Power abstained.

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1 The minutes of the joint special meeting with Eagle River Water and Sanitation District of January 21,
2 2016, were considered. Upon motion duly made and seconded, it was

3 **RESOLVED** that the minutes of the January 21, 2016, joint special meeting be accepted and
4 hereby are approved as presented. Directors Hymes and Power again abstained.

5 **Angler's PUD Cash in Lieu Request** – Ms. Smits presented her board action request and related
6 materials regarding the Angler's PUD request, a copy of which is attached hereto as **Exhibit C** and
7 incorporated herein by this reference. She explained the request and noted the development would be in
8 the "medium" water use category. Mr. Porzak noted his review of the request and agreed that the cash-in-
9 lieu calculation was appropriate. After discussion and upon motion duly made and seconded, it was
10 unanimously

11 **RESOLVED** that the Angler's PUD cash in lieu request be approved as presented.

12 **Upper Colorado River Wild and Scenic Management Plan Agreement** – Mr. Porzak discussed the
13 management plan and said the plan grandfathered in the Eagle River MOU; he recommended approval.
14 A copy of the agreement is attached hereto as **Exhibit D** and incorporated herein by this reference. After
15 discussion and upon motion duly made and seconded, it was unanimously

16 **RESOLVED** that the Upper Colorado River Wild and Scenic Management Plan Agreement was
17 approved as presented.

18 STRATEGY ITEMS

19 **Treated Water Storage Fee Elimination** – Ms. Brooks noted a discussion of the treated water
20 storage fee a few months prior. She presented a related board action request form, a copy of
21 which is attached hereto as **Exhibit E** and incorporated herein by this reference. Ms. Brooks
22 noted the fee was incorporated into the Authority's water system impact fee (WSIF), which was
23 adopted in 2015. The WSIF recognizes the benefit that all customers receive from regional
24 storage tanks; therefore, the treated water storage fee is no longer needed. After discussion and
25 upon motion duly made and seconded, it was unanimously

26 **RESOLVED** that the Treated Water Storage Fee be eliminated.

27 GENERAL MANAGER REPORT

28 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit F** and incorporated herein
29 by this reference.

30 **Mountain Star Tank Update** – Mr. Collins said the Board was very clear in its communication to
31 the Mountain Star Property Owners Association regarding the Authority's maximum contribution
32 of \$135,000 to the tank. Despite this, Mountain Star again requested additional funds from the
33 Authority. After discussion and upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** to approve execution of an agreement with Mountain Star that will include
2 the parameters previously agreed upon, including the Authority's maximum contribution
3 of \$135,000. Director Power abstained.

4 **Traer Creek Tank Update** – Mr. Collins noted Traer Creek was investigating remediation for the
5 failed tank. If Traer Creek's proposed cure is unsatisfactory, the Authority can file for declaratory
6 judgment for failure to meet the tank warranty obligation. In response to a question, Mr. Collins
7 said the Authority's tank expert was uncertain of the viability of the potential repair plan. In
8 response to another question, Mr. Collins said the Authority could be prejudicing itself if it did not
9 give Traer Creek time to pursue the proposed cure. A press release on the tank failure was
10 issued earlier in the month, at the Board's request.

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

14 **FINANCE REPORT**

15 In the absence of Mr. Wilkins, Ms. Reiter presented the finance report, a copy of which is attached hereto
16 as **Exhibit H** and incorporated herein by this reference. She noted that slightly lower than budgeted water
17 sales to date may be the result of fewer visitors. Lower-than-normal wastewater flows also indicate lower
18 tourist numbers.

19 **OPERATIONS REPORT**

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

22 **Town of Vail Strategic Action Plan** – Ms. Brooks noted a scheduled presentation of the plan
23 was delayed due to illness of one presenter. She briefly discussed the plan, which identifies and
24 prioritizes Gore Creek water quality issues. The town has committed to funding the plan. District
25 staff reviewed the plan and is supportive overall, but recommended higher prioritization of certain
26 projects, including mitigation of snow storage near Gore Creek and its tributaries.

27 **PUBLIC AFFAIRS REPORT**

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

30 **Legislative Issues** – Ms. Johnson discussed HB16-1283 on water loss audit reporting, which
31 would require the Authority and District, as covered entities, to report data on non-revenue water.
32 It is similar to a 2010 bill that mandated reporting of water use and water conservation data. In
33 response to a question, Ms. Johnson said it would require some additional staff time to prepare
34 and submit the report She also discussed upcoming legislation to be introduced by the Colorado
35 River Water Conservation District that provides an alternative mechanism for creation of

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1 subdistricts within the River District, which could then be used to finance some of the projects
2 recommended in the Colorado Basin Implementation Plan and Colorado Water Plan.

3 **Colorado Basin Roundtable** – Ms. Johnson said the River District is leading the effort to fund
4 the Colorado River Development and Curtailment Risk Study with support from the four west
5 slope roundtables and the Southwest Water Conservation District.

6 **State of the River Public Meeting** – Ms. Johnson noted the annual Eagle River Valley meeting
7 will be held either May 12 or May 16, from 5:15 to 8 p.m. at Colorado Mountain College in
8 Edwards.

9 **Authority U: Testing and Regulations Related to Lead in Drinking Water** – Ms. Johnson
10 referenced the lead in drinking water issue in Flint, Mich. where many homes still have old lead
11 service lines. She contrasted this with the relatively young age of the water system and homes in
12 the Authority's service area, which consistently show results of lead sampling at levels well below
13 the "action level" defined under the federal Safe Drinking Water Act. She said the District and
14 Authority were on a reduced monitoring schedule due to the low risk. She also presented a
15 memo, a copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference.
16 Ms. Brooks pointed out the unique nature of the Environmental Protection Agency's lead
17 regulation: water providers are required to measure lead levels at the household tap, even though
18 the providers have no ownership of the portion of the system that is within the properties of
19 individual homes and businesses that could be the source of the problem. Discussion ensued
20 about various materials used in pipes, their potential for corrosion, and what District staff looks for
21 during meter change outs at customer homes and businesses; the District's Rules and
22 Regulations, which stipulate use of certain pipe materials; and how lead's removal from solder,
23 flux, and brass components has steadily reduced the risk of lead exposure.

24 **Walking Mountains Climate Change Action Plan** – The Board discussed a letter from Walking
25 Mountains regarding a local climate change action plan, a copy of which is attached hereto as
26 **Exhibit L** and incorporated herein by this reference. Director Allender said the length of the local
27 ski season had not changed in recent decades, though some other areas within the U.S. are
28 certainly experiencing shorter winter recreation seasons.

29 **GENERAL COUNSEL REPORT**

30 **Avon Drinking Water Facility (ADWF) Leased Property** – Mr. Collins discussed the ADWF
31 property, which is leased from the town of Avon. District and town staff will meet to discuss
32 appraisal instructions and potentially engage an appraiser, beginning the process by which the
33 Authority could purchase the property. He noted a previous purchase effort resulted in differing
34 appraisals by the District and town's appraisers, so agreeing upon the instructions beforehand will
35 add an element of efficiency at the beginning of the process.

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WATER COUNSEL REPORT

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2 **Colorado Water Rights Protection Act** – Mr. Porzak updated on the legislation and ongoing
3 efforts to resolve issues regarding bypass flows; impact of the bill on county 1041 powers; and
4 language regarding how the federal government can obtain water rights in Colorado. He
5 presented related information, copies of which are attached hereto as **Exhibit M** and incorporated
6 herein by this reference. Mr. Porzak said the bill was scheduled for a committee hearing a week
7 from Monday and will continue to update the board on progress.

8 **Legislation Confirming Recreation as a Beneficial Water Use** – Mr. Porzak discussed a
9 recent Supreme Court ruling that recreational water use was not a beneficial use and presented
10 related information, a copy of which is attached hereto as **Exhibit N** and incorporated herein by
11 this reference. He discussed the proposed legislation, which would recognize recreation as a
12 beneficial water use and noted the Authority and District have numerous decrees for such uses.
13 The Board directed Mr. Porzak to support the bill on its behalf. Discussion ensued regarding
14 leaving water in the river for environmental purposes, meeting nutrient and water quality
15 standards, and for dilution flows, all of which are beneficial uses.

16 **Update on HR 2554: Continental Divide Wilderness and Recreation Act** – Mr. Porzak
17 updated the board on the bill and presented related information, a copy of which is attached
18 hereto as **Exhibit O** and incorporated herein by this reference. He also discussed a recently
19 received letter to the Boards from Rep. Polis, a copy of which is attached hereto as **Exhibit P** and
20 incorporated herein by this reference. The letter states that the District and Authority's suggested
21 language for the bill is unacceptable to the staff of the House and Senate Natural Resource
22 Committees. Discussion ensued regarding the various exceptions provided in other wilderness
23 bills; the amount of time the board, staff, and consultants have spent on this issue; and the
24 likelihood of this bill becoming law. The Board directed Mr. Porzak to draft a letter to Rep. Polis
25 clarifying its position and requesting a meeting.

26 **Eagle River MOU Projects Update** – Mr. Porzak updated the Board on a meeting with ERMOU
27 parties regarding potential joint projects, associated cost per acre foot for the various project
28 options, and needed wetlands studies to determine project feasibility. The Board authorized staff
29 to engage Bob Weaver of Leonard Rice Engineers to complete a wetlands feasibility study in the
30 spring and summer.

31 **Unallocated Water Policy Update** – Mr. Porzak discussed the Authority unallocated water policy
32 and related comments from a productive meeting with town of Avon representatives and their
33 water attorney. He noted comments that were not incorporated included an acre-foot limit on
34 cash-in-lieu of water rights and giving preference to low income housing, both of which are
35 beyond the scope of the Authority's power since the Authority is not a land use agency. Mr.

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1 Porzak clarified that per the updated Authority Agreement, a “contracting party” is one of the six
2 Authority members. Another meeting is scheduled to discuss the policy.

3 **Updated Water Rights Appraisal** – Mr. Porzak reviewed the updated water rights appraisal, a
4 copy of which is attached hereto as **Exhibit Q** and incorporated herein by this reference. He
5 noted that the ERMOU engineering study has indicated the Authority’s storage/acre-foot costs
6 might be slightly low.

7 **Texas Supreme Court Ruling re Prior Appropriation** – Mr. Porzak discussed a recent Texas
8 Supreme Court ruling that upholds the prior appropriation law for privately held water rights; the
9 state cannot give preference to cities or power providers over longstanding water rights holders
10 even if the state declares it necessary for health and public welfare of the people. He noted this
11 could be a precedent for future compact curtailment administration.

12 At 10:28 a.m., all remaining staff except of Ms. Brooks and Ms. Johnson left the meeting.

13 **EXECUTIVE SESSION**

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

18 **RESOLVED** to enter the executive session at 10:29 a.m. to discuss attorney-client privileged
19 issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
20 electronic record created as Mr. Porzak opined the contents of the discussion would contain
21 privileged attorney-client communications.*

22 The regular meeting resumed at 10:49 a.m.
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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:50 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.

James P. Collins, General Counsel

Glenn Porzak, Water Counsel