Upper Eagle Regional Water Authority
Board of Directors Meeting
March 24, 2016
MINUTES

A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held March 24, 2016, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

The following Directors were present, thereby constituting a quorum:

Tom Allender, EagleVail Metropolitan District
Geoff Dreyer, Arrowhead Metropolitan District
George Gregory, Berry Creek Metropolitan District
Sarah Smith Hymes, Town of Avon
Jim Power, Beaver Creek Metropolitan District
Mick Woodworth, Edwards Metropolitan District

Also in attendance were:

District Staff
Linn Brooks
Jason Cowles
Carol Dickman
Catherine Hayes
Debbie Hoffman
Leslie Isom
Diane Johnson
Brian Tracy

23 James Wilkins
24 Consultants
25 Jim Collins, Collins Cockrel & Cole
26 Kristin Moseley, Porzak Browning & Bushong LLP
27 Glenn Porzak, Porzak Browning & Bushong LLP
28 Public
29 Dan Godec, Berry Creek Metropolitan District
30 Mike Reisinger, Berry Creek Metropolitan District

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

CALL TO ORDER

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

INTRODUCTIONS

Ms. Brooks introduced Ms. Hoffman, the District’s new construction manager.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of February 25, 2016, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the February 25, 2016, regular meeting be accepted and hereby are approved as presented.

Reassignment of Responsibilities – Ms. Brooks noted Ms. Isom’s upcoming retirement and discussed the need to reassign some of her responsibilities, including the designation of new Colorado Special Districts Property and Liability Pool contacts for the Authority and a new Authority custodian of records. A related board action request is attached hereto as Exhibit A and incorporated herein by this reference.

After discussion and upon motion duly made and seconded, it was unanimously
RESOLVED that Evette Smits and Linn Brooks are the Colorado Special Districts Property and Liability Pool primary and secondary contacts, respectively; and further RESOLVED that Catherine Hayes is the Custodian of Records.

Copies of the Colorado Special Districts Property and Liability Pool designation and Custodian of Records Resolution are attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference.

GENERAL MANAGER REPORT

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

Gore Creek Strategic Action Plan – Ms. Brooks said the Vail town council adopted the plan at its March 15 meeting. District and town staff continue to work together to partner on high priority projects designated in the plan, including riparian restoration and winter snow storage locations.

Traer Creek Tank Update – Mr. Cowles noted a previous letter to Traer Creek stating its proposed tank fixes were inadequate and giving Traer Creek until March 9 to adequately update the repair plan; the date passed without such an update. Further discussion was saved for Executive Session.

Mountain Star Tank Update – Mr. Cowles noted the town of Avon and Mountain Star POA approved the tank funding agreement. Staff is working on annexation of the tank site, completion of which is expected on April 12. Tank construction is expected to commence on April 18.

Organizational Changes – Ms. Brooks acknowledged Ms. Isom’s many contributions to the Authority and District as she is retiring; Ms. Isom’s accomplishments include efforts towards organizational stability, procuring excellent employee benefits, the employee housing program, and employee pension plans. Ms. Isom thanked the Board for the opportunities she had in working with the Authority and District.

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

FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit F and incorporated herein by this reference. He noted lower-than-projected January water sales were likely due to lower tourism numbers. February sales were in line with projections, as were the development impact fees received. In response to a question, Mr. Cowles discussed the VIA development, which is a 70-unit affordable housing development in west Edwards. He also summarized the West End development in Edwards, which is a 75-unit multifamily residential development. The developer has a water service
agreement and has paid cash in lieu of water rights, but the amount of water is likely to be reduced, so a partial refund may be needed.

**OPERATIONS REPORT**

Ms. Roman presented the Operations Report, a copy of which is attached hereto as Exhibit G and incorporated herein by this reference.

**Eagle Mine Update** – Ms. Roman said the Eagle Mine Ltd. Board dissolved as a technical assistant grant (TAG) recipient; the group will retain their 501(c)(3) charitable organization status and become a subcommittee of the Eagle River Watershed Council. This committee will continue its efforts to provide information and facilitate public input related to the Eagle Mine Superfund site. Ms. Roman also reported that the Colorado Department of Public Health and Environment’s Hazardous Materials and Waste Management Division submitted a technical impracticability (TI) waiver of the arsenic standard to the Environmental Protection Agency, and it is currently under review. Staff and consultants are following this development and making comments as needed, as the proposed limit is much higher than normal background levels and could adversely affect Authority water quality and treatment operations.

**Black Gore Creek Steering Committee** – Ms. Roman updated the board on a recent meeting of this committee. She reported that CDOT aims to pick up as much traction sand as it puts down each year and hired a contractor last fall to retrieve the sand in the harder to reach areas. CDOT is designing a more permanent access road to remove sediment from the Basin of Last Resort on Vail Pass. The basin was last cleaned in 2009, and it cost over $1 million for a specialized contractor to access the basin.

**Regulation 31 Update** – Ms. Roman reviewed Regulation 31, which includes the Water Quality Control Commission’s proposed changes for surface water standards and methodologies, including those for temperature and certain metals in the Eagle River Basin. She noted issues of concern regarding how the standards are applied in the Authority and District service area. Party status was requested on behalf of the Authority, District, and Eagle Park Reservoir Company, and consultants Steve Bushong and Bob Weaver will monitor the rulemaking process and determine if any comments or other actions are appropriate.

**PUBLIC AFFAIRS REPORT**

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

**Legislative Update** – Ms. Johnson discussed bills the Authority and District are following, including the rain barrel bill (HB16-1005) and a bill regarding water loss audit reporting (HB16-1283). She said the Colorado Water Congress is also monitoring proposed public trust initiatives. Ms. Johnson also discussed Senate Bill 16-145, which provides an alternative mechanism for
creation of subdistricts within the Colorado River Water Conservation District. The subdistricts
could be used as funding mechanisms for projects related to the Colorado Basin Implementation
Plan and Colorado Water Plan. After discussion and upon motion duly made and seconded, it
was unanimously

RESOLVED to support Senate Bill 16-145, Colorado River District Subdistrict formation.

Statewide Tap Fee Article – Ms. Johnson noted an article about a possible statewide ‘tap fee,’ a
copy of which is attached hereto as Exhibit I and incorporated herein by this reference. This
proposed statewide surcharge could be used to fund projects identified in the Colorado Water
Plan; many questions remain as to how the funds would be collected, distributed, and utilized.

Building a Better Colorado Initiatives – Ms. Johnson said the organization submitted several
variations of possible ballot initiatives (related to their three focus areas) to the Title Board, but
only one version for each topic will be placed on the November statewide ballot. One possible
initiative would require petition signatures from all 35 state Senate districts for proposed state
constitution amendments.

Curtailment Risk Study – Ms. Johnson said the River District is leading the effort on the
Colorado River Development and Curtailment Risk Study to investigate Colorado River
operations, hydrology, climate, development pressures, and the implications on Lakes Powell and
Mead. East Slope parties are now participating in the effort, along with the four West Slope
roundtables and the Southwest Water Conservation District.

Vail SNOTEL Site Visit – Ms. Johnson reported on a March 14 Vail SNOTEL site visit with
employees of the USDA Natural Resources Conservation Service (NRCS), which manages the
site, and a Vail ski patroller. The site became more exposed with the removal of beetle-killed
trees about five years ago, subjecting it to more solar and wind effects; this makes comparisons
between current and historical data more difficult. The NRCS employees took manual site
measurements to compare to the automated data. Initial findings indicated the site may be
underreporting snow water equivalent.

GENERAL COUNSEL REPORT

Avon Drinking Water Facility (ADWF) Leased Property – Mr. Collins noted staff and counsel
are working with the town of Avon to extend the Authority’s current lease for the Avon Drinking
Water Facility property. District and town staff are also working to agree upon appraisal
instructions for the Authority’s purchase of the land, approval of which is required from Avon
voters and may be sought in the November election.

WATER COUNSEL REPORT

Update on HR 2554: Continental Divide Wilderness and Recreation Act – Mr. Porzak and
Ms. Moseley summarized a recent meeting that counsel, staff, and Board chairmen had with Sen.
Bennet’s chief of staff to discuss Rep. Polis’s proposed wilderness bill. Chairman Gregory complimented Ms. Brooks and Ms. Johnson on their presentation of the Boards’ history with wilderness and previous iterations of the wilderness bill; prior experiences and issues with the Forest Service; and the complexity of the Authority and District’s integrated systems. Mr. Porzak noted it was clear to Sen. Bennet’s staff that the Authority and District are basing the requested flooding language on previous experience and the Boards’ responsibility to provide high quality water to their customers. Information related to the bill and rationale for the Authority and District’s requested language is attached hereto as Exhibit J and incorporated herein by this reference. Ms. Moseley added that Sen. Bennet’s staff believed the timing was favorable for passage of a wilderness bill during Congress’s lame-duck period before President Obama’s successor takes office.

An additional meeting to discuss the bill is scheduled for Monday, March 28 at the District’s Vail office at 5:45 p.m. Attendees will include staff, Rep. Polis, and Authority and District Chairmen Gregory and Sackbauer, respectively.

**Unallocated Water Policy** – Mr. Porzak discussed the proposed policy and related information, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference. He noted the Authority’s strong portfolio of water rights and said it would be unlikely for a developer to provide its own water rights to the Authority; any future developments will likely pay cash in lieu of water rights. Discussion ensued regarding the requirement for future developments to comply with the Authority’s water demand management plan and water dedication policy; minor amendments to the policy requested by the town of Avon; and the requirement to review the unallocated water policy if the amount of unallocated rights is reduced by 150 acre feet or reaches less than 50 acre feet of storage water. Staff agreed to schedule a study session with the Board and town of Avon representatives to gain an understanding of the SFEs that the Authority is committed to serve under its agreement with Avon. The Board noted it would like to consider the final version for approval at its May meeting.

**State Legislation Update** – In response to a question, Mr. Porzak said a proposed water banking bill had much opposition from both political parties as well as the Colorado Water Congress. Mr. Porzak will continue to monitor the bill. He also discussed the status of HB 16-1109.

At 10:00 a.m., all remaining staff except of Ms. Brooks and Ms. Johnson left the meeting.

**EXECUTIVE SESSION**

Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously
RESOLVED to enter the executive session at 10:01 a.m. to discuss attorney-client privileged
issues concerning CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
electronic record created as Mr. Porzak opined the contents of the discussion would contain
privileged attorney-client communications.*

The regular meeting resumed at 10:20 a.m., at which time staff returned to the meeting.

Colorado Water Rights Protection Act (HB16-1109) – Mr. Porzak and Ms. Moseley discussed
the proposed bill and said involved parties appeared close to reaching consensus on bypass flow
language, which is largely unrelated to the substance of the bill. Mr. Porzak reported that the bill
passed unanimously in the House Committee on Agriculture, which is unusual.

St. Jude’s Recreation Bill – Mr. Porzak discussed the bill, which was proposed in response to
and to override a ruling by the Colorado Supreme Court in 2015 that the Roaring Fork Club’s
aesthetic, recreational, and piscatorial water diversion was not a beneficial water use. Mr. Porzak
said he filed support of the bill on behalf of the Authority and District, as both entities have
multiple such rights decreed conditionally. If the St. Jude’s Bill is not passed, conditional water
rights could be affected; the state engineer could deny diligence filings, change cases, or
attempts to make the rights absolute. Mr. Porzak said numerous other water rights owners have
filed similar support for the bill in response to the proposed legislation. After discussion and upon
motion duly made and seconded, it was unanimously

RESOLVED to contribute $1,000 for a lobbyist to support the bill on its behalf.

Thank you to Jim Power – Director Power noted this was his last meeting, as he would be
absent in April and he was term-limited with the Beaver Creek Metropolitan District. The Board
thanked him for his service and the engineering knowledge he brought to the Board.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:37 a.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

_________________________________
Arrowhead Metropolitan District

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Town of Avon

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Beaver Creek Metropolitan District

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Berry Creek Metropolitan District

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EagleVail Metropolitan District

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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.

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James P. Collins, General Counsel

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Glenn Porzak, Water Counsel