

Upper Eagle Regional Water Authority

Board of Directors Meeting

April 28, 2016

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held April 28, 2016, at 8:30 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 George Gregory, Berry Creek Metropolitan District
10 Sarah Smith Hymes, Town of Avon

11 The following Directors were absent and excused:

12 Jim Power, Beaver Creek Metropolitan District
13 Mick Woodworth, Edwards Metropolitan District

14 The following Alternate Directors were present and acting:

15 Pam Elsner, Beaver Creek Metropolitan District
16 Kara Heide, Edwards Metropolitan District

17 Also in attendance were:

18 <u>District Staff</u>	26	Brian Tracy
19 Linn Brooks	27	<u>Consultants</u>
20 Jason Cowles	28	Jim Collins, Collins Cockrel & Cole
21 Carol Dickman	29	Glenn Porzak, Porzak Browning & Bushong LLP
22 Catherine Hayes	30	<u>Public</u>
23 Diane Johnson	31	Dan Godec, Berry Creek Metropolitan District
24 Glen Phelps	32	Michael Lindholm, Traer Creek LLC
25 Siri Roman	33	Mike Reisinger, Berry Creek Metropolitan District

34 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

43 CALL TO ORDER

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

45 ACTION ITEMS

46 **Consideration of Minutes** – The minutes of the regular meeting of March 24, 2016, were considered.

47 Upon motion duly made and seconded, it was unanimously

48 **RESOLVED** that the minutes of the March 24, 2016, regular meeting be accepted and hereby are
49 approved as amended.

50 **Execution of Documents** – Ms. Brooks discussed the need to update the Authority's policy regarding
51 execution of certain documents, a copy of which is attached hereto as **Exhibit A** and incorporated herein
52 by this reference. The resolution authorizes Ms. Brooks to execute certain documents on behalf of the
53 Board, or in her absence, James Wilkins or John McCaulley. Mr. Collins clarified that the list of

Upper Eagle Regional Water Authority

1 documents is meant to be all inclusive and noted that title companies often require this sort of resolution
2 to complete transactions. After discussion and upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the Resolution Authorizing Execution of Documents be and hereby is approved
4 as presented.

5 **INTRODUCTIONS**

6 Ms. Brooks introduced Mr. Lindholm of Traer Creek LLC, who entered the meeting at 8:35 a.m.

7 **GENERAL MANAGER REPORT**

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

10 **Bennie's Breakfast Invitation** – Ms. Brooks reminded the Board of the 25th Annual Bennie's
11 Breakfast scheduled for May 25 at 7:30 a.m. at the Antler's at Vail. The gathering honors
12 employees for longevity and other achievements.

13 **Water Work Session with Avon Town Council** – Ms. Brooks reported that staff was preparing a
14 memo and presentations for a May 10 water work session with the Avon Town Council. Items for
15 discussion include regional and local water supply issues; the Authority's water demand
16 management program; and water tap fees. Discussion ensued regarding the Authority's
17 longstanding practice of having growth pay for growth, which is based on industry best practices.
18 She also noted that discussion with town representatives indicated they may ask for complete
19 waiver of tap fees for a future employee housing project. Mr. Collins said past precedent has
20 been to defer payment for such projects up to 10 years, but the Colorado Revised Statutes do
21 allow waiver of tap fees for employee housing.

22 **Mountain Star Tank Update** – Mr. Cowles reported the town of Avon approved the tank 1041
23 permit; the funding agreement and construction contract were also executed. Construction is
24 scheduled to begin May 9, weather permitting. Mr. Collins commended Mr. Cowles and Ms.
25 Brooks for getting the needed tank approvals.

26 **Traer Creek Tank Update** – Mr. Cowles and Mr. Collins discussed the tank failure, which limits
27 the Authority's ability to serve new development in Avon, EagleVail, and Traer Creek. Traer
28 Creek communicated via its attorneys that it believes the Authority defaulted in its contractual
29 obligations; the Authority's special counsel is preparing a response that will be circulated to the
30 Board prior to sending. In response to a question, Mr. Cowles said the repair plan presented by
31 Traer Creek was incomplete. He also reminded the Board that the Authority's insurance provider
32 dropped coverage for the tank and would likely not insure the tank even if it was repaired due to
33 the long-term risk associated with such a repair. Mr. Cowles also said adding dump valves to the
34 Bachelor Gulch booster pump station (BPS) will add system capacity, enabling service to
35 additional SFEs in Avon, EagleVail, and potentially Traer Creek, if it pays for the dump valve

Upper Eagle Regional Water Authority

1 project. This will be coupled with other work at the BPS, allowing for significant cost savings and
2 other efficiencies. Project completion is expected in spring 2017.

3 **FINANCE REPORT**

4 In the absence of Mr. Wilkins, Ms. Brooks presented the finance report, a copy of which is attached
5 hereto as **Exhibit C** and incorporated herein by this reference. Water sales were lower than projected in
6 March, and few tap fees have been collected to date, which is normal for this time of year.

7 **OPERATIONS REPORT**

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

10 **Technical Impracticability Evaluation Report and Waiver for Arsenic** – Ms. Roman discussed
11 a letter to Wendy Naugle of the Colorado Department of Public Health and Environment (CDPHE)
12 regarding the proposed Technical Impracticability (TI) Waiver for arsenic and staff's request to
13 include stakeholders in the review process. A copy of the letter is attached hereto as **Exhibit E**
14 and incorporated herein by this reference. At the April 15, 2016, Eagle Mine Stakeholder meeting,
15 Ms. Naugle clarified that they are recommending that the arsenic level be 3 µg/L. The Authority
16 and District understand that the water + fish standard of 0.02 µg /L is not attainable; however,
17 they objected to the proposed standard, as it would accommodate significant future degradation.
18 Ms. Naugle communicated that CDPHE is awaiting the results of a focused feasibility study from
19 CBS, the Mine owner, prior to distributing the TI Waiver to Stakeholders. Staff and consultants
20 continue to closely monitor this situation.

21 **Eagle Park Reservoir Company Quarterly Report** – Mr. Tracy discussed the quarterly report.
22 He noted Climax Mine's 404 permit application to construct an overburden storage facility to store
23 fill materials; the permit identifies seven possible sites near the Mine, one of which would
24 encroach on Eagle Park Reservoir property and could adversely affect reservoir water quality. Mr.
25 Tracy said additional discussion would take place at the afternoon EPRC quarterly meeting.

26 **PUBLIC AFFAIRS REPORT**

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

29 **Prescription Drug Take Back Event** – Ms. Johnson reminded Directors of the April 30 drug take
30 back event, which she helps coordinate locally. Law enforcement partners are hosting collection
31 sites in Vail, Edwards, and Gypsum. The event keeps pharmaceuticals out of the waste stream,
32 in part to protect water quality.

33 **Gore Creek Strategic Action Plan** – Ms. Johnson noted that staff continues to support town of
34 Vail efforts to complete high priority items from the plan. She helped develop the program for the
35 April 7 "sustainable landscape workshop" and was both a presenter and a participant. The District

Upper Eagle Regional Water Authority

1 sponsored lunch for about 50 people who attended the all-day training. In response to a question,
2 she said the town is still considering regulatory measures; town staff is focusing first on education
3 and outreach.

4 **Colorado Water Plan** – Ms. Johnson said discussion is ongoing regarding how to fund projects
5 identified in the plan and said she hadn't heard further discussion of a statewide 'tap fee' since
6 the last meeting. She noted Gov. John Hickenlooper's recent endorsement of the Windy Gap
7 Firming project as a "model of the type of project needed for Colorado's Water Plan."

8 **Colorado Water Institute (CWI) Report** – Ms. Johnson mentioned a recent report issued by the
9 CWI to address common myths and concerns about the "use it or lose it" notion of Colorado
10 water law. The report has garnered attention related to a key finding: that water users' beliefs that
11 they must use every drop of water available in priority or risk losing a valuable portion of a water
12 right are, to a large extent, unfounded. Mr. Porzak said the subject is complicated and the value
13 of a water right is still tied to the amount of water put to beneficial use.

14 **Public Trust Initiatives** – In response to a question, Ms. Brooks discussed proposed public trust
15 initiatives that the Colorado Water Congress is monitoring. Some of the initiatives are so broad
16 that they could adversely affect water users, despite being aimed at oil and gas companies.

17 **Water Law 101 Class** – Chairman Gregory noted he would attend a May 13 class offered by the
18 Colorado Bar Association regarding water law. He recommended that other interested board
19 members consider attending.

20 **MONTHLY REPORTS**

21 Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit G** and incorporated
22 herein by this reference. Mr. Cowles specifically called attention to the new development report, which
23 was created using a new software program. This will assist staff and developers in tracking development
24 applications and keeping records of all related documents.

25 **Contract Log** – Chairman Gregory discussed the contract log and confirmed with the Board that no
26 Director was aware of any party transactions that should be reported as the 2015 audit is completed. He
27 said he would communicate this to McMahan and Associates, which is performing the audit.

28 **GENERAL COUNSEL REPORT**

29 **Angler's Preserve** – Mr. Collins reported on a needed easement to bring water and sewer mains
30 through the adjacent Miller's Creek property to serve the Angler's Preserve development. An
31 appraisal will be sought, and Mr. Collins expects the compensation to the property owner will be
32 minimal due to an existing utilities easement in the area.

33 **Eagle River Meadows Easement** – Mr. Collins said staff and counsel are prepared to move
34 forward with condemnation to get the needed easement in the Eagle River Meadows area, as the

Upper Eagle Regional Water Authority

1 two property owners associations involved are unresponsive. A revised appraisal is expected
2 later in the day. He also noted the property is for sale.

3 **Avon Drinking Water Facility Leased Property** – Mr. Collins discussed the land, which the
4 town of Avon leases to the Authority. He is awaiting comments from Avon representatives on the
5 appraisal instructions he provided for the property, which the Authority would ultimately like to
6 purchase from the town.

7 WATER COUNSEL REPORT

8 **Colorado Water Rights Protection Act (HB 16-1109)** – Mr. Porzak discussed the legislation
9 and related information, a copy of which is attached hereto as **Exhibit H** and incorporated herein
10 by this reference. He reported that the Act passed unanimously in the House and Senate and
11 was signed into law by Gov. Hickenlooper on April 21. The bill provides a financial deterrent to
12 the federal government taking or impacting water rights; confirms that the federal government
13 must defer to state water law to secure water rights; and prevents state enforcement of
14 restrictions that the federal government may place on water rights. Mr. Porzak noted several
15 legislators who were integral in the bill's passage and said thank you notes were issued
16 accordingly. He also discussed the counterpart federal legislation regarding water rights
17 protection, which is still in progress.

18 **Amicus Brief** – Mr. Porzak discussed an amicus brief filed on behalf of the Authority and District
19 in the Denver Reuse Case, a copy of which is attached hereto as **Exhibit I** and incorporated
20 herein by this reference. Consolidated Ditches argues that Denver Water cannot reuse return
21 flows from any of its transmountain diversions (TMDs), not just the TMD referenced in the 1940
22 agreement between the two entities. The brief supports Denver Water's full reuse of water
23 diverted from the West Slope to minimize future transbasin diversions.

24 **Climax 404 Permit Application** – Mr. Porzak discussed the application and a related comment
25 letter, copies of which are attached hereto as **Exhibits J** and **K**, respectively, and incorporated
26 herein by this reference. He noted the importance of being attentive to this issue to ensure
27 protection of Eagle Park Reservoir water quality and future expansion plans.

28 At 9:40 a.m., Mr. Lindholm left the meeting.

29 **EXECUTIVE SESSION**

30 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek
31 tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
32 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
33 seconded, it was unanimously

34 **RESOLVED** to enter the executive session at 9:41 a.m. to discuss attorney-client privileged
35 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no

Upper Eagle Regional Water Authority

1 electronic record created as Mr. Collins opined the contents of the discussion would contain
2 privileged attorney-client communications.*

3 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle River
4 MOU projects, water banking, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that
5 no electronic record be made, as the discussion would be entirely privileged attorney-client communications.

6 Upon motion duly made and seconded, it was unanimously

7 **RESOLVED** to continue the executive session at 10:15 a.m. to discuss attorney-client
8 privileged issues concerning Eagle River MOU projects, water banking, and CRCA matters,
9 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak
10 opined the contents of the discussion would contain privileged attorney-client
11 communications.*

12 At 10:20, prior to the discussion of water banking and CRCA matters, all staff left the meeting, with the
13 exception of Ms. Brooks and Ms. Johnson, along with Mr. Porzak.

14 The regular meeting resumed at 10:35 a.m.

Upper Eagle Regional Water Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:36 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