Upper Eagle Regional Water Authority
Board of Directors Meeting
May 26, 2016
MINUTES

A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held May 26, 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
- Pam Elsner, Beaver Creek Metropolitan District
- George Gregory, Berry Creek Metropolitan District
- Mick Woodworth, Edwards Metropolitan District

The following Director was absent and excused:

- Sarah Smith Hymes, town of Avon

The following Alternate Director was present and acting:

- Virginia Egger, town of Avon

Also in attendance were:

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<tr>
<th>District Staff</th>
<th>30</th>
<th>Brian Tracy</th>
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<tr>
<td>Linn Brooks</td>
<td>31</td>
<td>James Wilks</td>
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<td>Camille Cuypers</td>
<td>32</td>
<td>Travis Young</td>
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<td>Jason Cowles</td>
<td>33</td>
<td>Consultants</td>
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<td>Carol Dickman</td>
<td>34</td>
<td>Jim Collins, Collins Cockrel &amp; Cole</td>
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<td>Sage Ebel</td>
<td>35</td>
<td>Glenn Porzak, Porzak Browning &amp; Bushong LLP</td>
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<td>Maureen Egan</td>
<td>36</td>
<td>Public</td>
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<td>Catherine Hayes</td>
<td>37</td>
<td>Noah Koerper, Sen. Bennet regional director</td>
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<td>Diane Johnson</td>
<td>38</td>
<td>Bobby Ladd, Reynolds Corporation</td>
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<td>Elena Jones</td>
<td>39</td>
<td>Dan Leary, Traer Creek LLC</td>
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<td>John McCaulley</td>
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<td>Michael Lindholm, Traer Creek LLC</td>
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<td>Wade McCaulley</td>
<td>41</td>
<td>Phil Matsen, Reynolds Corporation</td>
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<td>Siri Roman</td>
<td>42</td>
<td>Sean Reynolds, Reynolds Corporation</td>
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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 board of the Edwards Metropolitan District 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

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

INTRODUCTIONS

New District employees were introduced, including Ms. Egan, Water Demand Management Coordinator, and Ms. Ebel and Ms. Cuypers, Customer Service interns. It was noted that Ms. Egger, Avon town manager, was attending in place of Sarah Smith Hymes. Guests were introduced, including Mr. Koerper, Sen. Bennet’s central mountain regional director; Messrs. Lindholm and Dan Leary of Traer Creek LLC; and Messrs. Ladd, Matsen, and Reynolds of the Reynolds Corporation.
ACTION ITEMS

Resolution Honoring Jim Power – Director Gregory read a resolution and proclamation honoring former Director Jim Power, a copy of which 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 the resolution and proclamation honoring Jim Power be and hereby is approved as presented.

Oaths of Office – Oaths of office were administered to Directors Allender, Dreyer, Elsner, Gregory, and Woodworth, and alternate Director Egger, copies of which are attached hereto as Exhibits B, C, D, E, F, and G, respectively, and incorporated herein by this reference.

Election of Officers – Mr. Collins discussed the Board officers, per the Authority Bylaws. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that George Gregory serve as Chair and Authority representative to Eagle Park Reservoir Company.

RESOLVED that Tom Allender serve as Vice Chair.

RESOLVED that Sarah Smith Hymes serve as Secretary.

RESOLVED that Geoff Dreyer serve as Treasurer.

RESOLVED that Pam Elsner and Mick Woodworth serve as Assistant Secretary and Treasurer.

Authority Committees – Ms. Brooks discussed the vacancy on the New Development committee due to Jim Power’s departure. Treasurer Dreyer offered to serve on the committee. Director Woodworth will remain on the committee.

Consideration of Minutes – The minutes of the regular meeting of April 28, 2016, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the April 28, 2016, regular meeting be accepted and hereby are approved as presented.

Unallocated Water Policy – Mr. Porzak discussed the unallocated water policy, a copy of which is attached hereto as Exhibit H and incorporated herein by this reference. Discussion ensued regarding how the Authority Agreement, approved in May 2015, addresses Authority members’ water rights deficits at full build-out under existing zoning and based on current use. Mr. Porzak said his biannual updates of water rights summaries for each Authority member would reflect any usage reduction and indicate if a member’s deficit should be reduced. Upon motion duly made and seconded, it was unanimously

RESOLVED that the unallocated water policy be and hereby is approved as presented.
Wildridge Tract O Land Swap – Mr. Cowles discussed a board action request and related information regarding a proposed land swap, copies of which are attached hereto as Exhibit I and incorporated herein by this reference. The proposed swap is between the town of Avon and Reynolds Corporation, which is building a home near the site of a future Wildridge replacement tank. Mr. Cowles clarified that the Authority’s support was requested, but the town would ultimately determine whether to approve the land swap. Discussion ensued regarding the need for a tank in that location despite the steep terrain, and the need to include a covenant with the deed when the home is sold to ensure the future owner knows the site is encumbered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the Board recommends Avon town council’s support of the land swap, with the stipulation that a covenant be included to ensure the future owner knows a tank will be built on the adjacent property. Alternate Director Egger abstained.

Mountain Star Indemnity Agreement – Mr. Collins discussed the agreement, which was previously executed by Ms. Brooks on behalf of the Authority due to the timing of requested easement, which is approved in the agreement. A copy of the agreement is attached hereto as Exhibit J and incorporated herein by this reference. Mr. Collins explained that a utility easement already exists in the area, but an additional easement was requested by Holy Cross Electric, from which Mountain Star wishes to be indemnified. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the indemnity agreement with Mountain Star be and hereby is ratified.

PUBLIC COMMENT

Ms. Johnson introduced Mr. Koerper, Sen. Bennet’s central mountains regional director, to the Board. Mr. Koerper distributed a letter, attached hereto as Exhibit K and incorporated herein by this reference, concerning federal water conservation programs in the Colorado River Basin. He gave an overview of Sen. Bennet’s work on Good Samaritan legislation, the drought bill, the Bolts Ditch in Minturn (about which the Authority and District wrote letters of support), and a proposed public lands bill that would be a companion to Rep. Polis’ Continental Divide Wilderness and Recreation Act. He said Senate Committee on Energy and Natural Resources staffers are reviewing the Authority and District’s proposed flooding language for the companion bill. The proposal would create a new designation for the Camp Hale area and Mr. Koerper clarified that it would not affect water rights. Mr. Porzak urged support for H.R. 3189, the Water Rights Protection Act. The Board thanked Mr. Koerper for his time; he left the meeting at 9:35 a.m.

STRATEGY ITEMS

Tap Fee Presentation – Mr. Cowles presented information regarding the Authority and District impact fees, in addition to fees charged by Authority members and other local entities. This presentation was recently given to the Avon town council. Mr. Cowles emphasized that all fees charged by the Authority
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and District have a rational nexus and are based on extensive data analysis and best industry practices, including a ‘growth pays for growth’ philosophy. A copy of the presentation is attached hereto as Exhibit L and incorporated herein by this reference.

GENERAL MANAGER REPORT

Ms. Brooks presented her report, a copy of which is attached hereto as Exhibit M and incorporated herein by this reference. The monthly reports were also acknowledged, copies of which are attached hereto as Exhibit N and incorporated herein by this reference.

Wolcott Development Update – Ms. Brooks noted that the Hermes Group is taking substantive steps to obtain funding for the proposed Wolcott PUD. In response to a question, Mr. Porzak clarified that if Red Sky Ranch Metropolitan District included into the District boundaries, the Red Sky Ranch water rights would be deeded to the District as a stipulation of service.

American Waterworks Association Partnership for Safe Water – Mr. Tracy introduced Wade McCaulley, lead water operator, and Travis Young, water superintendent, to discuss the partnership for safe water, which is a voluntary program. The partnership is being implemented at the Avon Drinking Water Facility (ADWF), with plans to expand to other Authority and District treatment facilities in the future. Mr. McCaulley discussed the program, which helps control microbial contaminants, provides protection that goes above regulations and legislation governing drinking water treatment, and evaluates and optimizes treatment to protect public health. Mr. Young then discussed how the program is specifically being implemented into the treatment process at the ADWF in the four recommended phases. Discussion ensued regarding the use of ozone in the treatment process, which provides an additional level of treatment and make the process safer and more efficient. Messrs. McCaulley and Young left the meeting at 10:10 a.m. A copy of the presentation is attached hereto as Exhibit O and incorporated herein by this reference.

Paymentus Status Update and Risk Reduction – Ms. Jones and Mr. McCaulley discussed their memo regarding the Paymentus online customer bill pay system, a copy of which is attached hereto as Exhibit P and incorporated herein by this reference. Use of the system has resulted in significant cost savings due to printing fewer bills and postage savings, switching bill print vendors to accommodate online billing, and reduced need for software add-on subscriptions. In addition, the new system complies with red flag requirements to protect personal information. Ms. Jones left the meeting at 10:15 a.m.

Traer Creek Tank Update – Mr. Cowles and Mr. Collins discussed the tank failure, noting that the Authority filed a motion for declaratory judgment which has been accepted by the court. A letter was also sent to Traer Creek in response to its claim that the Authority was in default of the warranty obligation.
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Mountain Star Tank Update – Mr. Cowles updated on the Mountain Star tank, which is under construction and expected to be online by the end of summer. In response to a question, Ms. Brooks noted that the tank would be concrete, which is unusual for an above-ground tank; however, this will result in significant operations and maintenance cost savings over the lifetime of the tank.

Summary of Work Session with Town of Avon Council – Ms. Brooks discussed a May 10 work session with the Council to review water compact issues; water demand management; and impact fees. She offered similar outreach to other interested Authority members. Ms. Egger commented that the presentations were very informative and the council now better understands Authority and District operations.

FINANCE REPORT

Mr. Wilkins presented the finance report, a copy of which is attached hereto as Exhibit Q and incorporated herein by this reference.

Water Sales and Development Impact Fee Revenues – Mr. Wilkins noted May water sales were close to projections and development impact fee revenues were coming in as spring construction projects commence. Discussion ensued regarding budgeting water sales. Currently, projections are based on the prior year’s usage, so unless weather patterns are similar from year to year, the projections will likely be inaccurate. Vice Chair Allender suggested the closing dates for Vail and Beaver Creek should also be taken into account when budgeting.

Quarterly Financial Report – Mr. Wilkins also discussed the first quarter financial report, a copy of which is attached hereto as Exhibit R and incorporated herein by this reference. He noted the Authority was slightly above projections. In response to a question, Mr. Wilkins said RTU is the radio telemetry project, replacing the Authority’s existing and outdated communication system with external facilities. Mr. Wilkins also discussed rollovers and continued staff efforts to better manage these; multi-year projects are difficult to budget annually as funds aren’t always spent within a fiscal year.

OPERATIONS REPORT

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

Wastewater Treatment Plant Sanitary Surveys by CDPHE – Ms. Roman discussed a recent compliance evaluation inspection completed by the Colorado Department of Public Health and Environment (CDPHE) at the District’s three wastewater treatment plants, the laboratory, the collection system and the lift stations; the inspector gave the District an excellent review. Ms. Brooks noted this was a great accomplishment, especially since there are so many small components included in the evaluation.
Urban Runoff Group Update – Ms. Roman said the town of Vail received a CDPHE “319” nonpoint source grant to help fund a stormwater control project at the Vail public works facility. The grant money will be used to install multiple best management practices there, including bioswales, rain gardens, permeable pavers, filtration stormwater quality vaults and hydrodynamic separation devices, all of which will reduce industrial runoff there. Upon completion, the site will be used for educational and demonstration purposes. Ms. Roman also reported that the Eagle River Watershed Council received a grant from the town of Vail for riparian restoration of Gore Creek west of Lionshead skier bridge. Social trails to the creek will be removed, leaving one delineated access to the stream.

Town of Vail Outreach – Ms. Roman noted that the Town was hosting a free monthly lunch and learn events. The May program was held yesterday, and presenters discussed Gore Creek stream ecology and aquatic health.

COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

Ms. Johnson presented the Communications and Public Affairs Report, a copy of which is attached hereto as Exhibit T and incorporated herein by this reference.

Eagle River Valley State of the River Public Meeting – Ms. Johnson said about 85 people attended the May 16 event to hear from ten different local and regional speakers. She said the program is available on demand on the Channel 5 website and each presentation is available in PDF on the district website.

Colorado River Basin Planning – Ms. Johnson noted articles included with her report regarding water supply planning in the Colorado River Basin. The topic is receiving much media attention, and these articles provide a good overview of current efforts and concerns.

Water Use Regulations – Ms. Johnson said the water use regulations brochure was included in the May billing statements. The regulations are annually sent to customers and are in effect year round. A copy of the regulations is attached hereto as Exhibit U and incorporated herein by this reference.


Water Law Classes – Ms. Johnson informed the Board of several upcoming opportunities to participate in a water law class and will work to host a local class with former division 4 water referee Aaron Clay in early September.

Colorado Supreme Court Decisions re Severance Taxes – In response to a question, Ms. Johnson briefly discussed the April 25 ruling holding that the state improperly assessed
severance taxes to oil and gas operators. Consequently, the state will have to repay the funds, estimated to be hundreds of millions of dollars. It is unclear how the yet to be determined changes in the state budget may affect the Authority and District.

**GENERAL COUNSEL REPORT**

**Traer Creek Update** – Mr. Collins discussed the motion for declaratory judgment filed by the Authority’s special counsel, which will help determine who has the warranty obligation for the tank. He said the declaratory judgment would not include fault for the tank failure. He also noted related Executive Session discussion topics, including development of a plan for repair or replacement of the tank. Mr. Collins emphasized the need to get the tank back online, as its absence limits the Authority’s ability to provide water service for new development in Avon, EagleVail, and Traer Creek.

**Angler’s Preserve Easement** – Mr. Collins said it appeared that the needed easement was being handled between the developer and property owner; the Authority’s assistance is not needed at this time.

**Avon Drinking Water Facility Leased Property** – Mr. Collins discussed the property, which is leased from the town of Avon. The lease is being amended shortly to extend through 2084 and include the property on which the facility now encroaches, which is not included in the current lease.

**WATER COUNSEL REPORT**

**Federal Water Rights Protection Act** – Mr. Porzak discussed letters and information sent to Colorado senators and representatives urging support of the federal water rights protection act and outlining the unanimous passage of the Colorado water rights protection act. Copies of this information are attached hereto as Exhibit V and incorporated herein by this reference.

**Wolford Mountain Reservoir Update** – Mr. Porzak said the River District released information from a thorough investigation of Ritschard Dam at Wolford Mountain Reservoir; the latest evaluation indicates the dam is safe and can resume normal operations. A copy of this information is attached hereto as Exhibit W and incorporated herein by this reference. Mr. Porzak reminded Directors that Wolford Mountain Reservoir is a major source of out-of-basin augmentation water for the Authority and District.

**Mountain Town News Article** – Mr. Porzak distributed an article from Mountain Town News, regarding the Colorado Water Rights Protection Act, a copy of which is attached hereto as Exhibit X and incorporated herein by this reference. He indicated that the Directors might want to consider subscribing to the publication, which contains news from all Western Slope mountain towns.
Eagle River MOU Projects Update – Mr. Porzak discussed recent meetings with staff, consultants, and other ERMOU partners on the Western Slope to ensure consensus among these stakeholders. Project alternatives being considered by all stakeholders include an Eagle Park Reservoir enlargement and proposed Whitney Creek reservoir. Discussion ensued regarding the environmental and permitting issues that would be likely with the Whitney Creek option; a wetlands investigation will begin there soon. In response to a question, Mr. Porzak noted a pumping system would be needed to get water to the east slope parties if the Eagle Park enlargement was the chosen project.

At 10:53 a.m., Ms. Cyupers, Ms. Ebel, and Messrs. Leary, Lindholm, and McCaulley left the meeting.

EXECUTIVE SESSION

Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer Creek tank, 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 10:54 a.m. to discuss attorney-client privileged issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion would contain privileged attorney-client communications.*

Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the Lake Creek well augmentation plan and 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 continue the executive session at 11:00 a.m. to discuss attorney-client privileged issues concerning the Lake Creek well augmentation plan and 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.*

At 11:05 a.m., prior to the discussion of CRCA matters, all staff left the meeting, with the exception of Ms. Brooks and Ms. Johnson, along with Mr. Porzak.

The regular meeting resumed at 11:24 a.m.
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:25 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