

Upper Eagle Regional Water Authority

Board of Directors Meeting

May 26, 2016

MINUTES

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

12 The following Director was absent and excused:

13 Sarah Smith Hymes, town of Avon

14 The following Alternate Director was present and acting:

15 Virginia Egger, town of Avon

16 Also in attendance were:

17 <u>District Staff</u>	30	Brian Tracy
18 Linn Brooks	31	James Wilkins
19 Camille Cuypers	32	Travis Young
20 Jason Cowles	33	<u>Consultants</u>
21 Carol Dickman	34	Jim Collins, Collins Cockrel & Cole
22 Sage Ebel	35	Glenn Porzak, Porzak Browning & Bushong LLP
23 Maureen Egan	36	<u>Public</u>
24 Catherine Hayes	37	Noah Koerper, Sen. Bennet regional director
25 Diane Johnson	38	Bobby Ladd, Reynolds Corporation
26 Elena Jones	39	Dan Leary, Traer Creek LLC
27 John McCaulley	40	Michael Lindholm, Traer Creek LLC
28 Wade McCaulley	41	Phil Matsen, Reynolds Corporation
29 Siri Roman	42	Sean Reynolds, Reynolds Corporation

43 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

52 CALL TO ORDER

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

54 INTRODUCTIONS

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

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ACTION ITEMS

1
2 **Resolution Honoring Jim Power** – Director Gregory read a resolution and proclamation honoring former
3 Director Jim Power, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this
4 reference. After discussion and upon motion duly made and seconded, it was unanimously

5 **RESOLVED** that the resolution and proclamation honoring Jim Power be and hereby is approved
6 as presented.

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

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

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

14 After discussion and upon motion duly made and seconded, it was unanimously

15 **RESOLVED** that Tom Allender serve as Vice Chair.

16 After discussion and upon motion duly made and seconded, it was unanimously

17 **RESOLVED** that Sarah Smith Hymes serve as Secretary.

18 After discussion and upon motion duly made and seconded, it was unanimously

19 **RESOLVED** that Geoff Dreyer serve as Treasurer.

20 After discussion and upon motion duly made and seconded, it was unanimously

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

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

25 **Consideration of Minutes** – The minutes of the regular meeting of April 28, 2016, were considered.

26 Upon motion duly made and seconded, it was unanimously

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

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

35 **RESOLVED** that the unallocated water policy be and hereby is approved as presented.

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

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

12 Messrs. Ladd, Matsen, and Reynolds left the meeting at 9:10 a.m.

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

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

21 PUBLIC COMMENT

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

32 STRATEGY ITEMS

33 **Tap Fee Presentation** – Mr. Cowles presented information regarding the Authority and District impact
34 fees, in addition to fees charged by Authority members and other local entities. This presentation was
35 recently given to the Avon town council. Mr. Cowles emphasized that all fees charged by the Authority

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1 and District have a rational nexus and are based on extensive data analysis and best industry practices,
2 including a 'growth pays for growth' philosophy. A copy of the presentation is attached hereto as **Exhibit**
3 **L** and incorporated herein by this reference.

4 **GENERAL MANAGER REPORT**

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

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

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

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

32 **Traer Creek Tank Update** – Mr. Cowles and Mr. Collins discussed the tank failure, noting that
33 the Authority filed a motion for declaratory judgment which has been accepted by the court. A
34 letter was also sent to Traer Creek in response to its claim that the Authority was in default of the
35 warranty obligation.

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1 **Mountain Star Tank Update** – Mr. Cowles updated on the Mountain Star tank, which is under
2 construction and expected to be online by the end of summer. In response to a question, Ms.
3 Brooks noted that the tank would be concrete, which is unusual for an above-ground tank;
4 however, this will result in significant operations and maintenance cost savings over the lifetime of
5 the tank.

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

11 **FINANCE REPORT**

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

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

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

27 **OPERATIONS REPORT**

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

30 **Wastewater Treatment Plant Sanitary Surveys by CDPHE** – Ms. Roman discussed a recent
31 compliance evaluation inspection completed by the Colorado Department of Public Health and
32 Environment (CDPHE) at the District's three wastewater treatment plants, the laboratory, the
33 collection system and the lift stations; the inspector gave the District an excellent review. Ms.
34 Brooks noted this was a great accomplishment, especially since there are so many small
35 components included in the evaluation.

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1 **Urban Runoff Group Update** – Ms. Roman said the town of Vail received a CDPHE “319”
2 nonpoint source grant to help fund a stormwater control project at the Vail public works facility.
3 The grant money will be used to install multiple best management practices there, including
4 bioswales, rain gardens, permeable pavers, filtration stormwater quality vaults and hydrodynamic
5 separation devices, all of which will reduce industrial runoff there. Upon completion, the site will
6 be used for educational and demonstration purposes. Ms. Roman also reported that the Eagle
7 River Watershed Council received a grant from the town of Vail for riparian restoration of Gore
8 Creek west of Lionshead skier bridge. Social trails to the creek will be removed, leaving one
9 delineated access to the stream.

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

13 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

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

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

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

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

27 **Meeting with U.S. Rep. Polis** – Ms. Johnson reminded Directors that the March 28 meeting with
28 Rep. Polis and the Board chairs had been postponed due to conflicts in Rep. Polis’ schedule. He
29 recently offered dates in late June and July to reschedule the meeting. Ms. Johnson will
30 coordinate with the chairs and Rep. Polis’s office.

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

34 **Colorado Supreme Court Decisions re Severance Taxes** – In response to a question, Ms.
35 Johnson briefly discussed the April 25 ruling holding that the state improperly assessed

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1 severance taxes to oil and gas operators. Consequently, the state will have to repay the funds,
2 estimated to be hundreds of millions of dollars. It is unclear how the yet to be determined
3 changes in the state budget may affect the Authority and District.

4 GENERAL COUNSEL REPORT

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

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

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

19 WATER COUNSEL REPORT

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

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

30 **Mountain Town News Article** – Mr. Porzak distributed an article from *Mountain Town News*,
31 regarding the Colorado Water Rights Protection Act, a copy of which is attached hereto as
32 **Exhibit X** and incorporated herein by this reference. He indicated that the Directors might want to
33 consider subscribing to the publication, which contains news from all Western Slope mountain
34 towns.

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1 **Eagle River MOU Projects Update** – Mr. Porzak discussed recent meetings with staff,
2 consultants, and other ERMOU partners on the Western Slope to ensure consensus among
3 these stakeholders. Project alternatives being considered by all stakeholders include an Eagle
4 Park Reservoir enlargement and proposed Whitney Creek reservoir. Discussion ensued
5 regarding the environmental and permitting issues that would be likely with the Whitney Creek
6 option; a wetlands investigation will begin there soon. In response to a question, Mr. Porzak
7 noted a pumping system would be needed to get water to the east slope parties if the Eagle Park
8 enlargement was the chosen project.

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

10 **EXECUTIVE SESSION**

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

15 **RESOLVED** to enter the executive session at 10:54 a.m. to discuss attorney-client privileged
16 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
17 electronic record created as Mr. Collins opined the contents of the discussion would contain
18 privileged attorney-client communications.*

19 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the Lake Creek
20 well augmentation plan and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
21 electronic record be made, as the discussion would be entirely privileged attorney-client communications.
22 Upon motion duly made and seconded, it was unanimously

23 **RESOLVED** to continue the executive session at 11:00 a.m. to discuss attorney-client
24 privileged issues concerning the Lake Creek well augmentation plan and CRCA matters,
25 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak
26 opined the contents of the discussion would contain privileged attorney-client
27 communications.*

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

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

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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