

Upper Eagle Regional Water Authority

Board of Directors Meeting

September 22, 2016

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held September 22, 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 Mick Woodworth, Edwards Metropolitan District

12 **The following Director was absent and excused:**

13 Pam Elsner, Beaver Creek Metropolitan District

14 **The following alternate Director was present and acting:**

15 Bill Simmons, Beaver Creek Metropolitan District

16 **Also in attendance were:**

17 <u>District Staff</u>	26	Brian Tracy
18 Linn Brooks	27	James Wilkins
19 Jason Cowles	28	<u>Consultants</u>
20 Carol Dickman	29	Jim Collins, Collins Cockrel & Cole
21 Maureen Egan	30	Glenn Porzak, Porzak Browning & Bushong LLP
22 Catherine Hayes	31	<u>Public</u>
23 Debbie Hoffman	32	Kim Langmaid, Walking Mountains Science Center
24 Diane Johnson	33	Michael Lindholm, Traer Creek LLC
25 Dan Siebert		

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 Directors Allender and Gregory and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water
38 and Sanitation District. Director Allender also disclosed that he is a former employee of Vail Resorts, which tangentially deals with
39 the Authority and District, as well as being employed part time by SE Group, which does planning and environmental work for Vail
40 Resorts and other ski areas. Director Elsner disclosed her membership with the Vilar Performing Arts Center Guild, which operates
41 within the Authority's service area. Director Gregory also disclosed that he occasionally undertakes small development and
42 construction activities within the Authority and District service areas. Alternate Director Simmons noted he serves on the Edwards
43 Metropolitan District board and is employed by Beaver Creek Metropolitan District, an Authority member. Director Woodworth
44 disclosed that he is employed by the Eagle River Fire Protection District, which operates within the Authority's service area.

45 **CALL TO ORDER**

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

47 **INTRODUCTIONS**

48 Guests were introduced, including Kim Langmaid of Walking Mountains Science Center and Michael
49 Lindholm of Traer Creek LLC.

50 **ACTION ITEMS**

51 **Consideration of Minutes** – The minutes of the regular meeting of August 18, 2016, were considered.
52 Upon motion duly made and seconded, it was unanimously

53 **RESOLVED** that the minutes of the August 18, 2016, regular meeting be accepted and hereby
54 are approved as presented.

55 **Resolution Regarding Designation of Wilderness for Spraddle Creek, No Name Watershed**

56 **Areas** – The Board discussed the resolution and a Sept. 21 letter from Rep. Polis agreeing to

Upper Eagle Regional Water Authority

1 either include the Authority and District's requested language in an amendment to Rep. Polis's
2 wilderness bill or a reintroduced version in the 115th Congress. The resolution and letter are
3 attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference.

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

5 **RESOLVED** that the resolution be and hereby is approved as presented.

6 **Resolution in Support of Ballot Issue 1A: Affordable Workforce Housing** – The Board discussed a
7 board action request and related resolution regarding ballot issue 1A, which would add 3/10 of a mill
8 Eagle County sales tax to be earmarked for affordable workforce housing; copies are attached hereto as
9 **Exhibits C** and **D**, respectively, and incorporated herein by this reference. Discussion ensued regarding
10 the vague plan for spending the collected funds. Upon motion duly made and seconded, by a vote of 3 –
11 2, it was

12 **RESOLVED** that the resolution be and hereby is approved as presented.

13 The Board directed staff to include a letter to the Board of County Commissioners along with the signed
14 resolution indicating the desire for a detailed plan for fund expenditure, a copy of which is attached hereto
15 as **Exhibit E** and incorporated herein by this reference.

16 **Resolution in Support of Amendment 71: Raise the Bar, Protect our Constitution** – Ms. Johnson
17 discussed the resolution and related board action request regarding Amendment 71, copies of which are
18 attached hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference. She
19 clarified that Amendment 71 would make it more difficult to amend the Colorado constitution by requiring
20 that “any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the
21 registered electors who reside in each state senate district for the amendment to be placed on the ballot”
22 and that the percentage of votes needed to pass any proposed constitutional amendment would be
23 increased “from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional
24 amendment only repeals, in whole or in part, any provision of the constitution.” Currently there is no
25 requirement for geographical signature representation, and only a simple majority vote is required for
26 approval. Ms. Johnson clarified that the Amendment does not affect the process to amend state statute.
27 After discussion and upon motion duly made and seconded, it was unanimously

28 **RESOLVED** that the resolution be and hereby is approved as presented.

29 **Amended Resolution re Enhancements to Water Storage Capacity Required as a Result of the**
30 **Traer Creek Storage Tank Failure** – Mr. Collins discussed the amended resolution, a copy of which is
31 attached hereto as **Exhibit H** and incorporated herein by this reference. He noted the amended resolution
32 replaces the January 2016 resolution regarding the tank failure and allows development within the Traer
33 Creek PUD to be served by the additional capacity from the upcoming booster pump station upgrade
34 planned for 2017, with payment for the project expected from Traer Creek in the future. Mr. Collins
35 reminded the Board that the upgrade is needed to supply additional capacity that would have been

Upper Eagle Regional Water Authority

1 provided by the Traer Creek tank. After discussion and upon motion duly made and seconded, it was
2 unanimously

3 **RESOLVED** that the amended resolution be and hereby is approved as presented. Secretary
4 Hymes abstained.

5 **Resolution Approving Integrated Project Delivery** – Mr. Collins noted the resolution regarding
6 integrated project delivery was tabled, as discussions are ongoing regarding on how to best
7 complete the project.

8 **STRATEGY ITEMS**

9 **District Sustainability Efforts** – Mr. Tracy discussed the District’s sustainability committee and
10 introduced interim chair Dan Siebert. Mr. Siebert noted the Authority and District combined are the
11 second largest energy user in Eagle County. He also discussed District sustainability efforts, including the
12 history of the District’s sustainability committee and energy improvements to employee housing units and
13 District facilities. The District is implementing efficiency programs using established frameworks and
14 standards, including the environmental management system and Actively Green through the Walking
15 Mountains Science Center. Mr. Siebert also noted the District was recently received the Colorado
16 Department of Public Health and Environment’s bronze level certification in its Environmental Leadership
17 Program, the only such municipality on the West Slope to achieve this designation. The Board thanked
18 Mr. Siebert for his presentation, a copy of which is attached hereto as **Exhibit I** and incorporated herein
19 by this reference.

20 **Eagle County Climate Action Plan** – Ms. Langmaid was introduced and presented information
21 regarding the Climate Action Plan (CAP), a copy of which is attached hereto as **Exhibit J** and
22 incorporated herein by this reference. This climate change mitigation plan is being drafted through a
23 stakeholder process and spearheaded by Walking Mountains Science Center. Ms. Langmaid noted more
24 frost-free days in the area, the higher per capita energy usage in Eagle County, and that climate change
25 is simple, serious, and solvable. She noted efforts to communicate the plan and that the final of three
26 open houses for community outreach and comment would be held that evening. The Board indicated it
27 supports the development of the CAP in concept.

28 **Vail Sustainable Destination** – Ms. Langmaid also discussed Vail’s efforts to become the first certified
29 sustainable travel destination in the United States under the Global Sustainable Tourism Council. A
30 related presentation is attached hereto as **Exhibit K** and incorporated herein by this reference. She noted
31 a pre-assessment was completed with local stakeholders, including the District. The town must meet 40
32 criteria for the certification and is on track for summer 2017 completion. Ms. Langmaid said the town
33 would stay within the generic global criteria but was also customizing some of the framework for mountain
34 resort communities. The Board thanked Ms. Langmaid for the information.

35 **GENERAL MANAGER REPORT**

Upper Eagle Regional Water Authority

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

4 **FINANCE REPORT**

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

7 **OPERATIONS REPORT**

8 The Operations Report was presented, a copy of which is attached hereto as **Exhibit O** and incorporated
9 herein by this reference.

10 **Low Flow Operations** – In response to a question, Ms. Brooks noted local streams are
11 approaching instream flow (ISF) levels and noted standard operating procedures exist for such
12 conditions. Though most of the Authority and District's water rights are senior to the ISF, there is
13 concern for aquatic life protection during low flow conditions. Diversions for drinking water
14 treatment are being taken from the system's lowest possible diversion point in order to minimize
15 the impact of the community's water use on streamflows under these conditions.

16 **GENERAL COUNSEL REPORT**

17 **Lake Creek Wells Update** – Mr. Collins reported some progress with obtaining easements for
18 this new water supply project. Test wells will be drilled soon, and the South Fork Meadows HOA
19 accepted the Authority's appraisal. No agreement has yet been reached with the other property
20 owner, Eagle River Meadows. Mr. Porzak said a final settlement with the Colorado Water
21 Conservation Board (CWCB) for the Lake Creek water rights was expected soon.

22 **Email Discussions Reminder** – Mr. Collins reminded directors that any meeting or discussion of
23 more than two Board members in which public business is discussed constitutes a public meeting
24 that must be noticed accordingly. This includes any email received by all Board members to
25 which a Board member then replies to all. Mr. Collins also noted that any email communication
26 among Board members or staff is considered a discoverable public record.

27 **Amended Ground Lease with town of Avon regarding the Avon Drinking Water Facility**
28 **Property** – Mr. Collins presented the amended ground lease with the town of Avon, a copy of
29 which is attached hereto as **Exhibit P** and incorporated herein by this reference. The lease was
30 approved by the Avon Town Council on second reading. After discussion and upon motion duly
31 made and seconded, it was unanimously

32 **RESOLVED** that the First Amendment to Ground Lease between the town of Avon and
33 Upper Eagle Regional Water Authority be and hereby is approved as presented.

34 Mr. Lindholm left the meeting at 9:30 a.m.
35

Upper Eagle Regional Water Authority

WATER COUNSEL REPORT

Lake Creek Wells Update – Mr. Porzak said a scheduled tour of the proposed well sites with the CWCB staff was cancelled last week, as the Authority's changes to the proposed decrees met many of the CWCB's concerns; therefore, the tour was not needed. The only outstanding issue with the CWCB is related to the measurement of the Brett Ditch water rights, which Mr. Porzak and consultant Tom Williamsen are working on.

Denver Water Reuse Case – Mr. Porzak discussed the case, which was a complete victory for Denver Water. The Authority and District wrote an amicus brief in support of Denver Water's continued reuse of return flows from its transmountain diversions, with the exception of one specific 1940s TMD. The ruling limits Denver Water's need for future TMDs.

Member Water Right Reports – Mr. Porzak presented updated member water right reports for Arrowhead/Smith Creek, Beaver Creek, Berry Creek, EagleVail, Edwards, and town of Avon/Village at Avon, copies of which are attached hereto as **Exhibits Q, R, S, T, U, and V**, respectively, and incorporated herein by this reference. Mr. Porzak clarified that the projected deficits in each report are based on dry years, not average year yield. Discussion ensued regarding the Authority's limited in-basin storage; the likelihood of cutting back on outdoor water usage in dry years without adversely affecting aesthetics; and that successful permitting of any Eagle River MOU projects would require the Authority and District demonstrate meaningful and successful water demand management efforts.

Mr. Porzak also discussed the Authority water right supply and demand summary, a copy of which is attached hereto as **Exhibit W** and incorporated herein by this reference. Even during the last few years, in which there were few development projects, the Authority's unallocated water pool decreased by 26 acre feet to approximately 209 acre feet. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED to authorize Mr. Porzak to write an additional report summarizing Authority-only water rights and agreements, including the Authority's water service obligations.

St. Jude's Recreation Water Bill – Mr. Porzak discussed the proposed St. Jude's legislation, a copy of which is attached hereto as **Exhibit X** and incorporated herein by this reference. The bill would recognize recreational, aesthetic and piscatorial water rights as beneficial uses of decreed water rights. In 2015, the Colorado Supreme Court ruled that such uses were not beneficial. The Authority expressed support for such legislation, along with numerous other water providers.

EXECUTIVE SESSION

Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding ERMOU matters, cash-in-lieu fees, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no

Upper Eagle Regional Water Authority

1 electronic record be made, as the discussion would be entirely privileged attorney-client communications.
2 Upon motion duly made and seconded, it was unanimously
3 **RESOLVED** to enter Executive Session at 10:26 a.m. to discuss attorney-client privileged
4 issues concerning ERMOU matters, cash-in-lieu fees, and CRCA matters, pursuant to §24-6-
5 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
6 of the discussion would contain privileged attorney-client communications.*
7 The regular meeting resumed at 10:52 a.m.

Upper Eagle Regional Water Authority

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 10:53 a.m.

3 Respectfully submitted,

4
5
6 _____
7 Secretary to the Meeting

8 **MINUTES APPROVED, FORMAL CALL, AND**
9 **NOTICE OF MEETING WAIVED**

10
11
12 _____
13 **Arrowhead Metropolitan District**

14
15
16 _____
17 **Town of Avon**

18
19
20 _____
21 **Beaver Creek Metropolitan District**

22
23
24 _____
25 **Berry Creek Metropolitan District**

26
27
28 _____
29 **EagleVail Metropolitan District**

30
31
32 _____
33 **Edwards Metropolitan District**

34
35
36 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
37 in Executive Session not recorded constituted privileged attorney-client communications.

38
39
40 _____
41 **Glenn Porzak, Water Counsel**

42
43