

Upper Eagle Regional Water Authority

Board of Directors Meeting

December 15, 2016

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held December 15, 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 Pam Elsner, Beaver Creek Metropolitan District
10 George Gregory, Berry Creek Metropolitan District
11 Sarah Smith Hymes, town of Avon

12 The following Director was absent and excused:

13 Mick Woodworth, Edwards Metropolitan District

14 The following Alternate Director was present and acting:

15 Kara Heide, Edwards Metropolitan District

16 Also in attendance were:

17 <u>District Staff</u>	26	Jeff Schneider
18 Linn Brooks	27	Micah Schuette
19 Jason Cowles	28	James Wilkins
20 Carol Dickman	29	<u>Consultants</u>
21 Catherine Hayes	30	Jim Collins, Collins Cockrel & Cole
22 Debbie Hoffman	31	Glenn Porzak, Porzak Browning & Bushong LLP
23 Diane Johnson	32	<u>Public</u>
24 John McCaulley	33	Eric Applegate, Traer Creek Metropolitan District
25 Siri Roman	34	Mike Reisinger, Berry Creek Metropolitan District

35 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

46 CALL TO ORDER

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

48 PUBLIC COMMENT

49 Mr. Schuette, the District's newest planner, and Mr. Applegate of Traer Creek Metropolitan District were
50 introduced.

51 ACTION ITEMS

52 **Consideration of Minutes** – The minutes of the regular meeting of November 17, 2016, were
53 considered. Upon motion duly made and seconded, it was unanimously

54 **RESOLVED** that the minutes of the November 17, 2016, regular meeting be accepted and
55 hereby are approved as presented. Director Dreyer abstained.

Upper Eagle Regional Water Authority

1 **Proposed 2017 Meeting Schedule** – Ms. Brooks discussed a memo regarding the proposed
2 2017 meeting schedule, a copy of which is attached hereto as **Exhibit A** and incorporated herein
3 by this reference. Discussion ensued regarding staff conflicts during certain months with the
4 regular meeting schedule for the fourth Thursday of the month; however, moving such meetings
5 to the third Thursday can cause scheduling conflicts for Directors. The Board tabled any action
6 pending the outcome of the District Board’s discussion of the matter, as maintaining the same
7 meeting dates for both Boards is preferable and efficient.

8 **Resolution for Joint Regional Water Efficiency Plan with Eagle River Water & Sanitation**
9 **District** – Mr. McCaulley presented a board action request and related resolution regarding a
10 joint regional water efficiency plan for the Authority and District, copies of which are attached
11 hereto as **Exhibits B** and **C**, respectively, and incorporated herein by this reference. The Board
12 discussed the efficiencies of doing a regional plan. After discussion and upon motion duly made
13 and seconded, it was unanimously

14 **RESOLVED** that the resolution for a Joint Regional Water Efficiency Plan with the Eagle
15 River Water & Sanitation District be and hereby is approved as presented.

16 **2017 Operations Agreement with Eagle River Water & Sanitation District** – Mr. Collins
17 discussed the 2017 operations agreement with the District and a related board action request,
18 copies of which are attached hereto as **Exhibits D** and **E**, respectively. He noted various exhibits
19 to the agreement were updated to reflect the costs and fees from the previously adopted 2017
20 budget; the main body of the agreement did not change. After discussion and upon motion duly
21 made and seconded, it was unanimously

22 **RESOLVED** that the 2017 Operations Agreement with the Eagle River Water &
23 Sanitation District be and hereby is approved as presented.

STRATEGY ITEMS

24 **Avon Hotel Approval** – Secretary Smith Hymes noted the Avon Town Council recently approved
25 a hotel to be constructed between West Beaver Creek Blvd and Avon’s Main Street Mall, in the
26 space now occupied by a parking lot. Discussion ensued regarding timing and parking, among
27 other topics.
28

GENERAL MANAGER REPORT

29 Ms. Brooks discussed her report, a copy of which is attached hereto as **Exhibit F** and incorporated herein
30 by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit G**
31 and incorporated herein by this reference.
32

33 **Lead and Copper Sampling** – Ms. Brooks summarized the Safe Drinking Water Act’s Lead and
34 Copper Rule requirements and said the Authority and District systems have been on reduced
35 monitoring due to low or no levels of detection. The Authority’s scheduled monitoring period was
36 earlier this year; results from each sampled home remained low or non-detected. Sampling

Upper Eagle Regional Water Authority

1 results were communicated to customers with some information about lead in drinking water –
2 which usually comes from a home's own plumbing. However, some required language was
3 inadvertently omitted from the letters to customers, which could result in a violation. A follow-up
4 letter will be sent to participating customers and staff will notify state regulators. Ms. Brooks
5 proposed a public outreach effort to inform customers about lead in drinking water; the Board
6 agreed that transparency is best and noted some related issues to include. The Environmental
7 Protection Agency has increased its focus on lead in drinking water and has been updating the
8 Lead and Copper Rule. Colorado regulators have notified staff that the sampling frequency for
9 lead and copper will increase from the current once every three years to at least annually. Ms.
10 Brooks informed the Board that this increase may require an additional employee to complete the
11 sampling and reporting.

12 **FINANCE REPORT**

13 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit H** and
14 incorporated herein by this reference. He noted Authority water sales were slightly above projections and
15 District sales were slightly below, though both entities were well within year-to-date expectations. Tap
16 fees are above projections and expected to increase further in 2016 as developers pay before 2017
17 increases go into effect.

18 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

19 Ms. Johnson noted she did not include a written report for the monthly packets.

20 **Gore Creek Hotline** – Ms. Johnson informed the Board of the town of Vail's newly established
21 hotline, 970-476-GORE (4673), to anonymously report suspected spills or potential hazards to
22 Gore Creek. Such events can be reported 24/7 and will be received by the town's environmental
23 sustainability office during business hours and directed to the Vail Police department afterhours.

24 **Mountain Star Tank Dedication** – Ms. Johnson said the Dec. 8 ribbon-cutting event to celebrate
25 the completion of Mountain Star Tank 5 was well attended and thanked involved Board, staff, and
26 community members.

27 **OPERATIONS REPORT**

28 The Operations Report was presented, a copy of which is attached hereto as **Exhibit I** and incorporated
29 herein by this reference.

30 **Drought and Lakes Powell and Mead** – The Board discussed the most recent graph of Lake
31 Mead, water levels in which continue to decline, making additional drought years more difficult to
32 weather. Staff noted Lake Powell was last full in 1999, and this was largely why the 2003/2004
33 drought was successfully endured. Lake Powell's level has increased slightly in recent years due
34 to above-average total water generated in its watershed. Current conditions are concerning for a

Upper Eagle Regional Water Authority

1 variety of reasons, especially as lower basin states, including California, continue to use more
2 water than their allocation of water per the Colorado River Compact.

3 GENERAL COUNSEL REPORT

4 **Traer Creek Update** – Mr. Collins summarized recent developments with Traer Creek related to
5 the 2015 tank failure. Per the court’s request, the Authority served all involved parties with a
6 motion to join the proceedings. Mr. Collins noted the Authority continues to believe Traer Creek is
7 responsible for the two-year warranty and does not think all parties fully understand this position.
8 He recommended getting attorneys and non-attorneys for all parties together to effectively
9 communicate the Authority’s position and said such a meeting would also help determine whether
10 mediation efforts would be fruitful. The Board directed staff to facilitate the meeting.

11 **Traer Creek Tank Reconstruction** – Mr. Cowles said a draft request for proposal was prepared
12 by staff to solicit engineers for a tank redesign, per the integrated project delivery resolution
13 approved by the Board at its Nov. 17 meeting. He expects tank removal to commence in spring or
14 summer 2017.

15 **Lake Creek Wells Update** – Mr. Collins said Lake Creek Wells monitoring and testing was
16 complete, with results expected soon.

17 **Cordillera Metro District Surcharge Analysis** – Mr. Collins and Mr. Cowles discussed
18 communication with Cordillera regarding its surcharge to its customers. There was previous
19 discussion of terminating the charge; however, staff recommends keeping the charge, as the
20 future funds collected may be needed to purchase additional water rights. Cordillera also
21 proposed some additional water system projects for which the surcharge funds could be used.
22 Mr. Porzak suggested staff prepare a presentation for the Board regarding the history of the
23 Cordillera development and its contractual relationship with the Authority.

24 **Tap Fee Policy for Public Use Facilities** – Mr. Collins discussed the Authority and District’s tap
25 fee policy for public use facilities. The Board reaffirmed the policy, which allows financing of tap
26 fees for public use facilities for up to ten years. Per the policy, the Authority and District will not
27 waive the fees, as such facilities have a measurable impact on the system and both entities have
28 a “growth pays for growth” philosophy. Staff also noted the fees are based on square footage;
29 thus, smaller units pay lower fees.

30 Mr. Applegate, Ms. Hoffman, and Mr. Shuette left the meeting at 9:20 a.m.

31 **EXECUTIVE SESSION**

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

Upper Eagle Regional Water Authority

1 **RESOLVED** to enter Executive Session at 9:21 a.m. to discuss attorney-client privileged
2 issues concerning Traer Creek tank and Cordillera surcharge, pursuant to §24-6-402(4)(b)
3 and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the
4 discussion would contain privileged attorney-client communications.*

5 The regular meeting resumed at 9:45 a.m., at which time Mr. Applegate, Ms. Hoffman, and Mr. Schuette
6 reentered the meeting.

7 **WATER COUNSEL REPORT**

8 **Eagle River Meadows Update** – Mr. Porzak discussed the estimated water demand for the
9 Eagle River Meadows development. A related memo is attached hereto as **Exhibit J** and
10 incorporated herein by this reference. The development would have to augment 100% of
11 diversions during certain times of year due to the two mile gap in the Eagle River between the
12 Edwards Drinking Water Facility and the Edwards wastewater treatment plant. Mr. Porzak
13 discussed the potential for serving this development during instream flow calls from the Lake
14 Creek well field and developing a modified pumpback from the Edwards wastewater treatment
15 plant to the confluence of Lake Creek and the Eagle River to eliminate the need to augment
16 diversions rather than just the consumptive use. This would free up Eagle Park Reservoir water,
17 effectively expanding the Authority's unallocated in-basin water supply. Discussion ensued
18 regarding possible cost and funding scenarios, as well as work previously done to analyze such a
19 pumpback. The Board authorized staff to facilitate an additional study on the modified pumpback,
20 the cost for which would be paid at least partially by the developer.

21 **Water Rights Appraisals** – Mr. Porzak discussed the most recent water rights appraisals for the
22 Authority and District of approximately \$50 million and \$49 million, respectively. A related
23 breakdown of water rights and their values is attached hereto as **Exhibit K** and incorporated
24 herein by this reference.

25 **Colorado River Compact Update** – Mr. Porzak discussed the State Engineer's recently
26 submitted draft rules regarding compliance with the Republican River Compact. He noted the
27 draft rules do not exclude pre-Compact water rights and do not administer post-Compact rights
28 according to the priority system. He suggested the Authority and District work with the River
29 District to oppose the rules, as they could set an adverse precedent for future State Engineer
30 rules governing the administration of the Colorado River Compact. Mr. Porzak also presented
31 related materials, including a letter written to the State Engineer regarding the Republican River
32 Compact call and a memo regarding the impact of a Colorado River Compact Call on pre-
33 Compact water rights, copies of which are attached hereto as **Exhibits L and M**, respectively,
34 and incorporated herein by this reference.

Upper Eagle Regional Water Authority

1 **Eagle River MOU Projects** – Mr. Porzak discussed a recent Colorado Supreme Court ruling in
2 the Ivanhoe-Buske case, which will prevent Aurora and Colorado Springs from expanding the use
3 of existing Homestake Reservoir transmountain diversions by storing those diversions in new
4 east slope storage facilities. A copy is attached hereto as **Exhibit N** and incorporated herein by
5 this reference. He also noted this makes the Eagle River MOU projects even more important to
6 the East Slope stakeholders.

7 Mr. Applegate, Ms. Hoffman, and Mr. Schuette left the meeting at 10:22 a.m.

8 **EXECUTIVE SESSION**

9 Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding Eagle Park
10 Reservoir water rights and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
11 electronic record be made, as the discussion would be entirely privileged attorney-client communications.

12 Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** to enter Executive Session at 10:23 a.m. to discuss attorney-client privileged
14 issues concerning Eagle Park Reservoir water rights and CRCA matters, pursuant to §24-6-
15 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
16 of the discussion would contain privileged attorney-client communications.*

17 All remaining staff left the meeting at 10:40 a.m., prior to discussion of the CRCA matters, with the exception
18 of Ms. Brooks and Ms. Johnson.

19 The regular meeting resumed at 10:55 a.m.

Upper Eagle Regional Water Authority

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 10:56 a.m.

3 Respectfully submitted,

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5 _____
6 Secretary to the Meeting

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

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11 _____
12 **Arrowhead Metropolitan District**

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14 _____
15 **Town of Avon**

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18 **Beaver Creek Metropolitan District**

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21 **Berry Creek Metropolitan District**

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24 **EagleVail Metropolitan District**

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27 **Edwards Metropolitan District**

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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.

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41 _____
42 **James P. Collins, General Counsel**

43 _____
44 **Glenn Porzak, Water Counsel**