

Upper Eagle Regional Water Authority

Board of Directors Meeting

February 23, 2017

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held February 23, 2017, 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 Mick Woodworth, Edwards Metropolitan District

13 Also in attendance were:

14 <u>District Staff</u>	24	Brian Tracy
15 Linn Brooks	25	James Wilkins
16 Jason Cowles	26	<u>Consultants</u>
17 Carol Dickman	27	Jim Collins, Collins Cockrel & Cole
18 Maureen Egan	28	Glenn Porzak, Porzak Browning & Bushong LLP
19 Catherine Hayes	29	<u>Public</u>
20 Diane Johnson	30	Mike Reisinger, Berry Creek Metropolitan District
21 Siri Roman	31	Kim Bell Williams, EagleVail Metropolitan District
22 Micah Schuette	32	
23 Amy Schweig		

33 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

44 CALL TO ORDER

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

46 INTRODUCTIONS AND PUBLIC COMMENT

47 Ms. Johnson introduced Ms. Schweig, the new Community Relations Assistant.

48 ACTION ITEMS

49 **Consideration of Minutes** – The minutes of the regular meeting of January 26, 2017, were considered.

50 Upon motion duly made and seconded, it was unanimously

51 **RESOLVED** that the minutes of the January 26, 2017, regular meeting be accepted and hereby
52 are approved as presented. Directors Elsner and Hymes abstained.

53 STRATEGY ITEMS

54 **March Joint Meeting** – The Board agreed to hold a joint meeting with the District Board on
55 March 23 at the recommendation of Chair Gregory and District Chair Sackbauer. John Currier of

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1 the Colorado River District will present information on the Homestake Project and Eagle River
2 MOU matters. Mr. Cowles and consultant Bob Weaver will also present related information.

3 **GENERAL MANAGER REPORT**

4 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit A** and incorporated
5 herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as
6 **Exhibit B** and incorporated herein by this reference.

7 **Eagle River Village (ERV) Mobile Home Park Water Supply System** – Ms. Brooks provided
8 historical information on the ERV’s private water system, related water quality concerns, and fire
9 hydrant issues, among other items noted by Eagle County, ERV residents, Eagle River Fire
10 Protection District, and the local non-profit, Our Community Fund. Tap fees to connect the ERV to
11 the Authority’s system would be expensive, and the ERV owner declined connection in the past.
12 Ms. Brooks discussed alternate scenarios by which the interested parties could assist with
13 improved water availability, including installing filling stations and extending the Authority’s
14 fireflow system. She also clarified that some scenarios do not fit the standard water demand
15 formulas; in such cases, calculations based on actual impact can be performed. The water supply
16 to the ERV may be such an instance.

17 **Private Water Systems in Authority Service Area** – Ms. Brooks explained the difficulties
18 associated with private water systems within the Authority’s service area, including fire protection
19 issues and possible lack of maintenance, among other concerns.

20 **Aspens Mobile Home Park Water Use** – Secretary Hymes reported that water use management
21 at the Aspens was added to the town of Avon’s strategic plan as a Tier 1 priority due to lost water,
22 fire flow issues, and possible lead pipes. The park is on the Authority’s water system but only has
23 a master meter, so it is difficult to understand individual mobile home usage.

24 **Staff Initiatives and 2017 Budgets** – In response to a question, Ms. Brooks clarified that
25 managers continue to focus on operational budgets within their respective departments. Mr.
26 Wilkins noted there are certain factors that change throughout the fiscal year, including energy
27 and materials prices. Additionally, unanticipated events can adversely affect the budget, but are
28 paid for via the general fund and not included in the annual budget because they are rare.

29 However, such occurrences can dramatically affect the projected to actual figures in the budget.

30 **FINANCE REPORT**

31 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit C** and
32 incorporated herein by this reference. He noted changes to water sales projections, including use of a
33 five-year historical distribution model, and efforts to compare past water sales with weather patterns in
34 those years. He also discussed the unaudited year-end financials and ongoing efforts to improve budget
35 projections, especially for capital projects.

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1 OPERATIONS REPORT

2 The operations report was presented, a copy of which is attached hereto as **Exhibit D** and incorporated
3 herein by this reference.

4 **Eagle Mine Draft Discharge Permit** – Ms. Roman reported receipt of the Eagle Mine draft
5 discharge permit from the Colorado Department of Public Health and Environment (CDPHE). A
6 meeting of local stakeholders will be convened to review the permit and make comments to
7 CDPHE. In response to a question, Ms. Roman noted the draft status of the permit was related to
8 lack of available administrative resources at CDPHE to review the permit application.

9 **Eagle Mine Spill** – Mr. Tracy reported that CDPHE notified him via email of a recent 3,000-gallon
10 spill from the Mine in the Rex Flats area, which was the result of a pipeline leak. Mr. Tracy was
11 notified the following day, not immediately, because the spill did not reach the river. Ms. Brooks
12 clarified that the spilled metals are now in the environment and will eventually get into the river
13 naturally.

14 ENGINEERING REPORT

15 **Rules and Regulations Update** – Mr. Cowles noted staff was updating the Rules and
16 Regulations, particularly the appendices that relate to standard specifications for water and sewer
17 mains, as well as requirements for earthwork. The Rules and Regulations joint subcommittee,
18 Directors Allender and Simmons, will review the draft prior to presentation at the March 23 board
19 meeting.

20 **Traer Creek Tank Update** – Mr. Cowles reported that HDR was chosen as the design engineer
21 for the tank rebuild following an RFP process. He clarified that the tank structure will need to be
22 reevaluated and redesigned based upon the design team's recommended approach to the
23 foundation.

24 **Cordillera Surcharge Update** – Mr. Cowles said the Cordillera Metro District would like to
25 terminate the \$18/month surcharge the Authority is collecting on its behalf. He will work with staff
26 to compile a list of needed system improvements there, which could be funded by the fees
27 collected by Cordillera to date.

28 COMMUNICATION AND PUBLIC AFFAIRS REPORT

29 Ms. Johnson noted she did not include a written report in packets.

30 **Water Supply in Lower Basin States** – Ms. Johnson said the recent heavy rains in northern
31 California are improving the surface water supply situation in that area while also allowing for
32 delivery of more water to southern California. This allows California to rely less on water from the
33 Colorado River, so they can leave more water in Lake Mead, which likely means lower basin
34 states will avoid curtailment in 2018. She noted that California's groundwater supply issues
35 continue. Mr. Porzak added that California has not integrated surface and groundwater supplies,

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1 despite the clear interaction between the two sources. In response to a question, Ms. Johnson
2 said California is seeking to upgrade water infrastructure in addition to increasing storage
3 capacity.

4 **Waters of the US (WOTUS)** – Ms. Johnson said the Trump administration ordered the
5 Environmental Protection Agency and the Army Corps of Engineers to review the Obama
6 administration’s “Clean Water Rule: Definition of ‘Waters of the United States’” that defined which
7 water bodies are regulated by the Clean Water Act. The rule was put on hold in October 2015
8 due to legal challenges from 26 states, including Colorado (which the district and authority
9 supported), and farm lobbies. The order charges EPA and ACE with developing a new rule to
10 replace the Obama rule, which will also need to address the 2006 U.S. Supreme Court *Rapanos*
11 ruling concerning the scope of the CWA.

GENERAL COUNSEL REPORT

12 **Traer Creek Legal Update** – Mr. Collins said almost all parties had joined the lawsuit, per the
13 direction of the District Court. In January 2017, the Authority’s insurance issued a full opinion
14 denying its claim for the failed tank; the Authority requested a reconsideration of the denial and is
15 awaiting a response. The Authority also retained coverage counsel to review the case and issue
16 a legal opinion.

17 **Bachelor Gulch Water Rights** – Mr. Collins issued a claim letter to the Smith Creek Metropolitan
18 District, which is the entity with which the Authority entered into the water service agreement for
19 the Bachelor Gulch service area. Bachelor Gulch is served by the Authority via this water service
20 agreement and the agreement between the two entities limits the amount of water service to the
21 lesser of 887 EQRs (equivalent residential usage) or a certain defined amount of consumption.
22 Water utilized by the area already exceeds the use limit and expected build out will further
23 surpass the agreed-upon unit limit. More water rights and additional cash in lieu will likely be
24 required. Mr. Porzak stated the shortfall is considerable and without the addition of water rights or
25 cash in lieu payment, outdoor irrigation in the area would have to cease to account for the deficit.
26 A response to the letter has not been received.
27

WATER COUNSEL REPORT

28 **Republican River Compact Rules Update** – Mr. Porzak discussed letters sent to the State
29 Engineer regarding the draft rules for compliance with the Republican River Compact, as well as
30 a revised version of the rules, copies of which are attached hereto as **Exhibit E** and incorporated
31 herein by this reference. The State Engineer revised the relevant parts of the Republican River
32 Compact Rules in response to concerns raised by the Authority, District, and other entities. The
33 revised rules distinguished between pre and post compact water rights; included the seniority
34 system; and added language to state the rules were not to be used as a precedent for future
35 compact calls. In response to a question, Mr. Porzak clarified that the Republican River Compact
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1 language was not as explicit as the Colorado River Compact in addressing pre and post Compact
2 water rights.

3 **St. Jude's Recreation Water Bill** – Mr. Porzak discussed a revised version of the bill, which is
4 meant to overturn a 2015 Colorado Supreme Court decision in which the judge ruled that
5 recreational and aesthetic water rights did not constitute beneficial use. A copy is attached hereto
6 as **Exhibit F** and incorporated herein by this reference. Mr. Porzak said there are 1,000s of such
7 water rights already decreed in Colorado. Mr. Porzak said Rep. KC Becker sponsored the bill with
8 Rep. Diane Mitsch Bush cosponsoring.

9 **Amicus Brief in Consolidated Ditches Case** – Mr. Porzak discussed the 2016 case, in which
10 the Water Court found in Denver Water's favor. The Court ruled that Denver Water could reuse
11 any of its water besides that from the Moffat system, which was specifically prohibited by a 1940s
12 agreement between Denver Water and Consolidated Ditches. Consolidated Ditches appealed the
13 decision to the Colorado Supreme Court. The Board unanimously approved joining in an amicus
14 brief on Denver Water's behalf with a number of other West Slope entities. A related email is
15 attached hereto as **Exhibit G** and incorporated herein by this reference. After discussion and
16 upon motion duly made and seconded, it was unanimously

17 **RESOLVED** that the Authority join in an amicus brief with other interested parties to
18 support Denver Water's position in the case. Mr. Porzak was authorized to draft the brief.

19 **Revised Authority Water Rights Report** – Mr. Porzak discussed the revised Authority water
20 rights report, a copy of which is attached hereto as **Exhibit H** and incorporated herein by this
21 reference. The report was updated in light of recent findings, including a reduction in
22 augmentation water needed by Cordillera; and an increase in the yield of Eagle Park Reservoir
23 based on the Aurora Delivery Agreement, which gives the Authority access to additional
24 Homestake water if Eagle Park drops below a certain level. These updates bring the Authority's
25 unallocated water amount to 309 acre feet.

26 **Eagle River Meadows Update** – Mr. Porzak reported that the aforementioned changes to the
27 Authority water rights report show sufficient water rights are available to serve the Eagle River
28 Meadows development as previously requested. Mr. Porzak also noted the Edwards Pumpback,
29 which was discussed in January, is not needed at this time. Additional discussion was reserved
30 for Executive Session.

31 Ms. Egan, Ms. Schweig, and Mr. Schuette left the meeting at 9:46 a.m.

32 EXECUTIVE SESSION

33 Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding
34 the Eagle River Meadows, Lake Creek Wells, Eagle Park Reservoir Acquisition, and Eagle River
35 MOU projects, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be

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1 made, as the discussion would be entirely privileged attorney-client communications. Upon
2 motion duly made and seconded, it was unanimously

3 **RESOLVED** to enter Executive Session at 9:47 a.m. to discuss attorney-client privileged
4 issues concerning Eagle River Meadows, Lake Creek Wells, Eagle Park Reservoir
5 Acquisition, and Eagle River MOU projects, pursuant to §24-6-402(4)(b) and (e) C.R.S. with
6 no electronic record created as Mr. Porzak opined the contents of the discussion would
7 contain privileged attorney-client communications.*

8 Director Elsner left the meeting at 10:15 a.m.

9 Mr. Collins requested the Board continue Executive Session to receive legal advice regarding Eagle
10 River Meadows and Traer Creek, 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
12 communications. Upon motion duly made and seconded, it was unanimously

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

17 The regular meeting resumed at 10:59 a.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:00 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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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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29 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
30 in Executive Session not recorded constituted privileged attorney-client communications.

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

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42 **Glenn Porzak, Water Counsel**