

Upper Eagle Regional Water Authority

Board of Directors Meeting

March 23, 2017

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held March 23, 2017, 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 George Gregory, Berry Creek Metropolitan District
10 Mick Woodworth, Edwards Metropolitan District

11 **The following Directors were absent and excused:**

12 Pam Elsner, Beaver Creek Metropolitan District
13 Sarah Smith Hymes, town of Avon

14 **The following alternate Directors were present and acting:**

15 Amy Phillips, town of Avon
16 Bill Simmons, Beaver Creek Metropolitan District

17 **Also in attendance were:**

18 <u>District Staff</u>	31	Brian Tracy
19 Tug Birk	32	James Wilkins
20 Linn Brooks	33	<u>Consultants</u>
21 Jason Cowles	34	Jim Collins, Collins Cockrel & Cole
22 Carol Dickman	35	Mark Mitisek, Leonard Rice Engineers
23 Catherine Hayes	36	Glenn Porzak, Porzak Browning & Bushong LLP
24 Debbie Hoffman	37	Bob Weaver, Leonard Rice Engineers
25 Diane Johnson	38	Kathryn Winn, Collins Cockrel & Cole
26 John McCaulley	39	<u>Public</u>
27 Siri Roman	40	Mike Reisinger, Berry Creek Metropolitan District
28 Jeff Schneider	41	Kim Bell Williams, EagleVail Metropolitan District
29 Micah Schuette	42	
30 Amy Schweig		

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

54 **CALL TO ORDER**

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

56 **INTRODUCTIONS AND PUBLIC COMMENT**

57 Mr. Collins introduced Kathryn Winn, a partner in his firm. She performs work on behalf of the Authority
58 and District. Mr. Collins also shared that Eric Jorgenson would retire at the end of the month.

59 **ACTION ITEMS**

60 **Consideration of Minutes** – The minutes of the regular meeting of February 23, 2017, were
61 considered. Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the minutes of the February 23, 2017, regular meeting be accepted and
2 hereby are approved as presented.

3 **Rules and Regulations Revisions** – Mr. Birk discussed revisions to the Rules and Regulations and
4 presented a related board action request and redlined copy of the document, copies of which are
5 attached hereto as **Exhibits A** and **B**, respectively, and incorporated herein by this reference. Staff
6 extensively updated the appendices, especially those related to water and wastewater materials, as well
7 as the addition of a new appendix regarding earthwork. The revisions were reviewed by staff, legal
8 counsel, and the rules and regulations board subcommittee. Discussion ensued regarding a new state
9 regulation that requires annual testing of known backflow devices in the Authority and District systems,
10 which make up roughly 15% of Authority and District accounts. Staff must report the percentages of
11 verified vs. non-verified backflow devices to the state, but a retrofit program for non-verified accounts is
12 not required. Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the revised Rules and Regulations be and hereby are approved as presented.

14 Mr. Birk left the meeting at 8:45 a.m.

15 **Integrated Project Delivery Resolution for Avon Drinking Water Facility** – Mr. Schneider presented a
16 board action request and resolution regarding integrated project delivery for concrete and fluoride
17 improvements at the Avon Drinking Water Facility, copies of which are attached hereto as **Exhibits C** and
18 **D**, respectively, and incorporated herein by this reference. Discussion ensued regarding the early
19 engagement of a contractor, which will allow staff more flexibility and oversight regarding delivery method
20 and price negotiation. After discussion and upon motion duly made and seconded, it was unanimously

21 **RESOLVED** that the resolution for Integrated Project Delivery for Avon Drinking Water Facility
22 Improvements be and hereby is approved as presented.

23 Mr. Schneider left the meeting at 8:55 a.m.

24 **GENERAL MANAGER REPORT**

25 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit E** and incorporated herein
26 by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit F**
27 and incorporated herein by this reference.

28 **Succession Planning Update** – Ms. Brooks noted annual discussions and ongoing dialogue
29 regarding succession plans for the Authority and District's key consultants. She said she was
30 satisfied with the current succession plans for each of the four main consultants.

31 **FINANCE REPORT**

32 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit G** and
33 incorporated herein by this reference. He noted Authority and District water sales were below projections,
34 which are now based on a five-year model. The town of Vail also saw decreased sales tax for February,
35 which it attributed to the unavailability of rooms at the Vail Cascade and Holiday Inn. This could be one
36 reason for lower water sales in the District's service area. Visitor numbers valley-wide appear similar to

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1 past years, so the disparity in water sales is somewhat of an anomaly, especially for the Authority. Mr.
2 Wilkins also stated that he expects impact fee revenues to increase as builders begin projects in the
3 springtime.

4 **OPERATIONS REPORT**

5 The operations report was presented, a copy of which is attached hereto as **Exhibit H** and incorporated
6 herein by this reference. Mr. Tracy clarified that since the report was submitted, free river conditions were
7 implemented and the Authority and District were actively storing water in their reservoirs.

8 **ENGINEERING REPORT**

9 **Mountain Star Tank Refunding** – Mr. Cowles noted a memo regarding the Mountain Star Tank
10 project, a copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference.
11 Per an agreement with the HOA, \$335,000 in savings will be returned to the Mountain Star
12 homeowners association after the tank project was completed under budget. The project used a
13 construction manager at risk (CMAR) delivery method, which set a guaranteed maximum price for
14 funding of the project.

15 **Cordillera Surcharge Update** – Mr. Cowles reported on a memo to the Cordillera Metro District
16 (CMD) regarding suggested capital improvements to its water system, a copy of which is attached
17 hereto as **Exhibit J** and incorporated herein by this reference. The memo suggests funding the
18 capital improvements using funds from the monthly surcharge Cordillera collects, including
19 recommended fire flow improvements, per a 2016 study by SGM, Inc. The memo proposes that
20 CMD contribute funds toward the capital improvements and notes that CMD may cease collection
21 of the surcharge if it so chooses.

22 **Resolution regarding Traer Creek Tank Final Acceptance** – Mr. Collins and Mr. Cowles
23 discussed the resolution, a copy of which is attached hereto as **Exhibit K** and incorporated herein
24 by this reference. The Board discussed the resolution, which stated there could be no final
25 acceptance of the Traer Creek tank per the Authority's policy, since the tank is not operational.
26 Chair Gregory noted Traer Creek representatives were notified in advance of the resolution to be
27 considered. After discussion and upon motion duly made and seconded, it was unanimously

28 **RESOLVED** that the Resolution regarding No Final Acceptance of the Traer Creek Tank
29 be and hereby is approved as presented. Alternate Director Phillips abstained.

30 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

31 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit L** and incorporated
32 herein by this reference.

33 **Edwards Odor Issues** – Ms. Johnson discussed recent odor issues in Edwards that were likely
34 due to a pond east of the west entrance to Arrowhead. Prior to finding the issues in the pond,
35 District field operations crews searched the wastewater system for overflows and backups, as

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1 well as storm sewer issues (for which the District is not responsible). These searches turned up
2 no odor-causing issues, nor did searches by local fire crews and gas utility companies.

3 **Town of Vail Community Meeting** – Ms. Johnson discussed the town of Vail’s annual
4 community meeting the prior week. She and Ms. Schweig shared information on Fats, Oils, and
5 Grease (FOG) and their effects on the wastewater system with attendees, as well as engaging in
6 discussion regarding various topics of interest related to water and wastewater service.

7 **Waters of the US (WOTUS)** – Ms. Johnson discussed the WOTUS rule and confirmed that
8 despite being widely disliked, the rule is still in effect and technically applies. However, Mr.
9 Porzak clarified that the current administration may choose not to enforce the rule. He believes
10 the EPA will revert to agency interpretation, as it was prior to the WOTUS rule.

11 **Vail Mountain SNOTEL Data** – Ms. Johnson noted a delay in the snow water equivalent data for
12 the Vail Mountain SNOTEL site; increases or decreases of a certain size within a day’s time
13 trigger a manual review of the numbers before official release. In the current case, the data was
14 adjusted before its eventual release. Ms. Johnson also discussed snowpack in general, runoff
15 scenarios, and various factors that affect water supply availability on the Front Range and West
16 Slope.

17 GENERAL COUNSEL REPORT

18 **Traer Creek Legal Update** – Mr. Collins noted receipt of a second letter from the Authority’s
19 insurer, again denying coverage for the tank failure. More pleadings are being filed by involved
20 parties in the legal case, while additional meetings are ongoing to come to a negotiated
21 settlement rather than taking the case to court.

22 WATER COUNSEL REPORT

23 **Changes to State Water Staff** – Mr. Porzak noted state engineer Dick Wolfe is retiring.
24 Additionally, the director of the Colorado Water Conservation Board (CWCB), James Eklund, is
25 resigning his post to pursue private legal practice. The state engineer is a governor-appointed
26 post, while the head of the Department of Natural Resources will appoint the new CWCB director.

27 **St. Jude’s Recreation Water Bill** – Mr. Porzak updated on the bill, which passed the House of
28 Representatives Agriculture Committee, where it originated. He expected the bill to pass the
29 House and that the final form of the bill will preserve all existing decreed recreational water rights.
30 Additional provisions of the bill may or may not survive.

31 **Piney River Unit and Wolcott Reservoir** – Mr. Porzak presented a memo regarding the Piney
32 River Unit water right, a copy of which is attached hereto as **Exhibit M** and incorporated herein
33 by this reference. He also outlined the history of the water right and the proposed Wolcott
34 Reservoir. When Denver abandoned its water rights in the Eagle River valley, it retained the
35 rights to a joint use reservoir along with the Authority and District and the Colorado River Water

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1 Conservation District, for which the Authority and District have veto power. If Denver Water no
2 longer wishes to pursue the Wolcott Reservoir, the Board authorized Mr. Porzak to commence
3 discussions with Denver to obtain the land Denver owns near 4 Eagle Ranch. Mr. Porzak noted a
4 meeting on March 28 with Denver Water at which this and other topics of mutual interest will be
5 discussed.

6 **Amicus Brief in Consolidated Ditches Case** – Mr. Porzak discussed the 2016 case, in which
7 the Water Court found in Denver Water’s favor. The Court ruled that Denver Water could reuse
8 any of its water besides that from the Moffat system, which was specifically prohibited by a 1940s
9 agreement between Denver Water and Consolidated Ditches. Consolidated Ditches appealed the
10 decision to the Colorado Supreme Court. With the approval of the Authority and District Boards,
11 Mr. Porzak submitted an amicus brief in support of Denver Water on the boards’ behalf, a copy of
12 which is attached hereto as **Exhibit N** and incorporated herein by this reference.

13 Ms. Egan, Ms. Hoffman, Ms. Schweig, and Mr. McCaulley left the meeting at 9:38 a.m.

14 **Oaths of Office** – Oaths of office were administered to alternate directors Ms. Williams (EagleVail) and Mr.
15 Reisinger (Berry Creek). Copies of the oaths are attached hereto as **Exhibits O** and **P**, respectively, and
16 incorporated herein by this reference.

17 EXECUTIVE SESSION

18 Mr. Collins requested the Board enter into Executive Session to receive legal advice regarding Traer
19 Creek, River Park PUD capacity to serve letter, and Smith Creek Metropolitan District water rights,
20 pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
21 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
22 seconded, it was unanimously

23 **RESOLVED** to enter Executive Session at 9:39 a.m. to discuss attorney-client privileged
24 issues concerning Traer Creek, River Park PUD capacity to serve letter, and Smith Creek
25 Metropolitan District water rights, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
26 electronic record created as Mr. Collins opined the contents of the discussion would contain
27 privileged attorney-client communications.*

28 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the
29 Eagle Park Reservoir Acquisition and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S.
30 He asked that no electronic record be made, as the discussion would be entirely privileged
31 attorney-client communications. Upon motion duly made and seconded, it was unanimously

32 **RESOLVED** to continue Executive Session at 10:30 a.m. to discuss attorney-client privileged
33 issues concerning Eagle Park Reservoir Acquisition and CRCA matters, pursuant to §24-6-
34 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
35 of the discussion would contain privileged attorney-client communications.*

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- 1 At 10:39 a.m., before the discussion of CRCA matters, Mr. Collins, Ms. Winn, and all remaining staff left the
- 2 room, with the exception of Ms. Brooks and Ms. Johnson.
- 3 The regular meeting resumed at 11:00 a.m.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:00 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