

Upper Eagle Regional Water Authority

Board of Directors Meeting

April 27, 2017

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held April 27, 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 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 District Staff

18 Linn Brooks

19 Jason Cowles

20 Carol Dickman

21 Catherine Hayes

22 Diane Johnson

23 Elena Jones

24 John McCaulley

25 Glen Phelps

26 Siri Roman

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Jeff Schneider

Brian Tracy

James Wilkins

Consultants

Jim Collins, Collins Cockrel & Cole

Heather Houston, Western Ecological Resource

Glenn Porzak, Porzak Browning & Bushong LLP

Public

Kim Bell Williams, EagleVail Metropolitan District

37 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

48 CALL TO ORDER

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

50 ACTION ITEMS

51 **Consideration of Minutes** – The minutes of the regular meeting of March 23, 2017, were considered.

52 Upon motion duly made and seconded, it was unanimously

53 **RESOLVED** that the minutes of the March 23, 2017, regular meeting be accepted and hereby are
54 approved as presented. Secretary Smith Hymes abstained.

55 The minutes of the joint special meeting of March 23, 2017, were considered. Upon motion duly made
56 and seconded, it was unanimously

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1 **RESOLVED** that the minutes of the March 23, 2017, joint special meeting with the Eagle River
2 Water & Sanitation District be accepted and hereby are approved as presented. Secretary Smith
3 Hymes abstained.

4 **STRATEGY**

5 **Committee Assignments** – Ms. Brooks explained the need for a board committee related to the
6 Eagle River MOU, as relevant meetings are frequently held between board meetings and board
7 member participation would be beneficial. Secretary Smith Hymes offered to serve on the
8 committee. She also offered to serve on the Climate Action Plan ad hoc committee.

9 **GENERAL MANAGER REPORT**

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

13 **CIS Infinity 10-Year Look Back** – Mr. McCaulley and Ms. Jones reviewed the investment in the
14 Customer Service Information (CIS) Infinity software and its many benefits for customers and
15 staff. The software's ability to integrate with other systems has improved the customer
16 experience, created efficiencies, and saved time and money. Such benefits included online bill
17 payment and e-billing for customers (\$18,000/year in savings); the ability to track historical data,
18 customer communications, and other customer account-related information; and implementation
19 of a successful uniformity program (~\$500,000/year in positive financial impact). A copy of the
20 presentation is attached hereto as **Exhibit C** and incorporated herein by this reference.

21 Mr. McCaulley and Ms. Jones left the meeting at 9:10 a.m.

22 **Comments to Environmental Protection Agency (EPA) re Waters of the US Rule** – In
23 response to a question, Ms. Brooks said the Authority and District did not formally submit
24 comments to the EPA on the WOTUS Rule, but numerous other agencies did so. Ms. Brooks is
25 confident that the Authority and District's concerns were adequately covered by the other entities
26 with which they are aligned. A related letter from the EPA is attached hereto as **Exhibit D** and
27 incorporated herein by this reference.

28 **FINANCE REPORT**

29 Mr. Wilkins presented the finance report, a copy of which is attached hereto as **Exhibit E** and
30 incorporated herein by this reference. He noted Authority and District water sales were again below
31 projections. In Vail, this can likely be attributed to the unavailability of rooms at two major hotels
32 undergoing renovations. He said Authority base rate collections were above projections and expects
33 increased collection of such fees as spring construction continues. Mr. Wilkins also noted inclusion of two
34 new graphs that show a summary of revenues and expenditures.

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1 OPERATIONS REPORT

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

4 ENGINEERING REPORT

5 Mr. Cowles discussed the engineering report, a copy of which is attached hereto as **Exhibit G** and
6 incorporated herein by this reference.

7 **Cordillera Surcharge Update** – Mr. Cowles confirmed that the Cordillera Metropolitan District
8 discontinued collection of its \$18.50/month surcharge, effective with the next billing statement
9 following its March meeting. Staff will continue to work with the CMD on projects to address
10 system deficiencies, using funds previously collected from the surcharge.

11 **Traer Creek Tank Project Update** – Mr. Cowles reported that Filanc Construction was selected
12 as contractor for the Traer Creek tank rebuilding project. The Authority has not previously worked
13 with this contractor, but staff was impressed with the firm's experience on similar projects.

14 **Cordillera Valley Club (CVC) Tank Revegetation Project** – Ms. Houston of Western Ecological
15 Resource presented information regarding the successful and extensive vegetation restoration
16 project at the CVC tank project site. The goal of the restoration was to leave the disturbed area
17 with a more natural diversity of vegetation than is normally achieved after construction. The
18 sloped site included numerous unique species, and part of the restoration occurred during the
19 2012 drought. Despite many additional challenges, the project is meeting all success criteria and
20 is expected to do so until the official end of monitoring at the end of 2017. A copy of the
21 presentation is attached hereto as **Exhibit H** and incorporated herein by this reference.

22 COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

24 **Local and Regional Snowpack Update** – Ms. Johnson updated on area snowpack and
25 specifically the Vail SNOTEL monitoring site, which peaked earlier than normal but achieved
26 almost 90% of average snowpack for the site. The site conditions also changed in past years,
27 with more sunlight and exposure than the site historically saw. In regional news, Ms. Johnson
28 said Lake Powell will release 9 million acre feet of water to Lake Mead this year, staving off a
29 shortage for the lower basin states for at least another year.

30 GENERAL COUNSEL REPORT

31 **Traer Creek Legal Update** – Mr. Collins updated on the Traer Creek litigation. The Court granted
32 Ground Engineering's request for dismissal, and Judge Gannett's order seems to align with the
33 Authority's understanding of the case. Mr. Collins also noted Kyle Kreischer, the Authority's
34 special counsel for the matter, was moving out of state. Ms. Brooks, Mr. Collins, and Chair
35 Gregory interviewed counselors from Nathan Dumm & Mayer were and subsequently engaged

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1 two lawyers to replace Mr. Kreischer. After discussion and upon motion duly made and seconded,
2 it was unanimously

3 **RESOLVED** that the action to engage special counselors Andy Nathan and Justin Curry
4 of Nathan Dumm & Mayer for the Traer Creek Tank litigation be and hereby is ratified.

5 **Bachelor Gulch Water Service Agreement** – Mr. Collins and Mr. Porzak updated on the matter,
6 by which the Bachelor Gulch Metropolitan District was using more outdoor irrigation water than
7 allowed by the Authority’s original agreement with the Smith Creek Metropolitan District. That
8 agreement committed the Authority to serve 37 acre feet of historic consumptive use credits for
9 the summer season and 6 acre feet of during the winter. A revised agreement was presented, a
10 copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. Per the
11 terms of the revised agreement, Vail Resorts would convey an additional 31 acre feet of water to
12 serve the Bachelor Gulch Metropolitan District at full build-out. After discussion and upon motion
13 duly made and seconded, it was unanimously

14 **RESOLVED** that the revised Bachelor Gulch Water Service Agreement be and hereby is
15 approved as presented.

16 **Lake Creek Wells Update** – Mr. Collins reported that letters were sent to the owners to withdraw
17 the easement offers for the Lake Creek Wells, inform owners that test well equipment would be
18 removed. Mr. Collins noted that the property owners of Southfork Meadows were very
19 cooperative during the test well process.

20 **Vacation of Easement for VIA PUD** – Mr. Collins discussed a request by VIA representatives for
21 the vacation of a water utility easement in the area of the PUD. After discussion and upon motion
22 duly made and seconded, it was unanimously

23 **RESOLVED** that the vacation of water utility easement be and hereby is approved as
24 presented, with the conditions that the Authority receive new water easements for the
25 property and that County approval is gained for the development within two years.

26 WATER COUNSEL REPORT

27 **Support for Denver Water’s Gross Reservoir/Moffat Project** – Mr. Porzak discussed a letter
28 from the Eagle Park Reservoir Company sent to the Federal Energy Regulatory Commission in
29 support of Denver Water’s Gross Reservoir Expansion and Hydroelectric Project, and the Moffat
30 Collection System Project. A copy of the letter is attached hereto as **Exhibit J** and incorporated
31 herein by this reference. Mr. Porzak said Denver Water appreciated the support from EPRC.

32 **St. Jude’s Recreation Water Bill** – Mr. Porzak updated on the bill, which passed the House and
33 Senate, though the Senate requested changes, which now means the bill will go back to the
34 House for final approval. The current iteration of the bill still protects and preserves existing
35 absolute and conditional water rights decreed before the St. Jude’s decision. Related information
36 is attached hereto as **Exhibit K** and incorporated herein by this reference.

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1 **Eagle Park Reservoir Acquisition** – Mr. Porzak reported that Eagle County no longer wishes to
2 sell its Eagle Park Reservoir Company shares and wants to retain its water rights for future
3 housing projects. He said further discussion would take place at the EPRC meeting later in the
4 day.

5 Ms. Houston and Mr. Schneider left the meeting at 10:13 a.m.

6 **EXECUTIVE SESSION**

7 Mr. Collins requested the Board enter into Executive Session to receive legal advice regarding Traer
8 Creek and the Authority's tap fee philosophy, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked
9 that no electronic record be made, as the discussion would be entirely privileged attorney-client
10 communications. Upon motion duly made and seconded, it was unanimously

11 **RESOLVED** to enter Executive Session at 10:14 a.m. to discuss attorney-client privileged
12 issues concerning Traer Creek and the Authority's tap fee philosophy, pursuant to §24-6-
13 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents
14 of the discussion would contain privileged attorney-client communications.*

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

19 **RESOLVED** to continue Executive Session at 10:27 a.m. to discuss attorney-client privileged
20 issues concerning Eagle River MOU matters and CRCA matters, pursuant to §24-6-402(4)(b)
21 and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents of the
22 discussion would contain privileged attorney-client communications.*

23 At 11:11 a.m., before the discussion of CRCA matters, Mr. Collins and all remaining staff left the room, with
24 the exception of Ms. Brooks and Ms. Johnson.

25 The regular meeting resumed at 11:14 a.m.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:15 a.m.

3 Respectfully submitted,

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7 Secretary to the Meeting

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

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13 **Arrowhead Metropolitan District**

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17 **Town of Avon**

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21 **Beaver Creek Metropolitan District**

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25 **Berry Creek Metropolitan District**

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29 **EagleVail Metropolitan District**

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33 **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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42 **James P. Collins, General Counsel**

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Glenn Porzak, Water Counsel