

Upper Eagle Regional Water Authority

Board of Directors Meeting

September 28, 2017

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held September 28, 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 the
4 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 John McCaulley

24 Siri Roman

25 Jeff Schneider

26 Amy Schweig

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Brian Tracy

28

James Wilkins

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Consultants

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Jim Collins, Collins Cockrel & Cole

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Kristin Moseley, Porzak Browning & Bushong LLP

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Glenn Porzak, Porzak Browning & Bushong LLP

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Public

34

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

49 **Consideration of Minutes** – The minutes of the regular meeting of August 24, 2017, were considered.

50 Upon motion duly made and seconded, it was unanimously

51 **RESOLVED** that the minutes of the August 24, 2017, regular meeting be accepted and hereby
52 are approved as amended.

53 STRATEGY

54 There were no strategy items for discussion.

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GENERAL MANAGER REPORT

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

Request re Ballot Issue 1A – Ms. Brooks said Eagle County requested the Board consider support of ballot issue 1A, which involves use of a marijuana tax to support county mental health services. The Board declined to take action, as directors believe it is outside the scope of a water authority's purview to take action on such issues.

Services Agreement with Tom Allender – Mr. Allender noted it was his last meeting, as he is moving out of EagleVail. Ms. Williams would start attending on behalf of EagleVail Metropolitan District in October. Ms. Brooks discussed the services agreement, which would allow the boards and staff to continue their professional relationships with Director Allender as an on-demand consultant. Discussion ensued regarding Director Allender's unique expertise related to ongoing projects and permitting, especially as related to the Eagle River MOU projects. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the services agreement with Mr. Allender be and hereby is approved as presented. Director Allender abstained.

A copy of the agreement is attached hereto as **Exhibit C** and incorporated herein by this reference.

FINANCE REPORT

Mr. Wilkins presented the monthly finance report, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference. He noted Authority revenues were tracking close to projections, with the exception of capital projects, though this should self-correct by year end due to timing of expenditures. He also noted periodic budget committee meetings; both staff and the committee have focused on ways to reduce rollovers in FY 2018. The draft budget will be presented to the board in October, and the formal budget hearing and request for approval will take place in November.

OPERATIONS REPORT

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

Instream Flow Calls – In response to a question, staff discussed instream flow calls and operational adjustments. Discussion ensued regarding the most efficient timing of diversions during low-flow conditions and/or when there are calls on the river.

ENGINEERING REPORT

Mr. Cowles discussed his report, a copy of which is attached hereto as **Exhibit F** and incorporated herein by this reference.

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1 **6 West Development** – Mr. Cowles discussed the project, which will be considered by the Eagle
2 Board of County Commissioners the following week. District staff requested the County include a
3 water budget and irrigation efficiency standards in the PUD, based upon industry standard best
4 management practices. The County is proposing to dedicate all of the water for the development.
5 Ms. Brooks clarified that because of the water-use stipulations included in the PUD, the Authority
6 is not requiring dedication of 120% of the estimated water use as it has in the past. Water use will
7 be managed by the property management company to ensure compliance.

8 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

9 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit G** and incorporated
10 herein by this reference.

11 **Colorado River Compact, Minute 323** – Ms. Johnson reported Minute 323 of the Colorado River
12 Compact was recently signed. This minute deals with conservation drought contingency, and
13 among other provisions, it allows Mexico to store water in Lake Mead, which will help stave off a
14 water shortfall there.

15 **California WaterFix** – Ms. Johnson discussed this proposed initiative by California's governor. It
16 entails billions of dollars in infrastructure to bring water from northern California to the central and
17 southern parts of the state, making water supply more secure there and protecting aquatic life,
18 wildlife, and critical habitat. The proposal will be voted on by the agencies that purchase water
19 imported from northern California; one large agricultural water provider has withdrawn support for
20 the project, which could jeopardize approval.

21 **GENERAL COUNSEL REPORT**

22 **Authority of General Manager** – Mr. Collins discussed the action items that require board
23 approval and other actions the general manager can take and report to the board later. Mr.
24 Collins asked for input on these items, which can be added to the bylaws.

25 **Notice of Claim from Edwards Resident** – Mr. Collins distributed a notice of claim against the
26 Authority on behalf of a customer. A copy is attached hereto as **Exhibit H** and incorporated
27 herein by this reference. The homeowner's insurance is subrogating against the Authority
28 regarding damage from a water leak event in his home. After investigation, staff determined the
29 damage resulted from a faulty pressure reducing valve (PRV) on the customer's service line. The
30 claim was sent to the Authority's insurer for further action. Discussion ensued regarding whether
31 the rules and regulations should require customers replace PRVs every ten years.

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WATER COUNSEL REPORT

Water to Serve 6 West – Mr. Porzak said Eagle County’s dedication of water to the development would be an assignment of 10 shares of Eagle Park Reservoir Company stock for every 1-acre foot of water. Such assignment would also be included in the water service agreement.

Diligence Application for UERWA Pipeline – Mr. Porzak discussed the diligence application for the direct flow water right on Lake Creek, which the Authority maintains. A copy of the application is attached hereto as **Exhibit I** and incorporated herein by this reference.

Diligence Decree for Traer Creek Conditional Water Rights – Mr. Porzak presented the ruling of the referee in the matter, a copy of which is attached hereto as **Exhibit J** and incorporated herein by this reference. The town of Avon was a co-applicant in the case, and the protest period was over. Mr. Porzak expected Judge Boyd to sign the decree soon, whereupon it will become the decree of the Water Court.

District Court and 9th Circuit Court Decisions on Minimum/Bypass Flows – Mr. Porzak discussed a case in Bend, OR, by which environmental groups there wanted the Forest Service to impose minimum bypass flows as a special use permit condition. Such requirement would have subordinated state-issued water rights to a federal bypass flow. Mr. Porzak reminded the board that Colorado private water rights owners fought against a similar requirement. In Oregon, the District Court and 9th Circuit Court both denied the environmental groups’ arguments. More information is attached hereto as **Exhibit K** and incorporated herein by this reference.

Unallocated Water Policy – Mr. Porzak discussed a recent subcommittee meeting with Directors Allender and Hymes regarding the Authority’s unallocated water policy. Discussion ensued regarding whether the Authority should reconsider its first come, first served policy for its remaining unallocated water, as well as the need for additional water storage in the future.

EXECUTIVE SESSION

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

RESOLVED to enter Executive Session at 10:02 a.m. to discuss attorney-client privileged issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents of the discussion would contain privileged attorney-client communications.*

Messrs. McCaulley and Schneider left the meeting at 10:20 a.m.

Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding Eagle Park Reservoir, Bolts Lake, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S.

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1 He asked that no electronic record be made, as the discussion would be entirely privileged
2 attorney-client communications. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to continue Executive Session at 10:21 a.m. to discuss attorney-client privileged
4 issues concerning Eagle Park Reservoir, Bolts Lake, 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 11:18 a.m.

