

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

January 25, 2018

### MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was  
2 held January 25, 2018, 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 **The following Directors were present, thereby constituting a quorum:**

6 Geoff Dreyer, Arrowhead Metropolitan District  
7 Pam Elsner, Beaver Creek Metropolitan District  
8 George Gregory, Berry Creek Metropolitan District  
9 Sarah Smith Hymes, town of Avon  
10 Kim Bell Williams, EagleVail Metropolitan District  
11 Mick Woodworth, Edwards Metropolitan District

12  
13 **Also in attendance were:**

14 <u>District Staff</u>	24	Siri Roman
15 Tug Birk	25	Jeff Schneider
16 Linn Brooks, <i>via Skype</i>	26	Amy Schweig
17 Shane Cerny	27	Jason Sica
18 Jason Cowles	28	<u>Consultants</u>
19 Carol Dickman	29	Jim Collins, Collins Cockrel & Cole
20 Catherine Hayes	30	Glenn Porzak, Porzak Browning & Bushong LLP
21 Diane Johnson	31	<u>Public</u>
22 John McCaulley	32	Mike Reisinger, Berry Creek Metropolitan District
23 Maureen Mulcahy	33	Pete Wadden, town of Vail

34 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

37 Director Elsner disclosed her membership with the Vilar Performing Arts Center Guild, which operates within the Authority's service  
38 area. Director Gregory and alternate Director Simmons disclosed that they serve on the Board of the Eagle River Water and Sanitation  
39 District. Director Gregory also disclosed that he occasionally undertakes small development and construction activities within the  
40 Authority and District service areas. Alternate Director Simmons noted he serves on the Edwards Metropolitan District board and is  
41 employed by Beaver Creek Metropolitan District, an Authority member. Director Williams disclosed that she is the Eagle County  
42 Housing Director. Director Woodworth disclosed that he is employed by the Eagle River Fire Protection District, which operates within  
43 the Authority's service area.

44 **CALL TO ORDER**

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

46 **INTRODUCTIONS**

47 The Board welcomed Pete Wadden, watershed education coordinator with the town of Vail.

48 **ACTION ITEMS**

49 **Consideration of Minutes** – The minutes of the special meeting of December 14, 2017, were  
50 considered. Upon motion duly made and seconded, it was unanimously

51 **RESOLVED** that the minutes of the December 14, 2017, special meeting be accepted and  
52 hereby are approved as presented. Director Elsner abstained.

53 **2018 Resolutions** – Ms. Hayes discussed a board action request form regarding various 2018  
54 resolutions, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

55 **Resolution Designating Meeting Place and Posting Location** – The Board discussed the resolution to  
56 set the meeting place, posting location for meeting notices, and adopt a regular meeting schedule, a copy

## Upper Eagle Regional Water Authority

1 of which is attached hereto as **Exhibit B** and incorporated herein by this reference. After discussion and  
2 upon motion duly made and seconded, it was unanimously

3 **RESOLVED** that the 2018 resolution to set the meeting place, posting location, and adopt a  
4 regular meeting schedule be and hereby is approved as presented.

5 **2018 Operations Agreement with Eagle River Water & Sanitation District** – Mr. Collins discussed the  
6 operations agreement between the Authority and District, which automatically renews each year on Jan.  
7 1; however, it is advantageous for the board to formally adopt the agreement each year, from an  
8 administrative standpoint. Exhibits are updated annually to reflect current costs for that year. A copy of  
9 the agreement is attached hereto as **Exhibit C** and incorporated herein by this reference. After discussion  
10 and upon motion duly made and seconded, it was unanimously

11 **RESOLVED** that the 2018 Operations Agreement between the Authority and District be and  
12 hereby is approved as presented.

13 **Rules and Regulations Updates** – Mr. Birk discussed his board action request and the clean and  
14 redlined versions of the Rules and Regulations, copies of which are attached hereto as **Exhibits D, E,**  
15 **and F**, respectively, and incorporated herein by this reference. He reminded directors that the document  
16 underwent a major overhaul in 2017; at that time, staff committed to annually updating the document with  
17 minor revisions for board consideration. Mr. Birk also clarified that Appendix A included rates and fees  
18 and was approved with the Authority's budget in Nov. 2017. After discussion and upon motion duly made  
19 and seconded, it was unanimously

20 **RESOLVED** that the revised Rules and Regulations for 2018 be and hereby are approved as  
21 presented.

22 **Stillwater Water Dedication Request** – Mr. Cowles discussed the board action request and supporting  
23 documentation regarding a water rights dedication for the District's Stillwater PUD, an employee housing  
24 project in Edwards. Copies of the documents are attached hereto as **Exhibit G** and incorporated herein  
25 by this reference. Mr. Cowles clarified that the Authority will be serving the District's project, and the  
26 Authority's water dedication policy stated its preference for the developer to dedicate water if sufficient  
27 supply is available. The District has Eagle Park Reservoir water to dedicate for these project's water  
28 needs, which include augmentation of full diversions from December – February and August –  
29 September. Mr. Cowles reminded directors that the dedication amounts were calculated at 100% of the  
30 anticipated project demand of 200 gallons per unit per day, per a recent policy approved by the board.  
31 This calculation method is sufficient because it is also coupled with water use enforcement mechanisms,  
32 measurement capabilities, and a water service agreement, all of which are detailed in the PUD guide for  
33 the development; such measures are up to and including water shutoff. After discussion and upon motion  
34 duly made and seconded, it was unanimously

35 **RESOLVED** that the dedication of 1.68789 acre-feet of Eagle Park Reservoir water by the District  
36 for its Stillwater project be and hereby is approved as presented.

## Upper Eagle Regional Water Authority

1           **6 West Water Dedication Request** – Mr. Cowles discussed the board action request and supporting  
2 documentation regarding a water rights dedication for the 6 West PUD for which Eagle County will  
3 dedicate Eagle Park Reservoir Company shares, copies of which are attached hereto as **Exhibit H** and  
4 incorporated herein by this reference. He noted that similarly to the Stillwater development, the 6 West  
5 water needs were calculated at 200 gallons per day per unit; the water rights dedication requirement is  
6 100% of the calculated demand, with use restrictions outlined in the PUD guide, as well as a water  
7 services agreement for the property. After discussion and upon motion duly made and seconded, it was  
8 unanimously

9           **RESOLVED** that the dedication of 12.56024 acre-feet of Eagle Park Reservoir water by Eagle  
10 County for the 6 West project be and hereby is approved as presented.

### 11 STRATEGY

12           **Board Member Input** – Chair Gregory called for board member input and there was none. Ms.  
13 Johnson reminded directors to get updated parking permits from Ms. Hayes, as weekend parking  
14 enforcement will be stricter than years past. Directors are still welcome to park in the District lot  
15 on weekends to access Vail Mountain; however, weekday skier parking can no longer be  
16 accommodated, due to the number of employees who need to park at the office during the week.

17           **Restore the Gore Presentation** – Ms. Roman introduced Mr. Wadden, the town of Vail's  
18 Watershed Education Coordinator. He noted that in 2010, failing bug scores in Gore Creek *above*  
19 the Vail Wastewater Treatment Facility indicated the creek would be listed on the state's 303(d)  
20 list of impaired waterways. A water quality improvement plan was subsequently funded, out of  
21 which Mr. Wadden's position was created. He presented information on the town's Restore the  
22 Gore campaign, which is part of the effort to improve the health of Gore Creek; the creek has  
23 been adversely impacted by landscaping/pesticide use near the creek, untreated stormwater  
24 runoff, and an increase in impervious surfaces in Vail. Mr. Wadden has reached out to  
25 landscapers, homeowners, and the community at large to increase awareness of the need to  
26 protect and improve the health of the creek. The board thanked Mr. Wadden for his informative  
27 presentation.

28           **Water Demand Management Update** – Ms. Mulcahy, the District's water demand management  
29 coordinator, discussed her memo, a copy of which is attached hereto as **Exhibit I** and  
30 incorporated herein by this reference. She presented an update on recent water demand  
31 management efforts of the Authority and District. She also summarized recent efforts to improve  
32 water use efficiency, including reduction of water use of customers that have a disproportionate  
33 impact on the system, and pilot projects in high-demand and high-use areas. Pilot project goals  
34 included establishing water budgets for each property, improved customer access to water use  
35 information, and aligning Authority and District processes with local land use authorities. She also  
36 noted completion of a draft of the regional water efficiency plan for the Authority and District.

## Upper Eagle Regional Water Authority

1 Such a plan was required because of 2004 legislation, and a grant was received from the  
2 Colorado Water Conservation Board to assist with plan costs. Ms. Mulcahy outlined a schedule  
3 for plan adoption and hopes to bring the final plan to the board in July for consideration and  
4 approval.

### 5 **GENERAL MANAGER REPORT**

6 In Ms. Brooks' absence, Ms. Johnson presented the General Manager report, a copy of which is attached  
7 hereto as **Exhibit J** and incorporated herein by this reference. Monthly reports were acknowledged,  
8 copies of which are attached hereto as **Exhibit K** and incorporated herein by this reference.

9 **Colorado River District General Manager** – Ms. Johnson reported that Eric Kuhn officially  
10 retired as GM of the Colorado River Water Conservation District, though he is still performing  
11 contract work on behalf of the River District to provide continuity during the transition. Ms.  
12 Johnson, Ms. Brooks, and Mr. Porzak recently met with the new GM, Andy Mueller, to provide  
13 background on the Authority and District and their relationship with the River District. Ms.  
14 Johnson said meetings with Mr. Mueller ensure a continued strong relationship with the River  
15 District as items of mutual concern are addressed.

### 16 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

17 Ms. Johnson discussed her report, a copy of which is attached hereto as **Exhibit L** and incorporated  
18 herein by this reference.

19 **Colorado Basin Roundtable Update** – Ms. Johnson discussed the history of the basin  
20 roundtables, which were established by state legislation in part due to the 2002 drought. House  
21 Bill 1177 created the nine roundtables in 2005, and the roundtables began meeting in 2006. The  
22 Authority and District have had a roundtable presence at the Colorado Basin monthly meetings  
23 since inception, with board members or staff attending on their behalf. Ms. Johnson also  
24 discussed funding that the roundtables can provide for various water-related projects. The  
25 roundtables can also recommend such projects for statewide funding, though statewide funding  
26 has decreased in recent years due to declining severance taxes as well as a settlement with BP,  
27 by which the state must repay BP a large sum of money.

28 **Waters of the US (WOTUS) Update** – Ms. Johnson updated the board on recent developments  
29 regarding the WOTUS rule. She gave a brief history of the rule, noting that the Obama  
30 administration issued the WOTUS rule in 2015 to clarify items related to a 2006 U.S. Supreme  
31 Court decision. The 2015 rule resulted in lawsuits filed against the Environmental Protection  
32 Agency (EPA) by 23 states, including Colorado, as it appeared such legislation would expand the  
33 EPA's jurisdiction and include waters that were not covered bodies of water under the previous  
34 rule. Though the 2015 update was meant to provide clarity, it raised many questions for water

## Upper Eagle Regional Water Authority

1 providers and others. The Supreme Court recently ruled that any challenge should be heard by  
2 federal district, rather than appellate, courts.

3 **Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act** – Ms. Johnson said  
4 Rep. Polis unveiled an updated wilderness bill on Tuesday that includes Sen. Bennet’s previous  
5 draft legislation. The release coincided with the Outdoor Retailer + Snow Show in Denver, which  
6 moved there from its previous location in Utah, in part because of elected officials in Utah  
7 advocating for the reduction of protected land for national monuments. Ms. Johnson and Ms.  
8 Brooks received assurance from Sen. Bennet’s aide, Noah Koerper, that the bill included the  
9 agreed-upon language requested by the Authority and District in the bill’s previous iteration; such  
10 language gives the Authority and District broad authority to exercise needed remediation in the  
11 event of a natural disaster within the watershed, even in the proposed wilderness areas. Mr.  
12 Porzak said one addition to the current legislation included recognition of the non-wilderness  
13 status of Bolts Ditch in Minturn, which was mistakenly included in the Holy Cross wilderness  
14 boundary when the maps were drawn in 1980. Mr. Porzak would also like to include language in  
15 the bill that Bolts Ditch could be used to fill Bolts Lake. Staff will continue to monitor the bill  
16 throughout the legislative process.

### 17 **FINANCE REPORT**

18 In Mr. Wilkins’ absence, Ms. Johnson presented the monthly finance report, a copy of which is attached  
19 hereto as **Exhibit M** and incorporated herein by this reference. She noted there are still many invoices  
20 coming in for 2017 expenses, so the fund balance will be lower than what is shown on the report. She  
21 also called attention to the development impact fees, which for the Authority, Vail water subdistrict, and  
22 Vail sewer district, exceeded projections by about \$777,000. Ms. Johnson noted this was a variety of  
23 smaller projects paying tap fees at year-end, not one or two large projects. She also reminded directors  
24 that in 2018, water sales would be presented quarterly instead of monthly.

### 25 **OPERATIONS REPORT**

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

### 28 **ENGINEERING REPORT**

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

31 **Proposed Avon Developments** – Mr. Cowles said the town of Avon recently received notice of a  
32 proposed development in Traer Creek, east of Chapel Square in Avon. It is unlikely that the  
33 Kansas City-based developer will meet the intended groundbreaking in summer 2018. Mr.  
34 Cowles also received a referral from the town of Avon for a development on the Folsom parcel,  
35 east of the Ascent in Avon. If approved, such development would reduce the Authority’s

## Upper Eagle Regional Water Authority

1 unallocated water pool; however, lacking any specifics, Mr. Cowles was unable to estimate the  
2 impact further. Avon does not have any water to allocate to either project. Staff and legal will  
3 begin to prepare notices to developers for both projects regarding the system limitations on  
4 providing water in the area due to the failed Traer Creek tank.

### 5 **GENERAL COUNSEL REPORT**

6 Mr. Collins gave status updates on various legal matters, including the timeline for the Traer  
7 Creek mediation and delay in receipt of the repair plan, which was expected two weeks ago. He  
8 said all of his other topics would be discussed in Executive Session.

### 9 **WATER COUNSEL REPORT**

10 Mr. Porzak noted all of his items would be discussed in Executive Session.

11 Messrs. Cerny, McCaulley, Schuette, and Sica, Ms. Mulcahy and Ms. Schweig left the meeting at 9:59  
12 a.m. Ms. Brooks joined the meeting via Skype at 10:00 a.m.

### 13 **EXECUTIVE SESSION**

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

18 **RESOLVED** to enter Executive Session at 10:00 a.m. to discuss attorney-client privileged  
19 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no  
20 electronic record created as Mr. Collins opined the contents of the discussion would contain  
21 privileged attorney-client communications.\*

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

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

32 Mr. Porzak left the meeting at 10:53 a.m.

33 Mr. Collins requested the Board continue Executive Session to receive legal advice regarding Eagle Park  
34 Reservoir Company and cost-sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no  
35 electronic record be made, as the discussion would be entirely privileged attorney-client communications

## Upper Eagle Regional Water Authority

1 and requested that the record reflect that Mr. Porzak was abstaining from any participation in the subject  
2 and reaffirmed that he had left the meeting. Upon motion duly made and seconded, it was unanimously  
3 **RESOLVED** to continue Executive Session at 10:00 a.m. to discuss attorney-client privileged  
4 issues concerning Eagle Park Reservoir Company and cost-sharing, pursuant to §24-6-  
5 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the contents  
6 of the discussion would contain privileged attorney-client communications.\*

7 The regular meeting resumed at 11:05 a.m.  
8  
9

# Upper Eagle Regional Water Authority

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:06 a.m.

3 Respectfully submitted,

4  
5 \_\_\_\_\_  
6 Secretary to the Meeting

7  
8 **MINUTES APPROVED, FORMAL CALL, AND**  
9 **NOTICE OF MEETING WAIVED**

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12 \_\_\_\_\_  
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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32 \_\_\_\_\_  
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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41 \_\_\_\_\_  
42 **Jim Collins, General Counsel**

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44 \_\_\_\_\_  
**Glenn Porzak, Water Counsel**