

Upper Eagle Regional Water Authority

Board of Directors Meeting

February 22, 2018

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held February 22, 2018, 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 statutes
4 of the 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 District Staff

15 Jason Cowles

16 Carol Dickman

17 Catherine Hayes

18 Diane Johnson

19 John McCaulley

20 Louise Reiter

21 Jeff Schneider

22 Amy Schweig

23 Brian Tracy

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Consultants

Jim Collins, Collins Cockrel & Cole

Kristin Moseley, Porzak Browning & Bushong LLP

Glenn Porzak, Porzak Browning & Bushong LLP

Public

Paul Currier, water resource engineer

Mike Reisinger, Berry Creek Metropolitan District

Ulf Lindroth, ULFBUILT

32 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

42 **CALL TO ORDER**

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

44 **INTRODUCTIONS**

45 The Board welcomed Messrs. Currier and Lindroth, attending on behalf of the owner of 594 Winchester Trail
46 regarding requested water service, which would be discussed later in the meeting.

47 **ACTION ITEMS**

48 **Consideration of Minutes** – The minutes of the regular meeting of January 25, 2018, were considered.

49 Upon motion duly made and seconded, it was unanimously

50 **RESOLVED** that the minutes of the January 25, 2018, regular meeting be accepted and hereby
51 are approved as presented.

52 The minutes of the special joint meeting of February 13, 2018, were considered. Upon motion duly made
53 and seconded, it was unanimously

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1 **RESOLVED** that the minutes of the February 13, 2018, special joint meeting with the Eagle River
2 Water & Sanitation District be and hereby are approved as amended.

3 **Winchester Trail Water Service** – Mr. Cowles discussed his board action request regarding water
4 service to 594 Winchester Trail, a copy of which is attached hereto as **Exhibit A** and incorporated herein
5 by this reference. Mr. Cowles explained that the board previously issued a notice that service could not
6 be provided in the area due to its location at one of the furthest ends of the Authority's system, which
7 presents water quality issues. Mr. Tracy noted the water there meets Colorado Department of Public
8 Health and Environment standards but not the Authority's desired, voluntary, more restrictive standards.
9 The board approved the provision of water service to the property on the condition that a water service
10 agreement with the owner is executed; such agreement will require owner acknowledgment of the water
11 quality issues, water use limitations, and will absolve the Authority of any responsibility and liability from
12 such issues. After discussion and upon motion duly made and seconded, it was unanimously

13 **RESOLVED** that the board hereby approves the provision of water service to the property at 594
14 Winchester Trail with the following conditions: execution of a water service agreement with the
15 owner; the owner's acknowledgment of the water quality issues; limitations on water use, and
16 absolution of the Authority for any responsibility and liability from such issues.

17 Messrs. Currier and Lindroth left the meeting at 8:48 a.m.

18 **STRATEGY**

19 **Board Member Input** – Chair Gregory called for board member input and there was none.

20 **GENERAL MANAGER REPORT**

21 In Ms. Brooks' absence, Ms. Johnson presented the General Manager report, a copy of which is attached
22 hereto as **Exhibit B** and incorporated herein by this reference. Monthly reports were acknowledged,
23 copies of which are attached hereto as **Exhibit C** and incorporated herein by this reference.

24 **District Email Addresses** – Ms. Johnson reminded directors about the District email addresses
25 that were issued to directors for security and access purposes. She noted if any directors had not
26 yet brought in a device to set up access to the new addresses to please do so or set up an
27 appointment with the IT department to do so. Staff would like to begin exclusively using these
28 email addresses to contact directors in the near future.

29 **Tiny Homes** – Ms. Johnson noted the Avon town manager expects an application for tiny homes
30 in an area of Avon that is currently occupied by modular trailers, some of which include offices
31 leased by the District. This is of interest due to the expected need for additional office space for
32 staff at some future time. Also, the District is considering the logistics of providing water to this
33 type of development, such as expected usage, tap fees, and base rates.

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1 COMMUNICATION AND PUBLIC AFFAIRS REPORT

2 Ms. Johnson discussed her report, a copy of which is attached hereto as **Exhibit D** and incorporated
3 herein by this reference.

4 **Gypsum Water Summit and Local Water Supply** – Ms. Johnson said she received notice that
5 the town of Gypsum is holding a water summit on Feb. 27 to discuss current water supply
6 conditions, the potential for drought, and expected water use restrictions if drought conditions
7 ensue. Ms. Johnson said Gypsum’s town manager, Jeff Shroll, wants to disseminate such
8 information early, as the town’s population has roughly doubled since the 2012 drought. She
9 noted the Authority and District are not yet actively preparing for drought, though monitoring is
10 part of routine operations. Staff will continue to keep the board apprised of local water supply
11 conditions and any operational changes for drought if and when they are warranted.

12 **Stream Access Lawsuit** – Ms. Johnson discussed a stream access lawsuit, the outcome of
13 which will likely determine whether riverbanks and the river bottom are considered public or
14 private property. Mr. Porzak confirmed ongoing disagreements regarding this matter; the decision
15 in the lawsuit is likely to be controversial.

16 **Legislative Update** – Ms. Moseley updated the board on various legislative issues. She
17 specifically discussed a water sheparding bill, which was in response to the passage of St. Jude’s
18 legislation; entities like the Authority and District want to ensure environmental reservoir releases
19 continue to be beneficial uses of water, which the St. Jude’s legislation calls into question. She
20 also discussed HB 1073, which would expressly permit water districts, authorities, and reservoir
21 companies to enter into contracts for reservoir space, not just the purchase of actual water. She
22 also outlined a bill regarding 811 utility locate calls, which would establish a new commission to
23 set forth rules and regulations for such calls. The effect on utilities like the Authority and District is
24 unknown, though many large utilities are opposed, as the cost of compliance could be high. Ms.
25 Moseley also highlighted a proposed deficit irrigation project, which would expand current
26 legislation to include agricultural water leasing or fallowing projects as allowable pilot projects for
27 Colorado Water Conservation Board approval; certain other types of pilot projects are already
28 allowable. In the past, agricultural efficiency increases assumed that prior water use was
29 wasteful; the legislation would exempt these water rights from decreases in historical
30 consumptive use that results from efficiency or fallowing projects. The current proposal would
31 apply to water divisions 2 and 3 within the boundaries of the Upper Gunnison Water Conservancy
32 District.

33 FINANCE REPORT

34 In Mr. Wilkins’ absence, Ms. Reiter presented the monthly finance report, a copy of which is attached
35 hereto as **Exhibit E** and incorporated herein by this reference. Ms. Reiter left the meeting at 9:09 a.m.

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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 **Eagle Park Reservoir Tabletop Exercise** – Mr. Tracy briefly discussed a recent tabletop
5 exercise that simulated an emergency response to a dam breach at Eagle Park Reservoir. The
6 exercise was well attended by local emergency managers. Mr. Tracy thanked Pete Miller, the
7 District’s raw water resources operator, for planning the event. The emergency action plan for the
8 Eagle Park Reservoir will be updated as a result of the exercise.

9 ENGINEERING REPORT

10 Mr. Cowles noted he did not have a written report for this month.

11 **Proposed Avon Development** – Mr. Cowles said the town of Avon denied a development
12 proposal for the recently purchased Folsom parcel, which is east of the Ascent in Avon.

13 **Fireflow Study** – Mr. Cowles said field operations staff was working with the Eagle River Fire
14 Protection District on an Insurance Service Office (ISO) study regarding fireflow capabilities.
15 Since the Mountain Star tank upgrade, no such studies have occurred; the results could help
16 lower insurance costs in the area, if the tank upgrade has improved fireflow.

17 GENERAL COUNSEL REPORT

18 **Traer Creek Update** – Mr. Collins and Mr. Cowles discussed Traer Creek and noted receipt of a
19 proposed repair plan, though such plan is not in final form as more specifics are needed from the
20 engineer. Mr. Collins noted Andy Nathan, the Authority’s special counsel for the Traer Creek
21 matter, would attend the March board meeting to meet the members and provide a verbal update.
22 The next mediation with Traer Creek and other parties is scheduled for April 24.

23 WATER COUNSEL REPORT

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

25 Mr. Schneider left the meeting at 9:19 a.m.

26 EXECUTIVE SESSION

27 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding Traer Creek
28 tank and the Eagle Park Reservoir enlargement, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked
29 that no electronic record be made, as the discussion would be entirely privileged attorney-client
30 communications. Mr. Porzak did not participate. Upon motion duly made and seconded, it was
31 unanimously

32 **RESOLVED** to enter Executive Session at 9:20 a.m. to discuss attorney-client privileged
33 issues concerning the Traer Creek tank and the Eagle Park Reservoir enlargement, pursuant
34 to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins opined the
35 contents of the discussion would contain privileged attorney-client communications.*

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

5 **RESOLVED** to continue Executive Session at 10:11 a.m. to discuss attorney-client privileged
6 issues concerning Eagle River MOU matters, CRCA matters, and the Black Lakes Lease,
7 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak
8 opined the contents of the discussion would contain privileged attorney-client
9 communications.*

10 The regular meeting resumed at 10:27 a.m.

11 **Eagle Park Reservoir Enlargement** – The board discussed the proposed Eagle Park Reservoir enlargement
12 and related issues, including the apparent desire of Vail Associates Inc. (VAI) to purchase enlargement water
13 at 1993 prices, as well as to retain its majority shareholder status regardless of the extent to which VAI
14 participates in the enlargement. Discussion ensued, and Mr. Collins opined that Mr. Porzak does not have a
15 conflict of interest regarding the enlargement and its various disagreements, as the subject does not involve
16 any confidences. Moreover, Mr. Porzak engaged independent ethics counsel, which confirmed that he has no
17 conflict of interest in the matter. He will continue to serve the Authority and District in his water counsel
18 capacity, but has resigned as VAI water rights counsel. Notwithstanding, Mr. Porzak did not participate in this
19 discussion.

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1 **ADJOURNMENT**

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

3 Respectfully submitted,

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6 Secretary to the Meeting

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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 **Jim Collins, General Counsel**

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44 _____
Glenn Porzak, Water Counsel