

Upper Eagle Regional Water Authority

Board of Directors Meeting

August 23, 2018

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held August 23, 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, *via phone*
10 Kim Bell Williams, EagleVail Metropolitan District
11 Mick Woodworth, Edwards Metropolitan District

12 **Also in attendance were:**

13 District Staff

14 Linn Brooks
15 Jason Cowles
16 Carol Dickman
17 Catherine Hayes
18 Diane Johnson
19 Siri Roman
20 Jeff Schneider
21 Amy Schweig
22 James Wilkins

23 Consultants

24 Jim Collins, Collins Cockrel & Cole
25 Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
26 *via phone*
27 Kristin Moseley, Porzak Browning & Bushong LLP
28 Andy Nathan, Nathan Dumm & Mayer PC, *via phone*
29 Glenn Porzak, Porzak Browning & Bushong LLP
30 Public
31 Melissa Nelson, Berry Creek Metropolitan District

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 **ACTION ITEMS**

45 **Consideration of Minutes** – The minutes of the regular meeting of July 26, were considered. Upon
46 motion duly made and seconded, it was unanimously

47 **RESOLVED** that the minutes of the July 26, 2018, regular meeting be accepted and hereby are
48 approved as amended.

49 **Water Efficiency Plan** – Mr. McCaulley discussed the board action request and joint regional Water
50 Efficiency Plan of the Authority and District, copies of which are attached hereto as **Exhibits A and B**,
51 respectively, and incorporated herein by this reference. The required public comment period for the plan
52 ended on July 30. Staff presented the plan to over 30 local organizations with only one comment
53 received. Mr. McCaulley explained the efficiency goals, which are modest but achievable. Coupled with
54 planned water budgeting for individual properties, future reductions in use are likely to exceed
55 expectations. After discussion and upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the Joint Regional Water Efficiency Plan of the Authority and District be and
2 hereby is approved as presented.

3 A copy of the resolution approving the plan is attached hereto as **Exhibit C** and incorporated herein by
4 this reference.

5 **Rules and Regulations Amendment: Water Supply Response Plan** – Ms. Brooks discussed a board
6 action request and proposed amendment to the Rules and Regulations, copies of which are attached
7 hereto as **Exhibits D** and **E**, respectively, and incorporated herein by this reference. This amendment,
8 which would comprise Article XI, codifies the water supply response plan policies the board verbally
9 approved at the July 26 board meeting. Discussion ensued regarding the balance between the
10 regulations for excessive use, and limitations of the available technology and staff to enforce such
11 regulations and fines. Ms. Brooks and Mr. McCaulley discussed current accounting and enforcement
12 mechanisms available to staff, as well as future plans to improve monitoring and enforcement.

13 **Drought Update** – To provide further background for the proposed Rules and Regulations
14 amendment, Ms. Brooks discussed current weather and water supply conditions and compared
15 them to previous dry years in 2002 and 2012. Stream temperatures are coming down, and recent
16 rain has helped, though forecasters predict hot, dry weather in the weeks to come. Ms. Brooks
17 also discussed customer outreach and communication, including newspaper, radio, and web
18 messaging, in addition to recent letters to excessive users. The letters and a simultaneous Vail
19 Daily article on drought resulted in a drastic increase in call volume to customer service in the
20 following days, and Ms. Brooks complimented staff on handling those calls efficiently and
21 professionally. Ms. Brooks also noted large irrigators have significantly reduced water use; these
22 relationships are critical to managing demand in drought years. Using new smart meter
23 technology, staff was able to query any accounts using irrigation water on Mondays, a day when
24 no outdoor irrigation is allowed. Once all customers have smart meters in the coming years, such
25 enforcement will be more widely used to ensure compliance with the outdoor water use rules. The
26 Board then revisited the Rules and Regulations amendment. After discussion and upon motion
27 duly made and seconded, by a vote of 5 – 1, the Board

28 **RESOLVED** that the amendment to the Rules and Regulations be and hereby is approved as
29 presented. Vice Chair Hymes, who cast the dissenting vote, indicated the water use limitations
30 and fines should be stricter than currently proposed.

31 Ms. Brooks noted once water budgeting is fully implemented in the years to come, this section of the
32 Rules and Regulations can be updated accordingly with stricter regulations and enforcement. A copy of
33 the Resolution to Amend the Rules and Regulations is attached hereto as **Exhibit F** and incorporated
34 herein by this reference.

35 **STRATEGY**

36 **Board Member Input** – Board member input was requested and there was none.

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GENERAL MANAGER REPORT

Ms. Brooks presented the General Manager report, a copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit H** and incorporated herein by this reference.

Water Quality and Wildfire – Ms. Brooks confirmed that western wildfires have not affected Authority and District water quality or treatment processes. Some water providers are having issues with ash and debris in their water supply, but no such issues have been reported or observed in local water supplies.

FINANCE REPORT

Quarterly Financial Report – Mr. Wilkins presented the quarterly financial report, a copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. Revenue projections for the Authority will likely be exceeded as the drought conditions led to increased outdoor irrigation. Mr. Wilkins specifically noted the May water sales were as high as a summer watering month, as the dry weather prompted early use of irrigation water. This amount of usage in May was never seen before in Authority historical records. The Board acknowledged receipt of the report.

OPERATIONS REPORT

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

Letter of Support to CDOT for West Vail Pass Auxiliary Lane Project – Ms. Roman discussed her memo and a letter of support to the Colorado Department of Transportation (CDOT) regarding its West Vail Pass Auxiliary Lane Project, copies of which are attached hereto as **Exhibits K** and **L**, respectively, and incorporated herein by this reference. CDOT is moving forward quickly with analysis of this project using a streamlined National Environmental Protection Agency (NEPA) process. The project construction and permanent expansion of the highway may be very impactful to water quality in the area, and a unified community voice is important regarding protection and enhancement of water quality and the surrounding areas. The board unanimously approved sending the letter to CDOT regarding the project. A template letter was also provided to the directors so their respective boards could consider sending comments to CDOT as well, a copy of which is attached hereto as **Exhibit M** and incorporated herein by this reference.

Eagle Park Reservoir Company Operations Report – Ms. Brooks offered to answer any questions on the report and there were none. She said the meeting scheduled for later that day was cancelled and would be rescheduled for September.

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1 **ENGINEERING REPORT**

2 Mr. Cowles noted he did not include a written report in packets.

3 **Eagle River Valley (ERV) Mobile Home Park Update** – Mr. Cowles discussed the history of
4 water at the ERV mobile home park and efforts by the local nonprofit, Our Community
5 Foundation, to improve water quality there. Staff has been in ongoing discussions regarding
6 connection of the park to the Authority's water supply, and the owners have indicated interest and
7 the availability of funds for this purpose. Other local groups are discussing contributions as well.
8 Discussions will continue, and Mr. Cowles will report back to the board on an upcoming meeting
9 with park owners and others. A related memo is attached hereto as **Exhibit N** and incorporated
10 herein by this reference.

11 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

12 Ms. Johnson noted she did not include a written report in packets. Her work has focused on the ongoing
13 drought communications and other related efforts that Ms. Brooks previously discussed.

14 **GENERAL COUNSEL REPORT**

15 Mr. Collins referred to his confidential legal report included in the confidential packet.

16 **Mountain Star Irrigation Water Notice** – Mr. Collins said required upgrades to Mountain Star
17 infrastructure will begin after Labor Day in a zone-by-zone process. Affected areas will be limited
18 to indoor water use only, and residents were notified well in advance. The Authority offered to
19 provide irrigation water for affected areas if residents want to commission a watering truck for
20 their property. This is also contingent on the availability of irrigation water for other customers; no
21 irrigation water would be provided if watering restrictions are in place for other users.

22 **WATER COUNSEL REPORT**

23 Mr. Porzak referred to his confidential legal reports in the confidential packet.

24 **Black Lakes Water** – Mr. Porzak discussed the Black Lakes augmentation plan, which the board
25 approved at the July meeting. The plan was finalized and filed with the water court; a copy is
26 attached hereto as **Exhibit O** and incorporated herein by this reference. Mr. Porzak discussed
27 some other specifics of the plan, and said since all the water is released from Black Lakes, well
28 above any Authority diversions, it will be purely augmentation water.

29 **EXECUTIVE SESSION**

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

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1 **RESOLVED** to enter Executive Session at 9:51 a.m. to discuss attorney-client privileged
2 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
3 electronic record created as Mr. Collins opined the contents of the discussion would contain
4 privileged attorney-client communications.*

5 Special counselors Ms. Hernandez-Schlagel and Mr. Nathan joined the call at 10:00 a.m. They left the call at
6 10:16 a.m.

7 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding water
8 rights reports, Eagle River MOU, the Pando Feeder Canal, and Bolts Lake and Minturn water matters,
9 pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
10 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
11 seconded, it was unanimously

12 **RESOLVED** to continue Executive Session at 10:17 a.m. to discuss attorney-client privileged
13 issues concerning water rights reports, Eagle River MOU, the Pando Feeder canal, and Bolts
14 Lake and Minturn water matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
15 electronic record created as Mr. Porzak opined the contents of the discussion would contain
16 privileged attorney-client communications.*

17 The regular meeting resumed at 11:01 a.m.

18 **Response Letter to Homestake Partners** – After discussion and upon motion duly made and seconded,
19 it was unanimously

20 **RESOLVED** that sending a joint response letter from the Authority and District to the
21 Homestake Partners regarding their 90-day phase II Eagle River MOU project notice be
22 and hereby is approved as presented.

23 **Bolts Lake** – After the Executive Session discussion with staff and counsel, the Board unanimously

24 **RESOLVED** that the staff and water and general counsel should continue pursuit of the
25 development of a Bolts Lake agreement and a bulk water services agreement with
26 Minturn and Battle Mountain as presented.

27 **Pando Feeder Canal Diligence Application** – After the Executive Session discussion about this critical
28 water right, the Board unanimously

29 **RESOLVED** that Mr. Porzak be and hereby is authorized to draft and submit a diligence
30 application on the Authority and District's behalf for the Pando Feeder Canal Water Right.
31

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:02 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.

Jim Collins, General Counsel

Glenn Porzak, Water Counsel