

Upper Eagle Regional Water Authority

Board of Directors Meeting

October 25, 2018

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held October 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 George Gregory, Berry Creek Metropolitan District
8 Sarah Smith Hymes, town of Avon, *via phone*
9 Mick Woodworth, Edwards Metropolitan District

10 **The following Directors were absent and excused:**

11 Pam Elsner, Beaver Creek Metropolitan District
12 Kim Bell Williams, EagleVail Metropolitan District

13 **The following Alternate Directors were present and acting:**

14 Betsy Laughlin, EagleVail Metropolitan District
15 Bill Simmons, Beaver Creek Metropolitan District

16 **Also in attendance were:**

17 District Staff

18 Linn Brooks

19 Kyle Collins

20 Jason Cowles

21 Carol Dickman

22 Courtney Finch

23 Catherine Hayes

24 Diane Johnson

25 John McCaulley

26 Maureen Mulcahy

27 Seth Perry

28 Siri Roman

29 Jeff Schneider

30 Brian Tracy

31 Amy Vogt

32 James Wilkins

33 Len Wright

34 Consultants

35 Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
36 *via phone*

37 Kristin Moseley, Porzak Browning & Bushong LLP

38 Andy Nathan, Nathan Dumm & Mayer PC, *via phone*

39 Glenn Porzak, Porzak Browning & Bushong LLP

40 Kathryn Winn, Collins Cockrel & Cole

41 Public

42 Dan Godec, Our Community Foundation

43 Melissa Nelson, Berry Creek Metropolitan District

44 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

54 **CALL TO ORDER**

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

56 **INTRODUCTIONS**

57 Ms. Laughlin was introduced, attending on behalf of EagleVail Metropolitan District. Her oath of office was
58 performed the previous week and filed with the County Clerk and Recorder, pursuant to the new statutory
59 requirements. A copy of the oath is attached hereto as **Exhibit A** and incorporated herein by this
60 reference. Guests were introduced, including Mr. Godec of Our Community Foundation, and District staff
61 members Mr. Collins and Ms. Finch.

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ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of September 27, 2018, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the September 27, 2018, regular meeting be accepted and hereby are approved as presented.

STRATEGY ITEMS

Benchmarking Report – The Board briefly discussed the 2017 Benchmarking and Key Indicators report and related memo included in board packets. Copies are attached hereto as **Exhibits B** and **C**, respectively, and incorporated herein by this reference. Ms. Brooks explained that the benchmarks were defined and provided by the American Waterworks Association, compiled from the data reported by participating entities. Other key performance indicators and trending data was specific to Authority and District operations. Discussion ensued, and the board asked for more information on how staff would use the information and also thanked staff for work on the report.

Draft 2019 Budget Presentation – Mr. Wilkins discussed the draft FY 2019 budget and related materials, copies of which are attached hereto as **Exhibit D** and incorporated herein by this reference. The budget committee, Chair Gregory and Treasurer Dreyer, discussed the annual budget process and their involvement. They also discussed key points of the budget, including a 3% rate increase for rates and fees, and the anticipated issue of a \$14.6 million revenue bond. The committee recommended approval of the budget during the public budget hearing, which was noticed for the Nov. 15 board meeting.

GENERAL MANAGER REPORT

Ms. Brooks noted she did not include a written report in packets. Monthly reports were acknowledged, copies of which are attached hereto as **Exhibit E** and incorporated herein by this reference.

OPERATIONS REPORT

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

Eagle Mine Update – Ms. Roman discussed a recent spill at the Eagle Mine, which was not reported to the District via the agreed-upon channels of communication. While instream water quality standards for metals were likely not exceeded, concerns persist regarding the inspection and monitoring efforts at the Mine. Ms. Roman noted that she is working to build positive relationships with the new personnel at the Mine and the Colorado Department of Public Health and the Environment. A meeting with key stakeholders was scheduled in the coming weeks. Discussion ensued regarding the ideal level of involvement for the District, as well as the relationships governing the ongoing work at the Mine. A related memo is attached hereto as **Exhibit G** and incorporated herein by this reference.

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1 **2017 Macroinvertebrate Sampling Results** – Ms. Roman presented a memo regarding the
2 latest macroinvertebrate sampling results for local waterways, a copy of which is attached hereto
3 as **Exhibit H** and incorporated herein by this reference. She noted the data indicates
4 improvements on Gore Creek; however, the Eagle River sample sites experienced some
5 degradation of conditions. Discussion ensued regarding the applicability of the Gore Creek water
6 quality improvement plan to the Eagle River, as well as when mitigation efforts should be
7 undertaken on the Eagle River.

8 **ENGINEERING REPORT**

9 Mr. Cowles noted he did not include a written report in packets; all of his items would be covered in
10 Executive Session.

11 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

12 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit I** and incorporated
13 herein by this reference.

14 **Colorado River Matters** – Ms. Johnson discussed the upcoming presentation by Eric Kuhn,
15 retired general manager of the Colorado River District, and Chris Treese, external affairs
16 manager for the River District. She gave some background on Colorado River issues and
17 discussed the regulated inflow into Lake Powell (water released from system reservoirs) and
18 highlighted that the unregulated inflow (stemming from precipitation) was just two percent of the
19 30-year average in August and less than one percent in September. Ms. Johnson said Messrs.
20 Kuhn and Treese would further discuss implications of current hydrology, operations, water use,
21 drought contingency planning, and potential legislative action.

22 **GENERAL COUNSEL REPORT**

23 Ms. Winn referred to her confidential legal report included in the confidential packet.

24 **WATER COUNSEL REPORT**

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

26 **Proposed 2019 Cash in Lieu of Water Rights Fees** – Mr. Porzak discussed the Authority's
27 updated water dedication policy, which proposes increases in the Authority's cash-in-lieu of water
28 rights fees for 2019. A copy is attached hereto as **Exhibit J** and incorporated herein by this
29 reference. Such changes would be approved with the 2019 budget. Mr. Porzak recommended
30 direct flow water fees increase from \$9,000/acre foot to \$9,360. After discussion, the board
31 recommended in-basin augmentation water fees increase from \$35,000/acre foot to \$38,500, a
32 10% increase, which is reflective of the true cost of water and rising water development costs in
33 the area. Mr. Porzak agreed to update his resolution and bring it back with the 2019 budget at the
34 November 15 meeting.

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1 **Pando Feeder Canal Diligence/Absolute Application** – Mr. Porzak discussed the application to
2 make absolute a portion of the 1955 Pando Feeder Canal water right, a copy of which is attached
3 hereto as **Exhibit K** and incorporated herein by this reference. This water right was originally
4 donated to Eagle Park Reservoir Company by the Colorado River District and is diverted at the
5 East Fork Pump Station to fill Eagle Park Reservoir. Mr. Porzak noted it was a joint application on
6 behalf of all the Eagle Park Reservoir Company shareholders. The board approved Mr. Porzak to
7 sign and file the diligence application on its behalf.

8 **Amendment to the Colorado River Cooperative Agreement** – Mr. Porzak discussed an
9 amendment to the CRCA regarding the Clinton Reservoir dead storage pool. An exhibit to the
10 CRCA requires that the Clinton Reservoir dead storage pool cannot be used until a pump is
11 installed; however, Winter Park and Copper Mountain would like to use their allocation in the pool
12 without the need for a pump by taking the water from the active storage capacity, as not all of the
13 shareholders are using their entire allocation of the active storage capacity. Thus, the matter
14 could be handled through a bookkeeping entry. While this does not affect the Authority or District,
15 they are signatories to the CRCA and therefore must approve any change to the agreement. After
16 discussion and upon motion duly made and seconded, it was unanimously

17 **RESOLVED** that the amendment to the Colorado River Cooperative Agreement be and
18 hereby is approved as presented.

19 A copy of the amendment is attached hereto as **Exhibit L** and incorporated herein by this
20 reference.

21 **Eagle River Valley (ERV) Mobile Home Park Update** – The board welcomed Mr. Godec of Our
22 Community Foundation, who discussed the history of the ERV mobile home park and ongoing
23 issues with the park's available water supply. He explained the ongoing work to get the park
24 connected to the Authority's water supply. He discussed partners involved in this effort and the
25 contributions committed, including impact fees, the cost to physically connect the systems, and
26 some of Eagle County's Eagle Park Reservoir water. Discussion ensued regarding the
27 commitment of the Eagle Park water; Mr. Porzak advised against earmarking such water for any
28 particular use or place of use based on how the Authority's water rights are adjudicated for use
29 throughout the entire Authority system. Mr. Godec noted a high proportion of residents in the park
30 are Vail Resorts employees. The Board thanked Mr. Godec for his time and effort on this matter.

31 **EXECUTIVE SESSION**

32 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Colorado
33 River Compact Issues and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no
34 electronic record be made, as the discussion would be entirely privileged attorney-client communications.
35 Upon motion duly made and seconded, it was unanimously

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1 **RESOLVED** to enter Executive Session at 9:28 a.m. to discuss attorney-client privileged
2 issues concerning Colorado River Compact Issues and CRCA matters, pursuant to §24-6-
3 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
4 of the discussion would contain privileged attorney-client communications.*

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

9 **RESOLVED** to continue Executive Session at 9:59 a.m. to discuss attorney-client privileged
10 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
11 electronic record created as Ms. Winn opined the contents of the discussion would contain
12 privileged attorney-client communications.*

13 Special counselors Ms. Hernandez-Schlagel and Mr. Nathan joined the call at 10:00 a.m. They left
14 the call at 10:27 a.m.

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

19 **RESOLVED** to continue Executive Session at 10:28 a.m. to discuss attorney-client privileged
20 issues concerning the Traer Creek tank, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
21 electronic record created as Mr. Porzak opined the contents of the discussion would contain
22 privileged attorney-client communications.*

23 The regular meeting resumed at 10:59 a.m.
24

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:00 a.m.

Respectfully submitted,

Catherine de Hayes
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

[Signature]
Arrowhead Metropolitan District

Sarah Smith Hynes
Town of Avon

Parvula J. Olson
Beaver Creek Metropolitan District

George Gregory
Berry Creek Metropolitan District

[Signature]
EagleVail Metropolitan District

[Signature]
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.

[Signature]
Kathryn Winn, General Counsel

[Signature]
Glenn Porzak, Water Counsel