

Upper Eagle Regional Water Authority

Board of Directors Meeting

November 15, 2018

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held November 15, 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, *via phone*
10 Kim Bell Williams, EagleVail Metropolitan District
11 Mick Woodworth, Edwards Metropolitan District

12 **Also in attendance were:**

13	<u>District Staff</u>	25	Jason Sica
14	Linn Brooks	26	Brian Tracy
15	Kyle Collins	27	Amy Vogt
16	Jason Cowles	28	James Wilkins
17	Carol Dickman	29	Len Wright
18	Catherine Hayes, <i>via phone</i>	30	Courtney Zippel
19	Diane Johnson	31	<u>Consultants</u>
20	Amy Maxey	32	Jim Collins, Collins Cockrel & Cole
21	John McCaulley	33	Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
22	Maureen Mulcahy	34	<i>via phone</i>
23	Siri Roman	35	Andy Nathan, Nathan Dumm & Mayer PC, <i>via phone</i>
24	Jeff Schneider	36	Glenn Porzak, Porzak Browning & Bushong LLP

37 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

47 **CALL TO ORDER**

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

49 **INTRODUCTIONS**

50 Ms. Maxey, the District's new sustainability intern, was introduced.

51 **PUBLIC COMMENT**

52 Public Comment was called for, and there was none.

53 **ACTION ITEMS**

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

56 **RESOLVED** that the minutes of the September 27, 2018, joint special meeting with the Eagle
57 River Water & Sanitation District be accepted and hereby are approved as presented.

58 The minutes of the regular meeting of October 25, 2018, were considered. Upon motion duly made and
59 seconded, it was unanimously

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RESOLVED that the minutes of the October 25, 2018, regular meeting be accepted and hereby are approved as presented. Secretary Williams abstained.

The minutes of the joint special meeting of October 25, 2018, were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the October 25, 2018, joint special meeting with the District be accepted and hereby are approved as presented. Secretary Williams abstained.

PUBLIC HEARING: 2019 Proposed Budget

Chairman Gregory opened a public hearing at 8:35 a.m. to discuss the 2019 budget, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. A call for public input solicited no response. Ms. Brooks noted a slight increase in the proposed budget to offset Authority electric use with the purchase of 100% renewable energy, noting that according to recent studies, a one-degree Fahrenheit temperature increase can reduce water supply by up to 5%. The Board supported this budget increase. Ms. Brooks also explained the increase in meter replacement costs in the budget; the summer drought highlighted the need to increase the speed with which Advanced Metering Infrastructure (AMI) meters replace old meters. The public hearing was closed at 8:40 a.m. Mr. Wilkins presented Resolutions to Adopt the 2019 Budget and to Appropriate Sums of Money, copies of which are attached hereto as **Exhibits B** and **C**, respectively, and incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was unanimously

RESOLVED that the Resolutions to Adopt the 2019 Budget and Appropriate Sums of Money be and hereby are approved as presented.

The 2019 rates for service charges and tap fees are set as follows:

UERWA Water Service Rates for 2019

Base Rates per Single Family Equivalent:

\$17.81 Monthly Base Service Rate	\$0.52 increase from 2018
\$3.03 Monthly Debt Service for 2010B Bonds	\$0.02 decrease from 2018
\$2.53 Monthly Debt Service for 2013A Bonds	\$0.01 decrease from 2018
\$3.49 Capital Replacement Program Base Rate	\$0.10 increase from 2018
\$26.86 Total Base Rate per SFE	\$0.59 increase from 2018

Usage Rates per 1,000 Gallons of Metered Water Use per Single Family Equivalent:

Tier 1	First 10,000 gallons	\$3.73	3% increase from 2018
Tier 2	Next 10,000 gallons	\$5.59	
Tier 3	Next 10,000 gallons	\$8.38	
Tier 4	Next 10,000 gallons	\$12.59	
Tier 5	Over 40,000 gallons	\$18.88	

Wastewater Tap Fees:

\$3.75 per square foot for residential properties and 3% increase in the commercial fees, which are based on fixture count and meter flow. A 3% increase over 2018.

Water System Impact Fee: 3% increase from 2018 fees

Residential Fees are based on square footage (s.f.)

0 – 2,500 s.f.	\$3.96/s.f.
2,501 – 3,500 s.f.	\$4.87/s.f.
3,501 – 5,000 s.f.	\$5.94/s.f.
5,001 s.f. and over	\$7.62/s.f.

Commercial fees are based on meter flows and fixture counts.

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PUBLIC HEARING: 2019 Proposed Rates

Chairman Gregory opened a public hearing at 8:41 a.m. to discuss the 2019 rate sheet, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference. A call for public input solicited no response. Chair Gregory confirmed the Authority had posted the required formal notice of the public hearing at which the Board would consider a rate change at least 30 days in advance. A copy of the notice is attached hereto as **Exhibit E** and incorporated herein by this reference. The public hearing was closed at 8:42 a.m. Mr. Wilkins presented a resolution to adopt the 2019 rates, a copy of which is attached hereto as **Exhibit F** and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

RESOLVED that the resolution to adopt the 2019 rates be and hereby is approved as presented.

STRATEGY ITEMS

Eagle River Village Mobile Home Park Update – The Board briefly discussed the water quality situation at the ERV mobile home park and efforts to get the park connected to the Authority's water system. Staff clarified that all water right dedications are based on 100% of the observed historical use since that data is readily available via years of actual records. By contrast, a new development could be required to dedicate 120% of the estimated water use.

GENERAL MANAGER REPORT

Ms. Brooks noted her 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.

FINANCE REPORT

Mr. Wilkins presented his quarterly finance report, a copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference. He briefly discussed water sales and projected water system impact fees collected for 2018, which he expects to be slightly more than budgeted. After discussion, 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.

Sanitary Survey Update – Ms. Mulcahy reported the results of the recent sanitary survey, the review of facilities overseen by several District departments. The state inspectors who undertook the survey noted two violations related to the backflow program, which is administered by the Customer Service department. The backflow program is intended to protect the drinking water supply from contaminants in private service lines such as building fire suppression systems. Staff is working diligently to come into compliance with the Colorado Department of Public Health and

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1 Environment's Regulation 11, Backflow Prevention and Cross-connection Control Guidance. Per
2 state requirements, the public will be notified of such regulations via the 2018 Consumer
3 Confidence Reports. In addition, staff is already working with the CDPHE to develop an action
4 plan and ensure full compliance with Reg. 11 as soon as possible.

5 **Eagle Mine Update** – Ms. Roman discussed recent spills at the Eagle Mine, which were of
6 concern to the District and Authority. Other community stakeholders have sent letters of concern
7 to CDPHE expressing similar concerns regarding mine operations and maintenance. Ms. Roman
8 noted an upcoming meeting with new mine personnel and said she has already experienced
9 improved communication with the new Colorado Department of Public Health and Environment
10 (CDPHE) project manager.

11 **ENGINEERING REPORT**

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

14 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

15 Ms. Johnson presented her report, a copy of which is attached hereto as **Exhibit K** and incorporated
16 herein by this reference.

17 **Community Water Plan** – Ms. Johnson reported progress on the Community Water Plan, which
18 is being spearheaded by the Eagle River Watershed Council. ERWC executive director Holly Loff
19 is discussing the plan with each municipality in the Eagle River Basin, in addition to other local
20 governments and community groups. District staff is assisting with relevant portions of the plan,
21 including outreach efforts and information development. A community meeting for the plan is
22 slated for January 2019, and Ms. Johnson will continue to keep board members apprised of
23 progress on the plan.

24 **Drought Update** – Ms. Johnson noted the 2018 water year ended on Sept. 30 and was the
25 record warmest and second driest in the 124-year Colorado record. She also said the eastern half
26 of Eagle County (including Vail) was downgraded to D2 (severe drought) in the most recent
27 version of the drought monitor. The western portion of the county is still rated D3 (extreme), which
28 is the second highest drought rating on the D0 – D4 scale, which ranges from abnormally dry to
29 exceptional drought.

30 **Drought Contingency Planning** – Ms. Johnson and Mr. Porzak discussed statewide efforts
31 towards drought contingency planning. The Colorado Water Conservation Board is discussing the
32 topic at its upcoming board meeting, and a recent CWCB memo notes the state is in full
33 compliance with the Colorado River Compact. However, drought contingency planning is
34 necessary now to avoid future issues with compact administration. Mr. Porzak noted the most

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1 recent memo does not address prior appropriation, which is a concern, as it is the foundation of
2 Colorado water law.

3 **Northwest Colorado Council of Governments (NWCCOG) Update** – Ms. Johnson said the
4 NWCCOG group was meeting soon and would choose a new chair; local county commissioner
5 Kathy Chandler-Henry is one of the candidates for the position.

6 **Colorado Department of Transportation West Vail Pass Auxiliary Lane Project Update** –
7 Ms. Roman discussed a Dec. 13 community open house to discuss the project, which would add
8 auxiliary lanes on I-70 west of Vail Pass on the east and westbound sides. The additional lanes
9 would address safety concerns related to the geometry of the road in that area. District staff
10 continues to be involved in planning for this project to ensure water resources and water quality
11 concerns are addressed by CDOT in the project. Ms. Roman encouraged board members to
12 attend and provide written comments on such concerns; the more comments on a particular topic,
13 the more weight is given to such matters in the CDOT review process.

14 GENERAL COUNSEL REPORT

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

16 **Intergovernmental Agreement Approval** – Mr. Collins discussed approval of IGAs by the
17 general manager and clarified major agreements (for which board approval would be sought) and
18 minor agreements (those which, in the GM's discretion, could be approved by the GM and
19 reported to the board at the next reasonable opportunity). Additionally, some IGAs for GM
20 approval have a time-sensitive element that would be difficult to bring to the board. After
21 discussion and upon motion duly made and seconded, it was unanimously

22 **RESOLVED** that the resolution allowing the general manager to approve minor
23 intergovernmental agreements be and hereby is approved as presented.

24 **Traer Creek Tank Update** – Mr. Collins discussed the 2015 Traer Creek tank failure, and related
25 litigation, which has been ongoing for years. He noted Messrs. Cowles and Gregory's substantial
26 efforts on this matter. Mr. Collins reminded directors that the issue at hand is a \$12 million
27 replacement tank or a \$5 million repaired tank, which may or may not be insurable.

28 WATER COUNSEL REPORT

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

30 **Proposed 2019 Cash in Lieu of Water Rights Fees** – Mr. Porzak discussed the Authority's
31 updated water dedication policy, which proposes increases in the Authority's cash-in-lieu of water
32 rights fees for 2019, from \$9,000/acre foot to \$9,360 for direct flow water rights and from
33 \$35,000/acre foot to \$38,500 for in-basin augmentation water. This 10% increase is reflective of
34 the true cost of water and rising water development costs in the area. A copy is attached hereto

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1 as **Exhibit L** and incorporated herein by this reference. After discussion and upon motion duly
2 made and seconded, it was unanimously

3 **RESOLVED** that the 2019 water dedication policy be and hereby is approved as
4 presented.

5 Mr. Wilkins noted the updated cash-in-lieu fees were also reflected in the budget, which the board
6 approved earlier in the meeting.

7 **Absolute/Diligence Application** – Mr. Porzak discussed a diligence application for a variety of
8 water rights throughout Avon; a copy is attached hereto as **Exhibit M** and incorporated herein by
9 this reference. Mr. Porzak noted site-specific and system-wide diligence were appropriate for
10 many Authority water rights since many of the rights are used throughout the water system. After
11 discussion and upon motion duly made and seconded, it was unanimously

12 **RESOLVED** that the absolute/diligence application be and hereby is approved for filing
13 as presented.

14 EXECUTIVE SESSION

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

19 **RESOLVED** to enter Executive Session at 9:31 a.m. to discuss attorney-client privileged
20 issues concerning Colorado River Compact issues, the Bolts Lake agreement, Minturn Water
21 Service agreement, and Eagle River MOU matters, pursuant to §24-6-402(4)(b) and (e)
22 C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion
23 would contain privileged attorney-client communications.*

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

28 **RESOLVED** to continue Executive Session at 9:59 a.m. to discuss attorney-client privileged
29 issues concerning the Traer Creek tank and corrective actions to matters of potential liability,
30 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Collins
31 opined the contents of the discussion would contain privileged attorney-client
32 communications.*

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1 Special counselors Ms. Hernandez-Schlagel and Mr. Nathan joined the call at 10:00 a.m. They left
2 the call at 10:26 a.m.

3 The regular meeting resumed at 11:11 a.m.

4

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:12 a.m.

Respectfully submitted,

Catherine Hayes
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.

James P. Collins, General Counsel

Glenn Porzak, Water Counsel