

Upper Eagle Regional Water Authority

Board of Directors Meeting

December 13, 2018

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held December 13, 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 and alternate 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
9 Bill Simmons, Beaver Creek Metropolitan District, alternate
10 Kim Bell Williams, EagleVail Metropolitan District
11 Mick Woodworth, Edwards Metropolitan District

12 **The following Director was absent and excused:**

13 Pam Elsner, Beaver Creek Metropolitan District

14 **Also in attendance were:**

15 <u>District Staff</u>	24	Brian Tracy
16 Tug Birk	25	James Wilkins
17 Carol Dickman	26	Len Wright
18 Catherine Hayes	27	<u>Consultants</u>
19 Diane Johnson	28	Jim Collins, Collins Cockrel & Cole
20 John McCaulley	29	Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
21 Maureen Mulcahy	30	<i>via phone</i>
22 Siri Roman	31	Glenn Porzak, Porzak Browning & Bushong LLP
23 Jeff Schneider		

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. He noted Ms. Roman was attending the meeting in
44 place of General Manager Linn Brooks.

45 **INTRODUCTIONS**

46 Chair Gregory noted that Vice Chair Hymes was now also the town of Avon Mayor. The board
47 congratulated her.

48 **PUBLIC COMMENT**

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

50 **ACTION ITEMS**

51 **Consideration of Minutes** – The minutes of the regular meeting of November 15, 2018, were
52 considered. Upon motion duly made and seconded, it was unanimously

53 **RESOLVED** that the minutes of the November 25, 2018, regular meeting be accepted and
54 hereby are approved as presented.

Upper Eagle Regional Water Authority

1 **Vacation of Easement: Edwards Medical Center** – Mr. Birk discussed his board action request
2 and related documents, copies of which are attached hereto as **Exhibit A** and incorporated
3 herein by this reference. Discussion ensued, and Mr. Birk noted the easement was no longer
4 needed because the water mains were relocated and no longer in the original easement area.
5 After discussion and upon motion duly made and seconded, it was unanimously

6 **RESOLVED** that the vacation of easement be and hereby is approved as presented.
7 A copy of the resolution for vacation of easement is attached hereto as **Exhibit B** and
8 incorporated herein by this reference.

9 **Proposed 2019 Meeting Schedule and Posting Location** – The board considered a board
10 action request and resolution designating the meeting place and posting location for 2019 board
11 meetings, copies of which are attached hereto as **Exhibits C** and **D**, respectively, and
12 incorporated herein by this reference. Discussion ensued, and upon motion duly made and
13 seconded, it was unanimously

14 **RESOLVED** that the resolution designating the meeting place and posting location be
15 and hereby is approved as presented.

16 The meeting place and posting location were set for 846 Forest Road in Vail, and a regular
17 meeting schedule was also approved.

18 **2019 Operations Agreement with Eagle River Water & Sanitation District** – The board
19 considered a board action request regarding the 2019 Operations Agreement with ERWSD, a
20 copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference. The
21 agreement automatically renews each year on Jan. 1; however, it is a best practice for the board
22 to formally adopt the agreement each year. Exhibits to the agreement are updated annually to
23 reflect current costs for that year. After discussion and upon motion duly made and seconded, it
24 was unanimously

25 **RESOLVED** that the 2019 Operations Agreement between the Authority and District be
26 and hereby is approved as presented.

27 A copy of the agreement is attached hereto as **Exhibit F** and incorporated herein by this reference.

STRATEGY ITEMS

28 **Consolidation Options** – Chair Gregory discussed a work session of the Eagle River Water &
29 Sanitation District during which the board considered the possibility of consolidation with the
30 Authority. Discussion ensued regarding possible methods of consolidation, including the
31 expansion of the Water Authority, general actions needed for any consolidation, and the need for
32 a subcommittee of both boards to explore potential issues. Mr. Collins noted the various
33 approvals and requirements for such a consolidation, which would vary depending upon the
34 method used. A joint subcommittee of both boards will be formed to further discuss this and
35 determine potential issues.
36

Upper Eagle Regional Water Authority

GENERAL MANAGER REPORT

The General Manager's report was presented, 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.

OPERATIONS REPORT

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

Eagle Park Reservoir Company Update – Mr. Tracy noted that Pete Miller, the District's raw water operator, recently retired after almost 20 years of service. Pete will be missed, and current employee Travis Young will fill many of the roles Pete served, ensuring a smooth transition, especially for Eagle Park Reservoir matters. The Board asked Mr. Tracy to pass along its thanks and congratulations to Pete. Mr. Schneider discussed recent improvements at the East Fork Pump Station, which is used to pump spring runoff into Eagle Park Reservoir. An arc flash at the facility earlier in the year highlighted the need for safety and redundancy improvements, which were recently completed by staff and consultants. The Board thanked Mr. Schneider for the update.

ENGINEERING REPORT

There was no engineering report in Mr. Cowles' absence.

COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

Eagle River Community Water Plan – Ms. Johnson noted upcoming open houses scheduled for public outreach on the plan; these are tentatively scheduled for Jan. 16 and 17. District staff continues to assist with relevant portions of the plan, including community engagement and technical matters.

Colorado River Drought Contingency Planning – Ms. Johnson reported that the Upper Colorado River Commission voted to accept the proposed drought contingency planning documents, to which the upper basin states agreed. Discussion ensued, with staff, board, and consultants agreeing that DCP will not solve long term Colorado River supply issues, but is an intermediary step until the upcoming renegotiation of the 2007 interim guidelines for lower basin shortages and coordinated operations for Lake Powell and Lake Mead.

Waters of the United States (WOTUS) Rule – Ms. Johnson said the Trump administration proposed a new definition of WOTUS that would rescind the Obama administration's 2015 definition. Whereas the 2015 rule was viewed as an overreach by some, the current proposal is viewed as rolling back many protections covered by the Clean Water Act.

Upper Eagle Regional Water Authority

1 **Legislative Meeting** – Ms. Johnson is coordinating a Dec. 21 briefing for state House
2 Representative Dylan Roberts, who was elected in November after being appointed to the
3 position in Nov. 2017 to fill the vacancy left by Diane Mitsch-Bush. Roberts represents Eagle and
4 Routt counties and was recently appointed chair of the Rural Affairs Committee, which handles
5 most water-related legislation in the state house.

6 **Colorado Department of Transportation I-70 West Vail Pass Auxiliary Lane Project** – Ms.
7 Roman and Ms. Johnson reminded directors of the open house that evening at Donovan Pavilion
8 at 4:30 p.m. to gather community input on the proposed project. The project would add auxiliary
9 lanes west of Vail Pass summit in both the east and westbound directions. There are water
10 quality and environmental concerns with the project, and community input is important to ensure
11 protection of the water in Black Gore and Gore creeks and downstream. Ms. Roman explained
12 how public comments are categorized and addressed and encouraged board members and staff
13 to participate in the public process.

GENERAL COUNSEL REPORT

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

15 **Traer Creek Easements** – Mr. Collins noted after many years of work, needed easements were
16 finally executed with Traer Creek representatives.

WATER COUNSEL REPORT

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

18 **Homestake Reservoir Exchange Absolute/Diligence Application** – Mr. Porzak discussed the
19 Homestake Exchange, which is how the Authority and District repay Colorado Springs and Aurora
20 for Homestake water. When conditions permit, water from Green Mountain or Wolford Mountain
21 Reservoirs is released to satisfy the downstream Shoshone call, allowing Homestake Reservoir
22 to fill beyond its normal fill period. A copy is attached hereto as **Exhibit K** and incorporated herein
23 by this reference. After discussion and upon motion duly made and seconded, it was unanimously
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25 **RESOLVED** that Mr. Porzak be and hereby is authorized to file the absolute/diligence
26 application on behalf of the Authority.

27 **Pando Feeder Canal Absolute/Diligence Application** – Mr. Porzak discussed this water right,
28 which was donated by the Colorado River District in connection with the acquisition of Eagle Park
29 Reservoir. This water right allows direct storage in Eagle Park Reservoir and it is senior to the
30 instream flow. Mr. Porzak noted the diligence application for this water right was filed on the
31 Authority's behalf. The opposition period for this filing ends at the end of the month.

32 **Wolford Mountain Exchange Absolute/Diligence Application** – Mr. Porzak discussed an
33 absolute/diligence application for this water right. A copy is attached hereto as **Exhibit L** and
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Upper Eagle Regional Water Authority

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

3 **RESOLVED** that Mr. Porzak be and hereby is authorized to file the absolute/diligence
4 application on behalf of the Authority.

5 **EXECUTIVE SESSION**

6 Mr. Porzak requested the Board enter Executive Session to receive legal advice regarding Colorado
7 River Compact Issues, the Bolts Lake/Minturn water service agreement, and CRCA matters, pursuant to
8 §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be
9 entirely privileged attorney-client communications. Upon motion duly made and seconded, it was
10 unanimously

11 **RESOLVED** to enter Executive Session at 9:24 a.m. to discuss attorney-client privileged
12 issues concerning Colorado River Compact issues, the Bolts Lake/Minturn water service
13 agreement, and CRCA matters, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic
14 record created as Mr. Porzak opined the contents of the discussion would contain privileged
15 attorney-client communications.*

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

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

24 Ms. Hernandez-Schlagel joined the meeting via phone at 10:05 a.m. and left the meeting at 10:15
25 a.m. At 10:34 a.m., all staff left the meeting. The Authority board invited the District board to join its Executive
26 Session at 11:25 a.m., along with Ms. Roman, and Messrs. Collins and Porzak.

27 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the
28 Minturn/Bolts Lake Water Service Agreement, pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that
29 no electronic record be made, as the discussion would be entirely privileged attorney-client
30 communications. Upon motion duly made and seconded, it was unanimously

31 **RESOLVED** to continue Executive Session at 11:30 a.m. to discuss attorney-client privileged
32 issues concerning the Minturn/Bolts Lake Water Service Agreement, pursuant to §24-6-
33 402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak opined the contents
34 of the discussion would contain privileged attorney-client communications.*

35 The regular meeting resumed at 12:29 p.m.

Upper Eagle Regional Water Authority

1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 12:30 p.m.

3 Respectfully submitted,

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5 _____
6 Secretary to the Meeting

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

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11 _____
12 **Arrowhead Metropolitan District**

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15 **Town of Avon**

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17 _____
18 **Beaver Creek Metropolitan District**

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21 **Berry Creek Metropolitan District**

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24 **EagleVail Metropolitan District**

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27 **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 **James P. Collins, General Counsel**

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44 **Glenn Porzak, Water Counsel**