

Upper Eagle Regional Water Authority

Board of Directors Meeting

January 24, 2019

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held January 24, 2019, 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 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 Pam Elsner, Beaver Creek Metropolitan District
10 Kim Bell Williams, EagleVail Metropolitan District
11 Mick Woodworth, Edwards Metropolitan District

12 **Also in attendance were:**

13 <u>District Staff</u>	25 Len Wright
14 Linn Brooks	26 <u>Consultants</u>
15 Kyle Collins	27 Jim Collins, Collins Cockrel & Cole
16 Jason Cowles	28 Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
17 Carol Dickman	29 <i>via phone</i>
18 Catherine Hayes	30 Andy Nathan, Nathan Dumm & Mayer PC, <i>via phone</i>
19 Diane Johnson	31 Glenn Porzak, Porzak Browning & Bushong LLP
20 John McCaulley	32 Larissa Read, Common Ground Consulting
21 Maureen Mulcahy	33 <u>Public</u>
22 Siri Roman	34 Melissa Nelson, Berry Creek Metropolitan District
23 Brian Tracy	35 Dan Godec, Berry Creek Metro/Our Community Foundation
24 Amy Vogt	

36 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

46 **CALL TO ORDER**

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

48 **INTRODUCTIONS**

49 Ms. Read was introduced; she is the owner of Common Ground Consulting and would be presenting later
50 in the meeting.

51 **PUBLIC COMMENT**

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

53 **ACTION ITEMS**

54 **Consideration of Minutes** – The minutes of the regular meeting of December 13, 2018, were
55 considered. Upon motion duly made and seconded, it was unanimously

56 **RESOLVED** that the minutes of the December 13, 2018, regular meeting be accepted and
57 hereby are approved as presented.

58 **STRATEGY ITEMS**

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1 **National Environmental Policy Act (NEPA) 101** – Ms. Read discussed the National
2 Environmental Policy Act (NEPA) and its history. Seventy-five percent of Eagle County land is
3 under federal jurisdiction, so the NEPA process is very relevant in our area. Ms. Read
4 summarized the three main tenets of the act for any entity undergoing a project with potential
5 environmental impacts: such entity must evaluate alternatives, study potential impacts, and
6 gather public comments. Ms. Read noted pertinent NEPA regulations and the circumstances
7 under which certain ones would be applicable, including comparisons to local projects with which
8 the board is familiar. Under NEPA, projects with minimal or no projected impacts could receive a
9 categorical exclusion to be exempt from requirements to prepare an environmental impact
10 statement. As possible impacts increase, so does the level of NEPA oversight imposed by the
11 appropriate federal agency, including the requirement for an environmental assessment (EA)
12 and potentially an environmental impact statement (EIS), which is reserved for the most
13 impactful projects. In response to a question, Ms. Read said an EA can take from one to four
14 years, and an EIS could require three to five years, depending on project details. A memo on the
15 topic is attached hereto as **Exhibit A** and incorporated herein by this reference.

16 **West Vail Pass Auxiliary Lane Project** – Ms. Read specifically discussed the West Vail Pass
17 Auxiliary Lane project and how the project has proceeded so far under the NEPA process. A
18 related memo is attached hereto as **Exhibit B** and incorporated herein by this reference. The
19 project is currently (and legally) undergoing an environmental assessment, despite widespread
20 concern among stakeholders that a more stringent environmental impact statement should be
21 undertaken. Specifically, local stakeholders believe that water resources and stormwater runoff
22 are not being adequately considered.

23 Ms. Read left the meeting at 9:10 a.m.

24 **Unification** – The board appointed Secretary Williams and Vice-Chair Smith Hymes as the
25 subcommittee to discuss unification with a to-be-determined District subcommittee. Chair
26 Gregory acknowledged that all Authority directors were interested and had a stake in the
27 outcome of the discussions; however, the subcommittee will regularly report updates back to the
28 board. Ms. Brooks noted that managers, consultants, and other affected staff were gathering
29 information regarding possible advantages and disadvantages from their unique points of view.

30 **GENERAL MANAGER REPORT**

31 The General Manager's report was presented, a copy of which is attached hereto as **Exhibit C** and
32 incorporated herein by this reference. Monthly reports were acknowledged, copies of which are attached
33 hereto as **Exhibit D** and incorporated herein by this reference.

34 **Appeals Process** – Ms. Brooks refreshed the board on the appeals process, by which a
35 customer or developer can appeal a decision of the Construction Review Team. Such procedure

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1 is outlined in the board's Rules and Regulations. The first level of appeals is to the Rules and
2 Regulations Administrator, and next to the General Manager. If a satisfactory conclusion is still
3 not reached, the appeal can escalate to the Board. For informational purposes only, Ms. Brooks
4 reported the 6 West Developer had appealed the District's calculation of the development's tap
5 fees, which included storage space. After a site visit, Ms. Brooks determined that a portion of
6 some of the development's storage space did not impact water use and would be removed from
7 the square footage in the tap fee calculation; two other types of storage areas would still be
8 included in the tap fee calculation. The developer may still wish to appeal to the Board, and so no
9 discussion of the topic was undertaken.

10 OPERATIONS REPORT

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

13 **Tour of Avon Drinking Water Facility (ADWF)** – Mr. Tracy noted a request from a District board
14 member to tour the ADWF. Mr. Tracy extended the invitation to any interested directors; he will
15 send out a poll to determine the best date and time for the tour, which will highlight recent capital
16 improvements at the facility. A presentation on the improvements is also planned for the February
17 board meeting.

18 ENGINEERING REPORT

19 Mr. Cowles presented his report, a copy of which is attached hereto as **Exhibit F** and incorporated herein
20 by this reference. There were no questions on his report, and he noted discussion topics for Executive
21 Session only.

22 COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

25 **Legislative Updates** – Ms. Johnson noted the 2019 legislative session began Jan. 4. She is
26 tracking HB19-1050, which would extend to special districts the same policy that came from 2013
27 legislation, which said any homeowner association (HOA) rules that require homeowners to have
28 turf grass are unenforceable. Ms. Johnson outlined methods by which staff and consultants track
29 legislation relevant to the Authority and District throughout the legislative session.

30 **Meeting with Rep. Dylan Roberts** – Ms. Johnson said a recent meeting with Rep. Dylan
31 Roberts and District staff and board members was productive and effective in sharing information
32 about Authority and District concerns.

33 **Gov. Polis Cabinet Appointment** – Ms. Johnson noted Eagle County Commissioner Jill Ryan
34 was named executive director of the Colorado Department of Public Health and Environment
35 (CDPHE) and begins that role Jan. 28; her official resignation from Eagle County is Jan. 27. The

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1 Authority and District have a positive relationship with Ms. Ryan, and staff will continue to look for
2 opportunities to work with her on relevant items.

3 **Eagle River Community Water Plan** – Ms. Johnson reported that she and Amy Vogt continue
4 their involvement in the community engagement committee for the Community Water Plan.
5 Upcoming open houses are scheduled for Feb. 21 (Avon Town Council Chambers) and Feb. 27
6 (Eagle County Building) from 5 to 7 p.m. each evening, with one hour of presentations scheduled
7 for each. A Spanish language meeting is planned for 6 to 7:30 p.m. March 7 at CMC in Edwards.
8 Ms. Johnson will share more details as they are available.

9 **Colorado River Drought Contingency Planning** – Ms. Johnson discussed drought contingency
10 planning, particularly in the lower basin states. She reported that the Central Arizona Project had
11 approved plans earlier in the day and that the Arizona legislature must approve the plan by Jan.
12 31 to meet the Bureau of Reclamation deadline.

13 GENERAL COUNSEL REPORT

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

15 **Liens on Delinquent Accounts** – Mr. Collins shared that he will streamline the legal process by
16 which liens are used to collect unpaid water bills. The District, which files the liens on the
17 Authority's behalf, is statutorily entitled to such a lien regardless of whether it is actually recorded
18 with the county. The board agreed with Mr. Collins that no liens will be filed going forward, except
19 under extraordinary circumstances.

20 WATER COUNSEL REPORT

21 Mr. Porzak referred to his legal reports in the board packet.

22 **Wolford Mountain Exchange Absolute/Diligence Application** – Mr. Porzak discussed the
23 absolute/diligence application for this water right, which was recently filed at the board's direction.
24 A copy is attached hereto as **Exhibit H** and incorporated herein by this reference. Mr. Porzak
25 noted the Grand Valley Water Users requested some of the supporting documentation in the
26 application, which is being provided to them. The opposition period for this application is currently
27 open.

28 **Homestake Reservoir Exchange Absolute/Diligence Application** – Mr. Porzak discussed the
29 Homestake Exchange absolute/diligence application, which was recently filed at the board's
30 direction. A copy is attached hereto as **Exhibit I** and incorporated herein by this reference. The
31 opposition period for this application is currently open.

32 **Colorado River Compact Matters** – Mr. Porzak discussed the letter he sent to the Colorado
33 Water Conservation Board (CWCB) on the boards' behalf, which states the concerns of the
34 Authority and District regarding the CWCB's proposed actions if a compact call occurs. A copy of
35 the letter is attached hereto as **Exhibit J** and incorporated herein by this reference. Such plans

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1 make no mention of the priority system that is the foundation of Colorado Water Law. Mr. Porzak
2 indicated that litigation may result from affected West Slope parties if the Prior Appropriation
3 doctrine is not the basis of water administration in the event of a compact call.

4 At 9:51 a.m. all staff left the room, with the exception of Mses. Brooks, Hayes, and Johnson, and Mr.
5 Cowles.

6 **EXECUTIVE SESSION**

7 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding the Traer
8 Creek tank, Eagle River Valley Mobile Home Park, and the Cordillera water system, pursuant to §24-6-
9 402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the discussion would be entirely
10 privileged attorney-client communications. Upon motion duly made and seconded, it was unanimously

11 **RESOLVED** to enter Executive Session at 9:52 a.m. to discuss attorney-client privileged
12 issues concerning the Traer Creek tank, Eagle River Valley Mobile Home Park, and the
13 Cordillera water system, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record
14 created as Mr. Collins opined the contents of the discussion would contain privileged
15 attorney-client communications.*

16 Ms. Hernandez-Schlagel and Mr. Nathan joined the meeting via phone at 10:00 a.m. and left the
17 meeting at 10:45 a.m.

18 Mr. Porzak requested the Board continue Executive Session to receive legal advice regarding the Bolts
19 Lake/Minturn water service agreement, CRCA matters, and water rights hydrology model sharing,
20 pursuant to §24-6-402(4)(b) and (e) C.R.S. He asked that no electronic record be made, as the
21 discussion would be entirely privileged attorney-client communications. Upon motion duly made and
22 seconded, it was unanimously

23 **RESOLVED** to continue Executive Session at 10:53 a.m. to discuss attorney-client privileged
24 issues concerning the Bolts Lake/Minturn water service agreement, CRCA matters, and
25 water rights hydrology model sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
26 electronic record created as Mr. Porzak opined the contents of the discussion would contain
27 privileged attorney-client communications.*

28 The regular meeting resumed at 11:31 a.m.

29
30 **Traer Creek Mediation** – After discussion and upon motion duly made and seconded, it was
31 unanimously

32 **RESOLVED** that Messrs. Dreyer and Woodworth are appointed to attend a Feb. 2 mediation
33 session with parties to the Traer Creek litigation; and

34 **FURTHER RESOLVED** that such directors have the authority to agree to a settlement on the
35 Authority's behalf in accordance with the parameters discussed in Executive Session.
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:33 a.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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12 **Arrowhead Metropolitan District**

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15 **Town of Avon**

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

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44 **Glenn Porzak, Water Counsel**