Upper Eagle Regional Water Authority
Board of Directors Meeting
January 24, 2019
MINUTES

A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held January 24, 2019, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

The following Directors and alternate were present, thereby constituting a quorum:

Geoff Dreyer, Arrowhead Metropolitan District
George Gregory, Berry Creek Metropolitan District
Sarah Smith Hymes, Town of Avon
Pam Elsner, Beaver Creek Metropolitan District
Kim Bell Williams, EagleVail Metropolitan District
Mick Woodworth, Edwards Metropolitan District

Also in attendance were:

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

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

CALL TO ORDER

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

INTRODUCTIONS

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

PUBLIC COMMENT

Public Comment was called for, and there was none.

ACTION ITEMS

Consideration of Minutes – The minutes of the regular meeting of December 13, 2018, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the December 13, 2018, regular meeting be accepted and hereby are approved as presented.

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

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

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

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

GENERAL MANAGER REPORT

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

Appeals Process – Ms. Brooks refreshed the board on the appeals process, by which a customer or developer can appeal a decision of the Construction Review Team. Such procedure
Upper Eagle Regional Water Authority

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

OPERATIONS REPORT

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

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

ENGINEERING REPORT

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

COMMUNICATION AND PUBLIC AFFAIRS REPORT

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

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

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

Gov. Polis Cabinet Appointment – Ms. Johnson noted Eagle County Commissioner Jill Ryan was named executive director of the Colorado Department of Public Health and Environment (CDPHE) and begins that role Jan. 28; her official resignation from Eagle County is Jan. 27. The
Authority and District have a positive relationship with Ms. Ryan, and staff will continue to look for opportunities to work with her on relevant items.

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

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

**GENERAL COUNSEL REPORT**

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

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

**WATER COUNSEL REPORT**

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

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

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

**Colorado River Compact Matters** – Mr. Porzak discussed the letter he sent to the Colorado Water Conservation Board (CWCB) on the boards’ behalf, which states the concerns of the Authority and District regarding the CWCB’s proposed actions if a compact call occurs. A copy of the letter is attached hereto as Exhibit J and incorporated herein by this reference. Such plans
make no mention of the priority system that is the foundation of Colorado Water Law. Mr. Porzak indicated that litigation may result from affected West Slope parties if the Prior Appropriation doctrine is not the basis of water administration in the event of a compact call.

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

EXECUTIVE SESSION

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

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

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

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

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

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

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

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

FURTHER RESOLVED that such directors have the authority to agree to a settlement on the Authority’s behalf in accordance with the parameters discussed in Executive Session.
Upper Eagle Regional Water Authority

ADJOURNMENT
There being no further business to come before the Board, the meeting adjourned at 11:33 a.m.

Respectfully submitted,

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Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND
NOTICE OF MEETING WAIVED

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Arrowhead Metropolitan District

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Town of Avon

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Beaver Creek Metropolitan District

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Berry Creek Metropolitan District

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EagleVail Metropolitan District

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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.

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James P. Collins, General Counsel

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Glenn Porzak, Water Counsel