

Upper Eagle Regional Water Authority

Board of Directors Meeting

February 28, 2019

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was
2 held February 28, 2019, 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 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 James Wilkins
14 Linn Brooks	26 Len Wright
15 Jason Cowles	27 <u>Consultants</u>
16 Carol Dickman	28 Jim Collins, Collins Cockrel & Cole
17 Catherine Hayes	29 Ashley Hernandez-Schlagel, Nathan Dumm & Mayer PC,
18 Diane Johnson	30 <i>via phone</i>
19 Melissa Marts	31 Andy Nathan, Nathan Dumm & Mayer PC, <i>via phone</i>
20 John McCaulley	32 Glenn Porzak, Porzak Browning & Bushong LLP
21 Maureen Mulcahy	33 <u>Public</u>
22 Siri Roman	34 Melissa Nelson, Berry Creek Metropolitan District
23 Brian Tracy	
24 Amy Vogt	

35 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

45 **CALL TO ORDER**

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

47 **PUBLIC COMMENT**

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

49 **ACTION ITEMS**

50 **Consideration of Minutes** – The minutes of the regular meeting of January 24, 2019, were considered.

51 Upon motion duly made and seconded, it was unanimously

52 **RESOLVED** that the minutes of the January 24, 2019, regular meeting be accepted and hereby
53 are approved as presented.

54 **Rules and Regulations Update: Appendix G** – Ms. Mulcahy presented her board action request and
55 related documents, copies of which are attached hereto as **Exhibit A** and incorporated herein by this
56 reference. She summarized the need for the updates, to ensure compliance with the state-issued
57 Backflow Prevention and Cross Connection Control (BPPCC) requirements. In response to a question,

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1 Ms. Mulcahy explained that the Authority received a Tier 3 violation for noncompliance with certain
2 BPCCC requirements, which requires customer notification. A full program assessment for the Authority
3 *and* District is underway, after which one notification will be issued to customers. Upon motion duly made
4 and seconded, it was unanimously

5 **RESOLVED** that the updates to Appendix G of the Rules and Regulations be and hereby are
6 approved as presented.

7 **STRATEGY ITEMS**

8 **Board Member Input** – In response to a question, staff confirmed that the erwsd.org-issued
9 director email addresses had been deleted, except for those directors who wished to keep their
10 organizational email address.

11 **GENERAL MANAGER REPORT**

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

15 **Compost Program at the Vail Office** – Ms. Brooks informed directors that the Vail office now
16 has a commercial compost pickup service through EverGreen Zero Waste, based out of Aspen.
17 Employees are encouraged to compost at work and bring compost from home as well; interested
18 directors are welcome to bring compost and can get further details from staff.

19 **West Slope Fund** – In response to a question, Ms. Brooks explained this charge and resulting
20 fund, which was a requirement of the Colorado River Cooperative Agreement. Customers of
21 Denver Water outside of its 2010 service area are subject to an additional fee, and the West
22 Slope signatories of the CRCA are the beneficiaries of the fund. The fund is a compensatory
23 payment to offset water that is transmountain diverted to the front range and is to be used for
24 West Slope water projects. The fund cannot be used for litigation.

25 **FINANCE REPORT**

26 The quarterly finance report was presented, a copy of which is attached hereto as **Exhibit D** and
27 incorporated herein by this reference.

28 **Finance Update** – Mr. Wilkins reported that Authority water sales were above budget projections,
29 with May and July sales much higher than anticipated, likely due to the extremely dry summer in
30 the service area. Authority impact fee revenues were in line with projections, and many
31 developers paid at the end of December, prior to annual increases. Mr. Wilkins also noted fewer
32 rollovers than in years past, as staff continues to work on improving project spending projections
33 and timelines.

34 **OPERATIONS REPORT**

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

3 **Avon Drinking Water Facility (ADWF) Capital Improvements** – Mr. Tracy presented an
4 overview of recent capital improvements at the Avon Drinking Water Facility. State requirements
5 have required many of the upgrades, including a project to reduce disinfection byproducts to meet
6 new Colorado Department of Public Health and Environment (CDPHE) regulations. Other
7 highlights at the facility included being the first water provider to receive credits for ozone
8 disinfection, as well as having 24/7 automated operations. Mr. Tracy reminded directors of the
9 facility tour scheduled for the following day; if anyone is unable to attend, another tour could be
10 held. The board thanked Mr. Tracy for the information.

11 **Partnering Event for AWWTF Nutrient Upgrade Project** – Mr. Schneider and Ms. Marts gave
12 an overview of upcoming Avon Wastewater Treatment Facility capital improvements to meet the
13 state’s nutrient regulations. A related memo is attached hereto as **Exhibit F** and incorporated
14 herein by this reference. A construction manager at risk method is being used, and Ms. Marts
15 noted a partnering session with the staff, and engineering and contractor representatives to kick
16 the project off in a collaborative spirit and to minimize construction cost risk. Construction is
17 expected to start this fall and be completed in 2022; the project costs are currently estimated at
18 \$34 million but some cost escalation is expected based on current estimates. Ms. Marts noted
19 this project is unique in that it requires construction through existing operations.

20 **ENGINEERING REPORT**

21 Mr. Cowles presented his report, a copy of which is attached hereto as **Exhibit G** and incorporated herein
22 by this reference.

23 **6 West Project** – Mr. Cowles reported a subcontractor at the 6 West project did not properly
24 install the water and sewer mains for the development. The District’s field inspector identified
25 numerous issues, which the subcontractor has since remedied. In response to a question, Mr.
26 Cowles said the subcontractor had lost many of its tenured employees after being purchased by a
27 larger company. To protect the Authority and District if the fixes are not sufficient, an extended
28 three-year warranty for the work will be procured by the developer; warranty bonds will also be
29 assigned to the Authority and District by the contractor to back the extended warranty. Further,
30 the District will record a perpetual lien against the property, which will be memorialized via an
31 agreement with the subcontractor’s company. The board expressed satisfaction with the remedy.

32 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

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1 **Legislative Updates** – Ms. Johnson noted the 2019 legislative session began Jan. 4. She
2 updated the board on HB19-1050, which would extend to special districts the same policy that
3 came from 2013 legislation, which said any homeowner association (HOA) rules that require
4 homeowners to have turf grass are unenforceable. This bill is prepared for the governor’s
5 signature after passing in both the House and Senate. Ms. Johnson also discussed HB19-1108,
6 which would allow nonresident homeowners in Colorado to vote within special district elections
7 and serve on special district boards in a nonvoting capacity. This is an iteration of a bill from 2018
8 that was vetoed by former Gov. Hickenlooper. The bill is on the calendar for the Senate
9 committee for State, Veterans, & Military Affairs, with a hearing scheduled for the following week.
10 The District opposes this legislation; Ms. Johnson is working with others to get a “no” vote at the
11 committee hearing.

12 **Glenn Porzak’s Vail Trailblazer Award** – Ms. Johnson said Mr. Porzak was recently named the
13 2019 Vail Trailblazer by the town of Vail. The award has been given for the past four years to
14 recipients that have made lasting impacts on the Vail community. Upcoming events are
15 scheduled by the town to celebrate this award, including a presentation at the town of Vail
16 Community Meeting on Tuesday, March 12. The board congratulated Mr. Porzak on this well-
17 deserved award.

18 **Drought Contingency Planning** – Ms. Johnson updated the board on drought contingency
19 planning, particularly issues that the lower basin states are having. March 4 is the latest deadline
20 for the lower basin states to come to agreement regarding their drought contingency plan,
21 although the Bureau of Reclamation will allow time for states to agree while it takes input from
22 each of the seven basin states per the notice in the federal register.

GENERAL COUNSEL REPORT

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

25 **Mediation with Parties to Traer Creek Litigation** – Mr. Collins said most of his discussion
26 would occur in Executive Session. He reported on the March 1 mediation with parties to the Traer
27 Creek litigation and said the attendance of Directors Dreyer and Woodworth at the mediation was
28 very helpful in moving discussions along. He also noted the key role played by Judge Moorhead
29 in the mediation.

30 **Unification Update** – Mr. Collins discussed a recent meeting of the unification joint
31 subcommittee of the boards. The involved directors requested a determination of how both
32 boards could unify into an authority. The next meeting of the subcommittee will be March 27.

WATER COUNSEL REPORT

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

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1 **Colorado Outdoor Recreation and Economy (CORE) Act** – Mr. Porzak discussed this
2 legislation, which will be introduced in Congress and, among other issues, deals with wildfire
3 coordination efforts in wilderness areas. Of particular interest to the Authority and District are the
4 inclusion of Camp Hale as a National Treasured Landscape, as water released from Eagle Park
5 Reservoir must traverse these areas. Mr. Porzak also pointed out that the current legislation does
6 not require a cleanup of unexploded ordnances in the area, a change from previous iterations of
7 the bill. He will continue to monitor the legislation, which he expects will see many changes
8 before it would ever be signed into law. Related information is attached hereto as **Exhibit I** and
9 incorporated herein by this reference.

10 **Pando Feeder Canal Absolute/Diligence Application** – Mr. Porzak reported there were no
11 opposers to the Pando Feeder Canal filing to make absolute a portion of these important water
12 rights. He filed the motion for entry of final decree and is awaiting the referee's signature. A copy
13 of the motion is attached hereto as **Exhibit J** and incorporated herein by this reference. At 9:51
14 a.m. Ms. Marts left the meeting.

15 **EXECUTIVE SESSION**

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

20 **RESOLVED** to enter Executive Session at 9:52 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 and Mr. Nathan joined the meeting via phone at 10:00 a.m. and left the
25 meeting at 10:13 a.m.

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

31 **RESOLVED** to continue Executive Session at 10:14 a.m. to discuss attorney-client privileged
32 issues concerning the Bolts Lake/Minturn water service agreement, CRCA matters, and
33 water rights hydrology model sharing, pursuant to §24-6-402(4)(b) and (e) C.R.S. with no
34 electronic record created as Mr. Porzak opined the contents of the discussion would contain
35 privileged attorney-client communications.*

36 The regular meeting resumed at 10:50 a.m.

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2 **Approval of Settlement Terms with Parties to Traer Creek Litigation** – After discussion and upon
3 motion duly made and seconded, with Vice Chair Hymes abstaining, it was unanimously

4 **RESOLVED** that the board be and hereby does accept the terms of the proposed settlement
5 agreement with the parties to the Traer Creek litigation; and

6 **FURTHER RESOLVED** that the Authority's attorneys in the case be and hereby are authorized to
7 sign such settlement documents on the Authority's behalf.

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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.

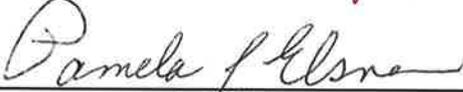
3 Respectfully submitted,

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6 Secretary to the Meeting

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

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13 Arrowhead Metropolitan District

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17 Town of Avon

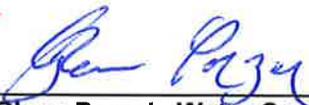
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36 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion
37 in Executive Session not recorded constituted privileged attorney-client communications.

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42 James P. Collins, General Counsel

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Glenn Porzak, Water Counsel