

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

March 28, 2019

### MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was  
2 held March 28, 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, *via phone*  
11 Mick Woodworth, Edwards Metropolitan District

12 **Also in attendance were:**

13 <u>District Staff</u>	22 <u>Consultants</u>
14 Linn Brooks	23 Jim Collins, Collins Cockrel & Cole
15 Jason Cowles	24 Kristin Moseley, Porzak Browning & Bushong LLP
16 Catherine Hayes	25 Glenn Porzak, Porzak Browning & Bushong LLP
17 Diane Johnson	26 <u>Public</u>
18 Siri Roman	27 Dan Godec, Berry Creek Metropolitan District
19 Jeff Schneider	28 Melissa Nelson, Berry Creek Metropolitan District
20 Brian Tracy	
21 Len Wright	

29 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

39 **CALL TO ORDER**

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

41 **PUBLIC COMMENT**

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

43 **ACTION ITEMS**

44 **Consideration of Minutes** – The minutes of the regular meeting of February 28, 2019, were  
45 considered. Upon motion duly made and seconded, it was unanimously

46 **RESOLVED** that the minutes of the February 28, 2019, regular meeting be accepted and hereby  
47 are approved as presented.

48 **Rules and Regulations Update** – Mr. Cowles discussed a board action request and related documents,  
49 copies of which are attached hereto as **Exhibit A** and incorporated herein by this reference. He noted the  
50 strategic, annual method by which staff is updating the Rules & Regulations. Mr. Cowles and Ms. Brooks  
51 specifically discussed the prohibition of “Y” connections in the water and wastewater system joint service  
52 lines. This will protect current and future customers and the District from the liability associated with such  
53 connections, which have caused backups and property damage in the past. Use of Y connections is less

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1           costly for developers, but future property owners, and the Authority and District, bear the burden of  
2           associated risk of service line failure. The board discussed the letter from Mike Dantas and considered  
3           the concerns therein stated. After additional discussion and upon motion duly made and seconded, it was  
4           unanimously

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

### 7    **STRATEGY ITEMS**

8                     **Board Member Input** – In response to a question, Mr. Schneider discussed planned, phased  
9                     upgrades to the Arrowhead tank. Residents should not expect interruptions to water service  
10                    during the interior tank recoating or exterior painting. Mr. Schneider said he and project staff  
11                    would continue to communicate with residents via Arrowhead Metropolitan District contacts.

### 12   **GENERAL MANAGER REPORT**

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

### 16   **OPERATIONS REPORT**

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

19                     **Village Hall Project at Beaver Creek** – In response to a question, Mr. Schneider discussed  
20                     options for the replacement of a water main in Village Hall at Beaver Creek. He said construction  
21                     was planned to minimize impacts to the resort and guests, and a trenchless option for the new  
22                     main was being considered. Beaver Creek Metro District was in close contact with staff regarding  
23                     the project. Staff is aware of the need for project completion prior to the 2019/2020 ski season.

24                     **Eagle Mine Superfund Site Consent Decree** – Ms. Roman discussed the consent decree  
25                     between the Environmental Protection Agency (EPA) and CBS, the owner of the Eagle Mine.  
26                     Authority and District concerns were communicated in writing to ensure the consent decree  
27                     includes timeliness of notifications and cleanup, regular inspections, and ongoing monitoring to  
28                     protect our rivers and source water quality. The Eagle Board of County Commissioners also sent  
29                     a letter to EPA that reinforced the Authority and District's concerns and requests. Copies of this  
30                     information are attached hereto as **Exhibit E** and incorporated herein by this reference. Ms.  
31                     Roman expects the negotiations between EPA and CBS to occur soon.

32                     **West Vail Pass Auxiliary Lane Project** – Ms. Roman continues to participate in the stakeholder  
33                     meetings on the Authority and District's behalf. At the last meeting, she suggested if the  
34                     stakeholders and the Colorado Department of Transportation (CDOT) could agree on required  
35                     metrics for the project, the Authority and District would not require such diligent oversight of water  
36                     quality and technical project aspects. Agreed-upon metrics have been used for similar projects in

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1 the past; staff is awaiting more information from CDOT on whether these metrics are an  
2 acceptable alternative. Ms. Roman also emphasized the importance of making Authority and  
3 District requirements clear and written in the Environmental Assessment (EA) document, in case  
4 project personnel changes occur by the time the project receives funding.

5 **Eagle Park Reservoir Company Update** – Mr. Tracy updated the board on Eagle Park  
6 Reservoir conditions and operations. He noted the reservoir was expected to gravity fill due to the  
7 high snowpack, but the East Fork Pump Station will run at least briefly to ensure the recent  
8 upgrades there are successful.

9 **Inundation Mapping Update** – Dr. Wright presented updated inundation mapping information  
10 related to a hypothetical catastrophic dam failure as required by the Emergency Action Plans for  
11 Eagle Park Reservoir and Black Lakes Number 1. Previous such plans were outdated and  
12 consisted of paper maps. The District received a Federal Emergency Management Agency  
13 (FEMA) grant administered by the State Engineer’s Office to model the inundation surfaces and  
14 digitize the information in GIS to better prepare for such an event. Dr. Wright noted the District’s  
15 dams are regularly state-inspected and well maintained, so the probability of such a failure is low.  
16 Discussion ensued regarding public communication of a catastrophic failure and the timing of  
17 certain associated events.

### 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.

21 **Lionshead Zoning Update** – Mr. Cowles discussed recent Vail Town Council efforts to stimulate  
22 redevelopment in Lionshead, via a proposal to allow unlimited residential development within  
23 current setbacks. The effort passed first reading. Mr. Cowles discussed concerns, as increased  
24 loading to the wastewater treatment facility could trigger capacity upgrades sooner than planned;  
25 this would compound customer rate increases that have been carefully planned to minimize  
26 impacts to customers.

27 **Vail Resorts Employee Housing Proposal in East Vail** – Mr. Cowles discussed the  
28 controversial employee housing proposal in East Vail on Vail Resorts-owned land. Opponents are  
29 concerned about the effects on bighorn sheep in the area; proponents recognize the need for  
30 more employee housing. Vail Resorts would have to dedicate Eagle Park Reservoir water for the  
31 development.

32 **Water Conservation Considerations in Front Range Water Projects** – Mr. Cowles discussed  
33 lawsuits brought by citizen group “Save the Colorado” against the federal agencies that permitted  
34 the large Front Range Windy Gap Firming Project and the Moffat Collection System Project. The  
35 suits allege that conservation was not considered a reasonable alternative to these projects in  
36 either case. Mr. Cowles noted the Authority and District’s aggressive conservation efforts will

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1 become more important in planning and permitting for any future projects. Mr. Porzak shared that  
2 some environmental groups are also questioning snowmaking water use as it relates to  
3 conservation.

4 **Proposed Development in Edwards** – Mr. Cowles noted a proposed project near the old B&B  
5 gravel pit in Edwards. The current proposal anticipates 594 units, including a hotel, several  
6 condos, and residential units, including single family houses and townhomes. The board  
7 discussed the project and the request for conditional capacity to serve. This project would utilize a  
8 large portion of the Authority’s remaining unallocated water; the board requested additional  
9 information, which Mr. Cowles will compile and bring back to a future meeting. Approval of such  
10 conditional capacity to serve could trigger review of the Authority’s unallocated supply, per the  
11 related portions of the 2015 Authority Agreement.

### 12 **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

15 **Legislative Updates** – Ms. Johnson reported on the status of various bills of interest to the  
16 Authority and District. Of interest was that HB19-1108, the non-resident elector bill was killed in  
17 committee. The District opposed the bill, which would have allowed non-resident electors in  
18 Colorado special districts to vote in board member elections.

19 **Colorado River Basin Roundtable Funding** – Ms. Johnson explained how the roundtables are  
20 funded. She noted the CBRT voted March 25 to award funds for the EagleVail Metropolitan  
21 District’s Stone Creek restoration project, which will improve water quality there. She also noted  
22 that “Learning by Doing,” which resulted from the Colorado River Cooperative Agreement, is now  
23 a 501(c)3 based in Grand County.

24 **Colorado River Drought Contingency Planning** – Ms. Johnson said the Bureau of Reclamation  
25 accepted the final Drought Contingency Plans from the lower and upper basin states. The  
26 Imperial Irrigation District, the largest holder of river water rights, refused to sign on to the final  
27 agreement as it wanted funding to clean up the Salton Sea, which is a serious environmental and  
28 public health risk. Messrs. Mueller and Fleming of the River District would attend a joint meeting  
29 later in the day to discuss this topic further.

30 **Eagle River Valley State of the River Community Meeting** – Ms. Johnson noted this free  
31 public meeting was upcoming, with possible dates of May 20 or 29. Mr. Mueller of the Colorado  
32 River Water Conservation District will discuss drought contingency planning, with other speakers  
33 addressing local water issues.

34 **CIP Projects and Customer Communications** – Ms. Johnson said a variety of construction  
35 projects are ramping up so communication to affected customers is also increasing. She noted

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1 the CDOT Edwards Spur Road Project would require some water shutdowns in the area that  
2 would affect many customers; she and project engineer Mark Mantua are working on customer  
3 notifications.

4 **Additional Legislative Update** – Ms. Moseley offered additional information on late bills  
5 introduced in the current legislative session. Such bills deal with leasing water rights to the CWCB  
6 in successive ten-year periods (HB19-1218); oil and gas regulations (SB19-181) that would affect  
7 severance taxes; water rights easement legislation (HB19-1082) that would allow piping open  
8 ditches; and authority to regulate agricultural chemicals in surface water, not just groundwater  
9 (SB19-186). Ms. Moseley will continue to monitor such legislation on the Authority and District's  
10 behalf.

### 11 GENERAL COUNSEL REPORT

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

13 **Traer Creek Settlement** – Mr. Collins discussed the status of settlement with the various parties  
14 involved in the Traer Creek legislation, which continues to wrap up. He noted the settlement  
15 terms are confidential to the extent permitted by Colorado law but shared that the global  
16 settlement with all entities gives money to the Authority to begin replacement of the tank.  
17 Demolition of the failed tank is slated for this year, in addition to planned geotechnical and  
18 geophysical investigations prior to any construction. Construction is planned for 2020, with tank  
19 completion tentatively expected in 2021. Mr. Cowles confirmed various aspects that will be  
20 required during construction to ensure engineers will have sufficient geotechnical information to  
21 design the tank foundation. In response to a question, Mr. Collins confirmed that Traer Creek will  
22 continue to be treated equally with other members to which the Authority provides service.

23 **Restructuring Efforts** – Formerly referred to as “unification,” Mr. Collins and the board  
24 subcommittee members reported on continued exploratory efforts regarding a possible political  
25 restructuring of the District and Authority. Staff and consultants continue to explore the benefits,  
26 political concerns, and issues regarding representation through election. Mr. Porzak is working  
27 through potential impacts and benefits to the unallocated water of each entity. In response to a  
28 question, Mr. Collins said each affected Authority member district and town would need to  
29 consent to such a restructuring.

30 **6 West Update** – Messrs. Collins and Cowles discussed the continued issues of poor  
31 construction at the development. The Authority and District have required an extended warranty  
32 and warranty bonds to ensure any future water and sewer main installation issues are remedied  
33 at the developer's cost.  
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## WATER COUNSEL REPORT

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

**Wolford Mountain Reservoir Conditional Exchange/Absolute Diligence Application** – It was reported that there were no opposers to the application. Copies of the response to the division engineer’s summary of consultation and motion for entry of ruling and decree are attached hereto as **Exhibit H** and incorporated herein by this reference.

## **EXECUTIVE SESSION**

Mr. Porzak requested the Board enter into Executive Session to receive legal advice regarding the Bolts Lake/Minturn water service agreement, CRCA matters, river access matters, the Colorado Outdoor Recreation and Economy Act, 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 enter Executive Session at 10:12 a.m. to discuss attorney-client privileged issues concerning the Bolts Lake/Minturn water service agreement, CRCA matters, river access matters, the Colorado Outdoor Recreation and Economy Act, 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 11:00 a.m.

**Minturn Water Service Agreement** – After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the board hereby authorizes Mr. Porzak to communication the following to the town of Minturn: it must abandon its Cross Creek water rights or subordinate such rights to Authority and District water rights to ensure consistent filling of a proposed Bolts Lake Reservoir.

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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:01 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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11 \_\_\_\_\_  
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 **Glenn Porzak, Water Counsel**  
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