

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

September 26, 2019

### MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was  
2 held September 26, 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 alternates were present and acting, thereby constituting a quorum:**

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

12 **Also in attendance were:**

13 <u>District Staff</u>	24	Jason Sica
14 Linn Brooks	25	Amy Vogt
15 Jason Cowles	26	James Wilkins
16 Troy Clous	27	Len Wright
17 Carol Dickman	28	<u>Consultants</u>
18 Tim Drescher	29	Jim Collins, Collins Cockrel & Cole
19 Claude Goldberg	30	Holly Loff, Eagle River Watershed Council
20 Catherine Hayes	31	Melissa Nelson, Berry Creek Metropolitan District
21 Diane Johnson	32	Glenn Porzak, Porzak Browning & Bushong LLP
22 Melissa Mills McLoota	33	
23 Jeff Schneider		

34 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

44 **CALL TO ORDER**

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

46 **INTRODUCTIONS**

47 Introductions were made, including Ms. Goldberg, the new Sr. Human Resources Generalist and Holly  
48 Loff, Eagle River Watershed Council Executive Director.

49 **PUBLIC COMMENT**

50 Ms. Johnson introduced Mr. Drescher, Avon Wastewater Treatment Facility Supervisor. Mr. Drescher was  
51 recently selected as the Outstanding Young Professional of the Year by the regional chapters of the  
52 American Water Works Association (AWWA) and the Water Environment Foundation (WEF). Mr.  
53 Drescher was recognized primarily for his dedication to training wastewater operators and assuming  
54 responsibility for a local professional seminar that is now in its 25th year. The Board congratulated Mr.  
55 Drescher on the award.

56 **ACTION ITEMS**

57 **Consideration of Minutes** – The minutes of the regular meeting of Aug. 22, 2019, were considered.

58 Upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the minutes of the Aug. 22, 2019, regular meeting be accepted and hereby are  
2           approved as presented.

3           **Ratification of Water System Impact Fee Increase** – Mr. Collins discussed the board’s approval to  
4           increase the Authority’s water system impact fee (WSIF) at the Aug. 22, 2019, board meeting, contingent  
5           upon approval by the town of Avon. While individual member approval was not required, the town did  
6           consider and approve the fee at its late August meeting. After discussion and upon motion duly made and  
7           seconded, it was unanimously

8           **RESOLVED** that the water system impact fee increase be and hereby is ratified.

### 9           **STRATEGY ITEMS**

10          **Water Quality at Eagle River Village Mobile Home Park** – Director Woodworth presented a  
11          photo of water at the Eagle River Village mobile home park. The photo depicted brown water in a  
12          bathtub; though the water meets state water quality regulations, the board agreed that the current  
13          quality is unacceptable for residents. Discussion ensued regarding ongoing efforts to work with  
14          the park owner to connect to the Authority’s system or greatly improve the current system in the  
15          park. Mr. Cowles will continue to monitor these discussions.

16          **Eagle River Watershed Council Funding Request** – Ms. Loff presented a 2020 funding request  
17          letter to the board, a copy of which is attached hereto as **Exhibit A** and incorporated herein by  
18          this reference. She outlined the past year’s efforts by the Eagle River Watershed Council, which  
19          would not have been possible without the funding from the Authority, District, and other  
20          contributors in the community. She highlighted the Authority’s funding, including \$25,000 for  
21          water quality monitoring and assessment, and \$25,000 towards the unrestricted fund balance.  
22          She outlined the various projects that were accomplished last year, including ongoing water  
23          quality efforts related to the Eagle Mine and Black Gore Creek; community cleanups; education  
24          and outreach; and a variety of others. The board unanimously approved \$50,000 in funding for  
25          2020, which is included in the 2020 budget that will be approved in the coming months.

26          **Service for John McCaulley** – Ms. Brooks reminded directors of the memorial service for John  
27          McCaulley, planned for Saturday, Sept. 28 at the Eagle River Presbyterian Church in Avon. Mr.  
28          McCaulley was recently retired from the District, having served as Customer Service manager  
29          and Field Operations manager. He had a short but courageous battle with pancreatic cancer.

30          **Board Meeting Processes** – The Board discussed the legal requirements around board meeting  
31          records and communications. The Authority and District boards follow the state archivist’s  
32          recommendation for retention and destruction, which requires public meeting recordings be saved  
33          for six months after approval of that meeting’s minutes. Mr. Collins advised it is not legally  
34          required for a special district to record its meetings, though many local entities choose to do so.  
35          The board directed staff to continue recording public board meetings. The board also suggested  
36          adding information on the District’s website regarding how to request meeting recordings and the

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1 retention schedule for such recordings. Staff acknowledged growing pains with the audio visual  
2 technology in the board room and committed to ensuring the equipment is properly functioning so  
3 the recordings can be made consistently available to interested parties.

### 4 **GENERAL MANAGER REPORT**

5 Ms. Brooks presented her report, a copy of which is attached hereto as **Exhibit B** and incorporated  
6 herein by this reference. Monthly reports were acknowledged, copies of which are attached hereto as  
7 **Exhibit C** and incorporated herein by this reference.

8 **Hahnewald Barn Deconstruction** – Ms. Brooks reported that the Hahnewald Barn  
9 deconstruction is proceeding; there is still much reclaimed wood on the site, and local wood sales  
10 are still in progress. There have been many local buyers purchasing small amounts of wood.

11 **Holy Cross Energy Peak Demand Rebate Program** – Staff continues to work with Holy Cross  
12 Energy on its peak demand rebate program, by which the District and Authority are eligible to  
13 receive rebates if enrolled meters reduce energy use during expected peak demand periods.  
14 Notices are sent out 24 hours in advance, so staff can plan equipment shutdowns and monitor  
15 processes to ensure compliance with required regulations. Since program implementation in July,  
16 the District and Authority have received nearly \$15,000 in rebates for reducing energy use during  
17 peak demand times. This is in addition to the savings from greatly reduced electric use during  
18 these times.

19 **Proposition DD** – Ms. Brooks discussed Proposition DD, which will be on the November ballot.  
20 This proposition would legalize sports betting and create a revenue stream for projects identified  
21 in Colorado's Water Plan. At the recent Colorado Water Congress (CWC) board meeting that Ms.  
22 Brooks attended, the CWC members discussed the proposition at length and decided to publicly  
23 support the proposition. After discussion and upon motion duly made and seconded, it was  
24 unanimously

25 **RESOLVED** the board be and hereby does approve the resolution in support of  
26 Proposition DD, to legalize sports betting in Colorado.

27 A copy of the resolution is attached hereto as **Exhibit D** and incorporated herein by this  
28 reference.

29 **Berry Creek Booster Pump Station (BPS) Replacement** – Mr. Schneider discussed the  
30 needed replacement of the Berry Creek BPS and staff efforts to move the project forward. There  
31 were some administrative holdups in the permitting process with the county regarding the land on  
32 which the BPS is located, which is owned by Berry Creek Metropolitan District and for which the  
33 Authority has contractual rights. Staff is working with the county to expedite permitting, as this 40-  
34 year-old station is at high risk of failure. After discussion and upon motion duly made and  
35 seconded, it was unanimously

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1           **RESOLVED** that a motion to authorize execution of an encroachment agreement with  
2           Eagle County and acceptance of easement from the Berry Creek Metropolitan District for  
3           the pump station project be and hereby is approved as presented.

### 4           **OPERATIONS REPORT**

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

### 7           **ENGINEERING REPORT**

8           Mr. Cowles presented the engineering report, a copy of which is attached hereto as **Exhibit F** and  
9           incorporated herein by this reference.

10           **Cordillera Valley Club PUD** – Mr. Cowles discussed a developer’s request to add additional  
11           units in the CVC area. CVC is fully exceeding the water use in its augmentation plan and has  
12           been for at least the last seven years that staff has researched. Most of the excess use is likely  
13           due to water use in irrigated areas. The CVC area includes the CVC golf course and surrounding  
14           development, in addition to Lake Creek Village. Discussion ensued regarding whether to proceed  
15           with the new request and how to get the original PUD’s water use aligned with the water rights  
16           dedicated. Staff and counsel will continue to work on this issue and report back to the board in  
17           the coming months.

18           **Traer Creek License Agreement** – Mr. Cowles and Mr. Collins reported that the License  
19           Agreement with Traer Creek was finally executed. This allows the Authority to use nearby land  
20           owned by Traer Creek for constructing staging and laydown purposes during demolition and  
21           construction of a new tank. A copy of the agreement is attached hereto as **Exhibit G** and  
22           incorporated herein by this reference.

### 23           **COMMUNICATION AND PUBLIC AFFAIRS REPORT**

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

26           **Colorado River Compact Matters** – Ms. Johnson mentioned the “Grand Bargain” and a Denver  
27           Post story about it, which is a concept proffered by some as the lower and upper basins look  
28           towards the next phase of negotiations on the coordinated operations of Lakes Powell and Mead.  
29           She mentioned that the River District’s Sept. 18 water seminar focused on these issues and  
30           recommended viewing the presentations, which are available on the River District’s website.

### 31           **GENERAL COUNSEL REPORT**

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

33           **Traer Creek Tank Insurance** – Mr. Collins reported that the Special District Association  
34           Insurance pool committed to insuring the new tank.

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## WATER COUNSEL REPORT

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

**Authority Water Rights Appraisal** – Mr. Porzak reported that a recent review of the Authority’s water rights was undertaken; the value is an estimated \$56.5 million. Though the present market value of its water rights cannot be included in the Authority’s annual audit, the market value is included at the end of the audit, in the statistical section. A copy of the appraisal is attached hereto as **Exhibit I** and incorporated herein by this reference.

**Wolford Mountain Reservoir Exchange** – Mr. Porzak discussed execution of the final decree to make absolute a portion of the Authority’s Wolford Mountain Reservoir Exchange. A copy of the final decree, signed by the water referee, is attached hereto as **Exhibit J** and incorporated herein by this reference.

**Waters of the US (WOTUS) Rule Repeal** – Mr. Porzak reported a full repeal of the federal WOTUS Rule, which was first introduced in 2015 and challenged by many states because it would have expanded the scope of permitting authority to water bodies that are disconnected from streams and rivers or have only intermittent flow. The rule never went into effect due to the many legal challenges it faced.

**Piney River Unit Agreement** – Mr. Porzak discussed an agreement regarding the Piney River Unit, a water right owned by the Authority, District, and Colorado River District. The agreement gives those entities an additional six years by which to reach agreement with Denver Water on a Wolcott Reservoir. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the term of the Piney River Unit agreement be and hereby is extended by six years.

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

Messrs. Clous, Schneider, Sica, and Wolff, and Meses. Goldberg, Loff, Mills McLoota, and Vogt, left the meeting at 10:04 a.m.

## **EXECUTIVE SESSION**

Mr. Collins requested the Board enter Executive Session to receive legal advice of counsel, pursuant to §24-6-402(4)(a)(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 10:04 a.m. to receive advice of counsel, 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.\*

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

5 **RESOLVED** to continue Executive Session at 10:15 a.m. to discuss attorney-client privileged  
6 issues concerning the Bolts Lake, CRCA matters, and water rights hydrology model sharing,  
7 pursuant to §24-6-402(4)(b) and (e) C.R.S. with no electronic record created as Mr. Porzak  
8 opined the contents of the discussion would contain privileged attorney-client  
9 communications.\*

10 The regular meeting resumed at 11:04 a.m.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:26 a.m.

Respectfully submitted,

*Catherine S. Hayes*  
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

*[Signature]*  
Arrowhead Metropolitan District

*Frank Smith Hayes*  
Town of Avon

*Bill Smith*  
Beaver Creek Metropolitan District

*Melissa Nelson*  
Berry Creek Metropolitan District

*[Signature]*  
EagleVail Metropolitan District

*[Signature]*  
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.

*Jim Collins*  
Jim Collins, General Counsel

*Glenn Porzak*  
Glenn Porzak, Water Counsel