

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

### April 23, 2020

### MINUTES

1 A regular, virtual meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority)  
2 was held April 23, 2020, at 8:30 a.m., in accordance with the applicable statutes of the State of Colorado.

3 **The following Directors and were present via Skype and acting, thereby constituting a quorum:**

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

10 **Also in attendance were:**

11 <u>District Staff</u>	22	Shane Swartwout
12 Linn Brooks	23	James Wilkins
13 Allen Cerny	24	Brad Zachman
14 Jason Cowles	25	<u>Consultants</u>
15 Carol Dickman	26	Jim Collins, Collins Cockrel & Cole
16 Catherine Hayes	27	Kristin Moseley, Porzak Browning & Bushong LLP
17 Diane Johnson	28	Glenn Porzak, Porzak Browning & Bushong LLP
18 Kira Koppel	29	<u>Public</u>
19 Siri Roman	30	Dominic Mauriello, developer, Kudel parcel
20 Jeff Schneider		
21 Micah Schuette		

31 **DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST**

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

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

41 **CALL TO ORDER**

42 Chair Gregory called the meeting to order at 8:35 a.m.

43 **PUBLIC COMMENT**

44 Public comment was called for and there was none.

45 **ACTION and OTHER ITEMS**

46 **Consideration of Minutes** – The minutes of the regular meeting of March 26, 2020, were considered.

47 Upon motion duly made and seconded, it was unanimously

48 **RESOLVED** that the minutes of the March 26, 2020, regular meeting be accepted and hereby are  
49 approved as presented.

50 **Cash-in-Lieu of Water Rights Request** – Mr. Schuette discussed his board action request for cash-in-  
51 lieu of water rights to serve the Kudel development in Edwards, a copy of which is attached hereto as  
52 **Exhibit A** and incorporated herein by this reference. Mr. Mauriello, the owner's representative, had no  
53 comment on the request. Discussion ensued regarding the Authority's remaining unallocated water. After  
54 discussion and upon motion duly made and seconded, it was unanimously

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1           **RESOLVED** that the request for cash-in-lieu of water rights in the amount of 1.61835 acre feet be  
2           and hereby is approved as presented; and **FURTHER RESOLVED** to direct staff to execute a  
3           water service agreement with the developer outlining the terms of water use for the development.

4           Mr. Mauriello left the meeting at 8:42 a.m.

5           **Designation of Member and Alternate Representatives for Colorado Special Districts Property and**  
6           **Liability Pool Insurance** – Mr. Wilkins discussed a board action request regarding the Authority's  
7           appointees for administrative insurance pool matters, a copy of which is attached hereto as **Exhibit B** and  
8           incorporated herein by this reference. After discussion and upon motion duly made and seconded, it was  
9           unanimously

10           **RESOLVED** that the form designating Connie Nunley and Mr. Wilkins as the primary and  
11           alternate representatives, respectively, for the Colorado Special Districts Property and Liability  
12           Pool be and hereby is approved as presented.

13           A copy of the completed form is attached hereto as **Exhibit C** and incorporated herein by this reference.

14           **Public Water System ID Combination** – Mr. Zachman discussed the Colorado Department of Public  
15           Health and Environment's (CPDHE) desire to administratively combine the Authority and District's public  
16           water system identification numbers, after which the CDPHE would regulate the systems as one. Mr.  
17           Zachman presented a related board action request for staff direction, a copy of which is attached hereto  
18           as **Exhibit D** and incorporated herein by this reference. Mr. Zachman confirmed that water rights and  
19           governance of the two entities would remain separate and unaffected by this administrative combining.  
20           After discussion and upon motion duly made and seconded, the board unanimously

21           **RESOLVED** that the request to proceed with combining the Authority's system with the District's  
22           system for CDPHE regulation purposes be and hereby is approved as presented.

23           **Extension of Late Fee Waiver** – Mr. Swartwout discussed his board action request regarding extension  
24           of customer late fee waivers during the pandemic, a copy of which is attached hereto as **Exhibit E** and  
25           incorporated herein by this reference. He noted the volume of unpaid customer bills has remained low  
26           throughout the COVID-19 pandemic. Ms. Brooks reminded the board that per Gov. Polis's order, no  
27           utilities may be shut off due to non-payment during the pandemic. Additionally, unpaid bills represent  
28           delayed revenue, not lost revenue. After discussion and upon motion duly made and seconded it was  
29           unanimously

30           **RESOLVED** that the extension of late fee waivers be and hereby is extended through the May  
31           billing period, which ends on June 2, 2020.

32           **Information Reports** – The information reports were acknowledged and are attached hereto as **Exhibit**  
33           **F** and incorporated herein by this reference.

### 34           **GENERAL MANAGER REPORT**

35           Ms. Brooks presented her general manager report, a copy of which is attached hereto as **Exhibit G** and  
36           incorporated herein by this reference.

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1           **COVID-19 Response Update** – Ms. Brooks and Ms. Roman updated the board on the COVID-19  
2 response. The District will stay in stage 3 of its operating plan until at least May 15, though Gov.  
3 Polis’s “stay at home” order will expire on April 26, giving way to a “safer at home” directive. In  
4 stage 3 of the District’s response, non-essential employees are required to work from home.  
5 Discussion ensued regarding how the District’s possible return to stage 2 would differ from stage  
6 3. The next stage could allow up to 50% of employees onsite, based on the governor’s order;  
7 however, discussions are ongoing regarding how this will be implemented across the District’s  
8 various facilities to ensure protection of essential workers and the Authority and District’s ability to  
9 provide its core functions.

10           Ms. Brooks and Ms. Roman also discussed the District’s weekly all-employee Town Hall  
11 meetings, which the District has been hosting virtually for employees since April 8. These  
12 sessions highlight 2 – 3 departments and changes to how that department’s employees are  
13 completing work due to the pandemic. Attendance for these sessions has been excellent, with  
14 80+ employees logging in each week. Operationally, water demand has been lower than in years  
15 past. Financial modeling is ongoing. Decreased impact fees are expected as development slows  
16 due to the economic conditions. Some Authority and District capital projects will be delayed,  
17 which will save funds. Others, like the Nutrient Upgrade Project at Avon WWTF, will continue as  
18 planned due to their regulatory necessity and the amount of design and planning that have  
19 already gone into such projects.

20           **Financial Modeling** – Ms. Brooks, Mr. Wilkins, and Mr. Swartwout discussed financial modeling.  
21 Impacts are expected in three areas: monthly billing revenue, loss of impact fees, and costs for  
22 responding to the COVID-19 pandemic. A related presentation is attached hereto as **Exhibit H**  
23 and incorporated herein by this reference. Ms. Brooks explained that most revenues are  
24 generated through base rates, which has narrowed staff’s focus to unpaid bills; reduced water  
25 usage will not affect revenues nearly as much. Ms. Brooks also confirmed that most treatment  
26 costs are fixed and would not be significantly reduced with decreased water usage.

### 27   **OPERATIONS REPORT**

28           Ms. Roman presented the operations report, a copy of which is attached hereto as **Exhibit I** and  
29 incorporated herein by this reference.

30           **General Operations Update** – Ms. Roman and Mr. Zachman discussed operations. Water  
31 production and wastewater inflows are lower than expected for this time of year. Ms. Roman  
32 noted operators seem more settled in stage 3 now than last month, when anxiety was higher. She  
33 is pleased with the flexibility of staff in adapting to the new expectations of this working  
34 environment.

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1           **Avon Wastewater Treatment Facility Nutrient Upgrade Project (NUP) Update** – Ms. Marts  
2           and Mr. Schneider updated the board on the NUP; a related memo is attached hereto as **Exhibit**  
3           **J** and incorporated herein by this reference. Ms. Marts noted the project is using a CMAR  
4           (construction manager at risk) delivery method, which has helped with navigating the unknowns  
5           of the current economic situation. Contract documents are being modified, per the CMAR  
6           method, as contract prices can decrease with lower commodities pricing during the pandemic.  
7           Additionally, the project is 5 – 6 weeks behind schedule, which pushes a critical shutdown period  
8           in the spring to a less busy time of year, which is beneficial. All state, local, and district policies for  
9           COVID-19 prevention must be followed by any on-site contract workers. Official notice to proceed  
10          was issued on April 23, and site mobilization will occur on May 4.

### 11    GENERAL COUNSEL REPORT

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

### 13    WATER COUNSEL REPORT

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

15           **Pando Feeder Diligence Protest** – Mr. Porzak discussed the absolute/diligence application for  
16           the Pando Feeder Canal. The referee granted diligence but included a requirement in the  
17           diligence finding that would unduly restrict the ability to obtain an absolute decree for a future  
18           enlargement of Eagle Park Reservoir; a copy of the referee's ruling and decree is attached hereto  
19           as **Exhibit K** and incorporated herein by this reference. A protest letter was filed on behalf Eagle  
20           Park Reservoir Company and its shareholders, as was an opposition to the state and division  
21           engineers' motion to intervene, though the motion was ultimately granted. Copies of both are  
22           attached hereto as **Exhibits L** and **M**, respectively, and incorporated herein by this reference.  
23           During a phone conference with the judge, the Company shareholders were granted 45 days to  
24           prepare an opening brief to support the protest, which is due on May 29.

25           **Eagle Park Reservoir Diligence Application** – Mr. Porzak discussed the diligence application  
26           for the two remaining conditional junior storage rights for Eagle Park Reservoir. The referee  
27           agreed with the finding of diligence but wants to include a footnote regarding the East Fork Pump  
28           Station as an alternate point of diversion, referencing a previous change case. Discussion ensued  
29           regarding the footnote, which the directors agreed was unrelated to the diligence case and should  
30           be removed. The ruling of the referee and the Company shareholders' response are attached  
31           hereto as **Exhibits N** and **O**, respectively, and incorporated herein by this reference.

32    At 10:04 a.m., Mses. Koppel and Marts and Messrs. Cerny, Schneider, and Schuette left the meeting.

### 33    **EXECUTIVE SESSION**

34    Mr. Porzak requested the Board enter Executive Session to receive legal advice of counsel regarding  
35    Green Mountain Reservoir, the Authority water rights report, EagleVail Metropolitan District water rights,

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1 the 6 West development, and Bolts Lake, pursuant to §24-6-402(4)(a)(b) and (e) C.R.S. He asked that no  
2 electronic record be made, as the discussion would be entirely privileged attorney-client communications.

3 Upon motion duly made and seconded, it was unanimously

4 **RESOLVED** to enter Executive Session at 10:05 a.m. to receive advice of counsel regarding  
5 Green Mountain Reservoir, the Authority water rights report, EagleVail Metropolitan District  
6 water rights, the 6 West development, and Bolts Lake, pursuant to §24-6-402(4)(b) and (e)  
7 C.R.S. with no electronic record created as Mr. Porzak opined the contents of the discussion  
8 would contain privileged attorney-client communications.\*

9 At 10:24 a.m., prior to discussion of Bolts Lake, all remaining staff left the call, with the exception of  
10 Mses. Brooks, Hayes, Johnson, and Roman, and Mr. Cowles.

11 The regular meeting resumed at 11:33 a.m.

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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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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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41 \_\_\_\_\_  
42 **James P. Collins, General Counsel**

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44 **Glenn Porzak, Water Counsel**