

Upper Eagle Regional Water Authority

Board of Directors Meeting

February 26, 2015

MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority
2 (Authority) was held February 26, 2015, at 8:30 a.m., in the Walter Kirch Room of the Eagle
3 River Water & Sanitation District (District), 846 Forest Road, Vail, Eagle County, Colorado, in
4 accordance with the applicable statutes of the State of Colorado.

5 ATTENDANCE

6 The following Directors were present, thereby constituting a quorum:

7 Tom Allender, EagleVail Metropolitan District
8 Geoff Dreyer, Arrowhead Metropolitan District
9 Todd Goulding, Town of Avon
10 George Gregory, Berry Creek Metropolitan District
11 Jim Power, Beaver Creek Metropolitan District
12 Mick Woodworth, Edwards Metropolitan District

13 Also in attendance were:

14 <u>ERWSD Staff</u>	24	Glen Phelps
15 Linn Brooks	25	Steve Sego
16 Becky Bultemeier	26	Brian Tracy
17 Evette Curran	27	<u>Consultants</u>
18 Carol Dickman	28	Jim Collins, Collins Cockrel & Cole
19 Angelo Fernandez	29	Kristin Moseley, Porzak Browning & Bushong LLP
20 Catherine Hayes	30	Glenn Porzak, Porzak Browning & Bushong LLP
21 Leslie Isom	31	<u>Public</u>
22 Diane Johnson	32	Bill Simmons, Beaver Creek Metropolitan District

33 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

36 Director Allender disclosed that he is the Director of Resort Planning for Vail Associates, Inc., which has significant land ownership and
37 business interests within the Authority. Also, he is appointed by Vail Associates, Inc. to serve as a Director of both the Eagle Park
38 Reservoir Company and the Clinton Ditch and Reservoir Company; he also serves on the Eagle River Water & Sanitation District Board
39 of Directors, which manages the Authority. Director Goulding disclosed that he serves on the Boards of the Eagle County Health Service
40 District and Vail Mountain Rescue, which have occasional dealings with the Authority. He also disclosed that he is employed by Chaffee
41 Construction Company, which has significant business interests within the Authority. Director Woodworth disclosed that he is employed
42 by the Eagle River Fire Protection District, which operates within the Authority's service area; he also serves on the Edwards
43 Metropolitan District Board.

44 CALL TO ORDER

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

46 ACTION ITEMS

47 **Consideration of Minutes** – The minutes of the Regular Meeting of January 22, 2015, were
48 considered. Upon motion duly made and seconded, it was unanimously

49 **RESOLVED** that the minutes of the January 22, 2015, Regular Meeting be accepted and
50 hereby are approved as amended.

51 **New Development Committee Member** – The Board appointed Director Woodworth to
52 replace former Director Bill Simmons on the New Development Committee.

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1 **Brookside Water Services Agreement** – Ms. Curran presented a board action request and
2 related information regarding the Brookside development cash-in-lieu payment administration,
3 a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. At
4 its January meeting, the Board approved a one-time discounted payment of \$40,000 for cash-
5 in-lieu of water rights for the Brookside development; the calculated amount owed was
6 \$46,458. Discussion ensued regarding accounting for the discount and whether to charge
7 Brookside the full amount and issue an immediate refund or simply charge the due amount.
8 Upon motion duly made and seconded, it was unanimously

9 **RESOLVED** to charge Brookside \$40,000 for cash-in-lieu of water rights and note the
10 one-time discount of \$6,458 on the invoice.

11 **Quarterly Financial Report and Year-End Financial Report** – Ms. Bultemeier discussed
12 the quarterly financial and year-end reports, copies of which are attached hereto as **Exhibit B**
13 and incorporated herein by this reference. She compared the current year-end report with the
14 long-term plan and noted that the financial model is working well; actual revenue was very
15 close to budget, though sales projections were lowered during the year. Ms. Bultemeier also
16 noted coverage ratios were met; revenue is covering operations costs; and the Authority is
17 getting closer to having both debt and operations costs covered by revenue. After discussion
18 and upon motion duly made and seconded, it was unanimously

19 **RESOLVED** to acknowledge receipt of the report.

20 **2015 Budgets Combined/Source Use Overview** – Ms. Brooks discussed the budgets for
21 Vail water, wastewater, and the Authority water funds, a summary of which is attached
22 hereto as **Exhibit C** and incorporated herein by this reference. She noted that the funds are
23 operated and tracked separately, although there is interaction at times. Ms. Brooks also noted
24 that the Authority pays the District for staff, as it does not employ its own, and the Authority
25 and District systems are interconnected and operated as such.

26 **2015 Operations Agreement with Eagle River Water and Sanitation District** – Ms.
27 Brooks discussed the agreement with the District, which automatically renews on January 1
28 each year. A board action request and copy of the agreement are attached hereto as **Exhibits**
29 **D** and **E**, respectively, and incorporated herein by this reference. After discussion and upon
30 motion duly made and seconded, it was unanimously

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1 **RESOLVED** that the 2015 Operations Agreement with the Eagle River Water and
2 Sanitation District be and hereby is approved as presented.

3 **REPORT BY WATER COUNSEL**

4 **Federal Water Rights Background** – Ms. Moseley presented information regarding three
5 federal directives that imply federal ownership of water on federal land, which is contrary to
6 Colorado state water law and to the prior appropriation doctrine of the western states. A copy
7 of the presentation is attached hereto as **Exhibit F** and incorporated herein by this reference.
8 She noted the well-established practice of both private parties and governmental entities
9 obtaining water rights on federal land and the continued deference to state law concerning
10 water rights. Ms. Moseley also summarized the differences between the eastern riparian
11 system of water rights and the Western practice of prior appropriation.

12 **State Legislation (Senate Bill 64)** – Mr. Porzak and Ms. Moseley gave a status report on the
13 bill, a copy of which is attached hereto as **Exhibit G** and incorporated herein by this
14 reference. The bill passed in the Senate and now moves to the House of Representatives. Mr.
15 Porzak recently held a meeting with the Speaker of the House to give background on the bill
16 and stress its importance with regard to protection of privately owned water rights.

17 **Colorado River Compact Water Bank** – Mr. Porzak discussed the possibility of a Western
18 Slope water bank using historic consumptive use credits; this could protect against a future
19 compact call and could potentially involve a variety of East and West Slope parties. A March
20 3 meeting is planned with the president of the Colorado River Water Conservation District to
21 further discuss this concept. Mr. Porzak said the water bank was a good candidate for
22 inclusion in the Colorado Water Plan, as it is a cooperative approach to mitigate potential
23 future water shortages; funding may be available. The Board discussed a potential Wolcott
24 Reservoir, which could serve in this capacity.

25 **Seniors First Supreme Court Appeal** – Mr. Porzak discussed the appeal, a copy of which is
26 attached hereto as **Exhibit H** and incorporated herein by this reference. He noted the appeal
27 challenges the state engineer's ruling that the Authority must use a senior water right first
28 even if it would prefer to divert a junior right instead. In response to a question, Mr. Porzak
29 noted the Authority rotates the use of certain water rights to ensure there are no prolonged
30 periods of nonuse.

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1 **Sedalia Case Supreme Court Opinion** – Mr. Porzak discussed the ruling in the Sedalia
2 case, a copy of which is attached hereto as **Exhibit I** and incorporated herein by this
3 reference. The Supreme Court ruled that previously quantified water rights cannot be subject
4 to factoring in years of nonuse up to the date of the prior Court quantification. If not
5 previously quantified or subsequent to the date of the prior quantification, nonuse can be
6 considered; however, the nonuse will not count against the user if there is good reason for the
7 non-use, which the provider has an opportunity to explain. He reminded Directors that the
8 Authority filed an amicus brief in the case because the Water Court reduced the amount of
9 the consumptive use credits for the Brett and Creamery Ditch water rights for the period of
10 nonuse prior to the Authority’s purchase; however, the ruling would not help the Authority
11 increase the amount of the historic consumptive use credits awarded these rights as there was
12 not a good reason for the nonuse by the seller of those rights.

13 **Wolford Mountain Reservoir Update** – Mr. Porzak discussed dam movement at the
14 Wolford Reservoir and two related articles, copies of which are attached hereto as **Exhibit J**
15 and incorporated herein by this reference. He noted the water level may be drawn down to
16 alleviate the immediate risk, but other measures, including rebuilding, may be required. The
17 dam is jointly owned by the River District and Denver Water.

18 **REPORT BY GENERAL MANAGER**

19 **General Counsel Report** – Ms. Brooks noted Mr. Collins was available by phone to answer
20 any questions related to his legal report.

21 **Water Rights Hydrology Model** – Ms. Brooks updated the Board on the model. Phase I is
22 complete, and the model is producing data. Phase II will include development of demand
23 scenarios, reporting tools to extract information from the model, and priorities for data
24 extraction. Discussion ensued regarding data extraction priorities, including data that would
25 support development of Eagle River MOU alternatives and to support the water demand
26 management plan.

27 **Staffing Update** – Ms. Brooks noted Finance Director James Wilkins will start Monday; he
28 is a former manager at a local bank. Ms. Brooks and Mr. Fernandez are working on an
29 orientation plan for him.

30 **Development Trends** – Ms. Brooks discussed current development trends that indicate
31 Authority acceptance of cash-in-lieu payments should occur following preliminary plan

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1 approval, but prior to final plat approval so any issues with water rights aren't the deciding
2 factor in a development's success. Ms. Brooks stressed the importance of ensuring cash-in-
3 lieu estimates are preliminary and conditional prior to final plat approval. She noted staff
4 would work with land use authorities to ensure the Authority's approvals become part of their
5 land use approval processes.

6 **REPORT BY DIRECTOR OF OPERATIONS**

7 In Mr. Fessenden's absence, Mr. Phelps presented the Operations Report, a copy of which is attached
8 hereto as **Exhibit K** and incorporated herein by this reference.

9 **Staffing Update** – Mr. Phelps introduced Mr. Tracy, who was recently promoted to Water
10 Manager. Mr. Tracy is also the chairman of the Colorado Utility Council and sits on the
11 board of the Eagle River Watershed Council.

12 **Traer Creek Tank Update** – Mr. Phelps noted the tank was online since two days ago and
13 appears to be balancing well with the others across the valley as water is uploaded to Vail.
14 Levels will be closely observed in the spring as water is downloaded from Vail.

15 **2015 World Alpine Championships Update** – Mr. Phelps said operations were seamless
16 during the 2015s, largely due to the preplanning efforts that occurred. He thanked operations
17 staff for taking extra shifts and curtailing vacations during the two-week event.

18 **Singletree Waterline Break** – Mr. Phelps provided an update on the waterline break earlier
19 in the week, noting that the failed PVC pipe wasn't discoverable during sounding efforts. The
20 Authority and District exceed the American Waterworks Association's recommended
21 number of leaks per 100 miles of pipe, and budget will be requested for a line replacement
22 program system-wide. Chairman Gregory, who lives in the area, said affected residents
23 praised staff for the quick response time and professional service provided. In response to a
24 question, Ms. Brooks said corrosive soils throughout the Authority service area are causing
25 some pipe failures.

26 **REPORT BY DIRECTOR OF ORGANIZATIONAL DEVELOPMENT**

27 Mr. Fernandez presented his report, a copy of which is attached hereto as **Exhibit L** and incorporated
28 herein by this reference.

29 **District Initiatives** – Mr. Fernandez discussed the District's 2014 and 2015 initiatives,
30 copies of which are attached hereto as **Exhibits M** and **N**, respectively, and incorporated
31 herein by this reference. He noted staff's accomplishments in 2014 and noted the 2015 list

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1 was pared down, as it was not possible to complete all previous initiatives due to the
2 exhaustive nature of the list. Mr. Fernandez pointed out the theme of the 2015 initiatives is
3 stability; many changes have been implemented in previous years, and this will allow staff to
4 adjust to new processes and procedures.

5 **Water System Impact Fee Study** – Mr. Fernandez said the full presentation will occur at the
6 March meeting. He noted most of the study was completed internally, and a process was
7 created that can be followed for future studies. An outside consultant will be used minimally
8 for a small portion of the project involving communication of the fee to customers.

9 **REPORT BY COMMUNICATIONS AND PUBLIC AFFAIRS MANAGER**

10 **Meeting with Rep. Polis Staff** – Ms. Johnson said she and Ms. Brooks met February 3 with
11 Congressman Polis’s new legislative assistant on environment and energy along with his
12 district representative to discuss his pending wilderness legislation, their approach to working
13 with local stakeholders, and other water-related federal issues.

14 **Denver Metro Chamber Leadership Foundation** – Ms. Johnson is working with
15 Leadership Foundation staff on their “Colorado Experience” program that will bring about
16 100 business leaders to Summit County and Vail in April to learn about transportation,
17 housing, and water infrastructure. Several staff members will address the group, which will
18 also tour treatment facilities.

19 **Colorado River Basin Implementation Plan** – Ms. Johnson is coordinating a March 2
20 stakeholders meeting to review and prioritize projects for the Eagle River and State Bridge
21 regions of the Colorado Basin Roundtable’s Basin Implementation Plan. The final draft of the
22 BIP is due April 17 to the Colorado Water Conservation Board as part of the Colorado Water
23 Plan process. She distributed a CWCB update on Colorado’s Water Plan, a copy of which is
24 attached hereto as **Exhibit O** and incorporated herein by this reference.

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ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 10:54 a.m.

Respectfully submitted,

Secretary to the Meeting

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

Arrowhead Metropolitan District

Town of Avon

Beaver Creek Metropolitan District

Berry Creek Metropolitan District

EagleVail Metropolitan District

Edwards Metropolitan District