

**UPPER EAGLE REGIONAL WATER AUTHORITY
RESOLUTION ON
WATER DEDICATION POLICY**

Adopted on January 27, 2011

WHEREAS, the Upper Eagle Regional Water Authority (“Authority”) is a quasi-municipal entity authorized and empowered to supply water for domestic and other public and private purposes; and

WHEREAS, the Authority’s mission is, among other goals and responsibilities, to provide efficient, effective, and reliable water to its service area, ranging from Eagle-Vail through Cordillera; and

WHEREAS, extensive redevelopment is occurring in the Authority’s service area and such redevelopment is increasing the existing development density and water uses associated with certain redevelopment properties; and

WHEREAS, new development and water uses are occurring within the Authority’s service area; and

WHEREAS, the Authority may expand its boundaries and commit to serve properties not currently within its service area; and

WHEREAS, to accommodate the increase in water demands caused by redevelopment projects and new water uses within or outside its current service area, and to continue to provide efficient, effective, and reliable water to its service area as it may from time to time be expanded, the Authority seeks to establish a uniform water dedication policy for third-party developers seeking (i) increased water service for the redevelopment of property within the Authority’s service area or seeking new water service for properties not covered by existing taps or zoning, or (ii) water service for properties not currently within the Authority’s service area (“Developers”); and

WHEREAS, such water dedication policy needs to protect the general welfare of the residents in the service area.

BE IT RESOLVED,

1. **GENERAL POLICY.** The Authority adopts the general policy of conditioning certain water service upon either a dedication of water rights or a payment of cash in lieu of water rights. This general policy shall apply (A) to all new development or redevelopment within its service area that will require an increase in water use or a new water use not covered by existing taps or zoning, and (B) to all properties not currently within the Authority’s service area. For any redevelopment, this condition applies only to the difference between the projected increased water demand and the pre-redevelopment water demand. For example, if the pre-

redevelopment demand for a particular parcel of property is five consumptive acre-feet and the projected redevelopment water demand will increase demand to six consumptive acre-feet, the increase of one consumptive acre-foot will be subject to this water dedication policy. The increase may be as a result of increased density, increased landscaping, or any other change in use of the property that increases the water demand from the pre-redevelopment demand. There may also be situations where the water rights dedication or payment of cash in lieu is based on the diversion demand, not just the consumptive use of the water demand.

2. **DEDICATION OF WATER RIGHTS.** The dedication of water rights must provide the Authority with a dependable legal supply of water equal to one hundred and twenty percent (120%) of the water rights necessary to service the new or increased water requirements associated with the new development or redevelopment, or property not currently within the Authority's service area. Using the example in Paragraph 1, if the Authority agrees to accept a dedication of water rights, the Developer would be required to supply a dependable legal supply of water in the amount of 1.2 consumptive acre-feet (120% of the increase in demand of one acre-foot). All water dedication agreements or contracts between Developers and the Authority that provide water rights to the Authority under this policy shall be at the discretion of the Authority.

To the extent the Authority determines to accept a dedication of water rights, the following criteria shall be used in determining the type of water rights to be dedicated:

- (A) Shares of stock in the Eagle Park Reservoir Company representing the right to the annual release of water from Eagle Park and/or Homestake Reservoirs.
- (B) Water rights that could be used to enhance the yield of Eagle Park Reservoir.
- (C) Interests in consumptive use credits that are already decreed for diversion and use at the Authority diversion points.
- (D) Imported/transbasin water that is available for use in the Colorado River basin upstream of the Shoshone Power Plant.
- (E) Other water rights that can be integrated into the Authority's water system or used to enhance existing exchanges without significant expense.
- (F) All dedicated water rights must be owned in fee and cannot be based on a leasehold interest.
- (G) There shall be a preference for in-basin or imported water.
- (H) Only water rights senior to the 1922 Colorado River Compact shall be accepted.

3. **CASH IN LIEU OF WATER RIGHTS.** All water dedication agreements or contracts between Developers and the Authority that provide cash in lieu of water rights under this policy shall be at the discretion of the Authority, shall be limited to a maximum of 50 acre feet per development, and shall be subject to the following additional conditions:

(A) The Authority has sufficient water rights to meet the new water service obligation.

(B) The Developer does not have access to the type of water rights that meet the Authority's criteria for acceptance of water rights.

(C) The water rights appurtenant to the land to be served have been previously severed.

(D) The cash can be utilized by the Authority to develop an identified project that will provide additional in basin or imported/transbasin water supplies.

(E) Cash payments based on 120% of the projected new or increased water use for summer months (defined as May through August each year) shall be valued based on the current market value of senior agricultural irrigation water rights, but shall not be less than six thousand eight hundred dollars (\$6,800.00) per consumptive acre-foot of water.

(F) Cash payments based on 120% of the projected new or increased water use for non-summer months (defined as September through April each year) shall be valued based on the current market value of firm annual yield of in-basin storage, for example Eagle Park and Homestake Reservoirs, but shall not be less than twenty-one thousand six hundred dollars (\$21,600.00) per consumptive acre-foot of water.

(G) Cash payments shall be paid to the Authority to be used, at the discretion of the Authority, to develop and/or acquire additional in-basin or imported/transbasin water supplies for the Authority.

4. **PAYMENT OF COSTS.** All payment of costs regarding water dedication agreements or contracts between Developers and the Authority under this policy shall be subject to the following conditions:

(A) In addition to the dedication of water rights under Paragraph 2 or cash payments under Paragraphs 3(E) and 3(F), Developers shall be required to pay the Authority for all legal, engineering, and other costs incurred or which may be incurred by the Authority to evaluate and/or adjudicate any augmentation plan or other water court application, if necessary, to provide new or increased water service to any Developer's property.

(B) Where an engineering or legal evaluation is required by the Authority to implement the terms of this Policy, the Developer will be required to deposit with the Authority an initial fee of no less than \$5,000 to pay for the cost of such evaluation. The initial deposit shall be used to pay the costs of staff, legal consultants, engineering consultants, and other

expenses that may be incurred by the Authority. These costs are separate and distinct from any other Tap Fees and other charges applicable to the development. This cost reimbursement charge is not related or credited to any other fee or the Authority. Deposit amounts in excess of the actual cost of the analysis will be refunded to the proponents of the development. A good faith effort will be made to generally account for the costs incurred, but the Authority shall not be obligated to provide a specific accounting of costs, but only a generalized estimate.

(C) In the event water service is no longer required or desired for Developer's property, any refund of cash in lieu payment previously paid shall be at the sole discretion of the Authority. Where the Authority decides in its sole discretion to refund a cash in lieu payment, the Authority may charge a cancellation fee. The Authority will not refund a cash in lieu payment once the property to which water service has been extended has obtained land use approval unless such land use approval is revoked or otherwise terminated by the relevant governmental authority.

5. **Applicability of Policy.** Upon the referral from the Town of Avon or Eagle County for an ability to serve commitment, the Authority staff shall determine whether this policy is applicable to any property that is currently within the Authority's service area and that is being developed or redeveloped.

6. **Consideration of Prior Dedications.** In determining the amount of any water rights dedication or cash payment in lieu, consideration shall be given to any past dedications of water rights by the Developer and whether excess water rights exist from such past dedications.

Approved this 27th day of January, 2011 by a vote of 6 in favor and 0 opposed.

By: /s/ Thomas Leonhardt, President and Board Chair