A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority (Authority) was held January 22, 2015, at 8:30 a.m., in the Walter Kirch Room of the Eagle River Water & Sanitation District (District), 846 Forest Road, Vail, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

ATTENDANCE

The following Directors were present, thereby constituting a quorum:

- Tom Allender, EagleVail Metropolitan District
- Geoff Dreyer, Arrowhead Metropolitan District
- Todd Goulding, Town of Avon
- George Gregory, Berry Creek Metropolitan District
- Mick Woodworth, Edwards Metropolitan District

The following Directors were absent and excused:

- Jim Power, Beaver Creek Metropolitan District

The following Alternate Director was present and acting:

- Bill Simmons, Beaver Creek Metropolitan District

Also in attendance were:

- ERWSD Staff
- Linn Brooks
- Becky Bultemeier
- Jason Cowles
- Carol Dickman
- Angelo Fernandez
- Todd Fessenden
- Catherine Hayes
- Leslie Isom
- Diane Johnson
- Melissa Mills McLoota
- Steve Sego
- Brian Tracy

DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

CALL TO ORDER

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

INTRODUCTIONS

Guest introductions were made, including Mountain Star representatives, Messrs. Clarke, Coyer, Gustafson, and Saunders; Brookside representative, Mr. Pylman; and Avon Councilmember Hymes.
PUBLIC COMMENT

Mountain Star – Chairman Gregory invited the Mountain Star representatives to comment.

Mountain Star representatives thanked the Authority for helping residents reduce water use in the development; for staff’s willingness to work with representatives and owners; and for the pump station upgrades that are forthcoming. Chairman Gregory appreciated the representatives’ effort to attend the meeting and thanked them for the ongoing work to reduce excessive water use and ensure a tank is built there.

ACTION ITEMS

Consideration of Minutes – The minutes of the Regular Meeting of December 18, 2014, were considered. Upon motion duly made and seconded, it was unanimously RESOLVED that the minutes of the December 18, 2014, Regular Meeting be accepted and hereby are approved as presented.

Meeting Place and Posting Location – Ms. Hayes presented a Resolution Designating the 2015 Meeting Place and Posting Location, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously RESOLVED that the Resolution Designating the 2015 Meeting Place and Posting Location be and hereby is approved as presented.

Committees Review – The Board reviewed its committee membership, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. No changes were made.

Mr. Navarro joined the meeting via conference call at 8:45 a.m.

Amendment to Water Dedication Policy – Ms. Brooks presented a board action request and related water dedication policy amendment, copies of which are attached hereto as Exhibits C and D, respectively, and incorporated herein by this reference. She noted that any new development within the Authority’s service area must dedicate water rights or pay a cash-in-lieu fee sufficient to cover the proposed water use. Authority consultants calculate the amount of needed water based on a water demand worksheet. The final amount is based on 120% of the estimated water demand, which includes a 20% safety factor in case the development uses more water than estimated. Ms. Brooks reminded Directors of the water demand management plan approved in 2014 to reduce excessive demand on the system. She noted the water demand worksheet sometimes over calculates the amount of water needed for
a development, especially in the case of high density developments, which tend to use much less water per single family equivalent (SFE) than large single-family homes. The proposed amendment to the Water Dedication Policy allows for an alternate method for calculating cash-in-lieu of water rights dedication fees with a smaller safety factor if the development can demonstrate lower water use. This could result in lower cash-in-lieu fee collections for the Authority, but would give the Authority more certainty of the development’s water use. Notwithstanding, Mr. Porzak emphasized that the norm will still be to base the water dedication and cash in lieu fee on 120% of the estimated water need absent compelling evidence to support a lower safety factor. Moreover, the final decision as to whether to reduce the water dedication or cash in lieu fee to an amount less than 120% is still up to the Board’s discretion and will be considered on a case by case basis. After discussion and upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Water Dedication Policy amendment be and hereby is approved as presented.

**Water Services Agreement Policy** – Ms. Brooks also discussed a board action request and related Water Services Agreement Policy, copies of which are attached hereto as *Exhibits E and F*, respectively, and incorporated herein by this reference. She noted that the policy would be used in conjunction with the amended water dedication policy. If the alternate calculation method for cash-in-lieu is used and approved by the Board, a Water Services Agreement policy would be executed with the developer and recorded against the property, limiting the development to only the water use for which it paid. Discussion ensued regarding whether, for example, the 105% requirement with a 5% safety factor provided enough cushion for developments that use water above the amount they pay for and whether a water service agreement recorded against the development would be sufficient to protect the Authority against excess use by the development in the future. Ms. Brooks clarified that the purpose of the water service agreement is to address excessive use; get certainty of the amount of water the Authority agrees to serve; better understand the amount of Authority unallocated water; and demonstrate that the Authority is proactively managing its system water demands. Mr. Porzak again noted that 120% of needed water for that development is still the rule, unless the developer presents evidence that a lesser amount of water is needed
and justified, all of which is approved at the Board’s discretion. Upon motion duly made and
seconded, it was unanimously

RESOLVED that the Water Services Agreement Policy be and hereby is approved as
presented.

Brookside Cash-in-Lieu of Water Rights Request – Ms. Brooks discussed information
concerning the Brookside Cash-in-Lieu request, including the Fourth Supplemental Water
Services Agreement between the Authority and the town of Avon, copies of which are
attached hereto as Exhibit G and incorporated herein by this reference. Chairman Gregory
clarified that the Board was being asked to approve cash-in-lieu of water rights dedication for
the development and an increase in the number of single family equivalents (SFEs) served in
the Town of Avon per Avon’s Water Lease Agreement with the Authority. After discussion
and upon motion duly made and seconded, it was

RESOLVED that the cash-in-lieu fee and increase in number of SFEs served in the
Town of Avon be and hereby are approved as presented, by a 3 – 2 vote, with
Director Goulding abstaining.

AND FURTHER RESOLVED that the Fourth Supplemental Water Services
Agreement between the Authority and the town of Avon be and hereby is approved as
presented.

Appeal: Brookside Cash-in-Lieu of Water Rights – The Board then discussed the amount
of the cash-in-lieu payment and related information, a copy of which is attached hereto as
Exhibit H and incorporated herein by this reference. Mr. Navarro gave background on his
appeal which is in response to the difference between the preliminary cash-in-lieu estimate of
January 2013 and the later version, provided in November 2014. Both estimates were
provided by water engineer Tom Williamsen. Mr. Porzak clarified that Mr. Williamsen
revised his original estimate after learning that the development would be required to
augment full diversions at certain times of year, which increased the needed water and
subsequently, the cash-in-lieu fee. Discussion ensued with each Director providing input on
the “safety factor” he thought could be reasonably applied to the water demand to arrive at
the Brookside cash-in-lieu fee. After discussion and upon motion duly made and seconded, it
was unanimously
RESOLVED that the Brookside cash-in-lieu fee be and hereby is calculated to be 110% based on a 10% safety factor. Director Goulding abstained.

Discussion continued, with Director Goulding sharing that Avon Town Manager Egger indicated Avon is considering an offer to contribute to help Brookside recoup the increased cash-in-lieu fee if the Authority would also make a concession. Chairman Gregory said the Board would take this under advisement during Executive Session.

REPORT BY WATER COUNSEL

Federal Water Right Directives and Status of Negotiations – Mr. Porzak discussed the impacts of the Forest Service’s proposed mandates on the Authority and District’s water rights. He also discussed a clause that was presented to the Forest Service on behalf of potentially affected water users, a copy of which is attached hereto as Exhibit I and incorporated herein by this reference. He will continue to monitor related developments.

State Legislation – Mr. Porzak presented the latest draft of the state legislation, a copy of which is attached hereto as Exhibit J and incorporated herein by this reference. The legislation was introduced by Sen. Sonnenberg, who said this was his first priority during the legislative session. Mr. Porzak noted the bill would codify existing water law and deem actions such as the current directives an administrative taking. A detailed description of the Sonnenberg bill is attached as Exhibit K and incorporated herein by this reference.

Eagle Park Water Quality – Mr. Porzak noted a report from Leonard Rice Engineers discussing elevated levels of molybdenum in the monitoring well above Eagle Park Reservoir. Staff and consultants will closely monitor this, especially in light of Climax’s upcoming request to the state for a 1000% increase in the molybdenum standards in streams near the Climax Mine.

Best Management Practices for Historic Consumptive Use Credits – Mr. Porzak said the Office of the State Engineer proposed best management practices (BMPs) regarding historic consumptive use credits and received huge pushback from the engineering community, after which implementation plans were delayed.

Water Rights Issues – Mr. Porzak discussed two Authority water rights acquired from Cordillera, both of which are fully augmented and can be diverted at the Edwards Drinking Water Facility. The senior right is tied to the Lake Creek water limits, while the junior right is tied to Eagle River limits, and thus, has a larger flow. Mr. Porzak noted the state’s belief
and a judge’s subsequent ruling that the senior-most, lower-flow right must be diverted first. Discussion ensued regarding possible options, including an appeal of the ruling. The Board directed Mr. Porzak to send a notice of appeal and appeal this ruling. Mr. Collins expects other municipalities will agree with the Authority’s position on this matter.

STAFF INFORMATIONAL REPORTS

Due to time constraints, all staff reports were tabled to the February meeting.

EXECUTIVE SESSION

Mr. Collins requested the Board enter Executive Session to receive legal advice regarding pending negotiations 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 10:51 a.m. to discuss attorney-client privileged issues concerning the Brookside appeal, 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.*

The regular meeting resumed at 11:03 a.m.

Ruling on Brookside Appeal – Chairman Gregory noted the Board had agreed on a reasonable cash-in-lieu payment. Upon motion duly made and seconded, it was unanimously

RESOLVED to reduce the Brookside cash-in-lieu of water rights payment to $40,000.

*
ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 11:04 a.m.

Respectfully submitted,

___________________________________
Secretary to the Meeting

MINUTES APPROVED, FORMAL CALL, AND NOTICE OF MEETING WAIVED

___________________________________
Arrowhead Metropolitan District

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Town of Avon

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Beaver Creek Metropolitan District

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Berry Creek Metropolitan District

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EagleVail Metropolitan District

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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.

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James P. Collins, General Counsel