

# Upper Eagle Regional Water Authority

## Board of Directors Meeting

January 22, 2015

### MINUTES

1 A regular meeting of the Board of Directors of the Upper Eagle Regional Water Authority  
2 (Authority) was held January 22, 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 Mick Woodworth, Edwards Metropolitan District

##### 12 The following Directors were absent and excused:

13 Jim Power, Beaver Creek Metropolitan District

##### 14 The following Alternate Director was present and acting:

15 Bill Simmons, Beaver Creek Metropolitan District

##### 16 Also in attendance were:

17	<u>ERWSD Staff</u>	30	Ed Trainer
18	Linn Brooks	31	<u>Consultants</u>
19	Becky Bultemeier	32	Jim Collins, Collins Cockrel & Cole
20	Jason Cowles	33	Glenn Porzak, Porzak Browning & Bushong LLP
21	Carol Dickman	34	<u>Public</u>
22	Angelo Fernandez	35	JC Clarke, Mountain Star
23	Todd Fessenden	36	Steve Coyer, Mountain Star
24	Catherine Hayes	37	Jim Gustafson, Mountain Star
25	Leslie Isom	38	Sarah Smith Hymes, Town of Avon
26	Diane Johnson	39	Frank Navarro, Brookside, <i>via phone</i>
27	Melissa Mills McLoota	40	Rick Pylman, Brookside
28	Steve Sego	41	Mike Saunders, Mountain Star
29	Brian Tracy		

#### 42 DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

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

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

#### 53 CALL TO ORDER

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

#### 55 INTRODUCTIONS

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

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### 1 PUBLIC COMMENT

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

### 8 ACTION ITEMS

9 **Consideration of Minutes** – The minutes of the Regular Meeting of December 18, 2014, were  
10 considered. Upon motion duly made and seconded, it was unanimously

11 **RESOLVED** that the minutes of the December 18, 2014, Regular Meeting be accepted and  
12 hereby are approved as presented.

13 **Meeting Place and Posting Location** – Ms. Hayes presented a Resolution Designating the  
14 2015 Meeting Place and Posting Location, a copy of which is attached hereto as **Exhibit A**  
15 and incorporated herein by this reference. Upon motion duly made and seconded, it was  
16 unanimously

17 **RESOLVED** that the Resolution Designating the 2015 Meeting Place and Posting  
18 Location be and hereby is approved as presented.

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

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

22 **Amendment to Water Dedication Policy** – Ms. Brooks presented a board action request and  
23 related water dedication policy amendment, copies of which are attached hereto as **Exhibits**  
24 **C** and **D**, respectively, and incorporated herein by this reference. She noted that any new  
25 development within the Authority’s service area must dedicate water rights or pay a cash-in-  
26 lieu fee sufficient to cover the proposed water use. Authority consultants calculate the  
27 amount of needed water based on a water demand worksheet. The final amount is based on  
28 120% of the estimated water demand, which includes a 20% safety factor in case the  
29 development uses more water than estimated. Ms. Brooks reminded Directors of the water  
30 demand management plan approved in 2014 to reduce excessive demand on the system. She  
31 noted the water demand worksheet sometimes over calculates the amount of water needed for

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1 a development, especially in the case of high density developments, which tend to use much  
2 less water per single family equivalent (SFE) than large single-family homes. The proposed  
3 amendment to the Water Dedication Policy allows for an alternate method for calculating  
4 cash-in-lieu of water rights dedication fees with a smaller safety factor if the development  
5 can demonstrate lower water use. This could result in lower cash-in-lieu fee collections for  
6 the Authority, but would give the Authority more certainty of the development's water use.  
7 Notwithstanding, Mr. Porzak emphasized that the norm will still be to base the water  
8 dedication and cash in lieu fee on 120% of the estimated water need absent compelling  
9 evidence to support a lower safety factor. Moreover, the final decision as to whether to  
10 reduce the water dedication or cash in lieu fee to an amount less than 120% is still up to the  
11 Board's discretion and will be considered on a case by case basis. After discussion and upon  
12 motion duly made and seconded, it was unanimously

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

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

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1 and justified, all of which is approved at the Board’s discretion. Upon motion duly made and  
2 seconded, it was unanimously

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

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

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

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

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

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1           **RESOLVED** that the Brookside cash-in-lieu fee be and hereby is calculated to be  
2           110% based on a 10% safety factor. Director Goulding abstained.

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

### 7   **REPORT BY WATER COUNSEL**

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

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

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

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

28          **Water Rights Issues** – Mr. Porzak discussed two Authority water rights acquired from  
29          Cordillera, both of which are fully augmented and can be diverted at the Edwards Drinking  
30          Water Facility. The senior right is tied to the Lake Creek water limits, while the junior right  
31          is tied to Eagle River limits, and thus, has a larger flow. Mr. Porzak noted the state’s belief

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1 and a judge's subsequent ruling that the senior-most, lower-flow right must be diverted first.  
2 Discussion ensued regarding possible options, including an appeal of the ruling. The Board  
3 directed Mr. Porzak to send a notice of appeal and appeal this ruling. Mr. Collins expects  
4 other municipalities will agree with the Authority's position on this matter.

### 5 **STAFF INFORMATIONAL REPORTS**

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

### 7 **EXECUTIVE SESSION**

8 Mr. Collins requested the Board enter Executive Session to receive legal advice regarding pending  
9 negotiations pursuant to §24-6-402(4)(b) and (e), C.R.S. He asked that no electronic record be made, as  
10 the discussion would be entirely privileged attorney-client communications. Upon motion duly made and  
11 seconded, it was unanimously

12 **RESOLVED** to enter executive session at 10:51 a.m. to discuss attorney-client  
13 privileged issues concerning the Brookside appeal, pursuant to §24-6-402(4)(b) and (e)  
14 C.R.S. with no electronic record created as Mr. Collins opined the contents of the  
15 discussion would contain privileged attorney-client communications.\*

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

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

19 **RESOLVED** to reduce the Brookside cash-in-lieu of water rights payment to \$40,000.  
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1 **ADJOURNMENT**

2 There being no further business to come before the Board, the meeting adjourned at 11:04 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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29 \*The undersigned attorney for the applicable Executive Session affirms that the portion of  
30 the discussion in Executive Session not recorded constituted privileged attorney-client  
31 communications.  
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34 \_\_\_\_\_  
35 **James P. Collins, General Counsel**