

Eagle River Water & Sanitation District
Board of Directors Meeting
July 25, 2024
MINUTES

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held July 25, 2024, at 12:00 p.m., in the Walter Kirch Room of the 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 and acting:

Dick Cleveland
Steve Coyer
Sarah Smith Hymes
Timm Paxson
Rick Pylman
Robert Warner, Jr.

The following Director was absent and excused:

Kate Burchenal

Also in attendance were:

<u>District Staff</u>	27	Micah Schuette
Tom Borawski	28	Dan Siebert
Jim Cannava	29	Shane Swartwout
Tony Costello	30	Brian Thompson
Allison Ebbets	31	Carmen Weiland
Steve Gallino	32	Brad Zachman
Chris Geisting	33	
Justin Hildreth	34	<u>Consultants</u>
Jesse Hooker	35	Kristin Moseley, Somach Simmons & Dunn
Diane Johnson	36	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Seth Jones	37	
Kyle Meinel	38	<u>Public</u>
Niko Nemcanin	39	Hugh Fairfield-Smith, Eagle Valley Wildland
David Norris	40	Zoe Goldstein, Vail Daily
Siri Roman	41	
Kailey Rosema		

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 for the following Directors indicating the following conflicts: Director Pylman disclosed that he owns a land planning consulting company doing business in the District's service area that has represented entities that have and may do business with the District. Director Warner disclosed that he is a former Builder/Developer in the District, a Member of the Eagle County Planning Commission and Zoning Board of Adjustment, and President of McCoy Springs at Arrowhead Homeowners Association. Director Burchenal disclosed that she is an employee of Airborne Snow Observatories, Inc., which does not currently do business with the District but there may be a time in the future when they do business with the District or other partners in the District's service area.

CALL TO ORDER

Having determined there was a quorum, Chair Cleveland called the meeting to order at 12:00 p.m.

INTRODUCTIONS

Chair Cleveland recognized Hugh Fairfield-Smith, who presented later in the meeting. Five new employees were introduced: Ms. Ebbets introduced customer relations specialist Carmen Weiland; Mr. Nemcanin introduced locator Steve Gallino; and Mr. Geisting introduced wastewater operators Tony Costello, Seth Jones, and Kyle Meinel.

PUBLIC COMMENT

Chair Cleveland called for public comment and there was none.

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PRESENTATION BY EAGLE VALLEY WILDLAND

Mr. Siebert referenced Mr. Thompson's memorandum, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. He said the District became a partner in the Eagle Valley Wildland (EVW) program in Mar. 2024. Mr. Fairfield-Smith, EVW Fire Management Officer, then presented a PowerPoint, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference. He said EVW is an intergovernmental partnership dedicated to wildfire response, planning, mitigation, and community education. He also said the District is collaborating with EVW on several priorities, including risk reduction around high-value and critical assets and developing the Colorado Ready Wildfire Action Plan. In response to a question, he discussed National Environmental Policy Act (NEPA) processes and other federal land issues impacting local fire management. In response to another question, Ms. Roman said the District contributed \$10,000 towards 2024 fire mitigation and operations per the EVW partnership agreement, of which 30% was allocated to the Authority per the standard split set in the ERWSD/UERWA Operations Agreement. She also said the partnership agreement will be annually considered for renewal. Mr. Fairfield-Smith concluded by thanking the board for its support of the EVW program.

BOARD MEMBER COMPLIANCE TRAINING

Ms. Roman referenced Mr. Thompson's memorandum, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference. She said staff are proposing to provide regular board member compliance trainings as part of ongoing board administrative processes. Mr. Norris and Mr. Borawski then presented a PowerPoint, a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference. Mr. Norris said the Special District Association (SDA) recommends board compliance training to ensure legal adherence, promote good governance, and build public trust. He also said trainings will align to standards and best practices endorsed by the SDA and other industry leaders. The training topics will be related to harassment, discrimination, fiscal accountability, and board member fundamentals. Mr. Borawski, ERWSD People Operations Manager, then facilitated the harassment-related training. He reviewed guidelines on appropriate conduct and highlighted that the intent of a person's actions does not determine whether harassment has occurred, rather the focus is on the impacts experienced by the receiving individual. He also discussed protocols for addressing potential harassment and encouraged board members to notify the General Manager of any personnel matters that come to their attention and to avoid directing staff.

ACTION ITEMS

Consideration of Minutes – The minutes of the June 27, 2024, special meeting were considered. Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the June 27, 2024, special meeting be accepted and hereby are approved as presented.

Contract Log – The board reviewed the contract log, a copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

RESOLVED that the contract log be accepted and hereby is approved as presented.

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1 **Joint Resolution Expressing Support for the Eagle River Community Water Plan –**

2 Mr. Thompson's presented a memorandum and the joint resolution, copies of which are attached
3 hereto as **Exhibits F** and **G**, respectively, and incorporated herein by this reference. He said staff
4 drafted the resolution at the request of the boards following the presentation of the Eagle River
5 Community Water Plan at the Jul. 17, 2024, joint board work session. Upon motion duly made and
6 seconded, it was unanimously,

7 **RESOLVED** to approve and adopt Joint Resolution 2024-04, Expressing Support for the
8 Eagle River Community Water Plan, as presented.

9 **Opting out of additional PFAS class action settlements** – Mr. Thompson presented a
10 memorandum and referenced the Nov. 27, 2023, memorandum by Steve Bushong, copies of which
11 are attached hereto as **Exhibits H** and **I**, respectively, and incorporated herein by this reference. He
12 said Mr. Bushong, water quality counsel for the District and Authority, reported to staff on Jul. 18,
13 2024, that the entities, jointly as a Public Water System (PWS), is a Class Member in the per- and
14 polyfluoroalkyl substances (PFAS) class action settlement involving Tyco Fire Products LP (Tyco),
15 and a Class Member will be automatically included in the settlement unless it opts out by Sept. 23,
16 2024. Mr. Thompson reminded the board of their direction from Nov. 30, 2023, to opt out of the 3M
17 and DuPont class action settlements (3M/DuPont) due to significant issues in these settlements,
18 namely that the defendants would receive broad immunity from future liability related to PFAS
19 contamination, and a PWS would receive compensation at a level far below associated treatment
20 costs, the scope of which is still unknown. He also said Mr. Bushong reported that the Tyco
21 settlement closely mirrors the structure and language of 3M/DuPont and contains similar issues. He
22 further noted Mr. Bushong's support of the boards applying its direction from 3M/DuPont to future
23 similar settlements, as a single inclusive authorization would be more efficient and cost-effective than
24 requiring the board to individually consider each similar settlement. Directors supported opting out of
25 the Tyco settlement and additional future PFAS settlements similar to 3M/DuPont, while continuing to
26 individually consider settlements with material differences, including the potential for greater
27 compensation. Directors also noted that the GM would be authorized to take action based on this
28 distinction in consultation with counsel, and the District and Authority should remain in consensus
29 when opting out of a settlement due to their status as a single PWS. Upon discussion, it was
30 unanimously

31 **RESOLVED** to authorize the General Manager to direct counsel to take such actions as
32 necessary for the District to opt out of all PFAS class action settlements that contain similar
33 structures, language, and issues as the 3M and DuPont settlements, of which the District
34 opted out on Nov. 30, 2023; and be it

35 **FURTHER RESOLVED** that this authorization may be revoked or modified by the board at
36 any time.

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1 INFORMATION REPORTS

2 Directors reviewed board committees and the May Authority meeting summary, copies of which are attached
3 hereto as **Exhibits J** and **K**, respectively, and incorporated herein by this reference.

4 BOARD MEMBER INPUT

5 Directors discussed a letter sent by a customer to the board on Jul. 19 regarding rate changes reflected in
6 their recent bills. Mr. Norris said staff has followed up with this customer. He also said staff are expecting an
7 influx of similar inquiries throughout outdoor irrigation season. Directors thanked the Customer Service team
8 for their outstanding work to help customers understand the 2024 rate redesigns.

9 GENERAL MANAGER REPORT

10 Ms. Roman presented the report, a copy of which is attached hereto as **Exhibit L** and incorporated herein by
11 this reference. She said the District held public tours of the Avon Wastewater Treatment Facility on Jul. 24 to
12 commemorate the completion of the \$57M nutrient upgrade project, and she thanked Directors Cleveland,
13 Coyer, Paxson, and Warner for attending the tours. She also said the District hosted senior leaders from the
14 Colorado Department of Public Health and Environment (CDPHE) on Jul. 9 to discuss challenges related to
15 wastewater regulatory upgrades and the associated financial burdens to ratepayers. They also toured the Vail
16 Wastewater Treatment Facility and highlighted the high-quality effluent and gold medal fishery starting below
17 the outfall. Ms. Roman expressed appreciation to CDHPE leaders for listening to the District's concerns and
18 discussing regulatory tools to provide flexibility to small communities.

19 BUSINESS ADMINISTRATION REPORT

20 Mr. Norris had no written report or further items to discuss.

21 **Quarterly financials** – Mr. Cannava presented the report, a copy of which is attached hereto as
22 **Exhibit M** and incorporated herein by this reference. He said wastewater and water revenues are
23 favorable to budget, and combined operating expenses are favorable despite overages due to
24 emergency distributions system repairs. He also briefly discussed contingencies if these repair
25 expenses follow the historical trend of increasing during the second half of the year.

26 OPERATIONS REPORT

27 Mr. Zachman and Ms. Rosema presented the report and a PowerPoint, copies of which are attached hereto
28 as **Exhibits N** and **O**, respectively, and incorporated herein by this reference. Upon referencing previous
29 board discussion regarding Vail Well R7, Mr. Zachman said a swage repair was attempted inside the well
30 casing on Jun. 19, which slowed the leak but did not fully stop it. Ms. Rosema said staff and consultants
31 proceeded to excavate around the well casing to perform exterior repairs. She also said these repairs were
32 effective and Vail Well R7 is expected to be back online soon. Chair Cleveland said he visited the site and
33 commended Ms. Rosema, Mr. Zachman, Mr. Nemcanin, and other staff involved with the repairs.

34 **Backflow Prevention and Cross-Connection Control (BPCCC) program update** – Mr. Swartwout
35 presented a memorandum, a copy of which is attached hereto as **Exhibit P** and incorporated herein
36 by this reference. He summarized the amendment to the State Plumbing Code resulting from the
37 enactment of HB24-1344, Sunset Plumbing Board, requiring anyone working on a backflow assembly

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1 to have a Plumbers License; historically, backflow testers required a state certification but not a
2 Plumbers License. He also said this change would be a significant challenge for District/Authority
3 public water system compliance as approximately 90% of testers are not licensed plumbers.
4 Following two emergency meetings to address these industrywide concerns, the State Plumbing
5 Board adopted a temporary policy postponing enforcement of this new requirement until April 2025 so
6 that a permanent solution can be implemented during the 2025 legislative session. Staff are advising
7 testers to continue testing and reporting as normal.

8 **ENGINEERING AND WATER RESOURCES REPORT**

9 Mr. Hildreth and Mr. Schuette presented the report, a copy of which is attached hereto as **Exhibit Q** and
10 incorporated herein by this reference. Upon noting the Bolts Lake update in Exhibit Q, directors supported
11 convening a joint board meeting in August for Black & Veatch to provide a project management update.

12 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

13 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit R** and incorporated herein
14 by this reference. Mr. Thompson reported on S.4673, Special District Grant Accessibility Act, which would
15 create the first-ever federal definition of “special district” and require that special districts be considered as
16 eligible local governments in federal funding programs. He said the bill passed in the U.S. House and the
17 Senate version is in committee. He also said the Special District Association of Colorado, on behalf of the
18 National Special District Coalition, asked its members to join a nationwide list of special districts in support of
19 S.4673. Upon discussion, directors expressed support for joining this coalition list.

20 **2025 regular election format** – Mr. Thompson presented a memorandum, a copy of which is
21 attached hereto as **Exhibit S** and incorporated herein by this reference. He said the May 6, 2025,
22 regular district election may be held by mail ballot or polling place if there are no TABOR issues on
23 the ballot. He also said a mail ballot election requires significantly more expenses compared to a
24 polling place election, with little impact on voter turnout in a director-only election. For these reasons,
25 the board supported holding the 2022 and 2023 regular elections by polling place. Upon discussion,
26 the board likewise supported budgeting for the 2025 election to be held by polling place with mailed
27 absentee ballots.

28 **WATER COUNSEL REPORT**

29 Ms. Moseley did not have a written report or items to discuss.

30 **GENERAL COUNSEL REPORT**

31 Ms. Winn did not have a written report or items to discuss.

32 **EXECUTIVE SESSION**

33 Ms. Moseley requested the board move into Executive Session to receive legal advice regarding Bolts Lake
34 and Battle North/Minturn Case Nos. 21CW3029 and 21CW3030, pursuant to §24-6-402(4)(b), C.R.S. Upon
35 motion duly made and seconded, it was unanimously

36 **RESOLVED** to enter into Executive Session at 1:49 p.m. to receive legal advice regarding
37 Bolts Lake and Battle North/Minturn Case Nos. 21CW3029 and 21CW3030, pursuant to §24-

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1 6-402(4)(b), C.R.S., with no electronic record created as Ms. Moseley opined the contents of
2 the discussion would contain privileged attorney-client communications.*

3 Ms. Winn requested the board move into Executive Session to receive legal advice and discuss the purchase
4 of real property at Timber Ridge Village, pursuant to §24-6-402(4)(a) and (b), C.R.S. Upon motion duly made
5 and seconded, it was unanimously

6 **RESOLVED** to enter into Executive Session at 2:04 p.m. to receive legal advice and discuss
7 the purchase of real property at Timber Ridge Village, pursuant to §24-6-402(4)(a) and (b),
8 C.R.S., with no electronic record created as Ms. Winn opined the contents of the discussion
9 would contain privileged attorney-client communications.*

10 Ms. Winn requested the board move into Executive Session to receive legal advice and determine positions
11 relative to matters in negotiation regarding entity fee collection arrangements, pursuant to §24-6-402(4)(b)
12 and (e), C.R.S. Upon motion duly made and seconded, it was unanimously

13 **RESOLVED** to enter into Executive Session at 2:19 p.m. to receive legal advice and
14 determine positions relative to matters in negotiation regarding entity fee collection
15 arrangements, pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created
16 as Ms. Winn opined the contents of the discussion would contain privileged attorney-client
17 communications.*

18 Open session resumed at 2:41 p.m. During the executive session, the board did not take any formal action or
19 discuss any matters not enumerated in §24-6-402(4), C.R.S.

20 **ADJOURNMENT**

21 There being no further business to come before the board at this meeting and upon motion duly moved and
22 seconded, it was unanimously

23 **RESOLVED**, that the signing of the minutes of this meeting shall be deemed to constitute full
24 and complete adoption, ratification, and approval of the business conducted and the
25 resolutions passed; and be it

26 **FURTHER RESOLVED**, that the meeting be adjourned at 2:42 p.m.

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36 *The undersigned attorney for the applicable Executive Session affirms that the portion of the discussion in
37 Executive Session not recorded constituted privileged attorney-client communications.
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42 _____
Kristin Moseley, Water Counsel

_____ **Kathryn Winn, General Counsel**