

Eagle River Water & Sanitation District
Board of Directors Meeting
April 27, 2023
MINUTES

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held April 27, 2023, 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:

Kate Burchenal
Dick Cleveland
Steve Coyer
George Gregory
Timm Paxson
Rick Pylman
Bob Warner

Also in attendance were:

<u>District Staff</u>	27	Siri Roman
Tom Borawski	28	Tracy Rymph
Jim Cannava	29	Jeffrey Schneider
Karen Carter	30	Micah Schuette
Zeek Ferraros	31	Brian Thompson
Tim Friday	32	Justin Way
Madeleine Harris	33	Brad Zachman
Justin Hildreth	34	
Jesse Hooker	35	<u>Consultants</u>
Diane Johnson	36	Kristin Moseley, Somach Simmons & Dunn
Ali Kelkenberg	37	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Kira Koppel	38	
Connor Meffert	39	<u>Public</u>
Kevin Nelson	40	Sarah Smith Hymes
Chuck Owen	41	Chris Neuswanger
Michael Rae	42	
Rob Ringle	43	

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 Gregory disclosed that he serves on the board of the Upper Eagle Regional Water Authority (Authority) and occasionally undertakes development and construction activities within the District and Authority service areas. Director Warner disclosed that he is a developer within the District's service area and serves on the Eagle County Planning Commission, which occasionally has dealings with the District. Director Pylman disclosed that he owns a land planning consulting company, which occasionally has dealings with the District.

CALL TO ORDER

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

INTRODUCTIONS

Chair Cleveland welcomed members of the public. Five new District employees were introduced: Mr. Way introduced senior network infrastructure engineer Zeek Ferraros; Mr. Friday introduced water resources engineer Justin Hildreth; Mr. Ringle introduced wastewater treatment operator Connor Meffert; Mr. Schneider introduced project managers Madeleine Harris and Kevin Nelson. Mr. Zachman recognized departing wastewater treatment manager Rob Ringle for his service to the District.

PUBLIC COMMENT

Chair Cleveland called for public comment and there was none.

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ACTION ITEMS

Consideration of Minutes – The minutes of the Mar. 23, 2023, special meeting were considered.

Upon motion duly made and seconded, it was unanimously

RESOLVED that the minutes of the Mar. 23, 2023, 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 A** 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.

Amended and Restated Joint Resolution Establishing a No-Fault Damages Program – Ms. Winn presented the resolution, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference. She said this amended and restated resolution, which supersedes the original resolution enacted Aug. 25, 2022, clarifies that the No-Fault Damages Program applies only to residential structures and does not apply to areas such as driveways, landscaping, or easements. She also said the cap on total combined payments under section 1(e) would remain at \$200,000 per fiscal year. Directors unanimously agreed to add a provision that explicitly excludes reimbursement of insurance deductibles. Ms. Winn recommended that joint resolutions be adopted by both boards in the exact same form. She further noted that Joint Res. 2023-01 would be superseded and a new Joint Res. 2023-02, incorporating the abovementioned amendment, would be the resolution that will be considered by the District board at today's meeting and then considered by the Authority board at their next regular meeting. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve and accept Amended and Restated Joint Resolution 2023-02, Establishing a No-Fault Damages Program, as further amended.

Legacy at Vail Square Water Rights Dedication – Mr. Schuette presented a memorandum, a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference. In response to a question, he said cash in lieu fees would be set by the District's rates at the date of payment and this policy would be stated on invoices. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept a cash payment in lieu of dedicating water rights in the amount of \$23,666 to cover the 0.36 acre-feet needed to satisfy the water dedication requirement for the Legacy at Vail Square project.

INFORMATION REPORTS

Directors reviewed the development report, board committees, and Authority March meeting summary, copies of which are attached hereto as **Exhibits D, E, and F**, respectively, and incorporated herein by this reference.

BOARD MEMBER INPUT

Chair Cleveland recognized Secretary Gregory, who is term-limited and serving his final meeting on the board. Directors thanked Secretary Gregory for his service and leadership.

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GENERAL MANAGER REPORT

Ms. Roman presented a memorandum, a copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference. Directors unanimously supported the recommendation in Exhibit G granting Eagle County School District bus access through the District's Cattail Flats housing property.

Ms. Roman reported on a leak in a Vail Resorts (VR) snowmaking line and said VR is not required to sample the discharge because algaecide has not been applied to Vail's snowmaking pond since 2021. She also provided updates on the District's participation in community presentations and work sessions.

Senate Bill 213, Land Use – Ms. Roman presented a memorandum, an Apr. 5, 2023, letter from her to Senator Dylan Roberts, a Fiscal Note Response Form (LLS# 23-0890.01), an Apr. 14, 2023, letter from her to Senator Roberts, and an Apr. 17, 2023, letter from Colorado Water Congress to Members of the Senate Local Government and Housing Committee ("Committee"), copies of which are attached hereto as **Exhibit H, I, J, K, and L**, respectively, and incorporated herein by this reference. She provided updates on SB 23-213 and recognized Ms. Moseley, Ms. Winn, Ms. Johnson, Mr. Schneider, Mr. Cowles, and Mr. Norris for their coordinated response to the bill's Mar. 22 introduction. Ms. Moseley said Senator Roberts referenced the District's analysis during the Apr. 6 Committee hearing and it had been widely circulated. She also said there have been several proposed amendments and a vote has not been scheduled. Chair Cleveland and Director Pylman thanked District staff and consultants for their leadership as the only water service providers that analyzed the tangible impacts of land planning on water service and supply.

Golden Peak Snowmaking Agreement – Ms. Roman presented a memorandum and the final executed agreement, copies of which are attached hereto as **Exhibits M and N**, respectively, and incorporated herein by this reference. She said Ski & Snowboard Club Vail and VR are discussing operational changes.

BUSINESS ADMINISTRATION REPORT

Quarterly financials – Mr. Cannava presented the report, a copy of which is attached hereto as **Exhibit O** and incorporated herein by this reference. He said operating expenses are on track with the FY 2023 budget and the District has received bond proceeds.

People Analytics – Mr. Borawski presented a memorandum and a PowerPoint, copies of which are attached hereto as **Exhibits P and Q**, respectively, and incorporated herein by this reference. Mr. Borawski, Ms. Carter, Ms. Kelkenberg, and Ms. Rymph discussed the District's human resources data infrastructure and summarized current workforce data. In response to a question, he said the District's recent compensation adjustments have improved employee recruitment.

OPERATIONS REPORT

Mr. Zachman presented the report, a copy which is attached hereto as **Exhibit R** and incorporated herein by this reference. He provided updates on recruitment for vacancies in the operations department. He also said annual pumping at the East Fork Pump Station will begin in early May.

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1 **Merging water systems for regulatory compliance** – Mr. Zachman presented a memorandum, a
2 copy of which is attached hereto as **Exhibit S** and incorporated herein by this reference. He said the
3 Colorado Department of Public Health & Environment approved the District and Authority’s request to
4 merge their individual public water systems (PWSs) for regulatory compliance purposes. As of Apr. 1,
5 the systems are now formally regulated as a single PWS. He also said the combined PWS is identified
6 as “Eagle River Water & Sanitation District” (ERWSD) and the District and Authority are listed as co-
7 owners. He further noted that ERWSD is now the second largest community water system on the
8 western slope and twenty-fifth largest system in Colorado with the third most facilities.

9 **Hillcrest right of way acquisition** – Mr. Schneider presented a memorandum, a copy of which is
10 attached hereto as **Exhibit T** and incorporated herein by this reference. He said the Colorado
11 Department of Transportation will determine the fair market value of the property that Eagle County is
12 intending to acquire based on independent appraisals from Eagle County and the District. He also said
13 the deadline to provide the independent appraisal has been extended to May 8 and once the appraisal
14 is complete, the District will negotiate final costs of acquisition with Eagle County and an action request
15 will be presented to the board.

16 **ENGINEERING AND WATER RESOURCES REPORT**

17 The board noted the written report from Jason Cowles, a copy of which is attached hereto as **Exhibit U**
18 and incorporated herein by this reference.

19 **Sustainability statistics and progress** – Ms. Koppel presented a PowerPoint, a copy of which
20 is attached hereto as **Exhibit V** and incorporated herein by this reference. She reviewed 2022
21 sustainability achievements and data. Highlights include reductions in natural gas and electricity
22 use and continued progress in energy-efficient transportation. She also said the District received
23 the Actively Green and Colorado Green Business Network certifications, and the Edwards
24 Wastewater Treatment Facility was awarded the Rocky Mountain Water Environment
25 Association’s Sustainability Award.

26 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

27 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit W** and incorporated
28 herein by this reference. She said Senate Bill 23-150, Require Labeling Disposable Wipes, was signed by
29 Governor Polis on April 11. She also said the research, outreach, and committee testimony provided by
30 District staff and consultants were critical to getting this law enacted. In response to a question, Ms.
31 Moseley said the law will take effect in August and compliance will likely take additional time until current
32 inventories of non-labeled wipes are exhausted. Ms. Johnson noted that the water use regulations
33 brochure will be included in customers’ May billing statements and is in both Spanish and English.
34 Communications about water conservation are ramping up as the seasons change and include
35 community presentations and outreach such as the May 10 town of Vail Lunch with the Locals program,
36 Sustainability Fairs with the town of Avon & Singletree, and the annual State of the River event on June 1.

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1 **Election Update** – Mr. Thompson said the District’s polling place election will be held on May 2 and
2 requests for absentee ballots were accepted through April 25. In response to a question, Ms. Johnson
3 said unofficial results will be available on the ERWSD website after votes are counted on May 2.

4 **WATER COUNSEL REPORT**

5 Ms. Moseley presented a memorandum and the District water rights appraisal, copies of which are
6 attached hereto as **Exhibits X** and **Y**, respectively, and incorporated herein by this reference. She said
7 the appraisal is needed for the annual financial audit and is based on current cash in lieu rates, which
8 greatly increased since the last appraisal due to the estimated costs to design, permit and construct
9 Bolts Lake. She also said there is no longer a price difference between summer and winter water for
10 cash-in-lieu of water rights purchases. She further noted that she utilized the price used in the 2022 cash
11 in lieu rates as the appraised value for historic consumptive use credits, which will likely need to be
12 increased in future appraisals to keep pace with market values. In response to a question, she said
13 conditional storage applies to structures that have not yet been built. In response to another question,
14 she said Wolford Reservoir is an augmentation source for Bolts Lake.

15 **GENERAL COUNSEL REPORT**

16 The board noted Ms. Winn’s privileged written report. She had no items to discuss in open session.

17 **EXECUTIVE SESSION**

18 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related
19 to Senate Bill 23-213, Land Use. Upon motion duly made and seconded, it was unanimously

20 **RESOLVED** to enter into Executive Session at 2:32 p.m. to discuss matters related to
21 Senate Bill 23-213 as Ms. Moseley opined the contents of the discussion would contain
22 privileged attorney-client communications.*

23 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related
24 to Senate Bill 23-295, Colorado River Drought Task Force. Upon motion duly made and seconded, it
25 was unanimously

26 **RESOLVED** to enter into Executive Session at 2:33 p.m. to discuss matters related to
27 Senate Bill 23-295, Colorado River Drought Task Force, pursuant to §24-6-402(4)(b),
28 C.R.S., with no electronic record created as Ms. Moseley opined the contents of the
29 discussion would contain privileged attorney-client communications.*

30 Ms. Winn requested the board move into Executive Session to receive legal advice of counsel and
31 discuss matters in negotiation related to a notice of intent to sue. Upon motion duly made and seconded,
32 it was unanimously

33 **RESOLVED** to enter into Executive Session at 2:50 p.m. to discuss matters related to
34 water rights reports pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic
35 record created as Ms. Winn opined the contents of the discussion would contain
36 privileged attorney-client communications.*

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1 The open session resumed at 3:12 p.m. During the executive session, the board did not take any formal
2 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

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4 **ACTION AS A RESULT OF EXECUTIVE SESSION**

5 Ms. Moseley discussed Senate Bill 23-295, Colorado River Drought Task Force. Upon motion duly
6 moved and seconded, it was unanimously

7 **RESOLVED** to direct counsel to express the District's position in favor of Senate Bill 23-295.

8 **ADJOURNMENT**

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

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

14 **FURTHER RESOLVED**, that the meeting be adjourned at 3:12 p.m.

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19 Secretary to the Meeting
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43 *The undersigned attorney for the applicable Executive Session affirms that the portion of the
44 discussion in Executive Session not recorded constituted privileged attorney-client communications.
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48 **Kristin Moseley, Water Counsel**

_____ **Kathryn Winn, General Counsel**