

Eagle River Water & Sanitation District
Board of Directors Meeting
May 25, 2023
MINUTES

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held May 25, 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
Sarah Smith Hymes
Timm Paxson
Rick Pylman
Bob Warner

Also in attendance were:

<u>District Staff</u>	24	Brian Thompson
Chuck Chadwick	25	Brad Zachman
Leah Cribari	26	
Allison Ebbets	27	<u>Consultants</u>
Tim Friday	28	Kristin Moseley, Somach Simmons & Dunn
Justin Hildreth	29	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Jesse Hooker	30	
Diane Johnson	31	<u>Public</u>
Niko Nemcanin	32	Tammy Baker
David Norris	33	James Dilzell
Chuck Owen	34	Eric Heil
Siri Roman	35	Joanna Kerwin
Jeff Schneider	36	Cliff Thompson
Micah Schuette	37	

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 Board of Adjustment, and President of McCoy Springs at Arrowhead Homeowners Association.

CALL TO ORDER

Having determined there was a quorum, Chair Cleveland called the meeting to order at 12:03 p.m.

OATHS OF OFFICE

Mr. Thompson administered oaths of office to recently elected directors Cleveland, Smith Hymes, and Warner, copies of which are attached hereto as **Exhibits A, B, and C**, respectively, and incorporated herein by this reference. The certificates of appointment were executed and filed electronically with the Clerk and Recorder.

MOTION TO CHANGE AGENDA

Directors unanimously agreed to change the agenda to move public comment as the next item.

PUBLIC COMMENT

Chair Cleveland called for public comment. Joanna Kerwin, an Edwards resident and customer, expressed concerns regarding the removal of grass using herbicides. She suggested that the District review lawn removal methods and work with community entities to promote methods that protect water quality. Chair

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1 Cleveland said the joint board Water Conservation Committee will discuss and provide recommendations to
2 the full board at the June 22 meeting.

3 **INTRODUCTIONS**

4 Mr. Nemcanin recognized lead field operator Chuck Chadwick, who is retiring from the District after 30
5 years of service. He invited directors to attend a Jun. 2 celebration in honor of Mr. Chadwick.

6 **ORGANIZATIONAL ITEMS**

7 Mr. Thompson presented a memorandum, a copy of which is attached hereto as **Exhibit D** and
8 incorporated herein by this reference. He reviewed organizational items that are typically considered by the
9 board at the first meeting following special district elections. He noted that officer terms expire in May 2024.

10 **Disclosures of Potential Conflicts of Interests** – Ms. Winn presented a memorandum and the
11 Disclosure of Potential Conflicts of Interest Questionnaire (“Questionnaire”), copies of which are
12 attached hereto as **Exhibit E** and **F**, respectively, and incorporated herein by this reference.
13 Discussion ensued regarding potential conflicts of interest. Ms. Winn recommended that all
14 directors complete a Questionnaire annually and reviewed the disclosure process, which includes:
15 1) Each director submits their Questionnaire to the District’s general counsel; 2) Counsel reviews
16 Questionnaires and provides guidance to individual directors on whether a potential conflict should
17 be disclosed; 3) Counsel consults with the disclosing director to create a Conflict of Interest
18 Disclosure and file with the Secretary of State (SOS); 4) SOS responds to the disclosing director
19 with a Conflict Disclosure Letter and Certificate, which are posted on the SOS website; 5) The
20 potential conflict is disclosed to the board by publishing the disclosure in meeting minutes; 6) The
21 disclosing director abstains on discussing and voting on matters related to the conflict unless their
22 vote is needed to establish quorum.

23 **SECRETARY APPOINTMENT**

24 Mr. Thompson presented a memorandum, a copy of which is attached hereto as **Exhibit G** and
25 incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

26 **RESOLVED** that Bob Warner serve as Secretary for the remainder of the current officer term.

27 **ACTION ITEMS**

28 **Consideration of Minutes** – The minutes of the Apr. 27, 2023, regular meeting were considered. Upon
29 motion duly made and seconded, it was

30 **RESOLVED** that the minutes of the Apr. 27, 2023, regular meeting be accepted and hereby are
31 approved as presented, with Director Smith Hymes abstaining as she was not yet on the board.

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

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

36 **Resolution Setting a Revised Regular Meeting Schedule** – Mr. Thompson presented a memorandum
37 and the resolution with its Exhibit A: Revised 2023 Regular Meeting Schedule, copies of which are

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1 attached hereto as **Exhibit I** and **J**, respectively, and incorporated herein by this reference. He said
2 replacing the Nov. 17 and Dec. 21 meetings with one meeting on Dec. 7 will allow staff to prioritize end-
3 of-year work plans and employee evaluations. Upon motion duly made and seconded, it was
4 unanimously

5 **RESOLVED** to approve Resolution 2023-04, Resolution Setting a Revised Regular Meeting
6 Schedule, with its Exhibit A, as presented.

7 **Designating Eagle Park Reservoir Company (EPRC) board representative** – Mr. Thompson
8 presented a memorandum, a copy of which is attached hereto as **Exhibit K** and incorporated herein by
9 this reference. In response to a question, he said the District chair has historically served as the EPRC
10 board representative. Upon motion duly made and seconded, it was unanimously

11 **RESOLVED** to appoint Dick Cleveland to serve as the District's representative on the EPRC
12 board of directors for EPRC's 2024 fiscal year term.

13 **Staffing Request** – Mr. Norris presented a memorandum, a copy of which is attached hereto as **Exhibit**
14 **L** and incorporated herein by this reference. He said adding a full-time water operator and a wastewater
15 operator will provide necessary organizational redundancy and strategically prepare entry level
16 employees in the event of staff turnover. Upon motion duly made and seconded, it was unanimously

17 **RESOLVED** to approve the Staffing Request for two full-time employees as presented.

18 **INFORMATION REPORTS**

19 Directors reviewed the development report, board committees, and Authority April meeting summary,
20 copies of which are attached hereto as **Exhibits M, N, and O**, respectively, and incorporated herein by this
21 reference. Ms. Roman said the development report work session, which is postponed from today due to the
22 unexpected absence of Jason Cowles, will help staff adapt the report to the informational needs of the
23 board. Discussion ensued regarding reinstating the board Water Quality Committee and training a director
24 to serve on the Audit and Budget Committees prior to Treasurer Coyer's term-limited transition in 2025.
25 Directors Smith Hymes and Paxson were assigned to the Water Quality Committee and Director Pylman
26 was assigned to replace Chair Cleveland on the Employee Housing Committee.

27 **BOARD MEMBER INPUT**

28 Chair Cleveland welcomed Director Smith Hymes to the board. Director Pylman said he heard community
29 members express interest in landscape transformation rebates and suggested that program policies be
30 confirmed soon so customers can plan for irrigation season. In response to a question, Mr. Norris said the
31 joint board Water Conservation Committee will recommend policies to the board after considering best
32 practices and feasibility studies. In response to another question, he said the rebate program requires
33 customers show that inefficient turf has been removed and does not prescribe acceptable transformation
34 options. In response to another question, he said the District provides \$2 per acre-foot and Edwards Metro
35 District (EMD) provides an additional \$1 per acre-foot, and EMD agreed for the District to facilitate a
36 coordinated application process to limit barriers to entry. Mr. Dilzell was asked to summarize the Eagle
37 River Watershed Council's rebate program.

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GENERAL MANAGER REPORT

Ms. Roman provided updates on community presentations and work sessions. Directors discussed community messaging related to rate conversions and water conservation.

BUSINESS ADMINISTRATION REPORT

Mr. Norris presented a memorandum, a copy of which is attached hereto as **Exhibit P** and incorporated herein by this reference. He said a disconnection policy is stated in the Rules and Regulations and applies only to customers with unpaid balances for more than 45 days. In practice, the District has implemented the policy on unpaid balances of greater than 90 days and prioritized high-balance accounts. In response to a question, he said insolvent customers receive at least nine communications from the District during this 90-day period that include referrals to financial assistance programs and opportunities to set up payment plans; however, these customers are overwhelmingly unresponsive and are not pursuing assistance. In response to another question, he said field operations staff and appropriate fire entities are notified when service is disconnected. Finally, he said three accounts have been in the process and one account is scheduled for disconnection for the month of May.

OPERATIONS REPORT

Mr. Zachman presented the report, a copy which is attached hereto as **Exhibit Q** and incorporated herein by this reference. He said Eagle Park Reservoir is about 60% filled since pumping began at the East Fork Pump Station on May 4, which is ahead of pace compared to 2022. He also said both Black Lakes are on track to fill. In response to a question, Ms. Johnson said peak snow water equivalent is occurring earlier in the season and SNOTEL stations are melting out earlier. In response to another question, Mr. Zachman said backflow prevention compliance applies to a certain pool of accounts that are tested annually. He also said the District is a participant in statewide stakeholder discussions reviewing backflow regulations.

Regulation 93 – Ms. Cribari presented a memorandum and a PowerPoint, copies of which are attached hereto as **Exhibits R** and **S**, respectively, and incorporated herein by this reference. She said the Water Quality Control Commission ruled that Eagle River Segment 9c from a point immediately below the confluence with Rube Creek to the confluence with the Colorado River will be listed on the 303(d) List of Impaired Waters due to occurrences of water temperatures being higher than the standard in two years out of four. She also said warming trends, which are not accounted for in Regulation 93, suggest that other segments may become out of compliance under the current standards. She further noted that the implications of a 303(d) listing for temperature have yet to be determined and may require costly cooling infrastructure that will not impact stream temperatures due to discharged effluent being a small portion of overall streamflow.

ENGINEERING AND WATER RESOURCES REPORT

The board noted the written report by Mr. Cowles, a copy of which is attached hereto as **Exhibit T** and is incorporated herein by this reference.

Construction cost and market update – Mr. Schneider presented a memorandum and a PowerPoint, copies of which are attached hereto as **Exhibits U** and **V**, respectively, and incorporated herein by this reference. He said construction costs have nearly doubled locally since 2020, which will continue to

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1 impact capital projects and master planning. Discussion ensued regarding strategies to overcome these
2 ongoing marketwide challenges.

3 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

4 Ms. Johnson reminded directors of the annual State of the River event on June 1 and upcoming Special
5 District Association board member workshops. She also provided an update on negotiations amongst the
6 Colorado Basin states. Specifically, she said California, Arizona, and Nevada reached a deal to cut three
7 million acre-feet of water use over three years, and the U.S. Department of Interior is now temporarily
8 withdrawing the draft Supplemental Environmental Impact Statement it published last month so that it can
9 fully analyze the effects of the proposal.

10 **Election returns**– Mr. Thompson presented a memorandum, a copy of which is attached hereto as
11 **Exhibit W** and incorporated herein by this reference. He said the increase in ballots cast was due largely
12 to significant growth of the District's permanent absentee ballot list. In response to a question, Ms. Winn
13 said special district elections are subject to the Colorado Local Government Election Code, which does
14 not allow for online voting.

15 **WATER COUNSEL REPORT**

16 Ms. Moseley presented a memorandum and Senate Bill 23-295, Colorado River Drought Task Force,
17 copies of which are attached hereto as **Exhibit X** and **Y**, respectively, and incorporated herein by this
18 reference. She said this bill, which passed in both chambers and is not anticipated to be vetoed, would
19 create a task force to develop recommendations that address drought in the Colorado River basin.

20 **GENERAL COUNSEL REPORT**

21 The board noted Ms. Winn's privileged written report. She said Senate Bill 23-286, Access to Government
22 Records, passed in both chambers and is awaiting the Governor's signature. She also said Senate Bill 23-
23 303, Reduce Property Taxes and Voter-approved Revenue Change, was signed by the Governor and its
24 associated Proposition HH will be considered by voters in the 2023 general election. In response to a
25 question, she said Proposition HH would impact the deadline to certify mill levies.

26 **EXECUTIVE SESSION**

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

29 **RESOLVED** to enter into Executive Session at 2:51 p.m. to discuss matters related to
30 Senate Bill 23-213 pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created
31 as Ms. Winn opined the contents of the discussion would contain privileged attorney-client
32 communications.*

33 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and
34 discuss matters in negotiation related to Colorado River Cooperative Agreement matters. Upon motion duly
35 made and seconded, it was unanimously

36 **RESOLVED** to enter into Executive Session at 3:23 p.m. to discuss matters related to
37 Colorado River Cooperative Agreement matters pursuant to §24-6-402(4)(b) and (e),

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

3 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and
4 discuss matters in negotiation related to a diligence application on the Independence Pass exchange. Upon
5 motion duly made and seconded, it was unanimously

6 **RESOLVED** to enter into Executive Session at 3:33 p.m. to discuss matters related to a
7 diligence application on the Independence Pass exchange pursuant to §24-6-402(4)(b) and
8 (e), C.R.S., with no electronic record created as Ms. Moseley opined the contents of the
9 discussion would contain privileged attorney-client communications.*

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

13 **RESOLVED** to enter into Executive Session at 3:39 p.m. to discuss matters related to a
14 notice of intent to sue pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record
15 created as Ms. Winn opined the contents of the discussion would contain privileged
16 attorney-client communications.*

17 The open session resumed at 3:41 p.m. During the executive session, the board did not take any formal
18 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

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1 **ADJOURNMENT**

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

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

7 **FURTHER RESOLVED**, that the meeting be adjourned at 3:42 p.m.

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Secretary to the Meeting

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*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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Kristin Moseley, Water Counsel

Kathryn Winn, General Counsel

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