



## MEMORANDUM

**TO:** Board of Directors  
**FROM:** Brian Thompson, Government Affairs Administrator  
**DATE:** August 18, 2023  
**RE:** August 24, 2023, Board Meeting

This memorandum shall serve as notice of a Special Joint Meeting of the Boards of Directors of the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority:

**Thursday, August 24, 2023  
11:00 a.m.**

**This meeting will be held at:**

Walter Kirch Room  
Eagle River Water & Sanitation District Vail office  
846 Forest Road  
Vail, Colorado

The meeting can also be accessed on Microsoft Teams. Login information can be requested by sending an email at least 24 hours in advance to [info@erwsd.org](mailto:info@erwsd.org).

Input from members of the public is welcomed during the meeting's designated Public Comment period consistent with § 18-9-108, C.R.S. Speakers may address the Board on a first-recognized basis by the Chair. Public Comments are limited to three minutes per speaker on relevant matters not listed on the agenda.



BOARDS OF DIRECTORS SPECIAL JOINT MEETING  
August 24, 2023  
**11:00 a.m.**  
Walter Kirch Conference Room

**AGENDA**

- |  | <u><a href="#">Attachment Link</a></u> |
|--|--|
| 1. <b>Introductions</b>  |  |
| 2. <b>Public Comment</b>   |  |
| 3. <b>Bolts Lake project update – Jason Cowles &amp; Justin Hildreth</b>   | <a href="#">Informational</a>          |
| 4. <b>Gore Creek fish kill settlement agreement – Siri Roman</b>   | <a href="#">Informational</a>          |
| 5. <b>General Counsel Report – Kathryn Winn</b>  | <a href="#">Confidential</a>           |
| 6. <b>Executive Session</b>  |  |
| 6.1. Motion to move into Executive Session pursuant to §24-6-402(4)(b), C.R.S.,<br>to receive legal advice related to: |  |
| 6.1.1. Bolts Lake matters  |  |
| 6.1.2. Minturn/Battle North settlement agreement   | <a href="#">Confidential</a>           |
| 6.1.3. Colorado River Cooperative Agreement matters  | <a href="#">Confidential</a>           |
| 6.1.4. Gore Creek fish kill settlement agreement   | <a href="#">Confidential</a>           |
| 7. <b>Adjournment</b>  |  |



## MEMORANDUM

**TO:** Boards of Directors

**FROM:** Jason Cowles, Director of Engineering and Water Resources  
Justin Hildreth, Water Resources Engineer

**DATE:** August 17, 2023

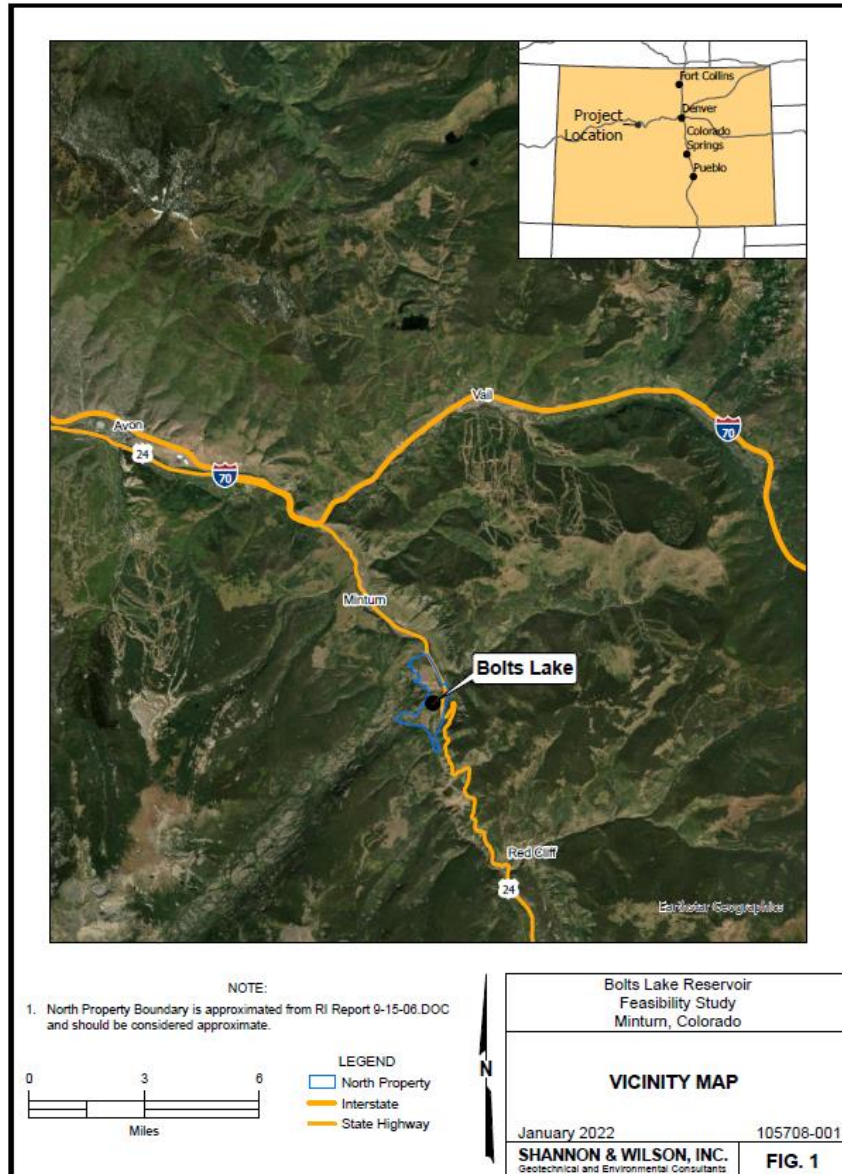
**RE:** Bolts Lake Update

This memorandum provides an update on the Bolts Lake project, describes the project schedule, outlines federal, state, and local permitting requirements, and summarizes construction management and contractor procurement.

### **Bolts Lake Background**

Bolts Lake is a 1200 acre-foot reservoir planned on property owned by the District and Authority (D/A) south of Minturn, situated between Maloit Park and Tigiwon Road (Figure 1). Ben Bolt constructed a reservoir around 1890 at this location which is a natural basin carved out by glaciers. Ben Bolt filled the reservoir with water diverted from Cross Creek and used it for recreation and fishing. Eventually, Empire Zinc Company, the operators of the Eagle Mine, purchased the property and operated the reservoir for recreational purposes. In 1996, the State of Colorado required the breach of the dam because it was classified as a high-hazard dam that did not meet the State's design and construction standards.

The D/A water demand projections which include future growth and climate change impacts demonstrated the need for additional sources of in-basin storage to augment depletions primarily for the benefit of the Authority. Investigations of potential sites throughout the Eagle River valley pointed towards the Bolts Lake site because of its location on private property near the confluence of Cross Creek and the Eagle River above the D/A's service area, the site's historical use as a reservoir, and the topography that creates a natural bowl for the reservoir. In 2021, the D/A contracted with Shannon and Wilson, Inc. to complete a feasibility analysis of the reservoir site. The feasibility study demonstrated that the site is technically feasible and diversions from Cross Creek or the Eagle River can fill the reservoir. The D/A purchased the site from the Battle North last year and concurrently entered into an Intergovernmental Agreement with Minturn to release the D/A from an easement on the reservoir property in exchange for Minturn receiving 20 acre-feet of augmentation storage from the District and the option to purchase an additional 55 acre-feet upon completion of Bolts Lake.



**Figure 1: Vicinity Map**

**Project Status**

The D/A retained Shannon and Wilson, Inc. (S&W) and LRE Water to complete the preliminary design, scheduled to be finished in early 2024. S&W already completed the feasibility study and cost estimate in January 2022 prior to the D/A purchasing the property. The preliminary design includes geotechnical studies, grading plans, groundwater modeling, soil borrow investigations, water diversions analysis, headgate assessment, and permitting assistance.

Last fall, S&W collected several boring samples at the reservoir site to evaluate the structural properties of the bedrock underlying the site. A geotechnical laboratory analyzed the samples collected from this effort and the results were provided in the spring.

The scope of the preliminary design effort also includes a borrow analysis of the District's 25-acre biosolids containment facility (BCF) in Wolcott. The feasibility level design (Figure 2) indicates Bolts Lake will require approximately 182,000 cubic yards (CY) of clay material for the dam core and liner without synthetic material. This spring, S&W hired a boring contractor to drill three additional bores and collect boring soil samples and excavate nine test pits at the BCF to evaluate the quality and quantity of clay material available at the site. The soil analysis indicates there is approximately 140,000 CY of highly suitable clay material available at the BCF, which will not be enough to implement the initial liner design concept. Staff is collaborating with S&W to evaluate design alternatives to develop a cost-effective design by minimizing excavation within the existing property, developing a liner design that incorporates clay and synthetic materials, and gravity-filling the reservoir instead of constructing a pump station.

Staff is also working with the Bureau of Land Management to release the BCF land from a patent reservation, which reserves mineral interests to the United States Government. This will need to be completed before clay can be mined from the BCF.

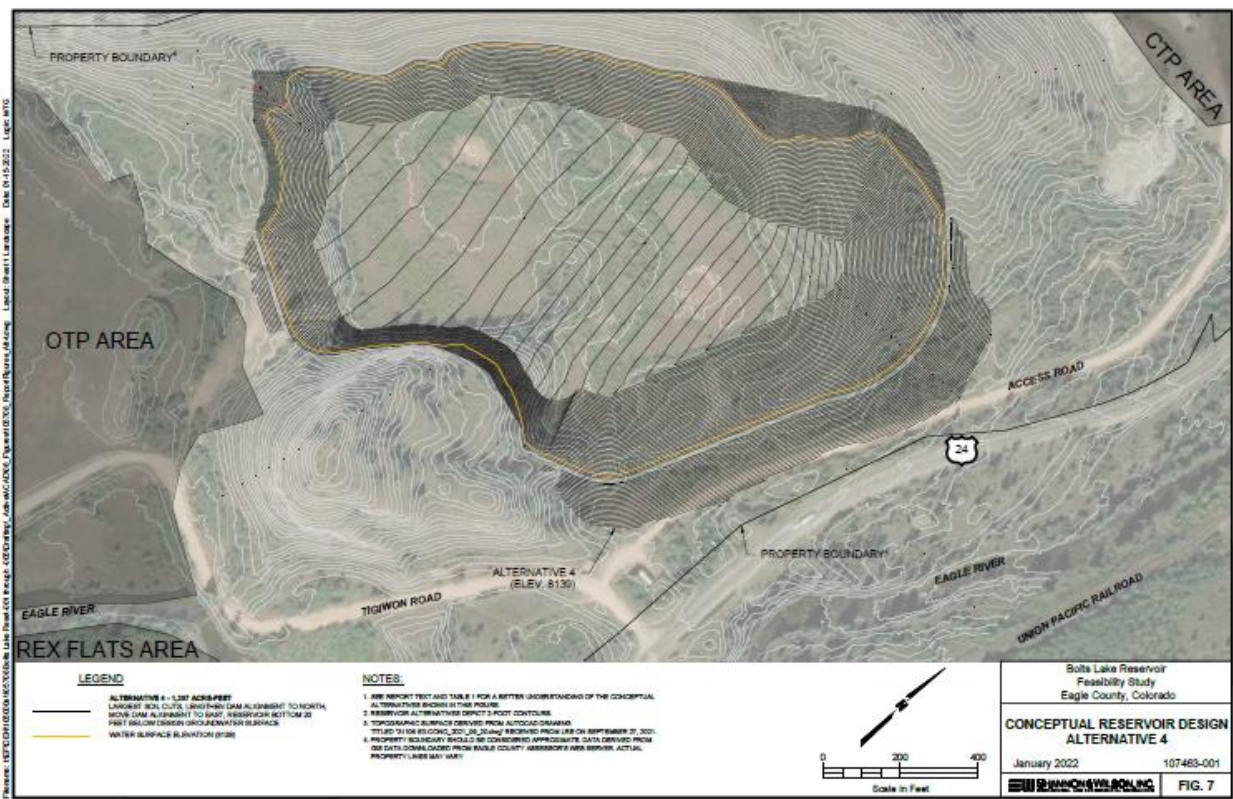


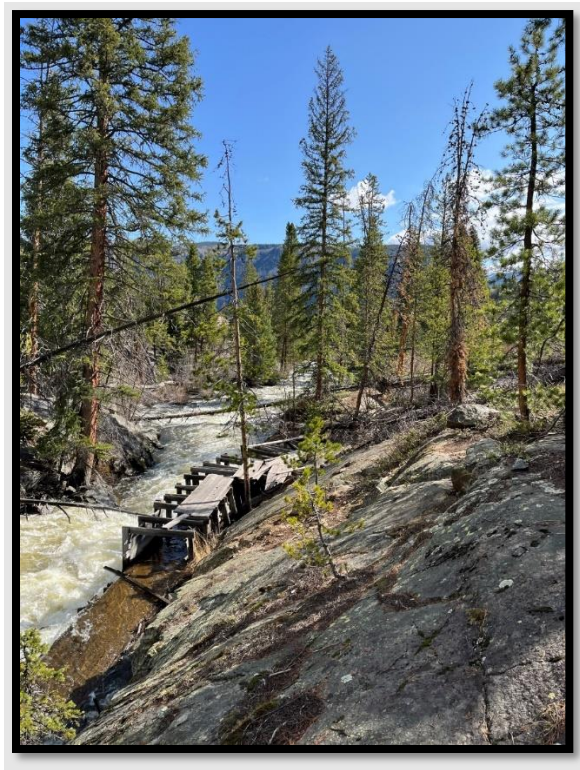
Figure 2: Preliminary Grading Plan for Bolts Lake

## Schedule

Attachment A contains the current project schedule. After S&W completes the preliminary design, we will begin the process of obtaining federal, state, and local permits. We anticipate that the permitting and design phase will span a minimum of two years, possibly longer due to the inherent risk of delays during permitting. Construction by the contractor is slated to commence in 2027 following the conclusion of the final design and permitting processes. The reservoir's construction is estimated to take approximately three years, with the earliest feasible completion date being 2029 contingent on permitting and project funding.

## Water Diversion Source

S&W is evaluating two water diversion options to fill the reservoir, including an Eagle River diversion and the existing diversion on Cross Creek in the Holy Cross Wilderness. The Cross Creek diversion (Figure 3) currently appears to be the most efficient and cost-effective way to fill the reservoir. The hydrologic models indicate that there are adequate flows in Cross Creek to gravity-fill the reservoir each spring subject to design and hydraulic analysis of the intake structure that will be performed once the design team completes a survey of the intake location this fall. An Eagle River diversion could also be permitted and constructed if Cross Creek is unable to reliably fill the reservoir, but the Eagle River diversion option will require pumping and extensive piping through wetlands, significantly increasing costs and environmental impact. The two diversion locations (Figure 4) are expected to produce similar yields. The 2021 cost estimate for the Cross Creek gravity diversion is \$920,000 compared to \$8,330,000 for the Eagle River diversion.



**Figure 3: Bolts Lake Headgate on Cross Creek in 2023**

Figure 3: Bolts Lake Headgate on Cross Creek in 2023

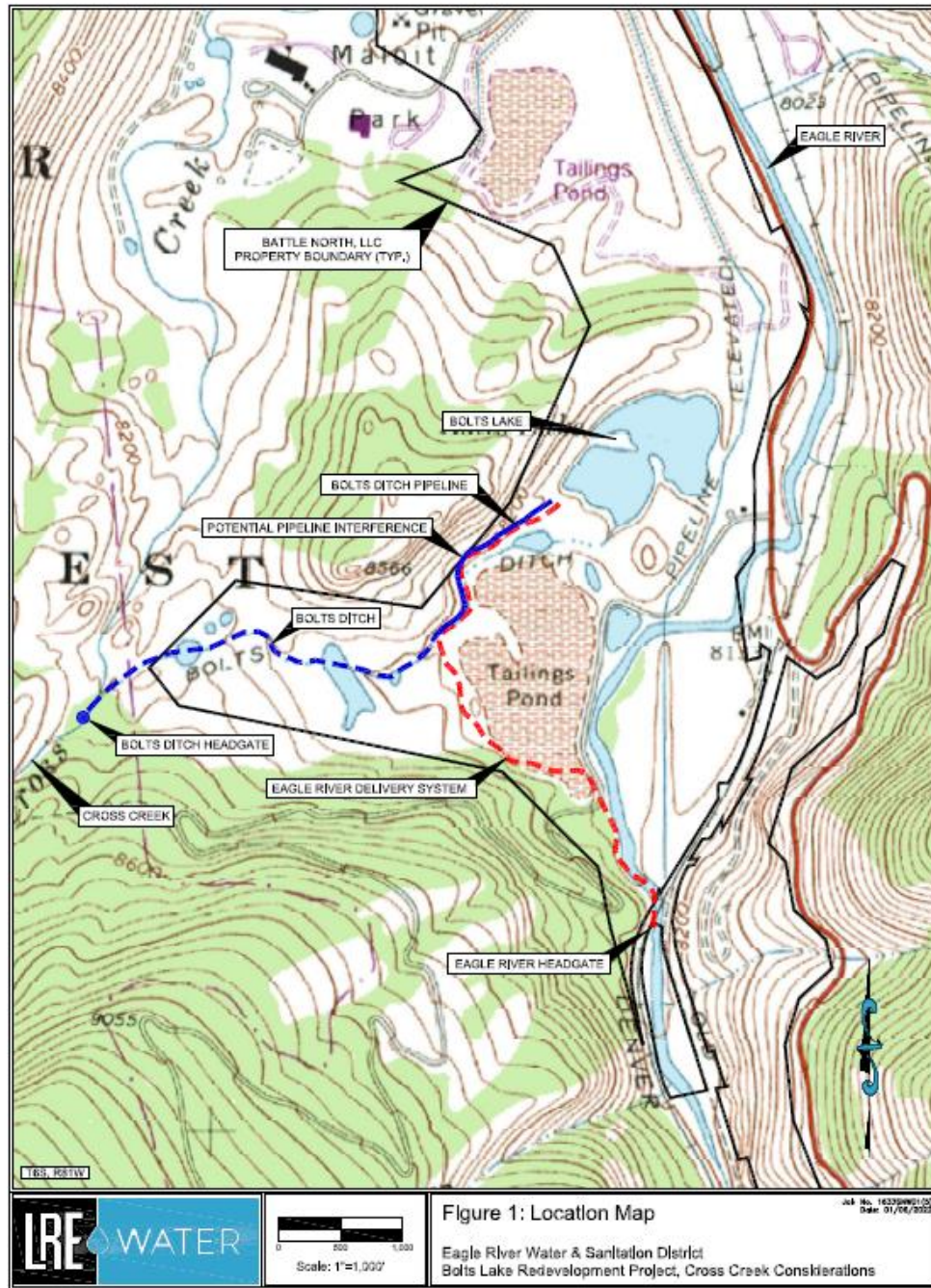


Figure 4: Map of the approximate location of Bolts Headgate and Ditch

## Funding Opportunities

We are researching and applying for funding opportunities that will reduce the financial impact on our ratepayers. In April, we obtained a \$229,000 grant from the Colorado Water Conservation Board (CWCB) to assist with funding the preliminary design. The funding comes from the Colorado Water Plan Grant program which supports the implementation of the Colorado Water Plan. The grant program funds Water Storage and Supply projects including the development of additional storage, artificial recharge of aquifers, dredging of existing reservoirs, and that address the water supply and demand gap as identified in basin implementation plans.

United States Bureau of Reclamation's (USBR) small storage program authorized by the Bipartisan Infrastructure Law (BIL) has \$100,000,000 available to fund water storage projects up to \$30,000,000 per project. The BIL requires the applicant to expend the funds by 2026 and allows the applicant to use the funds for design, permitting, and construction. The USBR requires the applicant to submit a feasibility study following their specific standards for review and approval before applying for funds. The feasibility study must demonstrate the problem and needs of the project, outline the beneficial uses of the storage, describe alternative plans, provide economic analysis, define project risk and uncertainty, present environmental considerations, and legal requirements, and verify that there is sufficient non-federal funding. The feasibility study will cost \$49,953 to complete, and we have applied to the Colorado River District (CRD) Accelerator Grant program to fund 75% of the feasibility study costs. We expect to hear if CRD will award the D/A the grant within the next 30 days.

We intend to apply for the USBR small storage program grant in September 2024 to assist with permitting and design expenses, assuming the USBR approves the feasibility study. The project budget estimates permitting and design fees to be approximately \$8,000,000. The program will provide funding up to 25% of the costs which could be up to \$2,000,000. Although the feasibility study guidelines are specific to this funding program, we believe completing the study and having it approved by USBR will increase awareness for future funding opportunities. We will continue to look for funding partners to assist with the project and minimize the costs to our ratepayers.

## Water Right Decrees

The D/A are currently adjudicating an application for water rights and approval of a plan for augmentation and exchange in Case No. 21CW3029. The proposed decree entered in the case seeks to create a direct flow water right that will be used for filling Bolts Lake when it is in priority and to approve a plan for augmentation that will allow for Bolts Lake to be filled when out of priority using historic consumptive use credits of the District, Wolford Mountain Reservoir, Eagle Park Reservoir, and Homestake Reservoir as sources of augmentation. Several entities submitted statements of opposition. We have reached stipulations with several of the opposers in the case and continue to work through issues with the remaining opposers. We estimate that it could be another year before all opposition is settled and a final decree is entered by the court.

Following the entry of a decree in Case No. 21CW2029, the D/A will need to amend several of their existing decrees to include Bolts Lake as a new source of augmentation supply. This process can occur concurrently with design and construction. If not completed prior to the completion of Bolts Lake, a substitute water supply plan, which is essentially a temporary authorization of a substitute source of augmentation by the Division Engineer, is also an option.



## Federal Permits

A project of this size and nature requires numerous federal, state, county, and local permits. The Cross Creek diversion is located on federal lands, necessitating a Forest Service Special Use Permit. Moreover, the diversion falls within the Holy Cross Wilderness Area, further limiting its development and use. Congress authorized Minturn to operate and maintain the diversion and ditch as part of the John D. Dingell Jr. Conservation, Management, and Recreation Act. The D/A are now requesting Congress with the support of Senator Hickenlooper and Bennett to amend the legislation authorizing the D/A as allowed users. However, the timeline for when Congress will authorize the D/A remains uncertain due to the complexity of passing federal legislation.

The D/A in partnership with the USFS will complete a Minimum Requirements Analysis Framework (MRAF) because the headgate and a portion of the ditch are located within the Holy Cross Wilderness. The MRAF evaluates headgate design and construction options that minimize disturbance, blend into the area, use natural materials, and do not require mechanized equipment. The Forest Service would complete the MRAF before initiating the National Environmental Policy Act (NEPA) process to inform its decision documents. The Forest Service is permitting us to proceed with the special use permit application and MRAF review before Congress passes the federal legislation.

Upon completing the preliminary design, MRAF, and the passing of the federal legislation, we will commence the NEPA process with the Forest Service. The NEPA process will primarily address impacts to wetlands, wildlife, fisheries, threatened and endangered species, and water quality. The Forest Service stated that their review will specifically focus on the headgate and diversion point situated on public lands while acknowledging the intended use of the water to fill the reservoir. The USFS requires the D/A to complete a Purpose and Needs Statement justifying the project. S&W is currently preparing the statement as part of the preliminary design process.

Previous studies identified only 0.1 acres of federally regulated wetlands related to the headgate and ditch improvements. There are 11.3 acres of wetlands at the reservoir site and the consultant determined they are not within the jurisdiction of the federal government. The Army Corps of Engineers will confirm that the wetlands are non-jurisdictional as part of the NEPA permitting process. Other permitting agencies such as the State of Colorado, Eagle County, or the Town of Minturn may require wetland mitigation. The NEPA permit process can take at least 2 years to complete, hopefully in early 2026.

## Local Permits

Eagle County guidelines and regulations for Matters of State Interest (1041 regulations) apply to the designation and regulation of any area or activity of state interest wholly or partially in unincorporated areas of Eagle County whether on public or private land. The upgrade to the Bolts Headgate and Ditch located in unincorporated Eagle County qualifies as a matter of state interest and will require a 1041 permit. The Town of Minturn also requires a 1041 permit for the construction of the Bolts Lake reservoir. The issues of concern for the Eagle County 1041 permit include water quality, aquatic life, wildlife habitat, natural hazards, and construction impacts. The Town of Minturn 1041 permit will focus on construction impacts including the potential trucking of soil for the liner and other construction materials on US24 through the Town. The liner requires approximately 160,000 CY of clay, which corresponds to 14,600

truckloads. We expect the 1041 permits will take a minimum of 12 months to obtain and plan to apply upon completion of the design development plan set and NEPA permit process in 2026.

The construction of the lake will require a liner system to prevent stored water from seeping into the ground. The liner system will be a combination of clay and synthetic materials. The closest available clay is at the District's biosolids containment facility in Wolcott. Eagle County requires a special use permit to mine the clay material. The D/A can apply for and obtain the Special Use Permit at the same time as the county 1041 permit.

### **State Permits**

The Colorado Division of Water Resources, also known as the Office of the State Engineer, approves the construction of Dams over ten feet. The review and process will occur concurrently with the design development process.

### **Construction Permits**

After the federal, state, and local authorities approve the project, the D/A's contractor will need to obtain the following construction permits:

- Colorado Department of Transportation access permit for construction traffic from Highway 24.
- Eagle County grading permit for Bolts headgate and ditch improvements
- Town of Minturn grading permit for reservoir construction
- Colorado Department of Public Health and Environment (CDPHE) construction stormwater permit
- CDPHE construction groundwater dewatering permit to manage the discharge of pumped groundwater.
- CDPHE air quality permit for dust mitigation required for sites larger than 25 acres.
- The Environmental Protection Agency (EPA) and CDPHE require a work plan approval to ensure the placement of excavated spoils on the old tailings pile site south of the site is consistent with the administrative order on consent requirements and that the contractor is properly handling and disposing of soil. We expect the review not to be contentious since the project will be disposing of and capping the area with clean soil. The EPA review will take approximately three months and will occur after federal, state, and local approvals and concurrently with the construction permits.

The selected contractor will apply for these permits which typically take 60 to 90 days to obtain.

## Program Manager

The reservoir design will occur concurrently with the NEPA permitting process since the NEPA process will impact the design. The USFS will take approximately two years to complete NEPA after S&W completes the preliminary design. Upon completion of the preliminary design, we will solicit a Program Manager. A Program Manager will be responsible for overseeing and managing the project to completion including design, permitting, and construction. Their role involves coordinating all aspects of the construction process, ensuring that the contractor completes the project on schedule, within budget, and following quality and safety standards. Here are some of the key responsibilities of a Construction Program Manager:

1. **Project Planning:** The construction program manager participates in project planning, including defining project scope, objectives, and deliverables. They create a detailed project plan that outlines the tasks, timelines, and resource requirements.
2. **Budget Management:** They develop and manage the project budget, ensuring that the contractor controls costs and allocated appropriately throughout the project's lifecycle. This will involve cost estimation, cost tracking, and cost analysis.
3. **Resource Allocation:** The program manager assigns personnel, contractors, and other resources to specific project tasks. They ensure that the right resources are available at the right time to keep the project on track.
4. **Schedule Management:** They create and maintain project schedules, monitor progress, and make necessary adjustments to ensure the project is completed on time.
5. **Risk Management:** Identifying potential risks and developing mitigation strategies to minimize project delays or cost overruns is an essential part of their role.
6. **Stakeholder Communication:** The program manager maintains effective communication with all stakeholders, including clients, contractors, vendors, and team members. They provide regular updates on the project's status and address any concerns or issues that may arise.
7. **Quality Control:** The program manager will ensure that construction work meets the specified quality standards and regulatory requirements. This includes confirming that the contractor and independent inspectors complete the regular inspections and follow quality assurance procedures to achieve this goal.
8. **Compliance and Permits:** Construction Program Managers ensure that the contractors obtain all necessary permits and approvals for the project and that construction activities comply with relevant codes, regulations, and safety standards.
9. **Change Management:** They handle changes to the project scope, schedule, or budget, assessing the impacts and obtaining necessary approvals as needed.
10. **Project Closeout:** At the end of the project, the program manager oversees project closeout activities, including final inspections, documentation, and handover to the client.

Overall, a Program Manager plays a crucial role in successfully delivering construction projects of this scale and magnitude by effectively coordinating all aspects of the project and ensuring its successful completion.

## Construction Schedule and Procurement

After retaining a program manager next year, we will solicit a construction company using the construction manager at risk (CMAR) project delivery method. The D/A and Program Manager will select the construction manager during the early stages of the project, typically during the design phase, based on qualifications and experience. The CMAR will become an integral part of the project team.

The key characteristics of the Construction Manager at Risk approach include:

1. **Early Involvement:** The CMAR is involved in the project early on, often during the design phase. They work closely with the D/A and design team to provide input and advice during the design process.
2. **Risk Assumption:** The CMAR takes on the role of managing the construction process and assumes responsibility for construction-related risks, including cost and schedule overruns. They work to control these risks and avoid potential issues.
3. **Guaranteed Maximum Price (GMP):** During the design phase, the CMAR provides a guaranteed maximum price for the construction of the project. This price ensures cost certainty to the owner and helps in budget planning and project financing.
4. **Collaboration:** The CMAR fosters a collaborative environment among all project stakeholders. They work closely with subcontractors and suppliers, seeking their input and expertise to optimize construction methods and costs.
5. **Value Engineering:** Value engineering is an important component in CMAR projects, seeking ways to deliver the project with the best value for the owner's investment.
6. **Flexibility:** The CMAR approach allows for flexibility during the design development and construction process, allowing adjustments and changes based on real-time feedback and unforeseen circumstances.
7. **Quality Control:** The CMAR is responsible for maintaining the quality of the construction work and ensuring that it meets the required standards.
8. **Construction Management Services:** Besides actual construction, the CMAR will also provide additional construction management services, such as project scheduling, coordination, safety management, and procurement.

The Construction Manager at Risk approach offers several benefits, including early involvement of the construction manager's expertise, cost certainty through the guaranteed maximum price (GMP), and a collaborative project environment. Once the contractor develops a GMP, the District and Authority will each have to issue bonds to pay for the project, which will take six to nine months to obtain. Successful implementation will require effective communication, collaboration, and risk management between all project participants. Construction is expected to take three years to complete. The earliest planned start is 2027 with completion in 2029. The complexity and quantity of permits and approvals for the project have the potential to delay the project start date into 2028 or beyond.

**Attachments:**

1. Bolts Lake Reservoir Project Schedule



# BOLTS LAKE RESERVOIR PROJECT SCHEDULE

EAGLE RIVER WATER AND SANITATION DISTRICT  
UPPER EAGLE REGIONAL WATER AUTHORITY

PREPARED DATE 08/16/23

TASK	Duration	2023				2024				2025				2026				2027				2028				2029				2030				2031			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
8	Conduct Environmental Studies																																				
9	Prepare Cat Ex/EA or EIS																																				
13	Section 7 Endangered Species Consultation with US Fish and Wildlife																																				
14	Permit Approvals and Decision Documents																																				
<b>PROGRAM MANAGER</b>																																					
1	Prepare Request for Qualifications																																				
2	Advertise RFQ																																				
3	Hire Program Manager																																				
4	Program Manager Assists with Project Development, Final Design & Permitting																																				
5	Program Manager Manages Construction																																				
<b>CONSTRUCTION MANAGER (CONTRACTOR) SELECTION AND CONSTRUCTION</b>																																					
1	Prepare Request for Qualifications																																				
2	Advertise RFQ																																				
3	Hire Construction Manager																																				
4	Construction Manager Assists with Design and Cost Estimating																																				
5	Develop Guaranteed Maximum Price																																				
6	Issue and Process Bonds for Project funding																																				
7	Construction Manager Obtains State and Local Construction Permits																																				
8	Construction																																				
9	Warranty																																				



## MEMORANDUM

**TO:** Boards of Directors  
**FROM:** Siri Roman, General Manager  
**DATE:** August 17, 2023  
**RE:** Gore Creek Fish Kill – Settlement Agreement

Vail Daily and Real Vail recently reported news stories regarding a \$275K settlement with Vail Resorts to resolve the damages from the Gore Creek fish kill that occurred Sept.17-20, 2021 (see attached).

District staff played a key role in the resolution of this event. Our responses were data-driven and professional every step of the way, which helped build trust with our local and State agencies. Specifically, District staff:

- Identified abnormally high water demand in the District system.
- Identified rapid and abnormal drops in the water level at localized water storage tanks, which helped pinpoint the area of the system that was experiencing high demand.
- Performed site investigations to identify and rule-out potential distribution line breaks in the area.
- Reviewed USGS streamflow data and identified an abnormal flow increase in Gore Creek that coincided with the start of the abnormal water demand in the District system.
- Notified Vail Resorts of the possibility of high usage from its Golden Peak service connection.
- Witnessed the dead fish in Gore Creek.
- Met with Colorado Parks and Wildlife (CPW) and town of Vail (TOV) staff during the initial investigation and response.
- Collected water quality samples and coordinated with Dave Rees to sample macroinvertebrates samples.
- Informed the Colorado Department of Public Health and Environment (CDPHE) about the severity of the incident, and supported CPW and CDPHE with their field investigations.

While the incident was devastating to many of us, especially with our commitment to protecting our local streams and rivers, we are glad that there is a resolution and that \$249K will now be used to fund a restoration project in the Gore Creek basin.

Steve Bushong will be available to answer questions about the settlement agreement during executive session at the Aug. 24 joint board meeting.

### Attachments:

Vail Daily News Story – Vail Resorts, Colorado reach settlement over 2021 fish kill on Gore Creek, Aug. 16, 2023

Real Vail News Story – Vail Resorts settles in snowmaking water discharge into Gore Creek that caused fish kill in 2021, Aug. 16, 2023

# Vail Resorts, Colorado reach settlement over 2021 fish kill on Gore Creek

News [FOLLOW NEWS](#) | Aug 16, 2023



**John LaConte** [FOLLOW](#)  
jlaconte@vaildaily.com



A dead trout, photographed in Gore Creek on Sept. 21.

*Peter Wadden/Town of Vail*

The Colorado Natural Resources Trustees approved a \$275,000 settlement with Vail Resorts regarding the [2021 Gore Creek fish kill in Vail](#), Attorney General Phil Weiser [announced](#) on Wednesday.

The state will receive \$249,000 to be used for a restoration project in the Gore Creek basin and the remaining \$26,000 will go to the state's Water Quality Improvement Fund, Weiser announced.

“While an unfortunate accident, this incident harmed aquatic resources in Gore Creek — one of Colorado’s prized trout fisheries in Eagle County,” Weiser said. “This settlement compensates the community for those injuries, providing funds that will go directly back to restoring natural resources on portions of Gore Creek downstream of the release.”

The state conducted a six-month investigation and found that, from Sept, 17-20, 2021, Vail Mountain left open isolation valves on its snowmaking system and released approximately 2 million gallons of water containing hazardous substances into Mill Creek and Gore Creek. A damages assessment identified injuries to aquatic life — including fish, algae, and aquatic insects — along 1.5 miles of river



The Eagle River Water and Sanitation District on Sept. 20, 2021, in examining tank level trends and pump cycles, noticed an increase in the Gore Creek above Red Sandstone stream gage beginning on Saturday, Sept. 18, 2021.

By the evening of Sept. 20, 2021, as Vailites were gathering for the Vail Social Community Potluck on Gore Creek, reports of dozens of dead fish turning up on the creek were flowing into the district.

Vail Resorts later said snowmaking employees working at the Golden Peak Pumpouse had inadvertently left valves open which caused district water to flow through the Vail Mountain snowmaking system and eventually into Gore Creek.

That water consisted included approximately 1.5 million to 2 million gallons of potable water from an Eagle River Water and Sanitation District tank used by Ski and Snowboard Club Vail for snowmaking, as well as approximately 200,000 gallons of water from Vail Mountain's snowmaking storage pond for snowmaking for Ski and Snowboard Club Vail, as well as approximately 200,000 gallons of water from Vail Mountain's snowmaking storage pond, according to statements provided to CDPHE from Jonathan Kimchi, Vail Resorts director of environmental compliance.

Kimchi said the pond water had been treated with one 30-pound bag of Cutrine-Plus Granular Algacide, which contains ethanolamine and copper carbonate.

A total of 120 dead fish was recorded, including 85 mottled sculpin, one cutbow, 16 rainbow trout, one brook trout and 17 brown trout.

Get the top stories in your inbox every morning. Sign up here: [VailDaily.com/newsletter](https://vaildaily.com/newsletter)

"I appreciate Vail Corporation's willingness to work with the trustees on damages for this accident. Colorado's fisheries and aquatic resources are some of our state's most important resources but also can be susceptible to harm where water resources are paramount," said Dan Gibbs, executive director of the Colorado Department of Natural Resources. "I am hopeful the settlement funds can quickly be put to use to restore Gore Creek and its fisheries and aquatic species for future generations of Coloradans to enjoy."

Vail Resorts, in a statement, said Vail Mountain partnered with state agencies throughout the process, which included immediate measures to prevent future unintended discharges of potable water.

"As a part of our commitment to our natural environment, we fully cooperated with state agencies and reached an amicable resolution with the state that will fund restoration and improvement projects to waterways, including the Gore Creek Basin," Vail Mountain spokesperson John Plack said in a statement issued Wednesday. "We take our commitment to the environment seriously, and we are dedicated to protecting the forests and waterways that surround our resort operation."



## Vail Resorts settles in snowmaking water discharge into Gore Creek that caused fish kill in 2021

By [RealVail Staff](#)

August 16, 2023, 10:55 am

The office of Colorado Attorney General Phil Weiser on Wednesday issued the following press release on a \$275,000 settlement paid by Vail Resorts for the release of water from its snowmaking system into Mill Creek and Gore Creek that caused a significant loss of aquatic life:

The Colorado Natural Resources Trustees have approved a \$275,000 settlement with Vail Corporation to resolve natural resources damages claims related to an inadvertent release of water from Vail's snowmaking system that discharged into Mill Creek and flowed into Gore Creek through the town of Vail in September of 2021.

The state conducted a six-month investigation and found that, from September 17 to September 20, 2021, Vail Mountain left open isolation valves on its snowmaking system and released approximately two million gallons of water containing hazardous substances into Mill Creek and Gore Creek. A damages assessment identified injuries to aquatic life—including fish, algae, and aquatic insects—along 1.5 miles of river impacted by the release.

[Under the terms of the settlement](#), \$249,000 will be deposited in the state's Natural Resources Damages Fund to be used for a restoration project in the Gore Creek basin. The remaining \$26,000 will go to the state's Water Quality Improvement Fund. The settlement is the result of a joint effort between the Colorado Natural Resources Trustees, Water Quality Control Division, and Division of Parks and Wildlife to resolve all state claims stemming from the release. The agreement will take effect upon signature by the State Controller.

“While an unfortunate accident, this incident harmed aquatic resources in Gore Creek—one of Colorado’s prized trout fisheries in Eagle County. This settlement compensates the community for those injuries, providing funds that will go directly back to restoring natural resources on portions of Gore Creek downstream of the release,” said Attorney General Phil Weiser, who serves as chair of the Colorado Natural Resources Trustees.

“I appreciate Vail Corporation’s willingness to work with the trustees on damages for this accident. Colorado’s fisheries and aquatic resources are some of our state’s most important resources but also can be susceptible to harm where water resources paramount,” said Dan Gibbs, executive director, Colorado Department of Natural Resources. “I am hopeful the settlement funds can quickly be put to use to restore Gore Creek and its fisheries and aquatic species for future generations of Coloradans to enjoy.”

“This settlement is the result of collaboration between state agencies and demonstrates our commitment to protecting our natural resources,” said Trisha Oeth, director of Environmental Health and Protection, Colorado Department of Public Health and Environment. “We recognize that Vail Resorts shares our value of protecting the environment we all cherish and rely on. The settlement will support the restoration of natural resources, help the community recover, and protect the environmental health of our state.”

For more information about the trustees and the work they do on behalf of Colorado, please visit: <https://coag.gov/office-sections/natural-resources-environment/trustees/>.