

Eagle River Water & Sanitation District
Board of Directors Meeting
March 23, 2023
MINUTES

A special meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held March 23, 2023, at 12:30 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 (began acting at 1:20 p.m.)
Dick Cleveland
Steve Coyer (left meeting at 2:43 p.m.)
George Gregory
Timm Paxson
Rick Pylman
Bob Warner

Also in attendance were:

| | | |
|-----------------------|----|--|
| <u>District Staff</u> | 29 | Daniel Siebert |
| Tug Birk | 30 | Brian Thompson |
| Tom Borawski | 31 | Mike Thompson |
| Jason Cowles | 32 | Jane Tucker |
| Sarah Crawford | 33 | Brad Zachman |
| Leah Cribari | 34 | |
| Allison Ebbets | 35 | <u>Consultants</u> |
| Tim Friday | 36 | Kristin Moseley, Somach Simmons & Dunn |
| Jesse Hooker | 37 | Dave Rees, Timberline Aquatics |
| Robyn Janssen | 38 | Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC |
| Diane Johnson | 39 | |
| Joe Mullins | 40 | <u>Public</u> |
| Niko Nemcanin | 41 | Tammy Baker |
| David Norris | 42 | Sarah Smith Hymes |
| Rob Ringle | 43 | Chris Neuswanger |
| Siri Roman | 44 | Cliff Thompson |
| Tracy Rymph | 45 | Todd Williams |
| Jeffrey Schneider | 46 | |
| | 47 | |

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 12:30 p.m.

INTRODUCTIONS

Chair Cleveland welcomed presenting consultants and members of the public. Mr. Zachman introduced a new District employee, water operator Joe Mullins. Mr. Nemcanin introduced long-standing field operations supervisor Mike Thompson.

PUBLIC COMMENT

Ms. Smith Hymes said she is running for the Director District 4 board seat in the 2023 regular election.

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ACTION ITEMS

1 **Consideration of Minutes** – The minutes of the Feb. 23, 2023, regular meeting and joint meeting with
2 the Authority board of directors were considered. Upon motion duly made and seconded, it was
3 unanimously
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5 **RESOLVED** that the minutes of the Feb. 23, 2023, regular and joint meetings be accepted and
6 hereby are approved as presented.

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

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

11 **Resolution Designating Polling Places for 2023 Regular Election** – Mr. Thompson
12 presented a memorandum and the Resolution, copies of which are attached hereto as **Exhibits**
13 **B** and **C**, respectively, and incorporated herein by this reference. He said the Vail polling place
14 location has been updated since the January Election Resolution as the ERWSD office is the
15 absentee ballot drop-off location and will be an efficient polling place location for voters and
16 election judges. In response to a question, he said parking will be reserved for voters on Election
17 Day. Upon motion duly made and seconded, it was unanimously

18 **RESOLVED** to approve and accept Resolution No. 2023-03, Designating Polling Places for
19 the 2023 Regular Election, as presented.

20 **Rules & Regulations Revisions** – Mr. Birk presented a memorandum, the summary of proposed
21 revisions, and a redline of the sections proposed for revisions, copies of which are attached hereto as
22 **Exhibits D, E, and F**, respectively, and incorporated herein by this reference. He reviewed the new
23 public comment and committee review processes, which yielded no suggested changes. In response
24 to a question, Ms. Winn said the District is empowered to adopt, amend, and enforce rules and
25 regulations that are not in conflict with state laws or regulations. Upon motion duly made and
26 seconded, it was unanimously

27 **RESOLVED** to approve and accept the 2023 Rules and Regulations Revisions as presented.

28 **Board Committee Updates** – Ms. Johnson presented a memorandum and proposed updates to
29 board committees, copies of which are attached hereto as **Exhibits G** and **H**, respectively, and
30 incorporated herein by this reference. She said the proposed updates eliminate committees that are
31 dormant or no longer needed. She recommended the joint “Water Supply” committee revert to “Water
32 Conservation” committee to align the committee with its original intent and address current strategic
33 priorities. She further noted that Authority vacancies on the Water Conservation Committee will be
34 filled by UERWA Directors Mike Trueblood and Tamra Underwood. The board unanimously approved
35 the revised board committees and committee assignments.
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1 INFORMATION REPORTS

2 Directors reviewed the development report and Authority February meeting summary, copies of which
3 are attached hereto as **Exhibits I** and **J**, respectively, and incorporated herein by this reference. In
4 response to a question, Mr. Cowles and Mr. Nemcanin provided a brief update on the 500 E. Lionshead
5 Circle – Legacy project.

6 BOARD MEMBER INPUT

7 Director Coyer provided an update on the Housing Coalition, which is coordinated by the Vail Valley
8 Foundation and includes representatives from the District and other regional entities. He said the
9 Coalition is developing a list of potential collaborative affordable housing development projects.

10 GENERAL MANAGER REPORT

11 Ms. Roman reported on the Mar. 21 meeting of the Eagle Park Reservoir Company board of directors.
12 She also reported on recent and upcoming presentations, meetings, and work sessions with various
13 local entities. Finally, she said the Town of Vail inquired into making improvements on a small parcel of
14 District property on Middle Creek.

15 BUSINESS ADMINISTRATION REPORT

16 **Water conservation program** – Mr. Norris provided updates on the new interdepartmental water
17 conservation team and said Ms. Ebbets has been promoted to water conservation supervisor. He also
18 said irrigation times were changed in the Rules and Regulations to align with operational practices and
19 that special irrigation permits will be suspended. In response to a question, he said staff will work with
20 customers who need to irrigate beyond the normal schedule to negotiate appropriate water use.

21 **Safety program update** – Mr. Siebert presented a PowerPoint, a copy of which is attached hereto as
22 **Exhibit K** and incorporated herein by this reference. He provided an overview of the District safety
23 program and an analysis of safety trends, costs, and staff engagement. He said the number of
24 recordable injuries and the associated costs have decreased since 2019, due largely to encouraging
25 staff to report near misses as that provides an opportunity to mitigate a potential safety issue. He also
26 said insurance rates have lowered since the District raised its deductible.

27 OPERATIONS REPORT

28 Mr. Zachman presented the report, a copy which is attached hereto as **Exhibit L** and incorporated
29 herein by this reference. He briefly reported on repairs to a water main in West Vail. In response to a
30 question, he said the number of breaks is about average compared to previous winters.

31 **Macroinvertebrate sampling** – Ms. Cribari presented a memorandum and a PowerPoint, copies of
32 which are attached hereto as **Exhibits M** and **N**, respectively, and incorporated herein by this
33 reference. She reviewed the 2021 biomonitoring results and noted improvements in the aquatic health
34 of Red Sandstone Creek and Gore Creek. She also said the most significant stressors for Gore Creek
35 are urban runoff, lack of riparian area, and spraying of herbicides and pesticides. Mr. Rees provided an
36 overview of data analysis methods and said the Colorado Department of Public Health & Environment
37 (CDHPE) uses the Macroinvertebrate Multimetric Index (MMI) version 4 (v4) to assess stream health.

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1 He also said that MMI v4 shows lower scores for Gore Creek, compared to MMI v3, because this
2 metric is more stringent on minor disturbances in high-elevation streams and disproportionately
3 emphasizes the most sensitive taxa. He is working with CDHPE as they develop MMI v5, which he
4 hopes will place greater emphasis on the relative abundance of all taxa. In response to a question, he
5 said preliminary review of 2022 sampling shows some recovery in sensitive taxa in Mill Creek, but not
6 in their previous abundance.

7 **PFAS Update** – Mr. Zachman presented a PowerPoint, a copy of which is attached hereto as **Exhibit**
8 **O** and is incorporated herein by this reference. He said the EPA released proposed maximum
9 contaminant levels (MCLs) of 4 parts per trillion for per- and polyfluoroalkyl substances (PFAS) on
10 Mar. 14. He referenced previous board discussions about the 2022 EPA PFAS Health Advisory and
11 said the 2022 sampling results were lower than the proposed MCLs. In response to a question, Ms.
12 Johnson said responses to the recent customer notification letter have primarily asked about methods
13 of removing PFAS. Mr. Zachman briefly reviewed activated carbon and reverse osmosis technologies.

ENGINEERING AND WATER RESOURCES REPORT

14 Mr. Cowles presented the report, a copy of which is attached hereto as **Exhibit P** and incorporated herein
15 by this reference. He said the District and Authority were awarded a \$250,000 water supply planning
16 grant from the Colorado Water Conservation Board (CWCB) to support the preliminary design of Bolts
17 Lake Reservoir. He thanked Mr. Friday for his efforts in drafting the grant application.

COMMUNICATIONS AND PUBLIC AFFAIRS REPORT

18 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit Q** and incorporated
19 herein by this reference. She reminded the board of work on Senate Bill 23-150 requiring “Do Not Flush”
20 labeling on non-flushable disposable wipes. She recognized Ms. Roman and Ms. Moseley for their
21 testimony before the Senate and House committees in support of the bill. She also reported that the bill
22 passed in both chambers and is not expected to be vetoed by Governor Polis. In response to a comment,
23 she confirmed that the Southern Nevada Water Authority will accept a \$2.4 million grant from the U.S.
24 Bureau of Reclamation to fund cloud seeding within the Colorado River Basin.

WATER COUNSEL REPORT

25 Chair Cleveland said the District transitioned to a single water counsel legal representation: Kristin
26 Moseley and her firm, Somach Simmons & Dunn. Ms. Moseley had no updates in open session.

GENERAL COUNSEL REPORT

27 The board noted Ms. Winn’s privileged written report. She said Governor Polis signed House Bill 23-
28 1023, which raises the minimum threshold on special district construction contracts requiring public bids
29 to \$120,000, which will be readjusted every five years. She also said the threshold remains \$60,000 until
30 the new law takes effect 90 days after the adjournment of the general assembly.

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EXECUTIVE SESSION

Ms. Winn requested the board move into Executive Session to receive legal advice of counsel and discuss matters in negotiation related to emergency repairs in East Vail. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 2:37 p.m. to discuss matters related to emergency repairs in East Vail pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created as Ms. Winn opined the contents of the discussion would contain privileged attorney-client communications.*

Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and discuss matters in negotiation related to bulk water service agreements. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 3:49 p.m. to discuss matters related to bulk water service agreements pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created as Ms. Moseley opined the contents of the discussion would contain privileged attorney-client communications.*

Ms. Winn requested the board move into Executive Session to receive legal advice of counsel and discuss matters in negotiation related to Bolts Lake obligations. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 3:51 p.m. to discuss matters related to Bolts Lake obligations pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created as Ms. Winn opined the contents of the discussion would contain privileged attorney-client communications.*

Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and discuss matters in negotiation related to a proposed stream restoration bill. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 4:07 p.m. to discuss matters related to a proposed stream restoration bill pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created as Ms. Moseley opined the contents of the discussion would contain privileged attorney-client communications.*

Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel and discuss matters in negotiation related to water rights reports. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 4:16 p.m. to discuss matters related to water rights reports pursuant to §24-6-402(4)(b) and (e), C.R.S., with no electronic record created as Ms. Moseley opined the contents of the discussion would contain privileged attorney-client communications.*

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1 The open session resumed at 4:24 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.

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

4 Ms. Moseley presented the District Water Rights Report, a copy of which is attached hereto as **Exhibit R**
5 and incorporated herein by this reference. Upon motion duly made and seconded, it was unanimously

6 **RESOLVED** to approve and accept the District Water Rights Report as presented.

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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 4:24 p.m.

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Secretary to the Meeting

*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.

Kristin Moseley, Water Counsel

Kathryn Winn, General Counsel