

Eagle River Water & Sanitation District
Board of Directors Meeting
June 22, 2023
MINUTES

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held June 22, 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 (began acting at 1:37 p.m.)
Sarah Smith Hymes
Timm Paxson
Robert Warner, Jr.

The following Directors were absent and excused:

Rick Pylman

Also in attendance were:

<u>District Staff</u>	32	Kailey Rosema
Jenna Beairsto	33	James Rossiter
Tom Borawski	34	Andrew Ryder
Amanda Buck	35	Tracy Rymph
Jim Cannava	36	Cindy Schmidt
Karen Carter	37	Jeff Schneider
Jason Cowles	38	Micah Schuette
Leah Cribari	39	Dan Siebert
Bryan Curtis	40	Brian Thompson
Mike Cushman	41	Jane Tucker
Allison Ebbets	42	Brad Zachman
Matt Gay	43	
Jesse Hooker	44	<u>Consultants</u>
Robyn Janssen	45	Paul Backes, McMahan & Associates
Diane Johnson	46	Kristin Moseley, Somach Simmons & Dunn
Alex Lamoreux	47	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Ali Kelkenberg	48	
Niko Nemcanin	49	<u>Public</u>
David Norris	50	Tammy Baker
Chuck Owen	51	Joanna Kerwin
Siri Roman	52	

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. 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 12:02 p.m.

INTRODUCTIONS

Chair Cleveland welcomed presenting consultants and members of the public. Seven new employees were introduced: Mr. Norris introduced front desk administrator Amanda Buck and water conservation data analyst Bryan Curtis; Ms. Cribari introduced seasonal laboratory assistant Alec Lamoreux; Ms. Rosema introduced water systems operator Andrew Ryder; and Mr. Nemcanin introduced seasonal field operators Matt Gay,

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1 Cindy Schmidt, and James Rossiter. Mr. Nemcanin also said Ray Dixon has returned as a seasonal field
2 operator.

3 **PUBLIC COMMENT**

4 Chair Cleveland called for public comment and there was none.

5 **ACTION ITEMS**

6 **Consideration of Minutes** – The minutes of the May 25, 2023, regular meeting were considered.
7 Upon motion duly made and seconded, it was unanimously

8 **RESOLVED** that the minutes of the May 25, 2023, regular meeting be accepted and hereby
9 are approved as presented.

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

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

13 **Consideration of FY 2022 Audited Financial Statement** – Mr. Cannava presented a memorandum,
14 a copy of which is attached as **Exhibit B** and incorporated herein by this reference. Mr. Backes then
15 presented the Governing Board Letter and Audited Financial Statement (“Audit”), copies of which are
16 attached hereto as **Exhibits C** and **D**, respectively, and incorporated herein by this reference.

17 Pursuant to §29-1-606, C.R.S., the Audit was submitted to the board prior to the June 30 deadline
18 and, upon approval by the board, will be submitted to the State Auditor prior to the July 31 deadline.

19 Mr. Backes summarized the Audit and said the District received an unmodified opinion with no
20 recommendations or concerns. Chair Cleveland said the board Audit Committee reviewed the Audit
21 and recommended approval. Upon motion duly made and seconded, it was unanimously

22 **RESOLVED** that the board accept the FY 22 Audited Financial Statement as presented and
23 direct final reports be distributed; and be it

24 **FURTHER RESOLVED** that the board authorize the General Manager and Finance Manager
25 to sign the letter of representation addressed to McMahan and Associates

26 Directors commended Mr. Cannava, Louise Reiter, and other staff for their extensive contributions to
27 the clean audit.

28 **INFORMATION REPORTS**

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

31 Chair Cleveland said the audit and budget committees will continue to consist of two members.

32 **BOARD MEMBER INPUT**

33 Chair Cleveland asked for general input and there was none.

34 **GENERAL MANAGER REPORT**

35 Ms. Roman reported on the District’s annual employee picnic, as well as recent community presentations and
36 work sessions. She also said the Authority board met earlier that day and requested a joint work session with
37 the District board to discuss Bolts Lake; District directors unanimously supported scheduling the joint work

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1 session for Aug. 24. Ms. Roman also proposed a joint field visit to the Bolts Ditch intake and will coordinate
2 with Authority and District directors to schedule. Finally, she reported on the Jun. 20 Eagle Park Reservoir
3 Company annual shareholder and quarterly board of director meetings. Highlights included approval of the FY
4 2024 budget that increased operating assessments to account for added capital expenses, plus updated
5 water quality monitoring at the Reservoir and nearby Climax Mine water sources.

6 **BUSINESS ADMINISTRATION REPORT**

7 **Water conservation program** – Ms. Ebbets presented a PowerPoint, a copy of which is attached
8 hereto as **Exhibit H** and incorporated herein by this reference. She said the board joint Water
9 Conservation Committee and District Water Quality Committee recommend amending the landscape
10 transformation program to exclude rebates for irrigated turf removal using herbicides on land located
11 within 75 feet of the Eagle River and 25 feet of Gore Creek and all tributaries. This change would not
12 apply to noxious weed management and would require that signs be posted if herbicides are used in
13 large public areas. In response to a question, Ms. Roman said these guidelines are anchored to
14 municipal setback policies. In response to another question, Ms. Winn said preemption laws do not
15 apply to rebate program stipulations. Directors unanimously supported implementing the committee
16 recommendations as presented. Ms. Kerwin thanked directors for taking this action and for quickly
17 responding to her May 25 public comment.

18 **2023 Spring compensation analysis** –Mr. Borawski presented a memorandum, a copy of which is
19 attached hereto as **Exhibit I** and incorporated herein by this reference. Discussion ensued regarding
20 adjustments of wage ranges and total compensation.

21 **Change to Agenda** – Directors moved Housing Program Update (agenda item 6.2.3) until later in the
22 meeting as Treasurer Coyer requested to be present for this discussion and had not yet arrived. The
23 Business Administration report continued after the Communication & Public Affairs report.

24 **OPERATIONS REPORT**

25 Mr. Zachman presented the report, a copy which is attached hereto as **Exhibit J** and incorporated herein by
26 this reference. In response to a question, Ms. Roman said the District's only involvement with Nottingham
27 Lake is lab analysis per contract with Town of Avon.

28 **East Vail Sanitary Sewer Overflow** – Mr. Nemcanin presented a PowerPoint, a copy which is
29 attached hereto as **Exhibit K** and incorporated herein by this reference. He reported on the District
30 response to the June 10 overflow. Mr. Zachman also reported on subsequent water quality sampling,
31 notification to downstream users, and submission of the 5-day report to the Colorado Department of
32 Public Health & Environment. Directors commended staff for their coordinated responses.

33 **Consumer Confidence Report** – Mr. Zachman presented the annual Consumer Confidence Report,
34 a copy of which is attached hereto as **Exhibit L** and incorporated herein by this reference. The
35 regulatory report covers calendar year 2022 for both the Authority and District public water systems.
36 Working with state regulators, the two reports were combined for the first time as the Authority and
37 District were working to merge the two systems into one for regulatory purposes to align with

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1 operating as consecutive systems. Mr. Zachman said the merge was approved in April so it is
2 unknown whether the 2023 CCR will be another combined report or simply one report reflecting the
3 new merged system. Directors thanked staff for also publishing the report in Spanish and
4 commended the high quality of the report's information and aesthetics.

5 **Dowd Junction Collection System Update** – Ms. Bearsto and Mr. Schneider presented a
6 PowerPoint, a copy which is attached hereto as **Exhibit M** and incorporated herein by this reference.
7 They reported on the impacts of Xcel Energy's repair work on the District's construction project.

8 **ENGINEERING AND WATER RESOURCES REPORT**

9 Mr. Cowles presented the report, a copy of which is attached hereto as **Exhibit N** and incorporated herein by
10 this reference.

11 **Work Session: Development Report** – Mr. Cowles and Mr. Schuette presented a PowerPoint, a
12 copy of which is attached hereto as **Exhibit O** and incorporated herein by this reference. The topics
13 of the work session were development report methodologies and the processes for development
14 approval, water rights dedication, and infrastructure approval.

15 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

16 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit P** and incorporated herein
17 by this reference. She reported on community engagement, including the annual State of the River program
18 and the Vail Farmers' Market. She also provided updates on Colorado River Basin issues. Specifically, she
19 said the U.S. Department of the Interior is pausing review of the Supplemental Environmental Impact
20 Statement to analyze the proposal by the lower basin states to modify operations through 2026, while also
21 initiating the formal process to develop post-2026 operating guidelines.

22 **BUSINESS ADMINISTRATION REPORT (continued from earlier in the meeting)**

23 **Housing Program Update** – Mr. Norris presented a memorandum and a PowerPoint, copies of
24 which are attached hereto as **Exhibit Q** and **R**, respectively, and incorporated herein by this
25 reference. He reported on housing program rate methodologies and the reciprocating taxable benefits
26 that result from setting District rents below affordable market rents. Directors unanimously supported
27 increasing District rents to align with the discounts outlined in Exhibit R. Directors further supported
28 adjusting housing stipends accordingly to keep benefits comparable for all employees.

29 **Recess** – Chair Cleveland called for a brief recess at 3:42 p.m. The meeting and recording resumed at 3:52
30 p.m. During this time, no public business was performed.

31 **WATER COUNSEL REPORT**

32 Ms. Moseley presented a memorandum, a copy of which is attached hereto as **Exhibit S** and incorporated
33 herein by this reference. She said the Colorado Supreme Court opinion in *State v. Hill* was procedural and did
34 not determine legal policy on public stream access.

35 **GENERAL COUNSEL REPORT**

36 The board noted Ms. Winn's privileged written report. She did not have any items for open session.

37 **EXECUTIVE SESSION**

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1 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related to
2 water court case updates. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to enter into Executive Session at 3:55 p.m. to discuss matters related to water
4 court case updates pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created as
5 Ms. Moseley opined the contents of the discussion would contain privileged attorney-client
6 communications.*

7 Ms. Moseley requested the board move into Executive Session to receive legal advice of counsel related to
8 the Homestake/Independence Pass Exchange. Upon motion duly made and seconded, it was unanimously

9 **RESOLVED** to enter into Executive Session at 4:05 p.m. to discuss matters related to related
10 to the Homestake/Independence Pass Exchange pursuant to §24-6-402(4)(b), C.R.S., with
11 no electronic record created as Ms. Moseley opined the contents of the discussion would
12 contain privileged attorney-client communications.*

13 Mr. Norris requested the board move into Executive Session to discuss the purchase and sale of real
14 property. Upon motion duly made and seconded, it was unanimously

15 **RESOLVED** to enter into Executive Session at 4:15 p.m. to discuss the purchase and sale of
16 real property pursuant to §24-6-402(4)(a), C.R.S., with an electronic record created and
17 retained pursuant to §24-6-402(2)(d.5)(II)(E), C.R.S.

18 The open session resumed at 4:32 p.m. During the executive session, the board did not take any formal
19 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

20 ACTION AS A RESULT OF EXECUTIVE SESSION

21 **Resolution Authorizing the Purchase of Real Property** – Mr. Norris presented the resolution with
22 an attached legal description of property to be acquired, a copy of which is attached hereto as
23 **Exhibit T** and incorporated herein by this reference. The board also noted a privileged memorandum
24 by Mr. Norris. The board further noted that the subject property was previously owned by the District
25 and sold to an employee under a deed restriction that gives the District the right of first refusal to
26 repurchase if the employee separates from the District. Upon motion duly made and seconded, it was
27 unanimously

28 **RESOLVED** to approve and adopt Res. No. 2023-05, Authorizing the Purchase of Real
29 Property, with its Exhibit A, Legal Description of Property to be Acquired, as presented; and
30 be it

31 **FURTHER RESOLVED** to authorize the General Manager to purchase forthwith the property
32 at 424 East Third Street in Eagle.

33 **Resolution Authorizing the Sale of Real Property** – Mr. Norris presented the resolution with an
34 attached legal description of property to be sold, a copy of which is attached hereto as **Exhibit U** and
35 incorporated herein by this reference. The board also noted a privileged memorandum by Mr. Norris.
36 Upon motion duly made and seconded, it was unanimously

