

Eagle River Water & Sanitation District
Board of Directors Meeting
October 26, 2023
MINUTES

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held October 26, 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
Timm Paxson
Rick Pylman
Sarah Smith Hymes
Robert Warner, Jr.

Also in attendance were:

<u>District Staff</u>	24	Jeffrey Schneider
Viktoria Beardsley	25	Brian Thompson
Tom Borawski	26	Jane Tucker
Jim Cannava	27	Brad Zachman
Jason Cowles	28	
<u>Allsultants</u>	29	
Tim Friday	30	Steve Bushong, Bushong & Holleman PC
Madeleine Harris	31	Kristin Moseley, Somach Simmons & Dunn
Justin Hildreth	32	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Robyn Janssen	33	
Diane Johnson	34	<u>Public</u>
David Norris	35	James Dilzell, Eagle River Watershed Council
Chuck Owen	36	Zoe Goldstein, Vail Daily
Siri Roman	37	Cliff Thompson, Edwards resident

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 Board Member of Arrowhead Metropolitan District, 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 12:00 p.m.

INTRODUCTIONS AND SUMMARY OF AGENDA ITEMS

Chair Cleveland welcomed bond consultants, water quality counsel, and members of the public. Mr. Thompson presented a memorandum, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference. He discussed plans for updates and regular review of board-adopted policies. He also reminded directors that the next regular board meeting is on Dec. 7.

PUBLIC COMMENT

Chair Cleveland called for public comment and there was none.

PUBLIC HEARING CONCERNING FY 2024 RATES & FEES

Chair Cleveland opened the public hearing. Mr. Cannava and Mr. Norris presented a memorandum and Resolution to Adopt the 2024 Rates and Fees with its Exhibit A, copies of which are attached hereto as

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1 **Exhibits B and C**, respectively, and incorporated herein by this reference. This public meeting was noticed
2 pursuant to § 32-1-1006(1)(h), C.R.S. Mr. Norris said there were no changes from the proposed rates and
3 fees presented at the Sept. 28 board work session. He also said a typical customer will see a combined
4 increase of 10.9% in their monthly water and wastewater bill. After board discussion, Chair Cleveland called
5 for public input; hearing none, he closed the public hearing. Upon motion duly made a seconded, it was
6 unanimously

7 **RESOLVED** to approve and adopt Res. 2023-09, Resolution to Adopt 2024 Rates and Fees, with its
8 Exhibit A, as presented.

9 **PUBLIC HEARING CONCERNING FY 2024 BUDGET**

10 Chair Cleveland opened the public hearing. Mr. Cannava and Mr. Norris presented a memorandum,
11 Resolution to Adopt the 2024 Budget, Resolution to Appropriate Sums of Money, Resolution to Set Mill
12 Levies, and the 2024 proposed budget packet, copies of which are attached hereto as **Exhibit D, E, F, G,** and
13 **H**, respectively, and incorporated herein by this reference. This public hearing was noticed pursuant to § 29-1-
14 108(1), C.R.S. Mr. Norris said there were no changes from the proposed budget presented at the Sept. 28
15 board work session. After board discussion, Chair Cleveland called for public input; hearing none, he closed
16 the public hearing. Upon motion duly made a seconded, it was unanimously

17 **RESOLVED** to approve and adopt Res. 2023-10, Resolution to Adopt the FY 2024 Budget, as
18 presented; and be it

19 **FURTHER RESOLVED** to approve and adopt Res. 2023-11, Resolution to Appropriate Sums of
20 Money, as presented; and be it

21 **FURTHER RESOLVED** to approve and adopt Res. 2023-12, Resolution to Set Mill Levies, as
22 presented.

23 **ACTION ITEMS**

24 **Consideration of Minutes** – The minutes of the Sept. 28, 2023, regular meeting were considered.
25 Upon motion duly made and seconded, it was unanimously

26 **RESOLVED** that the minutes of the Sept. 28, 2023, regular meeting be accepted and hereby
27 are approved as presented.

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

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

31 **Consideration of 2024 Billing Services Agreement with Minturn** – Mr. Norris presented a
32 memorandum and the Agreement, copies of which are attached hereto as **Exhibits J and K**, respectively,
33 and incorporated herein by this reference. Ms. Winn said the Agreement was amended to a one-year
34 contract with no automatic renewal to account for annual changes in costs and potential renegotiations.
35 Upon motion duly made and seconded, it was unanimously

36 **RESOLVED** to approve the 2024 Billing Services Agreement with Minturn, as presented.

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1 **Consideration of Bus Access License Agreement with Eagle County School District (ECSD) –**

2 The board noted a memorandum from Mr. Thompson, and Ms. Winn presented the Resolution with
3 its attached Exhibits A and B and Addendum, copies of which are attached hereto as **Exhibit L** and
4 **M**, respectively, and incorporated herein by this reference. Discussion ensued, including questions
5 regarding the District’s snowplowing requirements. Upon motion duly made and seconded, it was
6 unanimously

7 **RESOLVED** to approve the Bus Access License Agreement with Eagle County School District,
8 with its attached Exhibits A and B and Addendum, as presented.

9 **INFORMATION REPORTS**

10 Directors reviewed board committees and Authority September meeting summary, copies of which are
11 attached hereto as **Exhibits N** and **O**, respectively, and incorporated herein by this reference.

12 **BOARD MEMBER INPUT**

13 Secretary Warner and Treasurer Coyer discussed the online bill forecasting tool and offered suggestions to
14 simplify customer access. Chair Cleveland discussed the Oct. 20 joint board work session, community lunch,
15 and radio program featuring Colorado River Commissioner Becky Mitchell. Directors thanked staff for
16 organizing these events and commended Commissioner Mitchell for her passionate service. In reference to
17 the Oct. 2 ad-hoc committee meeting between representatives from the District and Authority boards, Chair
18 Cleveland said the Authority board declined the District board’s 10-year lease offer and will pursue a longer-
19 term lease from the Colorado River Water Conservation District. He also said the Authority board exercised
20 its option to purchase 250 shares of the District’s Class A, Series 2, stock in Eagle Park Reservoir Company,
21 which equates to 25 acre-feet of water.

22 **GENERAL MANAGER REPORT**

23 Ms. Roman said she and Mr. Norris recently presented the 2024 rate changes and restructures to the boards
24 of Arrowhead, Bachelor Gulch, Beaver Creek, EagleVail, and Edwards Metro Districts; additional
25 presentations to metro districts, associations, and town councils are scheduled through January. She thanked
26 directors for their support at these presentations. Discussion ensued regarding community engagement. In
27 response to a question, Mr. Norris said customized reports with personalized billing comparisons will be
28 mailed to all customers within the next few weeks. Ms. Johnson said awareness will also be raised through
29 advertisements in the Vail Daily, and she recognized Ms. Janssen and Ms. Tucker for their work on these
30 campaigns. Chair Cleveland commended staff for their proactive customer communication.

31 **BUSINESS ADMINISTRATION REPORT**

32 Mr. Norris did not have a written report or verbal updates.

33 **Water conservation program updates** – The board noted the memorandum by Ms. Ebbets, a copy
34 of which is attached hereto as **Exhibit P** and incorporated herein by this reference. In response to a
35 question, she and Mr. Norris provided a brief update on District participation in the statewide Urban
36 Landscape Water Conservation Task Force.

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1 **Quarterly financial report** – Mr. Cannava presented the report, a copy of which is attached hereto
2 as **Exhibit Q** and incorporated herein by this reference. In response to a question, he said the Total
3 Outstanding Debt Service is the sum of all outstanding debt, which currently extends through 2052.

4 **Draft of fund balance policy** – Mr. Cannava and Mr. Norris presented the policy draft, a copy of
5 which is attached hereto as **Exhibit R** and incorporated herein by this reference. Mr. Norris said the
6 policy would set the fund balance target at a minimum of six months and a maximum of twelve
7 months of annual budgeted operating costs. He also said this policy would improve the District's
8 credit worthiness, provide strategic direction for budget planning, and lessen the burden on
9 ratepayers by growing reserves to fund capital projects in lieu of bonding. Upon discussion, Mr. Norris
10 requested the board consider this policy for adoption at the Dec. 7 board meeting.

11 **OPERATIONS REPORT**

12 Mr. Zachman presented the report, a copy of which is attached hereto as **Exhibit S** and incorporated herein
13 by this reference. He said the triennial Compliance Evaluation Inspection of the District's wastewater program
14 will be administered on Dec. 12.

15 **Nutrient Management** – Ms. Roman and Mr. Zachman presented a memorandum and a
16 PowerPoint, copies of which are attached hereto as **Exhibits T** and **U**, respectively, and incorporated
17 herein by this reference. She said potential Regulation 31 limits will likely be unachievable for many
18 utilities, create significant costs for ratepayers, and may not benefit aquatic health in the Eagle River
19 watershed. She also said the 2018 Nutrient Memorandum of Understanding is no longer feasible due
20 to increased construction costs and the impacts of more frequent drought conditions on instream
21 standards. Mr. Zachman presented data regarding the high-quality effluent produced at Avon
22 Wastewater Treatment Facility and discussed upgrade requirements at Edwards Wastewater
23 Treatment Facility.

24 **Water Quality Control Commission's Denial of Town of Eagle's Request for Reconsideration of**
25 **Regulation 93** – Ms. Roman presented a memorandum, a copy of which is attached hereto as
26 **Exhibit V** and incorporated herein by this reference. Discussion ensued regarding collaborative
27 approaches to regulatory compliance and advocacy.

28 **Backflow Prevention and Cross Control program update** – This presentation was tabled until the
29 Dec. 7 board meeting due to technical issues.

30 **ENGINEERING AND WATER RESOURCES REPORT**

31 Mr. Cowles presented the Engineering and Water Resources Report and the Development Report, copies of
32 which are attached hereto as **Exhibits W** and **X**, respectively, and incorporated herein by this reference. He
33 had no verbal updates regarding these reports.

34 **Water allocation for State Land Board (SLB) parcel** – Mr. Cowles presented a PowerPoint, a copy
35 of which is attached hereto as **Exhibit Y** and incorporated herein by this reference. He said District,
36 SLB, Town of Avon, and County representatives discussed the proposed plan to annex the SLB
37 property in Dowd Junction into the Town of Avon and rezone it for workforce housing, and a potential

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1 allocation of water from the County's water dedicated to the Authority for workforce housing projects.
2 He also said Eagle County Commissioners seemed to indicate support for the allocation of water to
3 the property.

4 **Bolts Lake Update** – Mr. Hildreth presented a memorandum with its attached project schedule, a
5 copy of which is attached hereto as **Exhibit Z** and incorporated herein by this reference. He said
6 upcoming Bolts Lake timelines include completion of the feasibility study in Nov. 2023, contracting
7 with a Program Manager in Jan. 2024, completion of the preliminary design phase in early 2024, and
8 starting the permitting process in spring 2024. In response to a question, he said the permitting
9 process will take at least two years, barring unforeseen delays or objections.

10 **Extended Shoshone Power Plant Outage** – Mr. Cowles presented a memorandum, a copy of which
11 is attached hereto as **Exhibit AA** and incorporated herein by this reference. He said the Oct. 19
12 request by Division 5 and the U.S. Bureau of Reclamation (USBR) to allocate Green Mountain
13 Reservoir (GMR) water to support the Shoshone Outage Protocol will not impact the District's
14 supplies because a Shoshone call is not anticipated this winter due to the extended outage of the
15 power plant. He also said the District's GMR supplies are decreed for augmentation of snowmaking
16 diversions and Wolford Mountain Reservoir (WMR) supplies are not; therefore, he recommended
17 requesting that the Division Engineer issue an administrative approval of a temporary substitution so
18 that WMR water can be used for snowmaking if the Shoshone call were to come back on for any
19 reason during the snowmaking season. Ms. Moseley said approving this request will be beneficial to
20 stream health and building cooperation with Division 5 and BPR. Upon motion duly made and
21 seconded, it was unanimously

22 **RESOLVED** to authorize staff and counsel to negotiate terms with the Bureau of
23 Reclamation and Division of Engineers for the allocation of the District's remaining 915 acre-
24 feet of contracted water supplies in Green Mountain Reservoir to support the Shoshone
25 Outage Protocol

26 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

27 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit BB** and incorporated herein
28 by this reference. She had no further items to discuss.

29 **WATER COUNSEL REPORT**

30 **Draft of revised water dedication policy** – Ms. Moseley presented a memorandum with its attached policy
31 draft, a copy of which is attached hereto as **Exhibit CC** and incorporated herein by this reference. She said
32 the increase in cash in lieu fees was based on inflation, the anticipated construction costs of Bolts Lake, and
33 the elimination of a summer water price. Upon discussion, she requested the board consider this policy for
34 adoption at the Dec. 7 board meeting.

35 **GENERAL COUNSEL REPORT**

36 The board noted Ms. Winn's privileged written report. She had no items to discuss in open session.
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RECESS

Chair Cleveland called for recess at 2:03 p.m. The meeting and recording resumed at 2:13 p.m. During this time, no public business was performed.

WATER QUALITY COUNSEL REPORT

Mr. Bushong presented a memorandum, a copy of which is attached hereto as **Exhibit DD** and incorporated herein by this reference. He discussed the District's status in the per- and polyfluorinated (PFAS) class action settlements described in Exhibit DD, as well as the complexities in assessing settlement implications due to the limited understanding of the scale and scope of PFAS contamination. He suggested that he consult with an attorney specializing in PFAS to learn more about specific issues and develop a report with a recommended course of action for the board to consider. Ms. Winn said the Authority board directed Mr. Bushong to send this recommendation to directors via email with a deadline to respond with objections or questions. If an objection or question requiring discussion is raised by the stated deadline, a special board meeting will be scheduled; if no such board objections or questions are raised, Mr. Bushong would be authorized to file necessary documents based on his recommendation. Ms. Winn stressed the importance of the board providing direction with ample time for counsel to meet relevant deadlines. Upon motion duly made and seconded, it was unanimously

RESOLVED to authorize Mr. Bushong to engage and consult with special PFAS counsel in order to develop a report with a recommended course of action regarding certain PFAS class action settlements and present the report to the board in the above stated manner; and be it

FURTHER RESOLVED to authorize Mr. Bushong to file necessary documents based on his recommendation, provided that the board does not raise objections or questions requiring a special board meeting in the above stated manner.

EXECUTIVE SESSION

Mr. Bushong requested the board move into Executive Session to receive legal advice regarding wastewater compliance strategy. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 2:36 p.m. to discuss matters regarding wastewater compliance strategy pursuant to §24-6-402(4)(b), C.R.S., with no electronic record created as Mr. Bushong 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 regarding Colorado River Cooperative Agreement matters. Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into Executive Session at 2:56 p.m. to discuss matters regarding Colorado River Cooperative Agreement matters pursuant to §24-6-402(4)(b), 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 Mr. Norris requested the board move into Executive Session to discuss the potential purchase of real property
2 at 101 Eagle Road, Units D1, D2, and C2, in EagleVail. Upon motion duly made and seconded, it was
3 unanimously

4 **RESOLVED** to enter into Executive Session at 3:03 p.m. to discuss the potential purchase of
5 real property at 101 Eagle Road, Units D1, D2, and C2, in EagleVail §24-6-402(4)(a), C.R.S.,
6 with an electronic record created and retained pursuant to §24-6-402(2)(d.5)(II)(E), C.R.S.

7 The open session resumed at 3:26 p.m. During the executive session, the board did not take any formal
8 action or discuss any matters not enumerated in §24-6-402(4), C.R.S.

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

10 Director Pylman referred to discussion in executive session regarding the potential purchase of 101 Eagle
11 Road, Unit D2, in EagleVail, under terms specified by the board. The board noted this potential purchase
12 would be in addition to the purchase of 101 Eagle Road, Unit D1, which was authorized by the board at the
13 Aug. 24 regular meeting in alignment with the board's direction to purchase office space with sufficient
14 parking in lieu of the continued leasing of the Traer Creek offices. Upon motion duly made and seconded, it
15 was unanimously

16 **RESOLVED** to authorize the General Manager to enter into a purchase contract for the
17 property located at 101 Eagle Road, Unit D2, in EagleVail, under the terms specified by the
18 board.

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ADJOURNMENT

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

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

FURTHER RESOLVED, that the meeting be adjourned at 3:29 p.m.

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

Steve Bushong, Water Quality Counsel