

**Eagle River Water & Sanitation District**  
**Board of Directors Meeting**  
**December 7, 2023**  
**MINUTES**

A regular meeting of the Board of Directors of the Eagle River Water & Sanitation District (District) was held December 7, 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  
Robert Warner, Jr.

**Also in attendance were:**

District Staff	23	Travis Siemer
Tom Borawski	24	Shane Swartwout
Jim Cannava	25	Brian Thompson
Jason Cowles	26	Justin Way
Holly Emery	27	
Tim Friday	28	<u>Consultants</u>
Zach Green	29	Kristin Moseley, Somach Simmons & Dunn
Justin Hildreth	30	Kathryn Winn, Collins Cole Flynn Winn & Ulmer PLLC
Robyn Janssen	31	
Diane Johnson	32	<u>Public</u>
David Norris	33	Zoe Goldstein, Vail Daily
Chuck Owen	34	Joanna Kerwin, Edwards resident
Siri Roman	35	Cliff Thompson, Vail 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**

Two new employees were introduced: Mr. Swartwout introduced Backflow Prevention and Cross-Connection Control/Fats, Oils, and Grease Program administrative coordinator Holly Emery, and Mr. Green introduced wastewater operator Travis Siemer.

**PUBLIC COMMENT**

Chair Cleveland called for public comment and there was none.

**PUBLIC HEARING CONCERNING CERTIFICATION OF DELINQUENT ACCOUNTS**

Chair Cleveland opened the public hearing. Mr. Cannava presented a memorandum and the Resolution Certifying Delinquent Accounts for Collection with an attached exhibit, copies of which are attached hereto as **Exhibits A and B**, respectively, and incorporated herein by this reference. This public meeting was noticed pursuant to §32-1-1001(2)(a), C.R.S. Discussion ensued regarding the two delinquent accounts referenced in

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1 Exhibit B. In response to a question, Mr. Norris said accounts are pursued for certification on delinquencies  
2 greater than \$150 dollars and six months overdue. Mr. Cannava said the number of these accounts has  
3 decreased from previous years due largely to effective outreach and restarting shut-offs after a moratorium  
4 during the COVID-19 pandemic. After board discussion, Chair Cleveland called for public input; hearing none,  
5 he closed the public hearing. Upon motion duly made a seconded, it was unanimously

6 **RESOLVED** to approve and adopt Res. 2023-13, Resolution Certifying Delinquent Accounts for  
7 Collection, with its Exhibit A, as presented.

### 8 **UPDATES ON PER- AND POLYFLUOROALKYL (PFAS) CLASS ACTION SETTLEMENT EXCLUSIONS**

9 Ms. Roman recapped the Nov. 30 special joint meeting with the Authority board in which each board opted  
10 out of certain PFAS class action settlements. She reported that the District has not received a ruling on its  
11 objections and the District's exclusion affidavits have been filed.

### 12 **ACTION ITEMS**

13 **Consideration of Minutes** – The minutes of the Oct 26, 2023, regular meeting and the Nov. 30,  
14 2023, special joint meeting with the Authority board were considered. Upon motion duly made and  
15 seconded, it was unanimously

16 **RESOLVED** that the minutes of the Oct. 26, 2023, regular meeting and the Nov. 30, 2023,  
17 special joint meeting with the Authority board be accepted and hereby are approved as  
18 presented, with Directors Burchenal and Paxson abstaining on the consideration of the Nov.  
19 30 minutes as they were absent from this meeting.

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

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

23 **Resolution to Adopt 2024 Water Dedication Policy** – Ms. Moseley presented a memorandum and the  
24 Resolution with an attached exhibit, copies of which are attached hereto as **Exhibits D and E**,  
25 respectively, and incorporated herein by this reference. A draft of this policy was presented to the board  
26 for review at the Oct. 26 meeting. Discussion ensued regarding the nexus between the updated cash-in-  
27 lieu price and the anticipated construction costs of Bolts Lake Reservoir. Upon motion duly made and  
28 seconded, it was unanimously

29 **RESOLVED** to approve and adopt Res. 2023-14, Adopting the 2024 Water Dedication Policy,  
30 with its Exhibit A, as presented.

31 **Consideration of Fund Balance Policy** – Mr. Cannava and Mr. Norris presented a memorandum  
32 and the policy, copies of which are attached hereto as **Exhibits F and G**, respectively, and  
33 incorporated herein by this reference. A draft of this policy was presented to the board for review at  
34 the Oct. 26 meeting. In response to a question, Mr. Norris said staff will report to the board when the  
35 balance falls below the floor or above the ceiling. Upon motion duly made and seconded, it was  
36 unanimously

37 **RESOLVED** to approve and adopt the Fund Balance Policy, as presented.

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1           **Sunsetting 2005 Housing Policy** – Mr. Norris presented a memorandum and the District Owned  
2 and Sponsored Employee Housing Policy adopted by the board on Dec. 22, 2005 (“2005 Policy”),  
3 copies of which are attached hereto as **Exhibit H** and **I**, respectively, and incorporated herein by this  
4 reference. He recommended the board sunset the 2005 Policy to streamline the current employee  
5 housing program guidelines that have evolved to integrate the 2005 Policy with other methodologies.  
6 Upon motion duly made and seconded, it was unanimously

7           **RESOLVED** to sunset the District Owned and Sponsored Employee Housing Policy of 2005 as  
8 there are new policies and procedures which supersede this policy.

### 9 **INFORMATION REPORTS**

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

### 12 **BOARD MEMBER INPUT**

13 Treasurer Coyer suggested the board convene a study session to analyze upcoming capital expenses.

### 14 **GENERAL MANAGER REPORT**

15 Ms. Roman presented the report, her letter to Avon Town Council (“Avon”) and Eagle Board of County  
16 Commissioners (“BOCC”) dated Nov. 3, 2023, and a memorandum from Kathryn Winn dated Oct. 31, 2023,  
17 copies of which are attached as **Exhibit L, M, and N**, respectively, and incorporated herein by this reference.  
18 She discussed the recent work session between Avon, BOCC, and the Authority, which reinforced that the  
19 Authority cannot make land use decisions and focused on collaboration to align planning decisions with water  
20 considerations. She also provided updates on community presentations regarding rate restructuring, and she  
21 thanked board members for their continued support.

### 22 **BUSINESS ADMINISTRATION REPORT**

23 Mr. Norris provided updates on the water conservation program, highlighting the individualized billing reports  
24 and expanded WaterSmart alerts. He and Ms. Winn also discussed the defeat of Proposition HH in the 2023  
25 Coordinated Election and the potential implications of SB23B-001.

26           **Draft Investment Policy** – Mr. Cannava and Mr. Norris presented a memorandum and the policy  
27 draft, copies of which are attached hereto as **Exhibits O** and **P**, respectively, and incorporated herein  
28 by this reference. Mr. Cannava said this draft is an update from the board policy last adopted on Aug.  
29 23, 2012. He also said Chandler Asset Management updated the policy’s legal requirements and  
30 guiding principles. Mr. Cannava also said the Authority board requested additional language in its  
31 policy regarding certificates of deposit limits and citing the advising institutions; District directors  
32 consented to adding these provisions to its policy. Upon discussion, Mr. Norris requested the board  
33 consider this policy for adoption at the next board meeting.

34           **Draft E-Mail Policy** – Mr. Norris presented a memorandum and the policy draft, copies of which are  
35 attached hereto as **Exhibits Q** and **R**, respectively, and incorporated herein by this reference. He  
36 said the original policy, adopted Jul. 7, 1999, was being updated to reflect evolving technological,  
37 security, and legal landscapes. In response to a question, Ms. Winn said that all board member

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1 emails related to District business, including emails from personal email addresses and devices, are  
2 public records under the Colorado Open Records Act. Upon discussion, Mr. Norris requested the  
3 board consider this policy for adoption at the next board meeting.

4 **Draft Identity Theft Prevention Policy** – Mr. Norris presented a memorandum and the policy draft,  
5 copies of which are attached hereto as **Exhibits S** and **T**, respectively, and incorporated herein by  
6 this reference. He said the original policy, adopted Nov. 1, 2008, was being updated to reflect  
7 evolving technological, security, and legal landscapes. Upon discussion, Mr. Norris requested the  
8 board consider this policy for adoption at the next board meeting.

### 9 **OPERATIONS REPORT**

10 Ms. Roman presented the report, a copy of which is attached hereto as **Exhibit U** and incorporated herein by  
11 this reference. She reported on staff preparation for the triennial Compliance Evaluation Inspection of the  
12 District's wastewater program. She also reported on repairs to a water main leak on Geneva Drive in Vail.

13 **Backflow Prevention and Cross- Connection Control (BPCCC) program update** – Mr. Swartwout  
14 presented a PowerPoint, a copy of which is attached hereto as **Exhibit V** and incorporated herein by  
15 this reference. He discussed the District's compliance with Colorado's BPCCC rule (Section 11.39 of  
16 Regulation 11), which includes conducting hazard surveys on all non-single family residential  
17 connections and extensive auditing by the Colorado Department of Public Health & Environment. He  
18 also discussed the significant progress in the District's compliance, including surveying 100% of  
19 compliance accounts and 95% of assemblies tested in 2023. He further highlighted improvements in  
20 customer communication, process automation, data management, and penalty enforcement. The  
21 board commended staff for being industry leaders in developing a model BPCCC program.

### 22 **ENGINEERING AND WATER RESOURCES REPORT**

23 Mr. Cowles presented the report, a copy of which is attached hereto as **Exhibit W** and incorporated herein by  
24 this reference. He provided updates on the District's participation in the Shoshone Outage Protocol and on  
25 the development of an updated Water Scarcity Plan.

26 **Bolts Lake Update** – Mr. Cowles and Mr. Hildreth presented a memorandum, with its attached project  
27 schedule and grading plan, and a PowerPoint, copies of which are attached hereto as **Exhibits X** and **Y**,  
28 respectively, and incorporated herein by this reference. Mr. Hildreth provided updates on preliminary design,  
29 program manager submissions, and groundwater modeling. He also reported on the firm yield analysis  
30 supporting two points of diversion- from the Eagle River and from the existing diversion at Cross Creek. In  
31 response to a question, Ms. Moseley said the federal Bolts Ditch Act will likely not be heard in 2023 and will  
32 need to be resubmitted in the next legislative session.

### 33 **COMMUNICATIONS AND PUBLIC AFFAIRS REPORT**

34 Ms. Johnson presented the report, a copy of which is attached hereto as **Exhibit Z** and incorporated herein  
35 by this reference. She reported on the concurrent planning of Colorado River operations during the interim  
36 period through 2026 as well as post-2026. She said the Bureau of Reclamation released its revised draft  
37 Supplemental Environmental Impact Statement (draft SEIS) on Oct 25. The draft SEIS responds to last

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1 winter's favorable hydrology and designates the Lower Basin plan, where they committed to conserve at least  
2 1.5 million acre-feet of water by the end of 2024 and planned to conserve the rest of the 3 million acre-feet by  
3 2026, as its proposed action. In response to the revised proposal, public comments may be submitted until  
4 Dec.11, after which the BOR will release its final plan. She also said the Colorado River Drought Task Force  
5 concluded its meetings on Dec. 1 and will publish its final report on Dec. 15. Finally, she reported on the  
6 upcoming retirement of state engineer Kevin Rein.

7 **Proposed 2024 Regular Board Meeting Schedule** – Mr. Thompson presented a memorandum, a  
8 copy of which is attached hereto as **Exhibit AA** and incorporated herein by this reference. The board  
9 supported condensing the schedule to ten regular meetings. A final regular board meeting schedule  
10 will be included as an exhibit in the annual notice resolution that the board will consider at the Jan.  
11 25, 2024, regular meeting.

### WATER COUNSEL REPORT

13 **Eagle Park Reservoir Company Stock Transfer** – Ms. Moseley presented a memorandum with  
14 attachments, a copy of which is attached hereto as **Exhibit BB** and incorporated herein by this reference.  
15 She reported on the completed transfer of 250 shares of Class A, Series 2, stock in Eagle Park Reservoir  
16 Company (EPRC) from the District to the Authority. She noted that staff and counsel thoroughly reviewed  
17 historical records of EPRC stock certificates and EPRC's transfer requirements as this was the first stock  
18 transfer in several years. She also said the EPRC board was informed of the transfer at its Dec. 5 quarterly  
19 meeting.

20 **Non-Functional Turf Bill** – Ms. Moseley presented a memorandum and a draft bill "Concerning the  
21 Conservation of Water in the State Through the Prohibition of Certain Landscaping Practices", copies of  
22 which are attached hereto as **Exhibits CC** and **DD**, respectively, and incorporated herein by this reference.  
23 Upon discussion, directors unanimously agreed to take a position in support of the bill as the commercial turf  
24 removal provisions align with the District's landscape transformation efforts.

### GENERAL COUNSEL REPORT

26 Ms. Winn reported on intergovernmental agreements with metropolitan districts that are billed fees. She also  
27 recognized project manager Carter Keller for working with customers on amicable solutions to easement  
28 concerns.

### RECESS

30 Chair Cleveland called for a recess at 2:41 p.m. The meeting and recording resumed at 2:50 p.m. During this  
31 time, no public business was performed.

### EXECUTIVE SESSION

33 Mr. Norris requested the board move into Executive Session to discuss the potential purchase of real property  
34 at 101 Eagle Road, Unit D2, in EagleVail. Upon motion duly made and seconded, it was unanimously

35 **RESOLVED** to enter into Executive Session at 2:51 p.m. to discuss the potential purchase of  
36 real property at 101 Eagle Road, Unit D2, in EagleVail pursuant to §24-6-402(4)(a), C.R.S.,  
37 with an electronic record created and retained pursuant to §24-6-402(2)(d.5)(II)(E), C.R.S.

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1 Ms. Moseley requested the board move into Executive Session to receive legal advice regarding Colorado  
2 River Cooperative Agreement matters. Upon motion duly made and seconded, it was unanimously

3 **RESOLVED** to enter into Executive Session at 2:56 p.m. to discuss matters regarding  
4 Colorado River Cooperative Agreement matters pursuant to §24-6-402(4)(b), C.R.S., with no  
5 electronic record created as Ms. Moseley opined the contents of the discussion would contain  
6 privileged attorney-client communications.\*

7 Ms. Moseley requested the board move into Executive Session to receive legal advice regarding the status of  
8 active water court cases. Upon motion duly made and seconded, it was unanimously

9 **RESOLVED** to enter into Executive Session at 3:00 p.m. to discuss matters regarding the  
10 status of active water court cases pursuant to §24-6-402(4)(b), C.R.S., with no electronic  
11 record created as Ms. Moseley opined the contents of the discussion would contain privileged  
12 attorney-client communications.\*

13 Ms. Moseley requested the board move into Executive Session to receive legal advice regarding diligence in  
14 Case Number 17CW3168 . Upon motion duly made and seconded, it was unanimously

15 **RESOLVED** to enter into Executive Session at 3:15 p.m. to discuss matters regarding  
16 diligence in Case Number 17CW3168 pursuant to §24-6-402(4)(b), C.R.S., with no electronic  
17 record created as Ms. Moseley opined the contents of the discussion would contain privileged  
18 attorney-client communications.\*

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

### 21 **EXECUTIVE SESSION**

22 Upon discussion, Chair Cleveland requested the board move into Executive Session to discuss personnel  
23 matters regarding the annual review of the General Manager. Upon motion duly made and seconded, it was  
24 unanimously

25 **RESOLVED** to enter into Executive Session at 3:57 p.m. to discuss personnel matters regarding the  
26 annual review of the General Manager pursuant to §24-6-402(4)(f), C.R.S., with an electronic record  
27 created and retained pursuant to §24-6-402(2)(d.5)(II)(E), C.R.S.

28 Open session resumed at 3:57 p.m. During the executive session, the board did not take any formal action or  
29 discuss any matters not enumerated in §24-6-402(4), C.R.S.

### 30 **ADJOURNMENT**

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

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

36 **FURTHER RESOLVED**, that the meeting be adjourned at 3:59 p.m.  
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# Eagle River Water & Sanitation District

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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.

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**Kristin Moseley, Water Counsel**