



## **AGENDA**

### **The City of Santa Fe And Santa Fe County**

#### **Buckman Direct Diversion Board Meeting**

**THURSDAY, OCTOBER 3, 2019**

**4:00 PM**

**CITY HALL**

**CITY COUNCIL CHAMBERS**

**200 LINCOLN**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE SEPTEMBER 5, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON OCTOBER 1, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

#### **INFORMATIONAL ITEMS**

7. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, [rsugrue@santafenm.gov](mailto:rsugrue@santafenm.gov), 955-4501)
8. Report from the BDD Facilities Manager. (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206) **VERBAL**
9. Report on 4<sup>th</sup> Quarter Financial Position FY 2018/2019. (Mackie Romero, Financial Manager, [mmromero@santafenm.gov](mailto:mmromero@santafenm.gov), 955-4506)

10. Introduction of Rebecca Roose Director of Water Protection Division, and discussion of NMED Water Protection Division priorities. (Kyle Harwood, BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641) **VERBAL**
11. EPA, U.S Army Repeal of 2015 Rule Defining "Waters of the United States" (Alex Puglisi, Environmental Compliance Specialist, [aapuglisi@santafenm.gov](mailto:aapuglisi@santafenm.gov), 955-4232) **VERBAL**
12. Clean water Act Litigation: Controlling Urban Stormwater Pollution in Los Alamos County and Proposed CWA Section 401 Rulemaking limiting State and Tribal oversight of discharges.(Alex Puglisi, Environmental Compliance Specialist, [aapuglisi@santafenm.gov](mailto:aapuglisi@santafenm.gov), 955-4232, Rachel Conn, Amigos Bravo.) **VERBAL**

### **CONSENT AGENDA**

13. Request for approval of the 2020 Buckman Direct Diversion Board meeting calendar. (Jamie-Rae Diaz, Administrative Assistant – Board Liaison, [jldiaz@santafenm.gov](mailto:jldiaz@santafenm.gov), 955-4210)
14. Request for approval of the 2020 Fiscal Services and Audit Committee (FSAC) meeting calendar. (Mackie Romero, BDD Financial Manager, [mmromero1@santafenm.gov](mailto:mmromero1@santafenm.gov), 955-4506)

### **MATTERS FROM THE PUBLIC**

### **MATTERS FROM THE BOARD**

**NEXT REGULAR MEETING: Thursday, November 7, 2019 at 4:00pm**

### **ADJOURN**

### **EXECUTIVE SESSION**

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB may be a participant, including, without limitation, *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, United States District Court, New Mexico Case No. 1:16-cv-0433-JCH-SCY and *Amigos Bravos v. United States Environmental Protection Agency, et al.*, United States District Court, New Mexico Case No. 1:19-cv-00852-SCY-JHR (Kyle Harwood BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

### **END OF EXECUTIVE SESSION**

**PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE**

**RECEIVED AT THE CITY CLERK'S OFFICE**

**DATE: September 25, 2019**

**TIME: 1:23 PM**

**MINUTES OF THE**  
**THE CITY OF SANTA FE & SANTA FE COUNTY**  
**BUCKMAN DIRECT DIVERSION BOARD MEETING**

**October 3, 2019**

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Anna Hamilton, Chair, at approximately 4:00 p.m. in the Santa Fe City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll was called and the following members were present:

**BDD Board Members Present:**

Commissioner Anna Hamilton, Chair  
Councilor Peter Ives  
Commissioner Anna Hansen  
Councilor Michael Harris  
Citizen Member Denise Fort  
Mr. Tom Egelhoff [non-voting]

**Member(s) Excused:**

None

**BDD Board Alternate Members Present:**

Mr. J.C. Helms [Citizen Alternate]  
Ginny Selvin [Las Campanas Alternate]  
Councilor JoAnne Vigil Coppler, [City Alternate]

**Others Present:**

Rick Carpenter, Acting BDD Facilities Manager  
Mackie Romero, BDD Finance Manager  
Randy Sugrue, BDD Operations Superintendent  
Bernardine Padilla, BDD Public Relations Coordinator  
Rachel Brown, Santa Fe County Deputy Attorney  
Sara Smith, Santa Fe County  
Kyle Harwood, BDD Counsel  
Jesse Roach, City of Santa Fe, Water Division Director  
Alex Puglisi, City of Santa Fe Public Utilities  
Joni Arends, CCNS  
Rebecca Roose, NM ED  
James Bearzi, Glorieta Geoscience Inc.  
Joey Rowe, Santa Fe County  
Stephanie Lopez, City, Utilities  
Jamie-Rae Diaz, City of Santa Fe, Administrative Assistant

SM - LERK RECORDED 12/23/2019

Shelly Lemon, NM ED  
Rachel Conn, Amigos Bravos  
Luke Pierpont, Egolf + Ferlic + Martinez + Harwood  
John Verheul, NM ED

**3. APPROVAL OF AGENDA**  
*[Exhibit 1: Agenda]*

RICK CARPENTER (Interim Facilities Manager): Madam Chair, members of the Board, there are a couple of items that we would like to call your attention in the agenda packet and Kyle will handle that.

KYLE HARWOOD (BDD Counsel): Yes, Madam Chair, unfortunately we had a little bit of a muddle under Tab 11, which you'll see contains a lot of material. So for your orientation, page 1 through 65 of this should have been behind Tab 12. Pages 66 through 101 is a engineering or water resources that is not related to the BDD – it somehow kind of got stuck in the packet unfortunately.

CHAIR HAMILTON: I actually don't even have it. It goes from 65 to 86 in my packet, but that's okay.

MR. HARWOOD: And then pages 102 to the end are also meant to be behind Tab 12. So we are sorry for the confusion but things happen.

CHAIR HAMILTON: Thank you very much. So other than that people can flip to the other tab to look at what they need to. The agenda is good to go as it; so what's the pleasure of the Board?

COUNCILOR IVES: Move to approve.

MEMBER FORT: Second.

**The agenda was unanimously approved as published.**

**4. APPROVAL OF CONSENT AGENDA**

CHAIR HAMILTON: What's the pleasure of the Board?

COUNCILOR IVES: Move to approve.

MEMBER FORT: Second.

**The motion passed by unanimous [5-0] voice vote.**

**CONSENT AGENDA ITEMS:**

- 13. Request for approval of the 2020 Buckman Direct Diversion Board meeting calendar**
- 14. Request for approval of the 202 Fiscal Services ad Audit Committee meeting calendar**

**5. APPROVAL OF MINUTES: September 5, 2019**

Commissioner Hansen moved to approve as presented. Councilor Ives seconded and the motion passed by unanimous voice vote.

**6. REPORT ON THE OCTOBER 1, 2019 FISCAL SERVICES AND AUDIT COMMITTEE**

MACKIE ROMERO (BDD Financial Manager): Madam Chair, members of the Board, a Fiscal Services and Audit Committee meeting was held on Tuesday, October 1<sup>st</sup>. In attendance was myself, BDD Financial Manager, Rick Carpenter, Interim Facilities Manager, from the City, Councilor Harris, from the County, Commissioner Hamilton and from our Las Campanas partners we had Tom Egelhoff, Ginny Selvin, and Linda Spingler. During this meeting I provided an update of our audit and financial statements for fiscal year ending June 30, 2019. Our audit should begin this month and we are just waiting to meet with our auditors. I will continue to provide the Board and the partners an update on our audit and financial statements until the financial statements have been delivered to the State Auditor.

We also discussed information item #9 which is a report on the 4<sup>th</sup> quarter financial position which I will later present in this agenda. Are there any questions?

CHAIR HAMILTON: Thank you, Mackie. Are there any questions or comments from anybody who was there? Excellent.

MS. ROMERO: Thank you.

**INFORMATIONAL ITEMS**

**7. Monthly Update on BDD operations**

CHAIR HAMILTON: Welcome, Randy.

RANDY SUGRUE (Operations Supervisor): Thank you, Madam Chair, members of the Board. We had another good month at Buckman. The river was remarkably clear. We didn't have any storm related issues with turbidity this month. Our raw water diversions averaged a little over 3.7 million gallons per day. Our drinking water deliveries through Booster Stations 4A/5A average 2.7, a little above to 2.7 million a day. Las Campanas diverted just under a million a day, about .95. Our on-site treated and non-treated storage was about 61,000 gallons a day on average. We were providing just under 25 percent of the City and County water supply for the month. Canyon Road has dropped their production. Their reservoir levels are just where they want them so BDD is now ramped up our production over the difference.

I wanted to make mention also that we are very, very close to finalizing hiring our five new operators. We are very pleased to have that happen. The paperwork is going through final signatures in Human Resources and we expect to be scheduling the three non-City employees for physicals and that sort of thing shortly. So we look forward to having them on board soon.

MEMBER FORT: Madam Chair, I am sorry. Can you repeat the position that is being filled?

MR. SUGRUE: We have five operations positions.

MEMBER FORT: Great, thank you.

MR. SUGRUE: Yes, you're welcome. I'm open for questions.

CHAIR HAMILTON: Thank you. Any questions? Commissioner Hansen and then Councilor Harris.

COMMISSIONER HANSEN: I just had a question, what is ENSO neutral? I know that it's El Niño but if it's neutral does it mean it's going to stay the same as we have right now or what does it mean?

MR. CARPENTER: Commissioner, essentially, it will remain unchanged. We won't be in El Niño, we won't be in La Niña. We are expecting normal precipitation.

COMMISSIONER HANSEN: Thank you.

CHAIR HAMILTON: Thank you. Councilor Harris.

COUNCILOR HARRIS: Thank you. I am curious about the new hires. I know in the past the Santa Fe Community College has had a program; is that program still alive and well and are any of our new hires graduates of that program?

MR. SUGRUE: Madam Chair, members of the Board, it is alive and well. We've had several of our current operators continue to take some classes from the Community College. I believe at least one of our new hires who is a current City employee did participate in that program and part of his certification. He's a Level 2 certified operator. Entry level operators, I don't believe any were participants but we are going to encourage them to take those classes.

COUNCILOR HARRIS: Good, thank you, sir.

CHAIR HAMILTON: Yes, Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. Just one quick question and we need not necessarily do this at this meeting but perhaps another, I have to admit that I am still somewhat mystified by Article VII and the effects that occur in our reservoirs when it is invoked and I'm hoping that somebody might just spend maybe 10 minutes explaining operationally how that works because it says we can only keep 1,061 acre-feet in storage back at the 29 levels or 39, whenever that was established, but of course our reservoirs are generally more full than that over the course of the year. So I'm never sure whether that means we have got to empty them or we can keep what we've stored before it went into effect in them. So, and I don't know if there's a really simple answer we could do it now but I have never quite understood that dynamic.

MR. CARPENTER: It's complicated but we can handle it a number of different ways. Yes, we have a pre-compact pool of 1,061 acre-feet so we can store within that pool anytime Article VII is invoked or we can pass the water that comes into the reservoir through rather than storing and impounding it. If we choose to impound it which is something we often do and did this year, then it becomes an accounting exercise and we owe that water back and we pay it back with our San Juan-Chama water.

CHAIR HAMILTON: That was less than 10 minutes.

COUNCILOR IVES: Questions still remain in my mind and I'm happy to do them off line.

CHAIR HAMILTON: It is something we would want to put maybe as a short informational on the next agenda for presentation because between Rick and Kyle and Jesse we could probably get a good read on that.

MR. CARPENTER: Madam Chair, we would be happy to put together an informational item for the next Board meeting.

CHAIR HAMILTON: Short, maybe 10 minutes. Thank you.

COUNCILOR IVES: Thank you.

CHAIR HAMILTON: Any other questions? Thank you so much, Randy.

MR. SUGRUE: You are welcome.

## 8. Report from BDD Facilities Manager

CHAIR HAMILTON: Perhaps we could introduce your new boss.

MR. CARPENTER: Yes, Madam Chair, that's in my notes. So we'll start off with Jamie-Rae, she's to my left, she's an administrative assistant for the City of Santa Fe. She will be taking over the duties that Stephanie Lopez has been doing for the Board for these past many years. Stephanie's pending departure, and we will be sad to see her go, but Jamie-Rae will be stepping into her shoes.

I have one other introduction that I would like to make. Jesse Roach is in the audience, Jesse is our new Water Division Director. I think most of you know him but I thought it would be appropriate to introduce him and if he wants to say a few things to introduce himself.

JESSE ROACH (City Water Division Director): Madam Chair, members of the Board, I just wanted to come and formally introduce myself to the Board. I think I have met many of you in other circumstances although no one from Las Campanas and I'll look forward to those introductions. I will just say that of course BDD is of strategic import to the City of Santa Fe, everyone here knows that, but where the City of Santa Fe Water Division can help the activities of BDD and the BDD Board, please reach out.

CHAIR HAMILTON: Thanks so much Jesse, and welcome aboard.

MR. CARPENTER: Madam Chair, a couple of more items, if you don't mind. There's been quite a lot of talk in the past few Board meetings about the Source Water Protection Plan and the public outreach plan that goes along with that. After assessing it and talking to staff, we do not believe that we have the expertise or the staff members to pull that off in house. Our suggestions to the Board for your consideration would be to hire an expert, someone like Lynn Komer. We believe we can probably do this for under \$10,000 perhaps even around \$5,000. The facilities manager has the ability to enter in those types of contracts. That would be my recommendation but I would also be interested in any thoughts the Board might have on that topic.

CHAIR HAMILTON: Thank you. We chatted about it and I think that is an excellent idea. I think it's a good choice that falls within your ability to do without a formal RFP. Does anybody have questions or comments or thoughts? Denise.

MEMBER FORT: Thank you, Madam Chair. Could you just say a bit more about what is anticipated under the contract? I guess it's always nice to hear that things are inexpensive but I was hoping that we would have a couple of meetings around the City to talk about the source waters. So we are indeed talking about a revision of the Source Water Protection Plan that we were presented; correct?

MR. CARPENTER: As part of the public outreach plan, I would expect there would be some revisions, yes. The contract with the expert and I'm thinking of Lynn Komer, we could certainly bring the recommended scope of work back to the Board and talk around that. I would like to have the Board's input on what you would like to see out of that work effort and then enter into some sort of agreement that would facilitate that.

CHAIR HAMILTON: We're not talking about doing it blind.

MEMBER FORT: Okay, I'd just like to see some public meetings and we talked about some substantive revisions within the document that was kind of

basically the old document and somewhat updated but not very well updated, so this person would do that work, I take it.

MR. CARPENTER: Yes, exactly. I would anticipate at least one if not more public meetings.

MEMBER FORT: Thank you.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I support that. I think Lynn Komer has worked on this before and I think it would be a good continuation. Public meetings, of course, are necessary and that's part of what she would do is my understanding.

CHAIR HAMILTON: Anybody else? It sounds like there is support for this if you want to proceed. It's a good plan to develop a plan and get feedback is great. I'm happy to hear that.

MR. CARPENTER: Madam Chair, we will proceed accordingly then. And I have one last item that I'd like to call to the attention of the Board. It's just sort of a heads up, we'll bring it back in more detail at a subsequent Board meeting. Kyle Harwood and myself attend regular meetings of an organization called the Middle Rio Grande Endangered Species Collaborative Program. They used to meet every month and I think they're going to plan on meeting quarterly now. We are required to participate in the program under the auspices of our Record of Decision.; however, among the many agencies that participate at the federal, state, local, pueblos, some NGOs, most of them are signatories to the program. The Board is not. Our recommendation is that the Board ought to become a signatory to the program. It doesn't cost us any money and we're required to be there anyway.

So what we'd like to do is come back to this Board at the next meeting with a memo that details what the program is and why we think the recommendation to join would be something that the Board should consider to entertain.

CHAIR HAMILTON: Are there questions? I actually do have one small question. You know, it is clear that we have to participate and you've already been doing that and that's no additional expense. As a signatory are there other responsibilities that we would take on that would be additional expenses – time to develop inputs, whatever?

MR. CARPENTER: Madam Chair, there would be additional responsibilities and obligations as a signator but there would not be any associated expenses. Primarily, we'd have a voice at the table and the ability to vote.

CHAIR HAMILTON: Great. I just wanted to ask you essentially for transparency, it was kind of the obvious question. Yes, Councilor Ives.

COUNCILOR IVES: So if we are called to vote on various things it would be nice to know what things generally the organization does vote on and what their significance is or impacts might be. Hopefully, that can be included as part of that presentation.

MR. CARPENTER: Absolutely.

CHAIR HAMILTON: So essentially we would get more report back so that we could have input and discussion on items. Excellent. Member Fort.

MEMBER FORT: Thank you, Madam Chair. And I would just comment that Sunday's paper had a pretty sad story about the Middle Rio Grande which doesn't look much better than it did in 1997 when we started a lot of efforts to get more water in the river. It talked about the condition of the minnows and so on. I must say, the

Conservancy District's position didn't look any different than it did some 20 years ago. So anything we can do in our participation to increase the health of the Middle Rio Grande, this Board member's perspective would be a good thing. Thank you.

CHAIR HAMILTON: Excellent. Thank you. That's all? Thank you.

MEMBER FORT: I'm sorry I had a question for him.

CHAIR HAMILTON: My apologies go right ahead.

MEMBER FORT: Could you tell us, bring us up to date, on what's happening with the search for the position in which you are an interim.

MR. CARPENTER: Yes, we received two applications for the position. In my opinion and in the opinion of other staff, we may or may not decide to interview them but I'm not optimistic that we're going to fill the position this time around. I think we will have to re-advertise.

CHAIR HAMILTON: Thank you. Commissioner Hansen.

COMMISSIONER HANSEN: At that point, would you consider raising the salary offered?

MR. CARPENTER: That topic comes up every time we reach this point. I suspect we'll entertain that once again.

MEMBER FORT: Madam Chair, I am concerned that we do not yet have a permanent director. We very much appreciate what Mr. Carpenter has done and I hate to be – and I really was coming from an exhausting hospitalization visit at the last meeting where I was so incoherent but I wonder if I could be brought up to date on how we're going about this in terms of who is in charge? When we would raise the salary that is being offered? And I guess I am looking at someone who might know something about City personnel matters to say how do we advance this because this has really gone on for quite a long period and I would think there would be people at the right salary who would want to move to Santa Fe.

CHAIR HAMILTON: Mr. Carpenter.

MR. CARPENTER: It's a complicated task to take on because of the City's internal structure. We've discussed this before. Decisions would have to be made above my level probably at the department director level and interface with Human Resources and see what can be done in that regard.

MEMBER FORT: Madam Chair, who would the responsible person be to whom we should be speaking?

CHAIR HAMILTON: I think that a point in the very near future it might be worthwhile having a preliminary meeting with a subgroup with Dr. Roach as the Water Division Director and Rick and the Chair and maybe Mr. Harwood as legal and just see what needs to be discussed and how we can proceed. Because we have the rolling decision about whether we've given it enough time, done enough outreach and all of that sort of thing. So we recognize that it is complicated between the City personnel and BDD in general and the Board. But I think maybe it calls for perhaps having a preliminary meeting on this and then making some recommendations for how to move forward. Does that sound acceptable? If we could arrange that it would be good.

MEMBER FORT: We had spoken at one previous meeting, Madam Chair, about perhaps speaking to some sort of request to the City Personnel about what is necessary to do this. I just wonder if other Board members share the sense that this is an important position that deserves a permanent full-time person and if there's anything that

we should be doing in addition as a Board or should we – I know we don't use the word "ultimatum" but I'm just trying to think of some euphemism for telling the City that we'd like to get this position filled and everyone here has more experience that I do with the City.

COUNCILOR IVES: I am certain that I don't think anybody would disagree with the proposition that it's an important position and it would be great to have somebody filling that position. That said, certainly recognize that I don't have the expertise what the position is as a generalized statement or if there are complexities in that position that make it particularly difficult to fill for whatever reason. So I think the notion of having a smaller group sit down and discuss those parameters so that we can understand it better would make a great deal of sense.

CHAIR HAMILTON: And I would just like to clarify, I'd like the group to include, obviously myself as chair, and Councilor Ives as vice chair and it will just be a non-quorum and a good start.

COMMISSIONER HANSEN: Madam Chair, if possible maybe the utilities director from the County.

CHAIR HAMILTON: Sure.

COUNCILOR HARRIS: I just wanted to say that I heard Board Member Fort talk about what we're offering and including the possibility of moving to Santa Fe, I think a lot of folks aren't as enamored with Santa Fe perhaps as you are. You know, I think that's a fact. We've struggled to hire civil engineers in our Land Use Department and we finally got somebody to move over internally. Engineers and particularly as specified as we are asking for – and I'm not exactly sure what we're asking for. Maybe I'm being a little bit glib but the market place is going to respond and the market place is perhaps saying that perhaps we're not paying enough money. Perhaps they are looking at what it takes to live in this town and maybe our scope of work is off. A lot of times we ask for – in general not specific to this position – we ask for a scope of work that is just unrealistic given what we're willing to pay for it. So having a subgroup to really dig down on that I think is fine. I think Mr. Roach's involvement would be particularly important. He has just moved from the private sector to the public arena, thank you very much. But I think that conversation might be instructive as well. Thank you.

CHAIR HAMILTON: That's a good point, thank you for that.

COUNCILOR VIGIL COPPLER: Madam Chair, may I comment?

CHAIR HAMILTON: Please:

COUNCILOR VIGIL COPPLER: It seems to me that until you have a structure that allows for this kind of input it may not go anywhere. You may recall that not too long ago you asked me to look into – one of you asked me to look into, Chair Hansen at the time – asked me to look into some of the personnel matters we had. I did a great deal of research and discussed it with the City manager and it really didn't go anywhere. And, of course, now the City manager is no longer here. But you probably need to have buy in from the City and my belief is that our compensation plan is still out of whack not really based on the real issues that we have. I would say that the first step is to take a look at the job description and see if it really is as, Councilor Harris put it, are we asking too much or is the job described correctly. I would say we have to look into the personnel rules. I know that there are some ways that we can offer a better, more enticing salary than what we are doing.

When I did that research it seems to me that this Board has a lot more power than what I think is taken advantage of and in this regard someone, I think, should look into that because I would say that this Board can dictate some things because you're not necessarily under the City structure solely. Maybe take a look at what your personnel rules offer at the County and coming to some happy medium.

CHAIR HAMILTON: I think that is fabulous input. One reason for doing a meeting is to be able to discuss where the roadblocks are and you've highlighted your perception of some of them probably pretty accurately and instead of just making ultimatums being able to discuss what the options are and to understand to what extent those options lean toward some of the modifications to the JPA that we've had a committee working on and has kind of been in limbo for a short while. We made some necessary changes and haven't done any others. Exactly how to approach that is the germane question you're right on on that. But that was my intent on having a meeting to identify where the hold ups are and what the possibilities are in moving forward. It would be the first of several meetings because it would probably very quickly get to having HR and legal from all the partners involved. Initially, I think we can start easy and discuss what the options are because it's this rolling – do we wait another month and see if maybe this magic person who just wants to be here anyway and then maybe the month after that it will be that magic person and we're going to get exactly what we want without changing anything. And Member Fort's point was when do call a halt and just start talking about what we have to do as Plan B. And that's what I want to move toward. Thank you, Councilor.

#### **9. Report on 4<sup>th</sup> Quarter Financial Position FY 2018/2019**

MS. ROMERO: Thank you. Madam Chair, members of the Board, this presentation is to update the BDD Board and our partners on our 4<sup>th</sup> quarter financial position as of June 30, 2019. In your packet I have provided a budget overview which is on the next page after the memo. This budget overview includes the final expenditure amounts for each quarter with the budget of about \$9 million; BDD expended \$7,722,000 which is roughly about 85 percent of our budget. This is a little bit lower than last year. Last year we spent 88 percent of our budget but our budget was lower last year so we only had about an \$8 million budget. So in theory, we actually spent \$600,000 more this year than last year. That question came up in FSAC. In the future, I will include historical data for comparison, so thank you for that suggestion, Councilor.

In my report I have also included the final partner reimbursement amounts by major category. This includes 'other revenues' sources such as our PNM solar revenue and our funding from our DOE grant. Again, these funds are used to support the expenditures for the year. On page 2, I have our other funds. We have the major repair and replacement fund and the emergency reserve fund. I have the cash position for both of those funds. We don't have our interest earning that we get from the City. That has not come into our funds yet so that number is blank. In this report, I also have the budget overview for the major repair and replacement funds. Again, this is money that has been authorized by the BDD Board for expenditure. I have included 1<sup>st</sup> through 4<sup>th</sup> quarter expenditures and then the carry-over balance that the Board approved last month so that we could continue some of our ongoing projects.

There was a question that came up about the major repair and replacement during FSAC and that was how far we had gone along with our asset management program and being able to justify the contributions made to that fund. I did have a conversation with our new maintenance superintendent, Brian Armstrong, and luckily he was on our staff when those engineers were onsite preparing the asset management plan and so he is very eager to get back into that system and start doing a level of analysis and so with hopefully his help we can bring that to a report or an update back to the Board in the next couple of months and hopefully definitely prior to the next budget preparation so that we can have a better number of what type of contribution we need in that fund. I just wanted to be able to provide that update from FSAC.

Were there any other questions about the report?

CHAIR HAMILTON: Actually, just as a follow-up on that assessment. It's great to hear that Brian is both on board and has some background for helping with developing the asset management but we actually need the time for a financial person to do that analysis; right? And you don't, I know that. I see three positions in just you standing there, right. So don't you think that will be a little bit of a holdup?

MS. ROMERO: It is possible that there would be a little bit of a holdup. We talked about a strategy and the first thing was to bring the people who developed the software back to BDD to provide a training to make sure that we can navigate through the system and then possibly maybe taking the asset management plan and breaking it up. Maybe we focus on major assets that are valued over \$1 million and analyze that first and maybe bring that. So maybe start breaking that up and bringing it to you over the next couple of months was the approach that we had discussed.

CHAIR HAMILTON: Are you going to do that in the context of all current operational conditions, in other words, the plant as is?

MS. ROMERO: That is correct.

CHAIR HAMILTON: So it could change in the future.

MS. ROMERO: Absolutely.

CHAIR HAMILTON: Are there other questions on that or any questions for Mackie? Councilor Harris.

COUNCILOR HARRIS: I just think, again, at FSAC we talked about in more detail on a lot of the line items but I think particularly since we just had a discussion about the search for director, the largest single budgeted item is for employees' salaries and benefits and we're really – and that's the largest budget balance that's available. So we're at 84 percent there and I think it's just indicative of the struggle that we have had at all levels, whether it is maintenance supervisor or operators or certainly directors to really find the people to fully staff the facility. It's been kind of a common problem, I think, in the four years that I've sat here. Hopefully, with the operators that we have and we finally get a person to assist Ms. Romero in her capacity as well as a division director we should be in much better stead and spend the money that we have allocated for employees' salaries and benefits because otherwise I think we all understand that people have to perhaps cover positions that is not necessarily part of their job description and that can sometimes lead to safety issues, also people are overworked. Anyway, I think it's just worth remembering as we look at the past year. Thank you.

MS. ROMERO: Thank you.

COUNCILOR VIGIL COPPLER: Madam Chair.

CHAIR HAMILTON: Yes.

COUNCILOR VIGIL COPPLER: I would like to remind this Board that the Class and Comp Plan downgraded the positions in this group.

CHAIR HAMILTON: Which particular – I mean are you thinking about the operators?

COUNCILOR VIGIL COPPLER: Yes. And that was part of my meeting with the City Manager at that time to go to bat for those positions, they were still downgraded. So when we speak about the difficulty in recruiting these operators we sort of work against ourselves when we allow this to happen.

CHAIR HAMILTON: Thank you.

COUNCILOR HARRIS: Just to add to that because in Tuesday's Finance Committee meeting, I asked our Finance Department Director Ms. McCoy if she had been able to research a question I had from the previous meeting which had to do with what's the process. I mean, there are positions, certainly as a result of class and comp and this is one example I can point to and certainly some others, what's the process for addressing those positions. She – and it's not a fault on her part, but she just didn't have an answer yet. She acknowledged the question is still and so the City will be kind of looking at how to put in a formal process to address perhaps some of the – I don't want to say that inequities is the right word, but some of the problems associated with one-size fits all. And that's a little bit what we ended up with class and comps.

CHAIR HAMILTON: Absolutely. Commissioner.

COMMISSIONER HANSEN: I just want to say that I agree with the comments made by Councilors Vigil Coppler and Harris.

CHAIR HAMILTON: Thank you. Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. My recollection of our prior discussions on this point were that there was initially built in several different steps within each one of the operator levels at BDD as that facility was getting up and going and had more complexity. But the City has been moving actually to treating operators more equitably so that if you have an Operator 1 they do have a set pay range as opposed to setting your pay ranges by facility also with the understanding that cross training across the facilities will allow operators to have more opportunity to work across the entirety of the City platform. That does not seem to me to be a terribly bad thing and if I'm understanding we're hiring five new operators. That's all I had, thank you.

CHAIR HAMILTON: Thank you. And thank you, Mackie.

COMMISSIONER HANSEN: Madam Chair, I just wanted to state that I believe that Mike Harris is the vice chair. Didn't you accept that position?

COUNCILOR HARRIS: I think you're right actually.

CHAIR HAMILTON: There was never a revote?

COMMISSIONER HANSEN: No, there was never a revote.

CHAIR HAMILTON: Thank you, Commissioner.

COMMISSIONER HANSEN: I just wanted to point that out.

CHAIR HAMILTON: We will go back and double check to make sure we have it straight.

COUNCILOR HARRIS: I don't remember because quite frankly as you know, both Councilor Ives and I will not be here soon.

COMMISSIONER HANSEN: I know and that was why we continued

with you in the position of vice chair. I am just being accurate.

CHAIR HAMILTON: No, it is important and I really appreciate the catch. We'll clarify.

**10. Introduction of Rebecca Roose, Director of the Water Protection Division, and Discussion of NMED Water Protection Division Priorities**

CHAIR HAMILTON: I'm very pleased to welcome you here. Thanks so much for coming.

REBECCA ROOSE: Madam Chair, members of the Board, thank you. It's really good to be here and I'm sorry I that I wasn't able to make it last month. I'm very glad to be here with you today.

CHAIR HAMILTON: We're happy to have you in your position and we're happy to have you here. Please start

MS. ROOSE: Good afternoon, everyone. I just want to introduce myself and make a few remarks. I know on the agenda you're interested in hearing the priorities of the Water Protection Division. I'm happy to share that with you, answer questions and have a discussion with you today.

So in terms of introduction, as some of you may know, I've recently joined the New Mexico Environment Department. I started at my position in May as the Water Protection Director and in my role and at the Environment Department the Water Protection Division includes the Drinking Water Bureau, the Surface Water Quality Bureau, the Groundwater Quality Bureau, and the Construction Programs Bureau. So right now that's a team of about 160 people. We have 30 vacancies across the division right now and even if we had all those positions filled we would still be very strained and limited in what we can do.

So the conversations that we've heard already during this meeting about the difficulty recruiting and retaining quality people at the City level, we certainly feel your pain. And one of my priorities which I'll talk about more in a minute is recruiting and retaining the best talent that we can get at the Environment Department to do the incredibly important work of protecting our water resources across the state.

I came to the Environment Department from EPA headquarters. I was in Washington, DC for the last 15 years, the last 13 of those at EPA headquarters in various roles, predominantly working on water issues. I worked in the Office of Water on NPDES point source program under the Clean Water Act. I worked on non-point source program, state water quality planning, and then moved into the Office of Enforcement and Compliance Assurance where I worked on the Clean Water Act and Safe Drinking Water Act issues from the compliance perspective. I started out in the office writing regulations, moved to the Office of Compliance and worked on how we ensure that those regulations are followed and the environmental protection and public health protection goals of those regulations are achieved by increasing and ensuring compliance across the regulated community.

In both of those roles I also worked extensively on state programs, so where states are authorized to implement EPA programs I have a friend at EPA. Both in the regional offices in our region here that we work with and New Mexico is Region 6, and Dallas, the regions and headquarters staff work really closely together with states to ensure that

state implementation of federal environmental programs are meeting all of the expectations of the agency, of the underlying laws and regulations.

That gives you a little bit of the flavor of my background. I'd also like to point out that the last couple of years I was at EPA I was working exclusively with tribal governments all across the country and coming from the University of New Mexico Law School, where I went to law school, I studied both Indian law and natural resources environmental law, and I really wanted to work on environmental issues with tribes. And so the last couple of years at EPA I was able to realize that dream and managed a national financial assistance program for federally recognized tribes, over 500 tribes of the 573 federally recognized tribes participate in that program, and it supports them in developing their own environmental program capacity for their communities and for their people. So I'm proud of that as well.

MEMBER FORT: Madam Chair, the speaker aced environmental law.

MS. ROOSE: Thank you, Professor Fort.

CHAIR HAMILTON: Thank you, Member Fort.

MS. ROOSE: Yes, Member Fort and I go back a ways, when I was a student at UNM. So that gives you a little bit of my background. I'm happy to answer other questions about that if interested. I'm definitely more of a lawyer and policy person but I've been working with technical experts throughout my entire career and I am extremely excited and honored and humbled to be at the Environment Department and working with an incredible technical team in the Water Protection Division that are out there fighting every day, working hard to protect our water – surface waters, groundwater and drinking water for all New Mexicans.

I want to acknowledge Shelly Lemon, Bureau Chief of Surface Water Quality Bureau here with me, John Verheul from NMED, also general counsel, also supporting today, and we work really closely together on many of the issues that are important to the Board.

So going back to the priorities of the Water Protection Division, I'll start a little bit higher than that at the Environment Department priorities. The New Mexico Environment Department is working as best we can to elevate the opportunities for our staff, elevate the quality and function of our work across the state, and we're really focused on making decisions around four key pillars that really come up – one or more of them – in everything that we do, every decision we have to make as a department. And those four pillars are science, collaboration – that's part of me being here today; we're living collaboration right now – innovation and compliance. Those four pillars are really guiding what we do. You'll see it on the letterhead we send letters on, right there at the bottom of the page, since you all have that in front of you, and it really is something that is helping to guide our work and unify us as a department.

We have such diversity of work. I couldn't believe when I came to the Environment Department a few months ago that we do the food inspections, that we do public pool inspections, not to mention everything related to air quality protection and permitting and all the water programs that I've mentioned are part of my division, oversight of federal facilities, including DOE facilities at LANL. It's just an incredible diversity of people and perspectives and work and responsibilities and these four themes really do help to unify us and guide our decision process, and I've really embraced those as I've come in and gotten a feel for what we're doing across the Water Protection

Division. And those four pillars inform what I'll talk about as the priorities of the division.

There are governor priorities that are our priorities. One of those that is a big focus of ours in the division right now is produced water and implementation of HB 546 which was enacted earlier this year in the legislature and signed by the governor. It's commonly referred to in shorthand as the Produced Water Act. It directs NMED to regulate off-site, off-off oil field use of produced water from oil and gas industry. And so we're engage right now, just starting to roll out a very robust public engagement process to collect more information about how we're going to implement that law.

So in terms of our priorities for this year it's really laying the foundation for what we've been directed to do through that legislation of figuring out how we as a state can tackle both the water shortage issues and water security needs that we have and the challenges of a changing climate, and risks of increased drought and the demands that we have on our water resources, along with the growth of oil and gas production in our state that's generating volumes of produced water that right now are being injected underground never to be seen again, taken out of the hydrologic cycle. So we're going to be working on that this year on two levels of what we're calling Phase 1 of implementation.

Phase 1 includes our public engagement, getting out and talking to the public, educating on what we're doing and what the law means, and also having the public help us understand and educate us on what's important to them about this very, very controversial topic that's very concerning for a lot of people, because there's a lot we don't know about produced water and what would happen. So we're doing this public engagement.

And then also, the second piece of our focus for this year on that is working to fill the science and technology gaps around treatment of produced water for use for purposes outside of the oil and gas industry. There are many questions that we have as regulators that we need answers to before we can set forth in really taking charge of that legislation and developing a program that embraces public safety, that ensures the protection of the environment and public health. So that's a priority that's very program specific. It comes up in terms of as a department and what we think about what are the governor's priorities.

Another is that's cross-cutting across the department and it affects us in the Water Division as well is improving environmental management of federal facilities. That includes for the water program fully implementing the Water Quality Act and implementing its regulations at both the Department of Defense and Department of Energy facilities, including LANL and Kirtland Air Force Base. We have a number of groundwater discharge permits at these facilities. We want to make sure that we're doing everything we can. We're using all the tools in our toolbox to ensure that our laws, our state laws, and where we're authorized to implement any federal laws more outside of the water realm, that we're doing that as effectively and aggressively as we can.

And then within the division there are a number of priorities that we have related to improving compliance across all water regulatory programs. And I'll touch on them briefly. I could go into more detail on any one of these, but safe drinking water is a huge priority for us. We have a lot of work to do in my view to staff up to where we should be in the drinking water program to make sure we are effectively protecting public health

and drinking water across the entire state for all New Mexicans who rely on public water systems for their water.

One piece of that is with respect to our utility operator certification program which ties in with some of the comments that we've heard earlier in the meeting. We have a number of goals and objectives for how we can improve and strengthen that program. We're going through a public notice process right now on revised regulations for our operator certification program. I can follow up with additional information about that if it's of interest to the Board, and that would include, among other things, modernizing the regulations and creating a new operator-in-training program that some other states have and they've found that creating an entry level operator-in-training – kind of like an apprenticeship level, increases the pipeline of operators coming into this field and we want to work really closely with a number of partners to make sure that that opportunity once embodied in our regulations is really effective and to advertise it in as many ways and places as we can, including with high schools and community colleges and so forth to make sure that we really are doing everything that we can to address the challenges of filling those essential positions for our communities.

And then there's more on the drinking water side but I'll move on to groundwater quickly. On the groundwater program side, as many of you probably know, we manage the groundwater discharge permit program under the Water Quality Act. There are over 700 permitted facilities across the state and we need to hire more permit writers. We need to be staffed up to be able to do more inspections. This is all going to fold into what ultimately feeds into our request for our FY21 budget that goes forward to the legislature.

And we also have some infrastructure needs that we need to address in our groundwater program, including modernizing the way we manage and track and collect data. That may be a shared challenge with the City as well. So we have many opportunities, I will say, many opportunities to improve and modernize the way we leverage and manage our data in the 21<sup>st</sup> century.

And then surface water is a good place to kind of come at the end of this, and then I'll open it up for questions. On the surface water side, which ties into many of the concerns that Chair Hamilton raised in your letter to the governor and Secretary Kenney earlier this year. We are focusing this year on launching our next triennial review under the Clean Water Act where we identify revisions to our state water quality standards. There will be more coming out into the public about that this winter. We are focused on as early as possible in this administration finding the resources wherever we can in order to do a robust study and analysis of whether or not the state should pursue national pollutant elimination system authorization from EPA. We are one of only three states in the country, three states plus DC, that do not have NPDES authorization. We rely on EPA Region 6 to issue those surface water discharge permits in the state of New Mexico and there was a lot of study and thinking and effort put into the state moving forward and asking for that authorization, ten, twelve years ago and we want to take a look at that again and see if the time is right for us and what we would need to do to get there. That's a really important priority and something that we want to start early in the Lujan Grisham administration so that we could potentially see it through if we decide to go down that path.

And then another big item for us on surface water is to advocate for strong coverage of New Mexico waters under the EPA and Army Corps definition of waters of

the United States. If you have not read the Environment Department's comment letter to EPA from April of this year I encourage you to do that. Shelly and John and the team worked incredibly hard. I can brag about it blatantly because I wasn't there yet to work on it. I'm really proud of what the department put forward and the number of concerns we raised, including that if that proposed rule – and I think Alex maybe is going to talk about it a little bit more later, if that were to become final, our analysis is that up to 96 percent of surface waters in the state would lose Clean Water Act jurisdiction. And we, unlike many of those other states that have NPDES program authorization, we don't have a state regulatory program already established to start implementing for waters of the state to close that gap for protection of our surface waters. So that factors in very heavily to our thinking about our analysis of whether or not we should pursue Clean Water Act permit program authorization, but it's also something that we're focusing on in its own right and paying attention to very closely.

So to close, I just really quickly wanted to acknowledge the letter that Kyle passed out as we got started as a response letter to Commissioner Hamilton that we finalized this week. I want to extend the Secretary's appreciation for our your outreach and your correspondence on those issues. I also want to apologize for the delay in the response. We are working on ways to expedite the way in which we track and respond to important correspondence and constituent concerns that come to us as well. So there are a number of things that we're doing with the new management team to try and improve, but I wanted to acknowledge that I do realize that that was a little – it took a little while to get around to the response but I'm glad that we've been able to follow up and the Secretary in that letter extends his invitation to follow up with the discussion with you and we'd be happy to help set that up.

CHAIR HAMILTON: We very much appreciate that and I just want to say that certainly that did come from me as Chair but that was from the entire Board. There are people on this Board that – maybe even everybody who participated heavily, including Mr. Harwood and our legal staff. So that was a joint effort and of wide interest on this Board. So thank you for that. We also recognize in terms of the timing of exchange how much is changing, especially with the new administration in ways that I think many of us are very, very happy about and grateful for, and so it's very understandable.

Are we at a point of questions? Are we working our way around? Commissioner Hansen, why don't you start?

COMMISSIONER HANSEN: Thank you, Rebecca, for coming. It's good to see you again. I have just a few questions. Thank you first for working so hard on WOTUS. I worked on it also on the national level and it was extraordinarily disappointing to me to see the stance that the National Association of Counties took and that a lot of other people in the East do not understand what happens in the West and they don't understand our challenges, and so to have one rule that's supposed to fit all is not really very beneficial.

I am really happy to hear that you are working on the NPDES authorization. I think it is essential that New Mexico has some protection and that we have primacy and we have that clean water to protect ourselves because if this rule – hopefully not – we need that.

I was wondering – you didn't really elaborate on the PFAS but what are you doing about that?

CHAIR HAMILTON: You're right. I was smiling because of the recent news about polluted waters.

COMMISSIONER HANSEN: Right.

CHAIR HAMILTON: A very good question.

COMMISSIONER HANSEN: So I have that question and if you wanted to answer that then I'll –

MS. ROOSE: Sure. Madam Chair, members of the Board, great question and almost remiss to not to have mentioned it on its own. We are – so at the department there's a close coordination between the Resource Protection Division, which is led by Stephanie Stringer, and the Water Protection Division on issues around PFAS. The Resource Protection Division includes the Hazardous Waste Bureau, which implements RCRA. NMED's lawsuit against the Air Force is under RCRA authority, so there's a lot of effort going on on the RCRA. Sorry for my acronym use – Resource Conservation Recovery Act. Many of you probably are with me but just in case. There's a lot of activity going on on the RCRA side. On the water side we are in the process of rearranging some deck chairs in the Drinking Water Bureau so that we can begin to develop a strategy for how we're going to be pro-active on PFAS as opposed to just being reactive, which is very important on what we're doing on our litigation right now, but we also want to put a strategy together for how we can pro-actively identify other potential sources of PFAS around the state, identify what we as a state should be doing, looking at what a lot of other states are developing their own, they're getting out ahead of EPA and developing their own drinking water standards for PFAS contaminants. So we want to begin the work to do some of that analysis and figure out what we as a state can and should be doing to be proactive and make sure that we're protecting the public on issues of PFAS.

So we're just in the process of rearranging some of our grant authority so we can make sure that we have the funding to do that particular work that we weren't already involved in and it's a big priority for the Secretary and me to focus on over the coming year.

COMMISSIONER HANSEN: Thank you. The other comment I have is, yes, staffing is a serious, serious issue that we have in New Mexico and I did go and meet with the new president of the Community College and expressed this to her that government workers are needed. Across the board we need people who understand what it means to work in government positions, and so I think that that's one place to start. Northern New Mexico College, another place. Of course, UNM – yay Lobos. So that's something I care about.

I don't have enough information about produced water and I'm happy that you're looking into it. I think that it's something that we all need to know more about.

Then the National Association of Counties does have a very strong resolution about PFAS and they are lobbying to rescind that. But I also serve on the Air Quality Subcommittee for Environment, Energy and Land Use, and so I'm working on bringing forward a methane resolution to the National Association. So any help that you could give me that you're working on, because I think that it's important from a state level for me to bring forward what we're doing in this state on methane to the national level so

that we can actually get something done. Colorado has a good rule on methane and those are some of my concerns. And I really appreciate you coming here and I look forward to seeing you again.

CHAIR HAMILTON: Excellent. Thank you. Member Fort.

MEMBER FORT: Thank you. Nice to see you. If I might ask some questions about the letter we got. I don't mean to be so specific about it, but just the Board has been concerned about water quality in the Rio Grande, from which we draw our water, and one of the avenues we wanted to pursue was getting a TMDL established for water pollutants in the stretch essentially north of her from which we draw our water and we old the triennial review would not be the place but rather we should come back to the department. So could you explain what's meant by that? When would we come back and what proceeding?

MS. ROOSE: Madam Chair, Member Fort, I would say I don't think there's a formal proceeding or process to reach out and initiate a conversation about creating a TMDL. We can just set up a separate conversation with anyone who's interesting in meeting with us - Shelly and her team of TMDL experts to have a conversation. It maybe is even a little easier to not have to do it within the context of the triennial review. So we could have that as a follow-up item at any time.

MEMBER FORT: Good. Thank you. And the next question, Madam Chair, would be with respect to establishing water quality standards for the purposes for which we withdraw water - we've got good ones for irrigation, livestock watering and so on - but for establishing them for withdrawing for public water supply system, also not the triennial review and also an informal petition process, perhaps?

MS. ROOSE: Is that part of the triennial, Shelly?

CHAIR HAMILTON: If you could come up, because that way it's recorded and everybody can here.

MS. ROOSE: Sorry. I do have to rely on Shelly quite a bit.

MEMBER FORT: Another fine graduate of the UNM School of Law, I note also good in environmental law.

SHELLY LEMON: Madam Chair and Board members, for public water supply, water quality standards, that would be part of the triennial review. We do have a narrative standard for public water supply to recognize that water is withdrawn. When that water is withdrawn from the natural stream system then it has to meet safe drinking water standard. So that's where the water quality wick that comes out of the pipe to the tap would be under the Safe Drinking Water Act. We can certainly talk about minimum requirements in the stream to help with treatment processes for BDD and that would be part of the triennial review process to actually adopt or propose and adopt numeric water quality standards. But I'm not sure. I've never gotten a response of what contaminants or constituents or parameters you're interested in for us to evaluate. Because this has been brought up before.

MEMBER FORT: Yes. Thank you, Madam Chair. And I think we're able to provide that and I think it's been part of - frankly, almost a terminology issue within the Board. We can say the water meets all standards, and we have the presence of toxins - radionuclides and so on for which we don't necessarily have numeric standards and of course if one were to establish a drinking water standard it would be not just for this public water supply but for all, presumably. And so it would be helpful, I would think, to

have numeric standards for waters that are withdrawn and I certainly understand the Safe Drinking Water Act is a different matter after the water's been treated, but on the Board we've been trying to move towards improving the quality of the water that's withdrawn. Thank you.

So that would happen within the – I'm really looking to Kyle, who would be the person to be doing the legal work on this, presumably. So that would be done in the triennial review process to propose a public drinking water standard that included numeric limits.

MS. LEMON: That's correct.

MR. HARWOOD: We've got that on the calendar with NMED staff to put together early notification of that process starting – and I'll certainly be letting the Board know when that kicks off.

MEMBER FORT: Thank you. Madam Chair, if I may. And the next question has to do with the next paragraph, the Category 4B in the stormwater permits, and as you know, EPA has been sued by Amigos Bravos. I disclose I'm on the Board of the Western Environmental Law Center that's representing Amigos Bravos in this matter and have a great interest as a citizen and representing citizens here in terms of water quality again that we're withdrawing from the Rio Grande.

The position of the Environment Department up to this point has apparently not been one in support of the citizen plaintiffs with respect to EPA and Rebecca said just before the meeting, if you could just tell us where the Environment Department is on that matter now.

MS. ROOSE: Madam Chair, Member Fort, yes. I can try and elaborate on that. I can tell you exactly where we are right now which is in part we just had a conversation with Rachel Conn of Amigos Bravos last week. She raised this to us as well, an inquiry as to what is the Environment Department's position about the MS4 designation. And you're right, Member Fort, that the department in the past administration issued a written statement to EPA opposing Amigos Bravos' petition. We are in the process in the new administration, the new leadership team, of revisiting that, re-evaluating that and we are working through our internal processes to make sure that we understand the issues and we'll be following up with Amigos Bravos and others once we've completed that internal review and decided if in fact our position is different, what that is, and how we choose to convey that to EPA and others who are interested.

MEMBER FORT: Thank you.

CHAIR HAMILTON: That would be wonderful to hear.

MEMBER FORT: And of course it would reflect – I guess I am a proponent of getting NPDES delegation but it certainly would point to the kind of costs that might be involved for the state as well if it were to be administering stormwater permits for LANL, does it not.

MS. ROOSE: There is a connection.

MEMBER FORT: Perhaps substantial. I'm not – I would ask this question, Madam Chair, perhaps Commissioner Hamilton, which would be about perhaps moving the monitoring station, which is the one that was destroyed in the storm at San Ildefonso and sometimes I think someone with a PhD should ask the question but it would be the opinion of the Environment Department that the current location is adequate and suffices for the needs of the BDD in terms of water quality and when we turn off the

intake and so on? And if you want someone else to answer the question. That's what I'm reading this as saying.

MS. ROOSE: I'll take a stab at it. I wouldn't say that our position is that it's adequate. I think what we were thinking when we looked at this part of the letter to us is that if – I think we need more information from the Board, from BDD, as to why you think the new station isn't adequate. Is there a gap in terms of what monitoring data you had been relying on with the station that was destroyed and the one that's in place now. I don't think we had enough information to go with from our own internal staff and knowledge and understanding, so we do have a follow-up conversation or any follow-up correspondence from the Board back to the department in response to this letter. That would be something that would be helpful to get more information on, and I apologize if that wasn't as clear in the letter itself.

CHAIR HAMILTON: That's a great answer to hear and it sounds like something that perhaps we can have – I can arrange a small meeting and we can address getting more information and have some further discussion. That's fabulous. Thank you.

MEMBER FORT: And Madam Chair, if I might – one more question. Thank you. You said one of the governor's priorities was looking at, increasing environmental compliance by federal facilities including LANL. Is there anything – how would we be able to – we as a Board should be aware of all potential environmental issues that affect water served to the citizens. Is there anything that we are not addressing that the Environment Department. Is looking at currently?

MS. ROOSE: Madam Chair, members of the Board, off the top of our heads, collectively, I can't think of anything –

CHAIR HAMILTON: With short notice.

MS. ROOSE: Yes. And so if we think of anything we'll keep that question in mind. If we think of something that's on our radar that we aren't sure is on your radar we can bring that to you attention.

MEMBER FORT: Thank you.

CHAIR HAMILTON: Do you have a follow-up on this? Go ahead, Commissioner.

COMMISSIONER HANSEN: I just would like to follow up on the E-109.9. I have also had many conversations with the Governor of San Ildefonso about that station and reconstituting it, and so any meeting I would like to be included on that.

CHAIR HAMILTON: Thank you. Councilor Ives, did you have –

COUNCILOR IVES: I'll jump in with a question or two. First of all, thank you very much for being here and it sounds like you're doing great work over at NMED in terms of reinvigorating a number of aspects of the programmatic work of that department, so that's a delight to here.

I think some of us have had lingering doubts that the monitoring system that's in place that's designed to tell us what's coming from LANL, whether it's sufficient to that task. And indeed, given our capacity and from the perspective of innovation, a system that relies upon gross water flow volumes to determine when to shut down a system, that certainly may not necessarily be a bad approach but I'm not sure if it's been rigorously looked at as the best approach at this point in time, given technologies that are available. Because we did have a number of shut-downs at different points during the year for different reasons and whether or not that was necessarily required or not was probably a

question that a finer in analytics of the actually water quality that's being taken out of the Rio Grande might have answered differently.

We certainly would love to engage you in thinking about that system and if there are ways that it can be improved and changed to make it more – I don't want to say accurate but to some degree it is a question of accuracy based upon actual water content as opposed to simply water flow. And I don't know the answer to those questions, quite frankly. Not an engineer.

CHAIR HAMILTON: Neither am I.

COUNCILOR IVES: Only another attorney. Just an attorney. Yes. So that's something certainly that I would be curious about. And then the other, just on the produced water question, because that's one that I've wondered about significantly and especially when reading – I cannot remember when it may have been, last fall when there was a Bloomberg article that stated that there was going to be some probably \$22 billion spent on water in the Permian Basin or in New Mexico on water issues by the oil and gas industry. So basically a number that was three to four times the entire state's projected budget at that point in time. So I'm certainly glad to see that that's being looked at, because they do think as we evaluate the effects of climate change we have to look at all water, whether or not we have actually made a determination that it is part of one of the water resources of the state subject to OSE jurisdiction which apparently we haven't from the depths it's being produced.

Those are some significant questions. So I would simply say I'm glad you're looking at that because it's an area which I think is deeply in need of intelligent consideration for New Mexico's future. So I'll stop there, but thank you again for being here and to the rest of the team for being here as well.

MS. ROOSE: If I may, Madam Chair.

CHAIR HAMILTON: Please.

MS. ROOSE: Councilor Ives, a few follow-ups. On your question or observation about whether or not the current monitoring system in place is adequate, I would offer that could be a good topic of discussion for follow-up between the department and any members of the Board who are interested and as I said, in very broad terms, in terms of the current priority of the department to make sure that we're using all the tools in our toolbox to ensure the best possible environmental management of federal facilities, this can be part of that conversation in a specific application. Are there any other things that we could be doing as a department within our existing authorities to both evaluate the adequacy of those monitoring stations and the equipment and technology that's there, and if indeed it is inadequate and there could be better technology deployed, do we have authority to require that to be deployed, either by the facility or do we have programs and authority and funding to do it or grant to others to achieve that kind of thing.

So there are probably people at the department, other than me, who've explored some of those things that I just mentioned but I think a conversation around that could be good. And then on the second point on produced water, I wanted to note that as part of our public outreach effort that's underway we have our first public meeting on produced water in Albuquerque on October 15<sup>th</sup>. Our second one is in Santa Fe on October 30<sup>th</sup>. So the time – it's an evening meeting, 6:00 to 8:30 pm on October 30<sup>th</sup> in Santa Fe at the

Santa Fe auditorium? It's all on our website. I apologize for not knowing the exact location, and we can follow up with the Board with that detailed information.

But we welcome you. We welcome you to help us get the word out about that meeting. We intentionally booked a facility with a capacity of at least 300 so we're ready to talk with lots of folks in more detail about produced water.

CHAIR HAMILTON: Thank you. Councilor Harris.

COUNCILOR HARRIS: I don't have any questions. I just wanted to thank you for being here. Clearly you and your staff have a tremendous job ahead of you and I just wish you luck in filling those 300 positions. So anyways, thank you for being here.

CHAIR HAMILTON: Excellent. Mr. Harwood.

MR. HARWOOD: So I was just going to add, Board members, to remind you all as part of GGI's scope of work they are taking a close look at the E-109.9 and E-110 station locations and we'll be bringing recommendations back to the Board. And because, particularly James has worked at NMED previously, we encourage him to work with technical staff at the agency in preparing this.

CHAIR HAMILTON: That's an excellent point, and whether we also have some kind of additional meeting that we include GGI on that. That's excellent. Thank you. So this is fabulous. We're so grateful you're here. It was a lot of great information and we hope to continue the collaboration. I just want to thank you again and thank you for your time and for bringing staff who we are mostly familiar with and appreciate your participation as well.

MS. ROOSE: Thank you so much. Thank you for having us.

#### **11. EPA, US Army Repeal of 2015 Rule Defining "Waters of the United States"**

CHAIR HAMILTON: Mr. Puglisi, welcome.

ALEX PUGLISI (City Environmental Compliance Specialist): Madam Chair, members of the Board, I'll make this brief. This is related to a matter that the City has brought to the Board's attention before and the Board has participated in. I just wanted to make a formal announcement. I think a lot of you saw the article. On September 12<sup>th</sup> the Trump administration released a final rule to repeal the 2015 Waters of the United States, or WOTUS definition. It may reinstate the pre-2015 WOTUS definition from 1986. The rule will become effective 60 days after its publication in the federal register, so my understanding it was published on that day. So 60 days from September 12<sup>th</sup> and – actually, no. It hadn't been posted that exact day, so I'm not sure. Maybe Shelly knows exactly when that notice was posted for WOTUS. The rule? The notice that they had rescinded the previous – it was the 12<sup>th</sup>? Okay. I'm looking at something that was unclear on that.

Basically, this announcement that the WOTUS was rescinded marks the first step of a two-step process to repeal and replace the 2015 WOTUS rule with a revised rule, which we're expecting to be finalized sometime in 2020. It could be earlier but we have not yet seen any response to the comments that both the Board and the City submitted, as you know, as a result of our presentation here before. The Board's attorney prepared a letter for submittal by the Board and the City of Santa Fe also prepared a letter in opposition to the new rule. We did not comment on rescission of the 2015 rule.

As I said, the agencies are expected to release a final rule in 2020. As with the new 2015 WOTUS regulation there are numerous lawsuits expected to be filed on the new rule.

Just a brief history, the term WOTUS has been around since 1899 when it was actually added to the Rivers and Harbors Act, which is the precursor for the Clean Water Act. WOTUS was added to the Clean Water Act to differentiate which waters fall under federal authority. Since its inclusion in the act the definition has been redefined several times. In the 2000s the US Supreme Court decided two WOTUS cases which caused further confusion about the scope of WOTUS and its application. I believe they're referring to the SWANCC decision and the Rapanos decision.

Basically, we're going to continue to try to participate in the passage of the new rule and whatever comes out of that, and we would encourage the Board to do so also. Like I said, we're anxious to see the response to our comments even though they'll probably be grouped in with comments from all over the nation. And I stand for questions based on that. I would actually like to move on to the next item because I think Rachel will actually talk about another rule revision that's being proposed that I was going to originally cover but since Rachel had it in her packet we decided to just let her cover it there. And that's Section 401.

CHAIR HAMILTON: We will definitely take your suggestion. I just wanted for logistically – we know the packet was a bit scrambled but people still had trouble finding stuff specifically related to this. Could we maybe get that separately if you had a package material on WOTUS that summarized what you said?

MR. PUGLISI: I sure could and that could have been my fault.

CHAIR HAMILTON: It doesn't matter. Just if it's easy to provide to us that would fix it.

MR. PUGLISI: No problem. I thought I gave something to Jamie Ray but maybe I did not.

CHAIR HAMILTON: Thank you.

MR. PUGLISI: Thank you. I stand for questions.

CHAIR HAMILTON: Well, you suggested we move right to the next thing.

MR. PUGLISI: I would, in the interests of time.

CHAIR HAMILTON: And everybody is happy to do that. And we can ask questions jointly.

MR. PUGLISI: Thank you.

CHAIR HAMILTON: Thank you so much for bringing this and I can assure you the Board will continue to take an interest and participate with you on this.

## **12. Clean Water Act Litigation Controlling Urban Stormwater Pollution in Los Alamos County and Proposed CWA Section 401 Rulemaking Limiting State and Tribal Oversight of the Discharges**

CHAIR HAMILTON: Rachel Conn, thank you very much. Welcome.

RACHEL CONN (Amigos Bravos): Madam Chair, members of the Board, thank you for having me here today. My name is Rachel Conn. I'm projects director for

Amigos Bravos. We are a statewide water protection organization. We work to protect and restore the waters of New Mexico.

As has been previously mentioned here this evening we have filed a lawsuit with EPA for their failure to act on our 2014 petition for them to require permit coverage for stormwater discharges from Los Alamos National Laboratory and Los Alamos County. In fact if they grant our petition there would be three permittees. It would also include the New Mexico Department of Transportation for discharges from roads.

So we filed that petition in 2014 citing violations of the Clean Water Act, that there were discharges from urban sources, both at the lab as well as the county, and there's evidence of violations of water quality standards for parameters like Mercury, PCBs, copper, gross alpha – there's a long list. And there was a preliminary determination for EPA in 2015 where they made the preliminary determination to grant our petition and found that there appeared to be evidence that permit coverage was necessary. And since then there's been nothing. And that is why we in June filed a 60-day notice of intent to sue, and then a couple weeks ago we filed an actual lawsuit against EPA for their failure to make a final determination about requiring permit coverage for those urban discharges.

Specifically, they had either 90 or 180 days based on – we filed the lawsuit based on two provisions under the Clean Water Act, the residual designation authority and the MS4 regulations and those had two different timelines for them to respond to our petition. One was 90 days and one was 180, and giving them the benefit of the doubt that they could take 180 days they're still almost 1,000 days overdue in responding to our petition and thus our lawsuit.

You should have in your packet – you should have the press release that talks about that lawsuit and you should have the complaint itself as well as EPA's preliminary determination.

I wanted to take the opportunity to put that permit request, that regulatory action, which we hope will result – we hope that EPA will make a final determination soon and it will result in a permit to control those urban stormwater discharges. But to put that in context of other regulatory permits and actions up at the lab I also prepared another fact sheet or a handout that has a list of some of the major NPDES permits that exist upstream of the Buckman Direct Diversion. And as you can see on the bottom of that list it has what we hope will be an MS4 permit for those urban stormwater discharges and we certainly encourage the Buckman Direct Diversion to support the issuance of a permit and support EPA making a final determination that indeed a permit is needed.

Why I wanted to bring up – and I think that Alex referred to this – bring up this list of permits here today is because there's another action on the federal level that has a big impact on these discharges and that is a rule change, a proposed rule on 401 certification. 401 certification is the ability of states and tribes to set conditions to review federal permits and set conditions on those permits, and even do enforcement on those conditions. That's the traditional way 401 certification has happened. So that list of permits that you have before you all have 401 certifications associated with them and it is incredibly important.

Once again, we're in a situation here, just like with the Waters of the US Rule, where New Mexico is disproportionately impacted by this proposed federal rule. You all should have a fact sheet. I think that it's page 121. Did you pass out the other version?

No. It has slightly changed. I realized it wasn't quite up to date but it's basically the same. It just – the first version that you have in your packet I put together before the comment period officially started so it talks about an upcoming comment period. That comment period has actually started and it will end on October 21<sup>st</sup>.

And I wanted to call this Board's attention to that proposed rule because it impacts so much the discharges that occur in our state, because we depend here in New Mexico on 401 certification for permits, because we don't write our own permits. Hopefully that may be changing as was discussed earlier in the previous presentation with taking primacy of the program but right now we do not have primacy and we depend on 401 certification for the state to ensure that our state water quality standards are being protected and that our state waters are being protected.

This proposed rule would impact that authority quite substantially. It would limit the types of conditions that a state or tribe can put on an activity. It would limit the timeframe. It would place very hard requirements on the type of information and date that the state would have to provide to request a condition be put on a permit, almost to the point where it seems like it would be very difficult to meet that bar, the bar that's being proposed in the proposed rule. It also gives the federal agency – in this case it would be the EPA the ability to veto any condition that the state would put on a permit and it also takes away a lot of the enforcement authority from the state to enforce state certification conditions.

So it's a big change in our current situation and negatively impacts our ability as a state to protect our waters and directly impacts the waters that flow – that you all depend on with the Buckman Direct Diversion.

And so I would encourage you to consider making a comment on this proposed rule. The comment deadline is October 21<sup>st</sup>. And there is a fact sheet on the rule. I think I mentioned everything that was in the packet. There's a press release. There's the complaint itself for the MS4 complain lawsuit and there's EPA's preliminary determination on that lawsuit.

CHAIR HAMILTON: Excellent. Thank you very much, Rachel. I want to thank you for bringing this to us and actually thank you for bringing that last item to our attention. Commissioner, I was just going to ask for questions.

COMMISSIONER HANSEN: Is it possible for us to request that we make comments as a Board. I don't know if we have an action item on here so would that have to be something Matters from the Board, or since it is on the agenda is that something I can ask if the Board would be willing to request Kyle to make comments on?

CHAIR HAMILTON: We can certainly do it, I believe, under discussion of this presentation, and it's really just direction, not an action item. Am I correct, Kyle? Okay, so yes.

COMMISSIONER HANSEN: I'm requesting that.

CHAIR HAMILTON: There are no seconds; just you agree. Councilor Ives is agreeing. He seems to be agreeing with that request, because this has certainly flown under the radar. It flew under my radar. That's not hard.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Yes.

COMMISSIONER HANSEN: Can I ask if NMED is also making comments? Okay, thank you.

CHAIR HAMILTON: So perhaps we can collaborate or get some input from you guys as well. Thank you.

COMMISSIONER HANSEN: And Madam Chair, thank you, Rachel, very much for being here and thank you for your work on this. I was like really saddened by reading this press release is all I can say. Actually just no response is so disturbing to me, considering how important clean water is and being able to protect it, so thank you.

MS. CONN: Madam Chair, Commissioner Hansen, thank you for your comments. Yes, it's been very frustrating that there's been no response. This has been something that we've identified as a problem for impacting surface waters below LANL for quite some time. It's also impacted some of the work on the individual stormwater permit, so there's indication from LANL employees that some of the urban stormwater discharges, contaminated urban stormwater discharges from both LANL property and the county are flowing onto the IP sites, which are the industrial stormwater sites, which is making it more difficult to control those discharges. So it has a cascading impact.

I also want to point out on the handout that was just passed around with a list of permits, there's upcoming permit actions besides what we hope will be a permit action as a result of our petition. But there's also the individual stormwater permit and the point source permit, which is their wastewater treatment end of pipe discharge permit. Both of those are coming up for renewal and they're expected to see drafts some time in October or November with a potential public meeting in December. Amigos Bravos, along with our partners with Communities for Clean Water have prepared very detailed comments on the application package that LANL has submitted for the individual stormwater permit, and we have shared those with counsel and members of the City staff. So I just wanted to direct your attention to that too, that there's a lot going on with the permits at LANL right now.

We have a lot of concerns with the changes that Los Alamos National Laboratory is proposing to make to the existing industrial stormwater permit that regulates over 400 contaminated sites at the lab.

CHAIR HAMILTON: Well, thank you for bringing that to our attention. Are there other questions or comments on this issue? Councilor Ives.

COUNCILOR IVES: Thank you, Commissioner. So just looking at the press release and some of the figures you recite there are fairly stunning, I guess that's probably a good way to describe that, but talking about exceedences of over 10,000 time public safety limits and a couple paragraphs down you talk about specific areas – Los Alamos Canyon, Pueblo Canyon and Sandia Canyon, I think, where some exceedences are greater than 11,000 times, 14,000 times and 3,500 times greater than New Mexico health water quality criteria, and even exceeding in almost each instance wildlife habitat water quality criteria.

Clearly there are areas there which are significantly impacted by past Defense Department, DOE activities in defense of the country at a totally different time in our history. I presume there is very little if any habitation in any of those canyons. I assume wildlife is free to roam. Let me break it into two questions. So on the habitat side, to begin with, if you've got exceedences at 16 times greater, or 51 times greater than those standards, what requirements are imposed in connection with trying to ensure that wildlife does not come in contact with those areas?

MS. CONN: That's a good question and it's something that we bring up in our meetings with LANL technical staff. There are not many precautions or actions taken to limit wildlife's access, and as we know, we're in an arid state and all water is very precious and attracts a lot of animals when it flows during storm events. So during storm events is when a lot of the contaminants are mobilized and are moving and while this press release is in relation to our MS4 petition for control of urban stormwater discharges, that is one of the sources of those high levels. It is also the industrial sites that I mentioned, the 400 sites that are regulated under the individual stormwater permit that contribute to those levels as well.

COUNCILOR IVES: And do you have any sense what past activities when people were certainly more ignorant of impact than they are now, how clear is it that current activities from those discharges is exacerbating these problems in a significant way? Or are we talking about sort of legacy remediation?

MS. CONN: I think we're talking about both. So the other permit, the point source, end of pipe wastewater discharge permit that is also up for renewal is for ongoing activities at the lab. So it's from their various wastewater treatment plants and that certainly – they're required to treat to a certain level under the conditions of the permit and that's always something that we're following and advocating for stronger permit limits. And then there's just also the act of having water flow over where there is contamination from historic activities that can mobilize those historic discharges.

And then there's activities like we are addressing in this petition and this lawsuit which are ongoing urban activities which are creating new sources of pollution from urban activities and mobilizing old sources because of the hydrology. If you go up to on the Pajarito Plateau it's not uncommon to see – there's the pavement right to the canyon edge. So what you get when it rains is you get high velocity of stormwater shooting off the side of the canyon and into some of these places where there's historic dumping or discharges and contamination and it mobilizes those contaminants.

So when you look at stormwater regulation and stormwater permits they're both looking at capturing and treating contaminants but it's also looking at managing the flow of water so you aren't mobilizing more.

COUNCILOR IVES: Well, that was in part my questions earlier with regards to do we have the right system in place for evaluating impacts on the Rio Grande and eventually on the Buckman Diversion. So thank you for being here and for providing this information and alerting us to some of these issues in a much more real way. Thank you.

MS. CONN: Thank you.

CHAIR HAMILTON: Excellent. Thank you. Did you have something? Yes, Councilor.

COUNCILOR HARRIS: Very quickly. Clearly you have a lot on your plate with just this lawsuit, but I also wonder if in the future, does Amigos Bravos have concerns in the needs for MS4 permits for the City of Española and the City of Taos?

MS. CONN: We haven't looked – both of those, especially the City of Taos don't meet the population requirements and neither does Los Alamos.

COUNCILOR HARRIS: Right. Neither does Los Alamos. You're clear about that.

MS. CONN: They were much closer than either the Española or Taos population in density requirements for automatically getting an MS4 for coverage. And it is something that of course we'd be concerned about and we do work quite closely with the Town of Taos and Taos County in terms of monitoring water quality in the drainages around Taos and discharges from the wastewater treatment plant, but it's not something specifically that we have developed a petition or –

COUNCILOR HARRIS: Again, I appreciate what you're doing but you know the City of Española and what occurs there has I think potentially much greater impact on water quality and what happens at BDD than Taos. So perhaps at some future date it would be important for Amigos Bravos to also look at the City of Española.

MS. CONN: Great. Thank you.

CHAIR HAMILTON: Thank you. Thank you for bringing this to our attention and for the presentation. I know we'll be collaborating on an ongoing basis, so thanks. And I hate to move everybody along but we have five minutes to get out of here. Thank you.

MS. CONN: Thank you.

COUNCILOR IVES: Thank you.

## **MATTERS FROM THE PUBLIC**

CHAIR HAMILTON: Is there anybody here from the public who wants to address the Board? Again, is there anybody here from the public who wants to address the Board? I appreciate everybody who's attended. I'm going to go ahead and close Matters from the public.

## **MATTERS FROM THE BOARD**

CHAIR HAMILTON: Are there Matters from the Board?

MEMBER FORT: Yes, Madam Chair.

CHAIR HAMILTON: Yes. Make it quick because we have very little time.

MEMBER FORT: I just want to talk about climate change and I could go on and on. We are spending a million dollars a year on electricity for pumping water and other processes at BDD and I know that everybody on the Board wants to reduce our use of electricity from non-renewable sources, so I had seen Regina Wheeler here and she and I have been in contact about processes that are moving forward within the City to do an evaluation of how we could reduce the use of non-renewable power for the Buckman facility. I wonder if we could have just a briefing on the next agenda, next meeting. Thank you.

CHAIR HAMILTON: That can be a good suggestion. We can work toward that and consider it certainly for the near future and we did see your emails that you shared with everybody. So that's a good basis. Commissioner Hansen.

COMMISSIONER HANSEN: I'll just be quick. I just want to point out that on the Consent Agenda, and I'm sorry I did not bring this up sooner, but the legal conference room at the County Administration Building will not be available. So therefore you will need to find another place to hold those meetings next year.

CHAIR HAMILTON: Yes. We know that. I appreciate you mentioning that on the record. Yes, Mr. Harwood.

MR. HARWOOD: Madam Chair, you do have another Matter from the Board. I think you would like to state for the record and our minutes.

CHAIR HAMILTON: I would as a matter of fact. Yes, I would like under Matters from the Board like to state for the record that the matters discussed at the previous month's executive session were only those that were listed on the agenda and no decisions were made.

MR. HARWOOD: Thank you.

CHAIR HAMILTON: And thank you for the cue.

**NEXT REGULAR MEETING: Thursday, November 7, 2019 @ 4:00pm**

### **EXECUTIVE SESSION**

**In accordance with the New Mexico Open Meetings Act NMSA 1978 Section 10-15-1(H)(7), discussion regarding pending litigation in which the BDDB may become a participant, including without limitation: *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, United States District Court Case No. 1:19-cv-00852-SCY-JHR**

CHAIR HAMILTON: Thank you very much.

COUNCILOR IVES: So moved.

MEMBER FORT: Second.

CHAIR HAMILTON: Thank you. I have a motion and a second. May I please have a roll call?

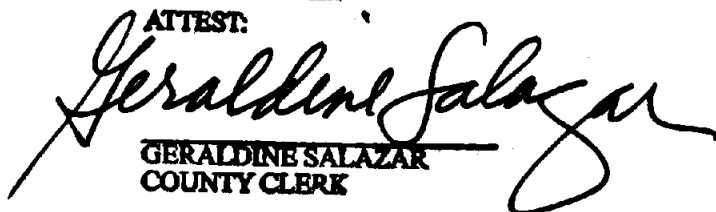
**The motion to go into executive session passed by unanimous [5-0] roll call vote as follows:**

|                     |     |
|---------------------|-----|
| Chair Hamilton      | Aye |
| Councilor Ives      | Aye |
| Commissioner Hansen | Aye |
| Board Member Fort   | Aye |
| Councilor Harris    | Aye |

### **ADJOURNMENT**

Chair Hamilton declared this meeting adjourned at approximately 6:00 p.m.

**ATTEST:**

  
**GERALDINE SALAZAR**  
**COUNTY CLERK**

Approved by: ,

  
Anna Hamilton, Board Chair

ATTEST TO: ,

*Geraldine Salazar*  
GERALDINE SALAZAR  
SANTA FE COUNTY CLERK

Respectfully submitted:

*Karen Farrell*  
Karen Farrell, Wordswork

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BUCKMAN DIRECT DIV MIN  
PAGES: 32

I Hereby Certify That This Instrument Was Filed for  
Record On The 3RD Day Of December, 2019 at 12:14:42 PM  
And Was Duly Recorded as Instrument # 1903412  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy *Estrella Martinez* County Clerk, Santa Fe, NM



SEC CLERK RECORDED 12/03/2019



EXHIBIT

1

## AGENDA

### The City of Santa Fe And Santa Fe County

#### Buckman Direct Diversion Board Meeting

THURSDAY, OCTOBER 3, 2019

**4:00 PM**

**CITY HALL**

**CITY COUNCIL CHAMBERS**

**200 LINCOLN**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE SEPTEMBER 5, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON OCTOBER 1, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

#### INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, [rsugrue@santafenm.gov](mailto:rsugrue@santafenm.gov), 955-4501)
8. Report from the BDD Facilities Manager. (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206) **VERBAL**
9. Report on 4<sup>th</sup> Quarter Financial Position FY 2018/2019. (Mackie Romero, Financial Manager, [mmromero@santafenm.gov](mailto:mmromero@santafenm.gov), 955-4506)

SEC CLERK RECORDED 12/03/2019

10. Introduction of Rebecca Roose Director of Water Protection Division, and discussion of NMED Water Protection Division priorities. (Kyle Harwood, BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641) **VERBAL**
11. EPA, U.S Army Repeal of 2015 Rule Defining "Waters of the United States" (Alex Puglisi, Environmental Compliance Specialist, [aapuglisi@santafenm.gov](mailto:aapuglisi@santafenm.gov), 955-4232) **VERBAL**
12. Clean water Act Litigation: Controlling Urban Stormwater Pollution in Los Alamos County and Proposed CWA Section 401 Rulemaking limiting State and Tribal oversight of discharges.(Alex Puglisi, Environmental Compliance Specialist, [aapuglisi@santafenm.gov](mailto:aapuglisi@santafenm.gov), 955-4232, Rachel Conn, Amigos Bravo.) **VERBAL**

### **CONSENT AGENDA**

13. Request for approval of the 2020 Buckman Direct Diversion Board meeting calendar. (Jamie-Rae Diaz, Administrative Assistant – Board Liaison, [jldiaz@santafenm.gov](mailto:jldiaz@santafenm.gov), 955-4210)
14. Request for approval of the 2020 Fiscal Services and Audit Committee (FSAC) meeting calendar. (Mackie Romero, BDD Financial Manager, [minromero1@santafenm.gov](mailto:minromero1@santafenm.gov), 955-4506)

### **MATTERS FROM THE PUBLIC**

### **MATTERS FROM THE BOARD**

**NEXT REGULAR MEETING: Thursday, November 7, 2019 at 4:00pm**

### **ADJOURN**

### **EXECUTIVE SESSION**

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB may be a participant, including, without limitation, *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, United States District Court, New Mexico Case No. 1:16-cv-0433-JCH-SCY and *Amigos Bravos v. United States Environmental Protection Agency, et al.*, United States District Court, New Mexico Case No. 1:19-cv-00852-SCY-JHR (Kyle Harwood BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

### **END OF EXECUTIVE SESSION**

**PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE**

RECEIVED AT THE CITY CLERK'S OFFICE  
DATE: September 25, 2019  
TIME: 1:23 PM