



## **AGENDA**

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

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

**THURSDAY, NOVEMBER 7, 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 OCTOBER 3, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING

#### **INFORMATIONAL ITEMS**

6. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, [rsugrue@santafenm.gov](mailto:rsugrue@santafenm.gov), 955-4501)
7. Report from the BDD Facilities Manager. **VERBAL** (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206)
8. Buckman Direct Diversion Board Comments on EPA Proposed Rule: Updating Regulation on Water Quality Certification Docket ID No. EPA-HQ-OW-2019-0405. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)
9. Buckman Direct Diversion letter to Governor Lujan Grisham, letter to NMED Secretary Kenney and letter to Representative Rubio, Chair of Radioactive and Hazardous Water Materials Committee,

regarding *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, No. 1:16-CV-00433-JCH-SCY. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

## **DISCUSSION AND ACTION**

10. Recommendation and Possible Action regarding BDD Board membership in the Middle Rio Grande Endangered Species Act Collaborative Program (MRGESACP) Executive Committee (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206 and Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)
11. Buckman Direct Diversion letter to Governor Lujan Grisham, and letter to NMED Secretary Kenney regarding a Petition by Amigos Bravos for Determination that storm water discharges in Los Alamos County contribute to water quality standards violations and require a Clean Water Act Permit. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

## **MATTERS FROM THE PUBLIC**

## **MATTERS FROM THE BOARD**

**NEXT REGULAR MEETING: Thursday, December 5, 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 is a participant, including, without limitation, *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610. (Nancy Long, BDD Legal Counsel, [nancy@longkomer.com](mailto:nancy@longkomer.com), 982-8405)

## **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: October 30, 2019

TIME: 10:57 AM

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

**November 7, 2019**

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Anna Hamilton, Chair, at approximately 4:05 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 JoAnne Vigil Coppler, [City Alternate]  
Mr. J.C. Helms [Citizen Alternate]

**Member(s) Excused:**

Councilor Michael Harris  
Citizen Member Denise Fort

Mr. Wendell Egelhoff [non-voting]

**BDD Board Alternate Members Present:**

Ginny Selvin [Las Campanas Alternate]

**Others Present:**

Rick Carpenter, Acting BDD Facilities Manager  
Mackie Romero, BDD Finance Manager  
Kyle Harwood, BDD Counsel  
Nancy Long, BDD Counsel  
Stephanie Lopez, City, Utilities  
Randy Sugrue, BDD Operations Superintendent  
Bernardine Padilla, BDD Public Relations Coordinator  
Rachel Brown, Santa Fe County Deputy Attorney  
Sara Smith, Santa Fe County  
James Bearzi, Glorieta Geoscience Inc.  
Joey Rowe, Santa Fe County  
Jamie-Rae Diaz, City of Santa Fe, Administrative Assistant  
Neil Williams, Citizen  
Steven Horak, EM - LA

**3. APPROVAL OF AGENDA**

*[Exhibit 1: Agenda]*

With no recommended changes, Councilor Ives moved to approve and Commissioner Hansen seconded. The motion passed by unanimous voice vote.

**4. CONSENT AGENDA ITEMS - No Consent Items**

**5. APPROVAL OF MINUTES: October 3, 2019**

Commissioner Hansen offered the following change: Page 8, line 39: Commissioner Hansen, rather than Chair Hansen

Ms. Lopez noted that the meeting was dated October 2<sup>nd</sup> rather than the 3<sup>rd</sup>.

Mr. Harwood provided corrections directly to the secretary.

Councilor Ives moved to approve as corrected. Councilor Vigil Coppler seconded and the motion passed without opposition.

**INFORMATIONAL ITEMS**

**6. Monthly Update on BDD operations**

CHAIR HAMILTON: Welcome, Randy.

RANDY SUGRUE (Operations Supervisor): Thank you, Madam Chair, members of the Board. We've had another consistent month at BDD. Our raw water diversions averaged 6.35 million gallons per day. Our drinking water deliveries through booster stations averaged close to 5.5 million gallons a day. Las Campanas diverted .57 million gallons per day on average. And our on-site treated and non-treated storage was close to .3 million gallons per day. So we're providing approximately 63.9 percent of the water supply to the City and County for the month.

The diversions are noted: For October about 187.9 million gallons. The drought summary is included. I had an updated note: we've had a new configuration booster pump at our Booster Station 1A to try to alleviate some of our wear and tear issues. It has been running several weeks now, I believe three weeks, with no particular issues. So we are very optimistic that this new booster pump configuration is going to alleviate a lot of our maintenance issues with those pumps going forward. We're also looking at an additional pilot project to introduce clean water rather than using raw water in the system to cool and lubricate the seals in that pump.

CHAIR HAMILTON: So this is just a quick question if you don't mind.

MR. SUGRUE: I am open for questions.

CHAIR HAMILTON: Is this one of a series of different attempts at different fixes that would help to improve the operations of those pumps?

MR. SUGRUE: Right. The excessive wear and tear on the pump shafts that connect the motor to the pump, we've tried for the last couple of years several configurations and this one seems to be working well.

CHAIR HAMILTON: That's great. But I just can't help myself just

purely out of curiosity; what were some of these changes that seem to be working? Just briefly.

MR. SUGRUE: Briefly, there is a seal that keeps the river water on one side and the lubricant, whether water or oil, on the other side. And the seals have been problematic on each and every case and the water from the river is able to move up the shaft and the sand in the water then starts to erode the shaft. This seal has a much wider surface to keep the water where it belongs.

CHAIR HAMILTON: Interesting, okay.

MR. SUGRUE: And it's not a common item and that's why it took us so long to get to this point.

CHAIR HAMILTON: So is this something that will be applicable elsewhere then?

MR. SUGRUE: Our intent then if this runs for a while longer, another week or three, we're going to probably be ready to move forward with the remaining pumps that we had budgeted quite a while back to replace the worn pumps.

CHAIR HAMILTON: Great, thank you.

MR. SUGRUE: You're welcome. Any other questions? Okay, thank you much.

RICK CARPENTER (Interim BDD Facilities Manager): Madam Chair, if I could add to that. The pilot project that's in its initial stage, it's very conceptual now, and I wish I could take credit for it but I can't. It was actually Jesse Roach's idea. Not only does it seem like it will probably work, we're very optimistic about it, but if it does work it will also save us a lot of money. So we're working through what that pilot project will look like, cost, schedule, those types of things and if it would please the Board I would be happy to write up an information item of the next Board meeting of what it is exactly that we're thinking.

CHAIR HAMILTON: That would be appreciated. That would be great. Councilor Ives.

COUNCILOR IVES: I just realized I had one question.

CHAIR HAMILTON: Yes, by all means.

COUNCILOR IVES: On page 2, covering the reservoir storage, it says under Abiquiu "11,165 acre-feet, SJCP carry-over from previous years plus 2018 deliveries"; is it 2018 deliveries?

MR. CARPENTER: That is a typo, Councilor.

COUNCILOR IVES: Assumed as much, thank you.

MR. CARPENTER: Not surprised you caught it.

CHAIR HAMILTON: Any other questions on this? Thank you.

## **7. Report from BDD Facilities Manager**

MR. CARPENTER: Yes, Madam Chair, I'll try and be brief. I do have a number of items that I want to touch on. Update on staffing: Randy and the operations staff and Mackie have been very successful over the last several weeks in filling a lot of the operator positions. We have one operator intermediate that has been filled. One operator basic that has been filled. Three operator entry positions that have been filled. And one water operator, I believe an offer has been made and accepted and the paper

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work is being routed. So there has been a lot of success in filling those vacancies just recently.

Also, Mackie and a little bit of my help, but mostly Mackie and Jesse Roach have been successful at preparing the reclassification paperwork for the contract administrator position as well the accounting supervisor. That paperwork is being routed as we speak. So that is also in process.

Also in process is we are working with Lynn Komer on developing a scope of work, a cost and a schedule for the source water protection plan public outreach project that we've been talking about. So that is underway as well. We haven't signed a contract yet but we're working on it and I expect to have that done in the next week or so.

With a little bit of a heavy heart, Stephanie Lopez who is sitting to my left, this is her last BDD Board meeting. She will be retiring in just a few days. I wanted to recognize her and thank her for all of her years of stellar service and support that she has given to the Board and to the staff. [Round of applause] That's all I have, Madam Chair.

CHAIR HAMILTON: Councilor Ives.

COUNCILOR IVES: Indeed we did celebrate Stephanie yesterday at Public Utilities which was wonderful and it's nice to be able to continue that celebration and thank you again. I'm waiting for the family to come around the corner with balloons and roses.

Just one question, we actually did hear a little bit about an update on the reorientation for the facilities manager position and some of the steps that the City was taking to make that position more attractive. I was hoping you might just address those really quickly if you would.

MR. CARPENTER: I would be happy to Council and members of the Board. Yes, we have been working with Human Resources Department and division director Jesse Roach to make some changes that are intended to do just that, to make it more attractive. We've received the ability to negotiate a higher range in the salary. In fact, I believe the words that will be on the position when it posts is "up to \$120,000 per year." That's actually stated on the job description. There's an ability, if need be, to negotiate moving expenses as well so if we have to recruit from outside that makes that much more attractive. And, also – I meant to ask Nancy or somebody for a more politically correct term – but to use the service of a quote and quote headhunter. I'll bet there's a better way to phrase that – talent recruiter. So we can cast a wider net. So we are optimistic that these changes will have results.

COUNCILOR IVES: Yesterday we heard essentially that and it was met with certainly joy might be an overstatement of how people felt but that we were taking the appropriate steps to try and ensure that that position was in fact filled and what a wonderful thing then to be moving forward.

MR. CARPENTER: I would say that we have been successful at taking some of the rigidity out of the process.

COUNCILOR IVES: So then with the six motions that you just mentioned, with five filled and one with an offer made and accepted, and aside from the facilities manager, how many other positions remain?

MR. CARPENTER: There's a position that we have person acting in in the warehouse, a warehouse schedule planner, that's technically vacant although we have it covered. I think we're good on operations and I think we're good on maintenance.

And with the financial positions and the facilities manager we're almost placed out, we will be.

COUNCILOR IVES: And that's what it sounded like so congratulations on a good process and good work on getting us to this point. And certainly we'll look forward to hearing success on the facilities manager position as well.

MR. CARPENTER: Thank you.

COUNCILOR IVES: Thank you.

CHAIR HAMILTON: Thank you. Commissioner Hansen.

COMMISSIONER HANSEN: Yes, Stephanie, I was not at your party yesterday but thank you for everything over the years you have done for the Buckman. I really appreciate it and I know you have really given a lot to this Board over the years before my time and I am grateful for all of that services. And congratulations on retirement and have a wonderful time.

CHAIR HAMILTON: Absolutely.

COMMISSIONER HANSEN: And if I can just thank you, Rick, for working on the facilities manager offer/contract. I felt for a while that it needed some updating and I am happy to hear that we have made a little bit of progress there and I appreciate it. Thank you very much.

CHAIR HAMILTON: Councilor, yes.

COUNCILOR VIGIL COPPLER: Stephanie, I mentioned this last night but I'll mention it again, one of the things that happened at Public Utilities was that it was a surprise. Her family came in and much to her surprise, Stephanie was in tears, tears of gratitude. But the thing that was so special was that she said she has been her 30 years and she loved her job. And over the course of the years, I have known Stephanie for a long time when I was here before, it really shows, she really does love her job and people love her. So I know everyone is going to miss you at the City and people on this Board who work with you and we wish you all the best and all of the fun things that you're going to do now in your new life. Thank you for everything.

CHAIR HAMILTON: Yes.

MR. HELMS: I really have appreciated all the work that you've done here and I know that I'm speaking also for Denise Fort who unfortunately is not here today, but we really will miss you and god bless you.

CHAIR HAMILTON: Oh, yes, please.

GINNY SELVIN: Thank you for everything. And those beautiful Fiesta dresses, we'll miss that.

CHAIR HAMILTON: Yes, good point. So now I get to claim Stephanie as a neighbor and dear friend as well as a colleague. And all I can say is I am so jealous and so proud of you. And really thank you so much for your unbelievable work and it's a lot to look up to. Somebody who can love their job for that long and is working with joy and everything makes it good for all the rest of us. We will very much miss you.

STEPHANIE LOPEZ: It was so hard to talk last night. I just want to – all of the staff, all of these years, Rick, Mackie and Kyle, everybody, I am just so appreciative of all of these years and friendships that I have made. I truly have loved doing what I do. I've been here as the PUC liaison for 15 years. I've been here for almost as many years as the liaison, and Nancy also, and I just want to say how thankful I am. And I didn't say it last night and he's not here but Shannon – just is special. These

are people who I have worked with forever. I feel thankful for the opportunities.

[Round of applause]

CHAIR HAMILTON: And, Rick, I also wanted to thank you because at the last meeting everyone had expressed their desire to do something different to be able to move forward with the facilities manager and make some changes. And you and Shannon and Jesse really took that pretty seriously and went to HR and when we had our little sub-meeting to talk about what the possibilities were, you guys were so proactive and came up with things that were really right in line with what everybody had been asking and I think that was very very much appreciated. So that was a great job and hopefully it will help. I mean there's no control over that, we'll just see where it goes. But I very much appreciated the way that was handled.

And then I just wanted to mention, sort of for the record, and for everybody, the rest of the Board's information, there's always been a lot of discussion about wanting to be updated on personnel and staffing and just related activities from the facilities manager and we had a discussion about doing a very brief memo in writing for the consent agenda and then having highlights done orally as we usually do and I appreciate your doing that and that will include staff related goings in the topics that people would be interested in. Both staffing status and what we're doing with that and things like trainings and accomplishments and those kinds of things. So very much appreciate it.

Are there any more questions for Rick or Stephanie?

COUNCILOR IVES: I will say that one other treat yesterday was that there were four generations of Stephanie's family here standing just in front of the dais and of course her daughter works in the water department and she had two grandkids, so she's already lining up that next generation.

CHAIR HAMILTON: And you guys know that her father was County Treasurer for years and so it's like we're rolling right through. Yes, Mr. Carpenter.

MR. CARPENTER: I don't want to cut that discussion short but I would like to, if I could, allow Kyle Harwood to offer a couple of comments as well.

CHAIR HAMILTON: Yes, please.

KYLE HARWOOD (BDD Counsel): I too am very grateful to work with Stephanie for all of these years. But the reason I come to the podium is not on that.

Just to do a quick update under matters from the facilities manager, some of us attended the interim committee on Radioactive and Hazardous Waste early this week where a Board letter was presented to that interim committee. For those of you who are familiar that's House and Senate members overseeing a committee that deals with that topic, radioactive and hazardous waste. This is a little bit delivery of the letter that is described under item 9 so I'm not sure, we can talk about it here under matters from the facilities manager as an update or perhaps under item number 9. I just wanted to let the full Board know that that letter was received well. None of the Board members or staff presented to the committee. These were updates to the committee about the Amigos Bravos lawsuit and the New Mexico Environmental Law Center lawsuit that this Board has heard presentations on over the preceding months. Although there was a question about safe drinking water standards which Mr. Bearzi did answer from the audience. So it was a good discussion and based on the requests of the elected officials to the chair of that committee it sounds like there are going to be additional agenda items scheduled after the coming session to get a fuller picture of some of these topics from the state and



the feds and the lab. So that will be continuing to unfold I'm sure into 2020. So that's just a quick update on that. I don't know if anyone has got any questions.

CHAIR HAMILTON: Are there questions? So this ties into – given the status of the letters and whatnot, there are some ongoing questions about what we want to do moving forward and then just more generally, is now a good time to ask about that? So do you want to volunteer some stuff or should I ask. Because we're kind of toward the end of the year and I think somehow getting a summary of like where we have been over the last year starting with the study session and what we wanted to accomplish at the end of this year culminating with these letters and where we might go forward.

MR. HARWOOD: Yes, very good, Madam Chair. It's been about 13 months since we did the study session. We have had lots of different moving parts through that year-plus and if it would be helpful to the Board I could prepare just a very brief set of bullet points about where we've been and offer up some alternatives going forward into 2020. There's about seven, I think, separate things that we've talked about – I think it's about seven different topics. And I know that we've had a lot of discussion over the last year over many of those different topics. And if it would be helpful to the Board I can bring back in December just a summary of those seven topics as I think of them and kind of where we've been and options of going forward.

CHAIR HAMILTON: Just to comment, I think that would be – I'm sure people have questions – but I think that would be really useful. And it's great. No pressure, but it's really great to see something in December and of course we can talk about moving forward and that would affect the work plan for the coming year on several fronts for you guys and GGI and the staff in general. So I think that would be very helpful. Commissioner.

COMMISSIONER HANSEN: Madam Chair, I agree. I think that would be great and that would give us, as you said, a work plan as we move into the next year.

CHAIR HAMILTON: A plan of attack. Yes, any other questions about it. Because obviously next month we can talk about some of the details and if you present options that would be something to start the discussion on with different components. Thank you.

MR. HARWOOD: Yes, Madam Chair. I think it would be very helpful to both staff and contractors to get a sense of priority and work effort. Yes, I'll bring that back in December.

CHAIR HAMILTON: Fabulous. Yes, Councilor.

COUNCILOR IVES: Just a point of clarification. So on the letters referenced in comments 8 and 9 here, I saw your signature on one but not on the other so I wasn't sure what the status of those are.

CHAIR HAMILTON: Really?

COMMISSIONER HANSEN: Madam Chair.

MR. HARWOOD: When we get – can I tackle each of those as we get there. We are still technically on number 7 so when we get to 8 and 9 I can give you an update; is that's alright?

CHAIR HAMILTON: Yes, we'll proceed through to 8 and 9. Yes, please.

MR. HARWOOD: Rick, do you have anything else on 7?

MR. CARPENTER: Nothing more to add.

CHAIR HAMILTON: Oh, yes, go ahead.

COMMISSIONER HANSEN: I just wanted to acknowledge and thank Rick for coming to the Rio Grande Water Fund. Both he and I attended last week, and I wanted to thank you for being there also because I think it is an important organization that's both the City and the County are signatories to the Rio Grande Water Fund.

MR. CARPENTER: Madam Chair, members of the Board, I agree. It's a very important organization. It is gaining momentum. The membership is growing. The funds that are available for watershed protection and maintenance and restoration are growing and it's becoming a higher profile organization. It was a very well attended. I don't know how many people were there, probably 100, 125, of all the big hitters. So the City of Santa Fe, I sit on the executive board for that water fund and we decide what the policies are and how to spend the money and I think it is a very worthwhile organization so thank you for recognizing that.

COMMISSIONER HANSEN: Thank you, Rick.

CHAIR HAMILTON: And actually I think this belongs here under number 7. I had one more question and I wonder if we could bring it up as a report – if there's anything to report in December on the sampling program that was indirectly related to TREAT or directly related to it. I know GGI is working on reviewing the plan. I just – maybe a status report next month?

MR. CARPENTER: Madam Chair, I would be happy to bring a status report. It's still a work in progress. We are having communications with NMED, they're ongoing. I wouldn't want to get into too much detail on that. But a status report I think would be very appropriate.

CHAIR HAMILTON: Great, thank you, whatever is appropriate. So perhaps that lets us move onto number 8.

**8. Buckman Direct Diversion Board Comments on EPA Proposed Rule:  
Updating Regulation on Water Quality Certification Docket JD No. EPA-  
HQ-OW-2019-0405**

MR. HARWOOD: Eight and nine, real briefly, these are both letters that have been delivered. Number 8, as you may remember had an October 21<sup>st</sup> deadline in order to comment on the 401 Rule. We did coordinate with a number of different entities on this letter. This letter has been delivered and was delivered by the deadline. Any questions about number 8?

COMMISSIONER HANSEN: Madam Chair. So in the past we've had all the signatures of all the Board on these letters; so I'm just wondering why we didn't do it this time.

MR. HARWOOD: We were in a little bit of a crunch and I apologize for that. But I will return to doing that if you want.

COMMISSIONER HANSEN: Yes.

CHAIR HAMILTON: It was just expedient because it was done between the two meetings.

COMMISSIONER HANSEN: Yes, but I would still like the names of the Board members on the letter.

CHAIR HAMILTON: Absolutely.

MR. HARWOOD: I apologize for getting that letter in without that.

CHAIR HAMILTON: Yes.

MR. HELMS: I'm the alternate citizen and Denise, I'm fairly certain, would have wanted her signature on it. I can't actually speak for her because I didn't go over it with her but maybe other members of the Board know that or perhaps you would call Ms. Fort to be sure that her signature is on it as regards a decision that was made a month ago or whenever it was. Do you understand my point? There was a point where I personally was opposed but I'm not the voting member normally and I believe she supported this; is that correct?

COMMISSIONER HANSEN: That's correct.

MR. HELMS: Okay, I just wanted to clarify that so she is not misrepresented here so that it is her signature that will be on the document.

CHAIR HAMILTON: Thank you. Yes, got it, thank you. Is there anything else on this? Let's move on to number 9, Mr. Harwood.

**9. Buckman Direct Diversion letter to Governor Lujan Grisham, letter to NMED Secretary Kenney and letter to Representative Rubio, Chair of Radioactive and Hazardous Waste Materials Committee**

MR. HARWOOD: This letter has also been delivered with signature and with some of the formatting errors corrected. This was the version that we got to Jamie for the packet but the actual letter that went in did go in signed and it did go in with some of the formatting errors fixed. I should also point out and this was an unfortunate autocorrect, but in the caption of the agenda item it says, "Representative Rubio, Chair of Radioactive and Hazardous" it should be "Waste" not water "Materials Committee." An unfortunate autocorrect that I apologize for. Fortunately, it is not in the letter it was just on our agenda.

So, again, I am sure that you will remind me to get all signatures on letters going forward and I am sorry this letter has also been delivered. This is actually the letter that was delivered at the interim committee meeting on Tuesday morning that I've already referred to.

CHAIR HAMILTON: And just for clarity, you'll see like at the very bottom there is that formatting problem, that was corrected before the actual signed copy. At the bottom of the first page – so we caught all of those. We didn't catch the –

COMMISSIONER HANSEN: Did you catch the paragraph –

CHAIR HAMILTON: Yes, yes. That lack of spacing at the top, yes. We caught both of those and those were corrected. So this was like a draft copy somehow got included in the packet.

MR. HARWOOD: Yes, I apologize for that confusion.

CHAIR HAMILTON: Commissioner.

COMMISSIONER HANSEN: Madam Chair, I had the opportunity to meet with Secretary Kenney and during that meeting he actually asked me to mark-up a copy of the Consent Order for the 2016. And I would like to ask if Kyle could help me mark it up?

CHAIR HAMILTON: Well, I think we should have some discussion but I think that's kind of a tall order for you to do all by yourself. So if BDD wants to – and I

think this is what we need to discuss, briefly – but if we want to have some input to this which we've been – we gave the letter on the consent order, we've had presentations on the difference between the 2005 and the 2016, so if we want to have some input it seems it would be a useful thing to do but not burden one person.

COMMISSIONER HANSEN: I mean, yes, that's how I felt about it. I thought maybe James Bearzi might be interested in giving some input. I don't want to rewrite this order. I want to mark it up with areas that would affect us in regards to cleanup. And, you know, I don't want to rewrite this order. I just want to mark it up in a way that reflects the issues that we are dealing with drinking water and how cleanup at the lab affects us. So I felt that it would be more appropriate – I have some ideas but I just also feel that I could use some legal help.

CHAIR HAMILTON: Yes, Mr. Harwood.

MR. HARWOOD: Madam Chair, may I recommend that when I mentioned the seven, sort of, water quality topics that I will be bringing back at the December meeting, the Consent Order is one of those seven. So if it's okay, let me take this suggestion and have it be one of the options.

CHAIR HAMILTON: That's great. That makes complete sense but I also think it would be useful to have a little – what kind of timeframe do you think Secretary Kenney was asking for? I mean, is there any?

COMMISSIONER HANSEN: I would like to do it sooner rather than later. I'm not looking for – I'm not trying to be NukeWatch or Concerned Citizens. I'm trying to mark this up in regards to our concerns that relate to BDD with the Consent Decree because I feel like there are things in here that do not relate to us.

CHAIR HAMILTON: Right. So, Kyle, I was going to ask you and then ask the Board members what they thought and Nancy and Rick in terms of process. This is a specific task compared to also planning out how this fits in but – this is a little bit while nice but unexpected, right? We wouldn't have dreamt this up on our own if this hadn't been presented to Commissioner Hansen. So it's a little bit opportunistic on our part to be able to use this opportunity to give some direct feedback; does that seem appropriate? And what kind of effort would it require because money is effort or effort is money and you know the Board has to think about that. I'm trying to look meaningfully at Kyle and Nancy.

NANCY LONG (BDD Counsel): A couple of things come to mind. I'm not sure what the effort might entail. If we're talking about a couple of hours or a couple of weeks worth of work and that might make a difference. And I think also Kyle has some resources that he's used before in terms of the Consent Order issue and there may be others that have gone through the order and already marked it up or at least have some comments. Whether those would be direct to the BDD concerns, I don't know. But it seems like there is probably already some work that has been done that we could tap in to.

COMMISSIONER HANSEN: Yes, Madam Chair, that's kind of what I felt like there was. There are people out there that we can possibly tap into also but I want to mark this up – and I was grateful that Secretary Kenney asked me, to even consider that. He said also, if there's things you like, to mark those too. And so I think it was generous on his part to make that offer to me and to us but I want to keep it focused on how it's going to affect our drinking water and what's important to the BDD.

CHAIR HAMILTON: So we actually had a presentation a few months ago about what some of the salient differences were and in what ways the 2016 order really gutted ability to ensure that there was meaningful cleanup and a few other things. So maybe if from that presentation we could pull some of those key points. But I know there is always a balance. There's a trade between keeping things in a reasonable level of effort.

MR. HARWOOD: Yeah, I am hoping my memo for December will answer all of these questions with proposed options and work effort and collaborating with others that the Board would not have to be responsible for the cost. So there's a lot of moving parts there and there's a lot of resources as Nancy said.

CHAIR HAMILTON: Okay, and then the other point is that it would have to come back. The Board could get briefed on what things we're thinking about to put forward otherwise, you know, it's not really from the Board.

MR. HARWOOD: I wouldn't hazard to go forward without getting your direction.

CHAIR HAMILTON: Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. Kyle, looking at the letter in the second paragraph and I think it's the second sentence, it says, "...BDD supports NWNM's position in this litigation because the BDD Board agrees that the 2016 Order on Consent, which replaced the 2005 Consent Order between NMED and DOE" and then it says, "does not sufficiently protect the BDD Project," and it states and "other Rio Grande water users from potential impacts of contaminated LANL runoff." And, as you know I have struggled here trying to understand some of our statements that were not being protected. So in your memo to be done in December I certainly would appreciate very much seeing detail on how it is that we are asserting the 2016 Order on Consent does not sufficiently protect the BDD project and how the 2005 Consent Order did.

COMMISSIONER HANSEN: Madam Chair, I feel like that's kind of what I was just asking him with the marking up of the 2016 Consent Order is how we are not being protected.

COUNCILOR IVES: That's part of the equation. I want to understand then how the 2005 order actually did protect us cause, again, we've not heard any position statement that we have nuclear materials in our drinking water that we process and deliver to our various constituents. So I'm just trying to understand really – and I understand that people are not happy with the change in consent order and certainly not happy with the waiver of the millions of dollars of penalties. I understand all of that. But, again, our task is more narrow than just LANL cleanup. So, again, I'm struggling to understand the specifics that lead us to draw these conclusions and that's what I'm hoping you will address in your memo for the Board.

MR. HARWOOD: I will.

CHAIR HAMILTON: I guess we can leave it there. Are there any other questions on this item? Okay, that was item 9.

MR. HARWOOD: Yes, would you like to move on to item 10?

CHAIR HAMILTON: Yes.

## **DISCUSSION AND ACTION**

### **10. Recommendation and Possible Action regarding BDD Board membership in the Middle Rio Grande Endangered Species Act Collaborative Program (MRGESACP) Executive Committee**

MR. HARWOOD: Item 10 is on a slightly different topic which is the BDD Board's continuing involvement with the Middle Rio Grande Endangered Species Act Collaborative Program Executive Committee. As my memo points out, Rick and I have attended those meetings for the last eight years and the recommendation from staff and counsel is that the Board ask to be a signatory to that program. You've got a draft letter on page 2 and 3 and then there's some bylaws and there's also in the back of this tab there are some of the recent, two of the recent newsletters that have been prepared by the Collaborative Program. So it's just a quick review of the materials behind this packet item.

You've heard us speak about this in past meetings and then just to remind you all which is in our proposed letter on page 2 of the packet, the biological opinion that covers the project under federal law does have a requirement that the Board participate. So for the last many years that participation has been informal and it's been under the wing of the Interstate Stream Commission. This recommendation here today is that the Board would become more of a full participant and signator. If it's not clear, the letter starts a process that the Collaborative Program goes through to evaluate whether or not they wish to have the entity requesting to participate will in fact be asked to participate. So there is a signature process later if our request for membership is accepted. So the reason this is under discussion and action is whether to send the letter requesting membership. There will actually be a further step if our membership request is accepted.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: So, thank you very much for bringing this forward and I know you mentioned it at last month's meeting. And I think it's important for us to be a signator and that's why I wanted to recognize you for attending the Rio Grande Water Fund and I feel that this is another organization that is important for us to be a signator to.

I would like to move to send the letter and request membership in the Middle Rio Grande Endangered Species Act Collaborative Program, and also I would like you to add all of our names.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: I have a motion and a second. Do I have any further discussion? Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. What is the net effect of changing our status from participating informally to becoming a member?

MR. HARWOOD: Over the past we have sort of not been at the table. We've had to – if we had a question or wished to observe something, we've had to do so through the Interstate Stream Commission staff and this would have us more fully engaged in the process and able to provide input. Rick, I don't know if you want to add anything.

MR. CARPENTER: It's just that. We would be more participatory and

actually physically have a seat at the table but we also get to vote. Right now we don't get to vote.

COUNCILOR IVES: I'm just trying to understand what, if any, obligations come with this by virtue of becoming a participatory member in that sense.

MR. CARPENTER: Councilor, I don't think that our obligations would become anything more than they already are. We are already attending the meetings. We do provide input it is just now it would be more formal.

MR. HARWOOD: And if you're concerned about additional cost outside of the staffing of the meetings, should know that many of the restoration projects that are undertaken by the various water entities up and down the middle Rio Grande those are done by separate contracts between the parties that wish to participate and have an interest in participating or are required to participate because of conditions of their environmental permits for their projects.

And so to give you a slice of old history we were sort of cautioned or encouraged to participate informally for many years because it wasn't clear how those projects were going to be funded and implemented and as the pattern and practice has developed over the years, Rick and I feel confident that we're not going to get drawn into expenses without this Board choosing to participate in a project.

COUNCILOR IVES: I have understood the City participation in Buckman is the San Juan-Chama water and that is actually not obviously Rio Grande native water and therefore, the biological opinion which relates to Rio Grande native water was something, to a degree, separate and apart from City consideration. And we've always, I believe, taken the position that there is no capacity by the Board to act on the Rio Chama water; and I correct in that understanding?

MR. HARWOOD: So of course the Board manages the project diversion of the City and County and Las Campanas water rights. So if you wanted to isolate the City's interest you would observe in the Collaborative Program that first of all, all of the San Juan-Chama and native diversions are in the baseline of the 2016 biological opinion model. So it's important to know that all diversions are in that minnow-focused model that's used for management of the river. And also that San Juan-Chama water is a big part of the Collaborative Program in terms of Bureau buy-backs for increased flows through the water short years. So there are a lot of interconnections.

But, yes, I think the point, if I understood what you were getting at, is that San Juan-Chama water has by federal rider been taken out of the mandatory set of water that can be used for the minnow but it is still all really very connected I think it is fair to say.

COUNCILOR IVES: I certainly don't disagree with anything you just said but I worry, I suppose, a little bit by joining whether or not we give any capacity to third parties over the City's San Juan-Chama water.

MR. HARWOOD: I don't know how that would happen. And, if anything, we're more thoroughly in the group of folks that are actively managing the water whereas right now we're a little outside of that. So many of the other San Juan-Chama contractors are folks that have mixed portfolios of water rights are in this Collaborative Program and I think the better way to think about it is that by more fully being part of this group we are all together as a group of water owners and water diverters of different flavors of water.

COUNCILOR IVES: Okay, thank you.

CHAIR HAMILTON: Are there other questions on this? We have a motion and a second.

The motion passed by unanimous voice vote.

**11. Buckman Direct Diversion letter to Governor Lujan Grisham and letter to NMED Secretary Kenney regarding a Petition by Amigos Bravos for Determination that stormwater discharges in Los Alamos County contribute to water quality standards violations and requires a Clean Water Act Permit**

MR. HARWOOD: I'm trying to get through these expeditiously. Let me first apologize regarding this letter because it does not have the whole Board's list of names and signatures. So that will be added immediately.

This letter has not gone yet unlike the letters under 8 and 9. This is a letter that if you recollect we had an executive session last month on the two lawsuits and even in the time since we had that conversation the New Mexico Environment Department has changed their letter to the EPA. So if you remember what Rachel Conn described to us was the Martinez administration had sent a letter suggesting the EPA not designate Los Alamos County as an MS4 Permittee and in the time since we've been discussing this the current Michelle Lujan Grisham administration has sent a letter reversing that, asking EPA to set the designation of MS4 for Los Alamos County. And, again, how this relates to the project is MS4 has to do with stormwater runoff that can activate legacy contaminants and get them to the river. So this is all about source water quality at the intake not about the safety of the water we deliver to our customers but about the cleaner the water the better, the cheaper to treat at the diversion intake.

So this is a letter, as you know we have been asked to write a letter in support and so this letter has actually been revised from the first version it was after the last meeting expressing an appreciation for the administration's recent change and urging NMED to perhaps consider an even more active role than just reversing their request. In fact, perhaps get involved in the litigation that Amigos Bravos has with the federal government. As you probably recollect, Rachel Conn pointed out that they're suppose to have 180 days to respond and it's 1,080 days or more so this is where we stand on this topic. I stand for questions.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: I would like to move to approve the Buckman Direct Diversion letter to Governor Lujan Grisham and to Secretary Kenney regarding the petition by Amigos Bravos for determination that stormwater discharges from Los Alamos Canyon [sic] contribute to water quality standard violation and require a clean water permit.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thank you. Motion and a second; any discussion? Yes.

COUNCILOR IVES: Thank you, Madam Chair. So the motion states affirmatively – could you read that back?

MR. HARWOOD: That we send this draft letter, that's the paraphrase.

COUNCILOR IVES: That would have been very simple. Do we have the



text out of curiosity?

COMMISSIONER HANSEN: I read the motion from the agenda; okay. I read the motion; is that not adequate?

The motion was repeated as the agenda caption: Buckman Direct Diversion letter to Governor Lujan Grisham and letter to NMED Secretary Kenney regarding a Petition by Amigos Bravos for Determination that stormwater discharges in Los Alamos County contribute to water quality standards violations and requires a Clean Water Act Permit

COUNCILOR IVES: No, if the motion mirrors the agenda statement it is perfectly fine.

COMMISSIONER HANSEN: Yes, I just read it.

CHAIR HAMILTON: Yes, it definitely mirrors that word for word. Is there further discussion? There's a motion and a second.

The motion passed by unanimous voice vote.

CHAIR HAMILTON: Thank you so much, Mr. Harwood. You carried the weight of this one.

## **MATTERS FROM THE PUBLIC**

CHAIR HAMILTON: Is there anybody here from the public who wants to address the Board? Once again, is there anybody here from the public who wants to address the BDD Board? I'm going to go ahead and close matters from the public.

## **MATTERS FROM THE BOARD**

CHAIR HAMILTON: Are there Matters from the Board besides me? Yes, Councilor Ives.

COUNCILOR IVES: I was interested and I think you've already covered it for our next meeting on the status of the testing –

CHAIR HAMILTON: Excellent, yes, I think we have that with Rick agreeing to give us a status update. Are there other matters from the Board?

With respect to the last meeting, I want to state for the record and our minutes that the only matter discussed during the executive session of our last Board meeting which was on October 3, 2019 was that the matters stated in the motion to go into executive session and no action was taken.

COUNCILOR IVES: Second.

CHAIR HAMILTON: Oh, I don't think we need a second this just needs to be read into the record to inform everyone that it was as stated in the motion and we didn't take any actions.

**NEXT REGULAR MEETING: Thursday, December 5, 2019 @ 4:00pm**  
The January meeting will occur on the second Thursday, January 9<sup>th</sup>

## 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 is a participant, including without limitation: *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610

MS. LONG: Yes, Madam Chair, you should ask for a motion to adjourn the meeting and go into executive session in accordance with the New Mexico Open Meetings Act NMSA 1978 10-15-1(H)(7) for discussion regarding pending litigation in which the BDD is a participant including without limitation: *Buckman Direct Diversion Board v. CDM Smith, et al.*

CHAIR HAMILTON: I would entertain a motion.

COUNCILOR IVES: So moved.

COUNCILOR VIGIL COPPLER: Second.

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

**The motion to go into executive session passed by unanimous roll call vote:**

Chair Hamilton	Aye
Councilor Ives	Aye
Commissioner Hansen	Aye
Board Member Helms	Aye
Councilor Vigil Coppler	Aye

## ADJOURNMENT

Chair Hamilton declared this meeting adjourned at approximately 5:05 p.m.

Approved by:

  
Anna Hamilton, BDD Board Chair

ATTEST TO:

  
GERALDINE SALAZAR  
SANTA FE COUNTY CLERK


Respectfully submitted:

  
Karen Farrell, Wordswork

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BUCKMAN DIRECT DIV MIN  
PAGES: 18

I Hereby Certify That This Instrument Was Filed for  
Record On The 3RD Day Of March, 2020 at 03:10:17 PM  
And Was Duly Recorded as Instrument # 1910865  
Of The Records Of Santa Fe County

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

Buckman Direct Diversion Board: November 7, 2019

SEC. CLERK RECORDED 11/07/2019





## AGENDA

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

#### Buckman Direct Diversion Board Meeting

THURSDAY, NOVEMBER 7, 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 OCTOBER 3, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING

#### **INFORMATIONAL ITEMS**

6. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, [rcsugrue@santafenm.gov](mailto:rcsugrue@santafenm.gov), 955-4501)
7. Report from the BDD Facilities Manager. **VERBAL** (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206)
8. Buckman Direct Diversion Board Comments on EPA Proposed Rule: Updating Regulation on Water Quality Certification Docket ID No. EPA-HQ-OW-2019-0405. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)
9. Buckman Direct Diversion letter to Governor Lujan Grisham, letter to NMED Secretary Kenney and letter to Representative Rubio, Chair of Radioactive and Hazardous Water Materials Committee,

regarding *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, No. 1:16-CV-00433-JCH-SCY. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

### **DISCUSSION AND ACTION**

10. Recommendation and Possible Action regarding BDD Board membership in the Middle Rio Grande Endangered Species Act Collaborative Program (MRGESACP) Executive Committee (Rick Carpenter, Interim BDD Facility Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4206 and Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)
11. Buckman Direct Diversion letter to Governor Lujan Grisham, and letter to NMED Secretary Kenney regarding a Petition by Amigos Bravos for Determination that storm water discharges in Los Alamos County contribute to water quality standards violations and require a Clean Water Act Permit. (Kyle Harwood, BDD Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

### **MATTERS FROM THE PUBLIC**

### **MATTERS FROM THE BOARD**

**NEXT REGULAR MEETING: Thursday, December 5, 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 is a participant, including, without limitation, *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610. (Nancy Long, BDD Legal Counsel, [nancy@longkomer.com](mailto:nancy@longkomer.com), 982-8405)

### **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:	October 30, 2019
TIME:	10:57 AM

SEC. CLERK RECORDED 10/30/2019