



AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, FEBRUARY 6, 2020

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 JANUARY 9, 2020 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON FEBRUARY 4, 2020 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD Operations. (Randy Sugrue, BDD Operations Superintendent, rsugrue@santafenm.gov, 955-4501)
8. Report from the Interim Facilities Manager. **VERBAL**. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4206)
9. Report on Facilities Manager. **VERBAL**. (Shannon Jones, Public Utilities Department Director, swjones@santafenm.gov, 955-4267)
10. Report on 2nd Quarter Financial Position for Fiscal Year 19/20. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

CONSENT AGENDA

11. Update on 2020 Operating Plan. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpernter@santafenm.gov, 955-4206)
12. Update on Firearms Use in Proximity of the BDD Facilities. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpernter@santafenm.gov, 955-4206)

DISCUSSION AND ACTION

13. Updates and Possible Action on Rio Grande Water Quality Issues. **VERBAL**. (Alex Puglisi, Environmental Compliance Specialist, aapuglisi@santafenm.gov, 955-4232 and Kyle Harwood, BDD Counsel, kyle@eagolaw.com, 986-9641)
14. Request for approval and recommendation to Santa Fe County Board of County Commissioners and City of Santa Fe City Council to approve the Fiscal Year 2021 Buckman Direct Diversion Operating Budget and Other Fund Contributions. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
 - a.) Presentation of the proposed FY2021 BDD Operating Budget and Other Fund Contributions.
 - b.) Public Comment
 - c.) Request for approval of the proposed Fiscal Year 2021 Operating Budget and Other Fund Contributions and recommendation to approve by the County Commission and the City Council.
15. Appointment of the Citizen Member and Alternate Citizen Member to the Buckman Direct Diversion Board. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)
16. Election of Chair and Vice Chair of the Buckman Direct Diversion Board. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)
17. Appointment of Committee Members for the Fiscal Services Audit Committee (FSAC) of the Buckman Direct Diversion Board. **VERBAL**. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, March 5, 2020 at 4:00pm

ADJOURN

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: January 30, 2020

TIME: 10:12 PM

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

February 6, 2020

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Commissioner Anna Hamilton, Chair, at 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 JoAnne Vigil Coppler
Councilor Carol Romero-Wirth
Commissioner Anna Hansen
Citizen Member Denise Fort

Member(s) Excused:

[None]

Mr. Tom Egelhoff [non-voting]

BDD Board Alternate Members Present:

Ginny Selvin [Las Campanas alternate]
Mr. J.C. Helms

Others Present:

Rick Carpenter, BDD Facilities Manager
Nancy Long, BDD Board Consulting Attorney
Mackie Romero, BDD Finance Manager
Bernardine Padilla, BDD Public Relations Coordinator
Randy Sugrue, BDD Operations Superintendent
Alex Puglisi, City of Santa Fe
Jamie-Rae Diaz, City Administrative Assistant
Kyle Harwood, BDD Counsel
Shannon Jones, City, Public Utilities Director
James Bearzi, Glorieta GeoScience

3. APPROVAL OF AGENDA [Exhibit 1: Agenda]

There were no changes to the agenda and Commissioner Hansen moved to approve as published. Councilor Vigil Coppler seconded and the motion passed by unanimous voice vote.

4. APPROVAL OF CONSENT AGENDA

9. Update on Operating Plan

12. Update on Firearms Use in Proximity of the BDD Facility

CHAIR HAMILTON: Are there any changes?

COMMISSIONER HANSEN: Yes, Madam Chair.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I don't have anything to take off or talk about but I just want to thank Mr. Carpenter for looking into number 12 and the issues about the firearms.

CHAIR HAMILTON: Okay, so we're actually on the approval of the minutes

COMMISSIONER HANSEN: Oh, we're on the minutes. The agenda says we're on the consent agenda.

CHAIR HAMILTON: Oh, I always do the minutes first. My brain thinks that should be first. I really apologize. Thank you, Commissioner. Okay, the consent agenda. Thank you, and nobody has anything to remove?

COMMISSIONER HANSEN: I just thanked him. I move to approve the Consent Agenda.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thanks. A motion and a second. Is there any discussion? A motion and a second.

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

5. APPROVAL OF MINUTES: January 9, 2020

CHAIR HAMILTON: Okay, and now we're on approval of minutes. Yes, Commissioner.

COMMISSIONER HANSEN: On page 6, line 15 and line 18, it should say Chair Hamilton instead of Commissioner Hansen. Otherwise, I didn't see any other changes. Are there any other changes from staff?

CHAIR HAMILTON: Does anybody else have changes to the minutes? What's the pleasure of the Board?

COMMISSIONER HANSEN: I move to approve with those changes.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thanks. I have a motion and a second.

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

6. REPORT ON THE FEBRUARY 4, 2020 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

MACKIE ROMERO (BDD Financial Manager): Madam Chair, members of the Board, the Fiscal Service and Audit Committee was held on Tuesday, February 4th via conference call. In attendance: Rick Carpenter, myself, Commissioner Hamilton, John Dupuis, and Ginny Sullivan. I did provide an update on the audit and that update is that within a couple of weeks the auditor does plan to be onsite at BDD to start preparing test work and preliminary financial statement preparation; however, they are anticipating to have to issue a second letter to the State Auditor with an estimated completion date of June. So we had already submitted to the State Auditor that the audit would be done in March but it looks like we will not meet that deadline. I will continue to provide updates to the Board and FSAC and during this meeting as we continue to try and get this audit done.

CHAIR HAMILTON: Do you mind questions as you go?

MS. ROMERO: No.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: So, maybe I just misheard you or didn't hear you, why are we delaying the audit?

MS. ROMERO: Madam Chair, Commissioner Hansen, the audit is delayed because the City is delayed so as the City is the fiscal agent and BDD is very much tied to the City until they are done with their portion, BDD cannot proceed with our portion.

CHAIR HAMILTON: So I can add something because we did have a discussion about this on the phone and a suggestion was made and I think Mr. Carpenter made some good suggestions in that respect to support looking at, examining possibilities for ways that specifically for purposes of the audit, the things that typically have been delayed at the City and that are holding us up, to look at the possibility of separating BDD from the City in those regards so making it so our audit would not be held up. Because there was concern expressed, and I certainly – I was definitely one that expressed concern about having repeated audit delays. That is a bad finding for BDD and it has impacts to us and it's not actually because of BDD failures. So to the extent that it is possible to do some separations and Mackie and Mr. Carpenter have both suggested one of those things that is critical and very difficult to reconcile that could potentially, we'd have to investigate it is the cash accounts. And I don't know if either of you have something to say about that but that was essentially the discussion that went around to avoid this in the future.

MS. ROMERO: Madam Chair, member of the Board, these same discussions have occurred between me and the City Finance Department and they have hired a consultant to start exploring those exact ideas and I will be part of those conversations and as they have those ideas if there's anything more that I need from the Board to get approved to maybe, hopefully, start that separation, I'll definitely bring that back for consideration. But I'm glad to know that the City on the Finance side is also looking at those options.

CHAIR HAMILTON: Well, that's great. It's great to hear that there's some cooperation. The other interactions are great and I mean that sincerely. I have every respect that the City is trying to deal with this to the very best extent that they can but to the extent that their avenues for rectifying it within the BDD and having that little bit of separation so that one thing isn't tied to the other, that would be great to look into.

MS. ROMERO: Thank you.

CHAIR HAMILTON: Are there other questions or comments just on that piece?

COMMISSIONER HANSEN: Madam Chair, I support the separation.

CHAIR HAMILTON: Thank you, Mackie and thank you Commissioner.

MS. ROMERO: Thank you. The other items on the agenda were the report on the second quarter financial report which I will be presenting to the Board and then we also discussed our annual operating budget request for fiscal year 2021 which will also be presented to you tonight. So I do thank everyone who participated on the conference call on that snowy night. It was a good meeting. Unless there's any questions or comments, that is the end of my report. Thank you.

CHAIR HAMILTON: Thank you. And it was a good meeting even though it was on the phone it was actually a very production conference call, a very comfortable way to do that meeting which almost surprised me. You always think in person is a lot better. And just for the record, there were a lot of accidents on the road that day and evening so I was grateful for having it as a conference call.

Are there any questions? Thank you, Mackie.

INFORMATIONAL ITEMS

7. Monthly Update on BDD Operations

CHAIR HAMILTON: Mr. Sugrue.

RANDY SUGRUE (Operations Superintendent): Thank you, Madam Chair, members of the Board, operations for the month of January have not been terribly adversely affected by winter weather. Raw water diversions for the month of January averaged 4.9 million gallons per day. Drinking water deliveries averaged close to that at 4.8 million gallons per day. There's a slight correction – Las Campanas toward the end of the month did divert for about three days for a total of around 3.5 million gallons total not per day. And the onsite treated and non-treated water storage was approximately .13 million gallons per day.

The BDD is providing approximately 80 percent of the water supply to the City and County for the month. We have a brief drought summary attached and the annual diversions for the month are approximately are depicting on the graph on the bottom. I stand for questions.

CHAIR HAMILTON: Any questions from the Board? Apparently not. Oh, yes, please.

MEMBER FORT: One question and this is on your second page. What's the reason that the City reservoirs are at about 30 percent capacity? Is that just normal for runoffs so far this year?

MR. SUGRUE: Madam Chair, Member Fort, that's correct. Snowfall is

actually a bit above average in the Sangre de Cristos but the melting snow is at a minimum of a little over a million gallons per day that comes in. So the reservoir is maintaining a fairly low level getting ready for the spring runoff. They want to make sure that they have plenty of room.

MEMBER FORT: So we are expecting full reservoirs this year?

MR. SUGRUE: We are always hopeful. At this point, snow is above average in southern Colorado. We haven't got a report since January 1st so we're expecting more information in the next few weeks on snowfall.

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

MR. SUGRUE: Thank you.

8. Report from the Interim BDD Facilities Manager

MR. CARPENTER: Thank you, Madam Chair and members of the Board. I only have a couple updates on staffing. The operations group has filled the final position in that group, water operator and lead position, and that individual will start this coming Monday, February 10th. Also, the contract administrator position, we conducted interviews, made an offer, that offer had been accepted and those documents are with Human Resources being processed now.

With that, I will stand for questions.

CHAIR HAMILTON: Thank you. Any questions, comments? I think it's really good to have filled that last position and the position that is Mackie's support position, I think it gives everybody a little bit of relief that efforts are distributed better and Mackie's head isn't going to explode anytime soon.

9. Report on Facilities Manager

CHAIR HAMILTON: Welcome. We don't get to see you every single time, at least at the microphone.

SHANNON JONES (City Public Utilities Department Director): Madam Chair, thank you. Madam Chair, members of the Board, my name is Shannon Jones. I am the City of Santa Fe's Public Utilities Department Director. It is my pleasure to present to you tonight and I appreciate your time in doing so.

What I wanted to communicate on the facilities manager is that Rick Carpenter, the interim facilities manager, has accepted the position. There was a process that they went through with representatives from the City, the County and the Board that brought together a committee that interviewed. It was a unanimous recommendation that we went forward with. Rick has been involved with the Buckman Direct Diversion through design, construction, operations – probably the most well-versed individual I know on the Buckman Direct Diversion. He has served in interim for almost two years and I think has done a tremendous job and I appreciate his willingness not to just serve in that role but now to step up in a permanent fashion and continue his progress there.

I'd like to personally thank the Board for the work that you guys do. For the amazing job and also the professional courtesies and considerations that you have given us as we've worked through this progress. Again, thank you for giving me the

opportunity to present to you Rick Carpenter who will be the BDD facilities manager.
[Applause]

CHAIR HAMILTON: Not a big presentation but it's symbolic in getting rid of that "interim" word. Congratulations. We are very, very glad that we have you permanently, officially and I don't know if you'd like – if you don't have other things to worry about and only the facility because you've been wearing multiple hats and I don't know how quickly you'll be able to get rid of the other hats but hopefully that's soon and we're really looking forward to this.

MR. CARPENTER: Thank you, Madam Chair and members of the Board. Yes, the transition I think will happen within just a couple of weeks and I'll be able to concentrate solely on the work of the Board.

CHAIR HAMILTON: Outrageous, that's great. Any other comments?
Commissioner.

COMMISSIONER HANSEN: Congratulations. I think it's the right move at the right time and we all look forward to continue working with you. Thank you.

MEMBER FORT: I'd add my congratulations. They told me I'd be surprised and I am very happy to hear this.

CHAIR HAMILTON: We made her wait for the official announcement.
Yes, Councilor.

COUNCILOR VIGIL COPPLER: Thank you. I would also like to congratulate you and someone once said, be careful what you wish for. Good luck in your new job.

MR. CARPENTER: Thank you, I am looking forward to it.

CHAIR HAMILTON: Excellent, yes, Councilor and then JC.

COUNCILOR ROMERO-WIRTH: Not to be left out, congratulations.

MR. CARPENTER: Thank you.

JC HELMS: You'll do a great job. Congratulations.

MR. CARPENTER: Thank you very much.

GINNY SULLIVAN: And I will say the same from Las Campanas.
We're really pleased.

MR. CARPENTER: Thank you.

CHAIR HAMILTON: Thank you and thank you so much, Shannon.

MR. JONES: Thank you.

10. Report on 2nd Quarter Financial Position for Fiscal Year 19/20

MS. ROMERO: Madam Chair, members of the Board, the report that is in your packet is to update the BDD Board and its partners of the second quarter financial position as of December 31, 2019. I have provided a budget overview. This is a financial plan that quantifies our current and future operations. It includes our fiscal year 19/20 adopted budget with any adjustments. We have our expenditures for services and goods received as of 12/31/2019. Encumbrances which were any executed purchase orders for goods and services and then there's a projected column that includes projected salaries and benefits as currently staffed, pending requisitions and our contracts to be executed within the fiscal year. As you can see from the report our expenditures in the second quarter were much higher than the first quarter. A lot of that is attributed to the

fact that the City has a new accounting system and so it took us a little bit to get some purchase orders and payments out the door. But, that's where you'll see most of the increase there. Based on our encumbrances and projections we are expected to spend about 91 percent of our budget with the vacancy savings of \$371,000.

In my report I also have the 90-day cash reserve credit which this is cash reserves that we hold to cover our future and current expenditures until we get reimbursed from our partners. The next graph is our fixed and variable cost. This demonstrates the reimbursements that we get from our partners and the billings that go out to the partners. So that process has been done through our accounting system and invoices will be issued out tomorrow to the partners.

The second page of the report is our "other funds." We have our major repair and replacement fund which receives a yearly contribution of \$626,706. The current year contribution has not been billed to the partners yet but that should go out by the end of the month. With that billings and the money that has been authorized by the Board, we have a project cash balance of \$1,772,786. The Board has authorized about \$645,000 for ongoing either new equipment or replacement. You can see in the second quarter we paid a little bit over \$370,000 and that was for our repairs on the raw water lift station pumps.

Unless the Board members have any questions on the report, that's the end of my presentation.

CHAIR HAMILTON: Thank you. Are there questions? Certainly one of the questions that came up in the FSAC meeting had to do with the sort of big change between the first quarter and the second quarter and did Mackie think that that was averaging out for lack of a better way to express that. That that wasn't a big blip but just delays and it was still within expectations of the budget for the whole and she said it was. I can't think of any other questions we had or points that were made.

MS. ROMERO: I think that was it.

CHAIR HAMILTON: Great, thank you.

MS. ROMERO: Okay, thank you.

DISCUSSION AND ACTION

10. Updates and Possible Action on Rio Grande Water Quality Issues

[Exhibit 2: Draft comments to NMED 2016 LANL Consent Order; Exhibit 3: Draft comments on NPDES Permit # NM0028355; Exhibit 4: WOTUS points]

CHAIR HAMILTON: Mr. Harwood and Mr. Puglisi. Welcome to both of you.

KYLE HARWOOD (BDD Counsel): Good afternoon, Board. Alex and I are going to present on 11 topics. There are 12 mentioned in the memo but one of them had the deadline moved so we don't need to address it this evening. I'll just take a moment to hand out the handouts that were prepared.

I will just say in way of introduction that at the last meeting I suggested and the Board directed us to go ahead and bring back the list of topics that we've visited over the last 16 months and to provide you updates on those topics and to provide recommendations on how to prioritize these items for the 2020 work calendar. I know we have some new members joining the Board and we will have an additional new

citizen member after tonight's meeting so Alex and I worked with Rick and the other staff very closely on all of these water quality topics as well as you know the Board has Glorieta GeoScience under contract and James Bearzi is here this evening as well to support all of these integrated water quality topics in the Rio Grande.

Alex and I are going to share this list of topics. I'm sure you'll interrupt us if you have questions because you have in the past.

CHAIR HAMILTON: I was going to say because we always do.

MR. HARWOOD: So I'll just start with that when I prepped this memo last week or the week before there were three deadlines coming due before the next Board meeting in March. That is an information comment deadline that NMED has requested of the public including the Board. A formal comment deadline on LANL's NPDES Industrial permit, which is number 2 and then number 3 on this memo, the public meeting got delayed I believe because of weather in late January and so the comment deadline has been extended until March 31, 2020. So we can bring you comments at the March meeting regarding that permit. And as we wade through this list of topics – as we get to the WOTUS topic you'll see that some of these things are very, very much up in the air.

But on the first item, which is the memo that looks like this [*Exhibit 2*]. It's got text on one side and then a little bit of text on the backside. NMED held a listening session on the night of our last Board meeting, if you remember, up at Los Alamos and at that meeting they requested comment from the public generally. That comments are due on February 28th which, as I already mentioned, is before our next Board meeting on March 5th and so this is much of the same sorts of issues and proposed comments that you have heard over the last six or eight months from folks like Rachel Conn of Amigos Bravos and Charlie de Saillan of the New Mexico Environmental Law Center and so we've summarized the issues and comments here. This is a draft and obviously we propose to put this in a little more of a traditional format before it would be sent in to New Mexico Environment Department. We've been told two things. One is that the February 28th deadline is the deadline that they would like our comments by and the other thing we've been told is that we can always tell them anything on our mind anytime. If the Board chooses to try and meet this deadline this is essentially the outline that we're recommending and I can step you through these. We have Alex and James to provide any technical support on these comments if you have questions of those nature.

MEMBER FORT: Chair.

CHAIR HAMILTON: Okay.

MEMBER FORT: Only good to start with an interruption. Could you just set the frame work for how – what reason do we have to think the consent order will be reopened?

MR. HARWOOD: Well, I think – is it enough to say that we're hopeful.

COMMISSIONER HANSEN: May I comment?

MR. HARWOOD: NMED is now taking an approach that they wish to gather comment on the consent order. They have heard from lots of corners, including this Board, that the 2016 order on consent is a poor substitute for the previous 2005 order on consent that entities such as the Board and others have real sincere concerns about going forward on the 2016 order on consent. I think it remains to be seen what sort of things DOE and the National Nuclear Safety Administration are willing to agree to

voluntarily and for those things that they're not so excited about agreeing voluntarily whether the state can regain the leverage that it once had. That's all to be determined. I think if I perceive it correctly, NMED is trying to figure out what kind of things that they would like changed and then they are going to determine what the path forward is on this.

This is a solicitation of comments on what should change. We obviously, as you all know, and this is later on my memo, we have our own memorandum of agreement between the Board and DOE under which we frankly don't have a lot of leverage but a strong working relationship with the Department of Energy. So how these things fit together is really up to the Board to decide.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: Member Fort and other Board members, I've had conversations with Secretary Kenney and he is very interested in looking at the consent order and as what Kyle said, I'm just verifying that he is interested in opening this up and seeing where he can change it. We lost a lot of leverage as Mr. Harwood said in the Martinez administration by the changes that were made in the 2016 Consent Order but they are moving forward and that is why they want to hear from the public and especially elected officials of what they want to see changed in the consent order. It will be beneficial to protecting our drinking water and protecting us.

MEMBER FORT: Madam Chair, just to clarify. I am very pleased to hear that the Environmental Department and the state will attempt to reopen it. I'm just very pleased that we're participating in it. I just wanted to see if there was any response from the other side. The consent order is signed and approved by a court and they don't necessarily have to reopen it. Thank you.

CHAIR HAMILTON: Thanks. Any other questions? Thank you, Mr. Harwood, you can proceed.

MR. HARWOOD: Thank you. So we will go ahead then. And if you don't have any questions about the issues or the comments here, Alex and James and I with direction from Rick will prepare a letter and circulate that to get everyone's signature on.

CHAIR HAMILTON: Yes, that would be good. I think that has been the Board's preference. And I assume, and we've breezed through these, but I assume if anybody looks at them and has additional thoughts they should email you; is that a good process within this week?

MR. HARWOOD: Yes.

CHAIR HAMILTON: I mean within the coming week.

MR. HARWOOD: Yes, please. We have a couple of weeks before the actual due date but, yes, if you could contact me before the end of next week that would be great.

CHAIR HAMILTON: Okay, thank you.

MR. HARWOOD: You all have my number and email. Yes, thank you for clarifying the process, Madam Chair. Did you want to add anything?

CHAIR HAMILTON: Mr. Puglisi and then I'll go to Denise.

ALEX PUGLISI (City Environmental Compliance Specialist): I just briefly just wanted to say that I've actually spoken with LANL staff and we're going to try and set up some phone conversations about their applications and the permit. There seems to be some inconsistencies in terms of what LANL themselves reported and what –

oh, I'm sorry. I thought we had moved on.

MR. HARWOOD: He's jumping the gate. He's really excited about the next one.

CHAIR HAMILTON: I know. Member Fort.

MEMBER FORT: Madam Chair, is it permissible, Kyle, to give a copy of this to the other citizen organizations that are interested or have you done so? Have you given it to Rachel and Charlie de Saillan and others?

MR. HARWOOD: I have not given it to them yet because frankly I just finished it a little while ago. I would be happy to send it to them now especially since you the Board has seen it.

CHAIR HAMILTON: Right, I was going to say to do it in the appropriate sequences is most better.

MR. HARWOOD: Okay, so Rachel Conn, Charlie de Saillan, and then Joni Arends and –

MEMBER FORT: Joni Arends, yes.

MR. HARWOOD: And actually this will come up later – no, on this topic I think those are the right interested folks.

CHAIR HAMILTON: Commissioner.

COMMISSIONER HANSEN: You might want to share it with NukeWatch also, Jay Coghlan.

MR. HARWOOD: Great, I'll get that out to those folks tomorrow. Okay, moving on to the far more exciting one which is a formal comment deadline on LANL's NPDES Industrial Permit, you have the second permit of the three. [*Exhibit 3*]

So the second of three is only one page and is draft. A quick comment outline. This is a formal comment. The first one, if I didn't make it clear is an informal comment deadline. This is a formal comment deadline under EPA's rules for providing comments NPDES permits. So it's got a quick description of the entity providing comment. A quick description of our project -- you all know that quite well. You'll see the last sentence under the description of the project does point out that one of the 11 outfalls is in our LA Pueblo Canyon watershed. If you remember some months ago we had a presentation by a staffer who started to go through pictures of all 11 outfalls and I believe it was Councilor Ives that said, can you just tell us about the one that is LA Pueblo Canyon and then we spent some time – that's this outfall, TA53. You'll see here the description of the current permit and the proposed changes, deleting limitations and monitoring requirements, which staff, counsel and consultants all feel that this is not a change that helps us. So you'll see a description of our concerns. The square bracket is there and I think James and Alex would like to develop more detail on that inconsistencies between the fact sheet and the permit so that – they'll often ignore a comment if it's sufficiently detailed. So we want to provide you with them the real gist of the disconnect between the fact sheet and the permit. That's the gist of what we'd like your permission to go ahead and draft up as a more traditional format comment. I'd like to ask Alex to add to that.

COUNCILOR ROMERO-WIRTH: Madam Chair.

CHAIR HAMILTON: Yes, Councilor.

COUNCILOR ROMERO-WIRTH: Mr. Harwood, what's the deadline for this formal comment?

MR. HARWOOD: The deadline for this is February 27th.

COUNCILOR ROMERO-WIRTH: And is the stuff that you're going to add, the more detail, is that just highly technical? Should we see it before we authorize this?

MR. PUGLISI: I would say for the most part it's pretty technical in the sense that there were things reported on LANL's application that weren't necessarily addressed by EPA and certain metals that were detected, albeit at low levels, for whatever reason EPA did not include those in LANL's permits and so they may be on the order of those – that type of comment. Like, chromium was detected in the application samples that were taken by LANL and yet, for whatever reason, the permit writer did not put that in the permit itself.

CHAIR HAMILTON: Do you mean they didn't put in monitoring for that or they didn't put in numeric limits?

MR. PUGLISI: They did not put in numeric limits for that. The other thing that they didn't do is there could be certain outfalls that do have radioactive contaminants in them that were not addressed in the permit. The reason being that the Atomic Energy Act controls those types of radionuclides; however, we do have a downstream stream segment that actually has a report requirement on one certain radionuclide are exceeded and we asked both NMED in their certification and EPA to address the fact that we are not going to know downstream whether or not we should be looking for radionuclides if LANL is not reporting as part of their permit requirements.

CHAIR HAMILTON: Further follow up. Member Fort.

MEMBER FORT: Madam Chair, isn't this the darnedest NPDES permit to not have limitations in reporting?

MR. HARWOOD: Right. But getting back to your question, Councilor, if you've got concerns about the letter going out without you seeing it. This is a bit of an unusual sequence, which I want to acknowledge, the deadline is near and it was our proposal to do this. But I am happy to try and circulate the draft letter fully to the Board before the deadline, if you'd be more comfortable doing that.

COUNCILOR ROMERO-WIRTH: Thank you. Madam Chair and Mr. Harwood, I think we ought to – I mean I am happy to approve you going forward but I do think that before it is submitted we probably should just take a look at it especially since it is going forward saying we are behind it and it just seems like we ought to know what it actually says.

MR. HARWOOD: We plan on circulating it 10 days before the deadline and give ourselves some time to talk if there are questions or changes before the deadline if that's okay.

COUNCILOR ROMERO-WIRTH: Thank you.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I just want to point out that Councilor Romero Wirth was not here when we had that presentation on the outfalls and so it would probably be a good idea for her to get a copy of that or the month of those minutes that that happened so that you could get a copy of that.

COUNCILOR ROMERO-WIRTH: That would be great, thank you.

MR. HARWOOD: They are very exciting minutes.

COUNCILOR ROMERO-WIRTH: Can't wait. [laughter]

COMMISSIONER HANSEN: As somebody who reads the minutes –

CHAIR HAMILTON: Member Fort.

MEMBER FORT: May we assume that the Environment Department will support our comments?

MR. PUGLISI: At the public meeting portion of it they seemed to indicate that they would be supportive of like report requirements and they themselves have indicated to EPA that they have some concerns about application materials and reasonable probability with regards to the application submittal by LANL in terms of how the EPA permit writer handled those. So, yes, I think they will be supportive of our comments.

MEMBER FORT: And would it be acceptable to the Board again to share this with Environmental Law Center, Amigos Bravos and the other two anti nuclear groups?

MR. HARWOOD: I'll suggest we circulate it to them after we get the draft to you all.

CHAIR HAMILTON: That's my suggestion I wanted to add on some of the more specific things you mentioned Alex and the implications that were brought up initially even about not having limits included for certain metals and potentially other things, all of those things that you mentioned just seem really important. And I wanted it, as a personal opinion, and I'm sure the Board that everyone can weigh in when you bring the letter back to us – I wanted to support putting those things in because the things you picked up on seem pretty important. They're the things that are certainly important to BDD in terms of being protected. Rumor does have it that EPA permit writers are being pushed to be much more general, less specific, less constraining in their permits and I agree that the things you mentioned seem like they are much less protective and important to put in.

MR. PUGLISI: And as Kyle said, we'll certainly make sure that everybody gets a copy of those comments before they're submitted. But I do agree with you and actually every permit writer seems to have their own way of applying certain things. And so it becomes somewhat convoluted when you have an institutional like LANL where you have 11 outfall, most facilities only have one outfall. But I have to say it is a lot less complicated than when LANL 141 outfalls, I believe at one time.

CHAIR HAMILTON: Thank you. Are there any other questions or comments on this? Thank you, so I guess we can just move along.

MR. HARWOOD: Very good. And then the third one I mentioned here, this deadline has been extended to the end of March. So we'll have comments and hopefully a fully drafted letter for you in March so we don't have to do this two-step process.

Just to be clear, I am going to send the NMED comments to Rachel Conn, Charlie de Saillan, Joni Arends, Jay Coghlan and Scott Kovac. I'll go ahead and send them also this which is just a draft outline. Once we get the final comment letters prepped and circulated, I'll also forward them on to those same NGOs after you've seen the actual. IS that okay?

COMMISSIONER HANSEN: Yes, thank you.

MR. HARWOOD: Great. Moving on. Mr. Carpenter, Mr. Bearzi and I met with our counterparts at the National Nuclear Safety Administration a couple of

weeks ago to talk about the BDD-DOE MOU and the fact that we are in the third and final year of the current MOU to discuss a schedule and work plan for 2020. And I'd like to make some recommendations to the Boards. This is building on and patterned after the effort we've used twice before. This is our third three-year MOU. We'll be looking at our fourth to start January of 2021 and so we discussed with Doug Hintze and his counsel the following schedule. That we would provide you in March at this Board meeting sort of a retrospective on the current MOU, how it has worked, how the ENS has operated, how we have spent the grant monies and sort of observe how the current MOU changed from prior year MOUs so that you would all have a clear picture of where we've been. At the April Board meeting, staff and counsel and consultants would bring to you a term sheet of items that we would recommend be included in the coming negotiation with LANL.

Mr. Hintze very much would like to get the Board up for a tour in May to look at the various components of ENS, to look at other issues of interest and concern that the Board may have. He is very excited to offer that tour. And as you all know there is no substitute for going and seeing these things with your own eyes. And then we would then at the staff level commit perhaps two or three meeting, hopefully not more, in May, June and July to work on those principles and draft them into a new MOU in August. We have a deadline we hope of August and then seek the Board's approval in October giving ourselves sort of November as a little bit of slack and trying very much to avoid bringing something to the last meeting of the year or the termination of the existing MOU.

That's our proposed schedule and work plan. As you will note, a key in here is that we would be bringing you our recommendations for a new MOU at the April Board meeting which is probably the most important topic in the near term.

CHAIR HAMILTON: Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: So August is what? You're going to write it May, June, July staff level and then August, what happens? You'll present it and we'll just digest it with the idea of coming back in October to approve it; is that the idea?

MR. HARWOOD: You could certainly approve it in September. There's a little bit of time in there to either call your congressman if they don't say yes to what we're requesting or other efforts that may be necessary if they are not agreeable to – if there's distance between their proposal and our proposal. But to certainly be acting on something by October, we hope. We don't want to go into 2021 without an MOU.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I heard that Doug Hintze is retiring, he's leaving in a month.

MR. HARWOOD: Is that right?

COMMISSIONER HANSEN: I heard that. I don't know if it's true. I'm just putting that out there.

MR. HARWOOD: The Doug Hintze, the bald guy?

COMMISSIONER HANSEN: Yeah, I know who Doug Hintze is. Will you check on that?

MR. HARWOOD: Yes, I will.

COMMISSIONER HANSEN: Because if we're in the middle of this negotiation and we're going to get somebody new in here to have to deal with, that is a little bit of a problem.

CHAIR HAMILTON: Yeah, that would be a real disruption.

MR. HARWOOD: Change is the only constant. We'll deal with whoever we need to work with. Doug is only the sixth or seventh person in that role that we've worked with since the project started. But he has been a very good partner to work with and –

COMMISSIONER HANSEN: He's been responsive, I agree.

MR. HARWOOD: So hearing no other guidance or direction from the Board we'll go ahead and plan on this with whomever DOE and NNSA have for us to work with; is that okay?

CHAIR HAMILTON: That sounds good.

MR. HARWOOD: Okay, very good. The next item was to determine when you wanted Mr. Hintze to come back and present to the Board. I think it's fine to go ahead and perhaps to pick a date perhaps in the spring for him to come –

CHAIR HAMILTON: Yes, go ahead.

COMMISSIONER HANSEN: I would like to suggest the April meeting.

MR. HARWOOD: The April meeting, okay.

COMMISSIONER HANSEN: And that's great. I was just going to ask if there's some strategy between when you're presenting proposed items on the draft MOU and when he's asking us to go on a tour.

MR. HARWOOD: Well, if we're going on a tour on May, April might be a good time to catch up on first quarter activities. April is also when staff is proposing to bring you our term sheet, so if it is Doug, we'll be talking about the term sheet and you can gauge his level of excitement about it if he'll be at the meeting. And to the extent that we need to have sort of more of a small working group format, non-quorum, discussions between staff and Board members to flush out various points, we've done that before in order to develop – because this stuff is fairly technical. Okay, I'm going to keep going if it's alright because I am only half-way through my list.

I was asked to put this on the agenda: we have been exchanging letters with NMED. Most recently, if you remember, on the cusp of our October meeting we received a response letter from NMED dated the week earlier. I believe the thought here is that it doesn't hurt to have a regular set of correspondence with Cabinet Secretary Kenney and his staff about the Board's priorities because it gives them a chance – it reminds them of our concerns. We are relying on NMED in a lot of ways to do some heavy lifting for us. Obviously, this Board doesn't want to have to work on every water quality issue itself and you've told us that in many ways and many times. So one efficient way to do that is to get it in writing on letterhead with your signatures on it and that does carry some weight over at the agency. So I think the suggestion is, if you would like, it is obviously work to do this, but if you'd like we would bring you a draft letter back at the next meeting to sort of pick up on the various topics and push them forward.

CHAIR HAMILTON: And this would include things like building on meetings, some meetings we have had where we are identifying things that we are most interested in or follow-ups from the letter and it will continue; that's the suggestion? Okay, that sounds good. Commissioner Hansen.

COMMISSIONER HANSEN: I think it's important to continue that dialogue especially since we have a lot of new staff at NMED and for them to get up to speed. Just as an example, the 109.9 sampling station, they didn't really understand why

that was so important to us. That we needed that to turn off the intake. They didn't really understand that. They thought that they could move it somewhere else where it might work but after we explained that to them, they were much more agreeable and understanding why the 109.9 sampling station on San I land is so important for the Buckman Direct Diversion when the water is coming down the canyon and we need to know. And not everything was working and it is still not working. So that's an issue that we need to continue to work with the Pueblo and NMED and see what we can do about that.

CHAIR HAMILTON: Thank you. Member Fort.

MEMBER FORT: This may be in the items that you've got later because you've the tri-annual review; would the pursuit of TMDLs be on that letter as an item we're raised with them and they responded and so on, Mr. Harwood?

MR. HARWOOD: Yes, I think we would bring you at the March meeting a draft letter of topics and suggested language and you would direct us whether you wanted it included or not. I know TMDLs is a particular interest of yours so –

MEMBER FORT: I am going to be so sorry to not be present at that meeting so I hope that TMDLs will be on the list and the same with respect to a drinking water standard would be – public water supply standard for the affected reaches of the Rio Grande. Again, something we've corresponded with them about and so it's a good thing to keep moving it forward and I'm just checking to see that it will be moving forward.

MR. HARWOOD: We are already missing you, Member Fort. I will include that and let the Board direct us going forward.

MEMBER FORT: Thank you.

CHAIR HAMILTON: Thank you. Anybody else?

COMMISSIONER HANSEN: We'll be sure and invite you, Member Fort.

CHAIR HAMILTON: So we should move along.

MR. HARWOOD: Moving along, it is my distinct pleasure to introduce Alex Puglisi to talk about the next item. It's a big one.

MR. PUGLISI: Basically, I took a lot of the facts from EPA's own press release regarding Waters of the United States but I put a different slant to it because their press release was talking about how this was going to clarify the application of the Clean Water Act to Waters of the United States and how the Clean Water Act would now apply to certain waters when in fact what they did through the promulgation of the rule was actually limit the number of waters that had been traditionally regulated under NPDES permit program and under the Clean Water Act and so – where they felt like they added clarity, I felt like they actually added ambiguity. And so you have the facts before you.

I think the biggest point I would add about WOTUS is obviously that we've already talked quite a bit tonight about discharges from Los Alamos and how they affect the BDD and the water supply of the City of Santa Fe. Since every one of the discharges in Los Alamos are to an ephemeral water body some intermit in certain reaches of the canyon where certain SWMUs apply, solid waste management units, under the stormwater permit. But most of the industrial discharges are directly to ephemeral waters and most of the solid waste management units under the stormwater permit, the IP stormwater permit, are also to ephemeral water courses. Those would no longer be regulated. And one questioned at the public hearing for Los Alamos for their industrial

permit whether or not the permit would automatically be revoked should this rule be implemented. They did not have an answer. The only answer that they had was that they would imagine that somebody would have to petition to no longer have the permit based on the new definition of WOTUS and based on that petition, EPA would take action. I'm not sure that's a correct answer because there would be thousands upon thousands across the United States petitioning to be have a permit under the old definition of WOTUS at the same time. So there would have to be some way to implement this new definition of those permits that were issued under the previous definition. How that would work nobody knows right now. The state doesn't know. The feds don't know. EPA doesn't know. And so – eventually you would see these discharges no longer be regulated. Now the hope is that this will be challenged in court and it will be stayed. Hopefully, New Mexico will join that suit. The Attorney General will join that suit and at least stay implementation of the rule in New Mexico the same way several states, numerous states, stayed the implementation of the Obama Rule in their state. So if you remember at one time we had a triage of different interpretations that applied. Some applied to pre-2015 rule, some applied with the new rule, some applied with the new rule stayed so how they were implementing WOTUS was actually a hodgepodge and they didn't even know how to implement it in the various states. Hopefully, because the 2015 rule was rescinded, which removes most of those un-clarities, so now whether or not this applies is the only question out there.

And so I think the biggest issues, obviously, I talked about the Santa Fe River in this handout [*Exhibit 4*] also but the big issue to us is the fact that those discharges would not be regulated under the federal permit programs of the Clean Water Act, industrial waste water discharges, stormwater discharges and 404. So even 404 permit would no longer be issued for the dredge and fill permits would not be issued in Los Alamos.

I think one thing that is not thought about often that we need to think about is if Los Alamos' discharges are not regulated because they are above us, we do have a discharge down below the BDD diversion and it's an outfall from the sediment return facility which actually takes water from the Rio Grande and actually tries to remove most of the sediment before it is sent up to the treatment plant. That sediment in a slurry form goes back to the Rio Grande. During the last permit reapplication, actually the one prior to the last one, which just occurred, we were actually, EPA actually tried to regulate us for things like toxaphene, PCBs, and other materials or other constituents that were originally at Los Alamos. And luckily we were able to demonstrate through additional sampling that we actually reduced the amount of PCBs and toxaphene and other constituents that were in the river prior to our discharge. And part of that is because some of those went up to BDD and actually were removed up there in the sludge that they removed at the plant itself. In the future, if LANL is no regulated in the NPDES permit program, they can't go back to LANL and say, We're going to further limit these constituents in your permits. But they can come to us and say, We're going to further limit these constituents in your permit, City of Santa Fe, County of Santa Fe, BDD Board. And that would be a pretty difficult situation for us to argue because the Clean Water Act does not allow them to take into account background concentrations from non-point sources upstream when calculating your permit limits. So that would be one additional fact that I would add to this is that if anybody is going to be affected by this it's going to be BDD.

Hopefully, in conversations with the state, they're talking about taking over some of these discharges under the groundwater discharge permit program and in some sense that may be even more stringent than the NPDES permit limits that LANL has received. However, at the current point in time, NMED has indicated that they neither have the staff nor the resources to issue groundwater discharge permits for every NPDES permit that might have gone to an ephemeral or intermittent stream. And so it will be several years before they can get a program up and running that could actually address some of these discharges.

That's really all I have to say other than what's in the handout. But I do stand for questions.

CHAIR HAMILTON: Thank you. I have a short-term question but first I want to note the insight it took for you to pick that up. I think that was a really good analysis and so I commend you for that and I think this is a huge potential problem for BDD that we have to be aware of.

My short-term question is that in the switch between implementing the new WOTUS and any stay that might come from a suit, is it likely that there will be permits that are just frozen, removed, whatever so that we're going to have that problem of unpermitted/unregulated discharge from LANL even if there's suits going on; do you suspect that? Will we have a little bit of time to deal with this? Not that we have anything that we can do about it but that's another challenge.

MR. PUGLISI: Right now the rule hasn't been published yet in the Federal Register. That will happen soon. Then it will take effect 30 days after publication. So we have a little bit of time there.

CHAIR HAMILTON: So it takes effect after 30 days, presumably in that 30 days NMED and lots of other states are going to scramble to get a suit going so all I'm asking is for opinion and you have no way to really know this on a hard fact basis. The issue that you brought up about what will happen with that process; do you think that that will start moving forward before suits can actually stop it?

MR. PUGLISI: Kyle has some updates.

MR. HARWOOD: It's a very uncertain picture going forward. All we know so far is that on January 24th the president issued an Executive Order releasing the new WOTUS language which actually did change a little bit from the pre-publication or pre-announcement version. I believe it's a 60-day effective date after being in the Federal Register. We don't know when it's going to appear in the Federal Register. The idea is that it's going to appear in the next couple of weeks. I've been contacted by several NGOs because New Mexico is so unique in the way that this formulation of the WOTUS rule is going to affect New Mexico so significantly given our hydrology and also given that we are one of three states that doesn't have primacy, and because of the text of the WOTUS rule. So my understanding from NMED is that they are coordinating with the AG's Office and my understanding from several NGOs is that they are all coordinating. There is a nationwide effort. There's a local effort. It really depends on the nature of the requested stay and where that leaves the existing WOTUS rule so we won't know until we see it but if they ask for the new rule to be stayed and the existing rule would be maintained that will tell us one thing about all the existing procedures. And then a judge is going to do what a judge is going to do with the requested relief. So until that wheel turns a little we don't know exactly the questions that are naturally on your

mind about how we stumble forward. A lot of these other prior litigations are actually ongoing and unresolved.

And let me just add while we're on this topic, more than one of these NGOs has asked whether this Board might be interested in filing an amicus brief on the need for a stay. I am not clear on what that work effort that would be. It wouldn't be for several months at a minimum. It would come at some briefing schedule stage after the filing of the complaint and the request of the stay. But I did want the Board to know that that request had been made. The nice things about amicus is that you're not a full party so you're not subject to discovery and all of the parts that you can lose control of as you enter into a lawsuit. But I wanted to mention that to the Board. It may be possible to get some assistance if the Board was open to it. We have to be careful about assistance with plaintiffs because you have to disclose in your amicus filing whether you've coordinated with others. So there's all kinds of issues to navigate there but I did want to let you know that I was called and asked whether we might want to start thinking about that.

CHAIR HAMILTON: I might suggest that we move pretty quickly – I knew I was asking a question that couldn't be answered and that I had a little bit of insight into also but it's also to discuss but the point was that I think the Board and you guys, you guys are really paying attention, have to pay attention to the timing of this. So I would suggest that we put that issue that you just mentioned on a very, maybe the next agenda so that we can actually consider the pros and cons and however we have to consider it. And then the obvious follow-on question to my previous, if the possibility that this gets promulgated fairly quickly and it changes LANL's motivation and regulatory hope for doing an MOU with us that has any meaning for us; do you have thoughts about that?

MR. HARWOOD: They are naturally connected but I also think that that national WOTUS issue is going to get hammered out in a venue and on a timeline that is very, very different than our ongoing relationship with LANL around the ENS and the grant funding. So I would hope –

CHAIR HAMILTON: That's true but the implications of their having less regulation to deal with is going to be obvious to them and that will change their motivation potentially.

MR. HARWOOD: One of the things that you're going to see in our retrospective MOU memo next month is that we negotiated the initial versions of our LANL MOU around the 2005 Consent Order and then it changed. So the analog here is we've been discussing our relationship with LANL around various WOTUS rules and the WOTUS rule is potentially changing around us.

CHAIR HAMILTON: Member Fort.

MEMBER FORT: We did, Madam Chair, at a previous meeting ask someone from LANL if they were going to take advantage of the WOTUS rule and they looked blank, I think would be a way of answering it. But it does seem as though the delegation would be able to get a commitment from LANL with whom their regular contact over appropriations to not take advantage of this period before we have a president and a new WOTUS.

MR. PUGLISI: Madam Chair and members of the Board, my understanding is that EPA is going to move on issuing this to the Federal Register and you are correct, it is a 60-day implementation time.

Obviously, and I have talked to a few people about this, if your permit is currently in flux and about to be issued, at the same time LANL may be thinking about requesting EPA for a delay for the permit issuance until this rule is finally implemented because there obviously would be numerous uncertainties involved in the issuance of a permit that is going to be immediately revoked. So I'm not saying that LANL is doing this but it would be to their benefit to ask EPA for a delay in the permit issuance and for a number of different discharges to do the same thing. That's why I think it's somewhat imperative that we do get their permit issued as quickly as possible and not delay the process. And I don't think that NMED plans to delay the process. They have issued their permits and they are hoping to have them addressed because just to somewhat address your comment from before, because we really don't know how EPA is going to handle this. But I would imagine that anybody who wants to challenge whether or not they fit under the definition of the Water of the United States would have to somehow file a petition and document the fact that the discharge goes to a stream river or tributary that does not meet the definition and show why. Because the State of New Mexico is not going to do that anytime soon. There is no planned reclassification of perennial versus ephemeral versus intermittent that is planned right now by the New Mexico Environment Department. So for EPA to withdraw a permit, I do believe that they'll have to be some formal challenge or petition of some sort. If that answers your question a little bit better.

CHAIR HAMILTON: Thank you. Are there other questions?

MR. HARWOOD: Last lap of topics and smaller ones generally. Last meeting we reported out that EPA had made the determination that Los Alamos County needed to get an MS4 permit and we enjoyed that news because this Board had sent a letter supporting that determination. In the meantime Los Alamos County has appealed to the Environmental Appeal Board in DC. There's some question whether that is the appropriate venue. Staff's recommendation, counsel and consultants, is that we continue to monitor that issue and not get too deeply involved but Amigos Bravos was grateful for our letter and will keep us up to date as that proceeds. Shall I go on?

CHAIR HAMILTON: Yes, please. We'll interrupt.

MR. HARWOOD: Very good. Number 9, just a quick update on the Northern New Mexico Citizens Advisory Board which is constituted under the Federal Advisory Board Act to assist LANL in its public outreach and has representation on the CAB from all sorts of walks of life from northern New Mexicans. They are currently non-functional not having a quorum. They are awaiting appointments from DC. I understand there is a lot going on back there. So there's no quorum and they are a non-functioning group at this time.

Source Water Protection plan meetings, the procurement is complete according to Mackie. Thank you, Mackie. And so there's a kickoff meeting being scheduled with Ms. Komer. For those of you who don't remember, our current Source Water Protection Plan does not go very far upstream. There was a request by this Board in 2019 to do a public listening session. That is Lynn Komer's contract and then to be followed by some technical updates to that plan with staff and budget to be determined.

New Mexico Environment Department will be holding its next triennial review and they plan to start their process this summer. We are on their email list to get updates as to that process and as that moves forward, I can provide you with some updates. As some of you know, back in 2009 the Board directed Nancy and I to be very involved in

the Triennial Review. We filed a petition. We argued and prepared to present at a WQCC hearing and ultimately worked with LANL to get the 303B segments monitoring requirements into that Triennial Review process back in 2009. We've skipped a couple of intervening ones. But we propose to keep the Board a little more current on that process to determine whether the Board has any priorities in the upcoming Triennial Review. That will be a third and fourth quarter work effort if the Board decides to get involved.

We've been told that there will be an enhanced involvement, public involvement schedule. This is a Department of Energy, Environmental Management initiative to reset the tone and scope of the conversation with interested stakeholders around all things LANL. They visualize this enhanced public involvement program as being a constant reoccurring process. This is not a campaign with a start, middle and end. This is meant to be a reoccurring process. I believe the first meeting was just set. I am not sure that I followed it properly on my email earlier today but I believe the meeting has been set for February 19th. We were told a couple of weeks ago to expect a kickoff of this program in March. So this is their outward looking program to everybody on everything and so we'll just be monitoring it. We have our own special relationship. We have our own special agreement with them but just to let the Board know that that is their plan and that is the way that the involvement program was described. With that, we recommend just monitoring it.

I think we've talked about action items and priorities as we've gone through these items.

CHAIR HAMILTON: If they're kicking off the program in March, what's February 19th? I got confused. Okay, that's fine.

MR. HARWOOD: I'll forward it to the whole Board so that you see what we got today.

CHAIR HAMILTON: That's great. Are there any final questions?

MR. HARWOOD: Very good, thank you.

CHAIR HAMILTON: Thank you so much. That was quite thorough.

14. Request for approval and recommendation to Santa Fe County Board of County Commissioners and City of Santa Fe City Council to approve the Fiscal Year 2021 Buckman Direct Diversion Operating Budget and Other Fund Contributions

a. Presentation of the proposed FY2021 BDD Operating Budget and Other Fund Contributions

MS. ROMERO: Madam Chair, members of the Board, we would like to present the proposed fiscal year 2021 annual operating budget and proposed contributions to the major repair/replacement fund for your approval and recommendation to our partners.

The BDD will be in its tenth year of operations. This milestone influenced our analysis of costs, as maintenance of our facilities will increase due to the age of the equipment and machinery. The BDD actively collaborated with its partners on the development of this budget and with their support we are requesting \$9,659,797 to support our fiscal year 2021 operations.

This budget consists of fixed and variable costs and includes revenues and reimbursements from several sources. The principal operating revenue of BDD's operating budget are reimbursements from our partners. The partner reimbursement revenue is estimated on projected expenditure types and allocated based on cost sharing allocations per our governing documents. And if you want to see the cost allocations that were used, that's on page 11, table D of the packet.

BDD was also \$96,000 of federal funding from the Department of Energy for the BDD Stormwater Sampling Program and that is also included in the budget. The other revenue that we receive is our monthly PNM solar rebate revenue from the water treatment plan solar array. This revenue is used to support the lease on the cost of that solar array.

The next slide is our expenses by major category and this page 8 of your packet. This table shows a budget comparison by major category of prior budgets and actuals. This budget request has a net decrease of \$36,612, less than our fiscal year 2020 adopted budget. This is due to many one-time projects and reclassification of positions as part of the class and comp study but even with this decrease we have some major projects that we'll be tackling in fiscal year 2021. This request does include an additional \$50,000 to begin the replacement of our HVAC units, \$150,000 to install a crane lift at our 4A/5A facility. This system is needed to provide safety to our employees as they repair pumps, valves and other heavy items. We are also requesting \$150,000 to replace the activated carbon in our GAC contactors. This cost will replace media in on contactor and will be included every year and replacement will continue on a rotating basis. So replacing the media on a scheduled basis will result in greater efficiency in this process.

Pages 9 and 10 of your packet do include a detailed level of our breakout of our major categories. So as you can see from our categories, salaries and benefits, electricity, chemicals, solids but then we have the materials and supplies and other operating costs, those are all in one lump sum. But if you look at pages 9 and 10, it is broken out in more detail if you want to see the contracts that we procure.

CHAIR HAMILTON: Commissioner Hansen. Can we have a question?

MS. ROMERO: Oh, absolutely. Did you have a question?

COMMISSIONER HANSEN: What kind of maintenance do we need from Positive Solar on the BS2A solar array?

MS. ROMERO: Positive Solar, they maintain the solar array. They'll go out and make sure all the solar panels are working and if they're not they'll recommend a replacement. So they'll just make sure the solar array, the one at 2A is working properly.

COMMISSIONER HANSEN: And how often do they do that?

MS. ROMERO: They have a schedule. It's biannual. So they'll come out twice a year.

COMMISSIONER HANSEN: So the \$7,000 is for them to come out and just check everything?

MS. ROMERO: Yes, to check and maintain it. It also helps with our warranty. So our stuff has warrants and that maintaining keeps that warranty intact.

COMMISSIONER HANSEN: Okay, thank you.

CHAIR HAMILTON: Thank you.

MS. ROMERO: Were there any other questions on the details?

CHAIR HAMILTON: Member Fort.

MEMBER FORT: Madam Chair and members of the Board, I would just note again that our electrical costs are over \$1 million and that's a lot of carbon. We had a presentation from Regina Wheeler that we are on the list to be evaluated and have solar installed and I really look forward to that time and I'm glad to have someone who is committed to it, Mr. Carpenter, and doing what we can and cutting down because it's taking a lot of electricity to lift this water up and bring it around to the City. So it's a big item in our budget and a big item to the climate.

CHAIR HAMILTON: Thank you.

MS. ROMERO: Thank you.

COMMISSIONER HANSEN: Do you have any update on that?

MR. CARPENTER: The Water Division manager has been working with Ms. Wheeler. I don't know the status of their work but he has taken that on, on behalf of the Water Division.

CHAIR HAMILTON: If I'm not mistaken there are also ongoing decisions between the City and the County on that.

MR. CARPENTER: I believe so.

COMMISSIONER HANSEN: So could we have an update about that in the next couple of months?

MR. CARPENTER: I would be happy to.

MS. ROMERO: Are there any other questions on any of the major categories?

CHAIR HAMILTON: Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Am I reading this correctly on page 8, overtime, the adopted budget was \$150,000, the unaudited actual is \$206,000 –

CHAIR HAMILTON: That's the 2019?

COUNCILOR ROMERO-WIRTH: Yeah. And then given that we're proposing \$150,000; is there a reason why you wouldn't go closer to the actual, the unaudited actual?

MS. ROMERO: Madam Chair, Councilor Romero-Wirth, we had a lot of vacancies last year in our operations. I think we had five vacancies. And so what happens is when we have vacancies we have a lot of overtime. But now that we're fully staffed in operations, that's the majority of where that overtime comes, we did bring that projection back down to just cover the normal shift differential and graveyard shifts that are part of the operator's salary.

COUNCILOR ROMERO-WIRTH: Okay, and are there any other variances that you think you should point out to us in terms of why they were high or why they were low? That's just one that caught my eye; are there others that you would draw to our attention?

MS. ROMERO: Madam Chair, Councilor Romero-Wirth, I didn't see – well, you can definitely see that our electric costs have decreased and that one is always hard to project with the cost of peak-off and peak-on pumping and how operations does that. The other big costs were our materials and supplies and so we project to have on call contractors and obviously we spent about 84 percent of that budget in our actuals. And then of course, the litigation costs which are also hard to project. So I think that those were the big ticket, unless you want me to go over anything specific.

COUNCILOR ROMERO-WIRTH: No, I just noted that one so I thought

I would get your take since you are way more familiar with these numbers at this point than I am. Thank you, Madam Chair.

MS. ROMERO: Thank you.

CHAIR HAMILTON: Thank you.

MS. ROMERO: So we will move on. The other part of this budget request includes our partner contributions to our major repair and replacement fund. So the policy that we have in place says that we are to receive partner contributions yearly. This is page 18 of the budget request. And so with this request we are asking for \$626,706 from our partners. This has been the yearly contribution for a couple of years. Staff has begun working on maintaining our capital asset and replacement software. We've had additional training. We have begun some data verification and creation of our vehicle replacement policy which was approved last year. Our goal is to continue to develop a multi-year projected asset plan, funding requirements and related replacement and disposal policy. So hopefully next year we'll be able to bring an increase to this fund with actual support of our asset management plan. With this you can see we have a balance as of June 30, 2019 of \$1,777,055 and with the partners' contributions and no further authorizations from the fund the balance of that fund would be \$2,403,761.

In summary, this budget summary includes the operating budget and then the contributions for the major repair and replacement fund. The total request for approval from the Board and recommendation to our partners is \$10,286,503. Unless there's any other questions about the budget, that is my presentation.

CHAIR HAMILTON: Thank you. So I'll entertain questions and remind everybody we'll do a public comment right after that before we move on to any vote.

COUNCILOR ROMERO-WIRTH: I just have a quick question, Madam Chair.

CHAIR HAMILTON: Yes.

COUNCILOR ROMERO-WIRTH: So given the fact that this facility is 10 years old now and it has lived through a downturn in the economy, has that led to any lessons learned in terms of budgeting? Or how has the downturn, you know, 2008, how did that affect the budget? Was there anything that could have been done proactively to have helped that?

CHAIR HAMILTON: We went on line in 2011.

MS. ROMERO: Madam Chair, Councilor Romero-Wirth, if you look at page 16 on the budget that gives you a breakout of our programs that support this budget. And as you can see the maintenance costs have definitely increased. So there are things that they put in there to try and help – replacing the HVAC units is included in that increased in the maintenance budget. Additional on-call repair contracts – getting the crane lift at 4A/5A to assist with maintaining the equipment.

COUNCILOR ROMERO-WIRTH: Okay, yes, those are maintenance issues. But the facility itself hasn't really lived through a downturn in the economy; is that true?

CHAIR HAMILTON: We went on line in 2011. So there was development of this project in 2008 but it was in process. We weren't actually operational.

MS. ROMERO: Right.

COUNCILOR ROMERO-WIRTH: Okay.

CHAIR HAMILTON: Thank you.

b. Public Comment

CHAIR HAMILTON: Is there anybody here in the public that would like to speak to the Board about the budget? I will say that there is another point in the meeting where there is general public comment offered. This is an opportunity to speak about the budget. Seeing none, I will go ahead and close the public comment.

c. Request for approval of the proposed Fiscal Year 2021 Operating Budget and Other Fund Contributions and recommendation to approve by the County Commission and the City County

CHAIR HAMILTON: This is an action item. Do you want to remind everybody what the whole process is? We approve it here and it has to go to the – you know, that part.

MS. ROMERO: Madam Chair, members of the Board, the process is that you would approve the budget here and recommend it to be included in the City of Santa Fe Water Division budget and Santa Fe County Public Utilities or Public Works budget and then those contributions would get approved within our respective partners' budgets and then we would bring this back for formal adoption in July after our partners' budgets have been adopted.

CHAIR HAMILTON: Thank you. With that, what is the pleasure of the Board? Commissioner.

COMMISSIONER HANSEN: Move to approve what Mackie just said.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thank you. Further discussion? I have a motion and a second.

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

CHAIR HAMILTON: Thank you and thank you for the thorough presentation.

MS. ROMERO: Thank you.

15. Appointment of the Citizen Member and Alternate Citizen Member to the Buckman Direct Diversion Board

NANCY LONG (BDD Board Counsel): Madam Chair and members of the Board, as a supplement to your packet material there is a memo at your place regarding the citizen member and alternate citizen member selection since our committee met after the packets went out for this meeting. The selection committee met last Friday, January 31st, to conduct interviews of six applicants. And we had many good applicants and we had a lot of discussion that I thought was good about what the best interests of the Board were and how a citizen member could best serve the Board. And we thought it was

important to consider the importance of a legacy of knowledge as well as the knowledge of the BDD and its operations and we're happy to recommend to you that you appoint JC Helms as the citizen member to the Board. He is currently the alternate citizen member and Peter Ives as the alternate citizen member.

CHAIR HAMILTON: Thank you. Is there discussion or questions from the Board at this point? Commissioner Hansen.

COMMISSIONER HANSEN: Madam Chair. I move to approve Citizen Member as JC Helms and Alternate Member as Peter Ives.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second.

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

CHAIR HAMILTON: I think we want to take this moment to thank Denise Fort for all her interruptions, for her years of contributions that were incredibly valuable. Thank you very much. Are there others –

COMMISSIONER HANSEN: I want to just thank Professor Fort for your dedication to this Board. It's been a great honor to serve with you and your knowledge and information has really helped me grow and I appreciate that. I am going to miss you. I don't know how many years you were on the Board before I joined but I know that Conci served for maybe 10 in the beginning so maybe you have been her five years.

MEMBER FORT: It was three, right after Conci.

COMMISSIONER HANSEN: So you came right after we were elected.

CHAIR HAMILTON: Was it the year before which makes it four years.

MEMBER FORT: Okay.

COMMISSIONER HANSEN: Yes, you wanted to get off last year but we didn't let you.

CHAIR HAMILTON: Did we give Member Fort a –

MEMBER FORT: Yes, I already got it. I don't think it's champagne but I think – [Ms. Fort displayed a BDD water container filled with BDD water] – it's like champagne.

COMMISSIONER HANSEN: Oh, it's beautiful. It's a glass bottle of Buckman water.

MR. HELMS: I'd like to say how great a pleasure it has been to serve under/with Denise. She was the regular and I was the alternate. She has been a tremendous contribution to this Board. She really does have tremendous knowledge and experience in these affairs and I really think she made a great contribution. I'm sorry to see her go formally but I hope she'll keep showing up as a member of the public and maybe giving speeches. It has been wonderful to work with you, Denise.

CHAIR HAMILTON: Excellent. Yes, Councilor.

COUNCILOR VIGIL COPPLER: Thank you, Madam Chair. Denise, it has been just a great pleasure to have you participate and participate with you on this Board. I do remember that we said goodbye to you before, I'm trying to remember what I said then. But I am still in awe of your knowledge and expertise and your background and your engineering and your legal and you've got many, many hats. And I'll say it again, many of you may not know that Denise and I served in the late/mid 80s on the City

of Santa Fe Grievance Board. Do you remember that? It was a long time ago. And she was a wonderful person to work with then and now I'm even more impressed. And I wish you well in anything else that you're going to be doing. Thank you for your service.

CHAIR HAMILTON: Councilor.

COUNCILOR ROMERO-WIRTH: I'm sorry you're leaving as I am coming. I'll catch you around the block.

MEMBER FORT: Thank you. This has been really, really interesting. I actually have been doing mostly water policy and I've never been this close to a facility that actually did something before. So that's been really interesting and I appreciated everyone's work. I don't know if Kyle is still here, but it's been great, and great to work with Nancy and with everyone on the staff as well. I started with – there has been a fair amount of turnover since I began but with Commissioner Stefanics and Joe Maestas had nominateded me, so that was some time ago. It has all been a good learning experience and I will be a ghost haunted you with respect to solar installations and so count on it. Thank you.

CHAIR HAMILTON: Fabulous, thank you. In the same breath, I want to take the opportunity to welcome Mr. Helms and tell you how much we've appreciated the service so far and very, very much and look forward to having you up here and supporting all the efforts of the Board. I think you really have and will continue to serve us well. We're very excited about that. Anything else on that, Nancy?

MS. LONG: Nothing else. Just to remind you that those are two-year terms so the term will start today.

16. Election of the Chair and Vice Chair of the Buckman Direct Diversion Board

MS. LONG: Madam Chair, the rules of order for the Board call for the election of the Chair and Vice Chair in February or soon thereafter to have the election. As you know of course this past year, although she had an abbreviated year, your Chair was Commissioner Hamilton and I believe the Vice Chair was Councilor Ives.

COMMISSIONER HANSEN: Mike Harris.

MS. LONG: Mike Harris.

CHAIR HAMILTON: Mike Harris until the last month –

MS. LONG: Right, I put them together. We had to delegate a Chair at one meeting. For this next term then your chair must be a City Councilor and the Vice Chair would be a County Commissioner.

CHAIR HAMILTON: Thank you. Commissioner.

COMMISSIONER HANSEN: I would like to nominate Councilor JoAnne Vigil Coppler for Chair.

CHAIR HAMILTON: Thank you and just as a point of sequence, we vote independently one at a time?

MS. LONG: On the two positions, yes.

CHAIR HAMILTON: Thank you. I have a nomination do I have a second?

MEMBER FORT: Second.

CHAIR HAMILTON: Thank you. All in favor.

The motion to elect JoAnne Vigil Coppler as Chair passed by unanimous voice vote.

CHAIR HAMILTON: That takes us to Vice Chair.

COUNCILOR VIGIL COPPLER: Madam Chair. I would like to nominate Anna Hansen for Vice Chair.

MEMBER FORT: Second.

CHAIR HAMILTON: Thank you. Motion and a second.

The motion to elect Anna Hansen as Vice Chair passed by unanimous voice vote.

CHAIR HAMILTON: Excellent. Congratulations to Councilor Vigil Coppler and Commissioner Hansen.

And I just want to take the opportunity to say how grateful I am to have been able to serve for this year. It was and will continue to be a real pleasure working with such an incredibly competent, dynamic and motivated board. It is really a pleasure and it was an honor to serve as chair.

COUNCILOR VIGIL COPPLER: Madam Chair, I would like to express our thanks for you having served as chair and led us through all of the technical things that we do. And you have a great deal of technical experience and thank you for that and I'm glad you'll still be here because we need that.

CHAIR HAMILTON: Thank you very much. I very much appreciate it.

COMMISSIONER HANSEN: Madam Chair, I want to also say thank you for your chair leadership and all of your information both scientifically and professionally.

CHAIR HAMILTON: Thank you.

17. Appointment of Committee Members for the Fiscal Services Audit Commission (FSAC) of the Buckman Direct Diversion

MS. LONG: Madam Chair, as members of the Board know, there's a committee of the Board that meets prior to each meeting to consider any fiscal issues that will be on the Board's agenda and we have named that the Fiscal Services Audit Committee. There has been one City member and one County member as well as Las Campanas' representatives that attend that meeting. It is a non-quorum meeting. It has been the chair and the vice chair of the last few years. There is nothing that requires that but you should have one representative from each public body on that committee.

CHAIR HAMILTON: I'll just add that I've been on that committee and I would be happy to continue. I got on when Commissioner Roybal was Chair or was moving from Vice Chair to Chair and he didn't want to do both. However, I am totally open. I would love to stay on but if you want to be on that and take it over that's just great.

COMMISSIONER HANSEN: Commissioner Hamilton, I would be happy to have you stay on there because I think you have a grasp of what is going on on that committee and I feel like you fill me in and give me information and you share what's going so I think that if you would like to continue as the other County member I am good with that.

CHAIR HAMILTON: I would love to, that's great. That's good. We need a City Councilor on it.

COUNCILOR VIGIL COPPLER: I would be happy to serve on it.

CHAIR HAMILTON: Okay and there's no questions about the Las Campanas participation.

MS. LONG: That's correct. They can both come or neither one come or one come. That's up to them, we do not need to appoint for that.

CHAIR HAMILTON: Do we have to have a motion?

MS. LONG: I think that you can just appoint as the continued chair based upon the input that you just heard.

CHAIR HAMILTON: Okay, based on the input, I will continue to serve as the County member and Councilor Vigil Coppler will come on as the City member.

MATTERS FROM THE PUBLIC

CHAIR HAMILTON: Is there anyone here who would like to address the Board? Seeing none, I will close matters from the public.

MATTERS FROM THE BOARD

CHAIR HAMILTON: Yes, Councilor.

COUNCILOR VIGIL COPPLER: Thank you. I am looking forward to continuing to work on this Board and look forward to all of your input. And then I would like to say that I think there's an error on the March 4th date.

COMMISSIONER HANSEN: It's March 5th.

CHAIR HAMILTON: Yes, Commissioner.

COMMISSIONER HANSEN: I would just like to note that today at the Roundhouse was Women Suffragist Day and we had a proclamation by the governor. And I am making that comment that women have had the vote for 100 years today and considering that we have all women, at the moment, on this Board – I think that that is a great testament to what has happened in this country with the vote that women have shown that they are more than competent to run government and contribute at a very high level. So I just wanted to recognize that we've had the vote for 100 years and I consider being able to vote a sacred privilege. I am grateful for this opportunity.

CHAIR HAMILTON: So I do have something, two statements with respect to the January 9th regular executive session of the Board meeting. I want to state for the record and our minutes, that the only matter discussed during the executive session of our board meeting held on January 9, 2020, was the matter as stated in the motion to go into executive session and no action was taken.

And in addition, I will state for the record and our minutes that the only matter discussed during the closed meeting held on January 17, 2020, was the discussion of the hiring of specific individuals for the position of Facilities Manager of the Buckman Direct Diversion Board and no action was taken.

NEXT REGULAR MEETING: Thursday, March 5, 2020 at 4:00 pm

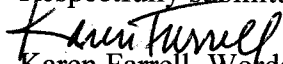
ADJOURN

Having completed the agenda and upon motion, Chair Hamilton declared this meeting adjourned at approximately 5:50 p.m.

Approved by:

Anna Hamilton, Board Chair

Respectfully submitted:


Karen Farrell, Wordswork

ATTEST TO

GERALDINE SALAZAR
SANTA FE COUNTY CLERK



AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, FEBRUARY 6, 2020

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 JANUARY 9, 2020 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON FEBRUARY 4, 2020 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD Operations. (Randy Sugrue, BDD Operations Superintendent, rsugrue@santafenm.gov, 955-4501)
8. Report from the Interim Facilities Manager. **VERBAL**. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4206)
9. Report on Facilities Manager. **VERBAL**. (Shannon Jones, Public Utilities Department Director, swjones@santafenm.gov, 955-4267)
10. Report on 2nd Quarter Financial Position for Fiscal Year 19/20. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

CONSENT AGENDA

11. Update on 2020 Operating Plan. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpernter@santafenm.gov, 955-4206)
12. Update on Firearms Use in Proximity of the BDD Facilities. (Rick Carpenter, Interim BDD Facilities Manager, rrcarpernter@santafenm.gov, 955-4206)

DISCUSSION AND ACTION

13. Updates and Possible Action on Rio Grande Water Quality Issues. **VERBAL.** (Alex Puglisi, Environmental Compliance Specialist, aapuglisi@santafenm.gov, 955-4232 and Kyle Harwood, BDD Counsel, kyle@eagolaw.com, 986-9641)
14. Request for approval and recommendation to Santa Fe County Board of County Commissioners and City of Santa Fe City Council to approve the Fiscal Year 2021 Buckman Direct Diversion Operating Budget and Other Fund Contributions. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
 - a.) Presentation of the proposed FY2021 BDD Operating Budget and Other Fund Contributions.
 - b.) Public Comment
 - c.) Request for approval of the proposed Fiscal Year 2021 Operating Budget and Other Fund Contributions and recommendation to approve by the County Commission and the City Council.
15. Appointment of the Citizen Member and Alternate Citizen Member to the Buckman Direct Diversion Board. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)
16. Election of Chair and Vice Chair of the Buckman Direct Diversion Board. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)
17. Appointment of Committee Members for the Fiscal Services Audit Committee (FSAC) of the Buckman Direct Diversion Board. **VERBAL.** (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, March 5, 2020 at 4:00pm

ADJOURN

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: January 30, 2020

TIME: 10:12 PM

To: BDD Board
RE: Draft comments to NMED 2016 LANL Consent Order
Date: February 6, 2020

EXHIBIT

tabbies
2

1. Issue: DOE/LANL sets the clean-up priorities based on budget for 1 to 3 years out. NMED has no authority to deny or approve the DOE/LANL list which is primarily driven by budget. DOE/LANL priorities may or may not include sites and activities important to Rio Grande water quality at and above the BDD Project intake. Clean-up priorities should be based on risk to human health and the environment, not the DOE budget.

Comment: *Priorities should be established until the last site is cleaned up (presumably still MDA G), and include all sites, including those important to BDD intake and Rio Grande water quality. NMED and DOE should collaboratively establish priorities, but the CO should give NMED authority to deny any milestone or target. Any unresolvable dispute should default to dispute resolution.*

2. Issue: Milestones (1-year out activities) and targets (2- to 3-year out activities) are currently set by DOE and are not enforceable by stipulated penalties [see CO VIII.B.(4)(c)].

Comment: *Stipulated penalties should apply to (at least) milestones and targets, subject to annual revision by NMED.*

3. Issue: With few exceptions, the 2016 Consent Order severed the relationship between issuance of a Certificate of Completion for a SWMU/AOC and migration of RCRA-regulated contaminants beyond the boundaries of a SWMU/AOC via stormwater. [see VII.H]. This is particularly important because of the proposed WOTUS rule change.

Comment: Remove or amend section VII.H to clarify that the Consent Order establishes requirements for releases of contaminants from SWMU/AOCs to stormwater.

4. Issue: Maintenance of the Los Alamos Canyon Weir is not subject to NMED review and approval under the CO or the Hazardous Waste Facility Permit (HWFP). Maintenance, including removal of sediment, and the decision process to conduct maintenance is at the discretion of DOE and its contractor.

Comment: Require maintenance of the Los Alamos Canyon Weir subject to NMED review and approval.

5. Issue: Public participation is severely limited under the CO. In fact, modification of the CO itself is expressly excluded from public notification (see CO VII.G), a provision that could not exist if corrective action was conducted under the aegis of the HWFP. Public notification of completion of work at SWMU/AOCs (e.g., Certificates of Completion) or other updates to SWMU/AOC status is not required as DOE can avoid notifying the public until the CO is terminated (see CO VII.D). Finally, the CO is based on a "campaign approach" which is in turn based on an "Annual Planning Process," which is opaque to the public. If the parties do not agree with the updates conceived under the APP, the public should be notified and input sought prior to a final decision by the Designated Agency Managers.

Comment: Any modifications to the Consent Order and the Annual Planning Process should involve some required mechanism of public participation. DOE should be required to update

the status of SWMU/AOCs and provide notification to the public. Modification of the CO should be subject to public notice, meeting, and formal comment. DOE should be required to develop, operate, and maintain an e-mail notification to interested parties about certain CO activities.

6. Issue: BDD is currently seeking information about conditions and past activities in the Los Alamos/Pueblo Canyon watershed. This information may spur additional recommendations to NMED that are specific to this geographic location.

To: BDD Board
RE: DRAFT comments on NPDES Permit No. NM0028355
Date: February 6, 2020

Comment Outline

Description of BDD Board (entity providing comment):

These comments are from the Buckman Direct Diversion Board, the governing body for the Buckman Direct Diversion. The Diversion is a single diversion point on the Rio Grande that the City of Santa Fe, Santa Fe County, and their limited partner, Las Campanas, share to divert their San Juan-Chama and native Rio Grande water rights. Diverted water is treated and introduced into the regional water system. The government entities are represented on the Board.

Description of BDD Project (entity impacted by proposed NPDES permit):

The Buckman Direct Diversion is on the Rio Grande, approximately 3 miles downstream of Otowi Bridge, a short distance downstream of the location of the confluence of Los Alamos Canyon and the Rio Grande. The Board is therefore understandably concerned about runoff in Los Alamos Canyon and its tributaries. NPDES Permit No. NM0028355 covers 11 outfalls, or locations of discharge of industrial pollutants to waters of the U.S., in this case the Rio Grande. One of those outfalls, known as TA-53 03A048, discharges treated cooling water that originates at TA-53 to a tributary of Los Alamos Canyon, and is upstream of the BDD Project intake structure.

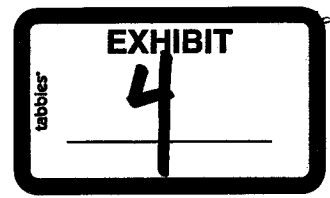
Description of current NPDES permit and proposed changes:

The current permit has effluent limitations for this outfall for total recoverable aluminum, total arsenic, dissolved copper, total mercury, and dissolved mercury. EPA proposes to delete those limitations and monitoring requirements from the final permit. The current permit also has monitoring requirements for gross alpha and chromium (VI). EPA also proposes to remove those monitoring requirements.

BDDDB Concerns:

The BDD Board has identified certain inconsistencies between EPA's Fact Sheet and the Permit. Some of those inconsistencies concern EPA's calculation of Reasonable Potential between outfalls and between pollutants at individual outfall. [more detail to be developed by staff and consultants before submittal]

The Board lacks confidence that EPA's analysis and subsequent removal of specific effluent limitations and monitoring is protective of human health and the environment, and specifically of the Buckman Direct Diversion. The Board therefore urges EPA to retain the more stringent monitoring and effluent limitation in the existing permit.



Waters of the United States (WOTUS)

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) finalized the Navigable Waters Protection Rule to define “Waters of the United States” and thereby establish federal regulatory authority under the Clean Water Act. Similar to the proposal released by these agencies in September 2019, the rule delineates four (4) categories of waterbodies that are within CWA jurisdiction and twelve (12) categories that are excluded. It replaces the “Step 1 Rule” published in October 2019, which struck down the Clean Water Rule adopted in 2016 under the Obama Administration. The Rule will be effective sixty (60) days after publication in the Federal Register.

For the first time, the agencies are streamlining the definition so that it specifically includes four specific categories of jurisdictional waters, and provides “clear exclusions” for many water features that have been traditionally regulated. The Navigable Waters Protection Rule regulates only these categories of waters and the tributary systems that provide perennial or intermittent flow into them through a direct surface flow connection:

- The territorial seas and traditional navigable waters,
- Perennial and intermittent tributaries to those water that have “regular meaningful” surface connections to a Traditionally Navigable Water (TNW),
- Certain lakes, ponds, and impoundments; and,
- Wetlands directly adjacent to jurisdictional waters with a surface water nexus.

As mentioned, the final rule also details 12 categories of watercourse exclusions and features that are not “waters of the United States,” such as features that only contain water in direct response to rainfall (e.g., ephemeral features), intermittent features that do not have a direct surface connection to a TNW, groundwater, many ditches, prior converted cropland, and waste treatment systems.

This new rule will negatively impact Santa Fe and New Mexico, as a whole, more than any other state in the nation for the following reasons:

- The NM Environment Department estimates that more than 90% of New Mexico’s streams, lakes, rivers and wetlands will be left without protection under the Clean Water Act as the result of the Rule.
- The Rule creates regulatory uncertainty, rather than removes it, with unclear definitions of “ephemeral”, “intermittent”, “perennial”, and “typical year”. The definitions in the new Rule are subjective, unclear, and not easily applied.
- The Rule would remove Clean Water Act protections for all ephemeral waters, and for intermittent and perennial waters, such as the Santa Fe River, that do not flow “consistently” to a Traditionally Navigable Water (TNW). Thus, important NM tributary streams such as the Santa Fe River, the Gallinas River, and the Rio Costilla, which provide water for designated uses such as public drinking water supply, agriculture, fish and wildlife habitat, livestock and wildlife watering and recreation; but do not always flow to a TNW year-round.
- New Mexico is one of only three states in the union that do not have delegation or primacy over the National Pollutant Discharge elimination System permit program pursuant to the Clean Water Act, meaning that EPA administers and issues NPDES permits in NM. Unlike most other states, NM does not have a state program in place to control surface water discharges into state waters – this means that there is now no program in place to control discharges to the majority of NM waters.
- Wetlands that do not have direct surface connection to a jurisdictional water will be left

without protection by this rule. This is well over half of New Mexico's wetlands including a majority of the wetlands in the SF area, which are typically fed by ephemeral or intermittent flows, or groundwater seepage.

- The drinking water supplies of a large number of people, living in cities such as Santa Fe and Albuquerque, are negatively impacted by this rule. Pollutant discharges, such as the ones originating at Los Alamos, to ephemeral or intermittent streams, will no longer be regulated under the NPDES permit program and will be left unregulated unless New Mexico develops its own programs for the regulation of these discharges. Other water sources, such as the Santa Fe River, will also be unprotected from pollutant discharges.