

City of Santa Fe



New Mexico

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AGENDA

**THE CITY OF SANTA FE
And
SANTA FE COUNTY**

BUCKMAN DIRECT DIVERSION BOARD MEETING

THURSDAY, APRIL 7, 2011

4:00 PM

CITY HALL

CITY COUNCIL CHAMBERS

200 Lincoln Avenue

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES FOR THE MARCH 3, 2011 BUCKMAN DIRECT DIVERSION BOARD MEETING**
5. **APPROVAL OF CONSENT AGENDA**
6. **MATTERS FROM STAFF**
7. **FISCAL SERVICES AND AUDIT COMMITTEE REPORT**

CONSENT AGENDA

8. Project Manager's Monthly Project Exception Report. (Rick Carpenter)
9. Update by Rick Carpenter on Financial Status of Contracts. (Rick Carpenter)
10. Project Manager's Report on Staffing and Training Program Progress. (Rick Carpenter and Stephen Hoffman)
11. BDD Public Relations Report for February and March, 2011. (Lynn Komer)

12. Update on Staffing and Vacancies. (Robert Mulvey and Stephen Hoffman)

DISCUSSION AND ACTION ITEMS

13. Request for Approval of Amendment to the FY 2011/2012 OMR&R Budget Request and Five Year OMR&R Project in Regard to the Emergency Reserve Fund to Provide for Additional Procedures for Notification When the Fund is Utilized and for Replacing the Fund Balance. (Nancy Long and Bob Mulvey)
14. Request for Review and Conceptual Approval of the Required Mitigation Plan Prepared by Parametrix for Off-Setting Aquatic/Wetland and Upland Habitat Impacts Associated with Construction and Operation of the BDD Project. (Rick Carpenter and Todd Caplan)
15. Discussion and Request for Approval of Amendment No. 1 to the LANL/DOE Grant. (Rick Carpenter and Nancy Long)
16. Discussion and Request for Approval of Amendment No. 18 to the Professional Services Agreement Between the Buckman Direct Diversion Board and Camp Dresser McKee for Expanded Aquatic and Geomorphic Surveys for the Sediment Return NPDES Permit on Labor and Expenses Basis for the Amount of \$143,864.00 Plus \$10,070.00 NMGR for the Total Amount of \$153,934.00. (Rick Carpenter and Mark Ryan)
17. Termination of the Professional Services Agreement Between the Buckman Direct Diversion Board and Norman Gaume, P.E., and Consideration of the Purchase of a Professional Liability Insurance Coverage "Tail" Upon Such Termination. (Rick Carpenter and Nancy Long)

INFORMATIONAL ITEMS

18. Response to Councilor Calvert's Questions Concerning Implementation of the BDD Operator Training Program and Implications for Operational Readiness. (Bob Mulvey)
19. Update on NMFA Water Trust Board Loan/Grant Agreement for \$4,000,000 to the BDD Project. (Alan Hook)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT MEETING: THURSDAY, MAY 5, 2011 @ 4:00 P.M.

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.

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

April 7, 2011

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

Roll was called and the following members were present:

BDD Board Members Present:

Commissioner Virginia Vigil, Chair
Councilor Rebecca Wurzbarger
Commissioner Liz Stefanics
Councilor Chris Calvert
Ms. Consuelo Bokum

Member(s) Excused:

None

BDD Alternates Present:

Commissioner Danny Mayfield

Others Present:

Rick Carpenter, BDD Project Manager
Stephanie Lopez, Staff Liaison
Nancy Long, BDDDB Contract Attorney
Lynn Komer, PR Team
Robert Mulvey, Facility Manager
Steve Hoffman, BDDDB Engineer
Neva Van Peski, League of Women Voters
Todd Caplan, Parametrix
Mark Ryan, CDM
Alan Hamilton, New Mexico Wildlife Federation
Alan Hook, City of Santa Fe Water Division

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss BUCKMAN, DIRECT DIV MI.
PAGES: 20

I Hereby Certify That This Instrument Was Filed for
Record On The 26TH Day Of May, 2011 at 11:18:07 AM
And Was Duly Recorded as Instrument # 1635870
Of The Records Of Santa Fe County

Deputy Marcella [Signature]) Witness My Hand And Seal Of Office
County Clerk, Santa Fe, NM Valerie Espinoza

3. APPROVAL OF AGENDA

Noting it was mistakenly placed on the agenda, BDD Project Manager Carpenter requested that item 15. "Discussion and Request for Approval of Amendment No. 1 to the LANL/DOE Grant" be removed.

570 CLERK RECORDED 55/26/2011

Commissioner Stefanics moved approval as amended. Her motion was seconded by Councilor Calvert and passed by unanimous voice vote.

4. **APPROVAL OF MINUTES: March 3, 2011**

Councilor Wurzbarger moved to approve the minutes as published. Her motion was seconded by Commissioner Stefanics and passed by unanimous voice vote.

5. **APPROVAL OF CONSENT AGENDA**

- 8. **Project Manager's Monthly Project exception Report**
- 9. Update by Rick Carpenter on Financial Status of Contracts [isolated for discussion]
- 10. Project Manager's Report on Staffing and Training Program Progress [isolated for discussion]
- 11. **BDD Public Relations Report for February and March 2011**
- 12. **Update on Staffing and Vacancies**

CHAIR VIGIL: Are there any concerns on any of the items. Councilor Calvert.

COUNCILOR CALVERT: Yes, thank you, Madam Chair. Item number nine, please.

CHAIR VIGIL: Okay, any others?

COMMISSIONER STEFANICS: Item number ten.

CHAIR VIGIL: Okay, any others?

COUNCILOR CALVERT: Move for approval as amended.

COUNCILOR WURZBURGER: Second.

The motion to approve the Consent Agenda with the exception of items nine and 10 passed by unanimous [5-0] voice vote.

6. **MATTERS FROM STAFF**

MR. CARPENTER: Madam Chair, just one brief update for the Board. Last Friday pre-acceptance testing warm-up or PATWU concluded and acceptance testing began. So, for the month of April the project will be in acceptance testing mode and if all goes well and the contractors pass all of the prescribed test then this Board will assume ownership beginning May 1st.

CHAIR VIGIL: Any questions on that? Anything else, Mr. Carpenter?

MR. CARPENTER: No, Madam Chair.

7. **FISCAL SERVICES AND AUDIT COMMITTEE**
[Exhibit 1: Clifton Gunderson, 4/5/11 memo]

SPC CLERK RECORDED 05/26/2011

MR. CARPENTER: I'll do it, Madam Chair. The group decided that there wasn't enough pressing matters to convene the committee. In lieu of that the accountants prepared and distributed a memo updating the committee on the various ongoing tasks. That memo has been passed out [*Exhibit 1*] and you have it in front of you. It addressed the capital budget, operating, invoicing to the partners, cost accounting and policy matters. I'd be glad to answer any questions that the Board may have.

CHAIR VIGIL: This was emailed to us yesterday, right?

MR. CARPENTER: Correct, Madam Chair.

CHAIR VIGIL: Are there any questions? Seeing none, this is not an action item and if there's any following up questions that can be brought up to the Fiscal Audit Committee. Oh, do you have any?

COMMISSIONER STEFANICS: Madam Chair, I have a little concern. I was fine with receiving a memo as long as we received the information but we were making a decision to receive a memo and then the memo came when we would normally have a meeting – almost at that moment. And, so, if we had decided that there was something important to have a meeting about we had no time then to do that. So I do think that the timing of the memo might need to be a little sooner. I don't think that there was anything pressing or conflicting here, Councilor Calvert, unless you disagree.

COUNCILOR CALVERT: No, but I did ask Mr. Carpenter to give us a little more notice as well on the meeting because we fought hard to get that meeting time that everybody agreed to. So tell us by Friday of the week before if we're going to have that meeting or not and if not we should probably have the memo by then.

MR. CARPENTER: Madam Chair, members of the Board, we would be happy to make that adjustment.

CHAIR VIGIL: And I think one of the other alternatives was that if there was a need for a meeting and not everybody could do it, it would do something telephonically; was that an alternative?

MR. CARPENTER: A conference call is also an option.

CHAIR VIGIL: Very good. Is there any other question on the memo?

Okay.

9. Update by Rick Carpenter on Financial Status of Contracts

COUNCILOR CALVERT: Thank you. I just have a couple of quick questions. One, it strikes me a little strange with the first line of solar that it's completed and we still have the whole balance in there. Surely, we've had to pay them something, haven't we?

MR. CARPENTER: Madam Chair, cc, this is an example of the memo not keeping up to date with billing. We have had transactions with American Capital and it's just not reflected here. I'll look into why it's not up to-date.

COUNCILOR CALVERT: Okay. The next one I have a question about is Hawkins Delafield it shows 94. Is that still there and do we have any need of their services?

MR. CARPENTER: Madam Chair, Councilor Calvert, members of the Board this is a similar example. We have billed against this. There are – last time I

checked – five or six thousand dollars left on this contract, not very much at all. I would be hesitant, however, to close this contract out because we haven't closed the design build contract of the capital budget yet. So if there were any remaining items that we would need to go back to them for further clarification I would hope that the contract has not been closed out.

COUNCILOR CALVERT: Okay. The other thing – on the backside especially in light of an item that is going to be before use – there's two lines with Norm Gaume there. Is any of that money still there?

MR. CARPENTER: Madam Chair, Councilor Calvert, I checked on that just before the meeting; \$95,456 is remaining on Norm's contract.

COUNCILOR CALVERT: Okay, and we'll get to that when we have that discussion later in the agenda. I just wanted to know – is this up to date in your opinion, this \$95,000 remaining?

MR. CARPENTER: I just left the Finance Department office to come to this meeting and the I found out that they sent two checks to him last week and that's what I was told was remaining.

COUNCILOR CALVERT: And finally under Qwest I don't even honestly know what those are about but there's two line items there with Qwest.

MR. CARPENTER: That should be zeroed out as well.

COUNCILOR CALVERT: Okay. That's all the questions I have for now on that, thank you.

CHAIR VIGIL: Are there any further questions on this? If not, may we have a motion?

COUNCILOR CALVERT: Move for approval.

COMMISSIONER STEFANICS: Second.

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

10. Project Manager's Report on Staffing and Training Program Progress

COMMISSIONER STEFANICS: Thank you, Madam Chair, actually, I'll move for approval of this item. I got my question answered in item 12, because I was looking at the staffing vacancies so I'm fine with this report.

CHAIR VIGIL: Okay. There's a motion; is there a second?

COUNCILOR CALVERT: Second.

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

DISCUSSION AND ACTION ITEMS

- 13. Request for Approval of Amendment to the FY 2011/2012 OMR&R Budget Request and Five-Year OMR&R Project in regard to the emergency Reserve Fund to provide for additional procedures for Notification when the Fund is utilized and for replacing the fund balance**

ROBERT MULVEY (Facility Manager): Madam Chair, this is in response to a request that was made by the Board during the budget approval and it had to do with setting some time lines for replenishment of the emergency fund. In approaching this we really had no scientific method. There was a lot of judgment involved in setting these thresholds but our goal was to make sure that the fund was adequately funded at any given time and that the partners had enough time to go through their budget process and replenish the fund should that be necessary. So we put in place two scenarios: if the fund drops below the \$2 million threshold, somewhere between \$2 million and \$500,000, we would come to the Board and ask them to replenish that within one year within the next budget cycle. And if dropped below \$500,000 we thought it was prudent to allow two years to replenish the fund.

I think one of the messages that we'd like to get across is that if we ever have to dip into this fund that communication is vitally important and we'll be talking to the Board and letting them know where we are and if you want to make any types of changes or recommendations at that time we could accommodate them.

CHAIR VIGIL: Any questions? Councilor Calvert.

COUNCILOR CALVERT: I just wanted to ask on your memo where the paragraph starts with "Staff, counsel and the Board" at the end of that paragraph starting about five lines from the end of that paragraph it says, "In the event an emergency should occur..." and it goes through this other language and I'm wondering why that isn't part of the amendment or whatever we're calling this on the backside.

MR. MULVEY: Madam Chair, Councilor Calvert, we recognized when we put this policy together that we could not anticipate all possible emergencies.

COUNCILOR CALVERT: No, I understand.

MR. MULVEY: Scenarios may arise whereby an emergency requires more than \$2 million and we would want to initiate the conversations at that point to work through that.

COUNCILOR CALVERT: Right. So I don't know why we don't just take that language you have there at the end of the paragraph and that "c" on the back and make that part of the procedures.

MR. MULVEY: We would be happy to do that.

COUNCILOR CALVERT: So, I would move for approval with that amendment.

COUNCILOR WURZBURGER: Second.

CHAIR VIGIL: I have a motion and a second. Any discussion on that?

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

14. Request for Review and Conceptual Approval of the Required Mitigation Plan prepared by Parametrix for Off-setting Aquatic/Wetland and Upland Habitat Impacts Associated with Constriction and Operation of the BDD Project

MR. CARPENTER: Thank you, Madam Chair and members of the Board, what staff is asking for and by the way, Mr. Todd Caplan with Parametrix who prepared this plan is in the audience and he may have some comments and can help

answer questions. This is a plan that is required by the resource agencies, Forest Service and the BLM, pursuant to our Record of Decision and our final Environmental Impact Statement and it outlines in specificity what we are required to do to mitigate for environmental impacts that are associated with this project. We will come back to the Board at a later date when RFPs have been issued and bids are received for individual projects to do some of these restoration projects that are outlined in the plan.

This plan has been submitted to the Forest Service, the BLM, they are in concurrence with it and we are asking for conceptual approval from the Board. There is a budget of just shy of \$1 million to do all of the required mitigation. Those funds have been and are included in the approved capital budget to complete this work and with that I might invite Mr. Caplan if he has any summary comments to add and we would be happy to stand for any questions. Oh, and one – Madam Chair, what you have in your packet is a cover memo and executive summary. There is a very long and very detailed report too big to even email but if the Board would like that report we would be happy to put it on a disc and provide that to you.

CHAIR VIGIL: Question from Councilor Wurzbarger.

COUNCILOR WURZBURGER: Mr. Carpenter, would you please clarify the budget implications of this where we are with budget in terms of paying and how this has been paid for.

MR. CARPENTER: I'm sorry, Madam Chair, I don't follow the question.

COUNCILOR WURZBURGER: I beg your pardon. This is what I called you on today and I thought there was some – you know, you answered the question that it was in budget. I see that it is in the background. I'm sorry, no questions.

CHAIR VIGIL: Yes, Councilor Calvert.

COUNCILOR CALVERT: So having stated that in the first paragraph, on the back you have the budget so my question is what is the actual budget for this bit that we do have in our budget.

MR. CARPENTER: Madam Chair, Councilor Calvert, it's right at \$1 million.

COUNCILOR CALVERT: So this is slightly under budget?

MR. CARPENTER: Yes, and it's an estimate, Councilor Calvert.

COUNCILOR CALVERT: I understand but it has also got a 10 percent contingency built in already.

MR. CARPENTER: That's correct.

COUNCILOR CALVERT: Okay. And, then the one other question I had had to do with the use of the herbicides and I'm wondering if the plan envisioned because I didn't necessarily see that in the executive summary but I may have missed that, if we are allowed to do that are we timing that when the river is at its lowest so that the chances of water interacting with the herbicide are the least?

MR. CARPENTER: Madam Chair, Councilor Calvert, the use of herbicides is recommended. It's the most effective way to deal with the noxious vegetation. It's under evaluation currently by the Forest Service to deal with those kinds of concerns that you have outlined and that's exactly the type of thing I would ask Mr. Caplan to add some specifics to.

TODD CAPLAN: Madam Chair, Councilors, in terms of the timing for the herbicides it is always done during the fall/winter period when the plants are dormant

and there aren't nesting birds in the trees. It will be applied with point-specific cut stump treatment it's called. So it is applied directly on the freshly cut surface of the stump. The groundwater in the mitigation area is greater than five feet so there's very little potential for any interaction with the surface water. So directly answering your question about the timing of low water, yes, fall-water is typically when low flows occur in the river.

CHAIR VIGIL: Any other questions? Yes, Conci.

MS. BOKUM: I had a question on that same point. I just wondered, this memo was written a little while ago, and I was wondering what the status was of the assessment that is being conducted. Has anything changed since this was written in terms of –

MR. CAPLAN: No, nothing has changed. I think this was dated March 29th and we received approval from the Forest Service prior to that date.

MS. BOKUM: I had one other sort of question and a comment. My copy of the schedule doesn't have anything in it. Is it possible to get it?

COUNCILOR CALVERT: Oh, yeah, the reproduction doesn't show up.

MR. CARPENTER: Madam Chair, Board member Bokum, we'll get you a color copy.

MS. BOKUM: This memo talks about the collaborative approach and a lot more is happening out there then I think is required for the acceptance of this project. And I go out there and it's a mess right now and I'm just really happy to see that this cause is contributing to fixing it up and there's going to be more that's going to happen and it's will be lovely and I want to thank all of you.

MR. CARPENTER: Madam Chair, Board member Bokum, Mr. Alan Hamilton is also in the audience. We invited him to come and if you would also like to hear from him on his efforts that are being proposed in tandem with ours so that there's a synergistic effect out there. He's here and can address any questions you may have.

CHAIR VIGIL: Please step forward if there's anything you can add to this to enhance our knowledge.

ALAN HAMILTON (New Mexico Wildlife Federation): Madam Chair, members of the Board, it has been a wonderful collaborative endeavor that has taken place between Buckman Diversion, between the Forest Service, BLM, San Ildefonso and I'm the conservation director for the New Mexico Wildlife Federation and we received funding to do restoration in the area north of where the mitigation is going to be taking place. So between San Ildefonso's project across the river, between the mitigation efforts in between the work that we're going to be doing, almost all of the Buckman area is going to be restored and hopefully we're going to create an area that is going to be safe and enjoyable for people in Santa Fe County to go and spend time.

We're in the process right now of doing our environmental assessment and that's in addition to doing the assessment for the restoration of the riparian areas north of the diversion. We're also including action items for infrastructure for recreation including toilets and decommissioning some roads and doing some kiosks and some tables to really help protect and confine the area from being impacted by off-road vehicles and other uses that aren't really desirably out there anymore. So it's been a great process and I thank you all for your support and I ask for your continuing support as we go forward working for the approval of our environmental assessment.

CHAIR VIGIL: We've been talking here wondering who is going to be maintaining all of this; do we know, Rick?

MR. CARPENTER: Madam Chair, members of the Board, the plan that is in your packet contemplates ongoing maintenance for some period of time, not indefinitely. That's what has been built into it. The Forest Service especially was reticent to sign onto anything that would require perpetual maintenance and having to fund that. But we are looking out into the future as far as we can see and doing mitigation monitoring to make sure that what is planted and restored actually takes and thrives and can be self-sufficient ongoing at that point.

CHAIR VIGIL: Anything else you need to add? Conci?

MS. BOKUM: Thank you all for doing this.

CHAIR VIGIL: We appreciate the collaborative effort. Councilor Calvert.

COUNCILOR CALVERT: So you're asking for conceptual approval at this point; is that right?

MR. CARPENTER: That's correct.

COUNCILOR CALVERT: Move for approval.

MS. BOKUM: Second.

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

16. Discussion and Request for Approval of Amendment No. 18 to the Professional Services Agreement between the Buckman Direct Diversion Board and Camp Dresser McKee for expanded aquatic and geomorphic surveys for the Sediment Return NPDES Permit on labor and expenses basis for the amount of \$143,854.00 plus \$10,070.00 NMGR for the total amount of \$153,934.00

MR. CARPENTER: Thank you, Madam Chair. Similar to the previous item that we just discussed, this is required by the Environmental Protection Agency that the project must do in order to comply with the NPDES permit. The Board may recall that that's the permit that allows the project to put sand that is separated from the river water back into the river as opposed to trucking it to the landfill. By the way, I was reminded today by the project engineer that trucking the sand to the landfill would add between half a million and \$800,000 per year to the operational budget of the project. So this was a big accomplishment for the project to negotiate this permit with EPA. They recently got back to us on the specifics of what they were going to require in order for us to comply with the permit stipulations and that is the subject of this contract amendment to provide those aquatic and geomorphic surveys in order to comply with the permit.

CHAIR VIGIL: Councilor Wurzbarger.

COUNCILOR WURZBURGER: Mr. Carpenter, that is the one that I had the money question about and I don't think that you've addressed that. Where are we getting the money for this?

MR. CARPENTER: Madam Chair, we didn't know, we couldn't know what the requirements would be so we did not have a specific line item in the capital budget. I talked to the accountants before the meeting to verify that there are available

funds in the contingency fund in the budget and that's what would be used to cover these costs.

CHAIR VIGIL: Any other questions? Councilor Calvert.

COUNCILOR CALVERT: So on the first page we're saying that the original amount on amendment 8 that we allocated for this was \$72,000; correct?

MR. CARPENTER: That's correct, Councilor Calvert.

COUNCILOR CALVERT: And then on the third page, and I'm not exactly clear what's being referenced here but it says the increased requirements from the EPA coupled with the lessons learned while conducting the two assessment events in 2010 have increased the cost of the remaining surveys by approximately 46 percent. And then we get to the bill for this which is 200 percent of the original amendment so I'm trying to understand the explanation and the math and some of those things.

MR. CARPENTER: Madam Chair, Councilor Calvert, if I could invite Mr. Ryan to respond to that question.

MARK RYAN (CDM): Madam Chair, members of the Board, actually the increase in the number of transects and that's the surveys across the river for both the geomorphic and the aquatic is actually an 87 percent increase for just the number of surveys. However, on top of that there's also additional sediments analysis that has to be done on each of the surveys and statistical analysis and the aquatic sampling is much larger and has to be done on each one and there's also an issue of getting in the river at flows greater than 1,000 cfs. The 46 percent increase actually, I'm sorry for that mistake, that really should have been an 87 percent increase in the number of transects and that's just the number of transects. So the actual budget increase would be an increase of \$143,000 over that \$72,000. So that percentage is incorrect and I apologize for that mistake.

COUNCILOR CALVERT: So basically this amendment is 200 percent of the original amendment, right?

MR. RYAN: That's correct.

COUNCILOR CALVERT: All right. That's all the questions I have.

CHAIR VIGIL: Any other questions?

COUNCILOR WURZBURGER: Move for approval.

CHAIR VIGIL: I have a motion. Do I hear a second?

MS. BOKUM: I'll second.

CHAIR VIGIL: Any further questions?

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

17. Termination of the Professional Services Agreement between the Buckman Direct Diversion Board and Norman Gaume, P.E., and consideration of the purchase of a Professional Liability Insurance Coverage "Tail" upon such termination

MR. CARPENTER: Thank you, Madam Chair. Real briefly and then I'll turn it over to Ms. Long. We've reached the point in this project where Mr. Gaume's relatively specialized services are really no longer required. We're able to get by without

him. That coupled with his very strong and recent desire to completely retire has prompted us to come to this board and request that we terminate Mr. Gaume's contract and there are some specifics that are associated with that are included in the contract and I'll turn that over to Ms. Long.

NANCY LONG (BDD Board Counsel): Madam Chair, Mr. Gaume's professional services agreement like other professional services agreements requires a professional liability insurance to continue after the substantial completion of the contract and ever after the professional services agreement would terminate. We require that because most policies are going to be a claim made policy rather than occurrence. So even for something that may have occurred a year, or two or three prior the coverage will kick in as to when the claim is made so we have required that everyone keep their professional insurance liability insurance beyond when their contract is up.

Mr. Gaume did not have insurance otherwise. Most entities that you contract with are doing a number of other projects and performing work for other clients so they are going to have generally available their professional liability insurance and they'll just get an endorsement for the board. Mr. Gaume did not have that. He had a different circumstance where he did not buy insurance. He did not ever have it. He contracted with the Board individually not as a business or an entity. When we required that of him and when we went out to the market to buy it, it turned out that that insurance was actually going to cost more than his contract amount. So we amended and allowed that the Board would pay for that insurance. Last year that was about \$4,000 just to make sure that the Board was protected and it also protects Mr. Gaume. We also provided in that amendment that upon termination of the contract because we do a pass through on the insurance amount that the Board could decide to continue tail insurance coverage otherwise he will not continue it for another three years.

We do not know the precise cost of that. Our insurance consultant has been trying to work on that. We think it will be less than his premium was per year per last year and that was about \$3,900. But to be safe we're saying it's going to be about \$10,000 to \$12,000 for three years' worth of coverage. That would protect the Board.

Mr. Gaume is not sure that that's required and I don't think he really has a position on whether the Board should procure that insurance for him. Our insurance consultant is very adamant that it would be beneficial to the Board to have this coverage because of his extensive involvement in so many aspects of the project over so many years. It would be extra protection and probably never need it but it's something that is advisable for the Board.

There are really two matters to vote on. Terminating his contract which would otherwise terminate June 30, 2011 which is coming up but he wants to terminate now and his services are no longer required. And then whether to continue that tail insurance coverage. I believe that if we come back to you and the cost is prohibitive or if we decide we only want one year worth of coverage we can still take action in the future to modify the insurance requirement.

CHAIR VIGIL: Okay. Commissioner Stefanics and then Councilor Calvert and then Councilor Wurzbarger.

COMMISSIONER STEFANICS: Thank you, Madam Chair. A couple of questions about the insurance side of things. What type of claims could be envisioned?

MS. LONG: There could be claims directly by the Board for any professional negligence in terms of work that Mr. Gaume might have performed as an engineer in putting together plans, advising, not very likely but that would be one type of claim. Another type of claim would be an indemnity claim so that if a third-party sued the Board, sued Mr. Gaume, sued our law firm and sued everyone in the mix then we are required to indemnify the Board if it is due to our actions. That's another type of claim that we could make against Mr. Gaume based upon a third-party claim.

COMMISSIONER STEFANICS: So, Madam Chair, most of these claim examples that you're giving would involve our Board against Mr. Gaume.

MS. LONG: I believe so, yes. There could be those indemnification types of claims. So that if someone sued the Board and the Board felt it was due to Mr. Gaume's action that would be a claim – it would be against Mr. Gaume by the Board. There could be third-party claims where everybody would get lumped in together and we would certainly want insurance coverage for everybody that was a defendant in that case. But most of the claims, I believe, would be a direct claim for professional negligence.

COMMISSIONER STEFANICS: Madam Chair, I might have a question later but I'll stop right now. Thank you.

CHAIR VIGIL: Councilor Calvert.

COUNCILOR CALVERT: You were saying, I think I heard you say, Ms. Long, that we could supposedly approve this for three years but maybe subject to approval on an annual basis and discussion so that we know if we really need to continue it.

MS. LONG: Yes, and that is what I would recommend.

COUNCILOR CALVERT: So I would like to make a motion that we accept the termination and approve the insurance subject to that condition of three years with annual discussion and renewal approval and also that we move the remainder of his monies in the contract over to the contingency fund.

COUNCILOR WURZBURGER: I'll second that with a friendly amendment I hope. And, that is that it is noted that the termination is – I love newspapers as you all know – I would never want it alluded or implied that this was not something that was requested by Mr. Gaume given all the significant contribution that he has made to this project. So if there's some language that you could help me with here –

COUNCILOR CALVERT: Voluntary.

COUNCILOR WURZBURGER: Yes, "voluntary" as a friendly amendment if you don't mind.

CHAIR VIGIL: I have a motion is there any discussion?

MS. BOKUM: Excuse me, Madam Chair, are we doing the motion with the friendly amendment. I gather that the insurance expert is looking at cost and you understood what it might be and I would think it would come back to the Board if it were beyond that.

COUNCILOR CALVERT: Yes, if it's significantly different.

COMMISSIONER STEFANICS: Could we separate the motion? One being the termination and the second one on the insurance.

CHAIR VIGIL: Yes, we'll need a withdrawal of the motion and friendly amendments here.

COUNCILOR CALVERT: I'll withdraw my motion.

COUNCILOR WURZBURGER: I agree.

CHAIR VIGIL: Okay, let's have one motion on the termination.

COUNCILOR CALVERT: One motion to accept the voluntary termination of Norm Gaume.

COUNCILOR WURZBURGER: Second.

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

COMMISSIONER STEFANICS: And, Madam Chair –

CHAIR VIGIL: Commissioner.

COMMISSIONER STEFANICS: I'd like to echo what other members of the Board have indicated that we truly appreciate the work of Mr. Norm Gaume and he brought us several steps ahead that we needed.

CHAIR VIGIL: Okay. We have another action item and that's considering professional liability insurance. Can somebody make the motion with all the friendly amendments that were discussed; Councilor Calvert?

COUNCILOR CALVERT: Yes, I think I can. I make a motion that we approve the insurance for Mr. Gaume for three years with annual discussion and approval and that if the amount is significantly more than was estimated it comes back for approval by the Board.

COUNCILOR WURZBURGER: Second.

COMMISSIONER STEFANICS: I have a question.

CHAIR VIGIL: Question.

COMMISSIONER STEFANICS: Madam Chair, and I don't know if Nancy or Rick if you could answer this, if we're paying for the professional liability insurance would it cover more than his activities and work with the BDD? It says professional liability policy and it doesn't say BDD.

MS. LONG: And that is a good question. If it is a true tail policy it will only cover this project. They are, they being Mr. Waddell and Norm, have been looking for the type of insurance that would best cover this as well as the price and there may be some advantage to just continuing professional liability insurance for him rather than a true tail policy and in that case it would cover anything else that he might do although he is retired at this point and there would not be a need for it but it may be cheaper insurance. So that is a good question but a true tail policy if that's what we end up with will only be for this professional service agreement with the Board.

COMMISSIONER STEFANICS: So we at this point, Madam Chair, have no comparison of a tail policy versus his professional liability cost.

MS. LONG: We do not. We believe it should be something less but not more than what his professional liability policy has been.

COMMISSIONER STEFANICS: Well, Madam Chair, the reason I ask this question is if we end up with a professional liability and he incurs work on his own then there would need to a reconsideration and I don't know that we would know that unless we put language into the agreement that we're supporting the financing of this as long as it is all related to his work with us but if it relates to other work, then there needs to be a pro rata or something.

COUNCILOR WURZBURGER: Just make it a condition, that's all you have to do. Make it a condition.

COMMISSIONER STEFANICS: I'll leave it to the maker of the motion.

COUNCILOR CALVERT: Well, I guess so what you were saying is that a general liability insurance might be cheaper but it also might complicate us in other matters that aren't related to the Board so I think maybe the best part is just to keep it as a tail policy and is that sort of what you're –

COMMISSIONER STEFANICS: Well, Madam Chair and Councilor, a tail policy would be cleaner but if it's going to be more expensive it might not be the best condition. So I don't what to prescribe which policy we end up with but I do just want the distinction put into probably a friendly amendment that any other work that is under this policy would be deducted from our payment.

COUNCILOR CALVERT: Okay.

CHAIR VIGIL: Would the maker of the motion consider that a friendly amendment?

COUNCILOR CALVERT: Yes, I move that.

COUNCILOR CALVERT: And the seconder?

COUNCILOR WURZBURGER: Yes.

COUNCILOR CALVERT: I have to make one amendment because I left it out. It was in my original motion and I left it out and that is that the remainder of his contract be moved over to the contingency fund. Is that friendly?

COUNCILOR WURZBURGER: Uh-huh.

CHAIR VIGIL: Okay, does everybody understand the amendments? Any other questions?

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

COUNCILOR WURZBURGER: May I ask one thing?

CHAIR VIGIL: Yes.

COUNCILOR WURZBURGER: When will we have the information on the cost and can that just be a staff direction to get that information back to us as soon as possible?

MS. LONG: Yes, I think we'll have it within a week.

COUNCILOR WURZBURGER: So we'll have it at the next meeting.

MS. LONG: Yes, we can make that a staff report at the next meeting.

COUNCILOR WURZBURGER: Okay.

CHAIR VIGIL: Okay, if you would please.

INFORMATIONAL ITEMS

18. Response to Councilor Calvert's questions concerning implementation of the BDD Operator Training Program and Implications for Operational Readiness

MR. MULVEY: Madam Chair, this is a memo in response to Councilor Calvert's question at the last meeting regarding our training program and whether or not we would be completely staffed up and have our staff trained in time for operating the plant. As I go back through my memo, I put quite a bit of detail in there that describes how our training program is transforming to meet our newer business needs, being able to run the plant and still reserve enough time to do the training properly.

COUNCILOR CALVERT: Okay, well, if I may?

CHAIR VIGIL: Please, Councilor.

COUNCILOR CALVERT: Is there any update to the status of hiring? In other words, I think the information and the numbers that we got in here – if we got any newer ones I don't recall, but we still had about six positions and most of them were maintenance – has there been any headway on the positions that were reported in the last meeting?

MR. MULVEY: Madam Chair, Councilor Calvert, yes. We've closed all of the positions and we're in the process of doing interviews right now to bring those positions on, hopefully, in the very near future.

COUNCILOR CALVERT: Okay, and then just one other comment that was sort of the genesis of this approach, and, again, I think staff was stepping up and meeting the challenge of providing the training that allowed us to hire the staff locally. Whatever training mechanism we use in the future whether it is more OJT versus classroom, I still want that emphasis on the home-grown talent and employment aspect of this project.

CHAIR VIGIL: Any other comments on this? Okay.

19. Update on NMFA Water Trust Board Loan/Grant Agreement for \$4,000,000 to the BDD Project

ALAN HOOK (City of Santa Fe Water Division): Madam Chair, Board members, my name is Alan Hook with the City's Water Division. I hope to be bringing the Board good news. This is the update on our fiscal year 2010 award from the Water Trust Board of \$4 million. It's basically \$3.2 million in the form of a grant and the other \$800,000 is a loan for ¼ percent administrative over 20 years. And, as of March 30th the City Council approved the ordinance and the acceptance of this award and right now, as you see in your memo, May 6th is our scheduled date for final signature by the Water Trust Board chairman and also the Mayor of Santa Fe.

I stand for any questions?

CHAIR VIGIL: Any questions? This is good news.

COUNCILOR CALVERT: Yes, thank you.

CHAIR VIGIL: Thank you very much. We really appreciate that.

MATTERS FROM THE PUBLIC

None were offered.

MATTERS FROM THE BOARD

CHAIR VIGIL: Is Lynn still here? Lynn, we had a preliminary meeting on the groundbreaking and we talked about some alternatives. Do you want to address a little bit of the discussion we had and I'll try and fill in on some of that. I can't even remember the date but we did talk about a site and I want her to address some of the things that we have discussed. These aren't final because we'd like Board input on this also.

LYNN KOMER (Public Relations): Thank you, Madam Chair. As you described we met before kind of as a timesavings mechanism to figure out the direction the Board wants to take with the dedication ceremony. We do have a date; it's May 24th 2 p.m. The discussion began with the public's involvement and that the public of course would be invited, and then there was – I would say that the discussion then moved toward making it a different type of celebration involving the future, kind of bridging the future, and involving children and maybe the water festival something along those lines. The alternative to having it at the Buckman Regional Water Treatment Plant would be the and I don't have the correct name but the old reservoir –

COUNCILOR WURZBURGER: It's the water park, but it's a historic building, on Canyon Road across from Cristo Rey.

MS. BOKUM: Water Plant Park.

COUNCILOR WURZBURGER: That's where Virginia said the water started, the first reservoir.

CHAIR VIGIL: The first reservoir that the citizens of Santa Fe were really familiar with that was visible.

COUNCILOR WURZBURGER: I was ready to go down 11 miles to the river.

CHAIR VIGIL: We actually had talked about doing it on site because really the Buckman Direct Diversion Project is spectacular. But there is problems with parking and that kind of thing. So we wanted to associate it with the benefits that this project provides for the community. We wanted children involved and so we've got some ideas about integrating children or students. We sort of wanted to divert ourselves, the discussion went from the standard, you know, ribbon cutting with the County speaking and the City speaking, and really make it a community celebration of sorts. The kind of ideas that you might be able to assist us with would be very, very helpful. We thought it might be kind of picnicking up there and really celebrate this project and do it more community focused than anything else. So if any of you have any ideas, we'd love to take them. If not, Lynn is going to be coordinating this event so we can always follow up and speak with her.

COMMISSIONER STEFANICS: Madam Chair, May 24th is a Tuesday.

CHAIR VIGIL: That's correct.

COMMISSIONER STEFANICS: And school would be –

COUNCILOR WURZBURGER: We looked at other dates and have talked about that.

COMMISSIONER STEFANICS: Okay, well school is still in session. So that might affect –

MS. KOMER: Yes, but, Commissioner, we had selected a date but should the Board wish a different type of program that would occur after school is out that is certainly up to the Board.

COUNCILOR CALVERT: An educational experience.

COMMISSIONER STEFANICS: I think an education experience would be great except I don't think the schools have money to even transport kids anywhere. I'm just saying if you want the children involved which sounds like a great idea that that might –

COUNCILOR WURZBURGER: Well, we were thinking of doing it on a Sunday afternoon instead of a Tuesday when everybody is at work and make it more of a family event rather than just children and see who comes. Maybe just the option of not having what I call "SOP" the same kind of ribbon cutting and we all look at each other and we've all seen each other for seven years or nine years. Both Virginia and I were so tired – but I think we need to change that date to make that effective, you're right.

COMMISSIONER STEFANICS: Madam Chair, if the children's event is going to go forward we might also want to think about inviting museums or non-profits that could perhaps set up an activity around water. Like for example, the New Mexico Children's Museum were there and they had a water activity and then some other children's group were there and they could have a water activity and maybe even the Santa Fe Complex was there with some model board.

COUNCILOR WURZBURGER: We talked a little bit about that because we have that conservation competition with posters and that may be another hook to acknowledge kids who actually won the poster contest at the event.

CHAIR VIGIL: I think one of the follow up tasks was that Lynn was going to speak with the superintendent of schools to identify particular classroom that we might be able to target for this occasion and find out if there are barriers for their participation as Commissioner Stefanics has brought up. There may be. So I think there are still some tasks that need to be done with regard to this. Will we be meeting before – let's see our next meeting is May 5th so maybe we can get an update.

MS. KOMER: Certainly.

COUNCILOR WURZBURGER: If we want to go this way we should probably – maybe we should look to change the date.

MS. BOKUM: Madam Chair.

CHAIR VIGIL: Yes.

MS. BOKUM: There's already a big festival about the river around the same time that is very much geared toward kids.

COUNCILOR CALVERT: The fishing derby.

MS. BOKUM: It's down on Agua Fria.

COUNCILOR WURZBURGER: That's the fishing thing. When is that?

MS. BOKUM: They do a lot of things and a lot of community groups are already involved.

CHAIR VIGIL: We actually talked about that. The San Ysidro River Blessing occurs –

MS. BOKUM: This is a different one.

CHAIR VIGIL: And then there are 3rd graders at Agua Fria Elementary School have something to do.

COUNCILOR CALVERT: This is a river festival and usually they time it at the same time as the fishing derby, I think.

MS. BOKUM: But it might just be repetitive if there are too many festivals because there is already a festival that is very much geared toward kids and all the same community groups might be interested. It may be – you should definitely check it out to see.

MS. KOMER: I believe the festival that you're referring to is the Children's Water Festival that is put on by the City of Santa Fe and if I remember correctly it's an educational weeklong festival that's is held at the Convention Center.

COUNCILOR CALVERT: No, that's something different. That's something that the City, the Water Conservation Department puts on usually here at the Convention Center. But what she's talking about happens actually out along the river.

COUNCILOR WURZBURGER: We have to look at that. The question is, I mean we're not doing a children's festival – and we need to look at the location and what you think about doing it in town which is easier for people to go but it does have a historical relationship and sets a context for what we've done how many years later.

MS. KOMER: Right.

CHAIR VIGIL: I think we've got the concept. We want to work through the history and how this project has involved. The development of it and how it is an additional resource to the community, to the City and the County and incorporating community by bringing in an educational component. It doesn't have to be children. It could be teenagers, it could be adults. Those are the kinds of directions. It could be secondary students.

MS. BOKUM: Madam Chair, just a matter of information. There is a non-profit that has worked very hard to make that power plant park happen and I think they would really like this event.

COUNCILOR WURZBURGER: Mac Watson.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: That reminds me of something else. There have been a lot of groups that have watched the BDD on both sides, pro and con, and it might be a great opportunity to bring everybody together from all those different groups to be a part of this celebration.

CHAIR VIGIL: Are we good to go? Do you have enough of a direction so that you may be able to come back and give us a report on the 5th?

MS. KOMER: Yes.

CHAIR VIGIL: The only think I don't have clarity in and we threw this out, we did talk about May 24th. Is that date still acceptable to everyone or based on the discussion will we move it to June?

COUNCILOR CALVERT: We talked about moving it to a Sunday, right?

COUNCILOR WURZBURGER: If you want people to come who work, they're not going to come at 2 o'clock –

COUNCILOR CALVERT: -- on a Tuesday.

COUNCILOR WURZBURGER: -- unless they are those of us who are the same group of people who have been involved in this.

CHAIR VIGIL: So May 24th is out.

COUNCILOR WURZBURGER: I think that Tuesday is not a good day.

CHAIR VIGIL: Okay, so on May 5th you can give us some alternative dates. Is there any other matters from the Board.

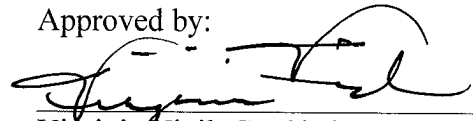
NEXT MEETING: THURSDAY, May 5, 2011 @ 4:00

2011/05/25 09:25 AM
Buckman Direct Diversion Board
Page 17

ADJOURNMENT

Having completed the agenda, this meeting was declared adjourned at approximately 5:00 p.m.


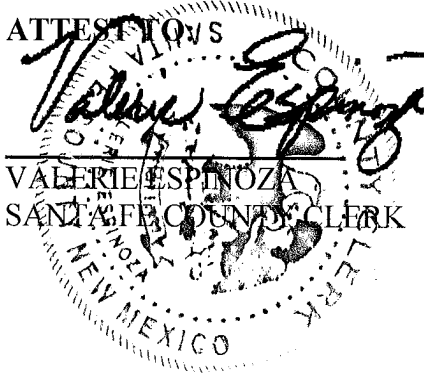
Approved by:


Virginia Vigil, Co-Chair

Respectfully submitted:

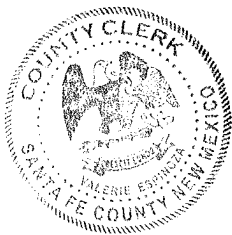

Karen Farrell, Wordswork

ATTEST TO:

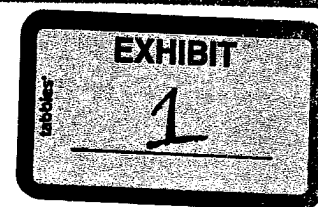

VALERIE ESPINOZA
SANTA FE COUNTY CLERK


ATTEST TO:

YOLANDA VIGIL
SANTA FE CITY CLERK



1142/32/28 00000000 045



DATE: April 5, 2011
TO: Buckman Direct Diversion Fiscal Services and Audit Committee Members
FROM: Clifton Gunderson, LLP
RE: Update on Status of Financial Management Tasks

This update memorandum has been agreed by the elected officials to substitute for the April FSAC meeting and serves to provide the FSAC Members with the current status of Financial Management Tasks. Presently, the key financial tasks of the Capital Budget Update as of December 31, 2010, Operating Billing to Project Partners, Implementation of the Cost Accounting System and Drafting of BDD Financial Policies are all in process, but not at a discussion stage for this group. Accordingly, the best use of the Committee Members' time appears to be to provide an update on the current status for each of these items at the present time.

Status of the Capital Budget Update.

Clifton Gunderson, LLP (CG) has been conducting an analysis of the transactions posted to both the Capital and Operating Budgets from July 1, 2010 through December 31, 2011.

We have been working with staff to resolve reconciling differences, properly categorize the transactions in light of their character as being either operating or capital in nature and obtaining the level of detail required to make a full status report to the Board.

Status of FY 2010-2011 Operating Billing to Project Partners

CG has been working with BDD staff and staff at the City of Santa Fe to analyze the expenditures posted to the Operating and Capital budgets for appropriate classification.

We have completed preliminary calculations of the Operating Billing by partner through December 31, 2010 and following a brief final review period the billings will be submitted to the City of Santa Fe, Santa Fe County and Las Campanas for approval and payment.

We will be rendering the Operating Billing for the first three months of 2011 through the final phase of testing for the Cost Accounting and Billing system for the BDD. We anticipate that these bills will be distributed to the BDD's partners in late April or early May for January, February and March of the current year.

NO CLERK RECORDED 5/2/2011

Cost Accounting System Implementation

We have been working closely with Mark Rook, the JD Edwards Accounting System Consultant, on the design and implementation of the cost accounting system. During March, we received a development stage version of the cost accounting system for demonstration and to initiate review and testing. During this time, Mr. Rook identified some elements of the system that needed to be improved upon in order to bring the system to full functionality. These issues have been addressed and the system is currently being set up in a final testing environment.

CG will be working with Mark Rook the week of April 4th to set up the system in the test environment, review the training plan for BDD Staff and City of Santa Fe Staff who will use and interact with the system, import test data, and test the system through mock billing runs for the January, February and March. We anticipate the testing of the system to take between 1 and 2 weeks.

We are planning for a comprehensive training with personnel who will use and interact with the system during the week of April 18th or 25th which will cover a broad base of both interaction with the system and how the cost accounting system works. An announcement will be forthcoming regarding this training on or before April 6th.

Once the cost accounting system is tested and validated, we will bring it into the live environment and import current year transactions. Then the operating cost billings for January, February and March of the current year will be invoiced to the partners. Following that billing the costs and invoices should be rendered on a monthly basis and in accordance with the Working Capital and Billing Policy.

Policy Drafting Update

Clifton Gunderson continues to support the BDD Staff through the implementation and acceptance of the BDD Facility. We are working with Staff to complete a Capitalization Policy that will be provided for your comment among many other primarily internal policies that deal with the specific accounting for costs, identification of data and financial management processes. We anticipate that as the final testing of the cost accounting system concludes and with the addition of a new financial manager these policies will be finalized in a draft form for review and comment from Staff and FSAC members.

STC CLERK RECORDED 05/26/2011