

City of Santa Fe



New Mexico

CITY CLERK'S OFFICE

DATE 3-31-10 TIME 9:50

SERVED BY Stephanie Lopez

RECEIVED BY Paula Calli



AMENDED AGENDA

THE CITY OF SANTA FE

And

SANTA FE COUNTY

BUCKMAN DIRECT DIVERSION BOARD MEETING

THURSDAY, APRIL 1, 2010

4:00 PM

CITY COUNCIL CHAMBERS

200 Lincoln Avenue

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES FOR THE MARCH 4, 2010 BUCKMAN
DIRECT DIVERSION BOARD MEETING**
5. **APPROVAL OF CONSENT AGENDA**
6. **MATTERS FROM STAFF**

CONSENT AGENDA

7. Project Manager's Monthly Project Exception Report. (Rick Carpenter)
8. Update by Rick Carpenter on Financial Status of Contracts. (Rick Carpenter)
9. Request for Approval of Amendment No. 3 to the Professional Services Agreement With Cliburn & Associates, LLC to for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount of \$27,015.62 to Continue Assisting the BDDDB in the Implementation of the Photovoltaic Project and With the Public Regulation Commission Proceedings Related to Solar Power. (Rick Carpenter)

DISCUSSION AND ACTION ITEMS

10. Request for Approval of CDM Amendment No. 12 for Completion of Applications for PNM Rebate for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount \$27,015.62. (Rick Carpenter & Mark Ryan)
11. Request for Approval of CH2MHill/Western Summit Constructor Joint Venture Change Order No. 14, BS3/4 Parallel Pipeline Preliminary Design and Permitting for the Amount of \$526,943.00 Plus \$42,485.00 (NMGRT @ 8.0625%) for a Total Amount of \$569,427.77 (Rick Carpenter & Mark Ryan)
12. Request for Approval of CDM Amendment No. 13 for Assistance With New BS3/4 parallel Pipeline for the Amount of \$27,168.00 Plus \$2,190.42 (NMGRT @ 8.0625%) for a Total Amount of \$29,358.42. (Rick Carpenter & Mark Ryan)
13. Request for Approval of Amendment No. 4 the Legal Services Agreement Between the Buckman Direct Diversion Board and Long, Pound & Komer, P.a. for Continued Legal Services for the BDDDB in the Amount of \$220,000 Plus \$17,737.50 (NMGRT @ 8.0625%) for a Total Amount of \$237,737.50. (Rick Carpenter)

EXECUTIVE SESSION:

Discussion of Threatened Litigation Concerning the PNM Substation Site Pursuant to Section 10-15-1 (H) NMSA 1978. (BDDDB Legal Counsel)

END OF EXECUTIVE SESSION

INFORMATIONAL ITEMS

14. Update on Status of PNM Caja Substation. (Rick Carpenter) **VERBAL**
15. Report and Update on the Status of BDDDB Washington DC Lobbyist Contract and Their Efforts to Obtaining Federal Funding Assistance. (Rick Carpenter)
16. Updated on On-Going LANL MOU Negotiations. (Rick Carpenter & Kyle Harwood)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT MEETING: THURSDAY, MAY 6, 2010 @ 4:00

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.

City of Santa Fe



New Mexico

CITY CLERK'S OFFICE

DATE 3-25-10 TIME 3:10

SERVED BY Stephanie Lopez

RECEIVED BY [Signature]



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

BUCKMAN DIRECT DIVERSION BOARD MEETING

THURSDAY, APRIL 1, 2010

4:00 PM

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City of Santa Fe



New Mexico

CITY CLERK'S OFFICE

DATE 3/24/10 TIME 10:05

SERVED BY [Signature]

RECEIVED BY [Signature]



AGENDA

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And

SANTA FE COUNTY

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4:00 PM

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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BUCKMAN DIRECT DIV MI
PAGES: 27

I Hereby Certify That This Instrument Was Filed for
Record On The 18TH Day Of June, 2010 at 11:07:28 AM
And Was Duly Recorded as Instrument # 1601871
Of The Records Of Santa Fe County

Deputy Marcelle Valerie Espinoza
County Clerk, Santa Fe, NM

SEC. CLERK RECORDED 06/18/2010

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

April 1, 2010

This meeting of the Santa Fe County/City Buckman Direct Diversion Board was called to order by Chair Rebecca Wurzburger at approximately 4:03 p.m. in the Santa Fe City Council Chambers, Santa Fe, New Mexico.

Roll was called and the following members were present:

BDD Members Present:

Councilor Rebecca Wurzburger
Commissioner Virginia Vigil
Ms. Conci Bokum
Commissioner Liz Stefanics

Member(s) Excused:

Councilor Chris Calvert

Others Present:

Rick Carpenter, BDD Project Manager
Norm Gaume, BDD Project Consultant
Kyle Harwood, BDDDB Contract Attorney
Steve Ross, County Attorney
Marcos Martinez, Assistant City Attorney
Stephanie Lopez, City Public Utilities Division
Mike Sanderson, Las Campanas
Lynn Komer, PR Team
Mark Ryan, CDM, BDD Board Engineer
Doug Sayre, County Utilities Division
Neva Van Peski, League of Women Voters
Patti Watson, Cooney Watson
George Rael, LANL Representative
Joni Arends, CCNS

APPROVAL OF AGENDA

[Exhibit 1: Agenda]

CHAIR WURZBURGER: Are there any additions or changes from staff?

RICK CARPENTER (Project Engineer): Madam Chair, yes. Staff would like to suggest we that move the Matters from the Public item up in the agenda to follow immediately after item 13, which is the last discussion and action item.

CHAIR WURZBURGER: I'm sorry. I believe it was going to be before item 10. That is my preference.

MR. CARPENTER: That would be even better.

CHAIR WURZBURGER: Thank you.

COMMISSIONER VIGIL: Move to approve with the amendment.

CHAIR WURZBURGER: May I have a second?

BOARD MEMBER BOKUM: Second.

The motion passed by unanimous [3-0] voice vote. [Commissioner Stefanics was not present for this action.]

APPROVAL OF MINUTES: March 4, 2010

Commissioner Vigil moved for approval of the minutes as published and Member Bokum seconded. The motion carried unanimously [3-0]. [Commissioner Stefanics was not present for this action.]

APPROVAL OF CONSENT CALENDAR

- 7. Project Manager's Monthly Project Exception Report (Rick Carpenter)**
- 8. Update by Rick Carpenter on Financial Status of Contracts (Rick Carpenter)**
- 9. Request for Approval of Amendment No. 3 to the Professional Services Agreement with Cliburn & Associates, LLC to for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount of \$27,015.62 to Continue Assisting the BDDDB in the Implementation of the Photovoltaic Project and With the Public Regulation Commission Proceedings Related to Solar Power (Rick Carpenter)**

Member Bokum moved for approval and her motion was seconded by Commissioner Vigil. The consent agenda was approved by unanimous [3-0] voice vote. [Commissioner Stefanics was not present for this action and arrived immediately thereafter.]

MATTERS FROM THE PUBLIC

None were offered.

EXECUTIVE SESSION:

Discussion of Threatened Litigation Concerning the PNM Substation Site Pursuant to Section 10-15-1 (H) NMSA 1978 (BDDDB Legal Counsel)

CHAIR WURZBURGER: I understand we do have an executive session proposed.

MR. CARPENTER: That is correct, Madam Chair.

CHAIR WURZBURGER: So I'll entertain a motion to go into executive session for the purposes so described.

COMMISSIONER VIGIL: Madam Chair, I move that we go into executive session to discuss threatened litigation concerning the PNM substation site.

CHAIR WURZBURGER: Okay. Could I have a second please?

BOARD MEMBER BOKUM: I'll second.

COMMISSIONER STEFANICS: I'm a little confused, Madam Chair.

CHAIR WURZBURGER: This was put on the –

COMMISSIONER STEFANICS: Right. But why aren't we doing the other items first?

CHAIR WURZBURGER: Because we made a decision that we were changing the order, because earlier discussions between the vice chair and myself regarding information that we need from the executive session that may influence how we discuss items that are under discussion.

COMMISSIONER STEFANICS: Okay.

The motion passed by unanimous [4-0] roll call vote, with Commissioners Vigil and Stefanics, Councilor Wurzbarger, and Board Member Bokum all voting in the affirmative.

CHAIR WURZBURGER: So we're going to go into executive session. We'll keep it as short as we can.

[The Board met in closed session from 4:07 to 4:33]

CHAIR WURZBURGER: Okay. Thank you for your patience. May I have a motion to come out of executive session, signifying what we did?

COMMISSIONER STEFANICS: Madam Chair, I move that we come out of executive session, having discussed threatened litigation concerning the PNM substation site, pursuant to Section 10-15-1, etc. without having made any decisions.

CHAIR WURZBURGER: Thank you, Commissioner. May I have a second?

COMMISSIONER VIGIL: Second.

The motion passed by unanimous [4-0] voice vote.

DISCUSSION AND ACTION ITEMS

- 10. Request for Approval of CDM Amendment No. 12 for Completion of Applications for PNM Rebate for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount \$27,015.62 (Rick Carpenter & Mark Ryan)**

MR. CARPENTER: Thank you, Madam Chair. Madam Chair, members of the Board, within the last few months or so we've become aware of a rebate program that is available to the Buckman Direct Diversion project for certain electrical equipment such as lighting and HVAC equipment. We would like to do additional analysis to complete the required applications for that rebate. However, that will require some work that's currently not funded for CDM in order to complete those applications. The rebate is very substantial, we believe, somewhere on the order of about \$400,000. So this would be a relatively small change order in order to avail ourselves of such a substantial rebate. Staff therefore recommends approval of the change order.

CHAIR WURZBURGER: Thank you, Rick. Questions from the Board?

COMMISSIONER VIGIL: Glad to know that. I move we approve.

COMMISSIONER STEFANICS: I'll second.

CHAIR WURZBURGER: Discussion?

The motion passed by unanimous [4-0] voice vote.

- 11. Request for Approval of CH2MHill/Western Summit Constructor Joint Venture Change Order No. 14, BS3/4 Parallel Pipeline Preliminary Design and Permitting for the Amount of \$526,943.00 Plus \$42,485.00 (NMGRT @ 8.0625%) for a Total Amount of \$569,427.77 (Rick Carpenter & Mark Ryan)**

MR. CARPENTER: Thank you, Madam Chair, Madam Chair, members of the Board, we have been analyzing and attempting to address this issue for many months and have had some specific engineering analysis recently completed that we were waiting for in order to advance this parallel pipeline. By the way, this is a new parallel pipeline that would extend from booster station three to booster four that will move water produced from the Buckman Direct Diversion project to the Las Campanas customers and also the city would have some capacity to move additional water.

We've received the engineering analysis and we're able to the matters of the recommendations that will impact it. We're now able to move forward if that is the wishes of the Board. This change order will be to cover the design costs and other ancillary costs associated with advancing the design phase of this pipeline project.

CHAIR WURZBURGER: Okay, questions from the Board?
Commissioner Vigil.

COMMISSIONER VIGIL: Thank you, Madam Chair. Explain to me, Rick, currently there is a line there. Is that correct? Explain to me what actually exists in infrastructure and what is separate or new infrastructure.

MR. CARPENTER: Madam Chair, Commissioner, members of the Board, there is an existing line there. It's the old Buckman wellfield trunk line. It's a 20" diameter pipe, 8.9 mgd capacity, intended to move Buckman wellfield water through that corridor. What this line would enable us to do is move additional water, additional capacity over and above that. To move a new increment of water that will serve Las Campanas and also other customers in that area with BDD water. So it's needed for additional capacity, additional redundancy. And by the way that trunk line is about 35 years old.

COMMISSIONER VIGIL: So that's where my question was leading. Is the capacity for this new infrastructure going to be able to be utilized when the other is outdated?

MR. CARPENTER: Yes.

COMMISSIONER VIGIL: Thank you, Madam Chair.

CHAIR WURZBURGER: Any other questions? Could I have a motion please?

COMMISSIONER STEFANICS: Madam Chair, I'll move approval of the change order for the additional costs for the four-mile, 24" diameter pipeline.

CHAIR WURZBURGER: Thank you, Commissioner. May I have a second?

BOARD MEMBER BOKUM: Second.

CHAIR WURZBURGER: Further discussion?

The motion passed by unanimous [4-0] voice vote.

12. Request for Approval of CDM Amendment No. 13 for Assistance With New BS3/4 parallel Pipeline for the Amount of \$27,168.00 Plus \$2,190.42 (NMGR @ 8.0625%) for a Total Amount of \$29,358.42 (Rick Carpenter & Mark Ryan)

MR. CARPENTER: Thank you, Madam Chair, members of the Board. This item is related directly to item 11 that you previously heard. This is for the owner's consultant to act in the role of this particular aspect of the project as they do on the project as a whole, to oversee the engineering work and permitting work that the contractor does as an extension of staff. Specifically, CDM would review the design-build contractor's preliminary design, coordinate what will end up being a lot of the work between the City and the County, and Buckman staff. They will assist in the acquisition of easements, the BLM right-of-way that's required, and the Army Corps of Engineers 404 permit, and also provide services to conduct biological and cultural resources clearances along the pipeline corridor.

CHAIR WURZBURGER: Thank you, Rick. Questions from the Board?

COMMISSIONER VIGIL: Move to approve.

COMMISSIONER STEFANICS: I'll second.

CHAIR WURZBURGER: Discussion?

The motion passed by unanimous [4-0] voice vote.

13. Request for Approval of Amendment No. 4 the Legal Services Agreement Between the Buckman Direct Diversion Board and Long, Pound & Komer, P.a. for Continued Legal Services for the BDDDB in the Amount of \$220,000 Plus \$17,737.50 (NMGRT @ 8.0625%) for a Total Amount of \$237,737.50 (Rick Carpenter)

MR. CARPENTER: Thank you, Madam Chair, members of the Board. This is a change order to continue funding for the Board's independent legal counsel. As you know, they have been and continue to be integrally involved in a great number of issues. That list of issues seems to keep growing, not least of which the triennial review which we went through and were successful and was very important, and ongoing issues with Los Alamos National Laboratories, the scope and facility work we're doing, a lot of work that we foresee coming with PNM. For example, environmental issues.

So this is to continue those services. I would also add that I've had a series of meetings with representative from Long, Pound & Komer to assure that their going rate as part of this change order will not go up. It's currently below market value, and we were able to negotiate the services at that level and not increase. In addition to that I've had several conversations with Ms. Long and members of her staff that we manage this budget and focus the efforts and clearly define the roles of legal counsel as opposed to other specialists on board. One example that I can offer of that is the work that we've been doing on the solar project which was an extremely complicated and very necessary project. What we've agreed to do is pull back certain people who have been working on that, Mr. Gaume, for example, but also independent counsel and have them focus on their specific areas of specialty and transfer that level of effort to in-house folks. We recently have been able to gain the services of Dale Lyons and others at the City who is going to take this over and do the work in-house.

So we're attempting to manage this budget as best we can, but staff still recommends approval of this change order for these important legal services.

CHAIR WURZBURGER: Okay. Thank you, Mr. Carpenter. I will now open it up for questions from the Board, starting with Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. First of all, how long do we envision that this amendment #4 would take us?

MR. CARPENTER: Madam Chair, Commissioner, that's a two-part answer. The budget that this Board approved has a line item as far as this contract contemplates 1 ½ years. I think that this amount of funding, which doesn't use up of that, by the way, it uses up most of it – this amount of funding we're planning on lasting for a year.

COMMISSIONER STEFANICS: Well, the reason I ask, Madam Chair, is because Amendment #3 was supposed to take us to December of 2010. So we're already several months short. So I'm just trying to get an idea of how long, how many months you think this would cover.

MR. CARPENTER: Madam Chair, Commissioner, members of the Board, you're absolutely right. The scope of work for the independent counsel does, or has been growing. The budget it planned for didn't seem to last quite as long as we would have liked for it to. But the efforts that I outlined just a few moments ago I think will make this

estimate of how long the money will last more realistic. We're planning for this to last at least a year.

COMMISSIONER STEFANICS: Okay. And Madam Chair, on the last page of our handouts, it says Buckman Direct Diversion Board summary of contracts, agreements and amendments – it's a form. I'm just wondering if there's a problem. The last page, number of 5 at the top under date, it says June 29, 1905. Last page of the form. So if this is a mistake our documents need to be corrected somewhere.

MR. CARPENTER: It's a typo, for sure and I will research it and correct it.

COMMISSIONER STEFANICS: Okay. Thanks.

CHAIR WURZBURGER: Thank you, Commissioner. Further questions? May we have a motion please?

COMMISSIONER STEFANICS: I'll so move to request for approval of Amendment #4 to the legal services agreement.

CHAIR WURZBURGER: Thank you. May I have a second?

BOARD MEMBER BOKUM: I'll second.

CHAIR WURZBURGER: Thank you. Further discussion?

The motion passed by unanimous [4-0] voice vote.

INFORMATIONAL ITEMS

14. Update on Status of PNM Caja Substation (Rick Carpenter) VERBAL

MR. CARPENTER: Thank you, Madam Chair. Madam Chair, members of the board, this project uses a lot of electric power and so certain upgrades to PNM's system to serve the area of the Buckman project, the Buckman project specifically but also other customers, are required. We have evaluated, going back to the early 2000s and received approval of two sites that are suitable for the construction for PNM to build a new substation. Recently there has been some issues raised to us with regard to one of those sites. Therefore staff is requesting that PNM do additional research on the viability of those sites and the feasibility of moving the prior site to the other site, potentially. So we'll be going through that analysis in the coming weeks and we'll be happy to report back to the Board as necessary, certainly by the next Board meeting.

CHAIR WURZBURGER: Thank you, Rick. Any questions at this point? Okay. Thank you.

15. Report and Update on the Status of BDDDB Washington DC Lobbyist Contract and Their Efforts to Obtaining Federal Funding Assistance. (Rick Carpenter)

CHAIR WURZBURGER: I'm very much looking forward to this report.

MR. CARPENTER: Thank you, Madam Chair. Madam Chair, members of the Board, Ferguson Group has been under one contract or another providing lobbying

services going back to the year 2000. Most recently they've been a subcontractor to CDM as the owner's agent on this contract. It dates back to the execution of CDM's contract as the owner's agent, several years. We've expended under that contract a total of \$102,000 in the first efforts to obtain federal funding for this project and to help us on policy-related and permitting issues back in Washington, DC.

They're averaging a burn rate of about \$23,500 a year on this contract. There is \$24,000 remaining unexpended on the contract. That will carry us for a while if the Board chooses. I would also add that one of the major things that Ferguson Group is working on right now is rural water projects, funding assistance for this project. As recently as last week we've had extremely positive feedback from the Bureau of Reclamation who will be administering this funding project.

On our efforts it's looking really good. It didn't always look good. It's been several years before we got the feds to come through and they didn't. But it's starting to look better. So we're fairly optimistic about going forward. But we'd love to hear what the concerns or issues are, if there are concerns of the Board about what the Ferguson Group has done, and more forward that way.

CHAIR WURZBURGER: I'll let other people talk first if they would care to do so.

COMMISSIONER STEFANICS: Madam Chair and Rick, I think that it would be appropriate for our lobbyist to provide a written report or status update of the various funding sources they have attempted, so that we know. Any time in the future that they pursue something it would appropriate for us to be notified so that we in turn could comment to our congressional members as we see them socially or in business meetings. I do believe that we could be of assistance but I would like to see that there's some specific activity that goes on for this particular contract.

MR. CARPENTER: We can provide that at the next Board meeting.

CHAIR WURZBURGER: Anyone else? Okay, I don't want to be overly cynical on this but I certainly agree with your comment. My understanding after going to Washington several times and tracking this is that we – really our only option at this point would be this rural water loan fund, and I don't know. When did we go back on it last time? Four years ago? Three years, four years ago? And for a while we were “guaranteed” and then we were later told you can't even be considered. So I really do want us to stay on top of this because at some point I'm comfortable saying they've done a great job but they haven't been able, for whatever reason, Congress has not decided that it's important. At least not for the City of Santa Fe, and I would just as soon not spend the money. But perhaps I could build on your idea and say if we could, instead of getting reports on this – if we get any sort of report on this on what the projected timeline is for our possibly getting this money and what the decision points are, to build on Commissioner Stefanics's idea. We could then contract our delegation if we're really in the running for something [inaudible] So that's what I would add to the discussion. Commissioner.

COMMISSIONER STEFANICS: And Madam Chair and Rick, I'm wondering, have they ever approached our members for an earmark request?

MR. CARPENTER: Madam Chair, Commissioner, members of the Board, yes. We've used the Ferguson Group on a variety of potential opportunities, including direct legislation asking one member or another to drop a bill a for us, or to participate in

various programs. Pretty much any and every opportunity for federal funding has been examined and evaluated by our staff and the Ferguson Group and in some cases attempts to advance it, like the rural water program. So, yes, we have directly approached members of the delegation, both members of Congress and Senators.

COMMISSIONER STEFANICS: Well, what I'm mentioning, Madam Chair, is something very specific. Did our lobbyist put in earmark requests, in writing, to all of our members? And if not, to our two senators and to our congressman. And if not, then we never had the opportunity to be even in the mix to be considered to be advanced. And the earmarks for the House have already gone in. The Senate deadlines are passed; they're going in in April. So if our federal lobbyists don't know how to do this, perhaps we need to change lobbyists or to tell them we want this every year. And this cost isn't going to go away so let's make sure they do it next year.

MR. CARPENTER: I'll be sure and include that on the report next month.

COMMISSIONER STEFANICS: If we don't ask, Madam Chair, we never have an opportunity to even have the "no."

CHAIR WURZBURGER: Correct.

COMMISSIONER VIGIL: Madam Chair, a clarification.

CHAIR WURZBURGER: Commissioner Vigil.

COMMISSIONER VIGIL: Rick, are you asking for us to take action on this and if so – it's just information. So at our next meeting you'll be able to give us more of an update as to some of the questions that have been posed, and then we can give you directions as to whether or not to move forward on this.

MR. CARPENTER: That's correct.

COMMISSIONER VIGIL: That's my understanding. Thank you, Madam Chair.

CHAIR WURZBURGER: Anyone else? Commissioner Bokum.

BOARD MEMBER BOKUM: It occurs to me, based on the conversation we just had that maybe the contract needs to be looked at and maybe some provisions need to be put in that aren't there now, to try and deal with some of these issues.

MR. CARPENTER: We'd be happy to bring a summary of the contract back and look at it, see what opportunities might be there for something that you're suggesting.

CHAIR WURZBURGER: Well, again it's my impression after doing this for eight years is that it's not the contract so much as going to Washington and hearing our delegation tell us we have no money. As I said, this has been one of my greatest disappointments about this project that we've taken something over locally so large and this is the response that we got. So I'm glad you're here and take us another round on that. [inaudible] a token involvement in the probably the largest infrastructure structure that we collectively have ever done I would like to see our tax money returned to us a community.

COMMISSIONER VIGIL: Madam Chair, that begs the question. Rick, can you give us an update of any federal funding that's been provided?

MR. CARPENTER: Madam Chair, Commissioner, members of the Board, we have not received any federal funding directly for the Buckman Direct Diversion project. Now, the Ferguson Group has been successful in other areas for the City. I think they were able to get about \$12 to \$13 million for feasibility studies around the Buckman

wells that went in in 2002, 2003 area. But no federal funds have been used on this project to date.

CHAIR WURZBURGER: Okay. This is some direction for the future. Are we agreed? All right.

16. Updated on On-Going LANL MOU Negotiations. (Rick Carpenter & Kyle Harwood) [*Exhibit 2: MOU with DOE; Exhibit 3: Photos of Gauging Station E110*]

KYLE HARWOOD (BDD Board Counsel): Thank you, Madam Chair. We are very pleased today to be placing at your table, this is a late edition of this agreement, which is why it was not in the packet. I believe we have copies for the public if there are any interested. Mr. Rael and I are pleased to provide a [inaudible] of the memorandum which we've been working very hard on. I would like to walk you through it. This is a document that we are each recommending – well, myself and the Board staff to the Board, and Mr. Rael to his organization, to address those issues from the 2007 letter that this Board sent to LANL.

I should point out that there are two square bracketed sections and there's an appendix, all three of which have been worked on by the technical team. But this shows you in black and white the actual language that we've been working hard to negotiate. I would, if it's okay, since you didn't have this in your packet –

CHAIR WURZBURGER: I don't want to be read to, and so what I would like you to do is do the big picture response in simple words, as to how this document responds to the – how many issues do we have? Six. So that would be six sentences at minimum, but probably more that would be tied to that. Thank you, Counselor. And we can open it for discussion as people speed-read it.

MR. HARWOOD: I'm sorry, six sentences? I think for my sentence, and this is the beginning of a very long sentence, I would like to address the early notification system that this Board requested. And this is addressed in the Agreement Principles 1 and 2. Agreement Principle 1 reviews a gauging system at – well, three locations in the LA Pueblo Canyon Watershed, E060, E050, and E110, and as you can see there under the description section, page 2, line 29, it describes how real-time flow data will be transmitted from that location to the project operations for their consideration on how to manage the BDD intake.

Paragraph #2 under Agreement Principles describes the water quality sampling. Agreement Principle #3 talks about a program where LANL will fund and install a sampler at our intake structure, and one of the capabilities of that sampler will be that when one of the LA Pueblo Canyon gauges triggers, this sampler will also trigger. So it's pulling in water from the main stem when we know that those side canyons are running. That seems very important.

Paragraph 4 does talk about a provision in the 2007 request to help us characterized the fate of contaminants and this describes LANL's assistance in analyzing for one year raw water, sediment return line and finished water. So we can answer questions about the fate of contaminants in raw water as it's brought into our system.

And then I would say that from Paragraph 6 on – well, the numbering is a little odd here. I apologize. We're missing a 7. But 6, 8, and 9 are some other basic provisions. Ten is a very important provision. It calls for twice a year meeting with technical staff to review data that's been collected and very importantly, it allows at Rick's level, project management level on the BDD side and Mr. Rael's level on the Los Alamos side to be able to make changes as the staff sees fit to the technical information contained in Appendix A. But the main structure of this memorandum cannot be amended without an amendment in the manner of [inaudible] that will be executed. So it's a tiered structure. The main agreement by the parties, but the terms in the Appendix can be changed by folks at that level. And that's patterned after another DOE agreement on a similar issue with San I Pueblo.

I know I've already burned my six sentences so I'll stop.

CHAIR WURZBURGER: You're doing very well.

MR. HARWOOD: Thank you.

CHAIR WURZBURGER: I want to say this is momentous to have it, regardless of the details, the fact that this now exists is a wonderful accomplishment and cooperation and collaboration, and we're very happy to receive it. Now, I presume that this is an information item and that we will have a chance to read this in detail, and respond more intelligently and have questions at our next meeting. Is that a correct assumption?

MR. HARWOOD: That is the plan, Madam Chair. I would like Mr. Rael to have a minute to say some comments in a moment, but my hope would be to very much be able to bring this to the Board at the May meeting for your consideration and possible approval. And so in that vein I would like to arrange now to sort of touch base with each of you and be able to bring back the document with redlines or comments or alternative draftings, however you see fit, so that when we come back to the next public meeting we hopefully have enough raw material to take action. And I don't know what level of changes you're going to request. There's been a lot of thought put into this but obviously it's for your consideration.

CHAIR WURZBURGER: Okay. Before I ask Mr. Rael to come forward, may I assume that both Mr. Ross and Marcos have reviewed this and been in the loop on this? Or not yet? Not yet. Okay. So that's obviously a step in our process. Mr. Rael, welcome, and thank you.

GEORGE RAEL (LANL Representative): Thank you, Madam Chair, members of the Board.

CHAIR WURZBURGER: You may have three sentences.

MR. RAEL: Three sentences. So let me highlight to you the pictures I've got in there. I know the interest has been in Gauging Station E110, and it is almost all complete. There are a few punchlist items that we have to fix on that. The first set of slides or pictures is – the first thing you're looking at, you're looking upstream towards Los Alamos, and what you see there is a concrete flume and a corrugated metal pipe to the right. That's where what we call the carousel for the samples will be pulled from the water as it moves through. And then the rest of the pictures just give you an idea of what that looks like.

We have a few punchlist items to finalize them. The actual carousel equipment that goes in that corrugated metal pipe is due to be installed within the next two to three

weeks, so we will certainly be ready for the monsoon. I am also working with headquarters on the letter that Mr. Carpenter signed on your behalf, Madam Chair, and it is in regards to the memorial. We are obviously well ahead on the MOU, or the memorandum of agreement, and we will be setting up a time to update the legislative committee on where we stand, probably in the month of April, but I'll do it in concert with Rick and Kyle.

CHAIR WURZBURGER: Thank you, Mr. Rael. What I see when I see this is your green grass. You're trying to make us feel bad. We still have our winter. Any questions of Mr. Rael before I open it up for further questions? Thank you again. I know you've worked on this very hard and we appreciate it. Questions or comments from members?

COMMISSIONER VIGIL: Madam Chair, Kyle, you said you – you didn't give us a date as to when this would come back. At what meeting?

MR. HARWOOD: May 6th.

COMMISSIONER VIGIL: And if you said it, I'm sorry. I'm not sure if you can field this particular question but as I read this, sampling will be taken and then there's a 30- to 60-day data gathering period. And there's a RACER database that identifies this and gets the information to us. What if there is an emergent situation? Does this early warning system actually – is it designed to be able to – 30 to 60 days doesn't seem to be enough time for me to say to the public, hey, we've got to shut down.

MR. RAEL: So the early warning system we're working with is a communications between the gauging stations and the actual project, telemetry if you will. And that will be fairly instantaneous. And that will give the operator the opportunity to turn off the gates if they so choose to. The data that you see there, the 30 to 60 is more what is coming in, the data that is sampled at the laboratory to tell us what is in there. Gauging station E110 is on San Ildefonso property, and so there is a protocol and a government to government relationship. So really, that isn't so much the governing. It's actually getting the data back from the laboratory. So that's where the times. But there will be a real-time communication between the gauging stations and the project.

COMMISSIONER VIGIL: Okay. And the question – maybe Kyle this is for you, or you, Rick. We had talked about doing a site tour there once we had something to visualize. Is that still being worked on? Because that would help me understand.

MR. CARPENTER: Madam Chair, staff will be contacting the Board members next week to try and find a date that's good for as many of you as want to go on the site tour. And Mr. Rael at our last meeting offered to do his very, very best to meet whatever the date is that pick. It will probably be some time in May.

COMMISSIONER VIGIL: May is good. So it will be fully operational in May? All three stations? I'm sorry. What will be operational?

MR. RAEL: Madam Chair, I don't know if it will all be operational but what we do want to have by then, and I think that's what we're going towards in the main timeframe, is to have a prop of sorts that will allow you to see, for lack of a better word a schematic on how the stations will communicate to the project.

COMMISSIONER VIGIL: Okay.

MR. RAEL: I really don't know if you have a better sense of the telemetry.

MR. CARPENTER: There's some technical issues that we're working on with the telemetry. So we're lagging a little bit further behind than some of the hard construction that's been finished and we'll be continuing to be working on. So we can – if the telemetry is not up and running by then we can at least show what it will look like while we're looking at the gauge and explain how it will work. The real idea though is to have all this up and running by the time the project is up and running and before the monsoon if possible. So as much as can be done will be done. That's kind of why we want to kind of want to push it to May and the rest we'll show you schematics and explain what you can't see. We'll show you where it's supposed to go.

COMMISSIONER VIGIL: Thank you, Mr. Rael. Thank you, Madam Chair.

CHAIR WURZBURGER: Thank you. Thank you, all, and again, congratulations.

MATTERS FROM THE BOARD

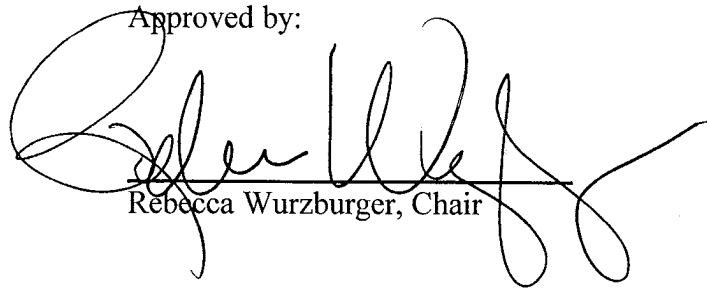
None were presented.

NEXT MEETING: Thursday, May 6, 2010 @ 4:00

ADJOURNMENT

Having completed the agenda, this meeting was declared adjourned at approximately 5:07 p.m.

Approved by:

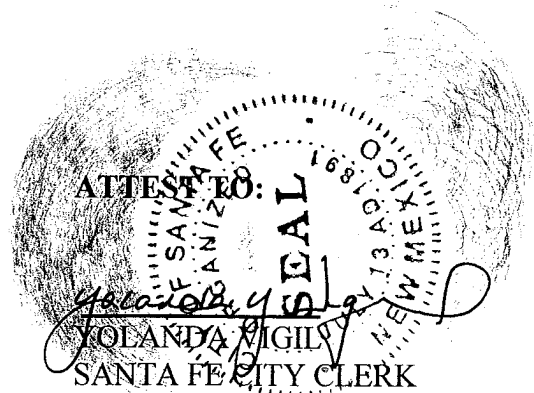

Rebecca Wurzburger, Chair

Respectfully submitted:

Debbie Doyle, Wordswork

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK



City of Santa Fe



New Mexico

CITY CLERK'S OFFICE

DATE 3-31-10 TIME 9:50

SERVED BY Stephanie Lopez

RECEIVED BY Paula Callahan

AMENDED AGENDA

THE CITY OF SANTA FE

And

SANTA FE COUNTY

BUCKMAN DIRECT DIVERSION BOARD MEETING

THURSDAY, APRIL 1, 2010

4:00 PM

CITY COUNCIL CHAMBERS

200 Lincoln Avenue

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES FOR THE MARCH 4, 2010 BUCKMAN DIRECT DIVERSION BOARD MEETING
5. APPROVAL OF CONSENT AGENDA
6. MATTERS FROM STAFF

CONSENT AGENDA

7. Project Manager's Monthly Project Exception Report. (Rick Carpenter)
8. Update by Rick Carpenter on Financial Status of Contracts. (Rick Carpenter)
9. Request for Approval of Amendment No. 3 to the Professional Services Agreement With Cliburn & Associates, LLC to for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount of \$27,015.62 to Continue Assisting the BDDDB in the Implementation of the Photovoltaic Project and With the Public Regulation Commission Proceedings Related to Solar Power. (Rick Carpenter)

EXHIBIT



CLERK RECORDED 06/18/2010

DISCUSSION AND ACTION ITEMS

10. Request for Approval of CDM Amendment No. 12 for Completion of Applications for PNM Rebate for the Amount of \$25,000.00 Plus \$2,015.62 (NMGRT @ 8.0625%) for a Total Amount \$27,015.62. (Rick Carpenter & Mark Ryan)
11. Request for Approval of CH2MHill/Western Summit Constructor Joint Venture Change Order No. 14, BS3/4 Parallel Pipeline Preliminary Design and Permitting for the Amount of \$526,943.00 Plus \$42,485.00 (NMGRT @ 8.0625%) for a Total Amount of \$569,427.77 (Rick Carpenter & Mark Ryan)
12. Request for Approval of CDM Amendment No. 13 for Assistance With New BS3/4 parallel Pipeline for the Amount of \$27,168.00 Plus \$2,190.42 (NMGRT @ 8.0625%) for a Total Amount of \$29,358.42. (Rick Carpenter & Mark Ryan)
13. Request for Approval of Amendment No. 4 the Legal Services Agreement Between the Buckman Direct Diversion Board and Long, Pound & Komer, P.a. for Continued Legal Services for the BDDDB in the Amount of \$220,000 Plus \$17,737.50 (NMGRT @ 8.0625%) for a Total Amount of \$237,737.50. (Rick Carpenter)

EXECUTIVE SESSION:

Discussion of Threatened Litigation Concerning the PNM Substation Site Pursuant to Section 10-15-1 (H) NMSA 1978. (BDDDB Legal Counsel)

END OF EXECUTIVE SESSION

INFORMATIONAL ITEMS

14. Update on Status of PNM Caja Substation. (Rick Carpenter) **VERBAL**
15. Report and Update on the Status of BDDDB Washington DC Lobbyist Contract and Their Efforts to Obtaining Federal Funding Assistance. (Rick Carpenter)
16. Updated on On-Going LANL MOU Negotiations. (Rick Carpenter & Kyle Harwood)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT MEETING: THURSDAY, MAY 6, 2010 @ 4:00

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.

CITY CLERK RECORDED 06/18/2010



MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT
OF ENERGY AND THE BUCKMAN DIRECT DIVERSION BOARD
REGARDING WATER QUALITY MONITORING

A. PURPOSE

To establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory ('LANL') in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project ('BDD Project').

B. PARTIES

The parties to this Memorandum are the Buckman Direct Diversion Board ('BDD Board') and the U.S. Department of Energy ('DOE').

C. AUTHORITIES

1. Both parties represent that they have the authority to enter into this Memorandum and are able to meet the respective commitments herein to the extent permitted by law.
2. Department of Energy. The U.S. Department of Energy is authorized to enter into this Memorandum pursuant to Title 42 U.S.C. 2011, et seq., Atomic Energy Act of 1954, as amended.
3. BDD Board. The BDD Board is authorized to enter into this Memorandum pursuant to the March 7, 2005, Joint Powers Agreement between Santa Fe County and the City of Santa Fe and associated state, local and municipal regulations related thereto.

D. BACKGROUND

1. The BDD Project is designed to divert water from the Rio Grande for use in the Santa Fe metropolitan area and will provide a source for the water supply systems of Santa Fe County, the City of Santa Fe and Las Campanas, LLP ('BDD Project partners'). The water to be diverted is comprised of San Juan-Chama Project water (a U.S. Bureau of Reclamation interbasin water transfer project) and native New Mexico state waters regulated by the State of New Mexico.
2. The planned point of diversion for the BDD Project is located on the east bank of the Rio Grande in northern New Mexico, near the historic Buckman townsite. The point of diversion is approximately 15 miles northwest of the City of Santa Fe and is located about three miles downstream from the confluence of the Rio Grande and Los Alamos Canyon (where Route 502 crosses the Rio Grande at the Otowi Bridge).
3. LANL sits on the Pajarito Plateau above the Los Alamos/Pueblo Canyon (LA/P Canyon) system. The LA/P Canyon system intermittently and infrequently flows to the Rio Grande just below the Otowi Bridge and upstream of the BDD Project planned point of diversion. The LA/P watershed contains sediments with LANL-origin contamination from historic releases from LANL. These sediments could transport to the Rio Grande during infrequent intermittent flows. The LA/P

Canyon watershed has been investigated under the Compliance Order on Consent with the New Mexico Environment Department, and measures to reduce the transport of contaminated sediments have been constructed.

4. The New Mexico legislature encouraged the BDD Board and DOE to memorialize their agreement to certain activities relating to the mitigation and monitoring of LANL origin water quality contaminants. The New Mexico legislature passed resolutions in 2009 and 2010, and this Memorandum will address the issues contained in those memorials.

5. In 2007, the BDD Board requested a written agreement with LANL and DOE, and this Memorandum represents a resolution of the issues requested by the BDD Board. This Memorandum represents an agreement between the parties that water quality management and monitoring are mutual priorities and the activities described in this Memorandum are consistent with, and will be carried out subject to, the policies, regulations, and applicable laws that pertain to the parties.

6. This Memorandum describes sampling and reporting activities relating to LANL-origin water quality contaminants that will be performed in support of the BDD Project and the diversion of drinking water from the Rio Grande.

7. The Agreement Principles outlined in this Memorandum will be used by the BDD Project to inform the operation of the BDD Project, and will provide information that will guide the future water quality policies and priorities of the parties.

E. AGREEMENT PRINCIPLES

1. LAMP Canyon Early Notification Gaging System

Purpose: The purpose of the early notification system is to provide real time streamflow data to the BDD Project at the following locations:

- Station E060 in Pueblo Canyon above the Los Alamos Canyon confluence,
- Station E050 in Los Alamos Canyon above the Pueblo Canyon confluence, and
- Station E110 in lower Los Alamos Canyon above its confluence with the Rio Grande.

Real-time stream flow data from these stations will enable the BDD Project to make decisions regarding facility operations, including temporarily ceasing diversion of water from the Rio Grande.

Description: The components of the early notification system include three stations each equipped with gaging (flow measurement) capabilities, real-time conveyance of stream-flow data, and automated stormwater samplers. Station E110 will also be equipped with camera capabilities or some other means of confirming real-time flow events, as permitted by the Pueblo of San Ildefonso.

System Design/Performance Standards: Flow measurements at the gaging stations shall be measured within a trapezoidal supercritical-flow flume design as reported in "Techniques of Water-resources Investigations of the United States Geological Survey, Chapter A14, Use of Flumes in Measuring Discharge" (F.A. Kilpatrick and V.R. Snyder, 1983). This flume is designed to

1 accurately measure stream flows between approximately 1 and 350 cubic feet per second (cfs).
2 The system shall be capable of a low flow trigger stage of 5 cfs (and will be capable of being
3 programmed later to a different trigger level, as agreed to by BDD and DOE in the Biannual Review
4 Process described below). The amount of time from when a station triggers to when the
5 notification is available to the BDD Project will be less than 1 minute.

6 *[Telemetry Performance Standard to be added after review by Technical Team]*

7 Maintenance, Inspection, Repair and Replacement: DOE shall maintain the early notification
8 system as necessary to support the purpose and performance standards described above. The
9 gaging stations shall be inspected once per month and after flow events 12 months/year.
10 Maintenance activities include ensuring data logger is powered up and operational, manual data
11 retrieval, load testing of battery, replacement of battery if needed, removing snow from solar panel
12 in winter months if needed, removing debris from stream channel if needed, performing discharge
13 measurement direct or indirect or ice measurement if required, checking datum and reference point
14 levels when required. In the event that any station is not functioning, DOE shall communicate via
15 email a written description of the station's inoperability to the BDD Project within 24 hours of
16 discovery, including a description of the activities and schedule necessary to restore operability
17 based on best estimate of availability of equipment and personnel. The inspections and repair
18 schedule are contingent on safe working conditions. The time period of inoperability shall be as
19 short as possible, and the performance standard for the system components shall be: 1) flow
20 measurement equipment flume inoperable not to exceed 72 hours, and 2) telemetry inoperable not
21 to exceed 48 hours. LANL is responsible for all equipment necessary to measure and transmit the
22 flow information, and the BDD Board is responsible for all equipment necessary to receive the flow
23 information.

24 **2. LA/P Canyon Storm Water Quality Sampling System**

25 Purpose: To provide water-quality contaminant sampling during flow events at the stations
26 described above in order to characterize contaminants in LA/P Canyon flows.

27 Description: The components of the event sampling system include three stations each equipped
28 with automated samplers that will be triggered by the occurrence of runoff at these stations as
29 described below. DOE will fund all sampling activities for this water quality system.

30 System Design/Performance Standards: The samplers shall be capable of collecting samples from
31 flows greater than 5 cfs. The analyte list for the samplers is contained in Appendix A of this
32 Memorandum and is consistent with the NMED-approved workplan for storm-water monitoring in
33 LA/P Canyon. The parties will review the analyte list and sampling protocol during the Biannual
34 Review process and can consider changes in accordance with the Memorandum amendment
35 provision and Biannual Review process described below. DOE will notify BDD of any changes in
36 the NMED-approved workplan. The sampling protocol will be conducted in accordance with
37 Appendix A (listed with specificity the LANL standard operating procedures (SOPs)), and can
38 consider changes in accordance with the Memorandum amendment provision and Biannual
39 Review process described below. The analytical methods are established by contract with LANL's
40 analytical service providers in accordance with EPA protocol where it exists.

1 Maintenance, Inspection, Repair and Replacement: DOE shall maintain the event sampling
2 system as necessary to support the purpose and performance standards described above. The
3 samplers shall be inspected no less than weekly from June to October of each year, and after each
4 flow event and/or 72 hours between flow events to collect samples. General maintenance includes
5 ensuring sampler is powered up and operational, load testing of battery, replacement of battery if
6 needed, inspection of sampler pump tubing, line, and intake to ensure no air leaks, cracks or plugs,
7 and test sample collection cycle to ensure correct programming, tripping and volumes are correct.
8 In the event that any station is not functioning, DOE shall communicate via email a written
9 description of the station's inoperability to the BDD Project within 24 hours, including a description
10 of the activities and schedule necessary to restore operability based on best estimate of availability
11 of equipment and personnel. The inspections and repair schedule are contingent on safe working
12 conditions. The time period of inoperability shall be as short as possible, and the performance
13 standard for the system components shall be automated sampler inoperable not to exceed 48
14 hours.

15 **3. Rio Grande at BDD Project location Sampling Program**

16 Purpose: To provide event-based sampling of change in stage in the Rio Grande or when triggered
17 by notification of flows in Los Alamos Canyon at the E110 Gaging Station.

18 Description: The components of the sampling system include a dedicated sampling station
19 equipped with an automated sampler that can be triggered on a regular schedule, and that can
20 also be triggered by notification of Los Alamos Canyon flows at the E110 Gaging Station. LANL
21 will fund and install a sampler as described in Appendix A which will be capable of sampling E110
22 gage triggered events, stage actuated events and other sampling schedules. DOE will fund up to
23 30 sampling events in the 5 year term of this Memorandum, as determined by the BDD Board, and
24 for those analytes described in Appendix A.

25 System Design/Performance Standards: The analyte list for this location is contained in Appendix
26 A of this Memorandum. The parties will review the analyte list and sampling protocol during the
27 Annual Review process and will make changes in accordance with the Memorandum amendment
28 provision and Annual Review process described below. The parties will exchange information and
29 seek to keep the Appendix A analyte list consistent with the NMED sampling programs on the Rio
30 Grande, however such changes will require the mutual consent of both parties. The sampling
31 protocol will be conducted in accordance with Appendix A, using LANL standard operating
32 procedures described in Appendix B. The analytical methods will be established by contract with
33 LANL's service providers in accordance with EPA protocol where it exists. The BDD Board may
34 request to split samples with a 3-day advance notice to the DOE point of contact. DOE will provide
35 BDD notice of sampling events approximately one week in advance via email.

36 Maintenance, Inspection, Repair and Replacement: DOE shall maintain the sampling system as
37 necessary to support the purpose and performance standards described above. The sampler shall
38 be inspected no less than weekly from April to October of each year. In the event that the station is
39 not functioning, DOE shall communicate via email a written description of the station's inoperability
40 to the BDD Project within 24 hours, including a description of the activities and schedule necessary
41 to restore operability. The inspections and repair schedule are contingent on safe working
42 conditions. The time period of inoperability shall be as short as possible, and the performance

1 standard for the system components shall be automated sampler inoperable not to exceed 48
2 hours.

3 **4. Rio Grande Contaminant Fate Analysis**

4 DOE will sample for a one year period analytes listed in Appendix A in raw Rio Grande water at the
5 BDD Project location, the sediment return line of the BDD Project, and finished water produced by
6 the BDD Project Water Treatment Plant. These samples will be monthly composites of flow
7 weighted daily sampling.

8 **5. National Academies Report**

9 *[Deletion of this section after review by Technical Team of materials]*

10 **6. Data Sharing**

11 DOE shall be responsible for all costs associated with sampling analyses described in this
12 Memorandum. Analytical results Rio Grande, E050 and E060 sampling will be made available to
13 the BDD Project via the RACER database within 30-60 calendar days after LANL receives
14 sampling results from the analytical laboratory. Analytical results for E110 sampling will be made
15 available as soon as practicable within the constraints of the agreement between DOE and San
16 Ildefonso Pueblo governing the collection and reporting of such data. Paper copies of the data will
17 also be transmitted to the BDD Project generally within 90 days after LANL receives sampling
18 results from the analytical laboratory.

19 **8. Coordination**

20 DOE and the BDD Project will coordinate with San Ildefonso Pueblo and the New Mexico
21 Environment Department on any issues related to the implementation of this Memorandum, and
22 will engage in any consultation required to accomplish the purposes of this Memorandum.

23 **9. BDD Project Rio Grande Diversion Records**

24 The BDD Project will make available records of when diversions have ceased, and this information
25 shall be used in the Biannual Review process to identify changes to Appendix A, however such
26 changes will require the mutual consent of both parties.

27 **10. Biannual Review**

28
29 The BDD Board and DOE staff shall meet twice annually to review the functioning of the early
30 notification system and sampling programs, in March and September of each year. During the
31 Biannual Review process, changes can be made only to the analyte list and sampling protocol
32 described in Appendix A (with a presumption that such changes will be consistent with changes to
33 the NMED approved sampling plan for LA/P Canyons), provided however that such changes will
34 require the mutual consent of both parties. The parties shall endeavor to keep the sampling
35 conducted pursuant to this Memorandum consistent with NMED sampling programs. The LASO
36 Environmental Program Manager and BDD Project Manager are authorized to make such changes,
37 provided a written Appendix A amendment is approved and executed by the authorized

representatives of the parties. Any changes outside of the scope of Appendix A must be through an amendment to the Memorandum as described below and executed in the same manner as this Memorandum.

F. CONTACTS

All notices, correspondence and communication arising under this Memorandum shall be provided to the representatives listed below, and any notice, demand, request, or information authorized or related to this Memorandum shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

DOE

Los Alamos Site Office
George Rael
Manager
Environmental Projects Office
Los Alamos Site Office/NNSA/DOE
(505) 606-0397- office
(505) 690-0734 - cell
grael@doeal.gov

with a copy to:

DOE Counsel
Silas DeRoma
phone: 505-667-4668
email: sderoma@doeal.gov

BDD Board

BDD Project Manager
Rick Carpenter
Sangre de Cristo Water Division, City of Santa Fe
801 San Mateo Road
Santa Fe, NM 87505
cell 505-660-5696
email rrcarpenter@santafenm.gov

with a copy to:

BDD Board Counsel
Nancy Long
Long, Pound and Komer
2200 Brothers Road
PO Box 5098
Santa Fe NM 87502
cell: 505-470-2158
email: nlong@nm.net

G. PERIOD OF AGREEMENT, MODIFICATION, OR TERMINATION

1. This memorandum is effective upon the signature of the BDD Board and DOE as shown below. This agreement shall expire five years from the date of the last signature, or may be terminated earlier as described below.

2. The BDD Board and DOE may modify this Memorandum by written amendment and in the same manner as this Memorandum was executed. This Memorandum may not be amended or superceded by other formal agreements without the mutual consent of the parties.

3. The BDD Board and DOE may terminate this Memorandum by mutual written consent, notice of which shall be provided to the representatives listed above 90 days before the effective date of termination.

4. If this Memorandum has not been terminated before the date of expiration and the parties agree, this Memorandum shall continue without interruption in full force and effect until amended, superceded or terminated by the parties.

H. OTHER PROVISIONS

1. Nothing in this Memorandum is intended to conflict with current directives of the parties or applicable laws. Any such conflicting term shall be invalid, but the remainder of the Memorandum shall remain in effect. If a term is deemed invalid, the parties shall immediately review the Memorandum and take appropriate action, including amendment or termination of the Memorandum. The activities described in this Memorandum are consistent with, and will be carried out subject to, all known policies, regulations, and applicable laws that pertain to the parties.

2. If the parties disagree over how to interpret this Memorandum, representatives of the parties shall notify and present their differences to each other in writing in order to reconcile the dispute. If the parties fail to resolve their differences within 30 days, the BDD Project Manager and Los Alamos Site Office Environmental Projects Office Manager shall prepare a written description of the dispute and the BDD Board Chair and DOE Environmental Programs Manager shall meet to reconcile the dispute. These representatives shall use efforts such as negotiation, facilitation and mediation to resolve the dispute.

3. This Memorandum in no way restricts the parties from participating in any activity with other public or private agencies, organizations, or individuals.

4. Activities described in this Memorandum are subject to the availability of appropriated funds. The BDD Board and Los Alamos Site Environmental Projects Office Manager shall make the appropriation of funds for the activities described in this Memorandum a priority when seeking regular or project specific funding requests.

5. This Memorandum describes the basis on which the parties will cooperate on the topics described herein. This Memorandum is not a financial obligation that serves as a basis for expenditures, and financial obligations necessary to carry out the activities described herein shall be addressed in other documents internal to each party. Expenditures of funds, human resources,

1 equipment, supplies, facilities, training, public information, and technical expertise will be provided
2 by each party.
3

4 6. This Memorandum is neither a fiscal nor a funds obligation document. Nothing in this
5 Memorandum authorizes or is intended to obligate the parties to expend, exchange, or reimburse
6 funds, services, or supplies, or transfer or receive anything of value. Any requirement for the
7 payment or obligation of funds by DOE established by the terms of this Memorandum shall be
8 subject to the availability of funds and Secretarial discretion, and no provision herein shall be
9 interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C.
10 §1341.
11

12 7. This Memorandum is not legally enforceable and shall not be construed to create any legal
13 obligation on the part of either party. This Memorandum shall not be construed to provide a private
14 right, or cause of action, for or by any person or entity.
15

16 NOW, in witness whereof, each of the BDD Board and DOE has caused this Memorandum to be
17 executed and delivered by its duly authorized representatives as of the last date shown below,
18

19
20 BDD Board
21

22
23 _____
24 BDD Board Chair, DATE
25

26
27
28 DOE
29

30
31 _____
32 DOE Environmental Program Manager, DATE

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