MINUTES OF THE

CITY OF SANTA FE & SANTA FE COUNTY

BUCKMAN DIRECT DIVERSION BOARD MEETING

July 3, 2014

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Chair Joseph Maestas, Chair, at approximately 4:33 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:
Councilor Joseph Maestas
Commissioner Liz Stefanics
Ms. Consuelo Bokum
Councilor Carmichael Dominguez
Commissioner Miguel Chavez

Member(s) Excused:

Others Present:
Nancy Long, BDD Board Consulting Attorney
Stephanie Lopez, BDD Office Manager
Nick Schiavo, Acting City Public Utilities and Water Division Director
Claudia Borchert, County Utilities Director
Teresa Martinez, County Finance Director
Gary Durrant, BDD Chief Operator
Mackie Romero, BDD Staff
Kyle Harwood, BDD Board Contract Attorney
David Rhodes, LANL Field Office
Rick Ulibarri, LANL
Wendell Egelhoff, Club at Las Campanas [*Exhibit 1: Sign-in Sheet*]

3. APPROVAL OF AGENDA

[*Exhibit 2: Agenda*]

Upon motion by Commissioner Stefanics and second by Councilor Dominguez the agenda was approved 4-0. [Commissioner Chavez was not present for this action.]

4. APPROVAL OF CONSENT AGENDA

Commissioner Stefanics moved to approve the Consent Agenda and Member Bokum seconded. The motion carried by unanimous voice vote. [Commissioner Chavez was not present for this action.]

5. APROVAL OF MINUTES: April 3, 2014

Councilor Dominguez moved to approve the minutes as submitted. Commissioner Stefanics seconded and the motion passed 4-0. [Commissioner Chavez was not present for this action and arrived shortly thereafter.]

6. MATTERS FROM STAFF

GARY DURRANT (BDD Chief Operator): We just want to note the solar project completion at 2-A. We had some good attendance there. We wanted to bring that back to the Board and congratulate them on their good voting for having that available for people. I think everybody appreciates the dollar savings available from that.

We have just an update on vacancies at the BDD. We have four operator vacancies right now that we're working to fill. We will not post those until the first of this month. We wanted to wait until the new AFSCME contract went into effect. And the facility manager and an administrative assistant. So we're getting there. That is all the matters from staff.

CHAIRMAN MAESTAS: Okay, I do want to congratulate staff on a wonderful event, the ribbon-cutting on the solar array for the booster station. I think now that brings our savings up to almost $400,000 in electricity costs, so that's fantastic. Is Bernadine here? Our public information officer? She did a fantastic job. I know her and all the staff were really key in making that a great success, and it was nice to kind of get out there onsite instead of having it in an air-conditioned building up the hill there where the facility is. Okay. Anything else from staff?

MR. DURRANT: Mr. Chair, there are no additional matters from staff.

7. Report on the July 1, 2014 Fiscal Services Audit Committee

CHAIRMAN MAESTAS: Who'll be reporting on that?

MR. DURRANT: We hoped that Commissioner Chavez will be reporting on that.

COMMISSIONER CHAVEZ: I guess I walked in just at the right time. I'll do my best. Sorry I'm late. So the Fiscal Services and Audit Committee did meet on Tuesday, July 1st. There were three items on the agenda, update on audit of BDD financial statements, that was a verbal report, and then the request for approval of award on contract extension for one additional year for water treatment plant chemicals – that's Consent Agenda item #2. So you're beyond that. And then the third was request for formal adoption of the 2014/15 annual operating budget, and that's discussion and action item #12.

So on the update on the audit of the BDD financial statements, there were two audits that the BDD staff is working on. One is the construction audit and the other is the operations audit. And if I could ask staff to elaborate just on those two points because honestly I did not take notes.

MACKIE ROMERO (BDD Staff): Mr. Chair, members of the Board, the update of the BDD audit is that the City Finance has received the approved contract from the state auditor and so now we're just pending a meeting with the accounting firm,

which is Accounting and Consulting Group for a schedule and prepared by client listing. So as soon as we get more information on that we will report that back to the Board. But we are moving along on getting those completed.

CHAIRMAN MAESTAS: I just had a follow-up question on the construction. When do we expect to totally close out the construction of the project?

MS. ROMERO: Mr. Chair, members of the Board, I did speak with Teresita Garcia from City Finance and she does have the draft version of the construction audit and me and her together are working on completing that. So I hope by the end of the month we will have a final version and when we do we will report that back to the Board.

CHAIRMAN MAESTAS: Will that represent kind of the closing of the construction part of the project?

MS. ROMERO: Yes. And we do need that to actually move forward with the operations for 2012. So we are hoping to finish that up.

CHAIRMAN MAESTAS: That's exciting. I would hope that we would have some kind of celebration to celebrate the completion.

MS. ROMERO: We will.

CHAIRMAN MAESTAS: Commissioner Chavez, anything else?

COMMISSIONER CHAVEZ: I think that pretty much covers everything because the other two items are on the agenda, so we can discuss those at that time.

CHAIRMAN MAESTAS: Any questions for Commissioner Chavez? Okay. Thank you.

INFORMATION ITEMS

8. Update on LALN MOU Early Notification System

KYLE HARWOOD (BDD Board Contract Attorney): I'm going to try to channel Mr. Jones who's not here tonight. The technical teams are continuing to meet and what we are engaged in right now on both the LANL side and the BDD side is trying to assess how well we have met the goals of the existing MOU so we can use that to inform the upcoming agreement. And the technical questions that have been asked by Ms. Bowman who is the new compliance officer were significant and the lab has provided a significant amount of data and I know they're working though that information so that we can give that picture of how well we have done in meeting those goals for the last 4 ½ years so I can inform the new agreement.

Mr. Rhodes is here again tonight. I don't know if you remember. He's subbing in for Pete Maggiore. Mr. Maggiore deals with the WIPP issues but he's also here if you have questions.

CHAIRMAN MAESTAS: Would you like to say a few words or only just respond to questions if we have any.

DAVID RHODES: I don't have anything. We're planning on meeting after the holiday. [inaudible]

MR. HARWOOD: That was the last thing I was going to mention. The technical meeting and then a negotiating meeting before the next BDD Board meeting are both anticipated in July.

CHAIRMAN MAESTAS: Any questions for Mr. Harwood? I just wanted to mention to the Board I did, about a month ago I met some representatives from the Department of Energy and Los Alamos National Labs and toured the early warning system, the gauging stations and I subsequently met with staff to give them kind of my feedback on what I'd like to see in the next early notification system. I think the primary points I'd like to see is re-establishing the gauging point on San I property. I know that's going to be a challenge but I think it's critical because it's downstream of the two we have in place in the upper canyons.

And the other thing is I really want us to start packing this data that we acquire, the water quality data particularly and put it in a user-friendly format, possibly in the form of an annual report. I just want to make sure that we're being as transparent as possible. And then the other thing too is I want to make sure that we don't – that this doesn't expire on us, that we do kind of negotiate a new MOU and get it in place before the expiration of the existing MOU.

MR. HARWOOD: Thank you, Mr. Chair. Yes, we have taken your direction and Pete and I believe David's support for getting something in place by the end of this calendar year, which will be six months before, or five months before the expiration. So we take that very seriously as our goal and deadline.

CHAIRMAN MAESTAS: Okay. Great.

9. Update on Wild Earth Guardians' Notice of Intent to Sue

MR. HARWOOD: I have no update.

CHAIRMAN MAESTAS: Okay.

COMMISSIONER CHAVEZ: Mr. Chair.

CHAIRMAN MAESTAS: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: So, Kyle, does that mean no news is good news?

MR. HARWOOD: Well, the deadline runs early next week and we had thought there might be some activity this week or last week but there in fact were not. There actually are some interesting court decisions coming out of different parts of the country on the interplay of the Endangered Species Act with state jurisdiction and other issues but nothing directly relevant. But the 60-day notice for the supplement Notice of Intent to Sue runs on the 8th and so this was sort of a placeholder in case something had happened but nothing has yet appears to have happened.

COMMISSIONER CHAVEZ: And in your estimation, Kyle, where do you see the critical – because the silvery minnow has a habitat – it's concentrated in certain areas? And where are those critical areas?

MR. HARWOOD: The designation of critical habitat is largely between Cochiti and Elephant Butte for the minnow, and it's in more specific areas for the southwestern willow flycatcher, and there are some other species of concern, but for the water management issues that are related the Buckman Direct Diversion project it's really the minnow and the southwest willow flycatcher and those critical habitat areas are below Cochiti.

COMMISSIONER CHAVEZ: Got it.

MR. HARWOOD: They studied areas above Cochiti and Espanola and up the Chama but they were not deemed suitable for reintroduction or stocking.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair.

CHAIRMAN MAESTAS: Any other questions for Mr. Harwood. Kyle, just one. It's not related to the Notice of Intent, but we do have a habitat restoration project that we're obligated to complete. I think it's affiliated with the environmental assessment. What's the status of that habitat restoration project? Do you know or can anyone –

MR. HARWOOD: It's a project that Rick manages and he's out of town this week as well. I help him – the habitat mitigation issues were driven by the Record of Decision. They were things the Board agreed to do in exchange for the construction permits that we used to put the facility in and I have to admit I do not know the current status of those projects today.

CHAIRMAN MAESTAS: Okay. Can we get an update and have that on the agenda for the next Board meeting?

MR. HARWOOD: I'm sorry I'm not up on that.

CHAIRMAN MAESTAS: It's okay. Yes.

MEMBER BOKUM: Isn't that considered construction? In terms of the budget?

CHAIRMAN MAESTAS: I believe so.

MR. HARWOOD: I believe those habitat restoration projects are being paid out of the old capital budget. Yes, ma'am.

CHAIRMAN MAESTAS: Anything else?

CONSENT AGENDA

10. Monthly Update on BDD Operations

11. Drought, Monsoon and Water Resource Management Update

12. Request for Approval of Contract Extension for One (1) Additional Year for Water Treatment Plant Chemicals in an Amount Not to Exceed the Budgeted Amount of $299,400 plus NMGRT. Various Vendors Provide the Chemicals for the Buckman Regional Water Treatment Plant. The Specific Vendors and Costs are All Listed in the Attached Memo

CHAIRMAN MAESTAS: Any desire to discuss any of those? Okay.

DDISCUSSION AND ACTION ITEMS

13. Discussion and Possible Action on the Hiring Process for the BDD Facility Manager

NICK SCHIAVO (City Utilities): -- comprehensive and targeted recruitment and so on the last pages of the memo I put in just what that would look like, either a 90- or a 120-day advertising blitz that we put in trade magazines where you can find people such as the director. And I also gave an estimated cost of about $2,500 to do that.

Also in the packet, item 2, I've included revisions to the existing job description. So I've included the current job description and the second one actually shows the strikethroughs and changes to that job description.

CHAIRMAN MAESTAS: Any questions? Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I asked that this come back this month rather than provide direction last time because we actually had started our meeting late and then we had to move out of these chambers for another meeting and I wanted to give this some attention. One of the reasons I would like for us to discuss this is because we're also waiting for some recommendations from our team for the future. And I did bring up once again that as long as the position is under the City, and maybe even under the County, that it would have some salary caps and that if we in fact are asking for some advanced level skills and education that we might not be receiving applications, applicants that would stick around.

So I wanted to bring this back to see if we wanted to stay in a holding pattern for a period of time or if we wanted to move ahead with this position. So I'm interested in my colleagues' comments.

CHAIRMAN MAESTAS: Ms. Bokum.

MEMBER BOKUM: I'm on the committee that I think Liz referred to and I don't think anything coming out of that committee is going to be very specific or specific enough to say that within six months we're going to have a whole different regime for dealing with management. That's just a point of information. In terms of I don't think we can expect anything coming out of that committee that's going to lead to something quickly. So I think that should impact what we want to do in the short term.

CHAIRMAN MAESTAS: I know in this and the previous meetings, I did have some discussions with Nick about a month and a half ago about the need to fill this position because as you know, when you have interim positions and others are vacant it just creates a lot of instability and I don't think it really helps morale either in an organization. But my thoughts on this – we're considering different models going forward and if we simply backfill this position as a City position we're essentially endorsing the status quo.

So my thought is I think it would be good for us to perhaps maybe have staff go back and consider either creating a new executive director position or converting the facility manager position to an executive director position with the same qualifications. My only concern with converting the facility manager to an executive director position is there's no buffer between the staff and the Board and I think – I know David Marquard, he's kind of a teambuilding guru. He's been working with the BDD staff to bring them together. It's a new entity and it's still evolving as we speak. And so I don't want to upset the developing morale of BDD staff. If I had my druthers I would keep the facility manager, maintain it to be classified, and establish an executive director position, because if you look at the organizational structure of Buckman there's other administrative functions; it's not all technical. And the facility manager position, if you look at the qualifications it's heavily technical.

So what I wanted to throw out there is that if you don't want to – I'm not going to say hold off on advertising this modified job ad. We can do that, but I would like to see perhaps staff go back and present the pros and cons of establishing an executive director position. So regardless of what model we go with in terms of selecting the next project

manager, we'll have a position that's exempt and reports solely to the Board and is evaluated by the Board and there is no affiliation with any governments. So I wanted to throw that out there. And I want to commend you, Madam Vice Chair for really kind of pushing this too, because we do need to do something. We need to create some stability in the upper ranks.

So my recommendation, let's go forward with this modified ad. I don't want to hold up progress but perhaps we can have staff come back and look at some kind of an executive director type model for this position – not the facility manager but just creating an executive director position. I realize if we create an additional position it will have budget impacts. There's no doubt about that but I think that this would address, regardless of whatever model, whoever gets selected as the next project manager, having an executive director that's independent and reports solely to the Board I think is consistent with what this Board wants.

So I want to put that out there. Any comments by Board members? Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Well, I like the model of having the executive director model is good. We have a similar organization, SWMA that I think has been operating well under that model and does provide that buffer. But I do think that it would be good to post this and see if we get any responses and what the pool is like, because I think that will tell us, really, what's happening in the field, in the industry and if there are any interested applicants or not. So I think we could move forward with it.

CHAIRMAN MAESTAS: Yes, Commissioner.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I actually like the idea of the executive director but I would like to have a legal discussion about it as well. And I'd like to ask Mr. Schiavo first, has not this position been advertised open-ended?

MR. SCHIAVO (Acting City Public Utilities and Water Division Director): Mr. Chair, Commissioner, yes. It's been advertised. It's been open until filled so it's been consistently advertised. What I should have told you at the beginning was we actually had someone who recently applied. This gentleman has applied before and was offered the position two years ago but declined at that time because of family reasons. But he's reapplied and so I have been working with staff to set up an interview with him and working with Santa Fe County to interview that applicant one more time.

COMMISSIONER STEFANICS: So my question, my next question is how many – how long has it been advertised and how many applicants have there been?

MR. SCHIAVO: It has been advertised pretty consistently since Robert Mulvey left two years ago. Two years or 18 months.

COMMISSIONER CHAVEZ: But Nick, you have the current facility manager job description in a modified – so if you post this again will it be with a modified job description?

MR. SCHIAVO: That would be up to the Board, what they would want to do. The Commissioner's question was how long had it been posted.

COMMISSIONER CHAVEZ: I know, and I did remember that. But I thought the intention was with a modified job description that we were hoping that we would get maybe a different round of candidates. I could be wrong but that was my understanding.

COMMISSIONER STEFANICS: Well, Mr. Chair.

CHAIRMAN MAESTAS: Yes, Commissioner.

COMMISSIONER STEFANICS: The salary has not changed. The independence of the position has not changed. To ramp up the quality of the applicants – and I think our staff is excellent. But I think if somebody wants to come in to run an excellent facility and excellent service for a City and a County that they probably are going to want a level of independence and authority. And that doesn't happen. So my next question was – and I believe we discussed this a couple years ago – my next question was is there room for an executive director, because we were told in previous years that it had to fit with the City of Santa Fe personnel system. So I don't know who wants to answer that.

MR. SCHIAVO: This will be the engineer's perspective, certainly not the legal perspective. One of the potential challenges with the executive director is that he would have a hard time directing staff because if he's going to be someone who's appointed or someone who is not directly working for the City then he may have a hard time directing all the union staff. So he could certainly be – that person could certainly be a good liaison between this Board and staff but there may be challenges.

COMMISSIONER STEFANICS: Ms. Long?

NANCY LONG (BDD Consulting Attorney): I was understanding your question to be a little bit different maybe in that the executive director, sort of revamping the position to be an executive director but that director would still be a City employee if they were hired during the time that the City was the project manager. Maybe that's not what your intent was but that's what I was understanding. Now if there is a desire to hire an executive director who does not work for the City but is actually just an employee of the Board, I would think that needs to be part of the recommendations in a possible transition that you are looking at in terms of all of the employees. I think it could be an issue just to have one person fill that role.

But you certainly could revamp the position and have additional duties that are not as technically related. You can call it whatever you want to. The facility manager was a position that was created as part of operations. So the operative documents just refer to the project manager, which as we've come to know is not a person but is the City now and could be another entity. There are some organizational charts that you all have approved along the way that have referred to a facility manager but that could certainly be fixed if you decided on an executive director.

CHAIRMAN MAESTAS: Yes, Ms. Bokum.

MEMBER BOKUM: Could we have an executive director that was an employee of the City or the County, depending on what happens with the transition, that reports directly to the Board? Is that legal? Rather than setting up a whole – we don't have to set up a whole separate agency that's totally independent to have an executive director or a facility manager that on an organization chart reports to us rather than to people in the County or the City?

MS. LONG: I believe it could be structured that way. The reporting would be to the Board.

MEMBER BOKUM: I've never thought of that and it wasn't until you raised that possibility. What I thought I heard you saying was maybe there's another thing that we haven't considered.

CHAIRMAN MAESTAS: Why don't we do this? Why don't we have staff look at creating an executive director position, and of course we probably wouldn't create it until we make a project manager selection. My only concern is I don't want to water down the duties if we choose to retain a facility manager. Because I'm concerned like making the level 4 certification preferred instead of mandatory because this is the highest type facility out there. So I'm a little concerned about watering down this in lieu of an executive director. So let's just go ahead and follow through. Let's post this, and I think the consensus is you want to post it as amended.

COMMISSIONER CHAVEZ: Right. That would be my suggestion.

COMMISSIONER STEFANICS: Mr. Chair, this is an action item.

CHAIRMAN MAESTAS: Right. Why don't we conduct this interview, the interview was an application based on the current criteria, right?

MR. SCHIAVO: That's correct, Mr. Chair. It's based on the current.

CHAIRMAN MAESTAS: So would the Board be interested in awaiting the outcome of that before we pull the trigger on this modified advertisement?

COMMISSIONER STEFANICS: Mr. Chair, I'd like to ask a question. If we actually interview an individual and they're extremely competent and willing to take a position and we're interested in them, would it in fact be a term position until any recommendations and decisions were made about the future? Because if the – I've been pretty opinionated about what the committee should be bringing back and I don't think the committee should be carrying on for another year. I think the committee should be coming back with a strong recommendation that we debate fully and we help move things along.

We also have one of our local state senators interested in assisting us in changes to state statute if we needed it in this next legislative session – Senator Peter Wirth. And he's spoken to myself, he's spoken to the Mayor, he's spoken to some members of the work team on this. So if we were to do a status quo we're really going to continue the same discussion for the next couple years. And I hope that we're not in a cycle. I also hope we get somebody competent and maybe things would be different if we found the perfect person who wants to work in this structure, but we haven't yet. That's all I'm saying.

CHAIRMAN MAESTAS: What's the timing on bringing a recommendation for a project manager selection in the timeline?

MR. SCHIAVO: Mr. Chair, if we interview that person in the next week and they accept it I could come back before the next Board with an update as to where that's at. We would know at that point. And the way the position was advertised and the way the gentleman applied for it was as a classified position.

CHAIRMAN MAESTAS: Okay, why don't we do this? Let's adopt the modified job ad and the recruitment strategy and implement that if this position is not filled. That way we go ahead and – when do you think you'll be done with the interview process?

MR. SCHIAVO: Mr. Chair, if I'm able to set it up next week with Santa Fe County I should be done next week.

CHAIRMAN MAESTAS: Okay. How is that? Is that –

COMMISSIONER STEFANICS: So, Mr. Chair, I'd like to clarify the process. In the past, after interviews the Board really had nothing to say about the hiring. Is that the same situation, Ms. Long?

MS. LONG: I am not sure what the protocol is for the hiring of this position. I do recall previously that on the hiring of past facility managers you're correct, that that was done without the Board involvement. And I also recall that the last cycle that you, Commissioner, had requested, that there be a meeting with the Board and the final person selected for the job. And there was some debate about that but I think that's how it finally worked out and then we finally just never had anyone that came forward.

So for this particular hire I don't know if there's been any incorporation of Board involvement and I would say probably not.

MR. SCHIAVO: So, Mr. Chair, my understanding that the only person who's ever accepted the position in a non-interim status has been Robert Mulvey, and that person was hired before the facility started to operate. Since then only interim positions have been put in – Erika and then Shannon Jones.

MS. LONG: That is correct, it's just that we've gone through some previous attempts at hiring and there was the debate about involvement of the Board. It just never got to the point of a final applicant to bring to you, is what I'm recalling.

COMMISSIONER CHAVEZ: Mr. Chair.

CHAIRMAN MAESTAS: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, I guess I have mixed feelings about whether the Board should review and make the final approval for that applicant. I'm more comfortable with staff handing that, especially if we've articulated and we're very clear in the skills and abilities and their requirements. So I think if the individual meets staff requirements and everything that we're asking of them I'm trusting that staff will make the right decision. That's where I'm at. It's not to say that I want to be disconnected or that I'm not concerned but I think sometimes that gets into a little bit of micromanaging and I want to stay away from that as much as possible. I think we need to have interaction with staff but at the appropriate place and time. So that's my take on it.

CHAIRMAN MAESTAS: Councilor Dominguez and then Ms. Bokum.

COUNCILOR DOMINGUEZ: Thank you, Mr. Chair. I guess it would seem to me that it would be appropriate to kind of go through this process that has already started in terms of maybe – I don't know who this applicant is, but if that doesn't come to fruition for whatever reason then I think it's a pretty clear signal to the Board that we need to reorganize or some up with some sort of reorganization that could include a new position, an ED position. But one of the questions that I had was how much time do we need to determine whether or not the current system we have in place with the right person is sufficient enough, is going to get us to the point we need to be at. I guess that's the question that I have that keeps lingering in my mind is this could be the right person, it could be the right model, but then they decide to leave at the spur of the moment. And so we're back to square one and having to potentially reorganize or some up with a different model.

But I think for now it would be appropriate to just kind of see where this takes us since we've already got an applicant and like I said, if it doesn't happen then it's a clear signal that something else needs to happen.

CHAIRMAN MAESTAS: Why don't we just go with a redundant, like multiple type actions here? Let's go forward. Let's determine whether or not this person is the right person for this position. If it's not filled then we'll automatically implement the revised job ad and implement this management recruitment strategy. And then I think the third thing would be for staff to maybe look at – I don't know if it would be a conversion. Let's just say create an executive director position with appropriate job duties. Again, I don't think – I agree with Nick. I'm not sure that a facilities manager that is highly technical can be an effective executive director, number one. And then number two, no techie is going to want to serve in an exempt position and be accountable to a Board and I think we'd really have a hard time attracting top talent. That's why I think we should keep this facility manager classified and that person can maybe be like a de facto chief of staff to help with morale they're protected by virtue of being classified but he'd be the executive director that would really handle the day to day and a lot of the interaction with the Board and be solely accountable to the Board, and be evaluated by the Board.

So I think we're pursuing all fronts here, if that's –

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MAESTAS: Yes, Commissioner.

COMMISSIONER STEFANICS: If we – I'm not opposed to an executive director, in fact it's probably in keeping with some of my ideas about the structure, but if we actually offered somebody a position it might be wise for them to know that there might be a different supervisory structure that might be occurring in the future, versus the structure that's currently set, so that they're just clear about lines of authority. So if I were an applicant I'd like to know if I'm responsible to the City Water Department or if I'm responsible to an executive director and perhaps that can be just clarified in the job interview and the job offer, that things might change.

CHAIRMAN MAESTAS: I think we talked about that because our budget cycle, our calendar year we're going to go from a calendar year to a fiscal year and given the project manager selection process I think I made that point in a previous meeting that we may not be able to make that transition effective July 1, 2015 and I think we've changed that. Isn't it July 1, 2016, so really we're looking at almost a two-year transition. Right? So, but I agree. Nick, in the interests of full disclosure I think that should be discussed with this prospective applicant.

COUNCILOR DOMINGUEZ: Mr. Chair.

CHAIRMAN MAESTAS: Yes, Councilor Dominguez.

COUNCILOR DOMINGUEZ: Just on that point, I guess it's been advertised under supervision received, operates within the governance of the BDD Board. Is that – I don't know if this is a legal question or not but does that – how significant is that? To say whether it's governance or direction of the BDD Board?

MS. LONG: I'm looking at that supervision received provision as well. What it seems to say is you'll be working under the Water Division Director, operating within the governance – I read that to mean that that's the governing authority but here is who your director is, the Water Division Director.

COUNCILOR DOMINGUEZ: So it doesn't give the impression that they will be working for the Board, necessarily, just under the governance that the Board has set policy –

MS. LONG: I believe that's a fair reading of that.

COUNCILOR DOMINGUEZ: Thank you, Mr. Chair.

CHAIRMAN MAESTAS: Okay, so I think we have consensus to move forward and interview this prospective candidate under the existing job description. If that's not successful, if we don't successfully fill it we will automatically advertise the revised job ad and implement the recommended recruitment strategy and also staff will study or bring some recommendations on the creation of an executive director position. And perhaps certain administrative duties that the facility manager currently has may be shifted over to the executive director. That way we make the facility manager maybe almost purely technical and less administrative, instead of having just a figurehead that sits in the hot seat.

Is that okay? This is an action item so I'd like that in the form of a motion. Commissioner Chavez.

COMMISSIONER CHAVEZ: The only thought I have is that in that same process, in that same line of thinking, I would imagine that staff would have to look at the budgetary implications in doing that even though we may not be ready right now but if we do decide to go down that path I think we want to start budgeting for that so that if we make the decision we have everything in place. So is that part of your sort of direction to staff?

CHAIRMAN MAESTAS: Yes. And then you and I sit on the SWMA Board, on the Solid Waste Management Agency and I think that's a model that's close to home. Maybe that would be another source of information in putting some recommendations together to the Board. Okay, this is an action item, so do you want me to the make the motion? Can I make the motion?

COMMISSIONER CHAVEZ: I think you can. We're approving not the amended or revised job description but the current BDD facility manager job description. We're going to interview the applicant on that, post the modified –

CHAIRMAN MAESTAS: If it's not filled by this –

COMMISSIONER CHAVEZ: Right. If it's not filled we'll post the modified along with the strategy. And so that would be in the form of a motion.

CHAIRMAN MAESTAS: Okay. I have a motion on the floor right here. Do I have a second?

COUNCILOR DOMINGUEZ: Second.

CHAIRMAN MAESTAS: Okay. Second by Councilor Dominguez.

COUNCILOR DOMINGUEZ: Mr. Chair, is that for the direction for staff to start looking at the next step if we end up going –

CHAIRMAN MAESTAS: Executive director? Yes. That's not contingent on anything. They're going to move forward and bring some recommendations on an executive director position as well.

COMMISSIONER CHAVEZ: And I don't know if that needs to be part of this motion. I think that could just be direction to staff, right?

MS. LONG: I agree, Commissioner.

COMMISSIONER CHAVEZ: Then what I just moved. Are you okay with that?

CHAIRMAN MAESTAS: Yes. We have a motion and a second. Any discussion on the motion?

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

14. Request Formal Adoption of the 2014-2015 Annual Operating Budget

MS. ROMERO: Mr. Chair, members of the Board, we are here to request formal adoption of the BDD annual budget for fiscal year 2014-15. On December 12, 2013 the BDD Board did approve the proposed fiscal year 14-15 operating budget of $6,524,600, and the annual contribution of $411,804 for the major repair and replacement fund. This budget was then approved by each governing body. This adoption also includes carry-forward funding of $2015,130 from fiscal year 13-14, which was approved by the Board on June 5th, and this will bring our total budget to $7,141,534.20. Does anybody have any questions on the final budget?

CHAIRMAN MAESTAS: Any questions for Ms. Romero? Just one comment on page one, if you could just maybe change the Board composition to reflect the current Board.

MS. ROMERO: Okay.

COMMISSIONER STEFANICS: Mr. Chair, the other option would be, if you want to keep the Board that did the operating budget to put in an amended budget with the current Board.

MS. ROMERO: Okay.

COMMISSIONER STEFANICS: Because there are major differences here, in terms of people. Thank you.

CHAIRMAN MAESTAS: Any other questions? If not, do I hear a motion to approve the 2014-2015 –

COUNCILOR DOMINGUEZ: I'll move to approve but I have a question.

COMMISSIONER CHAVEZ: Second.

CHAIRMAN MAESTAS: Okay, we have a motion by Councilor Dominguez and a second by Commissioner Chavez. Councilor Dominguez.

COUNCILOR DOMINGUEZ: So I'm just looking, Mr. Chair, and it might be in here but I don't see it. I guess the –

CHAIRMAN MAESTAS: What page are you on?

COUNCILOR DOMINGUEZ: I'm not on any page.

CHAIRMAN MAESTAS: Okay.

COUNCILOR DOMINGUEZ: Just I guess the reserve philosophy of the organization. How much do we have in reserves? How much do we keep? For how long? I don't see that explicit in this budget.

CHAIRMAN MAESTAS: I know we do have a policy. It's an adopted policy.

COUNCILOR DOMINGUEZ: Maybe it's in here; I just don't see it.

MS. ROMERO: Councilor Dominguez, it is. It is page 15, describes the emergency reserve fund, which is fully funded at $2 million.

COUNCILOR DOMINGUEZ: Okay.

MS. ROMERO: The second reserve fund that we have is on page 16, which is the major repair and replacement fund. That is currently funded at $823,624. This new budgeted fiscal year, fiscal year 14 and 15, you did approve additional

contribution of $411,804. So that will bring the balance to $1.2 million, when this fiscal year is done. We did hire a contractor for our capital asset management plan and once that is complete that will give staff the tools to re-evaluate this funding for the major repair and replacement and we could potentially be coming back to the Board for additional funding for that reserve fund.

COUNCILOR DOMINGUEZ: Okay. So what does the policy say in terms of how much we should have in there? Is there a policy that articulates that?

MS. ROMERO: Commissioner, members of the Board, there is a policy. The original policy was the $2 million cap on the emergency reserve fund, and then the policy for the major repair and replacement fund was done three years ago and I believe Shannon had brought that back to the Board, and the analysis of how they came up with that number, that's why we hired this contractor to come in because it needed to be a little bit more detailed than what they did originally.

CHAIRMAN MAESTAS: Councilor, the policy even, I think outlines detailed scenarios under which the funds would be used, emergency scenarios.

COUNCILOR DOMINGUEZ: Okay. I hadn't seen it and I guess that's what I'm looking for. $2 million, does that get you – how much water does that deliver?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MAESTAS: Commissioner Stefanics.

COMMISSIONER STEFANICS: I believe, at the end of calendar year 12, we had a major discussion about creating a policy, and I think you'd have to go back to look at the date. And it was when Mel Morgan was still with the City and we looked at proportionate use of the facility and the water in establishing the percentages for the reserve fund. And that the reserve fund – and I'm stretching my memory here – would be utilized for the future and if it in fact exceeded that amount of $2 million we would refund the partners but we would maintain the $2 million. Do you remember anything about this, Ms. Long?

MS. LONG: I do remember the discussions regarding enactment of that policy and the provisions for replenishing the policy, if there were an emergency that you had to dip into and how quickly that would be done. In terms of refunding, I don't recall that detail but I do know that we had also risk assessments done to come up with that number. Our insurance consultant sat down and tried to figure out, okay, what could go wrong and how much money could we possibly need on an emergency basis, not just a routine basis? So there was some thought and analysis put into it.

COMMISSIONER STEFANICS: Mr. Chair and Board members, the Fiscal Audit Committee did prepare that. That doesn't mean that it couldn't be revised or upgraded. Ms. Martinez was part of those discussions from the County and Mr. Morgan from the City, the Finance Manager, other staff from both the City and the County were involved. City Councilor Chris Calvert, myself and of course the BDD staff.

CHAIRMAN MAESTAS: Councilor, would it help if we maybe have staff come at the next meeting and just provide an overview of both policies, the equipment replacement and the emergency reserve?

COUNCILOR DOMINGUEZ: No, I think Mr. Chair, it would probably just be appropriate for staff to provide that to me via an email. It doesn't impact the action that we're going to take now, but just at least for my information.

CHAIRMAN MAESTAS: Okay. Do we at least have a policy, like assess it periodically very four years, five years?

MS. ROMERO: Mr. Chair, members of the Board, I know we just brought the major repair and replacement policy to this Board a couple months ago. The emergency reserve fund has been in place, I believe, for about a year. But I can re-provide those to the Board and like I said, we do, staff does intend to revisit the major repair and replacement fund policy.

CHAIRMAN MAESTAS: Okay. Because I know being on the Solid Waste Management Agency the state requires an emergency closure fund and they have to appraise the closure costs periodically and of course they just continue to escalate, so that's why I was wondering. But if it's only been in place for a year I'm comfortable that $2 million is fine.

MS. ROMERO: Okay. And I will provide the policy.

CHAIRMAN MAESTAS: Okay. Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, I think, just an observation. The emergency reserve fund, that $2 million seems okay but my concern has been on the major repair and replacement fund and we're weak on that side. I do encourage staff in the work that they're doing and I think we should be ready to increase this because, I don't know, this is just maybe shooting at the hip a little bit, but this just on the surface seems a little too low. And this does need to be evaluated so if we have to revise our policy in the major repair and replacement fund to increase that I would encourage that we do that because it just seems to be out of balance.

CHAIRMAN MAESTAS: You think $1.2 million is too low?

COMMISSIONER CHAVEZ: I think it could be. It sounds like it's low because of the size and the scale of the operation and the worst-case scenarios that we might be faced with. And so it just seems a little low but I think that staff is doing their work and I think we'll find out exactly where we are.

CHAIRMAN MAESTAS: But I think we do have a category of more lower level maintenance work. This is considered major. So I think we have ongoing preventive maintenance, rehabilitation of a lot of the facilities there on a specific schedule for this maintenance, so I don't think this includes the entire facility. It's just considered major.

COMMISSIONER CHAVEZ: Right. And actually on that point, Mr. Chair, if we could have a list of that infrastructure that would be considered major. What is that?

CHAIRMAN MAESTAS: That is in the policy, so maybe –

MS. ROMERO: Mr. Chair, members of the Board, again I do have to refer back to the contract that you guys did approve, which is we did hire a contractor to create a capital asset management plan and that should definitely give us a list of every single major equipment and that will give us the basis to go ahead and re-evaluate this fund and see if this is enough funding for that fund. So we do look forward to getting that report done. I believe they're scheduled to be done by October or November.

CHAIRMAN MAESTAS: Well, I think the replenishment is an indication that we have a good buffer there. If we were replacing the whole thing of $1.2 million then that would be cause for concern, at least for me, that it probably is too low, so I think we're good. I think we're good, Commissioner, but is there anything else?

COMMISSIONER CHAVEZ: No. I guess I'm just maybe being overly cautious on it but I think it might not be bad.

CHAIRMAN MAESTAS: Okay. Any other discussion? We have a motion on the floor and a second.

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

MATTERS FROM THE PUBLIC

CHAIRMAN MAESTAS: Anyone from the public that wishes to address the Board? Going once, twice? Okay, that's closed.

MATTERS FROM THE BOARD

CHAIRMAN MAESTAS: Any matters from the Board? Seeing none.

NEXT MEETING: August 7, 2014

ADJOURNMENT

Having completed the agenda, Chair Stefanics declared this meeting adjourned at approximately 5:45 p.m.

Approved by:

_____
Joseph Maestas, Board Chair

Respectfully submitted:

Debbie Doyle, Wordswork

FILED BY:

_____
GERALDINE SALAZAR
SANTA FE COUNTY CLERK

ATTEST TO:

_____
YOLANDA VIGIL
SANTA FE CITY CLERK

D R A F T

subject to approval

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 14, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager

ITEM AND ISSUE:

Update on the LANL Early Notification System and progress with Memorandum of Understanding.

BACKGROUND AND SUMMARY:

In 2007, the Buckman Direct Diversion Board (BDDB) requested a written agreement with Los Alamos National Laboratory (LANL). On May 13, 2010, the Buckman Direct Diversion Board (BDDB) and the United States Department of Energy (DOE) entered into a five (5) year Memorandum of Understanding (MOU) regarding Water Quality Monitoring set to expire in May 2015. The purpose of the MOU was "to establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory (LANL) and the Department of Energy (DOE) in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project (BDD Project)."

Historically, the E109.9 gaging station has been maintenance intensive. Typically, this site requires extensive maintenance after each storm event to remove sediments deposited in the station. During times after storm events and before station can be cleaned, the station remains inoperable. During the 6th Biannual DOE and BDDB MOU Meeting, held on March 27, 2012, staff discussed the possibility of utilizing gaging stations E50 and E60 as a Contingency Plan for the ENS (Early Notification System). Danny Katzman and Armand Groffman with LANL prepared an ENS Operation and Maintenance (O&M) procedures to be included in Appendix A of the MOU. The intent of the Contingency Plan was to have policies and procedures in place in the event that E109.9 gaging station was to become inoperable.

On August 9, 2013, the San Ildefonso Pueblo issued a Notice of Termination of Access to Station E109.9 to the DOE. Pursuant to the notification, access to the E109.9 Gaging Station will be denied to both the DOE and the BDD. This was mainly due to a 20" gas main located downstream of the E109.9 gaging station becoming exposed during some storm events. Without access to the E109.9 gaging station, staff realized it was only a matter of time before the site would become inoperable and would not be able to become operable until San Ildefonso Pueblo issued access to the site. Staff presented to the BDDB its intention to utilize the "Contingency Plan" under these circumstances.

On August 23, 2013, BDD Staff and representatives from the City of Santa Fe and Santa Fe County met with San Ildefonso Governor Terry Aguilar. In this meeting, the BDD issued a letter to the San Ildefonso Pueblo requesting a lease agreement to access the E109.9 Gaging Station. On August 27, 2013 the San Ildefonso Pueblo responded to the request for a lease agreement indicating that request would be considered pending a $25,000 application fee and the following documentation: A Site Survey,

Operations Agreement between the BDD and DOE, Environmental Reports, Appraisal, requested term of the lease, protocols for access, protection of information, and for discoveries of cultural resources.

BDD Staff identified two (2) potential scenarios to maintain the Early Notification System;

1. The BDDB could enter into a lease agreement with San Ildefonso Pueblo. While no modification to the operational procedures would be required, the current MOU would need to be renegotiated to reflect maintenance of the site. An initial cost of $25,000 for the application fee would be required, then possible cost of a site survey, appraisal, and Environmental Assessment, and then ultimately the annual cost the lease. The Pueblo has indicated that they would allow the BDD access to the site during the application process so long as it was moving forward.

2. The ENS and Operational Procedures could be modified to utilize E50 and E60 to trigger the ENS. This would require reprograming of the flow signal from E109.9 to E50 and E60. This was available because E50 and E60 could be used as a contingency to not having E109.9. The current MOU would need to be renegotiated to reflect modifications. The DOE would need to install video surveillance equipment and staff gage on the flume wall, but flow signals are already in place for the immediate use of the sites. The BDD would lose redundancy in the ENS.

On September 11, 2013 the BDDB directed staff to pursue Option # 2 under the following assumptions,

1. Cost for Option #1 could not be determined.
2. The Department of Energy would move any resources necessary to the gaging station E50 and E60 to bring them to the same level as E109.9.
3. The BDD would not be losing any capabilities within the ENS
4. E109.9 would be maintained through the monsoon season
5. Replacing E109.9 to another location is not feasible

On September 11, 2013, extreme flooding was experienced in both Los Alamos Canyon and Pueblo Canyon. E109.9 was buried and site equipment was lost. In addition the steam flow in this area moved several meter and no longer followed the steam path through the gaging station. BDD staff began utilizing the "Contingency Plan" at this point and has continued to date.

Since September 12, 2013, LANL has restored functionality to both E050 and E060. LANL has installed video surveillance at both E50 and E60. LANL has installed a camera at a location identified as E062 which is just below the confluence of LA/Pueblo Canyons. LANL has modified the website that provides images of E050, E060 and E062 in a carousel format that rotates through real-time images of the three (3) sites. BDD staff has modified the ENS operation to be trigger by flow greater than 5 cfs through E050 or E060, or a combined flow of 5 cfs through of both E050 and E060. BDD staff has purchased and install two (2) additional samplers at the diversion site to increase the duration of time when samples can be collected. LANL and BDD staff have met multiple times to discuss the 2014 sampling season and made adjustments to achieve a successful season.

On November 7, 2013, the BDDB addressed Peter Maggiore, Assistant Manager Environmental Project Office, of the US Department of Energy concerning an extension to the existing May 13, 2010 Memorandum of Understanding (MOU) between the U.S. Department of Energy and the Buckman Direct Diversion Board. The BDDB directed staff to present a resolution to the BDDB for approval in the December meeting.

On December 12, 2013 Resolution 2013-3 was presented and passed by the BDDB requesting that Los Alamos National Laboratory (LANL) and Los Alamos Site Office/National Nuclear Security Administration (LASO/NNSA) staff meet and confer with BDD Board staff on amendments to the May 13, 2010 MOU to reflect both the changed circumstances in LA/Pueblo Canyon as a result of the September, 2013 storm flow and to extend the MOU for additional years into the future.

The MOU can be broken down into two objectives. The first objective is to provide an Early Notification System. The second objective is to collect water quality samples representative of the Rio Grande River under the influence of flow from Los Alamos Canyon.

Objective 1 – Early Notification System (ENS)

In Section "E", subpart 1, of the MOU, the agreement identifies a LA/P (Los Alamos and Pueblo) Canyon Early Notification Gaging System. The purpose of the early notification system is to provide real time stream flow data to the BDD Project. Real-time stream flow data enables the BDD to make decisions regarding facility operations, including temporary ceasing diversion of water from the Rio Grande. This data is provided through the following gaging stations;

- Station E060 in Pueblo Canyon above the Los Alamos Canyon confluence,
- Station E050 in Los Alamos Canyon above the Pueblo Canyon confluence, and
- Station E109.9 in lower Los Alamos Canyon above its confluence with the Rio Grande.

This is due to the fact that the point of diversion for the BDD is located approximately three (3) miles downstream from the confluence of the Rio Grande and Los Alamos Canyon. Water from Los Alamos and Pueblo Canyon intermittingly and infrequently flow into the Rio Grande due to storm events in this watershed. The Los Alamos/Pueblo Canyon Watershed (LA/P Canyon Watershed) contains sediment with LANL-origin contamination from historic releases from LANL. These sediments could be transported to the Rio Grande during storm events.

Objective 2 – Water Quality Monitoring

In Section "E", subpart 2, of the MOU, the agreement identifies a sampling system to provide water-quality contaminate sampling data from flow events at the stations described above in order to characterize contaminates in Los Alamos and Pueblo Canyon.

In Section "E", subpart 3, of the MOU, the agreement identifies a sampling system to provide event-based sampling at the diversion site of the Buckman Direct Diversion to determine change is stage in the Rio Grande when under the influence of flow from Los Alamos Canyon.

In addition, the State of New Mexico Environmental Department, Oversight Bureau has been monitoring storm water and the transportation of sediment from Los Alamos since 2001. Their monitoring has included sampling of the E109.9 Gaging Station as well as the Buckman Direct Division Site.

Water quality monitoring is to determine a baseline level of contaminates in the Rio Grande and sampling of storm events that create flow from Los Alamos Canyon with enough velocity to transport sediment into the Rio Grande. These storm events are sampled in the canyons as well as at the diversion structure. Samples in the canyon provides measurement of contaminates as they move down Los Alamos Canyon. Samples at the diversion structure provide measurement of how contaminate levels dilute with existing flow in the Rio Grande from up gradient.

Over the last three (3) monsoon seasons, a total of sixteen (16) storm events were sampled. The samples were successfully collected, prepared, and sent to the analytical laboratories for analyses.
Results from the analyses are posted on the INTELLUS web site. BDD staff requires more time and assistance in processing this data to develop a summary of all events and interpret the data in the context of the MOU's intent.

Lessons learned from previous seasons

1) For the first three seasons, the BDD only utilized two (2) automatic samplers, which demonstrated to be insufficient for this project. Two more samplers were purchased for the 2013 (fourth and last) season. With 4 automatic samplers BDD can better "cover" the storm events, and can collect more samples.
2) Maintaining the automatic samplers in good working condition has been a challenge, but BDD's field experience from the previous seasons has been useful in learning how to best operate these samplers.
3) The strategy of when to collect samples changed throughout the years. Because of that samples from 22 storm events were not sent to the laboratory for analyses. Some of those events were sampled and some were not, and there was one autosampler failure.
4) The BDD would like to sample the Rio Grande during non-storm events to develop a true baseline of water quality. The BDD would like to sample the Rio Grande every time there is a storm event in the LA/P canyon system, and we would like to sample some regional events so that we can distinguish between potential LANL contaminants and regional contaminants in the river
5) The data from the previous seasons has not been summarized and analyzed in order to determine what modifications are needed to accomplish this objective of the MOU.

Recommended Modification to the MOU

1. No restrictions on sampling events should be specified in the MOU. The MOU may recommend 30 sampling events, but must have a provision for extending these sampling events after the third year in order to meet the MOU objectives.
2. Revise the MOU to obtain data that has better detection limits. The project should require a high quality data with low detection limits.
3. A "Time of Travel" study should be conducted and data should be implemented into the sampling plan.
4. The gaging station E109.9 should be restored as revisions to the MOU, the sampling of the river would be much more representative of the LA/P flow.
5. Annual reports and evaluation of the MOU's objectives and the program should be completed.

LANL and BDD staff has met to negotiate a new five (5) year MOU. BDD staff agrees that the current MOU is written well and the overall goal of the MOU hasn't changed. The monitoring of contaminants has been very limited for the last three years. The Buckman Direct Diversion's goal for the next five years is to:

1. Maintain the Early Notification System by receiving real time stream flow data of LA Canyon flow into the Rio Grande. In the event that LA Canyon flow is greater the 5 cfs, to cease diversion and allow these flow to pass the diversion structure before resuming diversion.

2. Collect and analyze water and sediment samples during storm events to characterize the water quality and determine the effect these storm events have on the Buckman Direct Diversion. These samples will be collected in the Rio Grande when the river is not under the influence of Los Alamos Canyon flow to determine a baseline of water quality

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager

ITEM AND ISSUE:

Presentation of Draft Job Description and Scope of Work to evaluate the potential of creating a Buckman Direct Diversion Executive Director.

BACKGROUND AND SUMMARY:

In July 3, 2014 the Buckman Direct Diversion Board, directed staff to move forward with hiring a BDD Facility Manager and bring forward some recommendations on a BDD Executive Director position. The intent is understood the BDD Facility Manager would serve a "technical" role for the Buckman Direct Diversion and oversee the day to day management of the facilities and staff. The BDD Executive Director would fulfill a more "administrative" role such as business practices and communications with the BDDB. Staff has begun this process by describing the essential functions of a BDD Executive Director. Once the essential functions are developed, staff will begin to look at minimum qualification required to perform the essential functions and anticipated salary.

DISCUSSION

Staff has begun this process by describing the essential functions of a BDD Executive Director. Once the essential functions are developed, staff will begin to look at minimum qualification required to perform the essential functions and anticipated salary.

ATTACHMENTS

- Draft BDD Executive Director Job Description
- Draft BDD Executive Director Scope of Work

Classification: BDD Executive Director	Grade: O FLSA Status: Exempt

GENERAL DESCRIPTION

This position provides professional expertise and leadership to manage the state-of-the-art Buckman Direct Diversion (BDD) facilities, co-owned by the City of Santa Fe and Santa Fe County; and is responsible for the production of drinking water that is compliant with applicable local, state and federal regulations, meets the demands of the City of Santa Fe and Santa Fe County, and optimizes facility operations.

SUPERVISION RECEIVED

Works under the administrative direction of the Buckman Direct Diversion Board and operates within the governance of the BDD Board.

SUPERVISION EXERCISED

Manages the BDD staff who have direct responsibility for facility operations, maintenance, process automation and security, water quality and reporting, fiscal administration, and staff safety and training in a 24/7/365 environment.

NATURE OF WORK

Essential Functions: *The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of any one position in the class. The omission of an essential function does not preclude management from assigning duties not listed herein if such functions are a logical assignment to the position.*

- Provides leadership to the BDD organization by keeping the vision and values of the organization at the forefront of decision-making and action; and to shape priorities. Helps others understand the organization's vision and values and their importance. Translates the BDD vision and values into day-to-day activities and behaviors; and guides and motivates others to take action that supports the vision and values of the organization.

- Plans, organizes, directs and manages all functions and activities for the BDD facilities including the stewardship required to realize the planned lifetime of the facilities and compliance with all permits, the Project Management and Fiscal Services Agreement between the BDD Board and the City of Santa Fe, the Facilities Operations and Procedures Agreement between the City of Santa Fe, Santa Fe County, and Las Campanas, and the Joint Powers Agreement between the City of Santa Fe and Santa Fe County.

- Assures compliance with contracts; environmental laws; Office of the State Engineer and Interstate Stream Commission requirements; and all applicable local, state and federal laws and regulations, including the Safe Drinking Water Act (SDWA).

- Oversees the preparation and approval of the annual O&M budget pursuant to BDD project intergovernmental agreements.

- Provides policy guidance and program evaluation to the BDD Board and management staff.

- Coordinates with the local, state and federal agencies and authorities on regulatory matters related to operation of the facility. Develops and maintains cooperative working relationships with other governmental and regulatory agencies and various public and private groups.

- Evaluates the need for, and recommends additional equipment, resources and staffing for efficient and effective facility operation.

MINIMUM QUALIFICATIONS

Education and Experience

Graduation from an accredited college or university with a Bachelor's Degree in water/wastewater technology, engineering, chemistry, management or related field. Master's of Science in civil, environmental or water resources engineering or related field of engineering is desirable. Professional Engineer preferred.

AND

Eight years of experience in water operations, four of which must include management of the operation and maintenance of a water facility and direct supervision of staff of a water or wastewater treatment facility. Advanced unit process management of a highly automated surface water treatment facility is preferred. A Master of Science in civil, environmental or water resources engineering or related field of engineering may substitute for two years of experience.

Knowledge, Skills, and Abilities

Extensive knowledge of advanced water treatment unit process theory and operation; practices and principles of management and supervision; advanced surface water plant operations and maintenance; applicable laws and regulations governing management of human resources; safe drinking water, including applicable federal, state and local regulations related thereto; occupational hazards and safety practices in the utility operations/maintenance field; and of budgets and financial operations. Knowledge of computer hardware and software used in the control, operation and maintenance of a water treatment facility.

Skill in leadership and management, including human resources management; developing and communicating business recommendations; written and verbal communication; and the analysis of water-related issues and in developing and implementing appropriate actions or programs around these issues.

Ability to work independently; plan, assign, direct, coordinate and review the work of others; to lead, motivate and develop subordinate staff; to develop and maintain effective relationships with elected officials, other managers, staff and the public; and gather and analyze data, draw conclusions, and make and implement recommendations; and effectively use standard and specialized computer software applications.

PHYSICAL DEMANDS/WORK ENVIRONMENT

Work is performed inside and outside, sometimes in inclement weather or slippery services and in confined spaces. Requires exposure to loud noises, vibrations, chemicals, toxic gases and fumes, germs, bacteria and allergens. May be required to use an oxygen monitor in designated areas. May be subject to cuts, bruises, punctures, burns, broken bones, insect and/or snake bites. Work is strenuous and may require extended periods of walking, standing, lifting up to 25 pounds, carrying, bending, stooping, kneeling, crouching, reaching above the head and shoulders, speaking, hearing and good visual acuity. May be required to enter and work in confined spaces and climb ladders. Work may require irregular work hours, late meetings, travel; and may be called out to address emergency situations.

BUCKMAN DIRECT DIVERSION EXECUTIVE DIRECTOR
SCOPE OF WORK

3. Duties of Employee and Employer.

a. Employee is engaged as BDD Executive Director for the Buckman Direct Diversion. As BDD Executive Director, Employee shall be accountable and responsible to:

i. Provide leadership, management, and supervision over all day-to-day operations, administrative functions, budget, programs, events, and other activities of the BDDB;

ii. Ensure Buckman Direct Diversion compliance with state and federal statutes, laws, rules, and regulations, and all other requirements applying to the operations of the Buckman Direct Diversion;

iii. Ensure the Buckman Direct Diversion is operated in a fiscally responsible manner and that sound financial management practices are established and followed, and that the finances of the Buckman Direct Diversion are appropriately documented and recorded;

iv. Provide that the Buckman Direct Diversion fulfills its purposes and meets its obligations;

v. Work towards achieving the BDDB's goals professionally, ethically, with a high degree of quality, and always with the public good as the primary consideration;

vi. Communicate and coordinate with the Board in order to ensure an informed, efficient, and productive Board;

vii. Respond to and implement Board directives and instructions; and

viii. Perform all other work necessary and proper to accomplish the purposes of the Buckman Direct Diversion and as directed by the Board.

b. Employee shall diligently and conscientiously devote Employee's entire professional time, attention, and energy to the performance of his/her work as BDD Executive Director.

c. Employee shall:

i. Work a full-time equivalent schedule, and additional hours as necessary to fulfill the obligations of the employment. Employee's schedule shall include day, night, and weekend hours as necessary. Employee shall not receive overtime or additional compensation for time worked in excess of a forty (40) hour workweek or for hours worked outside of traditional work hours.

ii. Observe and comply with all laws, statutes, rules, and regulations governing the work;

iii. Keep and maintain, or cause to be kept and maintained, appropriate records relating to professional services provided by Employee;

d. Employer shall have the right to control, direct, and supervise the duties to be performed, the manner of performing such duties, and the time for performing such duties.

e. Employer shall provide Employee with suitable office space, supplies, equipment, staff support, and other facilities and services appropriate to Employee's position and adequate for the performance of his/her duties.

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

DATE: August 7, 2014

TO: Buckman Direct Diversion Board

FROM: Mackie Romero, BDD Financial Manager

ITEM AND ISSUE:

Information Update on Amendment to Facility Operations and Procedures Agreement (FOPA).

BACKGROUND AND SUMMARY:

Due to the assignments made by Las Campanas, L.P. ("LCLP"), of its interest in the FOPA, to the Las Campanas Homeowners' Water Cooperative and to the Club at Las Campanas, along with an assignment of additional peak day capacity to the County, an amendment to the FOPA is called for. The FOPA amendment will, among other details, change the percentage allocation of "BDD Project Facility Capacity Allocation" which determines "Cost Sharing of Fixed OMR&R (Shared Facilities)", due to the acquisition of peak day capacity under the FOPA by the Las Campanas Homeowners' Water Cooperative and the Club at Las Campanas. Based on the assignments made by LCLP, the budget was prepared with the percentage changes to the projected fixed costs, Table E, of the FY14/15 Annual Budget Request.

The FOPA amendment will memorialize the current cost sharing of the partners as allocated in the Approved FY14/15 Annual Budget.

Amended Cost Sharing **(TABLE E)**

Partner	Fixed (Shared Facilities)	Fixed (Separate Facilities)	Variable Costs (Projected Volumetric Flow)
City of Santa Fe	62.09%	75.33%	74%
Santa Fe County	28.85%	24.67%	16%
Las Campanas (Coop)	3.68%	0%	10%
Las Campanas (Club)	5.38%	0%	0%
	100%	100%	100%

Section 7 "BDD Project Facility Capacity Allocation" of the Current FOPA:

Cost Sharing for Fixed OMR&R (Shared Facilities) - Section 20 of FOPA

City	62.09% (11.3 mgd allocation of 18.2 mgd total capacity)
County	20.33% (3.7 mgd allocation of 18.2 mgd total capacity)
Las Campanas	17.58% (3.2 mgd allocation of 18.2 mgd total capacity)

The FOPA is proposed to be amended to change the capacity allocation and to allow for additional percentage changes based on acquisition of additional peak day capacity amongst partners not to exceed amount of BDD permitted capacity (afy). This amendment will be drafted by BDD Legal Counsel, Long, Komer & Associates and circulated to the City of Santa, Santa Fe County and the Las Campanas Homeowners' Water Cooperative and the Club at Las Campanas for comment. The final version will be brought back to the board for possible action.

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Date: **June 23, 2014**

To: **Buckman Direct Diversion Board**

From: **Gary C. Durrant, Chief Operator BDD**

Re: **Update on BDD Operations for the month of July 2014**

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1. This memo is intended to update the BDD Board on BDD operations during the current month of July. BDD diversions and deliveries have averaged, in Million Gallons Daily (MGD) as follows:

   a) Raw water diversions: 5.672 MGD Average
   b) Finished Drinking water deliveries through Booster Station 4A: 2.368 MGD Average
   c) Finished Drinking water deliveries through Booster Station 5A: 1.956 MGD Average
   d) Raw water delivery to Las Campanas at BS2A: 30.819 MG Total.

2. The BDD is providing approximately 50 percent of the water supply to the City and County for the month.

3. On Peak Pumping: The BDD has been pumping on peak for a large portion of the month as we are providing some extra to the City/County beyond what we are able to provide off peak. Las Campanas is being kept very full in this difficult time of year. Our total for the month of July so far is 107.25 hours on peak.

4. Please see the following pages from the Monthly report to the Office of the State Engineer (OSE) for accurate information for the month of June 2014 and year to date.

5. Please note all prior years are also included for reference.

Monthly Diversions under SP-2847-E, SP-4842, and SP-2847-N-A
June-14

BDD Diversion of San Juan-Chama Water	**af**	**mg**
Total SJC water arrived at the BDD diversion site	412.04	134.26
Total SJC diverted at BDD	412.04	134.26
Total SJC available for offsetting depletions under RG-20516.	0	0.00

Total BDD water diverted from all water rights	af	mg
BDD Current Monthly Total	705.49	229.89
SJC Diversion under Permit SP-2847-E	*295.26*	96.21
City of Santa Fe	*295.26*	96.21
Santa Fe County	*0.00*	0.00
SJC Diversion under SP-2847-N-A (CLCI)	*116.78*	38.05
Rio Grande native water rights (SP-4842;SFCounty)	*293.45*	*95.62*

Metered Diversions under Permit SP-2847-E and SP-4842

Meter Serial Number	**OSE Meter Number**	**Current Month Meter Reading**	**Previous Month Meter Reading**	**Diversion by Meter**	
				ac-ft	mg
CC004816000-Diversion	14113	2285.177	2166.176	365.20	119.00
CC004916000-Diversion	14114	2266.697	2194.368	221.97	72.33
CC004A16000-Diversion	14115	2228.115	2175.262	162.20	52.85
CC000A16000-Return	14255	237.5298	223.233	43.87	14.30
Total Metered Diversions				**705.49**	**229.89**

Bnckman Direct Diversion Monthly SJC and Native Diversions

Jun-14

Month	Total SJC Release (AF)	SJC Conveyance Losses (AF)	Total SJC Available at BDD (AF)	SJC Diversion, SP-2847-E (AF)	SJC Diversion, SP-2847-N-A (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion (all permits)	SJC from SP-2847-E used to offset Buckman Wells RG-20516 (AF)	SJC from SP-2847-N used to offset Buckman Wells RG-20516 (AF)
JAN	383.34	3.74	390.33	390.33	0.00	12.68	0	403.01	0	0
FEB	347.93	3.26	339.99	339.99	0.00	12.94	0	352.93	0	0
MAR	373.81	3.66	381.62	356.93	24.70	148.90	0	530.52	0	0
APR	178.56	1.69	176.59	92.27	84.32	227.41	0	404.00	0	0
MAY	515.88	4.84	504.52	409.48	95.04	350.69	0	855.21	0	0
JUN	426.88	3.95	412.04	295.26	116.78	293.45	0	705.49	0	0
JUL										
AUG										
SEP										
OCT										
NOV										
DEC										
TOTAL	**2226.41**	**21.15**	**2205.10**	**1884.26**	**320.84**	**1046.06**	**0.00**	**3251.16**	**0.00**	**0.00**

Source of SJC releases in reporting month. Includes conveyance losses.

		ABIQUIU		
Month	Total Release (AF)	City of Santa Fe (AF)	Santa Fe County (AF)	Club at Las Campanas (AF)
JAN	383.34	383.34	0	0
FEB	347.93	347.93	0	0
MAR	373.81	346.36	0	27.45
APR	178.56	93.15	0	85.41
MAY	515.88	419.62	0	96.26
JUN	426.88	307.41	0	119.47
JUL	0.00	0.00	0	0.00
AUG	0.00	0.00	0	0.00
SEP	0.00	0.00	0	0.00
OCT	0.00	0.00	0	0.00
NOV	0.00	0.00	0	0.00
DEC	0.00	0.00	0	0.00
TOTAL	**2226.41**	**1897.82**	**0.00**	**328.59**

Buckman Direct Diversion Monthly SJC and Native Diversions

December 2013

Month	Total SJC Release (AF)	SJC Conveyance Losses (AF)	Total SJC Available at BDD (AF)	SJC Diversion, SP-2847-E (AF)	SJC Diversion, SP-2847-N-A (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion (all permits)	SJC from SP-2847-E used to offset Buckman Wells RG-20516 (AF)	SJC from SP-2847-N used to offset Buckman Wells RG-20516 (AF)
JAN	439.04	4.24	441.79	441.79	0	44.09	0	485.88	0	0
FEB	261.03	2.47	257.94	257.94	0	10.49	0	268.42	0	0
MAR	353.69	3.30	343.57	343.57	0	75.66	0	419.23	0	0
APR	680.73	6.34	661.33	661.33	0	89.47	0	750.80	0	0
MAY	1045.27	9.88	1030.46	1030.46	0	22.86	0	1053.32	0	0
JUN	817.91	7.85	818.00	734.56	83.44	260.03	0	1078.03	0	0
JUL	606.85	5.90	614.73	397.47	78.83	0.00	0	476.30	83.70	54.73
AUG	108.68	0.91	95.34	41.68	36.91	0.00	0	78.59	5.58	11.18
SEP	136.77	1.43	149.29	63.86	53.76	0.00	0	117.61	25.36	6.32
OCT	255.24	2.46	256.53	213.87	42.66	72.92	0	329.45	0	0
NOV	196.45	1.88	195.50	187.02	8.48	117.33	0	312.83	0	0
DEC	293.76	2.63	274.19	274.19	0.00	12.25	0	286.44	0	0
TOTAL	**5195.42**	**49.29**	**5138.67**	**4647.73**	**304.07**	**705.09**	**0.00**	**5656.89**	**114.64**	**72.23**

Source of SJC releases in reporting month. Includes conveyance losses.

		ABIQUIU		
Month	Total Release (AF)	City of Santa Fe (AF)	Santa Fe County (AF)	Club at Las Campanas (AF)
JAN	439.04	439.04	0	0
FEB	261.03	261.03	0	0
MAR	353.69	353.69	0	0
APR	680.73	680.73	0	0
MAY	1045.27	1045.27	0	0
JUN	817.91	729.30	0	88.60
JUL	606.85	473.27	0	133.58
AUG	108.68	65.21	0	43.47
SEP	136.77	83.87	0	52.90
OCT	255.24	211.15	0	44.09
NOV	196.45	186.31	0	10.15
DEC	293.76	293.76	0	0.00
TOTAL	**5195.42**	**4822.62**	**0.00**	**372.79**

Buckman Direct Diversion Monthly SJC and Native Diversions

December 2012

Month	Total SJC Release SP-2847-E (AF)	Conveyance Losses (AF)	Total SJC Available at BDD Diversion (AF)	Total SJC Diversion SP-2847-E (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion SP-2847-E plus SP-4842 (AF)	SJC used to offset Buckman Wells RG-20516 (AF)
JAN	448.09	4.06	447.00	411.56	5.02	0	416.59	35.44
FEB	210.29	1.97	216.94	208.13	32.21	0	240.34	8.81
MAR	335.75	2.94	323.61	312.85	59.21	0	372.06	10.76
APR	528.63	4.72	519.90	519.90	108.61	0	628.51	0.00
MAY	660.18	6.24	651.05	651.05	145.51	0	796.55	0.00
JUN	722.36	6.79	692.21	692.21	120.92	0	813.12	0.00
JUL	152.03	2.23	191.75	157.16	0.00	0	157.16	34.60
AUG	86.08	0.58	60.90	60.90	239.96	0	300.87	0.00
SEP	637.17	6.05	630.92	630.92	110.07	0	740.99	0.00
OCT	747.21	7.14	744.87	744.87	50.82	0	795.69	0.00
NOV	479.19	4.63	482.65	482.65	120.91	0	603.56	0.00
DEC	442.67	4.17	434.71	434.71	119.44	0	554.15	0.00
TOTALS	**5449.67**	**51.53**	**5396.51**	**5306.90**	**1112.67**	**0.00**	**6419.57**	**89.61**

Source of SJC Releases in reporting month. Includes conveyance losses.

		HERON		EL VADO		ABIQUIU	
Month	Total Release (AF)	CITY	COUNTY	CITY	COUNTY	CITY	COUNTY
JAN	448.09	0.00	0.00	0.00	0.00	448.09	0.00
FEB	210.29	0.00	0.00	0.00	0.00	210.29	0.00
MAR	335.75	0.00	0.00	0.00	0.00	335.75	0.00
APR	528.63	0.00	0.00	0.00	0.00	528.63	0.00
MAY	660.18	0.00	0.00	0.00	0.00	660.18	0.00
JUN	722.36	0.00	27.21	0.00	0.00	695.15	0.00
JUL	152.03	0.00	21.42	0.00	0.00	130.61	0.00
AUG	86.08	0.00	0.00	0.00	0.00	86.08	0.00
SEP	637.17	0.00	0.00	0.00	0.00	637.17	0.00
OCT	747.21	0.00	0.00	0.00	0.00	747.21	0.00
NOV	479.19	0.00	0.00	0.00	0.00	479.19	0.00
DEC	442.67	0.00	0.00	0.00	0.00	442.67	0.00
TOTALS	**5449.67**	**0.00**	**48.63**	**0.00**	**0.00**	**5401.04**	**0.00**

Note: Grey fields indicate revisions to previous monthly report

Buckman Direct Diversion End of Month Report

December 2011

Month	Total SJC Release SP-2847-E (AF)	Conveyance Losses (AF)	Total SJC Available at BDD Diversion (AF)	Total SJC Diversion SP-2847-E (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion SP-2847-E plus SP-4842 (AF)	SJC used to offset Buckman Wells RG-20516 (AF)
JAN	247.17	4.94	242.23	221.46	37.55	0.00	259.98	20.77
FEB	320.95	6.42	314.53	269.13	36.61	0.00	305.74	45.86
MAR	352.04	7.04	345.00	335.37	46.09	0.00	381.46	9.62
APR	585.11	11.70	573.40	573.40	56.64	0.00	630.04	0.00
MAY	568.22	11.36	556.86	440.02	49.23	0.00	488.87	116.84
JUN	765.87	15.32	750.55	655.89	80.66	0.00	736.55	94.67
JUL	641.81	12.84	628.97	407.40	49.86	0.00	457.26	221.58
AUG	182.98	2.07	168.97	86.23	0.00	0.00	86.23	82.75
SEP	568.78	6.83	537.05	515.86	0.00	0.00	515.86	21.19
OCT	555.90	4.85	570.81	555.66	0.00	0.00	555.66	15.16
NOV	431.29	3.93	433.26	433.26	14.60	0.00	447.86	0.00
DEC	437.57	3.90	429.46	450.42	0.00	0.00	450.42	-20.96
TOTALS	**5657.68**	**91.21**	**5551.11**	**4944.10**	**371.25**	**0.00**	**5315.94**	**607.47**

January 1, 2011: 1050.8 acre-feet of native Rio Grande water rights in SP-4842; not all are available for diversion- some transfers include leaseback provisions.

As of May 30, 2011: 330 ac-ft under SP-4842 A

Correction to Oct Total of SJC Available at BDD. The incorrect value used calculated the SJC released from upstream reservoirs, not that amount that arrived at BDD for diversion.

Source of SJC Releases for BDD diversion in reporting month. Includes conveyance losses.

			HERON		EL VADO		ABIQUIU	
Month	Total Release (AF)	Conveyance Losses (AF)	CITY	COUNTY	CITY	COUNTY	CITY	COUNTY
JAN	247.17	4.94	247.17	0.00	0.00	0.00	0.00	0.00
FEB	320.95	6.42	320.95	0.00	0.00	0.00	0.00	0.00
MAR	352.04	7.04	352.04	0.00	0.00	0.00	0.00	0.00
APR	585.11	11.70	585.11	0.00	0.00	0.00	0.00	0.00
MAY	568.22	11.36	568.22	0.00	0.00	0.00	0.00	0.00
JUN	765.87	15.32	765.87	0.00	0.00	0.00	0.00	0.00
JUL	641.81	12.84	641.81	0.00	0.00	0.00	0.00	0.00
AUG	182.98	2.07	0.00	43.56	0.00	0.00	133.47	5.95
SEP	568.78	6.83	0.00	150.50	0.00	0.00	418.28	0.00
OCT	555.90	4.85	0.00	0.00	0.00	0.00	555.90	0.00
NOV	431.29	3.93	0.00	0.00	0.00	0.00	431.29	0.00
DEC	437.57	3.90	0.00	0.00	0.00	0.00	437.57	0.00
TOTALS	**5657.68**	**91.21**	**3481.16**	**194.06**	**0.00**	**0.00**	**1976.51**	**5.95**

MEMORANDUM

TO: **City of Santa Fe Public Utilities Committee**
City of Santa Fe Water Conservation Committee
Buckman Direct Diversion Board

FROM: **Rick Carpenter, Water Resources and Conservation Manager** RC

VIA: **Nick Schiavo, Public Utilities Department and Water Division Director**

DATE: **July 24, 2014**

SUBJECT: 35th Monthly Update on Drought and Water Resource Management

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CURRENT UPDATE – GENERAL WATER RESOURCE MANGEMENT

As the Committee/Board is aware, our region is still suffering through a drought. Our region has gone through three consecutive years of record drought and heat. It is now apparent that we are in a fourth consecutive year of drought and abnormal heat and wind which will present significant challenges to all water purveyors, utilities, and irrigators going forward into the rest of this year. Weather prediction models had indicated that, at least through the early part of this summer, if not longer, drought conditions in the southwest (especially Arizona and New Mexico) should be neutral to below average precipitation and above average temperatures. However, there may be some relief in north-central New Mexico. Many models are now predicting the likelihood of a return of an El Nino weather pattern (70% chance , down from 75%, of normal to above normal precipitation). This could mean increased precipitation for the coming monsoon season, but more likely for the winter months (snow pack). New data show that the water in a section of the ocean called the "El Nino 34" region in the mid-Pacific has reached the +0.5 degree Celsius threshold, typically used to define the start of an El Nino pattern. That figure would have to persist or intensify for the next 5 or 6 months for an El Nino to officially be declared – but there is a very good chance of this happening. However, the Pacific trade winds are still too strong for full development of an El Nino in the near term even though we are in late July, i.e., the El Nino is showing early signs of potential weakening. This fire season is also expected to be very challenging which could have significant water quality implications for the BDD water treatment plant and/or Canyon Road water treatment plant.

This current drought is bad, but what sets it apart from previous extreme droughts is that, the region will enter into next summer without very much carry-over water from this year in regional reservoirs – they are at low levels. For example, Heron reservoir (San Juan-Chama Project water) is currently at about 29% of capacity. However, runoff from the San Juan watershed is substantial and accumulation into Heron from this year's snow pack and July rains is on the rise. BoR is predicting that SJCP contractors should receive at least 85% of normal deliveries (if not the full 100%). A good winter snow pack would be very beneficial.

It is worth noting, however, the City of Santa Fe has invested in a robust and diverse portfolio of four distinct water supply sources that allows for flexibility in meeting demand: Buckman well field, City well field, Canyon Road Water Treatment Plant on the Upper Santa Fe River, and the Buckman Direct Diversion on the Rio Grande. Supply from these groundwater and surface water sources are expected to be adequate in meeting local demands through the coming high-demand season.

LOCAL CONDITIONS

Source of Supply Utilization Summary

June 2014

City Wells	10.14mg/m	31.12af/m
Buckman Wells	20.60mg/m	63.24af/m
CRWTP	142.84mg/m	438.36af/m
BRWTP	188.90mg/m	579.71 af/m
Other Wells(Osage, MRC, etc)	*0.11mg/m*	*0.32af/m*

Upper Santa Fe River/CRWTP

	Total Combined Reservoir Level	Santa Fe Snow Gage	Reservoir Inflow
July 23, 2014	17.40%	0.00 inches	2.13 MGD
5-Year Average for This Date (2009 – 2013)	55.49 %	0.00 inches	2.47 MGD

As of July 23, total combined storage in Nichols and McClure reservoirs is 17.4% (or about 700 acre-feet of storage). Some flows have been by-passed due to construction on the new intake facilities. Inflows are expected to continue for the near future and so the reservoirs have been releasing water to allow for acequia deliveries, water treatment plant production, active construction, and draining/drying.

Buckman Regional Water Treatment Plant (BDD)

Flows in the Rio Grande are relatively high due to recent rains, and turbidity has been high at times, but the BDD Project in general has been able to divert water.

REGIONAL CONDITIONS

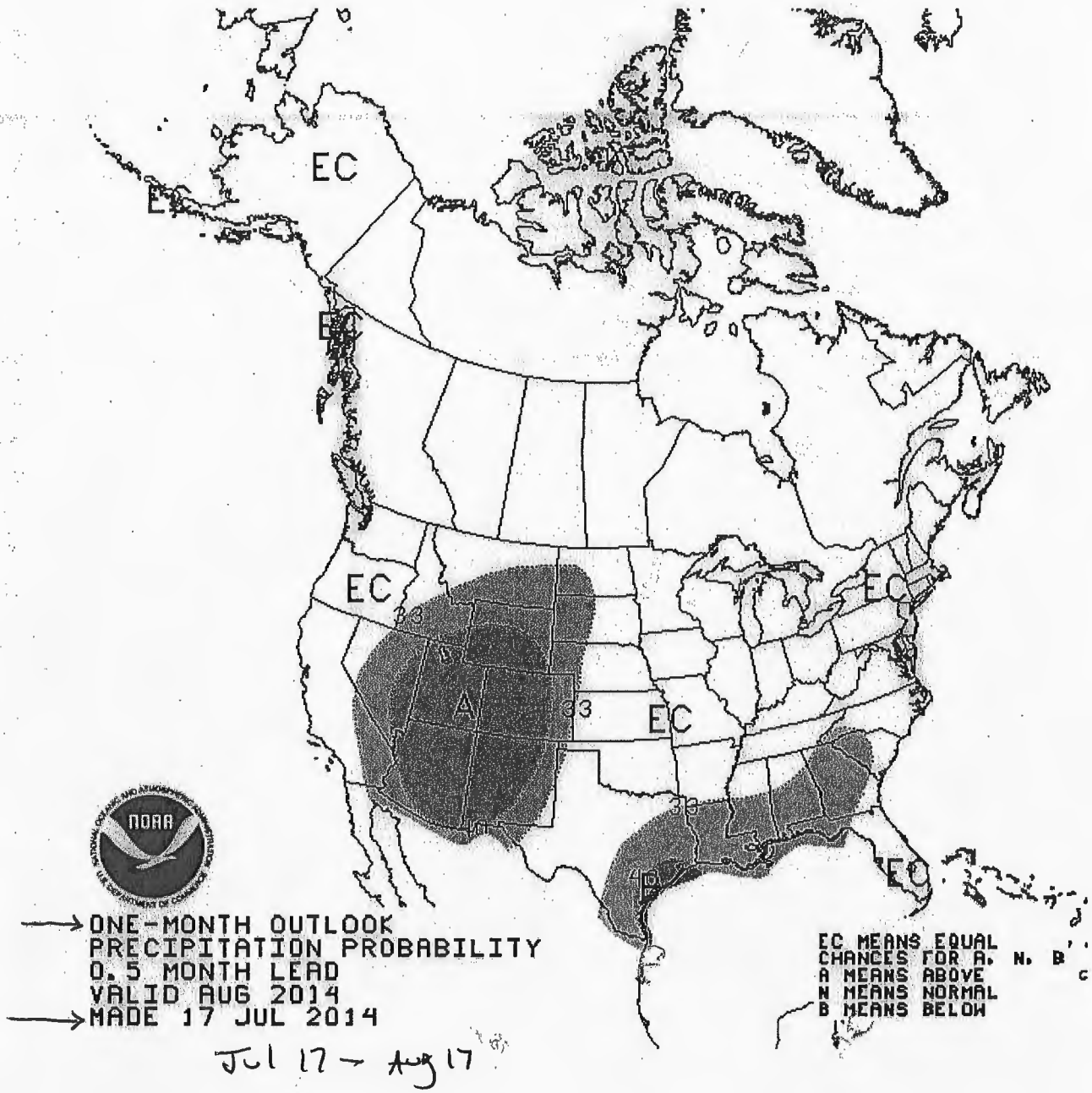
Rio Grande Basin

Surface flows in the Rio Grande and its tributaries through June have been well below normal, (except for temporary releases for the silvery minnow spawn), but July rains have helped increase flows. However, storage levels in regional reservoirs are still low. Native flows in the Rio Grande will likely be low through the summer and fall, and most of the water in the river will be San Juan-Chama releases or "Prior and Paramount" federal trust water.

UPDATE: on Wednesday, July 24, 2014, Wild Earth Guardians filed suit in federal court against the US Army Corps of Engineers and the Bureau of Reclamation citing violations of the Endangered Species Act as related to the Middle Rio Grande. Neither the BDD Project, the City of Santa Fe, nor the County of Santa Fe were named in the law suit, but this action may signal the beginning of collateral issues and/or constraints with regard to Rio Grande native flow management, as well as San Juan-Chama water resource management going forward. Updates will be provided by staff as necessary.

San Juan Basin

Snow melt was complete at the end of June. It should be stressed that, conditions could significantly worsen for San Juan Chama Project deliveries next year, if the drought persists, due to a lack of carry-over storage in Heron Reservoir and other reservoirs in the system. Heron Reservoir is currently at a very low level of 29% of capacity for this time of year. The Bureau of Reclamation has recently indicated that it is very likely that SJCP deliveries this year will be at or near 85% (if not higher) owing to good snow pack in the San Juan watershed last winter, high soil moisture, recent rains, and the minor amount of storage that was already in Heron at the beginning of the snow melt season.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ONE-MONTH OUTLOOK
PRECIPITATION PROBABILITY
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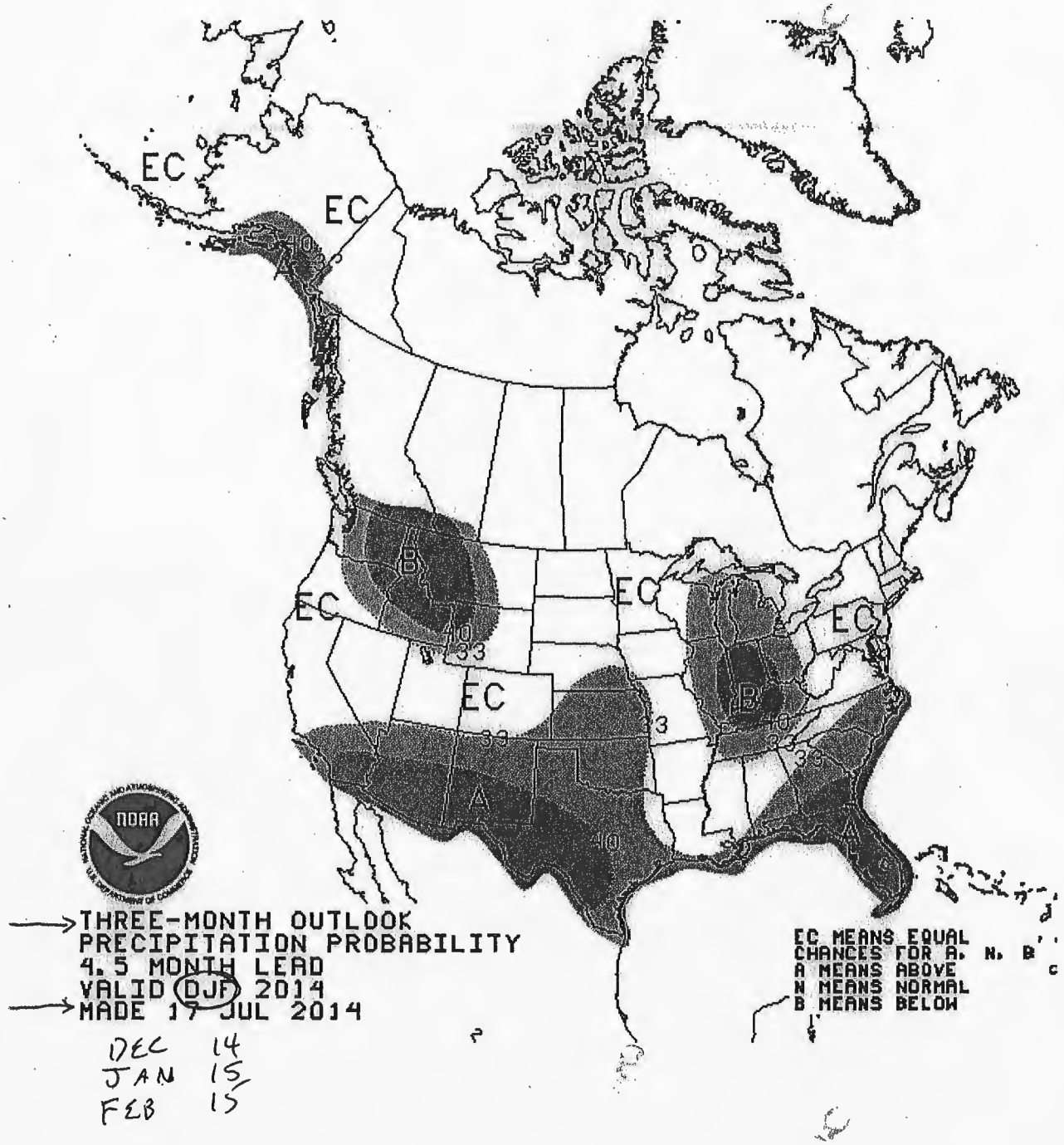
VALID AUG 2014
MADE 17 JUL 2014
EC MEANS EQUAL
CHANCES FOR A, N, B
A MEANS ABOVE
N MEANS NORMAL
B MEANS BELOW

Jul 17 – Aug 17



DEC 14
JAN 15
FEB 15

SANTA FE WATER SYSTEM DAILY REPORT
IN MILLION GALLONS OF WATER (MG)

WEDNESDAY 07/23/2014

			Same Date 2013		Same Date 2012	
CANYON WATER TREATMENT PLANT	4.007	MILLION GALLONS	2.180	MG	5.269	MG
BUCKMAN REGIONAL WATER TREATMENT PLANT[1]	5.770	MILLION GALLONS	0.130	MG	0.000	MG
CITY WELLS (INCLUDING ST. MICHAELS WELL)	0.000	MILLION GALLONS	1.566	MG	1.293	MG
BUCKMAN WELLS	2.154	MILLION GALLONS	7.444	MG	6.604	MG
TOTAL PRODUCTION	11.931	MILLION GALLONS	11.320	MG	13.166	MG
LAS CAMPANAS RAW GOLF COURSE CONSUMPTION	0.000	MILLION GALLONS	0.000	MG	0.000	MG
LAS CAMPANAS DOMESTIC SUPPLY CONSUMPTION	0.394	MILLION GALLONS	0.434	MG	0.409	MG
LAS CAMPANAS TOTAL CONSUMPTION	0.394	MILLION GALLONS	0.434	MG	0.409	MG
TOTAL STORAGE IN SYSTEM TANKS	29.141	MILLION GALLONS	19.390	MG	21.868	MG
GAIN OR LOSS OF STORAGE IN SYSTEM TANKS LOSS	0.130	MILLION GALLONS	(L) 1.209	MG	(G) 0.637	MG
ESTIMATED SFE RIVER DAILY INFLOW ABOVE McCLURE RESERVOIR[2]	2.13	MILLION GALLONS	2.39	MG	1.41	MG
ESTIMATED TOTAL STORAGE OF BOTH RESERVOIRS	17.4%	STORAGE LEVEL	32.2%	STORAGE	45.8%	STORAGE

1. Includes Santa Fe County Water Deliveries

2. USGS WEIR ABOVE McCLURE: http://waterdata.usgs.gov/nm/nwis/uv/?site_no=08315480&PARAmeter

RESERVOIR CAPACITY IN MG		
NICHOLS	162	2.6%
McCLURE	62	5.8%
MGD TOTAL	224	7.4%

SANTA FE RIVER PASS THRUS	PLANNED	0.10	CFS
ESTIMATED SFE RIVER DAILY STREAMFLOW @ GAGE BELOW NICHOLS RESERVOIR	ACTUAL	1.340	CFS
AS OF 04/15/14	ACRE-FT USED	1152.32	

NRCS SNOTEL GAGE STATIONS	CUMULATIVE SNOW WTR EQUIV.	CUMULATIVE SNOW DEPTH	DAILY PRECIP.	
SANTA FE SNOTEL	0.0	0.0	0.0	IN INCHES
ELK CABIN SNOTEL	0.0	0.0	0.0	IN INCHES
WRCC REMOTE AUTOMATIC WEATHER STATION AT AGUA SARCA				
SANTA FE WATERSHED		PRECIPITATION	0.03	IN INCHES

NOTE: Snow, Precipitation, and Stream Gage data are estimates & reported when available

SANTA FE SNOTEL SITE: http://www.wcc.nrcs.usda.gov/nwcc/sntl-data0000.jsp?site=922&days=7&state=NM

ELK CABIN SNOTEL SITE: 0http://www.wcc.nrcs.usda.gov/nwcc/sntl-data0000.jsp?site=921&days=7&state=NM

WRCC RAWS SITE: http://www.raws.dri.edu/cgi-bin/rawMAIN.pl?nmXSFW

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 16, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager SJ

ITEM AND ISSUE:

Request approval to purchase parts and supplies from Boyer and Seeley Pumps to repair Raw Water Pump Stations in the amount of $78,729.00.

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion currently utilizes five (5) pump stations to divert water from the Rio Grande River and delivery treated drinking water into the water system. These pump stations are equipped with a total of twenty-one (21) high flow pumps. The five (5) Raw Water Lift Station Pumps are designed and constructed by Morris Pumps. Boyer and Seeley, located in Greenwood, Colorado, is the authorized representative for Morris Pumps in New Mexico. The sixteen (16) pumps located in Booster Stations 1A, 2A, 4A, and 5A are designed and constructed by Weir Floway, Inc. Boyer and Seeley is the manufacture's Local Representative. In order to operate and maintain these twenty-one (21) pumps, the Buckman Direct Diversion has received a procurement exemption to purchase parts for Morris Pumps and Weir Floway, Inc pumps from Boyer and Seeley.

DISCUSSION

Work will be performed in conjunction with contract with Alpha Southwest. To avoid paying markup on parts thought the repair contractor, the Buckman Direct Diversion will purchase part directly from manufacturer's representative and provide to the project for installation.

In FY 2014/2015 the Buckman Direct Diversion will complete the following work.

Project	Material Cost
Rebuild Pump #2 @ RWLS	$45,679.00
Rebuild Pump #1 @ IA	$5,596.00
Rebuild Pump #3 @ 2A	$5,596.00
Replenish spare parts to BDD Inventory	$19,858.00
Total	$76,729

Total amount for parts purchased from Boyer and Seeley is $76,729 plus $2000.00 shipping

ACTION REQUESTED:

Staff recommends approval to purchase parts and supplies from Boyer and Seeley Pumps to repair Raw Water Pump Stations in the amount of $78,729.00. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit #7280000.520150.930020.

FINANCIAL IMPLICATIONS

Cost: $78,729
Savings: $11,809.35 (15% Mark-up)
Long Term Cost: N/A

Fund Source	Business Unit/Line Item	Amount
FY2014/2015	Rep and Replace System Equip #7280000.520150	$76,729

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager SJ

ITEM AND ISSUE:

Request approval of a Profession Service Agreement with Automation Electric in the amount of $30,000.00 plus NMGRT.

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion currently utilizes a Supervisory Control and Data Acquisition (SCADA) system to monitor and control automated functions of the facility and for reporting. The SCADA system is a Ci-tech product that interfaces with operational software such as Op-10 and Water Information Management System (WIMS). SCADA also serves as the Human and Machine Interface (HMI) allowing operators and/or preset parameters to control starting and stopping of equipment and water quality monitoring.

DISCUSSION

In order to operate and maintain this system, staff requires maintenance service to be performed by a contractor consisting of periodic calls to the Buckman Direct Diversion Facilities, to perform routine inspection, checking software upgrades and annual fees, calibration troubleshooting and other SCADA adjustments of the equipment. The contractor also provides upgrade, calibration and performs maintenance on the Buckman Direct Diversion Facilities SCADA instrumentation.

ACTION REQUESTED:

Staff recommends approval of a Profession Service Agreement with Automation Electric in the amount of $30,000.00 plus NMGRT. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit #7280000.

BUCKMAN DIRECT DIVERSION BDDB
PROFESSIONAL SERVICES AGREEMENT
WITH AUTOMATION ELECTRIC, LLC

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BOARD ("BDDB") and Automation Electric, LLC, (the "Contractor"). The date of this Agreement shall be the date when it is executed by the BDDB Chair.

1. SCOPE OF SERVICES

A. Maintenance service to be performed by Contractor under this Agreement shall consist of periodic calls to the Buckman Direct Diversion Facilities by Contractor's representatives. Such performance shall consist of routine inspection, checking software upgrades and annual fees, calibration troubleshooting and other SCADA adjustments of the equipment covered by this Agreement. Contractor shall upgrade, calibrate and perform maintenance on the Buckman Direct Diversion Facilities SCADA instrumentation.

B. Such maintenance service shall include scheduled and emergency service calls. The contract includes the labor for such maintenance, parts and software upgrades required for SCADA control instrumentation.

C. Contractor shall furnish the BDDB with a written report from Contractor after each service call.

D. The BDDB shall supply a list of any devices to be maintained by Contractor.

E. Maintenance service calls to the Buckman Direct Diversion Facilities will be scheduled at the convenience of both parties unless considered an emergency by the BDDB. Contractor must report to the job site within 48 hours of an emergency call.

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The BDDB shall pay to Contractor in full payment for services rendered, a sum not to exceed thirty thousand dollars ($30,000.00), plus applicable gross receipts taxes. The City shall pay to the Contractor the following rates for services rendered:

(1) $225.00 per day for estimated expenses for site visits based on the following:

a. Hotel - $65.00-$100.00 per day – estimate to be billed at best available accommodation rate;

b. Meals - $45.00 per day;

c. Car Rental - $70.00 per day – estimate to be billed at best rate available;

d. Fuel - $15.00 – estimate to be billed at actual rate;

(2) $100.00 per hour for phone support – 24 hour service, 7 days a week;

(3) $100.00 per hour for site visits – any day of week;

(4) The parts supplied by vendor shall be billed at cost plus 10%.

B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Invoices for services will be made on a monthly basis. Payment shall be made upon receipt and approval by the BDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made by the BDDB, this Agreement shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB Facilities Manager and terminate on June 30, 2015, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 10 days written notice to Contractor. In the event of such termination:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the BDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the BDDB shall pay Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the BDDB.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, the City of Santa Fe and Santa Fe County, their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDB to any obligation not assumed herein by the BDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (a) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (b) obtained BDDB approval of each company or companies as required below; and (c) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure

to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDB's exposure to loss for the duration of this Agreement.

C. Types of Insurance At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

(1) **Commercial General Liability**. Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (other than Products/Completed Operation)	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000
Personal Injury Limit	$2,000,000
Each Occurrence	$2,000.000

(2) **Automobile Liability**. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than $2,000,000 per accident. An insurance certificate shall be submitted to the BDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than $2,000,000 per claim and $2,000,000 annual aggregate. Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	$500,000	Each Accident
Bodily Injury by Disease	$500,000	Each Employee
Bodily Injury by Disease	$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDB, City of Santa Fe and Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDB is entitled to thirty (30) days prior

written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." In the event Contractors' insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDB within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "VII" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDB. The BDDB will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. Deductibles. All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

G. Specific Provisions Required.

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, City of Santa Fe, Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDB, City of Santa Fe, Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

(3) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDB's exposure to loss.

(4) Before performing any Professional Services, Contractor shall provide the BDDB with all Certificates of Insurance accompanied with all endorsements.

(5) The BDDB reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

(6) Contractor may obtain additional insurance not required by this Agreement.

13. <u>INDEMNIFICATION</u>

A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDB, City of Santa Fe and Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors performance or non-performance under this Agreement as

well as the performance or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

B. INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of Contractor or its employees, agents, representatives or Sub consultants, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The BDDB and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

A. Contractor shall conform with and participate in the Document Control policies of the BDDB or the City of Santa Fe. Contractor shall maintain, throughout the term of this

Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration and the State Auditor. The BDDB and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the BDDB or the City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This

Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

BDDB:	Shannon Jones, Facility Manager Buckman Direct Diversion 801 San Mateo Santa Fe, NM 87504
With a copy to:	Nancy R. Long, Esq., BDDB Counsel Long, Komer & Associates, P.A. P. O. Box 5098 Santa Fe, NM 87502
CONTRACTOR:	Automation Electric, LLC 304 South Brassie, Drive Payson, AZ 85541

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, Board Chair

Date: _____

APPROVED AS TO FORM

Nancy R. Long
_____
Nancy R. Long, BDDB Counsel

APPROVED

_____
Marcos A. Tapia, City Finance Director

_____
Business Unit/Line Item

ATTEST

_____
Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR

Automation Electric, LLC
304 S. Brassie, Drive
Payson, AZ 85541

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS #_____

City of Santa Fe Business
Registration #_____

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☑ or CONTRACT AMENDMENT ☐

2 Name of Contractor Automation Electric LLC

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $30,000.00

Termination Date: 06/306/30/15/2014

☐ Approved by BDDB Date: _____

☑ or by Project Manager Date: Pending

Contract is for: Scada

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☑ Approved by BDDB Date: Pending

☐ or by Project Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☐ Inclusive of GRT

Amount $ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: Term

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Total of Original Contract plus all amendments: $ 30,000

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other Exempt Procurement

6 **Procurement History:** _____
example: (First year of 4 year contract)

7 **Funding Source:** bdd **BU/Line Item:** 72410

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager and Maintenance Superintendent

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ITEM AND ISSUE:

Request approval of PSA with Hall Environmental Analysis Laboratory in the amount of $50,000 plus NMGRT.

BACKGROUND AND SUMMARY:

Hall Environmental Analysis Laboratory provides water quality and process control analysis services. The procurement method is utilizing an existing New Mexico State Price Agreement # 40-667-14-22753.

Discussion

The Buckman Direct Diversion requires services from a certified laboratory to analyze and report results for both regulatory requirements and process analysis for quality assurance and fact based decision making. Historically, the BDD has averaged $4,500 per month in analysis of drinking water and solid disposal.

Evaluation and Projection for FY 2014/2015

Project	Program	Projected Expenditures
Aqueous Samples	Safe Drinking Water Act	$11,000.00
Solid Samples	Solid Disposal Plan	$13,000.00
Acute Daphnia Pulex	Bio-Essay (NPDES)	$14,000.00
Additional Sampling	Process Control and Quality Assurance	$12,000.00
	Total	$50,000.00

ACTION REQUESTED:

Staff recommends approval of Professional Services Agreement with Hall Environmental Analysis Laboratory in the amount of $50,000.00 plus NMGRT.

Financial Implications

Cost: $50,000 plus NMGRT
Savings: Cost avoidance related non-sampling or permit violations
Long Term Cost: N/A

Fund Source	Business Unit/Line Item	Amount
FY 2014/2015	Prof. Services/#7280000.510300	$50,000.00+ NMGRT

BUCKMAN DIRECT DIVERSION BDDB
PROFESSIONAL SERVICES AGREEMENT
WITH
HALL ENVIRONMENTAL ANALYSIS LABORATORY

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDB") and Hall Environmental Analysis Laboratory (the "Contractor"). The date of this Agreement shall be the date when it is executed by the BDDB Chair.

1. SCOPE OF SERVICES

Contractor shall provide water quality and process control analysis services for the Buckman Direct Diversion Facility pursuant to the following criteria:

A. Conduct water analysis and provide results to the BDD Regulatory Compliance Officer.

B. Meet Environmental Agency and New Mexico Environment Department monthly/quarterly/yearly compliance requirements.

C. Apply Environmental Agency and New Mexico Environment Department approved analytical methodologies.

D. Meet Environmental Protection Agency and New Mexico Environment Department approved QA/QC requirements.

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. Compensation under this Agreement shall be fifty thousand dollars ($50,000.00) plus applicable New Mexico gross receipts tax. Contractor will provide services pursuant to the Scope of Services under Paragraph 1 herein.

B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Invoices for services will be made on a monthly basis. Payment to Contractor will be made within thirty (30) days after the date of billing. Billing will be made in accordance with the tasks described in the attached Scope of Services and shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB Facility Manager and terminate June 30, 2015, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 30 days written notice to Contractor. In the event of such termination:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the BDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the BDDB.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, the City of Santa Fe and Santa Fe County, their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. Contractor agrees not to purport to bind the BDDB to any obligation not assumed herein by the BDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (ii) obtained BDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDB's exposure to loss for the duration of this Agreement.

C. **Types of Insurance.** At all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

(1) **Commercial General Liability.** Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate(other than Products/Completed Operation)	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000
Personal Injury Limit	$2,000,000
Each Occurrence	$2,000.000

(2) **Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than $2,000,000 per accident. An insurance certificate shall be submitted to the BDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than $2,000,000 per claim and $2,000,000 annual aggregate. Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	$500,000	Each Accident
Bodily Injury by Disease	$500,000	Each Employee
Bodily Injury by Disease	$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDB, City of Santa Fe and Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDB is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event Contractor's insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and

"V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDB. The BDDB will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of Contractor.

G. **Specific Provisions Required.**

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, City of Santa Fe and Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDB, City of Santa Fe and Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

(a) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDB's exposure to loss.

(b) Before performing any Professional Services, Contractor shall provide the BDDB with all Certificates of Insurance accompanied with all endorsements.

(c) The BDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

(d) Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

General Indemnification. To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDB, City of Santa Fe and Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors performance or non-performance under this Agreement as well as the performance or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

Indemnification for Professional Acts, Errors or Omissions. Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of Contractor, or its employees, agents, representatives or sub-consultants, the General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do no waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Trot Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

A. Contractor shall conform with and participate in the Document Control policies of the BDDB or the City of Santa Fe. Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDB and the City of Santa Fe shall have the right to audit the billing both before and after payment to Contractor. Payment under this Agreement

shall not foreclose the right of the BDDB or the City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin,

ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

BDDB: Shannon Jones, Facility Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R. Long, Esq., BDDB Counsel
Long, Komer & Associates, P.A.
P. O. Box 5098
Santa Fe, NM 87502-5098

CONTRACTOR: Hall Environmental Analysis Laboratory
Attn: Andy Freeman, Laboratory Manager
4901 Hawkins NE, Ste D
Albuquerque, NM 87109

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service

shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, BDDB Chair

Date: _____

APPROVED AS TO FORM

_____
Nancy R. Long, BDDB Counsel

APPROVED

_____
Marcos A. Tapia, City Finance Director

72410.510300
Business Unit/Line Item

ATTEST

_____
Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

Hall Environmental Analysis Lab

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS #02201606006

City of Santa Fe Business
Registration # PENDING

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☐ or CONTRACT AMENDMENT ☑

2 Name of Contractor Hall Environmental Analysis Laboratory

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $50,000.00

Termination Date: June 30, 2015

☐ Approved by BDDB Date: _____

☑ or by BDD Facilities Manager Date: Pending

Contract is for: Lab analysis

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☑ Plus GRT ☐ Inclusive of GRT

Amount $ 50,000.00 of original Contract# _____ Termination Date: 06/30/2015

Reason: lab

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ 50,000

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other State Price Agreement

6 **Procurement History:** 1 year contract
example: (First year of 4 year contract)

7 **Funding Source:** _____ **BU/Line Item:** 72410.5103

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager

ITEM AND ISSUE:

Request approval of Profession Service Agreement with Alpha Southwest, Inc in the amount not to exceed $50,000 plus GRT

BACKGROUND AND SUMMARY:

On June 17, 2014 the City of Santa Fe's Water Division solicited and received seal bids (RFB # '14/42/B) for on-call services for mechanical and electrical repair. The intent of this contract is strictly an as-needed, on-call contract, with no guaranteed minimum. Alpha Southwest was the selected bidder and was awarded the contract. On July 30, 2014 the City of Santa Fe City Council approved this contract including the term of the contract through June 30, 2015.

Discussion

The Buckman Direct Diversion requires services from a licenses firm to provide on-call repair, replacement, fabrication, and modification services for mechanical and electrical equipment, piping, valves, instrumentation, pumps, and motors. This service would be utilized to supplement current BDD maintenance resources in the repair and maintenance of the Buckman Direct Diversion's facilities and equipment. The Scope of Services includes, but is not limited to, providing license technicians for both mechanical and electrical work, with the ability to;

- Perform repairs on booster stations including; site security, sanitary protection and disinfection.
- Providing specialized equipment such as crane services.
- Provide repairs, parts, materials and replacement of equipment.

Evaluation

For FY14/15, staff will utilize this contract to complete the following work.

Project	Total Cost
BS1A Pump # 1	$13,000.00
BS2A Pump # 3	$14,000.00
RWLS Pump # 2	$23,000.00
TOTAL	**$50,000.00**

ACTION REQUESTED:

Staff recommends approval of a Professional Services Agreement with Alpha Southwest, Inc. in the amount not to exceed $50,000.00 plus NMGRT. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit # 7280000.

BUCKMAN DIRECT DIVERSION BDDB
PROFESSIONAL SERVICES AGREEMENT
WITH
ALPHA SOUTHWEST, INC.

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BDDB ("BDDB") and Alpha Southwest Inc., ("Contractor"). The date of this Agreement shall be the date when it is executed by the BDDB Chair.

1. SCOPE OF SERVICES

Contractor shall provide the following on-call repair and replacement services for the BDDB: all work involved in the installation, replacement, or repair of Buckman Direct Diversion's Water Treatment Plant Process Equipment and Control Systems as directed by the BDD Maintenance Superintendent. Contractor shall furnish all necessary supervision, labor, materials, and facilities, required to accomplish the scope of services set forth by this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The BDDB shall pay to the Contractor in full payment for services rendered, a sum not to exceed fifty thousand dollars ($50,000), plus applicable gross receipts taxes, in accordance with the "Fixed Unit Price Schedule" provided in Exhibit "B" attached hereto.

B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Invoices for services will be made on a monthly basis. Payment shall be made upon receipt and approval by the BDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made by the BDDB, this Agreement shall terminate upon written notice being given by the BDDB to the Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB and terminate on June 30, 2015, unless terminated sooner pursuant to Article 6 below. The term may be extended for three (3) additional twelve (12) month periods not to exceed 4 years, by the written agreement of the Parties amending this Contract.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 10 days written notice to Contractor. In the event of such termination:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the BDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the BDDB shall pay Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the BDDB.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, the City of Santa Fe and Santa Fe County, their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDB to any obligation not assumed herein by the BDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (a) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (b) obtained BDDB approval of each company or companies as required

below; and (c) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDB's exposure to loss for the duration of this Agreement.

C. **Types of Insurance.** At all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

(1) **Commercial General Liability**. Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

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Bodily Injury by Disease	$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDB, City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDB is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." In the event the Contractor's insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "VII" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDB. The BDDB will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

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(3) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDB's exposure to loss.

(4) Before performing any Professional Services, Contractor shall provide the BDDB with all Certificates of Insurance accompanied with all endorsements.

(5) The BDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

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A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDB, City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors performance or non-performance under this Agreement as well as the performance or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

B. INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of Contractor or its employees, agents, representatives or Sub consultants, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The BDDB and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive

any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

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B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration and the State Auditor. The BDDB and the City of Santa Fe shall have the right to audit the billing both before and after payment to Contractor. Payment under this Agreement shall not foreclose the right of the BDDB or the City of Santa Fe to recover excessive or illegal payments.

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Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern.

The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

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This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

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During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality,

and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

BDDB: Shannon Jones, Facility Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R. Long, Esq., BDDB Counsel
Long, Komer & Associates, P.A.
P. O. Box 5098
Santa Fe, NM 87502-5098

CONTRACTOR: Alpha Southwest, Inc.
Attn: Warner Ellis
205 Rossmoor Ave SW
Albuquerque, NM 87105

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall

be deemed effective as o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, BDDB Chair

Date: _____

APPROVED AS TO FORM

Nancy R. Long
Nancy R. Long, BDDB Counsel

APPROVED

_____
Marcos A. Tapia, City Finance Director

72410.510300
Business Unit/Line Item

ATTEST

_____
Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

Alpha Southwest, Inc.

Signature: _____

Printed Name: Warner Ellis

Title: _____

Date: _____

NM Taxation & Revenue
CRS #03-185297-00-1

City of Santa Fe Business
Registration #

"Exhibit A"

Scope of Services

Field Service Technicians/Engineers

A. The Contractor will provide all necessary tools, equipment and materials needed to provide on-call repair, replacement, fabrication, modification, rehabilitation, abandonment, and demolition services for mechanical and electrical equipment, piping, instrumentation, water pumps and tubing, electric motors, and buildings associated with the Buckman Direct Diversion Project.

   a. Field Service Technicians will provide the installation, commissioning, troubleshooting and training for the hardware field components comprising the Water Treatment Plant Process Instrumentation and Control Systems. These services and components include, but are not limited to the following, pumps, Flowmeters, Level Transmitters, Pressure Transmitters, Position Indicators, Pressure switches, Level Switches, Pilot devises, Interconnected wiring, 600 Volt and below Power System Components, Motors, Motors Controllers, Motor Operated Valves, Isolation and Control valves, Piping and related functions.

   b. Field Service Engineers will provide the programming, development, commissioning, troubleshooting and training for the hardware and software components comprising the Water Treatment Plant Process Instrumentation and Control Systems. These service and components include, but are not limited to the following, Programmable Logic Controllers, Communications Networks, Operator Interface Systems, Operator Interface Panels, Autodialers, Annunciators, Report Generation software and related functions.

Repairs and Replacement

A. All repairs performed under this Contract will be authorized in writing by a Work Order signed by the BDD Maintenance Superintendent.

   Each Work Order will set forth

   (i) the Work to be performed by the Contractor
   (ii) the period of performance,
   (iii) the fixed unit prices per "Exhibit B," as applicable
   (iv) the ceiling price
   (v) other data as necessary.

Reporting

A. The Contractor will provide a written report indicating all test results.

i. To ensure consistency, maintain a reasonable standard of quality, and facilitate the screening of tests submitted, the work will be submitted on a standardize report form created by the contractor and approved by the BDD Maintenance Superintendent.
ii. All information on this report will be provided to the BDD Maintenance Superintendent for each instrument or equipment tested.
iii. If the test equipment provides a printout of inputted data this will be submitted with the report.

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☑ or CONTRACT AMENDMENT ☐

2 Name of Contractor Alpha Southwest

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $50,000.00

Termination Date: June 30, 2015

☑ Approved by BDDB Date: Pending

☐ or by Project Manager Date: _____

Contract is for:

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for:

---

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☐ Inclusive of GRT

Amount $ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ _____

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# Piggy back of City's RFP _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 **Procurement History:** _____
example: (First year of 4 year contract)

7 **Funding Source:** _____ **BU/Line Item:** 7280000

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

m

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

DATE: August 7, 2014

TO: Buckman Direct Diversion Board

FROM: Mackie Romero, BDD Financial Manager MR

SUBJECT: 4th Quarter Financial Statement - Preliminary

PURPOSE:

This memo is intended to update the BDD Board and its partners on our preliminary 4th Quarter financial position as of June 30, 2014.

Budget Overview – A financial plan that quantifies our current and future operations.

- Approved Budget – FY13/14 Adopted Budget, includes approved budget adjustment requests
- Expended – Expenses per quarter for services and/or goods received as of 6/30/2014.
- Available Balance – Represents vacancy savings and uncommitted budget balance as of 6/30/2014.

90 Day Cash – Represents the cash target for the FY13/14 adopted budget year as per BDD Working Capital and Billing Policy.

Cash Balance – Cash receipts held by the fiscal agent, to pay current and future obligations.

Pre-Bills – As per the BDD Working Capital and Billing Policy, each partner is billed 1/12 of their share of the adopted budget.

Actual Expenses - Expenses for services and/or goods received as of June 30, 2014.

Outstanding Accounts Receivables - Represents the dollar amount owed by each partner as of June 30, 2014 for the monthly pre-bills.

Other Funds – The Major Repair and Emergency Reserve funds have reached the targeted budget for the fiscal year. The Major Repair and Replacement Fund will continue to be billed beginning July 1, 2014.

A final version will be presented to the BDD Board and its partners, upon final reconciliation of fiscal year ended June 30, 2014, which will include any excess revenue owed to our partners.

BDD will continue to provide quarterly updates with useful financial information to provide the highest level of transparency to our partners and the Buckman Direct Diversion Board.

If you feel any additional information should be included in our report, please contact me.

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

4th Quarter Financial Statement – Operations (Cumulative) - Preliminary

(Unaudited 07/01/2013-6/30/2014)*

Budget Overview

CATEGORY	APPROVED BUDGET	EXPENDED 1st Quarter	EXPENDED 2nd Quarter	EXPENDED 3rd Quarter	EXPENDED 4th Quarter	TOTAL	BALANCE AVAILABLE
Salaries & Benefits	2,706,248	651,376	699,224	551,316	666,280	2,568,196	138,052
Electricity	1,361,255	269,013	246,339	298,313	422,868	1,236,534	124,721
Chemicals	327,283	36,089	48,702	42,396	91,730	218,916	108,367
Solids	121,800	20,006	50,316	11,914	35,893	118,130	3,670
Materials & Supplies	763,529	54,414	96,806	150,391	349,861	651,472	112,057
Other Operating Costs	1,653,992	208,053	182,494	274,060	590,966	1,255,572	398,420
Fiscal Agent Fees	103,496	25,874	25,874	25,874	25,873	103,495	0.99
TOTAL	**7,037,603**	**1,264,825**	**1,349,755**	**1,354,264**	**2,183,470**	**6,152,314**	**885,289**
						*Less Board Approved Carry forward funding to FY14/15	(205,130)
						Uncommited Balance	680,158

90-Day Cash Target

	Total
City of Santa Fe	1,285,334
Santa Fe County	365,466
Las Campanas	84,499
	1,735,299

Cash Balance*

	Balance
Cash at 6/30/2014	1,103,657

Pre-Bills - Operations

	Total	1st Quarter	2nd Quarter	3rd Quarter	April	May	June*
City of Santa Fe	4,793,594	1,386,125	1,285,648	1,228,505	470,972	422,344	-
Santa Fe County	1,416,848	435,120	368,704	359,432	124,092	129,500	-
Las Campanas	226,025	77,142	48,560	44,340	26,977	29,007	-
	6,436,468	**1,898,387**	**1,702,912**	**1,632,277**	**622,040**	**580,852**	**-**

*A June pre-bill was not submitted to partners, due to projected expenses to be less than approved budget.

Actual Expenses – Operations

	Total	1st Quarter	2nd Quarter	3rd Quarter	April	May	June
4th Quarter Expenses	6,152,314	1,264,825	1,349,754	1,354,264	601,572	501,281	1,080,618

*Outstanding Accounts Receivable

	City of Santa Fe	Santa Fe County	Las Campanas
as of 6/30/14	-	-	-

***Note: FY12/13 Ending balances have not been included in presentation of statement, except for cash.**

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

4th Quarter Financial Statement – Other Funds (Cumulative)

(Unaudited 07/01/2013-6/30/2014)

Pre-Bills – Major Repair & Emergency Reserve Funds

	Total	1st Quarter	2nd Quarter	City of SF	SF County	Las Campanas
Major Repair Fund	240,219	102,951	102,951	24,320	8,646	1,351
Emergency Reserve Fund	583,339	250,002	250,003	54,431	21,218	7,686
	823,558	**352,953**	**352,954**	**78,751**	**29,864**	**9,036**

Financial Position

	Emergency Reserve	Major Repair
Balance at 06/30/2013	**1,416,678**	**583,389**
1st Quarter Billing	250,002	102,951
2nd Quarter Billing	250,003	102,951
3rd Quarter Billing	83,317	34,333
Total	2,000,000	823,624
Target Balance	2,000,000	823,624
Remaining Balance	-	-

*Outstanding Accounts Receivable

	as of 6/30/14
City of Santa Fe	-
Santa Fe County	-
Las Campanas	-
	-

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memorandum

Date: July 29, 2014

To: Buckman Direct Diversion Board

From: Kyle Harwood, Board Counsel

Digitally signed by Kyle Harwood Date: 2014.07.29 08:16:54 -07'00'

Via: Shannon Jones, Interim BDD Facility Manger

Re: WildEarth Guardians v Bureau of Reclamation and Army Corps of Engineers
Case 1:12-cv-00666

ITEM AND ISSUE:

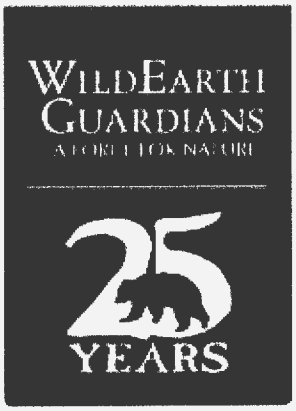
On July 24, 2014 WildEarth Guardians (WEG) filed a Complaint for Declaratory and Injunctive Relief in federal court under the citizens' suit provision of the Endangered Species Act (ESA) naming the US Bureau of Reclamation and US Army Corps of Engineers as defendants.

Please note the following sections of the complaint:

1. San Juan Chama project water is briefly discussed on page 23 of the complaint.
2. The prior Minnow litigation is described beginning on page 24 of the complaint.
3. The effect of the 'minnow rider' is described on page 29 of the complaint.
4. The claims for relief begin on page 36 of the complaint, and the prayer for relief begins on page 38.

RECOMMENDATION:

Staff and counsel will be available to discuss the case at the meeting, however the Board should consider an executive session for discussion of certain legal issues and questions.



For Immediate Release: July 24, 2014
Contact: Jen Pelz, Wild Rivers Program Director, 303-884-2702

WildEarth Guardians Seeks New Course for the Rio Grand
Lawsuit Targets Inaction by Federal Water Managers

ALBUQUERQUE, *N.M.*—WildEarth Guardians filed suit today in fed court citing two decades of broken promises by federal and state water managers to secure dynamic and perennial flows for the Rio Grande. T group believes that these agencies' failure to exercise the full range of their authority to pr the river and its imperiled species not only violates the Endangered Species Act, but also i it impossible to restore a functioning Rio Grande ecosystem.

"The Rio Grande is central to the history, culture and beauty of New Mexico," said Jen Pe Wild Rivers Program Director at WildEarth Guardians. "The river has sustained the valley centuries, and we have a moral obligation to hold water managers and users accountable t ensure that the river does not vanish."

The group's lawsuit details the failures by the U.S. Bureau of Reclamation and U.S. Army of Engineers to implement even the most modest changes in management on behalf of the Grande. A 2003 management plan attempted to return some balance to the Rio Grande in New Mexico by requiring certain flows and physical infrastructure changes—reconnectin river from fragmentation by dams—for the benefit of the species. The federal and state ag however, failed to honor their commitments to the detriment of the endangered species.

"The plan of the past decade did not go far enough to protect and maintain a living river," Pelz. "This lawsuit seeks to provide the shake up necessary to realign our collective value secure new commitments from all water managers to ensure that the river has a right to its water and it is a sustainable, dynamic ecosystem."

The lack of oversight and accountability in the Rio Grande also adds to the decrease of flo the river. As just one example, the "Water Bank" operated by the Middle Rio Grande Conservancy District—which distributes water throughout the District to land without wa rights—requires authorization by the State and federal government. However, even thoug entities have expressed notable concerns about the validity of the Water Bank and request proof of beneficial use of the District's water rights prior to any such approval, the Distric operates the Water Bank each year without any oversight or authorization.

"It's a bank without a charter. Not even the worst Wall Street bankers could have establisl system so lacking in accountability and supervision," said Pelz. "Stealing water like this fi our river and our future is reckless and cannot continue."

Steve Sugarman and in-house lawyer, Samantha Ruscavage-Barz, represent the organizati the litigation. This lawsuit is the latest action in WildEarth Guardians' campaign to protec restore the Rio Grande, America's third longest and one of its most iconic rivers.

# # # # #

516 Alto Street Santa Fe, NM 87501 505-988-9126 fax 505-213-1895 www.wildearthguardians.o
DENVER • EUGENE • LARAMIE • MISSOULA • PORTLAND • SAN DIEGO • SANTA FE • SALT LAKE CITY • TUCSC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILDEARTH GUARDIANS,	)	
	)	
Plaintiff,	)	Case No. _____
	)	
v.	)	
	)	
UNITED STATES BUREAU OF RECLAMATION and UNITED STATES ARMY CORPS OF ENGINEERS,	)	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
	)	
Federal Defendants.	)	
	)	

INTRODUCTION

1. The Rio Grande originates in the San Juan Mountains of Colorado and travels about 1,900 miles south to the Gulf of Mexico near Brownsville, Texas. During its journey, the river passes through the rocky canyons, deep gorges and wide-open valleys of Colorado, New Mexico and Texas, and serves as the United States' border with Mexico.

2. Flows in the Rio Grande originate from snow melting out of the southern Rocky Mountains in Colorado and northern New Mexico. As the temperatures rise in spring, so do flows in the river creating a pulse of water in the Rio Grande between April and June of each year. Summer monsoonal rainfall also contributes significantly to the flows of the Rio Grande. These highly variable and sometimes considerable snowmelt and rain events throughout the valley help to provide dynamic flows in and sustain this historically perennial river.

3. Along its path, the Rio Grande supports life where it could not have otherwise existed. The river provides unique and varied riverine and riparian communities that sustain a diverse array of plants, fish, and wildlife. For example, the river nourishes and regenerates the

extensive cottonwood and willow forest, or "bosque," that is unique to central New Mexico. The Rio Grande also provides an artery of life to numerous human settlements centered around and adjacent to the banks of the river, including the Pueblos and the cities and towns scattered throughout the valley.

4. The Rio Grande also supports diverse and varied economies throughout the basin. The fertile soils in the floodplain of the river supports agriculture from Pueblo settlements to family farms to commercial agriculture. Communities like Taos rely on the flows and magnificence of the river in its vast gorge to attract tourists and provide recreational opportunities that support the economy of northern New Mexico. Supported by and reminiscent of the historic Rio Grande, the Bosque del Apache National Wildlife Refuge located south of Socorro, New Mexico – one of the crown jewels of the Rio Grande – draws tourists, photographers and bird and wildlife watchers to catch a glimpse of rare migratory birds and interesting wildlife, also while sustaining the broader local economy of Socorro County.

5. The beauty, diversity and iconic nature of the Rio Grande also has inspired and continues to inspire authors, photographers, artists, and filmmakers to showcase its exceptional qualities. The history and cultural values associated with the flows of the Rio Grande valley go far beyond any measurable monetary worth.

6. However, the irreplaceable values of the Rio Grande are increasingly threatened by the operations and activities of Defendants United States Bureau of Reclamation ("Reclamation") and United States Army Corps of Engineers ("Corps"). Together these two federal agencies – collectively referred to in this Complaint as "Federal Defendants" – have significant discretionary authority as to how much water is stored in reservoirs along the Rio Grande, how much water flows in the Rio Grande, when that water flows in the Rio Grande, and

how much water is put to agricultural use in the Rio Grande. To date, the Federal Defendants have exercised and failed to exercise their discretionary authorities in ways that imperil the continued existence of two endangered species that are listed for the protections afforded by the Endangered Species Act ("ESA"): the Rio Grande silvery minnow and the Southwestern willow flycatcher.

7. With this lawsuit, Plaintiff WildEarth Guardians ("Guardians") seeks to protect and restore flows in the Rio Grande and the associated riparian ecosystems it sustains. For far too long, the Federal Defendants' operations and activities in managing the Rio Grande have been unbalanced and have failed to sustain the multitude of values that the river provides. The primary objective of this litigation is to secure the congressionally mandated protections of the ESA to protect and conserve the silvery minnow and the willow flycatcher. A favorable result in this lawsuit will have the secondary and entirely salutary effect of conserving the Rio Grande ecosystem, one of New Mexico's natural treasures, for the use and enjoyment of current and future generations of New Mexicans.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 16 U.S.C. § 1540(g) (ESA citizens' suit). As required by the ESA, 16 U.S.C. § 1540(g), Guardians has provided sixty days' notice of intent to sue before bringing this action.

9. Venue is properly vested in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A), as all or part of the ESA violations alleged in this Complaint occurred in the District of New Mexico; and 28 U.S.C. § 1391(e), as a substantial part of the events and omissions giving rise to the claims occurred in this judicial district. Additionally, the Plaintiff and the Federal

Defendants all reside in this judicial district.

PARTIES

10. Plaintiff WILDEARTH GUARDIANS is a non-profit environmental advocacy and conservation organization based in Santa Fe, New Mexico. Guardians has more than 43,000 members and activists. More than 4,000 of these members and activists reside in New Mexico. Guardians and its members are dedicated to protecting and restoring the wildlife, wild places, and wild rivers of the American West.

11. One of Guardians' main endeavors is its "Wild Rivers Program." A specific purpose of this program is to work towards the enhancement and restoration of riverine ecosystems. Amongst other concerns, the organization and its members are concerned about impairment of rivers due to water management activities, point and nonpoint source pollution, and physical modification of river ecosystems through channelization and the construction of levees. Guardians works through administrative appeals, litigation, public outreach, and other efforts to assure that all federal agencies fully comply with the provisions of all pertinent federal environmental laws.

12. For the past twenty years, the focus of Guardians' Wild Rivers Program has been its "Rio Grande: America's Great River" campaign. The purpose of this campaign is to protect and restore the Rio Grande by ensuring that the river has continuous flows and that federal government management policies promote a healthy, ecologically functional Rio Grande that supports diverse native species.

13. Guardians has participated extensively in agency proceedings and other matters relating to the Rio Grande ecosystem broadly, and advocated for the the survival and recovery of the Rio Grande silvery minnow and Southwestern willow flycatcher specifically.

14. Guardians and its members use and enjoy the Rio Grande and its tributaries and adjoining public lands in New Mexico for recreational, scientific, aesthetic, spiritual, commercial, professional, and other purposes and will continue to do so in the future. Guardians and its members derive – or, but for the endangered status of the Rio Grande silvery minnow and Southwestern willow flycatcher, would derive – recreational, scientific, aesthetic, spiritual, commercial, and professional benefits from the existence in the wild of these species through observation, study, photography, and other pursuits.

15. The above-described aesthetic, conservation, recreational, scientific, commercial, professional and other interests of Guardians and its members have been, are being, and, unless the relief prayed for is granted, will continue to be adversely affected and irreparably injured by the failure of the Federal Defendants to comply with their mandatory duties under the ESA. Guardians brings this action on behalf of itself and on behalf of its injured members.

16. Defendant UNITED STATES BUREAU OF RECLAMATION ("Reclamation") is an agency of the United States within the Department of the Interior. As described below in this Complaint, Reclamation owns the water rights and the physical infrastructure of the Middle Rio Grande Project, including but not limited to El Vado Dam and the four diversion structures on the Rio Grande that are used to divert water out of the Rio Grande and onto the irrigated lands lying within the Middle Rio Grande Conservancy District ("MRGCD"). Reclamation maintains discretionary control and management authority over the use of those water rights and physical facilities, and has a mandatory obligation to assure that the use of those water rights and physical facilities complies in all respects with the mandatory requirements of the ESA. Reclamation also

controls the storage and delivery of federal project water[1] in the San Juan-Chama Project, and maintains discretionary control and management authority over the delivery and use of that water. Reclamation has a mandatory obligation to assure that the storage, delivery, and use of that water is consistent with the mandatory requirements of the ESA.

17. Defendant UNITED STATES ARMY CORPS OF ENGINEERS ("Corps") is an agency of the United States within the Department of the Army. The Corps owns, operates, and maintains Abiquiu Dam, Cochiti Dam, and several other smaller water storage facilities along the Middle Rio Grande and the Chama River, which were constructed and/or enlarged and improved in connection with the Middle Rio Grande Project. The Corps maintains discretionary control and management authority over the operation of those dams. The Corps has a mandatory obligation to assure that the operation of those dams complies in all respects with the mandatory requirements of the ESA.

LEGAL BACKGROUND

18. The structure and function of the ESA, 16 U.S.C. § 1531 *et seq.*, are premised on Congress's finding that the biggest threat to the continued survival of threatened and endangered wildlife species is the destruction of their natural habitats. Accordingly, the ESA contains various provisions that are specifically intended to halt the trend of habitat destruction.

19. The expressed purpose of the ESA is "to provide a program for the conservation [of] endangered species and threatened species" and "to provide a means whereby the ecosystems upon which [such] species depend may be conserved." 16 U.S.C. § 1531(b).

20. Pursuant to the ESA, the United States Fish and Wildlife Service ("FWS") has the

---

[1] Unless specifically limited, the phrase "federal project water" refers collectively to that water which is stored and delivered though the Middle Rio Grande Project and the San Juan-Chama Project.

duty to list imperiled species as threatened or endangered solely on the basis of biological criteria without regard to the economic impact of listing. 16 U.S.C. § 1533(c).

21. After a species is listed as threatened or endangered under the ESA, Section 7(a)(1) of the ESA imposes important obligations on federal agencies to "conserve" such species. 16 U.S.C. § 1536(a)(1). For purposes of ESA compliance, the duty to "conserve" requires that federal agencies use their authorities to assure the survival of threatened and endangered species, to protect their critical habitats, and to promote the recovery of the species to the point at which they no longer require the protections of the ESA.

22. Pursuant to Section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), federal agencies have a mandatory substantive duty to "insure that any action . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of the species' designated critical habitat.[2]

23. In order to assure that federal agencies comply with their substantive Section

---

[2] Hereafter in this Complaint, the statutory phrase "destruction or adverse modification" will be shorted to "adverse modification" or, when contextually appropriate, "adversely modify." The ESA defines "critical habitat" as follows:

> (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the [Act], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the [Act], upon a determination by the Secretary that such areas are essential for the conservation of the species.

16 U.S.C. § 1532(5)(A).

7(a)(1) duty to conserve and their substantive Section 7(a)(2) duty to insure against jeopardy or adverse modification of designated critical habitat, Section 7(a)(2) of the ESA mandates a "formal consultation" process which requires all federal agencies to consult with the FWS as to those projects that may adversely affect a listed species or may adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2). The duties set out in Section 7(a)(2) are known as the "Section 7 procedural duties."

24. The first step in the Section 7(a)(2) formal consultation process is a written request for the initiation of formal consultation from the action agency to the FWS. 16 U.S.C. § 1536(c), 50 C.F.R. § 402.14(c). The phrase "action agency" refers to the federal agency that proposes to implement or provide funding for a project that may adversely affect listed species. This written request includes submission of a Biological Assessment ("BA") prepared by the action agency in which the action agency identifies the action which it proposes to implement and assesses the expected impact of the proposed action on listed species and their designated critical habitats. 16 U.S.C. § 1536(c), 50 C.F.R. §§ 402.12, 402.14.

25. The formal Section 7(a)(2) consultation process, including the FWS's analysis of jeopardy to species and adverse effects to critical habitat, concludes with the issuance of a Biological Opinion ("BiOp") by the FWS.

26. In undertaking its Section 7(a)(2) jeopardy and critical habitat analyses during the course of preparing a BiOp, the FWS must consider how a proposed action affects a species' prospects for *recovery*, as well as its prospects for *survival*. A species' prospects for recovery are adversely affected when an action's impacts reduce the reproduction, numbers, and/or distribution of the species. 50 C.F.R. § 402.02, *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 932 (9th Cir. 2008).

27. Throughout the Section 7(a)(2) formal consultation process – including the development of both the BA and the BiOp – the action agency and the FWS must utilize the "best scientific and commercial data available." 16 U.S.C. § 1536(a)(2), 50 C.F.R. §§ 402.14(f), 402.14(g)(8).

28. In the BiOp that it issues at the conclusion of a formal consultation process, the FWS determines whether a proposed agency action comports with the action agency's Section 7(a)(2) substantive duties. If the FWS finds that a proposed agency action will jeopardize a listed species or adversely modify its designated critical habitat, the FWS formulates a "Reasonable and Prudent Alternative" ("RPA") which avoids that effect.

29. If the FWS makes a determination that a proposed action will jeopardize a species or adversely modify critical habitat and issues an RPA to avoid that effect, the action agency must either implement the RPA or seek relief from the Endangered Species Committee (colloquially known as the "God Squad"). 16 U.S.C. § 1536(e). The Endangered Species Committee is a committee of seven cabinet-level members which has the authority to exempt a federal project from the requirements of Section 7, thereby accelerating a species' decline towards extinction.

30. If an action agency modifies the action which is the subject of a BiOp (as modified by an RPA, if any) in such a way that implementation of the action may affect a listed species or its designated critical habitat in a manner not addressed in the original BiOp, such modification constitutes a violation of the agency's substantive and procedural duties under Section 7(a)(2).

31. During the course of the Section 7(a)(2) formal consultation process, an action agency action is prohibited by Section 7(d) of the ESA from taking any action that would result

in irreversible and irretrievable effects to listed species. 16 U.S.C. § 1536(d).

32. Section 9 of the ESA and its implementing regulations prohibit any person, including any federal agency, from "taking" a listed species. 16 U.S.C. § 1538(a)(1); 50 C.F.R. § 227.21. Taking is defined broadly under the ESA to include harming, harassing, or killing a protected species either directly or by degrading its habitat sufficiently to significantly impair essential behavioral patterns. 16 U.S.C. § 1532(19); 50 C.F.R. § 17.3.

33. To maintain compliance with Section 9, a federal agency may cause the "take" of a listed species incidental to an otherwise lawful activity only after obtaining an Incidental Take Statement ("ITS") from the FWS. 16 U.S.C. §§ 1536(b)(4), 1536(o). The FWS incorporates an ITS into the BiOps that it issues, if it finds that implementation of the action that is the subject of a BiOp (as modified by the RPA, if any) will result in the "incidental take" of individuals of a listed species. 16 U.S.C. § 1536(b)(4).

34. An ITS sets forth the amount of incidental take that is permitted, and that is therefore exempt from the take prohibition of Section 9. *Id.* In every ITS, the FWS specifies the amount of incidental take that is expected to occur as a result of the implementation of the federal action which is the subject of the BiOp. 16 U.S.C. § 1536(b)(4)(C)(i), 50 C.F.R. § 402.14(i)(1)(I). Any take above the amount specified in the ITS constitutes a violation of Section 9.

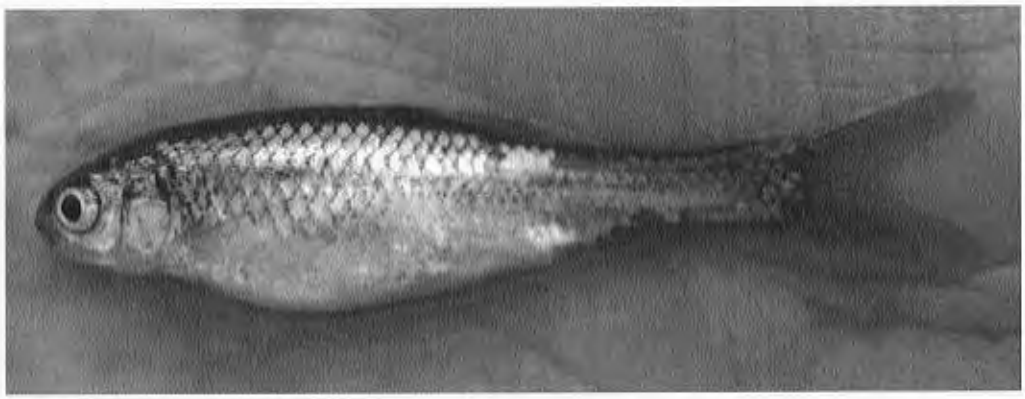
35. Additionally, if the FWS incorporates an RPA into a BiOp (which the FWS is required to do in those instances when a proposed agency action will result in jeopardy or adverse modification of critical habitat) and the action agency fails to implement the RPA, then the ITS has no legal effect and the action agency may not implement any activity that results in take of a listed species.

FACTUAL BACKGROUND

I. Listed Species in the Middle Rio Grande and the impacts of Federal Defendants' Middle Rio Grande operations and activities on those species

A. Rio Grande Silvery Minnow *(Hybognathus amarus)*

36. The Rio Grande silvery minnow is a small, relatively heavy-bodied minnow, with small eyes and a small, slightly oblique mouth. Adults reach about 3.5 inches in length. The back, sides, and abdomen of the minnow are silver with a green dorsal stripe. The silvery minnow is pictured here.[3]



37. Preferred habitat for the silvery minnow includes stream margins, side channels, and off-channel pools where water velocities are low or reduced from main channel velocities. Within this habitat, silvery minnows are found in sandy bottom areas with aquatic vegetation and instream debris. The silvery minnow does not tend to occupy stream reaches characterized by straight and narrow channels with rapid flows.

38. The silvery minnow was historically one of the most abundant and widespread aquatic species in the entire Rio Grande, occurring from Espanola, New Mexico, downstream

[3] Photo credit: Aimee Robetson (U.S. Fish & Wildlife Service)

nearly 1,000 miles to the Gulf of Mexico. The silvery minnow also occurred in much of the Pecos River. The silvery minnow has been extirpated from more than 95% of its historical range and today only occupies a 174-mile stretch of the Middle Rio Grande from Cochiti Dam in Sandoval County to the headwaters of the Elephant Butte Reservoir in Socorro County.

39. This 174-mile stretch is fragmented by the four diversion dam structures associated with the Middle Rio Grande Project: the Cochiti, Angostura, Isleta, and San Acacia diversion dams. These structures constitute physical barriers to the upstream passage of silvery minnows.

40. Silvery minnow spawning is triggered by and corresponds with high or peak spring flows in the Middle Rio Grande that historically occurred between March and June as a result of snow melt runoff. Once spawning occurs, the associated peak flows carry the semi-buoyant eggs downstream and the young rear in broad sandy-bottomed reaches of the river.

41. Under natural conditions, some newly hatched fish swim upstream and rear in habitats upstream of the locations where they hatched. However, because diversion dams associated with the Middle Rio Grande Project prevent the species from migrating back upstream once the eggs are hatched downstream, approximately 70% of the entire population of Rio Grande silvery minnow currently exists below the San Acacia Diversion Dam (the furthest downstream of the four diversion dams) in a 58-mile stretch of the Middle Rio Grande.

42. Monitoring data shows that during some periods of the year, almost the entire silvery minnow population exists downstream of the San Acacia Diversion Dam. This is the reach of the Middle Rio Grande which is most susceptible to river drying as a result of the Federal Defendants' water management operations in the Middle Rio Grande.

43. The FWS listed the Rio Grande silvery minnow as an endangered species under

the ESA in 1994 and designated a 157-mile reach of the Middle Rio Grande as critical habitat in 1999. 59 Fed. Reg. 36,988 (July 20, 1994); 64 Fed. Reg. 36,274 (July 6, 1999). The initial rule designating critical habitat for the silvery minnow was vacated by court order in 2000, and a new rule re-designating critical habitat was issued on February 19, 2003. 68 Fed. Reg. 8,088.

44. The FWS listed the silvery minnow as endangered due to, *inter alia*, reductions in stream flow, dewatering of extended lengths of the river channel as a result of diverting river flow for agricultural purposes, alteration of the natural hydrograph by dams and other artificial features, and channelization.

45. In April of 2013, the Middle Rio Grande Endangered Species Collaborative Program (a consortium of 17 federal agencies, state agencies, Pueblos, and the MRGCD which was founded by former U.S. Senator Domenici) released a report analyzing silvery minnow population trends since 1993. The report concludes that the population of silvery minnows in 2012 (the latest data set available at the time that the report was prepared) was lower by an order of magnitude than the population of silvery minnows in 1994 when the species was listed.

46. The authors of the report state that changes in silvery minnow populations "appear to be closely related to the timing, magnitude, and duration of flows during spring and summer."

47. The report's authors note that population monitoring efforts in October of 2012 failed to yield any silvery minnows at all, the first time that such an event had occurred since population monitoring began in February of 1993.

48. In further connection with the declining trend in silvery minnow populations, the report states that "[t]he estimated densities of Rio Grande silvery minnow were significantly lower . . . in 2010, 2011, or 2012 as compared with 2007, 2008, or 2009."

49. Finally, the report's authors conclude that "[t]he extremely low densities of Rio Grande silvery minnow in 2012 appear to indicate that current management efforts (e.g. stocking, salvage, habitat restoration, flow manipulation etc.) are not sufficiently buffering the population against substantial declines" and that "it appears that additional efforts/activities will be required to yield robust self-sustaining populations of Rio Grande silvery minnow in the Middle Rio Grande over time."

50. More recent data, appearing in the March 3, 2014 Salvage Report prepared by the Middle Rio Grande Endangered Species Collaborative Program, shows that the silvery minnow population continued to decline in 2013. The Salvage Report's authors state that "[w]e found fewer [minnows] in 2013 than in any year since 2003." The authors further state the lack of a spring spawning flow and river drying in the early summer of 2013, combined with the already low level of silvery minnows in the river from the preceding year, "resulted in extremely few wild [silvery minnows] collected during 2013 salvage operations" and that this finding "reinforces the severity of the situation."

51. The March 3, 2014 Salvage Report concludes that "[s]alvage data make it apparent that river conditions and management over the last three years cannot support [silvery minnow] recruitment" and that "[i]f no changes to in-stream water availability occur, [silvery minnows] will continue to be fully dependent on hatchery stocking."

52. On May 6, 2013, the FWS issued a "Hydrologic Objective" for the Middle Rio Grande which is its "recommendation for water needed to support a wild silvery minnow population in the Middle Rio Grande . . . and ultimately achieve a self-sustaining population." According to the FWS, the Hydrologic Objective "is based on the best available scientific and commercial information on the relationship between average density of silvery minnows

measured over 20 years and associated hydrologic variables measured during those same years."

53. The Hydrologic Objective acknowledges that physical modifications to the Middle Rio Grande – such as fish passage at diversion dams and increased safe channel capacity – are critical to the survival of the silvery minnow.

54. At the same time, the Hydrologic Objective states that "[w]ater is the key to reproduction, survival, and in an intermittent stream, it is also key to distribution." For this reason, the Hydrologic Objective "is focused on water needs to protect the silvery minnow and improve its status in [the Middle Rio Grande]."

55. Insofar as water needs are concerned, the Hydrologic Objective focuses on two life stages of the silvery minnow: first, reproduction (which is addressed by the "Age 0 Strategy"), and second, survival (which is addressed by the "Age 1+ Strategy").

56. The Age 0 Strategy is intended to induce silvery minnow spawning by providing a spring-time peak flow in the Middle Rio Grande that mimics a natural flow associated with snow melt in timing, magnitude, and duration. The Hydrologic Objective states that "[t]he minimum acceptable Age 0 Strategy would be a discharge of 2,740 cfs [cubic feet per second] for 7 days in May."

57. The Age 1+ Strategy is designed to secure the amount of adult survival necessary to assure that the silvery minnow does not become extinct. The Hydrologic Objective specifies that this requires that there are no more than 63 low flow days (<150 cfs in summer and <300 cfs in winter) at the San Acacia gage each year. Furthermore, the Hydrologic Objective states that as part of the Age 1+ Strategy, the amount of river drying in the Middle Rio Grande should be limited to 40 miles, that the river not be allowed to dry at a rate of greater than 4 miles per day, and that wetted reaches be continually maintained below the San Acacia and Isleta diversion

dams.

B. <u>Southwestern willow flycatcher (*Empidonax traillii extimus*)</u>

58. The Southwestern willow flycatcher is a small migratory bird approximately six inches long. It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly. The willow flycatcher is pictured here.[4]

59. The willow flycatcher inhabits the streamside and wetland thickets of New Mexico and Arizona, and southern portions of Nevada, Utah, and California. River features such as broad floodplains, water, saturated soils, and fine sediments help maintain desirable willow flycatcher streamside habitats for nesting, foraging, migration, dispersal, and shelter.

60. On February 27, 1995, the FWS listed the Southwestern willow flycatcher as an endangered species, and designated critical habitat on July 22, 1997. 60 Fed. Reg. 10,694 (Feb. 27, 1995); 62 Fed. Reg. 39,129 (July 22, 1997). Pursuant to Court order, the FWS has modified

[4] Photo credit: Jim Rorabaugh (U.S. Fish & Wildlife Service)

its critical habitat designation for the willow flycatcher several times since the original designation in 1997 including, most recently, in 2013. 78 Fed. Reg. 344 (Jan. 2, 2013). At the time of listing, the known willow flycatcher population was estimated between 300 and 500 pairs. 60 Fed. Reg. at 10,711.

61. In its listing rule, the FWS found that the decline of the Southwestern willow flycatcher resulted from loss of habitat, including adverse modifications of riparian habitat necessary for the breeding and successful reproduction of the willow flycatcher as a result of human development, channelization, changes in surface water hydrologic regimes, introduction of alien species, and other activities. *Id.* at 10,714.

62. The FWS found that reduced peak flows, channelization, and reduced sediment in the Middle Rio Grande below Cochiti Dam has eliminated thousands of acres of willow flycatcher habitat. The lack of large peak flows combined with channelization causes narrowing of the Rio Grande channel and eliminates overbank flooding, both of which limit development of the backwater habitats necessary for willow flycatcher survival in the Middle Rio Grande. The 235 miles of levees between Cochiti Dam and Elephant Butte Reservoir that have restricted the width of the floodplain and disconnected the river from most of its natural floodplain have further reduced the amount and quality of suitable habitat for the willow flycatcher.

II. Federal Management of the Middle Rio Grande through operations and activities conducted in connection with the Middle Rio Grande Project and the San Juan-Chama Project

63. Federal involvement and control over the Middle Rio Grande and its principal tributary, the Rio Chama, traces back to the period encompassing the 1940s through the 1960s when Congress authorized two water projects under the federal reclamation laws: the Middle Rio Grande Project and the San Juan-Chama Project.

A. The Middle Rio Grande Project

64. Irrigated agriculture in the Middle Rio Grande began with the Pueblos and continued to develop through the early part of the twentieth century with construction of more extensive irrigation systems. By 1920, agricultural production had declined due to frequent flooding and inefficient water delivery from existing irrigations systems.

65. In August of 1925, the MRGCD was formed to address the problems besetting the irrigated farm lands along the Middle Rio Grande. The MRGCD is a political subdivision of the State of New Mexico formed under the New Mexico Conservancy Act of 1923. The MRGCD rehabilitated existing irrigation systems, created a drainage system to return unused water back to the Rio Grande, built levees for flood control, drained waterlogged lands, and initiated construction of the El Vado Dam and Reservoir along the Rio Chama.

66. Notwithstanding the creation of MRGCD in 1925, irrigated agriculture in the Middle Rio Grande continued to be bedeviled by variable river flows, flooding, erosion, and waterlogging of farmlands. As a result, many of the irrigators within the MRGCD ceased to pay their assessments and many agricultural lands were acquired by the MRGCD in lieu of payment of unpaid assessments.

67. By the 1940s, the MRGCD was essentially bankrupt and in default on its bonds. Many of its facilities were also in disrepair, and the MRGCD did not possess the financial resources to make required repairs. Additionally, many of the previously irrigated lands within the MRGCD were no longer irrigable because erosion throughout the Rio Grande system had resulted in serious aggradation (elevation) of the river channel and associated flooding and saturation of previously irrigated lands. These conditions led to pressure for the federal government to take over the MRGCD.

68. In 1947, Reclamation and the Corps completed a comprehensive plan for flood control, rehabilitation of irrigation and drainage facilities, and river channelization works in the Middle Rio Grande Basin. The result was the "Middle Rio Grande Project," which Congress authorized in the 1948 and 1950 Flood Control Acts. *See* Flood Control Act of 1948, Pub. L. 80-858, Title II, Section 201 *et seq.*; Flood Control Act of 1950, Pub. L. 81-516, Title II, Section 204.

69. The Middle Rio Grande Project, as authorized by these Acts, is a federal reclamation project under which Reclamation assumed ownership, control, and authority over all assets and operations of the MRGCD at a time when MRGCD was essentially bankrupt and seeking federal assistance. At the time, MRGCD's assets and operations consisted of water rights; El Vado Dam and Reservoir; four permanent diversions dams; two river canal headings; a canal siphon across the Rio Grande; several hundred miles of irrigation canals, laterals, and drains; 180 miles of riverside levees; and jetties and other flood control works.

70. The Middle Rio Grande Project also provided federal funds to retire all outstanding MRGCD bonds, and expended federal funds to construct, repair, and improve water storage, diversion, and conveyance facilities within the MRGCD system.

71. The respective rights, duties, and obligations of Reclamation and MRGCD with respect to the water and physical facilities of the Middle Rio Grande Project are spelled out in federal reclamation law statutes and in various legal documents, including the Repayment Contract of September 24, 1951 executed by Reclamation and MRGCD and the Transfer and Assignment of Water Rights of May 28, 1963 executed by MRGCD.

72. The 1951 Repayment Contract between Reclamation and MRGCD provides, *inter alia*, that all MRGCD's property interests—including diversion dams, irrigation and drainage

canals, and storage facilities—were conveyed to Reclamation and would remain under Reclamation ownership and control until such time as MRGCD paid off that portion of the cost of the project allocated *and* Congress acts to retransfer property back to MRGCD.

73. The 1951 contract further provides that "any and all [water right] filings made in the name of the District [MRGCD]" are "to be assigned to the United States for beneficial use in the project and for Indian lands in the project area."

74. In 1963, MRGCD executed a Transfer and Assignment of Water Rights in which it stated that it "does grant and convey to the United States" all the surface water rights that it had acquired in the Middle Rio Grande pursuant to New Mexico law.

75. Insofar as MRGCD's water rights are concerned, MRGCD's position is that it obtained rights to the use of waters in the Rio Grande when it was issued a storage permit from the New Mexico State Engineer: Permit No. 1690 which permits the storage of 198,000 acre-feet of Rio Grande basin water in El Vado Reservoir.

76. Also pursuant to the 1951 contract, Reclamation assumed operation and maintenance of all MRGCD facilities. In the 1970s, Reclamation permitted MRGCD to assume operation and maintenance of the irrigation facilities associated with the Middle Rio Grande Project as the United States' agent, other than El Vado Reservoir. Although MRGCD has assumed operation and management of most irrigation facilities associated with the project, the 1951 contract makes clear that it does so as the "agent" of Reclamation and must implement Reclamation's instructions.

77. The legal relationship beween Reclamation and MRGCD was specifically addressed by Reclamation in a letter of July 6, 2000 to Mr. Subhas Shah, Chief Executive Office of MRGCD. In that letter, Mr. Michael Galbadon, Reclamation Area Manager, writes that "[a]s

an agent of the United States operating Federal facilities, [MRGCD] is required to operate all transferred works in compliance with Federal law including the ESA" and "in a way that Pueblo water rights are not adversely affected."

78. As part of the Middle Rio Grande Project, Congress also authorized the Corps to construct flood control reservoirs and levees for flood protection. Pursuant to that authorization, the Corps built, currently owns, and is responsible for maintaining and operating, the following dams and reservoirs: Abiquiu, Cochiti, Galisteo, and Jemez Canyon.

79. Abiquiu Dam and Reservoir are located on the Rio Chama about 32 river-miles upstream from its confluence with the Rio Grande. Abiquiu Dam was constructed by the Corps as part of its flood and sediment control project for the Middle Rio Grande, which was jointly studied and proposed with Reclamation as part of the Middle Rio Grande Project, and approved by Congress in the 1948 and 1950 Flood Control Acts. Abiquiu Dam is owned, operated, and maintained by the Corps, which controls water storage and releases pursuant to federal statutory and other requirements.

80. Cochiti Dam and Reservoir are located on the Rio Grande about 50 miles north of Albuquerque, within Cochiti Pueblo's territorial jurisdiction. The Flood Control Act of 1960 (Public Law 86-645) authorized the Corps to construct Cochiti Dam for flood and sediment control on the main stem of the Rio Grande. The Corps continues to own, operate, and maintain Cochiti Dam and associated facilities; and controls water storage and releases pursuant to federal statutory and other requirements.

81. In addition to Cochiti Dam, the Corps has constructed, currently owns, operates, maintains, and controls several smaller storage facilities on the Middle Rio Grande system, including Galisteo Dam on Galisteo Creek, about 12 miles upstream of its confluence with the

Rio Grande; and Jemez Canyon Dam and Reservoir, on the Jemez River about 3 miles upstream of its confluence with the Rio Grande some 22 miles north of Albuquerque.

82. The Federal Defendants continue to have significant operational control over all water operations in the Middle Rio Grande.

83. For example, Reclamation has provided, and continues to provide, substantial funding for operation and maintenance costs relating to the Middle Rio Grande Project. Estimates of Reclamation's financial contribution to the operation and maintenance of the Middle Rio Grande Project total around $10 million annually.

84. From the time that federal government involvement in the Middle Rio Grande Project began until 2010, the federal government expended more than $231 million dollars of federal funds on the Middle Rio Grande Project.

85. The Ninth Circuit Court of Appeals, in a historical review of federal reclamation projects such as the Middle Rio Grande Project, has characterized such projects as a "vast federal subsidy." *Peterson v. U.S. Department of the Interior*, 899 F.2d 799, 804 (9th Cir. 1990).

86. Given the significant federal financial subsidy provided by the federal government to irrigators who use the waters associated with federal reclamation projects, and in light of the significant federal role in the development of those waters and related storage and delivery facilities, the federal government retains a substantial amount of control over the manner in which that water is distributed: "It is not there for the taking (by the landowner subject to state law), but for the giving by the United States. The terms upon which it can be put to use, and the manner in which rights to continued use can be acquired, are for the United States to fix." *Israel v. Morton*, 549 F.2d 128, 132-33 (9th Cir. 1977).

B. <u>The San Juan-Chama Project</u>

87. In 1962, Congress authorized the San Juan-Chama Project by amending the Colorado River Storage Project Act to allow diversion of a portion of New Mexico's water from the San Juan River into the Rio Grande through an inter-basin transfer of water from the Colorado River basin to the Rio Grande basin. *See* Pub. L. 87-483, Section 8 *et seq.* Reclamation stores San Juan-Chama water in a project pool at Heron Reservoir. San Juan-Chama water must be beneficially used in New Mexico. Therefore, none of this water may be used to meet New Mexico's obligations to Texas under the Rio Grande Compact.

88. In planning the San Juan-Chama Project, Reclamation calculated that the expected "firm-yield" of water to be supplied by the Project is 101,800 acre-feet annually. The various parties which contracted to receive an allocation of the annual water supply (including the Albuquerque Bernalillo County Water Utility Authority and MRGCD) did not receive any right to a fixed amount of water in any given year. Rather, each contracting party was granted a contractual right to receive a proportionate share of the water available from the project in any given year to be used for a specifically defined purpose.

89. As an example, MRGCD was granted a contractual right to the use of 20,900 acre-feet annually of the firm yield amount "as an irrigation water supply."

90. In years when the available water supply is lower than the anticipated firm-yield, then all parties which have contracted for the use of San Juan-Chama Project water share proportionally in that shortage, in proportion to their respective allocations from the firm-yield.

91. In connection with the actual amount of water to be delivered to a contractor in any given year, MRGCD's June 25, 1963 contract with Reclamation states as follows: "During periods of scarcity when the actual available water supply may be less than the estimated firm

yield, [MRGCD] shall share in the available water supply in the ratio that allocations [to the various contracting parties] bear to the estimated firm yield." That is, MRGCD could expect to receive 20,900/101,800 [20.55%] of the available water supply.

92. Heron Reservoir was constructed using federal funds authorized for the San Juan-Chama Project and is owned and operated by the United States, through Reclamation.

III. Reclamation's and the Corps' history of ESA Section 7(a)(2) consultations with respect to their operations and activities in the Middle Rio Grande

93. Even though the silvery minnow was listed as an endangered species in 1994 and the willow flycatcher was listed as an endangered species in 1995, Federal Defendants failed to complete a formal Section 7(a)(2) consultation with the FWS for a number of years. During this period of time, Federal Defendants' operation of federal storage and diversion facilities in the Middle Rio Grande resulted in significant impacts to both species.

94. For example, significant stretches of the Middle Rio Grande were dewatered in 1996, 1998, and 1999. These river drying events resulted in silvery minnow mortality, imperilling the species and bringing it closer to extinction.

95. In April of 1996, Federal Defendants allowed MRGCD to divert all water flowing in the Middle Rio Grande. Significant river drying resulted, and the population of silvery minnows plummeted as the drying killed approximately 50% of the species' existing population.

96. To remedy the Federal Defendants' foot-dragging with respect to its Section 7(a)(2) obligations, WildEarth Guardians commenced a lawsuit against Federal Defendants in November of 1999 in the United States District Court for the District of New Mexico in which it alleged that Federal Defendants were in violation of both their substantive and procedural duties

under Section 7(a)(2).[5]

97. Subsequent to the filing of the 1999 lawsuit, Reclamation and the Corps commenced a Section 7(a)(2) consultation assessing the impacts of their Middle Rio Grande operations on ESA-listed species. This consultation – which was the first Section 7(a)(2) consultation conducted with respect to the Middle Rio Grande operations – culminated in FWS's issuance of a BiOp on June 29, 2001.

98. The June 29, 2001 BiOp concluded that the Federal Defendants' Middle Rio Grande operations jeopardized the continued existence of both the silvery minnow and the willow flycatcher. As there was no designated critical habitat for either of those two species at the time that the BiOp was issued, the June 29, 2001 BiOp did not make any findings in connection with the effect of the Federal Defendants' Middle Rio Grande operations on such habitat.

99. While the June 29, 2001 BiOp was a step forward in conservation efforts directed at the silvery minnow and the willow flycatcher, the Section 7(a)(2) consultation which concluded with issuance of that BiOp was impermissibly narrow in scope as the BiOp did not assess the cumulative impacts of all of the Federal Defendants' discretionary actions in the Middle Rio Grande.

100. Accordingly, Guardians filed an amended complaint in July of 2001, in which it realleged its claims against Federal Defendants. In this pleading (styled as the Second Amended Complaint), Guardians alleged that Reclamation and Corps had impermissibly failed to consult

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[5] At the time that this lawsuit was commenced, WildEarth Guardians was known by its former name "Forest Guardians." The lead plaintiff in the 1999 lawsuit was the Rio Grande Silvery Minnow and WildEarth Guardians was also joined by a number of its conservation partners as co-plaintiffs in that lawsuit. The lawsuit was styled *Rio Grande Silvery Minnow, et al. v. Martinez*, Civil No. 99-1320-JAP/RHS.

over key elements of their Middle Rio Grande operations, including their discretionary decisions (a) not to reduce water deliveries to MRGCD, (b) not to utilize the Corps' discretionary authority over reservoir management, (c) not to use a portion of San Juan-Chama water stored in Heron for the silvery minnow, and (d) not to invoke discretionary clauses of the San Juan-Chama contracts for purposes of reallocating water to the minnow, if necessary.

101. In a decision of April 19, 2002, (now Senior) Judge James A. Parker of the United States District Court for the District of New Mexico issued a decision resolving Guardians' claims concerning the required scope of Section 7(a)(2) consultations. *Rio Grande Silvery Minnow v. Keys*, 469 F.Supp. 2d 973 (D.N.M. 2002) *affirmed Rio Grande Silvery Minnow v. Keys*, 333 F.3d 1109 (10th Cir. 2003) and *vacated as moot Rio Grande Silvery Minnow v. Keys*, 355 F.3d 1215 (10th Cir. 2004).

102. In the April 19, 2002 decision, Judge Parker ruled in favor of Guardians on its claims concerning the scope of Reclamation's discretionary authority over the operation of federal facilities in the Middle Rio Grande and, relatedly, the required scope of Reclamation's procedural Section 7(a)(2) obligations. Specifically, Judge Parker ruled that Reclamation has the discretionary authority to reduce water deliveries to MRGCD pursuant to (1) the "shortage clause" of the 1951 repayment contract for the Middle Rio Grande Project, (2) the authorizing legislation for the San Juan-Chama Project and contracts for the use of that water, and (3) Reclamation's duty to limit water deliveries to MRGCD to the amount of water that is beneficially applied to irrigation within the MRGCD. Accordingly, Judge Parker ordered that Reclamation had a duty to broaden the scope of its Section 7(a)(2) consultation with FWS to conform with the scope of its discretionary authority.

103. In the April 19, 2002 decision, Judge Parker ruled against Guardians on its claims

that the Corps has the discretionary authority to re-operate those dams that it owns and operates in connection with the Middle Rio Grande Project, and that it has a mandatory duty under Section 7(a)(2) to consult with the FWS as the effects of those operations on the silvery minnow and the willow flycatcher.

104. To comply with Judge Parker's April 19, 2002 decision, Reclamation commenced an expanded Section 7(a)(2) consultation with FWS in August of 2002. However, in the interim period between issuance of the April 19, 2002 decision and commencement of the expanded Section 7(a)(2) consultation in August of 2002, Reclamation released nearly all of the contracted water under the Middle Rio Grande Project and the San Juan-Chama Project.

105. According to Judge Parker, the release of this water in 2002 created a crisis that "could have been avoided if the Federal Defendants, especially [Reclamation], had properly performed their statutory duties." *Rio Grande Silvery Minnow v. Keys*, 356 F.Supp.2d 1222, 1225-26 (D.N.M. 2002) *vacated as moot Rio Grande Silvery Minnow v. Keys*, 355 F.3d 1215 (10th Cir. 2004). Judge Parker further found as follows:

> By the time the April 19, 2002 Memorandum Opinion and Order was filed, [Reclamation] knew or should have known that it was facing potentially disastrous drought conditions in 2002 and that it would run out of voluntarily acquired supplemental water for the minnow sufficient to meet the flow requirements in the June 29, 2001 [BiOp]. Yet it failed to request consultation until August 2002.

356 F.Supp.2d at 1226.

106. To prevent the 2002 crisis from developing into an extinction event, Judge Parker ordered [Reclamation] to assure specifically defined minimum flows in certain reaches of the Middle Rio Grande for the remainder of 2002. 356 F.Supp.2d at 1237. Judge Parker determined that, if necessary to meet the stated flow requirements, Reclamation had an obligation to release

San Juan-Chama Project water from Heron Reservoir and to compensate those whose contractual rights to water were impaired by Reclamation's releases. *Id.*

107. The United States Court of Appeals for the Tenth Circuit affirmed Judge Parker's April 19, 2002 decision in a decision of June 12, 2003. *Rio Grande Silvery Minnow v. Keys*, 333 F.3d 1109 (10th Cir. 2003) *vacated as moot Rio Grande Silvery Minnow v. Keys*, 355 F.3d 1215 (10th Cir. 2004).

108. Reclamation re-initiated consultation on its Middle Rio Grande discretionary actions in order to comply with Judge Parker's April 19, 2002 decision. As part of this effort, Reclamation prepared a new BA which it submitted to the FWS in February of 2003. The February 2003 BA expanded the scope of the Section 7(a)(2) consultation to include an assessment of Reclamation's discretionary authority to reduce water deliveries to MRGCD.

109. The re-initiated and expanded Section 7(a)(2) consultation culminated in FWS's issuance of a new BiOp on March 17, 2003 which covered the Federal Defendant's Middle Rio Grande operations for the period 2003-2013.

110. Like the June 29, 2001 BiOp which preceded it, the March 17, 2003 BiOp concluded that the Federal Defendants' operations in the Middle Rio Grande jeopardized the continued existence of the silvery minnow and the willow flycatcher. By the time that the March 17, 2003 BiOp was issued, however, critical habitat had been designated for the silvery minnow and that BiOp determined that the Federal Defendants' Middle Rio Grande operations would adversely modify this critical habitat.

111. As required by the ESA, the March 17, 2003 BiOp contained an RPA which was intended to mitigate the significant adverse effects of the Federal Defendants' Middle Rio Grande operations, to alleviate the threat of jeopardy, and to avoid the adverse modification of

designated critical habitat. The RPA contained various elements including requirements for modified water operations which guaranteed continuous minimum flows in certain reaches of the minnow's habitat and requirements for physical modifications to the federal facilities in the Middle Rio Grande such as fish passages at the diversion structures.

112. Since the March 17, 2003 BiOp contemplated that the Federal Defendants' continued operations in the Middle Rio Grande would result in the incidental take of silvery minnows and willow flycatchers, that BiOp also included an ITS which provided a narrow exemption from the ESA's general Section 9 prohibition on "take." Take limits for the silvery minnow are set annually by FWS, which determines the maximum number of silvery minnows that may be incidentally taken by the Federal Defendants' Middle Rio Grande operations without violating Section 9.

113. In an appropriations act of 2004, Congress joined the on-going dispute as to Guardians' efforts to secure conditions necessary for a healthy ecosystem in the Middle Rio Grande. Specifically, Congress enacted what is colloquially known as the "minnow rider." With the minnow rider, Congress stated that Federal Defendants' "compl[iance] with the [RPA] and the incidental take limits defined in the [BiOp] released by the [FWS] dated March 17, 2003" would "fully meet all requirements of the [ESA] . . . for the conservation of the Rio Grande Silvery Minnow and the Southwestern Willow Flycatcher on the Middle Rio Grande in New Mexico."

114. The minnow rider addressed the Federal Defendants' obligations with respect to San Juan-Chama Project water separately. In connection with San Juan-Chama Project water, the minnow rider states that Reclamation "may not use [its] discretion, if any" to restrict water deliveries to contracting parties "to meet the requirements of the [ESA]" except in those

circumstances where "such water is acquired or otherwise made available from a willing seller or lessor and the use is in compliance with the laws of the State of New Mexico."

115. Congress's enactment of the minnow rider terminated all pending litigation over the Federal Defendants' compliance with the ESA, and led to the Tenth Circuit's decision to vacate Judge Parker's April 19, 2002 decision and the Tenth Circuit's June 12, 2003 decision affirming Judge Parker's decision. *Rio Grande Silvery Minnow v. Keys*, 355 F.3d 1215 (10th Cir. 2004).

B. Reclamation's and the Corps' non-compliance with the RPA and the ITS of the 2003 BiOp

116. In the ensuing years, Federal Defendants developed a pattern and practice of continuing violations of the 2003 BiOp's RPA and ITS, all to the detriment of the silvery minnow and the willow flycathcer.

117. For example, Federal Defendants violated Elements E and F of the RPA which require continuous river flows through various segments of the Middle Rio Grande, even though the FWS had stated in the 2003 BiOp that those flows were "essential to provide a sufficient amount of habitat to support these silvery minnows and ensure that the primary constituent elements of their critical habitat are available to sustain them." Specifically, Federal Defendants impermissibly allowed stretches of the Rio Grande to dry in 2003, 2004, 2006, 2011, and 2013, and violated the Central Gage flow requirements in 2013.

118. Another significant violation of the 2003 BiOp's RPA was Federal Defendants' failure to provide for sufficient water to create a spawning spike in the spring of 2011, 2012, and 2013. This failure constitutes a violation of RPA Element A.

119. Additional violations of the various components of the RPA incorporated into the

2003 BiOp include (1) failure to provide fish passage at the San Acacia and Isleta Diversion Dams (RPA Element R) and (2) failure to implement habitat restoration projects in the southern portion of the Middle Rio Grande (RPA Element S), and (3) failure to modify the San Marcial railroad bridge (RPA Element U).

120. Federal Defendants have also violated the 2003 BiOp's ITS. In 2013, the FWS determined that Federal Defendants could incidentally take a maximum of 2,746 silvery minnows during the 2013 irrigation season (April 1, 2013 - March 30, 2014) without violating Section 9. However, the March 3, 2014 Salvage Report for the 2013 irrigation season determined that Federal Defendants' Middle Rio Grande operations caused the death of 11,800 minnows, over 400% of the permitted amount.

121. Additionally, the ITS expressly states that it is "based on the premise that the RPA will be implemented." As discussed above, Federal Defendants have violated the RPA in many respects since the 2003 BiOp was issued.

122. Since Federal Dendants have violated the 2003 BiOp's ITS by exceeding the amount of permitted take and by not complying with the RPA, they are not exempt from Section 9's prohibition on the take of ESA-listed species and their taking of silvery minnows constitutes a violation of Section 9.

123. The Federal Defendants' operation of federal facilities on the Middle Rio Grande – including storage, release, and diversion decisions – has diverged in significant respects from the operations which the FWS has determined are necessary to avoid extinction of the silvery minnow in its Hydrologic Objective.

124. From 2003 to present, management of the Rio Grande under the 2003 BiOp allowed two-thirds of the silvery minnow's and willow flycatcher's critical habitat (over 100

miles of the 174 miles in the Middle Rio Grande) to go dry between June 15 and October 31. Further, that portion of the river allowed to dry has consistently been found to support the highest population of silvery minnows and willow flycatchers in the Middle Rio Grande.

125. As discussed above, two reports prepared by the Middle Rio Grande Endangered Species Collaborative Program have determined that the silvery minnow is now critically imperiled and that the Federal Defendants' current conservation efforts are inadequate to stop the precipitous decline of the species towards extinction.

C. **Expiration of the 2003 BiOp & re-initiation of Section 7(a)(2) consultation**

126. By its terms, the 2003 BiOp extended through February 28, 2013. However, the 2003 BiOp states that any coverage provided by that BiOp (such coverage being contingent on the Federal Defendants' compliance with the RPA and the ITS) would be extended if the Federal Defendants timely commenced a new Section 7(a)(2) consultation prior to February 28, 2013.

127. In order to commence a new Section 7(a)(2) consultation in contemplation of the expiration of the 2003 BiOp, Reclamation submitted a BA to the FWS as to the effects of its operations and activities in the Middle Rio Grande on January 16, 2013.

128. However, the scope of the action that Reclamation submitted for consultation was impermissibly narrow. As it had done in the BAs which it had submitted to the FWS prior to Judge Parker's April 19, 2002 decision, Reclamation disavowed the significant extent of discretionary authority which it has over water operations and deliveries in the Middle Rio Grande.

129. The on-going Section 7(a)(2) consultation commenced by Reclamation in February of 2013 is inconsistent with Judge Parker's analysis of Reclamation's discretionary authorities in the Middle Rio Grande as set forth in his April 19, 2002 decision which analysis

was affirmed by the Tenth Circuit in its June 12, 2003 decision.

130. In order to commence a new Section 7(a)(2) consultation in contemplation of the expiration of the 2003 BiOp, the Corps submitted a series of BAs to the FWS as to the effects of its operations and activities in the Middle Rio Grande. The last such BA was submitted to the FWS on February 15, 2013.

131. However, the Corps withdrew its BA and withdrew from Section 7(a)(2) consultation on November 26, 2013. Accordingly, the Corps is not now in Section 7(a)(2) consultation with the FWS.

IV. Discretionary authorities of Reclamation and the Corps in the Middle Rio Grande

A. Reclamation discretion

132. Reclamation retains significant discretionary authority and control over water operations in the Middle Rio Grande. These discretionary authorities stem from both Reclamation's development of the Middle Rio Grande Project and Reclamation's development of the San Juan-Chama Project.

133. Some of Reclamation's discretionary authorities, which must be assessed in the context of a Section 7(a)(2) consultation with the FWS, were addressed by Judge Parker in his decision of April 19, 2002.

134. For example, Reclamation has the discretionary authority to reduce water deliveries to MRGCD under the shortage clause of the 1951 repayment contract for the Middle Rio Grande Project and the shortage clauses incorporated into annual contracts for the delivery of San Juan-Chama Project water. Reclamation's discretionary authority to reduce water deliveries on the basis of these shortage clauses must be assessed within the scope of the on-going Section 7(a)(2) consultation. However, the on-going Section 7(a)(2) consultation between

Reclamation and the FWS does not address this discretionary authority.

135. Additionally, Judge Parker found in his April 19, 2002 decision that Reclamation "has a statutory duty to determine whether overuse [of federal project water] is occurring" on irrigated lands within MRGCD, and to limit deliveries of federal project water for irrigation purposes to that amount which is reasonably needed for beneficial use. Reclamation must include its discretionary authority to limit the delivery of water to MRGCD to the "beneficial use" amount in its on-going Section 7(a)(2) consultation with the FWS. The on-going Section 7(a)(2) consultation between Reclamation and the FWS does not address this discretionary authority.

136. Upon information and belief, Reclamation has failed to conduct an analysis as to whether or not MRGCD is "overusing" federal project water on its irrigated lands.

137. Reclamation has additional discretionary authorities over the use of federal project water which were not addressed by Judge Parker in his April 19, 2002 decision, and these discretionary authorities must also be included within the scope of the on-going Section 7(a)(2) consultation with FWS.

138. As examples, under federal reclamation law and the 1951 repayment contract for the Middle Rio Grande Project, Reclamation retains the discretionary authority: (1) to disapprove and/or to place conditions on any use of Middle Rio Grande Project water outside the geographical boundaries of MRGCD, (2) to disapprove and/or to place conditions on transfers of Middle Rio Grande Project water, and (3) to disapprove and/or to place conditions on MRGCD's operation of its so-called "Water Bank." The on-going Section 7(a)(2) consultation between Reclamation and the FWS must also address these discretionary authorities.

139. Reclamation acknowledges that the cumulative effect of the significant transfers

of federal project water from MRGCD to areas outside the geographical boundaries of the MRGCD imperils the silvery minnow, and threatens other serious consequences including a failure to meet delivery obligations under the Rio Grande Compact and a failure to comply with federal trust obligations to the Middle Rio Grande Pueblos. Nonetheless, Reclamation has failed to exercise its discretionary authority to disapprove and/or to place conditions on such transfers.

140. Reclamation has also entirely failed to exercise its discretionary authority over operation of MRGCD's Water Bank. Reclamation's failure to exercise this discretionary authority has resulted in an unbalanced utilization of the water in the Middle Rio Grande which impairs the ability of the Middle Rio Grande Pueblos to store water in the spring of each year and which also impairs many and various non-consumptive uses of the river. For example, Reclamation's failure to exercise its discretionary authority over Water Bank operations results in additional depletions from the Middle Rio Grande which are harmful to the silvery minnow's survival and recovery.

B. <u>Corps Discretion</u>

141. The Corps operates and maintains each of its reservoirs and associated facilities pursuant to the operating criteria set forth in P.L. 86-645. These criteria generally limit the Corps' discretion in storage and release of water from the reservoirs. However, the Corps retains some flexibility in its reservoir operations in the Middle Rio Grande.

142. The Corps' Water Control Manuals specifically provide discretionary authority for the Corps to "deviate" from normal reservoir operations in certain circumstances. For example, the Corps' Water Control Manual for Cochiti Lake provides that the Corps' may modify its operations through "planned deviations" approved by the Southwest Director.

143. The Corps has exercised its authority to deviate from normal reservoir operations

in the Middle Rio Grande on several occasions in the past to provide flows downstream of Cochiti Dam to benefit the silvery minnow and willow flycatcher. In 2007 and again from 2009-2013, the Corps planned to deviate from its water control plan for Cochiti Lake to provide a spawning and/or overbanking peak flows below Cochiti Lake.

144. The Corps actually modified its operations in 2007 and again in 2010 by storing spring flows in Cochiti for a limited period of time so that a larger peak flow more closely conforming to natural conditions could be released several weeks later. The Corps produced environmental assessments in 2007 and 2009 evaluating the effects of these planned deviations. The 2007 and 2010 deviations resulted in significant benefits to the silvery minnow.

CLAIMS FOR RELIEF

First Claim for Relief
Violation of the substantive requirements of ESA Section 7(a)(2) by Reclamation

145. Each and every allegation set forth in this complaint is incorporated herein by reference.

146. As set out herein, Reclamation's operations and activities in the Middle Rio Grande result in jeopardy to the Rio Grande silvery minnow and the Southwestern willow flycatcher, and also result in the adverse modification and/or destruction of the species' designated critical habitats, all in violation of the substantive requirements of ESA Section 7(a)(2)

Second Claim for Relief
Violation of the procedural requirements of ESA Section 7(a)(2) by Reclamation

147. Each and every allegation set forth in this complaint is incorporated herein by reference.

148. As set out herein, Reclamation's failure to consult with the FWS as to the full extent of its discretionary authorities over operations and activities in the Middle Rio Grande, including but not limited to its authority to reduce water deliveries to MRGCD when needed to assure compliance with the ESA, constitutes a violation of the procedural requirements of ESA Section 7(a)(2).

Third Claim for Relief
Violation of of ESA § 7(d) by Reclamation

149. Each and every allegation set forth in this complaint is incorporated herein by reference.

150. As set out herein, Reclamation's operations and activities in the Middle Rio Grande during the on-going ESA Section 7(a)(2) consultation with the FWS cause irreversible and irretrievable effects on the Rio Grande silvery minnow and Southwestern willow flycatcher in violation of ESA Section 7(d).

Fourth Claim for Relief
Violation of the take prohibition of ESA § 9 by Reclamation

151. Each and every allegation set forth in this complaint is incorporated herein by reference.

152. As set out herein, Reclamation's operations and activities in the Middle Rio Grande have caused, and continue to cause, the incidental take of Rio Grande silvery minnows in violation of ESA Section 9.

Fifth Claim for Relief
Violation of the substantive requirements of ESA § 7(a)(2) by the Corps

153. Each and every allegation set forth in this complaint is incorporated herein by reference.

154. As set out herein, the Corps' operations and activities in the Middle Rio Grande result in jeopardy to the Rio Grande silvery minnow and the Southwestern willow flycatcher, and also result in the adverse modification and/or destruction of the species' designated critical habitats, all in violation of the substantive requirements of ESA Section 7(a)(2)

Sixth Claim for Relief
Violation of the procedural requirements of ESA § 7(a)(2) by the Corps

155. Each and every allegation set forth in this complaint is incorporated herein by reference.

156. As set out herein, the Corps' failure to consult with the FWS as to the full extent of its discretionary authorities over operations and activities in the Middle Rio Grande constitutes a violation of the procedural requirements of ESA Section 7(a)(2).

Seventh Claim for Relief
Violation of the take prohibition of ESA § 9 by the Corps

157. Each and every allegation set forth in this complaint is incorporated herein by reference.

158. As set out herein, the Corps' operations and activities in the Middle Rio Grande have caused, and continue to cause, the incidental take of Rio Grande silvery minnows in violation of ESA Section 9.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WILDEARTH GUARDIANS respectfully requests that this Court:

A. Declare that Reclamation and the Corps are violating their substantive duties under ESA Section 7(a)(2) by jeopardizing the silvery minnow and/or willow flycatcher, and by adversely modifying and/or destroying the species' designated

critical habitats;

B. Declare that Reclamation and the Corps are violating their procedural duties under ESA Section 7(a)(2) by failing to consult with the FWS on all aspects of their discretionary authority and decision-making concerning water operations and related management actions on the Middle Rio Grande;

C. Declare that Reclamation is violating ESA Section 7(d) by taking actions which have irreversible and irretrievable effects on the silvery minnow and/or the willow flycatcher during the course of its ongoing consultation with the FWS;

D. Declare that Reclamation and the Corps are violating ESA Section 9 by having caused, and by continuing to cause, unlawful "take" of silvery minnows;

E. Order Reclamation and the Corps to take all steps within their discretionary authority necessary to avoid jeopardy to the silvery minnow and willow flycatcher and adverse modification and/or destruction of their designated critical habitats, as required by ESA Section 7(a)(2), taking into account federal trust responsibilities to the Middle Rio Grande Pueblos;

F. Order Reclamation and the Corps to complete a comprehensive consultation with the FWS on the effects of the full range of their discretionary authority as required by ESA Section 7(a)(2) on an expedited basis;

G. Enter such temporary, preliminary, or permanent injunctive relief as specifically prayed for by WILDEARTH GUARDIANS hereinafter in a manner which is consistent with the federal government's trust responsibility to the Middle Rio Grande Pueblos;

H. Award WILDEARTH GUARDIANS its reasonable fees, costs, expenses, and

disbursements, including attorneys fees, associated with this litigation pursuant to the ESA; and

I. Grant such additional and further relief as the Court may deem just and appropriate.

Respectfully submitted this 24th day of July 2014.

/s/ Samantha Ruscavage-Barz
WildEarth Guardians
516 Alto Street
Santa Fe, NM 87501
Tel: (505) 401-4180
sruscavagebarz@wildearthguardians.org

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Cerrillos, NM 87010
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Attorneys for Plaintiff WildEarth Guardians

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

DATE: August 7, 2014

TO: Buckman Direct Diversion Board

FROM: Mackie Romero, BDD Financial Manager

ITEM AND ISSUE:

Request approval of the revised "BDD Working Capital and Billing Policy".

BACKGROUND AND SUMMARY:

On November 1, 2012 BDD adopted a Working Capital and Billing Policy, which provides procedural guidance for operating and accounting of BDD's Working Capital Fund.

Current Major Procedural Items:

- Pre-Bills - Owner advance billings based on adopted budget
- Earnings (Revenue) - based on invoiced expenditures
- Credits - the dollar difference between owner advances and invoiced expenditure
- Target Balance of Cash-on-hand - 90 Day cash on hand policy and calculation

In discussion with BDD partners, this policy change will better assist our owners in cash management and will clarify existing procedures.

The proposed changes are briefly summarized, as follows:

- **Pre-bills**- Owners will only receive an advanced billing for the 90 day cash reserve and Major Repair and Replacement Fund Contributions.
    - 90 day cash reserve will be used to pay for current and future payroll and vendor obligations.
- **Earnings (Revenue)** – Owners will receive an invoice based on actual expenditures monthly for reimbursement.
    - These payments will restore the 90 day cash reserve.
    - Owners will be billed separately for Fixed and Variable costs

- **Credits –** The 90 day cash reserve will represent the credits available to owners.
    - 90 day cash reserve credit may be applied to 4th Quarter invoices or applied to next fiscal year's 90 day cash pre-billings.
    - Any amount remaining at the end of the fiscal year shall be refunded to each owner.
- **WTP Solar Rebate –** PNM rebates will be deposited as revenue and will be budgeted yearly to support the expense from American Capital Energy.
- **Budget Adjustment Requests –** provides approval hierarchy and dollar thresholds for processing budget adjustment requests.

These proposed changes will help reduce excess revenue owed to owners, and will allow for timely receipt of actual expenditures. It also clarifies accounting for solar rebate revenue and approval of budget adjustment requests.

ACTION REQUESTED:

Staff recommends approval of the revised "BDD Working Capital and Billing Policy" effective July 1, 2014.

ADOPTED WORKING CAPITAL AND BILLING POLICY, revised July 1, 2014

Purpose

The Buckman Direct Diversion (BDD) Operating Fund is a working capital fund. Establishing such working capital funds is standard practice for such enterprise funds among local governments such as the City of Santa Fe and Santa Fe County. A working capital fund is a revolving fund because it's financed primarily from recurring revenues from its customers (the BDD owners) and because the fund's spending authority depends on and adjusts to those revenues. Working capital funds are established to help improve the efficiency of services by ensuring that the operation's annual budget fairly allocates its costs while providing its managers expanded flexibility to respond to owner's needs. A working capital fund should break even over time; however, it is prudent for a working capital fund to maintain a positive cash balance to manage variability in the timing and amount of cash flow.

The purpose of this policy is to set forth procedural guidance for obtaining owner advances via pre-bills, how earning (revenue) are recognized via billing, and how the 90-cash reserve is managed.

90-Day Cash Reserve Calculation

To be consistent with the City of Santa Fe and Santa Fe County utility enterprise funds, the BDD operating Fund shall maintain a target balance of 90 days cash-on-hand, recognizing that there will be some variability in the actual amount of cash-on-hand at any given point in time due to the variable nature and timing of cash flows. The target balance shall be calculated by multiplying 90 by the average daily budgeted expenditure as based upon the current fiscal year's adopted operating fund expenditure budget, so that each owner's portion of the target balance can be determined in a straightforward manner. The average daily budgeted expenditure is calculated by dividing an owners share of its total adopted fiscal year operating fund expenditure budget by 365. The result of this operation is then multiplied by 90. The result of this second operation becomes the target cash-on-hand balance.

Example:

Adopted Budget Expenditures	$	8,464,512
Divided # Days in Year		365
Average Daily Budget	$	23,190
Multiplied by 90 Days		90
90 Days Cash on Hand Target	$	2,087,140

Appendix B – Working Capital and Billing Policy

Pre-Bill Procedure

- *90-Day Cash Reserve*

Within 30 days of the new budgeted fiscal year, each owner of the project will receive a pre-billing for the 90-day cash reserve based on their share of the facility's budgeted amounts. This amount will be due and payable within 10 days of receiving the invoice. This amount will be held as a reserve credit to cover current and future obligations, within a fiscal year.

Refer to "90 Day Cash Reserve Calculation" of the policy for calculation method.

- *Emergency Reserve Fund and Major Repair and Replacement Fund*

No later than the 15th day of the month each owner of the project will receive a pre-billing for the month, based on their share of the reserve fund's budgeted amount. This amount will be due and payable within 10 days of receiving the invoice.

Disbursements of Cash

During the course of the operating month the fiscal agent shall use the receipts from the 90 day cash reserve to pay for all fixed and variable operating costs. For example, every two weeks the BDD must meet payroll for services rendered in the preceding two weeks. Invoices from BDD vendors and suppliers shall be paid when they are presented to the fiscal agent in accordance with the fiscal agent's procurement policy and accounts payable procedures.

Final Billing & Reconciliation

- *Fixed Costs:*

Ten days after the prior month closes, each owner will receive a bill that will detail the owner's share of actual facility fixed expenses in the prior operating month, which is due and payable to the BDD. These amounts are immediately due and must be received by the fiscal agent within 10 business days.

- *Variable Costs:*

Ten days after receiving the actual percentage of water delivery usage. Each owner will receive a bill that will detail the owner's share of actual facility variable expenses in the prior operating month, which is due and payable to the BDD. These amounts are immediately due and must be received by the fiscal agent within 10 business days.

Receipts received through the final billing will restore the 90 day cash reserve.

All transactions will be accounted for on an accrual basis of accounting.

Any payment that is not received on or before the due date shall incur a late charge equal to 1% of the balance per month. Amounts shall compound on a monthly basis and accrue additional late charges until paid in full. Late charges shall not be pro-rated in less than monthly increments.

Interest Income

When the BDD funds carry excess cash it shall earn interest on those balances, and such interest income will remain within the BDD for the purposes of funding its future operating or capital needs. If needed, these funds will be included in our annual budget request for spending approval.

4th Quarter Billing

The 90-day cash reserve credit may be applied to fourth quarter expenses. Any amounts remaining from the 90-day cash reserve at the end of the fiscal year, may be applied to next fiscal year's 90-day cash pre-bill.

Any amounts not applied to either 4th quarter expenses or next year's 90-day cash pre-bill, shall be refunded to each owner, within 30 days of the final billing.

WTP Solar Rebate Revenue

All amounts received from PNM will be deposited as revenue in the BDD operating fund. This revenue will be budgeted yearly to support the expenses from American Capital Energy. This revenue will reduce the percentage of variable expenses billed to the City of Santa Fe and Santa Fe County.

Budget Adjustment Requests (BARs)

Any budget adjustment requests (BARs) between budgeted categories, that exceed $50,000 will be approved by the Board. Any budget adjustment requests within a budgeted category may be approved by the fiscal agent. Any budget adjustment requests that increase the adopted and approved budget, within a fiscal year, shall be approved by the board and forwarded to the Owners as soon as reasonable for appropriation.

Approved August 7, 2014

Buckman Direct Diversion
Board Chair

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 23, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager

ITEM AND ISSUE:

Request approval to release a Request for Proposal (RFP) to acquire consulting services to assess water quality data collected the last four years under the Memorandum of Understanding between the Buckman Direct Diversion Board (BDDB) and the US Department of Energy (DOE).

BACKGROUND AND SUMMARY:

In 2007, the Buckman Direct Diversion Board (BDDB) requested a written agreement with Los Alamos National Laboratory (LANL). On May 13, 2010, the Buckman Direct Diversion Board (BDDB) and the United States Department of Energy (DOE) entered into a five (5) year Memorandum of Understanding (MOU) regarding Water Quality Monitoring set to expire in May 2015. The purpose of the MOU was "to establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory (LANL) and the Department of Energy (DOE) in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project (BDD Project)."

In Section "E", subpart 2, of the MOU, the agreement identifies a sampling system to provide water-quality contaminate sampling data from flow events at the stations described above in order to characterize contaminates in Los Alamos and Pueblo Canyon.

In Section "E", subpart 3, of the MOU, the agreement identifies a sampling system to provide event-based sampling at the diversion site of the Buckman Direct Diversion to determine change is stage in the Rio Grande when under the influence of flow from Los Alamos Canyon.

In addition, the State of New Mexico Environmental Department, Oversight Bureau has been monitoring storm water and the transportation of sediment from Los Alamos since 2001. Their monitoring has included sampling of the E109.9 Gaging Station as well as the Buckman Direct Division Site.

Water quality monitoring is to determine a baseline level of contaminates in the Rio Grande and sampling of storm events that create flow from Los Alamos Canyon with enough velocity to transport sediment into the Rio Grande. These storm events are sampled in the canyons as well as at the diversion structure. Samples in the canyon provides measurement of contaminates as they move down Los Alamos Canyon. Samples at the diversion structure provide measurement of how contaminate levels dilute with existing flow in the Rio Grande from up gradient.

DISCUSSION

Over the last three (3) monsoon seasons, a total of sixteen (16) storm events were sampled. The samples were successfully collected, prepared, and sent to the analytical laboratories for analyses. Results from the analyses are posted on the INTELLUS web site. BDD staff requires more time and assistance in processing this data to develop a summary of all events and interpret the data in the context of the MOU's intent.

ACTION REQUESTED

Staff recommends approval to release an RFP for consulting services to assess water quality data collected the last four years under the Memorandum of Understanding between the Buckman Direct Diversion Board (BDDB) and the US Department of Energy (DOE).

ATTACHMENT

Draft Request for Proposal

BUCKMAN DIRECT DIVERSION

"REQUEST FOR PROPOSALS"

ENVIRONMENTAL CONSULTING SERVICES
FOR
BUCKMAN DIRECT DIVERSION
RIO GRANDE WATER QUAILITY ASSESSMENT

RFP #'14//P

PROPOSAL DUE:

October 3, 2014
2:00 P.M.
PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD
BUILDING "H" SANTA FE,
NEW MEXICO 87505

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Attachments:

1. Instructions Relating to Local Preference Certification Form
2. Local Preference Certification Form
3. Resident Veterans Preference Form
4. Sample Contract
5. Minimum Wage Ordinance

REQUEST FOR PROPOSALS
PROPOSAL NUMBER '14//P

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, October 3 , 2014.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Environmental Consulting Services
For
Buckman Direct Diversion Rio Grande Water Quality Assessment

The Buckman Direct Diversion Board (BDDB) requires services consisting of all equipment, material, labor and all other elements necessary for the evaluation and assessment of water quality data collected pursuant to the 2010 Memorandum of Understanding between the BDDB and the United States Department of Energy (DOE). This assessment will accomplish the task of evaluating the Water Quality Monitoring of the MOU by assessing the data collected including; all technical information, event parameters, and analytical data for the last four years and will be complied into a comprehensive final report.

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.

_____
Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on:_____
To be published on:_____

Received by the Albuquerque Journal Newspaper on:_____
To be published on:_____

PROPOSAL SCHEDULE

RFP # '14//P

1.	Advertisement	August 29, 2014
2.	Issuance of RFP'S:	August 29, 2014
3.	Receipt of proposals:	October 3, 2014 at 2:00 p.m. local prevailing time. Purchasing Office 2651 Siringo Road Bldg., "H" Santa Fe, New Mexico 87505 (505) 955-5711
4.	Evaluation of proposals:	October 10, 2014
5.	Interviews:	October 17, 2014
6.	Negotiation of Contract	October 24, 2014
7.	Recommendation of award to Buckman Direct Diversion Board:	November 6, 2014

DATES OF CONSIDERATION BY BUCKMAN DIRECT DIVERSION BOARD ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The Buckman Direct Diversion Board (herein called "BDDB"), invites firms to submit five (5) copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, October 3, 2014.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '14//P
Title of the proposal: **BDD Rio Grande Water Quality Assessment**
Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the Buckman Direct Diversion determines it is in the best interest of the BDDB.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given

consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The BDDB reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the BDDB.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the Buckman Direct Diversion. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the BDDB reserves the right to alter the membership or size of the selection committee. The BDDB reserves the right to change the number of firms interviewed.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

1. RESIDENT, LOCAL OR VETERANS PREFERENCE

INTENT AND POLICY

The city recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The city also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978).

To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico Taxation and Revenue Department.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 5% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the city Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the city Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

New Mexico Resident Veteran Business Preference: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix E.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business preference.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. I f no proposal are received from proponents in

the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

8. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. **GENERAL**
When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. **ASSIGNMENT**
Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. **VARIATION IN SCOPE OF WORK**
No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. **DISCOUNTS**
Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. **TAXES**
The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. **INVOICING**
   (A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

   (B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

7. **METHOD OF PAYMENT**
Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby

contracted or as otherwise specified in the compensation portion of the contract documents.

8. DEFAULT

The City reserves the right to cancel all or any part of this order without cost to the City if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. NON-DISCRIMINATION

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. NON-COLLUSION

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

SCOPE OF SERVICES
'14//P

1. BACKGROUND, PROJECT PURPOSE & GENERAL SCOPE

Professional services are required consisting of all equipment, materials, labor, quality control, overhead, management, and all other elements necessary for the evaluation and assessment of water quality data collected pursuant to the 2010 Memorandum of Understanding between the BDDB and the United States Department of Energy (DOE). This assessment will accomplish the task of evaluating the Water Quality Monitoring of the MOU by assessing the data collected including; all technical information, event parameters, and analytical data for the last four years and will be complied into a comprehensive final report. The services also consist of providing meetings, literature review, preliminary and final assessment report. The services include a provision to create portions of the Scope of Work (SOW) under the lead of the Buckman Direct Diversion Project Manager. The Contractor will, as part of the assessment, identify potential gaps in the data or quality of data, or the design of the monitoring system, and make recommendations on improvements for the program.

The Buckman Direct Division Board (BDDB) a Joint Powers Agency, comprised of the City of Santa Fe and Santa Fe County which operates and maintains the Buckman Direct Diversion Project (BDD Project). The BDD Project diverts imported water contracted to the City and County through the San Juan - Chama Project and native water rights from the Rio Grande. The BDD Project is a major addition to the region's water supply portfolio with purposes that include improved groundwater sustainability and drought protection. The BDD Project includes a raw water diversion and pump station, grit removal, raw water conveyance, a 15 mgd water treatment plant, 4 million gallons of treated water storage and two treated water pump stations and transmission lines that supply the City and County distribution systems. The BDD Project began operations in Spring 2011. It also provides up to 3.25 mgd of raw water to Las Campanas, a residential community.

2. SCOPE OF WORK

The Consultant shall submit a Draft Work Plan as a part of the proposal expanding on the work tasks listed below, describing its approach to the project, along with a schedule, to indicate how the work will be accomplished. This Work Plan should be prepared such that it can be incorporated, with only minor modifications, as Exhibit 'A', Further Description of Basic Services (a.k.a Contract Scope of Work), in any eventual professional services agreement. The Consultant will be expected to conduct monthly review meetings with the BDD Project Manager to go over progress of plans and each task listed below. All deliverables shall be made in the form of hard copy (5 copies unless noted otherwise) and working electronic files.

When developing the BDD Rio Grande Water Quality Assessment, the following Sub Tasks will be addressed and completed by the Proposer.

Table 1 Scope- Capital Asset Management Plan

Task	Number of Sub-Task	Sub-Task Description
1) Work Plan	1A 1B 1C	▪ Draft Work Plan ▪ Final Work Plan ▪ Kick Off Meeting & SOW
2) Technical and Analytical Data	2A 2B 2C 2D	▪ Compiling data and references ▪ Data summary and presentation (narrative, tables, graphs, statistics) ▪ Analyses and assessments (interpretations, trends, comparisons with regional or national data) ▪ Gap analysis and recommendations
3) Development of Report	3A 3B 3C	▪ First 50% Preliminary Draft Report ▪ Second 90% Pre-Final Draft Report ▪ Third 100% Final Report

Sub Task 1A Draft Work Plan: as described above.

Sub Task 1B Final Work Plan:

The Consultant will lead a design team comprised of the Consultant and its subcontractors and the Buckman Direct Diversion project manager. The Consultant shall prepare a detailed Final Work Plan to be utilized throughout project execution. The Work Plan will be developed based on the Contract Scope of Work. The Final Work Plan shall be prepared in collaboration with Buckman Direct Diversion Staff and will include the following components:

a. Project description, summary of work and deliverables, project schedule;

b. Anticipated BDDB workload and schedule for interfacing with Consultant;

c. Project team, organization, and responsibilities;

d. Communication protocols, documentation, meetings and workshops;

e. Approach to review of existing data, reports and other relevant information;

f. Approach to establishment of detailed assessment with measurement matrix and methodology;

g. Quality control and assessment process and activities; and

h. Detailed description of and reasons for any differences in the Final Work Plan and the Contract Scope of Work.

The Consultant's application for these planning purposes shall comply with established industry and nationally recognized scientific analysis and practices environmental practices for water quality analysis including Environmental Protection Agency and New Mexico Environmental Department guidelines. The Consultant shall identify all such pertinent practices and guidelines in the draft Work Plan, and document the references used in its assessments.

The Final Work Plan will be prepared in draft form for Buckman Direct Diversion staff review and all comments will either be incorporated into the Final Work Plan or addressed otherwise. The draft Final Work Plan will be presented to the Buckman Direct Diversion during the kickoff meeting described below.

Sub Task 1C Kick-Off Meeting:

The Proposer shall contact the BDD Project Manager (PM) within ten (10) working days of the effective date of the agreement to schedule a kick-off meeting. The meeting will be held at the Buckman Direct Diversion Water Plant located at 341 Caja Del Rio Road Santa Fe, New Mexico. The meeting shall be held within twenty (20) working days of the effective date of the agreement. The time and meeting specifics shall be coordinated with the BDD's PM. Minutes of the meeting shall be submitted to the BDD's PM for approval within five (5) working days of the meeting. The BDD will review and provide comments on the meeting minutes within five (5) working days of submission.

The Consultant shall prepare for and lead a project kickoff meeting. The meeting shall be held at the Buckman Direct Diversion offices and include the key Consultant staff, any sub Consultants and appropriate Buckman Direct Diversion staff and key stakeholders. The kickoff meeting shall introduce the project team, confirm the project objectives and discuss key issues and concerns. At the meeting, the Consultant will also present the scope of work, key deliverables, budget, schedule and communications plan and other project plans as described in the draft Final Work Plan. The Consultant will provide the suggested meeting agenda and draft Final Work Plan to the Buckman Direct Diversion at least one week prior to the Kickoff Meeting.

From time to time, other BDDB representatives and other BDDB-contracted Consultants may be involved in project meetings with the Consultant. Biweekly progress meetings or telephone conference calls are anticipated to provide proper coordination, review of progress and to finalize project decisions. Monthly progress reports shall be submitted to the BDDB, at least one week prior to every monthly

progress meeting. Progress meeting shall be held at the Buckman Direct Diversion.

Deliverables:

1. Kickoff Meeting Agenda (via email);
2. Draft Final Work Plan and Kickoff Meeting Materials (5 copies);
3. Kickoff Meeting Minutes (via email);
4. Final Work Plan (5 copies);
5. Bi-Weekly Progress Meeting Minutes (via email); and
6. Monthly Progress Reports (5 copies).

Sub Task 2A Compiling Data and References:

The Consultant shall collect all available raw data (technical and analytical) and compile it in proper format. As part of this task, the Consultant shall describe the sampling and analysis plan(s) for the project, and document the historic design and sampling strategies. All technical information for each sampling event shall be summarized to include weather data, trigger times and gauges, discharges (at BDD, Otowi, LANL stations), length of events, and other pertinent information describing the event.

Sub Task 2B Data Summary and Presentation:

This sub task shall focus on the collected water quality analytical data. The Consultant shall summarize the data using narrative descriptions, tables, graphs and statistics. In addition, the Consultant shall summarize data from other sources that may be pertinent to the next step, the analysis and assessment, such as LANL gauge stations data and Rio Grande data, historic and current. The Proposer shall prepare and submit the data summary and presentation for review to the BDD's PM upon completion of the task. The BDD's PM will review and provide comments within ten (10) working days of submission.

Sub Task 2C Analyses and Assessments:

The Proposer shall conduct data analyses by commonly used practices, domestic and/or abroad, when developing assessment. The Consultant shall look for time, locations, or constituents trends of the collected BDD data, including in reference to other river or LANL data. The Consultant shall evaluate the data in the context of the MOU intent, and in the light of regional or other water quality standards or occurrences. The Proposer shall prepare and submit the data summary and presentation for review to the BDD's PM upon completion of the task. The BDD's PM will review and provide comments within ten (10) working days of submission.

Sub Task 2D Gap Analysis and Recommendations:

The Consultant shall provide a feedback on omissions in the collected data, which omissions appear important in the interpretation and analysis of the data.

As part of this task, the Consultant shall list recommendations on future MOU tasks, sampling design, sampling strategies, equipment, data, or objectives, in order to successfully accomplish the intent of the MOU.

Sub Tasks 3A, 3B, 3C Development of the Report:

The Proposer shall prepare a Report of the work for the BDD's consideration and possible implementation within the tasks completion percentages. The Report contents shall outline at a minimum the following areas (A) to (H) below:

(A) Summary of Findings;
(B) Project Objectives and Methodology;
(C) Sampling Events and Data;
(D) Assessment of Data;
(E) Performance Gap Identification;
(F) Cost and Risk Management Analysis of Gaps;
(G) Recommendations for Future Work; and
(H) Conclusions and Summary for the BDD Board.

The Report shall clearly outline the achievements of the previously conducted work and recommend future steps required to accomplish the objective(s) of the MOU including the roles and responsibilities of the BDD.

The Report shall be submitted to the BDD PM for review and approval. The BDD will review and provide comments within fifteen (15) working days of submission. The report shall include special Summary and Presentation to report be submitted to the Buckman Direct Diversion Board (Board) as an informational item.

3. SUPPLEMENTAL WORK TASKS AND SUB TASKS

The Consultant may recommend modification to the work scope as outlined in the preceding section in order to improve the project value, to incorporate innovative technology or methods, or to add missing elements that are essential for successful project completion. The Consultant shall include any recommended modifications to the project in writing during the monthly review meetings and shall provide cost (or credit), consultant hours, and other necessary information.

SUBMITTAL REQUIREMENTS

I. PROJECT SCHEDULE

Complimentary with a specific scope of services and a not-to-exceed fee for each task, the engineering consultant will develop a performance schedule for its services, which will become part of the contract.

It is estimated that it will take 30 to 60 days to solicit RFP's, select a consultant and negotiate a professional services agreement. **The Buckman Direct Diversion desires a final draft for review to be submitted no later than six (6) months after notice to proceed**. Proponents may also identify realistic opportunity for more aggressively controlling project time.

II. HOURLY RATES AND PROFESSIONAL FEE PROPOSAL

A fee proposal shall be submitted as part of the technical proposal for each of the following tasks, each with an individual fee:

Task 1 – Final Work Plan and Project Kickoff
Task 2 – Data Review
Task 3 – Assessment
Consultant Recommended Supplemental Work Scope

The detailed fee proposal, along with the work plan and scope of work and qualifications statements will be the basis for selection. The estimated fees for each task shall be compiled on City of Santa Fe Engineering Cost Summary Forms. A summary cost sheet for all Tasks with hours, costs, and fees shall be provided. The fee estimate shall be lump sum paid by percentage of completion and will be based upon detailed consultant hours, direct and indirect costs and profit.

Proponents shall also provide a schedule of other direct or reimbursable costs to provide the services requested in the RFP. Cost Summary forms must be completed and submitted for sub-agreements.

The final fee and the scope of work of the top ranked consultant will be negotiated after that firm has been selected. If agreement on final scope of services and fee cannot be reached with the top ranked consultant, the second-ranked consultant, and the third-ranked consultant will be considered in that order.

III. ERRORS AND OMISSIONS INSURANCE

Proponents must provide evidence of Professional Errors & Omissions Insurance coverage in minimum limits of $2,000,000 per occurrence. Insurance certificates shall be attached to Proposal. No additional direct or reimbursable expense is allowed under Professional Services Agreements for this standard coverage. Insurance certificates shall apply to prime consultants only and must be attached to the proposal.

IV. STATEMENT OF QUALIFICATIONS

Proponents shall provide responses to the following items to describe its organization, capabilities, experience, expertise and local knowledge as it specifically relates to the types of services requested.

A. PROPONENT(S) FIRM DATA

1) Official or Corporate name of company

2) Types of professional services provided

3) Legal form of business

   a. Date established in current form

   b. Former corporate names, locations, dates

   c. Names, titles, professional affiliation/expertise of principals

   d. Categories in which firm is legally qualified to do business in New Mexico.

4) Firm size, particularly in office where work proposed to be performed

5) If Joint Venture or Teaming Agreement, please provide this information for each entity and references for similar previous projects performed as a Team or joint venture.

B. QUALIFICATIONS, CAPABILITY AND EXPERTISE

1) Discuss specialized design, technical and construction competence of firm or joint venture, regarding the type of services required.

2) Describe the capacity and capability of firm, joint venture or Teaming Agreement, including special consultants, to perform the work, including any specialized services, within the time frames to expedite projects.

3) Describe the continuity of the company, particularly its capability to sustain loss of key personnel, or owner directed substitution of key personnel, without adversely affecting a project or the company

4) Discuss past record of performance on contracts with public agencies or private sector clients with respect to such factors as control of time, costs, value, quality of work, claims handling and ability to achieve schedules. Provide reference contacts.

5) Discuss knowledge and familiarity with Industry Standard Practices, costs, labor and trades, general contractors and bonding limits, seasonal construction constraints, and procurement requirements and so forth in the region where the projects are located.

6) Discuss employee qualifications and competence in field of water transmission and distribution systems regarding master planning and system design, system operation, hydraulic modeling and model calibration, water demand analysis, and other relevant skills and experience

7) Discuss the engineering firm's existing workload and its capacity to handle the requirements of the Water Division projects.

The Buckman Direct Diversion is seeking a firm that can clearly demonstrate they currently have the requisite staff and necessary expertise for this project. The BDDB fully anticipates the consultant to immediately start work on this project with the notice to proceed.

To propose on this project, the consultant team shall have prepared a minimum of three (3) water quality assessments that are similar in scope and complexity. Project references are requested. The Proponent shall demonstrate that all professional consultant(s) that will be utilized to perform the work currently have the qualified professional staff and expertise to perform the work. Proponent's must present a past record of performance on selected tasks and ability to comply with critical schedules and budgets.

C. WORKLOAD

Describe the firm's current workload (particularly in the office that will manage this project). Provide names, locations, and clients for each project. List those in your firm who are assigned to these projects that will also be assigned to the proposed project and the firm's capacity in these projects (i.e. subcontractor for structural design, landscape design, etc.).

D. KNOWLEDGE OF LOCAL CONDITIONS

Demonstrate recent knowledge and experience with City/County Public Works Department, City/County Public Utilities Department, neighborhoods, local boards and commissions, community awareness, historic sensitivity, local design practices, local construction methods, conditions & seasonal requirements, and cost estimating in the general project area, i.e., Santa Fe Regional Area.

E. EXPERIENCE

Discuss recent experience of firm and project team on projects similar to this project. List particular projects, their completion dates, costs, owner / client, and references (including telephone numbers). Include photographs of completed projects. Describe your firm's expertise and familiarity with procedural and regulatory requirements on these kinds of projects.

F. PROJECT TEAM AND RELATED EXPERIENCE

1) Present the organizational chart for the project team for public involvement, design and construction; the names of the specific team members; with their assigned tasks; qualifications and percent of time they will be assigned to the

project. Include construction inspector if deemed necessary for verification of compliance of design specifications.

2) Describe the management plan for coordinating schedules and resources to complete this project on schedule and within budget.
3) Describe the client and consultant relationship the firm will establish for progress meetings, design, review, decision-making, and budget containment.
4) Should the firm be invited for personal interview, the City requires the principal and key design personnel, who will be assigned to the project, be present, be introduced, make comment to the selection committee, and preferably be a participant in the interview.

G. RESUMES

For sake of uniformity, submit the resumes of key members of the project team, including subcontractors, using the following format:

- Name and Title
- Specialized Professional Competence
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background, Education

V. PROPOSAL FORMAT

For uniformity of review and evaluation of proposals, please use the following format in preparing a response to this RFP:

A. Table of Contents
B. Statement of Qualifications and Project Team Description and identification
C. Detailed Work Plan, based upon the RFP requirements and Scope of Work
D. Project Schedule
E. Schedule of Hourly Rates & Costs
F. Professional Fee Proposal
G. Resumes of proposed project team
H. Professional Errors & Omissions Insurance Certificate
I. Any additional pertinent information

The proposal is limited to 35 pages for items "A" through "E". The smallest acceptable pitch is 12 point, with nominal 1" margins. Pages for resumes and additional pertinent information are not limited. As a practical matter, however, there is a limit as to how much material the Selection Committee members are able to read and absorb. Please clearly identify each proposal item.

EVALUATION CRITERIA
&
WEIGHTED VALUES
EVALUATION COMMITTEE MEMBERS

Method of Award - The project will be awarded based upon the following criteria:

1. Ranking of qualified proposals by the Selection Committee as per the enclosed rating system.
2. Interviews
    - The scores from the Evaluation Criteria Form shall be utilized to determine the top ranked firm to be selected for the project.
    - Interviews will be conducted with the top ranked firms based of the score from the Evaluation Criteria Form if needed.
    - Only the scores from the Interview Evaluation Form will be utilized to select the top ranked firm. It is noted that the Proposed Fee score will carry over from Evaluation Criteria Form to the Interview Evaluation Form.
3. Consideration and approval of the Buckman Direct Diversion Board. The Board will make the final decisions as to award of contract.

Selection Committee - The selection committee may consist of representatives from the following departments:

- City Public Utilities Department

  Designee
- County Public Utilities Department

  Designee
- Buckman Direct Diversion

  BDD Facility Manager

  BDD Regulatory Compliance Officer

The Buckman Direct Diversion reserves the right to alter the size and membership of the Selection Committee.

Interviews - interviews will be scheduled by the Buckman Direct Diversion. They will consist of a 1-hr. presentation by the Proponents, including a question and answer period. At the Interview, firms are expected to introduce and involve the professionals who will be assigned to the project and make them available for questions by the Selection Committee.

EVALUATION CRITERIA, SUBMITTALS AND QUALIFICATIONS

Evaluation Criteria

Evaluation will be based upon the attached "Evaluation Criteria Form"

Submittals:

The Request for Proposal must include each of the following evaluation criteria. Each proposal submitted must address the required evaluation criteria. Based on the complexity of the project, the owner may add additional items of concern. The Owner must include a weight factor with each of the evaluation criteria to communicate to the Offerors the relative importance of each.

1. **Specialized Design and Technical Competence***
   Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.
2. **Capacity and Capability***
   Capacity and capability of the business to perform the work, including any specialized services, within the time frame
3. **Past Record of Performance***
   Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.
4. **Familiarity with the Contracting Agency***
   Proximity to or familiarity with the area in which the project is located.
5. **Work to be Done in New Mexico***
   The amount of design work that will be produced by a New Mexico business within this state.
6. **References***
   3 to 5 references for completed projects similar in scope and size
7. **Staff Qualifications***
   Documentation of employee qualifications
8. **Firm Qualifications***
   Experience and competency of the firm
9. **Fee Schedule***
   "Fee Schedule" in a separate sealed envelope within the packet, marked "Fee Schedule

EVALUATION CRITERIA FORM

RFP: 'xx/xx/x
PROJECT: Buckman Direct Diversion Rio Grande Water Quality Assessment

NAME OF FIRM: _____

The consultant selection, or short listing for interviews, will be based upon evaluation of the proposal and the Firm's qualifications, relative to the evaluation criteria.

Proposal Component	**Weighted Value**	**(1=low, 10=high)**	**Total Score**	**Max Score**
Design Approach/ Methodology; Grasp of project requirements	25			250
Relevant experience of firm and specific qualifications & experience of project team, demonstrated by previous projects	15			150
Past Performance; *The quality and timeliness of previous work; the demonstrated ability to mobilize quickly, control costs, provide competent designs and accurate plans; the ability to meet schedules.*	15			150
Knowledge of Local Conditions; *Industry Std. Construction practice; Labor & Trades, bonding, seasonal construction limitations, project site, environmental, regulatory and procurement requirements.*	5			50
Work Plan & Project Schedule; discussion of work elements and time frames	15			150
Work Load: *Consultant's staff size related to current uncompleted work and the amount of work proposed under this project.*	5			50
Proposed Fees: *Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope or missing scope. A very High fee may reflect us paying firm's learning curve.*	20			200
Total Score	**100**			**1000**

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

Local Preference Score, if applicable: Total Score x 1.08 = _____

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE
EVALUATOR SIGNATURE: _____DATE: _____

RFP 'xx/xx/x

Buckman Direct Diversion Asset Management Plan

CONSULTANT FIRM:_____

INTERVIEW EVALUATION CRITERIA

Criteria	Weighted Value	(1=low, 10=high)	Total Score	Max Score
1. Grasp of project requirements and Presentation of Management Approach /Methodology: evaluation of firm's discussion and analysis of project and local issues; evaluation of discussion of its project & control systems; evaluation of work plan discussion and relationship to fee. Does firm grasp lead times for official actions and do they manage that within their schedule?	20			200
2. Overall technical skills presentation skills: evaluation of discussion of firm's capability to organize and present concepts and technical information with clarity, and credibility, supported by visual, aids. How well do you think the team will represent the BDD in areas of cost & time control, claim management & prevention, dispute and change order negotiations.	20			200
3. Project Management: evaluation of firm's & specific project team members' style & efficacy; evaluation of firm's intent to interact with and mentor BDD professional staff; evaluation of project team's relevant experience & creativity; does this discussion tend to support firm's stated qualifications, experience and expertise?	20			200
4. Responses to other relevant issues: raised by Selection Committee evaluation of firm's responses to committee 's questions and issues.	20			200
5.Proposed Fees: Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope, missing scope or a reduced amount of qualified engineer time. A very High fee may reflect us paying firm's learning curve, higher than normal area pay rates or higher effort than is required.	20	Carry over Score from Evaluation Criteria Form _____	_____	200
Total Score	**100**			**1000**

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

Local Preference Score, if applicable: Total Score x 1.08 = _____

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____DATE: _____

INSTRUCTIONS RELATING TO
LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer.** If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**

2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.

3. **Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.**

4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.

5. **Definition:** The following definition applies to this preference.

   A local business is an entity with its Principal office and place of business located in Santa Fe County.
   A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

Additional Documentation: If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: _____

Business Name: _____

Principal Office: _____
Street Address City State Zip Code

City of Santa Fe Business License #_____ **(Attach Copy to this Form)**

Date Principal Office was established: _____ **(Established date must be six months before date of Publication of this RFP or RFB).**

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____ **Date:** _____

Subscribed and sworn before me by_____ **this**____**, day of** _____

My commission expires_____ _____
Notary Public

SEAL

YOU MUST RETURN THIS FORM WITH YOU OFFER

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 29, 2014, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager

ITEM AND ISSUE:

Request approval of a resolution requesting consultation between the Buckman Direct Diversion Board and the Pueblo of San Ildefonso concerning Loa Alamos/Pueblo Canyon Stormwater Monitoring Sites.

BACKGROUND AND SUMMARY:

On May 13, 2010, the Buckman Direct Diversion Board (BDDB) and the United States Department of Energy (DOE) entered into a five (5) year Memorandum of Understanding (MOU) regarding Water Quality Monitoring set to expire in May 2015. The purpose of the MOU was "to establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory (LANL) and the Department of Energy (DOE) in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project (BDD Project)."

The E109.9 gaging station, located on The Pueblo of San Ildefonso, is an important part of the Early Notification System due to its close proximity to the Rio Grande. In addition, it is important to the water quality analysis providing sampling of storm events in Lower Los Alamos Canyon. This data, along with sampling data collected at the BDD Diversion site and upper gaging stations E50 and E60, allows for complete monitoring of sediment mobilization and the impact this has on the Buckman Direct Diversion.

On August 9, 2013, the Pueblo of San Ildefonso issued a Notice of Termination of Access to Station E109.9 to the DOE. Pursuant to the notification, access to the E109.9 Gaging Station will be denied to both the DOE and the BDD. This was mainly due to a 20" gas main located downstream of the E109.9 gaging station becoming exposed during some storm events. On August 23, 2013, BDD Staff and representatives from the City of Santa Fe and Santa Fe County met with San Ildefonso Governor, Terry Aguilar. In this meeting, the BDD issued a letter to the San Ildefonso Pueblo requesting a lease agreement to access the E109.9 Gaging Station. On August 27, 2013 the San Ildefonso Pueblo responded to the request for a lease agreement indicating that request would be considered pending a $25,000 application fee and the following documentation: A Site Survey, Operations Agreement between the BDD and DOE, Environmental Reports, Appraisal, requested term of the lease, protocols for access, protection of information, and for discoveries of cultural resources.

ACTION REQUESTED:

Request approval of a resolution requesting consultation between the Buckman Direct Diversion Board and the Pueblo of San Ildefonso concerning Loa Alamos/Pueblo Canyon Stormwater Monitoring Sites.

THE BUCKMAN DIRECT DIVERSION BOARD

RESOLUTION NO. 2014 -___

A RESOLUTION REQUESTING CONSULTATION BETWEEN THE BUCKMAN DIRECT DIVERSION BOARD AND THE PUEBLO OF SAN ILDEFONSO CONCERNING LOS ALAMOS / PUEBLO CANYON STORMWATER MONITORING SITES

WHEREAS, the May 13, 2010 MOU has the express purpose to establish the roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory ('LANL') and the Department of Energy ('DOE') in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to the operation of the Buckman Direct Diversion Project ('BDD Project'); and

WHEREAS, the MOU was administratively amended to clarify certain technical issues on June 17, 2011; and

WHEREAS, the water quality and flow monitoring of LA/P Canyon inflows to the Rio Grande upstream of the BDD diversion site have become a significant component of BDD Project operations; and

WHEREAS, historic stormwater flows in LA/Pueblo Canyon during September, 2013 have impacted the gaging and sampling station at E109.9 which is located on San Ildefonso Pueblo lands; and

WHEREAS, the BDD Board desires to continue discussions with San Ildefonso Pueblo concerning the future use of the E109.9 station; and

NOW, THEREFORE, BE IT RESOLVED BY THE BUCKMAN DIRECT DIVERSION BOARD that the Board hereby requests the opportunity to consult with San Ildefonso Pueblo and will identify members of the Board and staff to contact the Pueblo concerning this issue.

PASSED, APPROVED and ADOPTED this _____ day of August, 2014.

BUCKMAN DIRECT DIVERSION BOARD:

_____

Councilor Joseph Maestas, BDD Board Chair

ATTEST:

_____

Yolanda Vigil, City Clerk

APPROVED AS TO FORM:

_____

Kyle Harwood, BDD Board Counsel