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5 **MINUTES OF THE**
6
7 **THE CITY OF SANTA FE & SANTA FE COUNTY**
8
9 **BUCKMAN DIRECT DIVERSION BOARD MEETING**

10
11 **March 7, 2019**
12

13 **1. & 2.** This meeting of the Santa Fe County/City Buckman Direct Diversion Board
14 meeting was called to order by Councilor Peter Ives, Chair, at approximately 4:00 p.m. in
15 the Santa Fe City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.
16

17 Roll was called and the following members were present:
18

19 **BDD Board Members Present:**

20 Councilor Peter Ives, Chair
21 Commissioner Anna Hamilton
22 Councilor Michael Harris
23 Denise Fort, Citizen Member
24 Commissioner Anna Hansen
25

Member(s) Excused:

None
26

27 Tom Egelhoff [non-voting]
28

BDD Board Alternate Members Present:

29 Ginny Selvin [Las Campanas alternate]
30 JC Helms [Citizen alternate]
31

Others Present:

32 Rick Carpenter, Interim BDD Facilities Manager
33 Nancy Long, BDD Board Consulting Attorney
34 Mackie Romero, BDD Finance Manager
35 Stephanie Lopez, City Utilities Department
36 Bernardine Padilla, BDD Public Relations Coordinator
37 Randy Sugrue, BDD Interim Operations Superintendent
38 Michael Kelley, County Public Works
39 Kyle Harwood, BDD Counsel
40 Francisco Romero, BDD
41 Jay Lazarus, Glorieta Geoscience
42 James Bearzi. Glorieta Geoscience
43 Alex Puglisi, City Utilities, Environmental Compliance Specialist
44 Sara Smith, County Constituent Liaison
45

1 Marcos Martinez, Assistant City Attorney
2 Pat McGuire, N3B
3 C. Rodriguez, DOE EM-LA
4 Ben Underwood, DOE EM-LA
5 Stephen Hoffman, DOE EM-LA
6 Todd Nelson, N3B
7

8 **3. APPROVAL OF AGENDA**
9 [*Exhibit 1: Agenda*]

10
11 There were no changes from staff.
12

13 Commissioner Hamilton moved to approve the agenda. Commissioner Hansen
14 seconded and the motion passed without opposition.
15

16 **4. APPROVAL OF CONSENT AGENDA**
17

18 CHAIR IVES: Any changes from staff?

19 RICK CARPENTER (Acting Interim Facilities Manager): No, Mr. Chair.

20 CHAIR IVES: Very good. Changes from the Board? Member Fort.

21 BOARD MEMBER FORT: Mr. Chairman, I would like to request that
22 item 12 be removed from the Consent Agenda for a brief discussion.

23 CHAIR IVES: Very good.

24 COMMISSIONER HAMILTON: Mr. Chair, I was wondering about item
25 7. Since that is an informational item and I recognize – I assume it was put on consent in
26 case nobody really wants to hear the Operations Update and to be honest – and I’m open
27 to whatever everybody else thinks, but I am thinking that it is pretty short and it gives us
28 face time and it opens opportunities to ask questions about what’s going on which we
29 always seems to need to do.

30 CHAIR IVES: We are happy to pull it.

31 COMMISSIONER HAMILTON: Yes, please.

32 CHAIR IVES: Good.

33 COMMISSIONER HAMILTON: I was just giving the opportunity for
34 somebody else to object.

35 CHAIR IVES: I’m not objecting. Councilor.

36 COUNCILOR HARRIS: If I could; we had this discussion at FSAC and
37 both Commissioner Hamilton and I agreed that it’s a valuable information item. So, yes,
38 we should pull it off consent but in the future if we could have it as information we
39 thought that would be appropriate.

40 CHAIR IVES: We can certainly do that. That’s easy. Any other changes
41 to the Consent Agenda? What is the pleasure of the Board? Commissioner.

42 COMMISSIONER HANSEN: Yes, I realize that most of our agenda is on
43 consent but I’m wondering – we are pulling number 12 off, right?

44 CHAIR IVES: Correct.

45 COMMISSIONER HANSEN: And we’re pulling seven?

46 CHAIR IVES: Correct.

1 COMMISSIONER HANSEN: Do we need to pull 9 for any reason?
2 CHAIR IVES: If you have questions on it, yes.
3 COMMISSIONER HAMILTON: I don't but –
4 COMMISSIONER HANSEN: Okay, I'm good with the change. I
5 apologize, I just came back from Washington, DC and I got my packet a half-an-hour
6 ago.

7 CHAIR IVES: No worries.

8 COMMISSIONER HAMILTON: Mr. Chair.

9 CHAIR IVES: Yes, please.

10 COMMISSIONER HAMILTON: I'd like to move to approve consent
11 with those two changes.

12 COUNCILOR HARRIS: Second.

13 CHAIR IVES: Motion and a second to approve the consent agenda as
14 amended. Is there any further discussion? All those in favor. Any opposed, any
15 abstentions.

16
17 The motion passed by unanimous voice vote.

18
19 **Consent Agenda**

- 20 7. Removed from Consent
21 **8. Request for approval to purchase system equipment from HACH Company**
22 **for the amount of \$32,084.10**
23 **9. Discussion and possible action on proposed revisions to the Rules of Order**
24 **for the Buckman Direct Diversion Board**
25 **10. Request for approval of Award of RFP '19/22/P to Long Komer & Associates**
26 **to provide legal services for the Buckman Direct Diversion Board for a total**
27 **amount of \$265,000 exclusive of NMGRT**
28 **11. Request for approval of Award of RFP '19/04/P to Glorieta Geoscience, Inc.**
29 **to provide technical services to the Buckman Direct Diversion Board of a**
30 **total amount of \$160,000 exclusive of NMGRT**
31 12. Removed from Consent

32
33 **5. APPROVAL OF MINUTES: March 5, 2019**

34
35 There were no corrections and Commissioner Hamilton moved to approve. Board
36 Member Fort seconded and the motion passed by unanimous voice vote.

37
38 **5. REPORT on March 5, 2019 FISCAL SERVICES AND AUDIT**
39 **COMMITTEE (FASC)**

40
41 CHAIR IVES: Mackie.

42 MACKIE ROMERO (BDD Financial Manager): Mr. Chair, members of
43 the Board, a Fiscal Services and Audit Committee meeting was held on March 5th. In
44 attendance was myself, BDD Financial Manager, from the City, we had Councilor Harris,
45 from the County, Commissioner Hamilton and Joe Gonzales. And from our Las
46 Campanas entity, Tom Egelhoff. We discussed consent agenda items number 8 which

1 was our request to exceed \$60,000 purchase threshold with HACH Company to purchase
2 equipment. We discussed the City's purchasing policy and the need for equipment and
3 there were no major concerns with this item. We discussed consent agenda items 9 and
4 10 which were our request to award proposals. We discussed the multi-term budgeting,
5 what legal services were included in the compensation amounts; however, there were also
6 no major concerns with those items. We discussed the approval and recommendation of
7 the budget which will be discussed further in the agenda and we also discussed vacancies
8 which will also be reported later on by our Facilities Manager and we did discuss the next
9 PMFSA committee meeting which I have tentatively scheduled for March 20th as long as
10 everyone from the committee accepts that invitation. So hopefully there will be no
11 changes to that meeting. That's my report. If you have any questions?

12 CHAIR IVES: Questions? Good, thank you, Mackie.

13
14 **Consent Agenda Items:**

15 **7. Monthly Update on BDD Operations**

16
17 CHAIR IVES: Commissioner Hamilton.

18 COMMISSIONER HAMILTON: I was wanted to hear the presentation
19 and then to see if there are any questions and I really appreciate it.

20 RANDY SUGRUE (Interim BDD Operations Superintendent): Thank
21 you, Mr. Chairman, members of the Board, I appreciate the opportunity because there are
22 a couple of minor changes that I should throw in and I will.

23 For the month of February BDD raw diversions averaged 3.5 million gallons per
24 day. Drinking deliveries through Booster Station 4A and 5A averaged a little over 3
25 million gallons per day. Las Campanas did divert water in February because it's a cold
26 month Tom doesn't divert much water but it did on about the 20th divert about 1.6 million
27 gallons which is an average over the month of about 60,000 gallons a day, a significant
28 amount of water. Our on-site treated and non-treated water therefore was about .41
29 million gallons per day. The BDD provided approximately 51 percent of the water
30 supply for the City and the County for the month. We have our water resources drought
31 update included which in general is positive. And then I revised the graph to just show
32 2019.

33 I had a request and I would like to ask your permission on future reports if you'll
34 notice there's about eight pages of previous years' diversion numbers and that's repeated
35 every month, and I'd like to just include the previous year to save paper and time and
36 bulk in the packet. So with your permission, next month I'll just provide a report of this
37 year and 2018 for comparison. If you ever have any questions, the information is easily
38 available.

39 CHAIR IVES: Does any member of the Board have problems with that or
40 concerns, if you could identify them now, otherwise I think that's fine.

41 MR. SUGRUE: Thank you. The other small item. Tom reminded me of
42 this. When we put the packet together it is generally about the third week of the month in
43 question and so I only have numbers up until about the third week. I try and then average
44 for the rest of the month. So when I come in I can give you the minor corrections, again
45 next month, on water diversions because there's usually five to seven days that I can't

1 specifically include. So in the future, I'll give you my estimation to the end of the month
2 and then I'll give you a minor correction or two if they are pertinent.

3 CHAIR IVES: Accuracy counts so that sounds very good.

4 MR. SUGRUE: It is important to us.

5 CHAIR IVES: Any other part of the presentation, otherwise we'll go to
6 questions.

7 MR. SUGRUE: Please, I'll stand for questions.

8 CHAIR IVES: Questions from the Board, Commissioner.

9 COMMISSIONER HAMILTON: I have just a quick question just about
10 the Las Campanas diversion because that's different than the raw water delivery that you
11 have listed here which is 000.

12 MR. SUGRUE: Yes, it is different because at that point when I put the
13 numbers together Tom hadn't diverted.

14 COMMISSIONER HAMILTON: Got it. Thank you.

15 MR. SUGRUE: And so, again, I can bring that to the Board's attention
16 monthly there will be some minor corrections that have the specific/the actual numbers
17 for the tail end of the month.

18 CHAIR IVES: Other questions from the Board, Commissioner.

19 COMMISSIONER HANSEN: This is just hypothetical but what do you
20 see, or does anyone see or have a good projection of what might be the runoff and how
21 much water will start coming?

22 MR. SUGRUE: Quantity wise we can't really say. There's too many
23 variables but it looks good. At this point at our upper snow tail gauging station, there's
24 over 4 feet of snow.

25 COMMISSIONER HANSEN: Oh, okay.

26 MR. SUGRUE: So as the warmer weather comes in, that is going to
27 result in a great influx of water to the reservoirs. Canyon Road is already ramping up
28 production to bring the water level of the upper reservoir down to allow capacity to
29 handle that inflowing water. So it's looking good.

30 COMMISSIONER HANSEN: Thank you.

31 BOARD MEMBER FORT: Just one follow up question on that, Mr.
32 Chairman. When will the meetings of the parties with respect to the BoR deliveries be
33 held this year?

34 MR. CARPENTER: It's normally, I'm sorry, Mr. Chair, members of the
35 Board, it is normally scheduled for April. I was just informed earlier today, however,
36 that meeting will be combined with another meeting of the San Juan-Chama Contractors
37 Association which is currently scheduled for March 22nd. So we should have an update
38 and we can provide that to the Board at the April Board meeting.

39 CHAIR IVES: Other questions? Yes, Commissioner.

40 COMMISSIONER HANSEN: Is that meeting open?

41 MR. CARPENTER: It will be a public meeting.

42 COMMISSIONER HANSEN: So will it be here in town?

43 MR. CARPENTER: Mr. Chair, members of the Board, the meeting will
44 be held at the Convention Center here in Santa Fe.

45 COMMISSIONER HANSEN: Thank you.

1 CHAIR IVES: I had one question. In the middle of page 2 in the packet,
2 it states, “the City received over 90 percent delivery from BoR of full firm-yield of San
3 Juan-Chama Project water for year 2018,” and then it goes on to say that, “in 2019 it is
4 projected to be about normal,” and my recollection is that 2018 was the first time we had
5 anything less than 100 percent. So that to me means our 100 percent is our normal so
6 we’re anticipating 100 percent.

7 MR. CARPENTER: That’s a good observation. The deliveries from the
8 project were about 90 percent of full firm-yield; however, we were able to divert more
9 than that because we had water in storage from previous years. As Mr. Sugrue indicated
10 we are expecting very good runoff, at least normal if not above normal for this year. I
11 think we’ll probably get 100 percent this year.

12 CHAIR IVES: It was phrased oddly given what I understood at least
13 normal to be. So, thank you. Anything else? What is the pleasure of the Board?

14 NANCY LONG (BDD Board Counsel): Yes, Mr. Chair, this is an
15 informational item, usually.

16 CHAIR IVES: Thank you very much for your report. I look forward to
17 the changes next round.

18 MR. SUGRUE: Thank you. Very good. We produce a great product and I
19 appreciate your support in helping us do that.

20 COUNCILOR HARRIS: Thank you.

21
22 **12. Consideration and possible action on BDD Board Rio Grande Water Quality**
23 **action items** (from February 7, 2019 BDDDB Meeting)

24
25 CHAIR IVES: This takes us to the second item from the consent agenda.
26 Board Member Fort, would you like a presentation first?

27 BOARD MEMBER FORT: I don’t need one, thank you, Mr. Chairman.
28 Kyle, the letters are great. I think the one suggestion I would like to make with respect to
29 them and looking for example at the letter on page 3, the final paragraph begins, “The
30 BDD’s ability to divert,” I’d like to fill this in more and I think everyone now on this
31 Board understands the issues that are involved but I guess related to this that this will be
32 less than a formal motion, I think it would be great if we told the public what we’re doing
33 with respect with – I’m looking up to see our public relations person or communications
34 person here – I think it would be great if we were able to tell the public what we’re doing
35 with respect to protecting water quality, what we’re attempting to do and for those
36 purposes a letter that has a fuller explanation about what we’re looking at with respect to
37 Los Alamos, what we’re looking at with respect to TMDLs and so on would be helpful.
38 I’d like a few more in effect informational paragraphs. This is fine for the audience to
39 which it is going but so that it could be used and distributed to other audiences. Thank
40 you.

41 KYLE HARWOOD (BDD Counsel): Might I suggest that you and I work
42 on some language and we’ll bring back a new draft for the next meeting.

43 BOARD MEMBER FORT: Sure.

44 CHAIR IVES: We can certainly do that.

45 COMMISSIONER HAMILTON: Well, just one question. I think that’s a
46 great idea. My only thought is the longer the letter – this gets right to the point. This

1 being succinct has some communicative advantages. Would be effective to have a one-
2 page appendix to the letter so it takes it out of the flow of the key thoughts but still
3 provides the information? You guys would still have to work on it and bring it back but
4 you can think about that.

5 MR. HARWOOD: With two lawyers in charge of an appendix.

6 COMMISSIONER HAMILTON: I'm trying to think of something snarky
7 to say, but it's not coming to me.

8 CHAIR IVES: No more than 50 footnotes.

9 COMMISSIONER HAMILTON: Thank you.

10 BOARD MEMBER FORT: And I'm sorry, Mr. Chairman, I would make
11 the same point with respect to the other two letters that are there. So I understand – I
12 guess, it seems to me that we would begin the first parts of the letter explaining what
13 we're doing and what we're doing right and then the kind of action paragraph is one in
14 which we're saying what we would like to see from the Environment Department, what
15 we would like to see from the elected representatives. So perhaps we would even lead
16 with those paragraphs: here's what we're asking from you and here's what we're doing.

17 I think we deliver a very good product. There's a lot of people within the City
18 who probably still don't know that and they're buying bottled water and so on and so I
19 think we should be proud of our activism in this area and proud of the role that we're
20 going to play within the state. So I'd like to make these letters ones that will be
21 persuasive to a large audience. Thank you.

22 COMMISSIONER HANSEN: So, I was meeting with Senator Heinrich
23 yesterday and I really think that this is an important letter that Senator Heinrich would be
24 also very interested in. We had a discussion about the Buckman Direct Diversion when I
25 was in his office with him so besides Senator Udall, I definitely think we should include
26 Senator Heinrich.

27 MR. HARWOOD: On that point, Commissioner, it just makes sense to
28 send it to all five congressionals perhaps.

29 COMMISSIONER HANSEN: Pardon?

30 MR. HARWOOD: To send it to all five congressionals.

31 COMMISSIONER HANSEN: Yeah, I think that would be really good
32 even though Representative Haaland and Xochitl Torres Small are not directly impacted
33 but I think water quality is a really important thing to all of them and they should know
34 what we're doing and I think that they would interested in knowing what we're doing.

35 MR. HARWOOD: And they all drink water in Santa Fe when they come
36 to visit.

37 CHAIR IVES: You found the common denominator. Very good.

38 COMMISSIONER HANSEN: Chair.

39 CHAIR IVES: Yes.

40 COMMISSIONER HANSEN: I just want to make one more comment. I
41 did brag about our water today on the plane. I was sitting next to a person who does solid
42 waste in Connecticut and he said to me that people just really have to start drinking tap
43 water and water out of their taps, you know. And, I said, yes, we have the Buckman
44 Direct Diversion and we have really good water.

45 CHAIR IVES: As well as Canyon Road Treatment, another good source,
46 of course. But, yes. So, we won't take action on this today. So the direction is to take it

1 back and work with Board Member Fort on modifications to be brought back to the next
2 meeting of the BDD for action at that point in time, yes?

3 COMMISSIONER HAMILTON: Sure, that sounds good.

4 CHAIR IVES: That is the consensus. Very good.

5
6 **DISCUSSION AND ACTION**

7 **13. Request for approval and for BDDB recommendation to Santa Fe County**
8 **Board of County Commissioner and City of Santa Fe's City Council to**
9 **approve the Fiscal year 2020 Buckman Direct Diversion Operating Budget**
10 **and Other Fund Contributions**

11
12 MS. ROMERO: Mr. Chair, members of the Board, during last month's
13 Board meeting, the Buckman Direct Diversion presented our annual operating budget
14 request for fiscal year 2020. This request was for \$9,696,409 to support our operations
15 plus annual contributions to the Major Repair and Replacement Fund for \$626,706 for a
16 total recommendation of \$10,323,155.

17 Mr. Chair, prior to approval and recommendation our JPA states we will allow for
18 public comment. But I just wanted to refresh your memory on the budget numbers.
19 Thank you.

20 CHAIR IVES: I appreciate that.

21
22 **Public Comment**

23
24 CHAIR IVES: Let's move on to public comment which we had
25 postponed from the last meeting to this one. Is there anybody who would like to address
26 the Board on the budget that has been presented? There being none, we'll close the
27 public comment on the budget.

28
29 **Request for approval of the proposed Fiscal Year 2020 Operating**
30 **Budget and Other Fund Contributions and recommendation to**
31 **approve by the County Commission and the City Council**

32
33 CHAIR IVES: Let's move on to questions of the Board. Mike, Councilor.

34 COUNCILOR HARRIS: Thank you, Chair. We had no real questions. I
35 think everybody has seen it and worked it, understand it and we all know where the bump
36 is having to do with litigation costs. We have accepted that. I think the point that we're
37 going to hear from Mr. Carpenter is really what we talked about, Mackie, Ms. Romero
38 mentioned that we lost or we're about to lose another key person and so we've got real
39 staffing issues at Buckman Direct Diversion that we really need to address. And that's
40 probably the most substantive discussion we had FASC on Tuesday regarding the budget.

41 CHAIR IVES: What is the pleasure of the Board with regards to the
42 budget?

43 COMMISSIONER HAMILTON: Mr. Chair, I would move to approve the
44 budget.

45 COUNCILOR HARRIS: Second.

1 CHAIR IVES: We have a motion and a second. Further discussion.
2 There being none all those in favor signify by saying aye.

3
4 **The motion passed by unanimous voice vote.**

5
6 CHAIR IVES: Very good. Mackie, thank you, and on to the respective
7 governing bodies.

8 MS. ROMERO: Yes, thank you.

9
10 **INFORMATIONAL ITEMS**

11 **14. Presentation on Los Alamos National Laboratory Cleanup Efforts as they**
12 **relate to RDX contamination and update on DOE Order 140**

13 [*Exhibit 2: DOE-OEM Presentation; Exhibit 3: DOE Order 140 Materials*]
14

15 MR. HARWOOD: Thank you, Mr. Chair. I'd like to just take one
16 moment to identify and welcome Mr. Hoffman to the podium. He is in for Mr. Hintze
17 this week because, as Mr. Hintze indicated he would be out of state, so I would like him
18 to just introduce himself for a moment because I think you can do a better job than I.

19 STEPHEN HOFFMAN (DOE EM-LA): Thank you all for inviting us
20 here. As Kyle mentioned, my name is Steve Hoffman, I'm the deputy manager out at the
21 Environmental Management Field Office in Los Alamos. You routinely hear from my
22 boss, Mr. Doug Hintze who is on work related travel. Just as a quick reminder of what
23 we do up there, our legacy waste cleanup project is driven by, predominantly, by two
24 lines of effort: our solid waste and our solid and water lines of effort. That is how we're
25 funded. Soil and water pertains primarily to investigating and remediating hazardous
26 chemical contamination. And the solid waste line of effort involves retrieving, packaging
27 and shipping mixed low-level and solid waste. Low-level waste going predominantly to
28 commercial vendors where our transuranic waste goes exclusively down to the Waste
29 Isolation Pilot Plant down in Carlsbad, New Mexico.

30 So I think my boss has already beat me to the punch and brought you what we call
31 our "smart book." If you need one, I brought one that we can pass around and if we need
32 more I can deliver them –

33 COMMISSIONER HANSEN: We have not gotten the smart book.

34 MR. HOFFMAN: Well, then I've got one up on my boss. I'll leave this
35 one and if you like it, we'll bring more. It is publicly releasable. With me this afternoon
36 is Mr. Patrick McGuire, he is our project director for our Royal Demolition Explosive or
37 RDX campaign. He's got 35 years experience. He has a wealth of knowledge in
38 characterizing and remediating hazardous soil and water and I think you're going to
39 enjoy his presentation. With that, I'll turn this over to Mr. Patrick McGuire.

40 MR. HARWOOD: Just to be clear Board, I think that Doug brought that
41 book last month and handed out copies of it. We are happy to get copies anew or I can
42 scan it and send it out. I'll scan it and put it in the archive that we'll be talking about in a
43 minute so that it will be available to you all without further printing. And just for the
44 Board's information, we asked Mr. McGuire to do a 10 minute presentation of RDX and
45 then to get back to the final item on this agenda.

46 PATRICK MCGUIRE (N3B): Mr. Chair, members of the Board, thank

1 you for allowing me to come in here today and give you a presentation on RDX. If you'd
2 like to go to page number 2, these are our presentation topics. And I hope that the take-
3 away today is that you'll come away understanding that RDX does not threaten public
4 water supply and that we have a plan in place to be sure that it does not.

5 If you want we can go to the next slide. This is a conceptual cross-section of the
6 Mesa Canyon setting and the groundwater systems that underlie it. And you'll see here
7 that there are three groundwater bodies. We have the alluvial groundwater, that's the
8 shallow groundwater. We have perched intermediate and then we have the deeper
9 regional groundwater system. And the regional groundwater system and that's where the
10 public water supply wells are screened, the top of that water body is about 1,300 feet
11 below the top of the mesa. So below ground surface. We monitor all three groundwater
12 systems; the alluvial, the perched and the regional. And, again, as the slide shows, the
13 public water supply wells are screened in the regional aquifer.

14 If you'd like to go to the next slide, I'll give you a little bit of history. Back in the
15 early 1950s in an area called TA-16, facilities were constructed in the southwest portion
16 of the laboratory. And these facilities, we call it building 260, were produced and
17 constructed for the manufacturing and casting of high explosives of which RDX is one
18 and this program supported the nuclear weapons program. In the process of making
19 RDX and high explosives, water is used. So during the manufacturing years several
20 million gallons per year of wastewater was discharged to the Cañon de Valle through an
21 outfall that we refer to as 260 outfall. So back in the early 1990s there was a soil
22 investigation. RDX was detected in the soils. In the late 1990s there was a groundwater
23 investigation and RDX was measured in both the intermediate groundwater system as
24 well as the regional groundwater system. The levels that were detected were below any
25 standard but it was detected back in the late 1990s. And presently we do detect RDX in
26 springs, surface water and shallow groundwater. Now we try to get a kind of estimate of
27 the mass of RDX that is in the system. So if you look at just what's below the TA-16
28 area, again the outfall 260 there is approximately 1,500 to 3,600 kilograms of RDX in the
29 system. In the regional groundwater, we estimate that there is 35 to about 415 kilograms
30 of RDX in the system.

31 I'd like to go to the next slide. Based on the results of that initial soil
32 investigation in the early 90s, from approximately 2000 to 2010 there was remedial
33 activities that took place and that remedial activity, in essence they were, as I refer to
34 them, as dig and haul jobs. Basically, there were several excavations. The excavations
35 were completed so that the side walls and the bottom of the excavations met the soil
36 cleanup standard and then after that standard was met, these excavations were backfilled.
37 In addition, there was some permeable rock and this rock contained residual RDX. It was
38 going to be difficult to excavate and so grout was injected into the permeable rock. In the
39 business we refer to that as in-situ stabilization. In essence what it does is it creates this
40 cement/concrete area that does not allow water to infiltrate through it. So you have this
41 concrete/cement block, water if it does come into contact with it, it is shed off. So water
42 is not able to come into contact with RDX and therefore it doesn't get into the deeper
43 groundwater system.

44 At the completion of that work there was a construction completion report that
45 was submitted to NMED and NMED approved it in 2017 and concluded that the surface
46 remediation was complete and no further action was required. It did require that there

1 would be long-term monitoring and so on semi-annual basis we still monitor the surface
2 water alluvial against shallow ground water as well as the springs. We also do an
3 inspection of where the soil remediation took place to make sure there's no erosion
4 occurring. And there is a report that is due at the end of September of every year. We
5 refer to it as the Long-Term Monitoring and Maintenance Report. And that report is a
6 Consent Order milestone that we need to meet.

7 So if you go to the next slide, I would like to just briefly talk about the geographic
8 relationship between where the RDX area is and where the Buckman Direct Diversion is
9 located. And if you look at the slide here you see the dark brown area, that is the water
10 canyon water shed. If you at about 3/4s of the way if you will, up to the left you'll see a
11 number of symbols, that is the TA-16 area that's where the RDX area is located. And the
12 RDX area is located in the Cañon de Valle. Cañon de Valle meets Water Canyon and
13 then the Water Canyon discharges to the Rio Grande where you see that blue star. That
14 discharge location is approximately five river miles downstream of the Buckman Direct
15 Diversion. So, again, we monitor the stormwater sediment in the three groundwater
16 zones. Again, we do see RDX in the alluvial groundwater system. I would mention that
17 we also see evidence of natural biodegradation of RDX within the alluvial system. We
18 see the byproducts of that degradation when we collect groundwater samples. And as I
19 mentioned the discharge from the Water Canyon, again, this is the canyon where all of
20 the RDX work takes place, that the discharge is actually five miles downstream of the
21 Buckman Direct Diversion.

22 If you go to the next slide, once the surface remediation was complete then the
23 focus could become deep groundwater. In order to investigate deep groundwater you've
24 got to install groundwater monitoring wells. And so that installation of the monitoring
25 wells helps us assess the nature and extent of contamination. So the nature is, it's RDX.
26 The extent is, what's the size, what's the footprint of RDX within the system. So as I
27 mentioned there are groundwater monitoring wells in the intermediate zone and that's
28 about 600 to 1,000 feet below ground surface, again, below the top of the mesa, so below
29 ground surface. And there are about 12 monitoring wells within the intermediate
30 groundwater zone. We also have approximately nine wells that are within the regional
31 aquifer that monitor water quality within the regional aquifer underlying the RDX area.
32 In addition to understanding the nature and extent, we also need to understand the fate
33 and the transport of RDX in the system. So if you will, what is a molecule of RDX when
34 it is in the system? What does it do when it comes into contact with a clay mineral?
35 What does it do, as I mentioned, if a bacteria gets it and uses it in its metabolic processes?
36 So we have to understand that as well. So there are other studies that have been
37 conducted. Tracer studies, aquifer tests, we've done some bench scale studies and we
38 have determined that groundwater flows at about 20 to 40 feet per year. So on average
39 about 30 feet per year. And all of these investigation activities were done with NMED's
40 approval.

41 I'd like to go to the next slide and I'll walk you through what we think, in terms
42 of a conceptual model, what's happened here. If you look at this cross section, to the left
43 of cross section are the Jemez Mountains and as you move down slope you'll see where
44 there's Highway 501, Cañon de Valle as well the 260 outfall.

45 So there are two main flow regimes in this system. As you see, if you're looking
46 from the left of the slide, the cross section you see the shallow, if you will, blue arrows

1 that are moving horizontally. That's shallow groundwater flow in the system. That's
2 referred to the mountain front. And this mountain front water will percolate into deeper
3 zones as well as it comes into contact with faults and the faults are depicted by the red
4 vertical line with the up and down arrows, so when that mountain front water comes into
5 contact with faults it will then go deeper. And this deeper flow regime is referred to as
6 the Mountain Block. So here is what we think happens: the mountain front water which
7 is originating from the snowmelt and rainfall in the Jemez Mountains, that shallow water
8 flows downhill and it then comes into contact with the RDX that was in the outfall 260
9 area and that water that contains RDX infiltrates down and gets into the intermediate
10 zones. It continues to infiltrate down and then gets into the regional aquifer. And this
11 shading that you see here, the RDX pathway, I'm trying to depict the concentration, what
12 happens to the concentration of RDX. So within the shallow zones right beneath the 260
13 outfall, RDX concentrations are higher and then they decrease as you move down
14 through the system.

15 So if you go to the next slide, take a look at the system in plan view. The red
16 symbols, they depict monitoring wells that are screened within the regional aquifer. The
17 green symbols depict monitoring wells that are screened within the perched intermediate
18 zone. To the right of the slide you see the larger green symbols that depicts the closest
19 water supply wells. If you look to the left, you'll see this blue outline, this tongue shape.
20 This is the extent of the perched intermediate water. If you look within there you'll see a
21 green outline that outlines the area, the extent of RDX that's within the perched
22 intermediate zone. And then this yellow-shaded area, that depicts the extent of RDX
23 within the regional aquifer and within that yellow zone you'll see the two purple
24 symbols. Those symbols depict two wells that exceed the NMED tap water screening
25 level of 9.66 micrograms per liter or parts per billion.

26 One thing I would also point out is that there's a distance of over three miles from
27 the eastern extent of the RDX to the public water supply wells. One thing that I also
28 would point out is that RDX has never been detected in a public water supply wells. As
29 part of DOE supplements the monitoring program that the county has and the monitors
30 for RDX and high explosives they have never been detected in a public water supply
31 well. It has often not been detected in the wells that have been found in between this
32 yellow shaded area and where the green wells – the public water supply wells depicted by
33 the green symbols. And DOE will continue to collect this monitoring data.

34 If you go to the next slide, so upcoming activities. In August of this year there
35 will be a report submitted to the NMED and it is referred to as the Deep Groundwater
36 Investigation Report and that report is going to focus on RDX in the perched and regional
37 aquifers. The objective of this report is to determine whether we have sufficiently
38 characterized RDX in the system. In addition there will be a numerical model that will
39 help us understand what RDX footprint will look like in the future. What that will help
40 us do is to determine whether long-term monitoring will be sufficient to be protective of
41 the public or whether we need to go into some form of remediation. Regardless of what
42 the decision is, long-term monitoring will continue.

43 If you'd like to go to the next slide, it gives you a sense of schedule. As I
44 mentioned there is ongoing monitoring. In August 2019, that's when the report, the deep
45 ground water investigative report will be submitted to NMED. And I'd also like the
46 Board to understand that we hold monthly meetings with the NMED and the purpose of

1 holding those meetings is to ensure that we get their input along the way as well as they
2 understand what we think of how the system is operating and so that when we submit this
3 document in August there should be no surprises to the NMED and that we anticipate that
4 there would then be a fairly quick turnaround in terms of their review. And we anticipate
5 their review being completed in February 2020. As I mentioned before, the decision at
6 that point could be long-term monitoring is sufficient to be protective of human health in
7 the public water supply or we need to go into a corrective measures evaluation.
8 Corrective measures evaluation is a feasibility study that we would assess and evaluate
9 remedial alternatives. In August of 2020, and this is a target Consent Order milestone
10 date, there would be a decision by the NMED of what the remedial alternative/remedial
11 design would like that. We would then go into the design phase which is referred to here
12 as the corrective measures implementation plan. That would be submitted sometime in
13 September of 2021 and then from there you go on to operate your remedial system.

14 That's the presentation. With that, I would be happy to take any questions.

15 CHAIR IVES: Questions? Commissioner.

16 COMMISSIONER HANSEN: What hazard level is this considered, the
17 RDX, is this a hazard 1, hazard 3, hazard 5?

18 MR. MCGUIRE: It is considered a possible carcinogen.

19 COMMISSIONER HANSEN: Possible, so it doesn't have a hazard level
20 associated with it.

21 MR. MCGUIRE: It is referred to as a possible carcinogen.

22 COMMISSIONER HANSEN: And are you sampling in Water Canyon?

23 MR. MCGUIRE: And so within –

24 COMMISSIONER HANSEN: Are you doing surface waters?

25 MR. MCGUIRE: So where the confluence of Cañon de Valle and Water
26 Canyon, their confluence, there is a surface water sampling location there and we do
27 sample semi-annual. RDX has never been detected at that location.

28 COMMISSIONER HANSEN: And what happens when humans come
29 into contact with this?

30 MR. MCGUIRE: You know, it's my understanding reading some of the
31 history that particular with soldiers in C4, RDX made a great deal of C4 that when they
32 would want to start their fire to cook their food they would use their knives and they
33 would cut up the C4 and then they would use it to cut their food and so they became
34 exposed it and it causes nausea. It can cause convulsions, and causes them to become
35 very sick.

36 COMMISSIONER HANSEN: So besides nausea and making you very
37 sick, you said it is a carcinogenic, so have cancer been found in the soldiers that have
38 been doing this? What is the level of carcinogenics that we're dealing with?

39 MR. MCGUIRE: Well, if you look at the tap water screening level that
40 NMED tap water screening level of 9.66 micrograms per liter, that number is derived
41 from someone, 150 pound person drinking one liter of RDX at that concentration every
42 day for 70 years. If that was the case, there would be one additional cancer risk in
43 100,000 people.

44 COMMISSIONER HANSEN: And then I know you have all of these
45 corrective measures and that you're working with NMED but are you still – is this
46 chemical still being injected into the ground in any way up in Los Alamos? Or is it being

1 disposed into the ground anywhere?

2 MR. MCGUIRE: No. What there is, is there is still research that is
3 ongoing. There are waste management practices that are in place that does not allow the
4 wastewater to then get into the environment.

5 COMMISSIONER HANSEN: So you have this review and the corrective
6 measures, I'm sorry I don't know if I really got an answer there. Are you still putting this
7 stuff in the ground?

8 MR. MCGUIRE: No, ma'am.

9 CHAIR IVES: And on that point, I know you're on the EM side. I don't
10 know if you have full knowledge of what NNSA is doing on the other side of the house.

11 COMMISSIONER HANSEN: Right, on the other side of the house you
12 don't know. On the plant whatever terminology you want to use.

13 MR. MCGUIRE: I've been to the facility –
14 [Speaking from the audience, Mr. Hoffman states that there is no more outflow since the
15 1990s]

16 CHAIR IVES: The only thing I would ask is that if you speak please
17 come down to the microphone. Just so that we can capture it.

18 COMMISSIONER HANSEN: Thank you, Chair.

19 MR. HOFFMAN: Thank you, Patrick, you did a great job. No more
20 outflow since the 90s as mentioned in the presentation. That's not connected to the EM
21 or NNSA message line. This is just want it is.

22 COMMISSIONER HANSEN: What can you do to remediate this?

23 MR. HOFFMAN: We have not begun investigating CMEs as Patrick
24 mentioned corrective measure evaluations study of alternatives because we haven't even
25 finished evaluating the extent, as he mentioned, wells to evaluate where the extent of this
26 contaminant is.

27 COMMISSIONER HANSEN: And so you've known about this since
28 1990; correct? Isn't that what you said?

29 MR. HOFFMAN: Not from memory but from the slide there, the first
30 investigation in soil occurred in the mid 1990s and the outfall discharge was terminated
31 in 1996. We don't have any great fidelity in terms of what's beyond that slide right there.

32 COMMISSIONER HANSEN: So in 20 or 30 years, you've not come up
33 with anyway to remediate this anywhere across the country? This must exist in other
34 sites, other places and they don't have a way to remediate this?

35 MR. HOFFMAN: There may be indeed other techniques. We are not
36 prepared to talk about them tonight. That's not really the point of the presentation. The
37 point is to give you an understanding of the extent of the contamination, what we're
38 currently doing and how we're interacting very closely with NMED on this.

39 COMMISSIONER HANSEN: Okay. Thank you.

40 MR. HOFFMAN: You're welcome.

41 CHAIR IVES: Other questions? Board member Fort.

42 BOARD MEMBER FORT: Just a quick question on this. Do I
43 understand that RDX is the only contaminant that has been found as a result of the outfall
44 or is this presentation just about RDX?

45 MR. HOFFMAN: This is about RDX. When we do our sampling, we pull
46 out an entire slate of potential contaminants and RDX is the area of interest so hence the

1 briefing.

2 BOARD MEMBER FORT: But when you say the area of interest, are
3 there similar projects going on with respect to other contaminants or it means no other
4 have been found at levels that are above the Environment Department levels?

5 MR. HOFFMAN: I'm going to have to phone a friend for that; Pat.

6 MR. MCGUIRE: So within the RDX area, again as Steve has mentioned,
7 when we analyze we analyze for a whole suite of compounds. Not only the high
8 explosives but also semi-volatile, volatiles and we do detect other high explosive
9 compounds but not at the concentrations that we find of RDX. Also, there are some very
10 intermittent, very low level detections of chlorinated solvents like a TCE for example.
11 But the primary focus, and if you look at the extent – as I mentioned the nature of the
12 contamination within the area everything points to RDX. That's what you really want to
13 address.

14 BOARD MEMBER FORT: Okay, thank you.

15 COMMISSIONER HANSEN: And, Chair, did you say you were under a
16 Consent Order to clean this up or – do you have a Consent Order with NMED?

17 MR. HOFFMAN: This is indeed part of the Consent Order and as Pat
18 mentioned the first milestone that – looking on the very last slide before the question
19 slide, you see that NMED reviews our deep groundwater investigative report and then
20 there's a potential interaction with corrective measure. That is, we may simply observe it
21 and let it attenuate naturally or with NMED's guidance we may take on an active
22 technique or campaign to attenuate it. Regardless, this is part of our Consent Order and
23 so you're seeing some of the milestones or parameters right there. Mr. Harris.

24 COUNCILOR HARRIS: Yeah, so the deep groundwater investigative
25 report, that covers a range of potential contaminants not just RDX; is that correct?

26 MR. HOFFMAN: I'm sure it does. I'll let our pro come back to the mike.

27 MR. MCGUIRE: Yeah, we will mention the other contaminants but again
28 the focus is RDX. And when you look at the Consent Order and actually look at the
29 milestones that are in the Consent Order, one of the – it focuses in on RDX and what the
30 Consent Order milestone has in there is that there will be a groundwater risk assessment
31 addressing RDX within the system. Again, in the report we will talk about all of the
32 compounds that have been detected but the focus will be RDX.

33 COUNCILOR HARRIS: Okay, all right. I'm curious and I know that you
34 don't have a crystal ball but what is your expectation about the report and how it might
35 be received?

36 MR. MCGUIRE: We are, as I mentioned, engaging the NMED on a
37 monthly basis. We are working through issues. At this point without seeing the results
38 of numerical modeling because that's going to help us understand what the RDX
39 footprint will be in the future and so I don't really – I'm trying to keep an unbiased
40 opinion of where we might go with this. But, again, I am hoping that with the meetings
41 with NMED and having the numerical modeling results we should have our future runs,
42 again looking at the future footprints here within the next month or so, so we'll have
43 plenty of time to be able to assess the model and the model results and take a look at the
44 footprint and then try and make a decision from there.

45 COUNCILOR HARRIS: So based on – so funding levels, does that
46 remain an issue? I mean, that's always part of the paste for any cleanup operations and

1 certainly that would apply at Los Alamos.

2 MR. HOFFMAN: We are well funded right now. That is not a constraint.
3 So this is an initiative, a campaign, it's one of the more highly prioritized one. And it's
4 not taking a backburner to any other funding initiative.

5 COUNCILOR HARRIS: Okay. All right. Thank you, Chair.

6 CHAIR IVES: I was just going to just come back to two points in the
7 presentation. One was the map on page 6 which shows the outflow of Water Canyon but
8 that's five miles downstream from the Buckman Diversion?

9 MR. MCGUIRE: That's correct. That's where the blue star is. That's
10 where the discharge from the Water Canyon is to the Rio. That's correct.

11 CHAIR IVES: Okay, so presumably one could draw the conclusion that
12 the RDX moving on gradient is really not a concern for Buckman probably at any point
13 in time.

14 MR. MCGUIRE: I would make that conclusion, yes, I would agree with
15 that.

16 CHAIR IVES: And then you talked about the relative speed of
17 groundwater flow 20 to 40 feet per year, maybe an average of 30, and I'm not sure of the
18 distance from that eastern most edge of the RDX contaminant how far that is down to the
19 Rio Grande? But it looked like, just looking at the map, it could 8 to 10 miles.

20 MR. MCGUIRE: I agree with that. That is correct.

21 CHAIR IVES: In which case we're talking at the 30 feet per year, 880
22 years plus.

23 MR. MCGUIRE: That's correct, yes.

24 CHAIR IVES: Okay. And I understand that obviously things may need to
25 be done and I don't know the characteristics of RDX underground and whether there are
26 any natural processes that make it less significant in terms of its pollutive affects but,
27 again, it doesn't seem to be certainly any type of risk for BDD or certainly an immediate
28 risk for anybody's water except Los Alamos and that's why you're monitoring it with
29 regards to the wells up there.

30 MR. MCGUIRE: That's correct. And when we look at the studies that
31 have been done and look at how RDX moves through the groundwater system it actually
32 moves a little bit slower than water itself. And we anticipate that one of the conclusions
33 from the deep ground water investigation report that there will be additional monitoring
34 wells that will be screened to the east side of the extent of RDX. So, again, to provide
35 some additional sentinel wells to be sure that it never gets to the public water supply or if
36 it was heading that way, we would have plenty of time that it would be detected and then
37 we would have plenty of time to remediate before it ever would get into the public water
38 supply.

39 CHAIR IVES: Great. Two final questions. When do you think you'll
40 have the RDX fully characterized based upon the work you're doing?

41 MR. MCGUIRE: Well, part of the deep ground water investigation report
42 is to determine if we have sufficient data. I would say right now, professionally, that we
43 have a pretty good handle on the eastern edge of the RDX extent. So, again, we have a
44 good handle on the eastern extent; the extent between the RDX and the public water
45 supply wells. Where we lack data is the western side, the Jemez Mountains side. But,
46 again, groundwater flow would have it be that we would have sufficient coverage if you

1 look at the way that groundwater flows on the eastern side of the extent of the RDX.

2 CHAIR IVES: Okay. And then the last question, at the beginning part of
3 the presentation the milestone report was referenced as being provided in September of
4 the year but that last, second to last page, referenced reports the deep groundwater report
5 going in in August; is that the same report or are they different?

6 MR. MCGUIRE: They are different. The one that is due annually in
7 September we refer to as a long-term monitoring and maintenance. So that is the long
8 term monitoring for the shallow soil and groundwater system. So that's where we
9 monitor surface water. We monitor the springs and we monitor shallow groundwater.
10 Then we collect samples on a semi-annual basis and then we prepare the report that is
11 submitted to the NMED in September. And so that takes care of the surface if you will.
12 And now we're writing a report on the deep groundwater system.

13 CHAIR IVES: Okay, thank you. I wasn't sure which is why I wanted to
14 ask. Any further questions in connection with the presentation? There being none,
15 gentlemen, thank you very much for coming down. It's always informative and
16 fascinating so thank you.

17
18 **Update on DOE Order 140.1** [*Exhibit 3*]

19
20 CHAIR IVES: We would thank our counsel who has to run off to another
21 meeting and let us continue. We lost one counsel and have replaced counsel. [Ms. Long
22 departs and Mr. Harwood takes her seat.] Welcome, Kyle. So a presentation on DOE
23 Order 140.1

24 MR. HARWOOD: So as many of you know, there has been some
25 proposed changes to the interface with the Defense Nuclear Facilities Safety Board and I
26 believe this item was added to the agenda so that we can discuss that proposed change
27 and some of the communications that have been made around it. And I'll just mention by
28 way of introduction that I will be placing – I believe you already have materials handed
29 out, is that right? So those materials will go in the dropbox archive that I also sent out
30 today to the Board.

31 COMMISSIONER HANSEN: Thank you, Kyle. I asked Kyle if we
32 could discuss this because I attended and I was really sorry to – I know that your name
33 was listed on the places to make comments, Chair Ives, and I was sorry that you couldn't
34 make it to Albuquerque. But I wanted to share with you my comments and the comments
35 from the CAB which is the New Mexico Citizens Advisory Board that serves up there.
36 And part of the reason I have been working with Senator Udall and Senator Heinrich both
37 on this, they are extraordinarily concerned about DOE Order 140.1. They believe along
38 with the chairman of the Defense Nuclear Facilities Safety Board that this is actually a
39 violation of the rule of law. That this order is overstepping their boundaries, DOE.
40 There are four main points and it's covered in my letter. The first is departmental
41 elements, and I am wondering if we have enough copies to hand some out to the audience
42 members? Did we have any? I made sure that everyone had copies. So acting at the
43 direction of the secretary or the secretary's designee to deny access to information where
44 the person requesting the information does not need such access in connection with
45 his/her duties, the secretary can deny the Defense Nuclear Safety Board access to
46 information which is a violation of the statute because they are an oversight board and

1 they were defined and set up by Congress. So they are not a – they are not overseen by
2 DOE. They are overseen by Congress so it is a statutory issue.

3 And then second it appears to improperly limit the DNFS access to only complete
4 documents in two key areas. One is where the documents contain DOE decisions on the
5 safe design and operation of defense nuclear facilities. So, and I'm not going to read the
6 whole paragraph, but I'll give you an example of why this is such problematic. When
7 they were designing the chemical metallurgy, the CMRR or metallurgy building, if the
8 Defense Board wouldn't have been there to do oversight we would not be aware of the
9 fault lines that are in Los Alamos and the problems with the fault and so therefore then
10 the design of that building had to be redone because of the Defense Nuclear Safety
11 Board.

12 Third is that the contractors, this will be written into the contractors, basically it
13 amounts to a gag rule for the contractors not being able to give information to the
14 Defense Nuclear Facilities Safety Board once their contract has been implemented. This
15 was a discussion at the public hearing. The chairman and the board, the Safety Board,
16 questioned Sandia and Los Alamos and the environmental management of Los Alamos
17 with Los Alamos Environmental Management this order has not been put into the
18 contract of N3B because their contract was signed before the order was put into effect
19 which was in May 2018. So that means it will come up next time. What was also stated
20 during the public hearing by the attorney for the Defense Nuclear Facilities Safety Board
21 is that they're basically losing up to 70 percent of protection and that WIPP will lose all
22 oversight Defense Nuclear Facilities Safety Board which I consider incredibly serious
23 since we had an explosion there that lasted for three years and closed the facility.

24 And, fourth, was the health and public safety and defining where the health and
25 public safety is of workers inside defense and outside defense. So this order from DOE
26 104 would therefore not – would state to the Defense Nuclear Facilities Safety Board that
27 they would no longer be overseeing workers. Outside defense they would be seeing them
28 and that is not the intent of the statute. The statute is very clear that it is there to protect
29 workers along with the public health and safety and this is one of their main missions.

30 Senator Udall, Senator Heinrich and myself and the CAB members all requested
31 this hearing in Albuquerque and it was very enlightening. I also included the questions
32 from the Defense Nuclear Facilities Safety Board and their presentation. And if you look
33 on page 3 where the arrow is, I'm sorry it's not in color, but there's a pie-shape, so all the
34 rest of the categories will be eliminated from oversight. So over 70 percent of what they
35 see right now will be – could be eliminated by this order and some of it has been
36 eliminated by this order.

37 I felt it was a really strong statement of the chairman of the Defense Nuclear
38 Facilities Safety Board to say that this is a violation of the rule of law. Something that I
39 think all of us take incredibly seriously. These are not my words but I do support what he
40 said. But those were his words. And also another Defense Nuclear Facilities Safety
41 Board member stated that she had a statute that she was going to follow and that she was
42 not following anything except for the statute. So they were pretty much united in what
43 they felt about this order and that it needs to be rescinded and that it needs to be taken
44 back. Senators Udall and Heinrich both feel very strongly about that. Most of our entire
45 delegation also I shared this with Assistant Speaker Lujan when I was in Washington DC
46 and he was incredibly concerned about this order especially considering that LANL is in

1 his district. I also spoke with Representative Haaland because Sandia is in her district
2 and they didn't know anything about it because this order was done basically in the dead
3 of night with no public hearing and no information shared with anybody. It is only since
4 it has kind of come to light that people have and the Defense Nuclear Facilities Safety
5 Board has run into issues where people are not giving them the information that they
6 need to do their job. I, personally, over the last 15, 20 years, 30 years this board was set
7 up by Senator John Glenn in 1988 and I have seen, as long as I have lived in New
8 Mexico, I have seen the benefit of this board in its protection of New Mexico and the
9 citizens and especially also workers on site.

10 So I wanted to share this information with you. I have been working with Chair
11 Hamilton on bringing – she knows that I am bringing a resolution forward in the County
12 and I would be happy to share it with the City, the resolution that I am working on so that
13 you also know the issues that are happening out there. And while I was in Washington
14 DC I tried to talk, since I was at NACo, the National Association of Counties, I tried to
15 talk to county commissioners and I did almost talk to every single commissioner that has
16 a facilities. They only oversee about 13 states that have nuclear facilities. So I found
17 those 13 states and gave them this information also.

18 CHAIR IVES: Thank you for that update on DOE Order 140.1. Does
19 anybody have any questions for the Commissioner?

20 COMMISSIONER HAMILTON: No, but I do want to on the record
21 commend Commissioner Hansen for this. It's a lot of really good information and a lot
22 of due diligence and it was very well done.

23 COUNCILOR HARRIS: I would agree. Thank you for the work. I'll
24 read through this and I'll have a conversation. I found myself looking through this
25 document to see when the effective date was. It's effective upon publication.

26 COMMISSIONER HANSEN: Right.

27 COUNCILOR HARRIS: May of 18.

28 COMMISSIONER HANSEN: And, I did have DOE from Washington
29 DC in my office thanks to Senators Udall and Heinrich, and they stated that they – we
30 pointed out all of these issues with the order, this was DOE from Washington, and we
31 pointed out all of the issues from the order and they did say that they would review the
32 order in May of 2019 and then they said maybe in May or June or July of 2019 and so I
33 don't think it is something that we can wait. I think that they need to rescind this order
34 and I am extraordinarily concerned about the lack of safety that DOE is trying to take
35 away. You know, nuclear safety is something that is very dear and near to my heart. I
36 think that it is one of the most important things that we can all work on for our citizens
37 and I want to make sure that our workers in these facilities and in these sites are safe and
38 along with the citizens outside.

39 CHAIR IVES: I don't think you'd get any argument from anybody sitting
40 up here.

41 COMMISSIONER HANSEN: Thank you.

42 CHAIR IVES: Very good. Any other questions? In that case, we will
43 take up the next item

44

1
2 **15. Presentation on Waters of the United States (WOTUS) Regulations**
3

4 CHAIR IVES: Alex, welcome.

5 ALEX PUGLISI (City Environmental Compliance Specialist): Thank
6 you, Mr. Chair, members of the Board. Thanks to LANL for that presentation on TA-16.
7 As a former employee of Los Alamos I was actually responsible for sampling that
8 outflow and I hope I'm not that one in 100,000. I did wear gloves when I took the
9 sample and I never used a penknife on explosives that I know of. I should be okay.

10 But as many of you have probably heard there have been proposed changes to the
11 definition of Waters of the United States and basically we've been waiting for that
12 definition to be released by EPA for many months. They first proposed it in December of
13 2018 and they sent that out as a preliminary proposal. Of course, the government
14 shutdown actually prevented them from releasing the final proposed rule but that was
15 done on February 14th and it was published in the *Federal Register*. It gave the public
16 and all interested parties until April 15, 2019 to submit comments and questions.

17 As many of you may have heard, the City of Santa Fe is looking forward to
18 passing a resolution with regards to the proposed definition of Waters of the United
19 States and we are going to submit comments to the rule. I believe the County of Santa Fe
20 has passed a similar resolution so I appreciate that.

21 Let me talk a little bit about the rule. Basically, in 2015 the Obama
22 Administration passed a rule they called the Clean Water Rule and that defines what the
23 Waters of United States is. When the 1972 Clean Water Act was implemented, basically,
24 the Waters of the United States was treated as navigable waters of the United States and
25 tributaries to those navigable waters. Those included both intermittent and ephemeral
26 and perennial tributaries to those navigable waters. The biggest implication of the
27 proposed rule is that it actually eliminates a lot of those tributaries. And it actually
28 eliminates any water of the United States that might have formerly been considered
29 navigable or somehow involved in interstate commerce from that definition and those
30 would include intermittent and ephemeral water bodies, such as the Rio Puerco in
31 western New Mexico, that would be the biggest one I could think of. Another one would
32 be Tijeras Arroyo and that flows into the Rio Grande in Albuquerque. We have an
33 example right here in Santa Fe too: the Santa Fe River. The Santa Fe River would be
34 impacted by the proposal so I'll just go through some of the major comments and the
35 major provisions that the City may have comments on.

36 The first one would be the proposal to exclude ephemeral waters from Waters of
37 the United States. It is our opinion and obviously we'll basically make sure that our
38 comments are legally valid before we send them out. We've had conversations with our
39 legal staff and there are some things that are not fully explained in the new rule that
40 definitely need to be clarified before we can submit comments. Unfortunately, the public
41 hasn't been given the opportunity to ask questions of EPA or the Corps of Engineers and
42 any of the proposed hearings are actually closed only to federal, state, tribal agencies that
43 have direct responsibilities for implementation of the Clean Water Act. So we haven't
44 had the opportunity to actually ask these questions except with some of our state peers
45 and the Corps of Engineers and EPA in Dallas. But right now a lot of what they're
46 telling us are their preliminary interpretations of the rule and they're not even sure

1 exactly how some of these streams will be treated.

2 Eliminating the Clean Water Act protections for all ephemeral waters regardless
3 of their significant nexus to downstream traditionally navigable waters of the United
4 States will have a devastating impact on the nation's waters, particularly in the arid
5 southwest. The proposed one-size fits all approach regarding ephemeral waters conflicts
6 with the goals of the Clean Water Act to restore and maintain the chemical and physical
7 and biological integrity of the nation's waters and wherever attainable an interim goal of
8 water quality which provides for the protection and promulgation of fish, shellfish and
9 wild life and provides for recreation in and on the water. The goal is that those uses be
10 achieved. As you know, the Santa Fe River even though it is ephemeral water body
11 supports many of those uses even in its ephemeral stretch. We actually during the
12 classification of the Santa Fe River the New Mexico Environment Department actually
13 went out and took pictures of people wading and swimming in the Santa Fe River during
14 a rainstorm and so that was one of the adjustments –

15 COMMISSIONER HANSEN: I have some pictures for you.

16 MR. PUGLISI: So, just to let you know, let's look at the Santa Fe River
17 as an example. Santa Fe River from the wastewater treatment plan below to the Rio
18 Grande we believe is a perennial water body and we hope that that stays that way under
19 the proposed rule. Up above that we have an ephemeral stretch and that stretch is about
20 10 miles long. And then we come to an intermittent stretch which is about four miles
21 long and goes up to Nichols Reservoir. Up above Nichols Reservoir it's a perennial
22 water body. And the proposed rule would not only eliminate ephemeral and intermittent
23 tributaries unless they have a direct nexus to the Rio Grande, but it would also eliminate
24 those water – we believe, that they would eliminate those perennial and intermittent
25 stretches above an ephemeral. So anything above that ephemeral stretch which starts at
26 about Guadalupe Street, that's how it is divided up in the classification that New Mexico
27 Environment Department uses would be eliminated from classification. That would even
28 include the watershed itself, the perennial stretch in the watershed. Why, because it is
29 separated, it's isolated from the Rio Grande a traditionally navigable water body of the
30 US by that ephemeral so it would not contribute flows to that perennial body of the
31 United States – waters of the United States.

32 So we're very concerned about losing those protections even for the intermittent
33 and especially for the perennial reaches of the Santa Fe River.

34 Eliminating jurisdiction of all ephemeral waters is not mandated by the courts
35 right now. Part of the reason, the justification behind the passage of this new rule was
36 that the old implementation strategy was being challenged in court by several different
37 parties, industries and even municipalities. But the court mandates that have come down
38 right now say nothing about eliminating all ephemeral water bodies from classification
39 under the Clean Water Act. So we feel that the proposed rule should, at a minimum, be
40 revised to recognize and maintain the jurisdictional status of ephemeral waters that do
41 have a significant nexus to a downstream traditional water body. The rule – I'm just
42 trying to hit the main – I already have a lot of comments put together so I'm trying to just
43 hit the important things.

44 Severing jurisdiction for perennial and intermittent segments upgrade of
45 ephemeral segments is contrary to the goals and the objectives of the Clean Water Act
46 and will leave important and unique waters, such as the watershed, unprotected.

1 Preamble language which indicates a ephemeral segment with severed jurisdiction
2 upstream of the ephemeral segment should at a minimum be deleted we believe. The rule
3 must clearly state that all intermittent and perennial segments of rivers and streams are
4 jurisdictional by rule regardless of whether they are located upstream or in nexus to an
5 intermittent or perennial water body.

6 The accumulative effect of unregulated downstream traditional navigable waters
7 is a big concern to us. And this I think is maybe one of the biggest concerns to the Board
8 and part of the reason why I would like to give this update today. So, as we heard there
9 are several tributaries to Los Alamos that reach the Rio Grande. Most of those tributaries
10 are ephemeral water bodies. They do not fall perennial. They fall perennial – in one of
11 them, there is a perennial stretch in the upper watershed but the stretches that intersect
12 with the Rio Grande are mostly ephemeral. We believe that this could mean that some of
13 the current protections under the individual stormwater permit that has been issued to Los
14 Alamos will no longer exist. Furthermore, and a lot of people aren't considering this, Los
15 Alamos does a lot of point source discharges from TA-16 for example. That one has
16 been eliminated but there are a number of other point source discharges that discharge to
17 these ephemeral water bodies. Those point source discharges would also be removed
18 from regulation if this rule is implemented as is currently being interpreted.

19 We have heard some people say that there is a possibility that ephemeral water
20 bodies like that might be considered a point source to a perennial water body, the Rio
21 Grande. So in other words, at the confluence with Los Alamos and Pueblo Canyons in
22 the Rio Grande it would be considered a point source of discharge to the Rio Grande and
23 somehow regulated. That's somewhat ironic and somewhat – it just doesn't make sense
24 because point source discharges are regulated at the point of discharge to a Waters of the
25 United States. If those ephemeral water bodies are no longer Waters of the United States
26 there will not be an NPDES permit and how you can regulate a cumulative effect of
27 several discharges downstream including natural runoff and erosion at a point of
28 confluence with a navigable water is beyond most of us and we don't feel that, even the
29 preamble of the proposed rule which somehow suggests that this could occur, we don't
30 see how that would be implemented under the definition of tributary, ephemeral and
31 intermittent water bodies. And so that's a huge concern to us and it's also a concern
32 throughout New Mexico.

33 Just to extent this to New Mexico, 90 percent of the waters in New Mexico are
34 ephemeral water bodies. We believe that 90 percent of the waters that are currently
35 regulated by EPA in the State of New Mexico would fall out of jurisdiction and like I
36 said, the Santa Fe River is one. I could give you another example, we have a number of
37 streams and creeks coming off of the Sangre de Cristos, Nambe Creek, Nambe River,
38 Pojoaque River, these would all fall out of jurisdictional status and so it's of a huge
39 concern not only here in Santa Fe but throughout New Mexico.

40 I know a number of groups are going to be submitted comments and it is our hope
41 that the City can submit comments and we would certainly invite any comments from the
42 Board that you may want to see submitted. But I think you definitely have some
43 concerns with regards to upstream discharges into the Rio Grande upstream from the
44 BDD diversion, such as Los Alamos and even further north. There are a number of
45 tributaries that come into the Rio Grande that would fall out of jurisdiction. So that is
46 certainly a concern that this Board should consider.

1 That's the end of my presentation and it was meant to be a verbal presentation. I
2 will stand for questions.

3 CHAIR IVES: Let me just ask one clarifying question because I do know
4 about the resolution that is being forth in the City as a co-sponsor of that. So it appears
5 our respective jurisdictions are doing exactly that through the governing bodies of each
6 entity. I'm just trying to figure out whether it is necessary that BDD as an amalgam of
7 both bodies weigh in separately.

8 MR. PUGLISI: Councilor, thank you for the question. No, it's not
9 necessary. I would just invite any comments that you may have on points that we may be
10 missing here.

11 CHAIR IVES: Understood. Councilor Harris, I'll start over here this
12 time.

13 COUNCILOR HARRIS: Alex, thanks for the information. I only have
14 had a very shallow level of information so far.

15 MR. PUGLISI: We all do right now.

16 COUNCILOR HARRIS: Yeah, but are your comments in a form that
17 you're circulating yet or how are you – where do you stand in terms of the statement that
18 is coming out of our Utilities Department?

19 MR. PUGLISI: Councilor, thank you for that question. I think what our
20 plan is that no comments will be really circulated on a widespread basis until our legal
21 counsel has a chance to review them and we believe that the comments will also not
22 really be formulated until the resolution passes. We definitely want the resolution to
23 pass. And it is my understanding that the resolution will be heard next week at the
24 Finance Committee meeting on Monday and then following that it will actually be heard
25 by the Public Works Committee on the following Monday –

26 COUNCILOR HARRIS: It will be the other way around.

27 MR. PUGLISI: Yes, I think you're right, I apologize.

28 COUNCILOR HARRIS: It's Public Works next Monday and then –

29 MR. PUGLISI: And then to Council on the 27th.

30 COUNCILOR HARRIS: All right. Good, thank you.

31 CHAIR IVES: Other questions.

32 BOARD MEMBER FORT: Thank you very much, Mr. Chair. Thank
33 you, great presentation. Could you identify, not now, but would it be possible for you to
34 do a memo for the Board about what NPDES permits there are that might be affected by
35 this as well as stormwater discharges that would affect our intake at Buckman?

36 MR. PUGLISI: Certainly could. New Mexico Environment Department
37 does publish a list of NPDES permits on their website. So it would be basically
38 everything along the main stem of the Rio Grande or a tributary to the Rio Grande. Not
39 so much the ones on the main stem –

40 BOARD MEMBER FORT: Not the main stem, no. So I'm thinking
41 specifically of the ones that would affect – obviously the ones within Los Alamos and
42 then you mentioned the stormwater permits as well.

43 MR. PUGLISI: Right, I could certainly research that with the
44 Environment Department and I believe we could probably do that.

45 BOARD MEMBER FORT: And, Mr. Chairman, I would think the – I
46 don't mean to be cynical about the Trump Administration and I certainly support

1 submitting public comments to the Trump Administration but I think perhaps the action
2 for the Board might be attempting to get a commitment from Los Alamos, presumably, as
3 the primary entities currently holding these permits to continue in compliance with those
4 permits and there will be a new administration in two years, perhaps, but I'd like to get
5 commitments from Los Alamos with respect to those permits.

6 MR. PUGLISI: Board members, I also believe that the Source Water
7 Protection Plan that I think Daniela will be bringing before the Board next month, also
8 addresses a lot of those possible sources.

9 BOARD MEMBER FORT: Mr. Chairman, it might. When we looked at
10 it before, it only went, I think, 10 miles upstream. So I'm not sure if it will include those.

11 MR. PUGLISI: Oh, it hasn't even made it to Española then.

12 BOARD MEMBER FORT: It would be good if it did, but I don't know if
13 it will. Thank you.

14 CHAIR IVES: Not an action item. It's informational. Certainly, I think
15 we can take that up as a possibility with Los Alamos. And, again, I always beg the
16 question whether it is this Board or the constituent agencies who are the most appropriate
17 ones. Commissioner.

18 COMMISSIONER HANSEN: I've been happy to be able to work with
19 Alex on this issue for quite some time. I have been working on this issue at the national
20 level with NACo. I sit on the Environment, Energy and Land Use Committee for them.
21 And I brought back a pile of papers about the Waters of the US and definitions and
22 different things. While I tried to get an appointment at EPA, it didn't happen. We
23 couldn't make that happen. But I did speak with Senator Udall, Senator Heinrich, Ben
24 Ray Lujan, Deb Haaland, they're all onboard. Deb Haaland is requesting that the time be
25 extended for comments and I don't know if that will happen but that is something that is
26 definitely on that. I really want to share all of the documents I have with Alex because
27 it's complicated. What is going on is extraordinarily complicated.

28 One of the things that I heard in Washington was that they're thinking about –
29 they've created this map of the rivers of Waters of the US and they've created a Waters
30 of the US for New Mexico which goes up to like the San Luis Valley and kind of covers
31 most of New Mexico, goes down to Texas and a long strip along the border and they're
32 thinking of defining intermittent per watershed. That was just thrown out to me. I just
33 heard that in a conversation. It's not anything that's in stone. But it is something that we
34 can start to request, how are the definitions. What is really important here is the
35 definitions on how they define intermittent for each watershed and how we define
36 ephemeral and that is one of the really important points about of Waters of the US.

37 I understand your question Chair Ives about do we also need to make comments.
38 But the message that I have gotten is that more comments are needed. Every single
39 comments counts. And if we want to have standing, if we want to have any kind of
40 ability to be part of a larger suit or anything or protect a certain reach of the river, it
41 would be to our benefit as a separate board to make our separate comments about our
42 diversion because when I mentioned this to Assistant Speaker Lujan he was just horrified.
43 He was just like, he was angry and I had a very good conversation afterwards with his
44 aide and I told him that I would follow up on what we were doing because they are really
45 concerned about this. All of our delegation is concerned about this issue of Waters of the
46 US because they recognize that we can lose 90 percent of our protection and that is the

1 last thing that they want to have happen in New Mexico. So I don't think it could hurt us
2 even if we made a short comment about where the water system is and the waters around
3 the water system of the Rio Grande because parts of the Rio Grande could be considered
4 ephemeral. I mean, according to Speaker Lujan and some other people I have heard this
5 is a big topic at NACo and unfortunately I did not know that there was a meeting with
6 EPA and the leadership of NACo because not everything is shared and I would have
7 really liked to have gone to that meeting. You know, out in the west we are very unique
8 and New Mexico is very unique in its watershed and so one size does not fit all. What is
9 happening in Maine and Connecticut and Delaware has nothing to do with the waters that
10 we have here. So I think the definitions about our watersheds are really the places where
11 we might be able to gain some protection.

12 And I have more to say and I would like to get with Alex and share the
13 information that I brought back that we could go over that together. He has a good
14 handle on this. But I would like us to write a letter from the Board and I know that we
15 can't do it now but April 15th is right around the corner so if we are going to write a letter
16 I think we need to start thinking about it and along with the City and the County because
17 we've already passed our resolution and we are starting to work on it and we passed it
18 right before I left for Washington.

19 MR. PUGLISI: Mr. Chair, I did forget that the River Commission will
20 also be reviewing the proposed resolution and that meeting is next Thursday, the 15th.

21 COMMISSIONER HANSEN: And I also sit on that committee.

22 CHAIR IVES: Commissioner.

23 COMMISSIONER HAMILTON: So just a thought about – you kind of
24 questioned the appropriateness of whether BDD has standing to comment or to just be
25 like the City and the County.

26 CHAIR IVES: Really both entities are commenting.

27 COMMISSIONER HAMILTON: But it's really not that subtle but
28 Member Fort brought up a really – her question highlights – well, Alex said it straight out
29 and it's a really good comment. The implications of WOTUS where it takes the
30 regulatory teeth out of discharges and contaminants and cleanup and restoration and
31 aspects of implementation of the Clean Water Act that are driven by this definition. And
32 so clearly BDD if we're doing, even if we think it needs to be extended, we're doing a
33 source water protection thing. We're looking at how things upstream of us impact and
34 that's the nexus here. I think it is directly related. I mean there are people sitting here
35 who have already done a huge amount of – what's the expression; footwork? But the
36 background work has already been done so we can build on that. It's not a huge effort
37 for us to do that but I think that there is direct interest in BDD.

38 COMMISSIONER HANSEN: Agreed.

39 CHAIR IVES: So an approach we could take because both of the bodies
40 will have acted by the next meeting of this Board would presumably be to provide
41 comments from the Board coordinating – and I'm not sure whether folks have separate
42 comments they want to submit to Alex to put in the form of letter from this Board
43 regarding the rules.

44 COMMISSIONER HAMILTON: I hate to volunteer other people but I
45 wonder if somehow between Kyle and Nancy that that would be the appropriate funnel.
46 Because Alex is doing comments for the City although it would be very helpful to have a

1 little bit of information on what protections BDD would be losing per Member Fort's
2 comment if we had directly or at least generically some information on that, it could help
3 focus our comments.

4 MR. HARWOOD: Given the timing that Alex has laid out, I'd like to
5 suggest that we put an item on the agenda and be able to report out what has happened
6 between now and our next meeting which will be at least a little bit before the deadline.

7 COMMISSIONER HANSEN: What has happened with the other
8 comments?

9 MR. HARWOOD: All the other materials that are being prepared. I
10 know that Alex has mentioned several times that the City Attorney's Office is reviewing
11 their comments and that would be a big part of the lift so that we're not duplicating
12 efforts. So hopefully, if not packet time, BDD Board meeting time we can update you all
13 on that and have a pretty quick turnaround if this Board chooses to send in a letter. So
14 it's not adding a lot of work but a placeholder and a plan. I don't know if that answers
15 some of the questions.

16 COMMISSIONER HAMILTON: Mr. Chair. I just want to add to that
17 that in the comments that Commissioner Hansen spearheaded, work with the County
18 legal so they are reviewed so that is additional input that could be used.

19 COMMISSIONER HANSEN: And possibly Jerry Schoeppner also and
20 the County Attorney office is working on comments and then I have this large section of
21 papers that I brought back from NACo that are specifically about the Waters of the US
22 and the questions and answers and that might help us to clarify some of the issues. EPA
23 actually, what was reported back at the EELU was that the meeting that they had with
24 EPA was one of the best meetings they had on Waters of the US. So I have all of this
25 material that the EELU has been working on Waters of the US even before I joined the
26 board. They have been working on it for the last year and I just joined the board in July
27 so of last year. So I have a lot of comments and I will get together with Alex and our
28 attorney and we'll figure out what would be appropriate to each body.

29 CHAIR IVES: Yeah, I think Santa Fe has to figure out what's appropriate
30 to them.

31 COMMISSIONER HANSEN: Right, for them.

32 CHAIR IVES: So would it be possible to get copies of all of these
33 materials that you have?

34 COMMISSIONER HANSEN: Yes, we will, I will work with Sara, my
35 constituent liaison, and we'll try and scan them in. That's what we'll do. We'll try and
36 scan them in and there might be some links also on NACo's site of the Energy,
37 Environment and Land Use Committee that I can also share with everybody.

38 CHAIR IVES: I think the agenda item for next time would be a review of
39 City and County actions on the proposed changes to the WOTUS Rule as well as
40 recommendations for specific comments on the rule by the BDD based upon impacts to
41 its system which seems very appropriate. And at that time, we can make it an action item
42 for submitting of comments and we can always delegate them the final preparation of
43 those comments to some smaller group which might make sense in the instance.

44 MR. HARWOOD: Very good.

45 CHAIR IVES: Good.

46 COMMISSIONER HANSEN: Thank you.

1 CHAIR IVES: Yes, JC.
2 JC HELMS: I have a question and a very short comment. First of all,
3 what are the working definitions in your work of perennial, ephemeral and intermittent?
4 CHAIR IVES: It may be a very long question actually.
5 COMMISSIONER HANSEN: So this is the problem.
6 MR. HELMS: Is there a definition out there?
7 MR. PUGLISI: Ephemeral would be, and I'm not saying that this is
8 exactly how it is being presented in the new rule, but typically I think ephemeral would
9 be considered a stream that flows in direct response to precipitation either rain or snow.
10 For example, the snow we had last week, 5 or 6 inches of snow, you could see that the
11 Santa Fe River is actually running as a result of stormwater running off of our streets.
12 And it's actually further down than it is normally at this year. So that's an ephemeral.
13 Intermittent is intermittent in time or space and so you could have a seasonal flow
14 which EPA talks about here. So a traditionally perennial stretch, an intermittent stretch,
15 that flows due to snowmelt for example, and in Santa Fe that would kind of be down to
16 the Guadalupe bridge area, that's how the state broke the classifications. There are three
17 different classifications to the Santa Fe River. So that intermittent stretch is flowing as a
18 result in snowmelt in the winter and it flows in the spring, so it is intermittent in time and
19 in space. It has a certain reach that is being fed during a certain time period. Perennial is
20 continuous flow all year.
21 MR. HELMS: Okay, thank you. I have one comment to make. To what
22 extent – there are plenty of people in this state and even in the city who like the new
23 WOTUS definition. They are not happy with the previous definition, thought it was too
24 broad. To what extent is that point of view considered in your work in the City?
25 MR. PUGLISI: Are you referring to the public or within City government
26 because I am not aware of any opposition to the –
27 MR. HELMS: No, the public. Is that point of view represented within the
28 City in your discussions in preparation of comments?
29 MR. PUGLISI: We haven't actually released the City's position on the
30 rule yet so I know the City will invite public comment on that. And so at that point in
31 time we can obviously see what the input is from people who may be opposed to the rule
32 but as of yet I haven't heard any – there's been no indication – well, there was indication
33 to the City that they would actually see us comment and that came from the River
34 Commission. But I have not seen any letters or anything submitted to the City that says
35 we're actually in favor of the rule change. No, I have not. And, actually, I would
36 recommend that those folks make their voice heard at the public meeting on the City's
37 resolution. I'm not sure if the comments themselves will actually go to Council or it will
38 just direct staff to prepare a letter for the Mayor's signature.
39 CHAIR IVES: And folks, I'm looking at the time.
40 MR. PUGLISI: Sorry, my five turned into 25.
41 CHAIR IVES: No worries. No worries. Thank you for that presentation.
42 MR. PUGLISI: Thank you.

43
44 **16. Report from the Interim Facilities Manager**

45
46 CHAIR IVES: I would be remiss if I did not say, Happy Birthday, and I

1 hope there's time to celebrate after this meeting.

2 MR. CARPENTER: Thank you, I think at this point. That's very nice of
3 you, Mr. Chair, thank you.

4 In the interest of time I will try and be brief. I just have a couple of updates for
5 the Board on pumps and people. I'll start with pumps, I think that that is a little easier. I
6 can't go into too much detail because as the Board knows the pumps are partially the
7 subject of ongoing litigation. But I did want to give you an update of where we're at with
8 a couple of ongoing efforts. We have pumps 2 and 4 in the raw water lift station are
9 currently offline. We are evaluating what the possible fixes might be. I will be back in
10 April with a recommendation and a possible request for action on what that might be and
11 what it would look like and what the cost implications would be, whether that's in open
12 session or in executive session. Pump #4 is looking pretty good. If you will recall that's
13 the one where we had the problems with the oil and the seal. We had higher hopes that
14 that would work better. However, we have done some repairs to that and at the beginning
15 of next week, we will begin testing that pump and I will also update the Board in April on
16 how that is going. So that's pumps.

17 CHAIR IVES: Questions on pumps? Very good.

18 MR. CARPENTER: Thank you. People, so there are a number of
19 vacancies on the Buckman Direct Diversion staff beginning with the facilities manager
20 that's the position that I am currently filling in an interim capacity. That position has
21 been advertised. It will close on March 11th and I am hoping for a good crop of qualified
22 applicants. As the Board knows, however, that is a difficult position to fill and I haven't
23 – I don't have an intention to fill the position for the sake of filling it. I want to get a
24 qualified applicant. The worst thing we could do is to make a bad hire or a questionable
25 hire on a position that is as critical as the facilities manager. I will do my best. I have
26 been out recruiting, beating the bushes and we will see what we get on the 11th.

27 Another critical position is the operations superintendent. That is currently being
28 filled on an interim basis by Mr. Sugrue. It is also advertised and will close on March
29 29th and we hope to be successful in that regard as well. There are a couple of other
30 positions that are also vacant. The charge operator, we have one position that is currently
31 vacant. It is being filled by an advanced water treatment operator. That's going okay for
32 the time being but we hope that that will also be filled very soon. That position closes on
33 the 10th which is a Sunday, so that may be a typo, but it's very soon, next week. There
34 are two advanced water treatment operator positions and two operator positions and a
35 water resources coordinator position that are currently open. They are not advertised at
36 this point. I am working with the Public Utilities Director and the Human Resources
37 Department and soon probably the union, what we're doing is we're looking at those
38 positions to see if there are efficiencies, the classifications and the compensation, the job
39 descriptions certainly need to be updated. Any cross-training that can be done with
40 existing source of supply positions, so that's under evaluation. It's still a very high
41 priority of mine. I intend to fill those positions as soon as possible but they are currently
42 under evaluation.

43 There is an administrative assistant position that is vacant and being filled
44 temporarily by a temp staff from an agency. My intention there is to reclassify that
45 position, elevate the position and give Mackie Romero the administrative and financial
46 assistance that I believe she needs. So I want to upgrade that and we'll be working on

1 that as rapidly as possible.

2 Lastly, I was notified very recently that the maintenance superintendent that is
3 currently with the BDD, Mr. Adrian Garcia, he is eligible to retire on May 31st of this
4 year and he intends to do so. He has provided me with that notice. That too is a very
5 difficult position to fill. It's a critical position. What I'm working to do currently is I'm
6 seeking permission to begin the recruitment for that prior to his retirement. I don't want
7 to wait until May 31st. If I can start that process sooner, I will and that's what I am
8 working towards right now.

9 And with that, Mr. Chair, members of the Board, I will stand for questions.

10 CHAIR IVES: Just two things quickly. That certainly sounds very
11 prudent to be trying to look in the case of a retirement for somebody to fill that position
12 effective at or about the anticipated retirement of the existing person in that position.
13 And I always say if you needed any help talking to HR, I'm happy to try and help in
14 making that case in talking about the significance of BDD and its operation. Then the
15 second, in connection with the facilities manager position, of course, we adopted
16 amendment 8 to the --

17 MR. CARPENTER: PMFSA.

18 CHAIR IVES: However we pronounce that acronym. And of course the
19 selection committee was to have designated our citizen board member keeping the
20 electeds out of personnel decisions. And I know fortunately Board Member Fort is
21 staying on but I'm not sure she necessarily wants to tackle that. So I would throw it out
22 as a question eventually which is good to have Mr. Helms as the alternate perform that
23 function. So it's just something to consider as we move forward in our making --

24 MR. CARPENTER: Mr. Chair, I am happy to have that input and whether
25 it is Board Member Fort or Mr. Helms, I would welcome that.

26 CHAIR IVES: Good. Other questions, yes, Commissioner.

27 COMMISSIONER HAMILTON: So you mention all of this and it all
28 makes sense. I am really glad to hear the information. I appreciate you bringing it
29 forward. Just two things. First a small question. In addition to the administrative
30 assistant, I mean that's a great idea to give Mackie more help; but isn't there another
31 financial director position -- not director, whatever the title was -- that's also vacant when
32 she went to the City?

33 MR. CARPENTER: Yes, Mr. Chair, members of the Board, that's the
34 fiscal administrator position. That's a position that Mr. Vokes actually created before his
35 departure. That is currently also vacant. It's one of the positions that with the Public
36 Utilities Director and with the help of HR, we are also evaluating the efficacy of that
37 position in its current form or should it also be reclassified and if so, how so. So that's
38 also under evaluation currently.

39 COMMISSIONER HAMILTON: So with regard to the evaluations, that
40 is always a good idea because you can restructure things to fill the positions better. But it
41 doesn't -- but you can't fix the problem by cross-training. It's still a lot of bodies so it's a
42 lot of massive work that is still sort of uncovered.

43 MR. CARPENTER: I couldn't agree more and I'm a big believer in
44 cross-training for these very reasons.

45 COMMISSIONER HANSEN: I thank you, Mr. Chair. Did we do a
46 national search for the facilities manager?

1 MR. CARPENTER: I don't know – Mackie, did we do –

2 MS. ROMERO: Mr. Chair, members of the Board, we did post the
3 position on Indeed and then we did a couple of other sites. We did the Texas Municipal
4 League and the New Mexico Municipal League, AWRA. Bernardine tweeted it and put
5 it on the BDD website. So we did try and reach out to other sources for that position.

6 COMMISSIONER HAMILTON: Just if you don't know, the AWRA is
7 the American Water Resources Association and that's national.

8 COMMISSIONER HANSEN: Okay, great. So one of the things I
9 recognize is that in Santa Fe, in Santa Fe County maybe northern New Mexico, we are
10 definitely having a shortage of workers to fill positions and so I did one day run into Bill
11 McCamley, the new Workforce secretary, and I mentioned to him, you know, this – we
12 need a better skilled, trained workforce. And he talked about apprentice programs and
13 that he's starting to work on instituting that. And so I know at the moment we need these
14 filled, these positions filled, but as we move forward I am hoping that we can start to look
15 at apprenticeship programs as a way to start training our workforce so that we have a
16 skilled workforce available to us that we're not desperate and feeling crunched because
17 we don't have the people that we need to find. So, I just wanted to share that with you.

18 MR. CARPENTER: Thank you. That's also something that I'm looking
19 into not only with just the BDD but with the source of supply within the City are paid
20 internships, apprenticeships, rekindling our relationship with the Santa Fe Community
21 College and getting that pipeline re-established. Those are all things that I am looking at
22 and I am highly supportive of it.

23 COMMISSIONER HANSEN: Thank you. I have known that about you,
24 Mr. Carpenter, from the past and I really appreciate it. Thank you so much.

25 MR. CARPENTER: Thank you.

26 CHAIR IVES: Other questions for our facilities manager? There being
27 none, thank you very much for that report, Rick. And now we'll do a chorus of Las
28 Mañanitas. [laughter]

29 MR. CARPENTER: Thank you.

30 31 **MATTERS FROM THE PUBLIC**

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33 CHAIR IVES: Would anybody care to address the Board? Please come
34 up. Unfortunately, we'll have to be quick, although I don't see our usual – please. State
35 your name for the record and then please.

36 FRANCISCO ROMERO: Alrighty. Mr. Chair, members of the Board,
37 my name is Francisco Romero. I am a BDD employee. My title is Planner Scheduler. I
38 wanted to address some of the staffing issues that we have going on. Maybe I can shed
39 some light on the subject and possibly help facilitate it a little bit.

40 I've done a lot of research because of some of events that have taken place for
41 myself personally recently. I've got a packet for everyone. [Exhibit 4]

42 CHAIR IVES: And I will say that we usually try and limit comments to
43 about two minutes. So, just to keep that in mind.

44 MR. ROMERO: Definitely, so I'll keep that in mind. It's Mr. Carpenter's
45 birthday, we can all to the Bull Ring and celebrate. I'm not going to talk about this whole
46 packet. Really what kind of started my research with things like the PMFSA, the things

1 that are responsible for the City of Santa Fe as a project manager, the duties and
2 responsibilities of the Board.

3 I recently applied for a position at Buckman which is the Advanced Water
4 Treatment Operator position. I interviewed. I was selected as the best candidate and
5 unofficially offered the position by means of this memo that essentially is saying that I
6 can have the position but the pay that I'll be offered is going to be substantially less than
7 everyone else because it's got to sit at the minimum range of the City of Santa Fe's comp
8 and pay study. Also, I'll be possibly be left out of A, B and C pay scales that were
9 previously involved for all other operators.

10 So this got me thinking and researching. So I went to the PMFSA just to see what
11 the duties and responsibilities are. So in here it says, "Provide all staff necessary" – this
12 is for the project manager, "Provide all necessary staff, materials and supplies necessary
13 to operate and maintain the project consistent with the BDD Board funding. Recruit,
14 hire, train staff for the project according to the BDD Board's approved staffing plan."

15 So then I went to go find the staffing plan. So the staffing plan is in here with an
16 A, B and C pay scale kind of like a pay for knowledge, pay for skill. This was set up
17 originally by the BDD Board. I printed out the minutes, they're in here and I highlighted
18 them.

19 Then in 2016 EMA Incorporated was hired and paid about \$29,000 to do a study
20 to ensure that the education qualifications along with the pay incentives aligned with
21 BDD's current needs. So I have those results in this packet as well which we're doing 90
22 percent of those things. And the findings essentially say, yes, that they are aligned with
23 what BDD currently has in place.

24 So this memo to me, aside from it being a tad unfair, it doesn't seem – it seems
25 like from the PMFSA contract that it is actually the Board's duty to execute a policy and
26 procedure that's involved with these A, B and C pay scales. Not necessarily one person
27 in particular, more of a democracy like the BDD Board is comprised of. So for me now,
28 this strangle hold or bottleneck rather for this position and me going into this position is
29 being held up at the Public Utilities Director's Office. He's the one that initiated this
30 memo and saw to it that it was written so I think if people clearly understood the
31 responsibilities of the project manager, the BDD Board, their union positions that are
32 with the City, there are pay scales that are involved and approved by the Board, if those
33 are understood better maybe this can help facilitate things like this for me and for the
34 other 10 positions because there is a water resources coordinator position that is also
35 unfilled.

36 So out of these 10 positions that are unfilled, seven of them are essential. So when
37 you have seven operators instead of 14, and they're all essential positions running a plant,
38 it's not safe and I'm glad we talked today about quality of water because eventually if
39 you go through with things that this memo is saying, knocking down pay scales, it's
40 already hard to find people. And then you either don't have people or you have
41 unqualified people. So then where does that leave the quality of the water? I think now
42 is probably not a good time to lower standards, lower pay.

43 So look through this packet. And if it is something that we can get on the next
44 agenda, I'd be more than happy to speak on this again.

45 CHAIR IVES: Thank you very much for that presentation.

46 Unfortunately, it's not a back and forth here in terms of comments.

1 MR. ROMERO: I just wanted to hand out of the packet and meet you all
2 for drinks at the Bull Ring.

3 CHAIR IVES: I appreciate it.

4 COMMISSIONER HANSEN: Yes. It's not a question. It's not a
5 question. Francisco, it would be helpful if the members from Las Campanas and the
6 alternate citizen board member could get a packet also.

7 MR. ROMERO: Yes, I've got one more and I'm done with it now, so –
8 and I did have this – I don't know if you all had this in your packet for your agenda
9 packet today, I've got a structure here that basically says the organizational structure for
10 Buckman which starts with you as the Board and goes to the Facilities Manager and I'm
11 not sure where in here the Public Utilities Director can have a whole lot of hang ups like
12 this. Anyway, I'll give this to you all.

13 CHAIR IVES: Thank you very much. Any other public comments? Yes,
14 sir. Please come down and state your name.

15 MARK GARCIA: Mr. Chairman, members of the Board. My name is
16 Mark Garcia. I am a life-long resident of the City of Santa. I have worked for the City of
17 Santa Fe for 12 years, Buckman Direct Diversion for five years as an AWT Water
18 Treatment Advanced Operator. It was tough getting into Buckman because we're one of
19 the state-of-art advanced treatment facilities. I'm here talking about our career and our
20 career advancements. As you heard, they're wanting to kind of reclassify, re-describe our
21 jobs. I don't think that's right. Like Francisco said, as a state-of-the-art facility you don't
22 want to be backing off – they want to deplete our training, in which I'm actually
23 supposed to be in school right now for my associates' degree, I'd rather attend this to get
24 it more put out because we need the training. We need qualified employees and them
25 taking away our training and everything we're not going to be – I mean, we're an
26 advanced treatment facility and we should be focused on that not a conventional where I
27 think the Public Utilities Department is more focused on a conventional not an advanced.

28 And I just wanted to make you well aware of what we've been hearing is that
29 they're trying to take away our jobs. They're trying to lower our pay with this classified
30 pay scale and as an entity with the City and the County I think it should be up to the
31 Board and not a public utility director saying, we need to do away with this, and we need
32 to cut their pay, we need to do this. I just wanted to make you guys aware of that. What
33 we're hearing and as a certified level 4 operator I covered the treatment plant as a charge
34 operator numerous times by myself which is not only hazardous but safety. I mean, if I
35 trip and fall in the middle of the night at 11 o'clock nobody is going to find me until 5 in
36 the morning. That's why it was structured for four operators. Now we're down to two
37 and like I state, sometimes one at night. And I think we should look into this more
38 clearly and make sure we hold our jobs that are there. Thank you.

39 CHAIR IVES: Thank you. Others? There being none, we'll move on.

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42 **MATTERS FROM THE BOARD**

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44 None were presented.
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1 **NEXT REGULAR MEETING: Thursday, April 4, 2019 @ 4:00 p.m.**

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3 **ADJOURNMENT**

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5 Having completed the agenda, this meeting adjourned at approximately 6:10 p.m.

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8 Approved by:

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11 _____
12 Peter Ives, Board Chair

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15 Respectfully submitted:

16
17 Karen Farrell, Wordswork

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19
20 **ATTEST TO:**

21
22
23 _____
24 YOLANDA Y. VIGIL
25 SANTA FE CITY CLERK