



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

June 7, 2019

Vice Chair Representative Debra Haaland
Representative Xochitl Torres-Small
United States Congress
House Armed Service Committee
Washington, D.C.

The Honorable Rick Perry
United States Department of Energy Secretary
1000 Independence Avenue
Washington, D.C. 20585

Honorable Bruce Hamilton, Acting Chair
Defense Nuclear Facilities Safety Board
625 Indiana Ave, NW, Suite 700
Washington, D.C. 20004

Re: Suspension of DOE Order 140.1

The Buckman Direct Diversion Project (the “BDD”) is a joint water supply project of the City of Santa Fe and Santa Fe County, New Mexico. The BDD diverts its share of U.S. Bureau of Reclamation San Juan-Chama Project water and native pre-1907 New Mexico water rights from the Rio Grande River and treats it to drinking water standards for delivery to Santa Fe regional water customers. Physically, the BDD is located on the Rio Grande and is downstream of the cities of Espanola and Los Alamos, as well as the portion of Los Alamos National Laboratory that is in the Los Alamos/Pueblo canyon watershed. Due to its location on the Rio Grande the BDD has unique concerns regarding the water quality of the Rio Grande and the contributing runoff from the ephemeral streams of the Pajarito Plateau, where the City of Los Alamos and the Los Alamos National Laboratory (the “LANL”) are located.

The BDD Board has very serious concerns about the potential effects of DOE Order 140.1 on the Defense Nuclear Facility Safety Board (the “DNFSB”) and the ability of the DNFSB to perform its critical statutory duty.



In order to fulfill its mission, the DNFSB must have access to a range of information regarding the design, construction, and operation of defense nuclear facilities such as the LANL. Order 140.1 would improperly impede the DNFSB's ability to obtain the information the it needs from DOE staff and DOE contractors in order to fulfill its statutory mandate. In particular, Order 140.1 could result in DOE or DOE contractors improperly restricting access to and information about defense nuclear facilities to the DNFSB.

Please note that the enabling statute for the DNFSB at 42 U.S.C. Section 2286c(a), mandates that the Secretary of the Department of Energy "shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this subchapter." It stands to reason that this statutory requirement is there to ensure that the Board, its staff, and inspectors get the information and access they deem necessary to fulfill the DNFSB's mission. However, the following provisions of Order 140.1 appear to be in conflict with this statutory requirement for cooperation.

First, the Order at Paragraph 4(b)(2)(b) authorizes DOE "Departmental Elements" acting at the direction of the Secretary or the Secretary's designee, to deny access to information "where the person requesting the information does not need such access in connection with his/her duties." This provision appears to grant the Secretary or the Secretary's designee blanket power to unilaterally determine what information the DNFSB needs to know to perform its independent advisory function.

Second, the Order at Paragraph 4(b)(2) appears to improperly limit DNFSB access to only "completed documents" in two key areas. One is where the documents contain DOE decisions on the safe design and operations of defense nuclear facilities, with examples given of safety basis documents, safety evaluation reports, and design, construction, and operation Standards. The other is where the documents "represent[] any event or practice at a defense nuclear facility which the DNFSB considers may adversely affect public health or safety", with the example provided of "approved results of fact-finding review and investigations". The obvious concern here is that DOE could deny DNFSB access to critical decisional and investigative documents indefinitely on the grounds that they are not yet completed or approved. This language could enable or even encourage stonewalling by DOE staff.

Third, the Order at Paragraph 4(b)(3) and 4(b)(4) could prevent DOE contractors from responding to otherwise proper requests for information or access by the DNFSB without formal authorization from a designated DOE representative. These provisions discourage transparency and are contrary to the spirit if not the letter of 42 U.S.C. Section 2286(c)(a). DNFSB inspectors should have unfettered and unfiltered access to DOE contractors and their employees at defense nuclear facilities.

Fourth, the Order at Paragraph 7(h) provides a restrictive definition of "public health and safety" that appears to conflict with the provisions of the DNFSB's enabling act. In the Order, "public health and safety" is limited to the "health and safety of individuals located beyond the site boundaries of DOE sites with DOE Defense Nuclear Facilities." The DNFSB's enabling act in no way restricts the Board's mission to advising the Secretary on protecting the public health and safety of individuals living and working outside a defense nuclear facility. 42 U.S.C. Section 2286(a)(a) in fact expressly states that the DNFSB's mission is to inform and advise the Secretary "in providing adequate protection of public and safety at such defense nuclear facilities", and not just outside the facilities.

The BDD Board recognizes the DNFSB's track record in documenting and making recommendations on health and safety issues that have arisen within the site boundaries at LANL.

Sincerely,
/s/ Anna Hamilton

Anna Hamilton, Santa Fe County Commissioner
Chair, Buckman Direct Diversion Board

On behalf of the Buckman Direct Diversion Board:

/s/ Anna Hamilton

Anna Hamilton, Santa Fe County Commissioner
Chair, Buckman Direct Diversion Board

On behalf of the Buckman Direct Diversion Board:

Michael Harris, Santa Fe City Councilor
Vice Chair, Buckman Direct Diversion Board

Anna Hansen, Santa Fe County Commissioner
Buckman Direct Diversion Board

Peter Ives, Santa Fe City Councilor
Buckman Direct Diversion Board

Denise Fort, Citizen At-Large BDDDB Member
Buckman Direct Diversion Board

Cc:
Representative Ben Ray Lujan
Senator Martin Heinrich
Senator Tom Udall