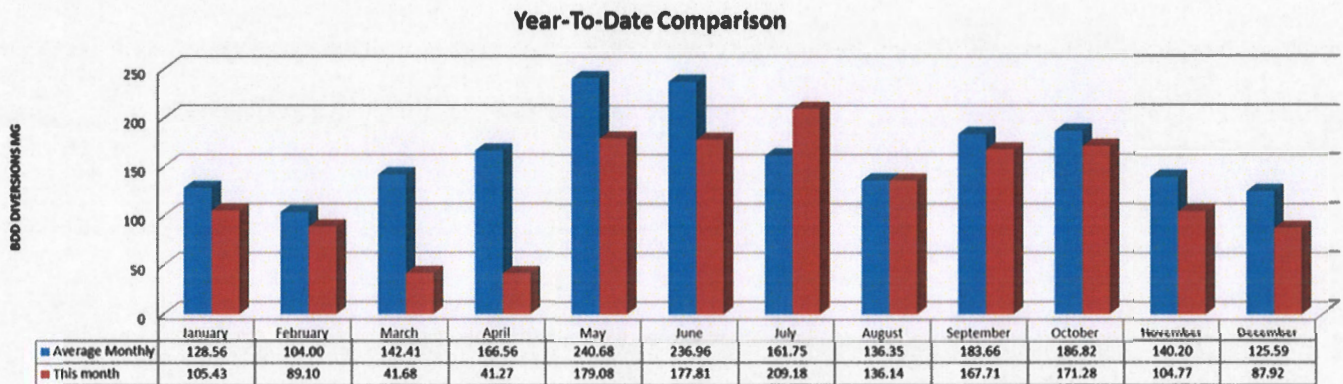




Date: January 9, 2020
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of December 2019

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of December 2019. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
 - a. Raw water diversions: 2.836 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 2.826 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.0 MGD.
 - d. Onsite treated and non-treated water storage: 0.01 MGD Average.
2. The BDD is providing approximately 49.1% percent of the water supply to the City and County for the month.
3. Drought Summary.
4. The BDD year-to-date diversions are depicted below:



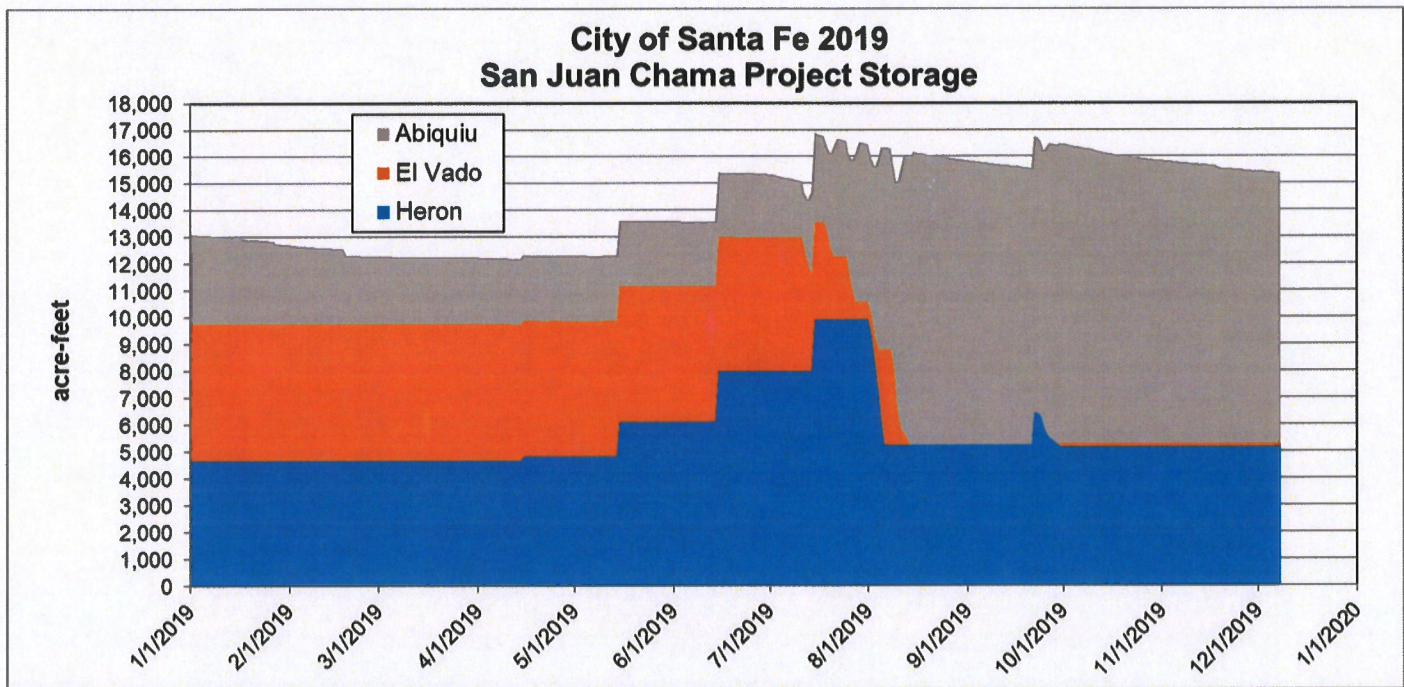


Drought/Monsoon, and Storage

NOAA has recently updated ENSO (El Nino/La Niña) status to:

ENSO-neutral conditions are present. Temperatures across the tropical Pacific were above average in November, but sub-surface heat content was near normal as were surface winds. Of the three possible outcomes—return of El Niño, La Niña, or neutral — forecasters continue to give neutral the highest odds (70% chance) of continuing through winter.

Local Upper Santa Fe River reservoir storage volume is about average for this time of year (30%). The City has received normal delivery from BoR of full firm-yield of San Juan-Chama Project (SJCP) water for 2019. Rio Grande Compact Article VII storage restrictions are not in effect (restrictions on storage were lifted in early May). This means the City is allowed to impound “native” runoff into Nichols and McClure Reservoirs above the pre-Compact pool of 1,061 acre-feet (AF); however, Elephant Butte Reservoir is nearing its “trigger” volume (400,000 acre-feet), below which Article VII conditions may resume. Updates to this condition will be made as needed.





Buckman Direct Diversion

Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-19 In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	327.677	56.671	0.000	271.007	271.007	0.000	2.483
FEB	278.357	71.266	0.000	207.090	207.090	0.000	1.908
MAR	134.335	88.610	0.000	45.725	45.725	0.000	3.498
APR	126.924	114.750	0.000	12.175	12.175	0.000	0.110
MAY	550.285	550.285	0.000	0.000	0.000	0.000	0.000
JUN	546.222	546.222	0.000	0.000	0.000	0.000	0.000
JUL	649.014	23.285	0.000	625.729	519.383	106.345	2.907
AUG	422.340	17.075	0.000	405.265	318.606	86.659	1.912
SEP	518.606	169.956	0.000	348.650	261.901	86.749	1.564
OCT	531.254	15.373	0.000	515.881	477.452	38.429	4.676
NOV	325.023	42.180	0.000	282.843	280.865	1.978	2.936
DEC	269.902	26.223	0.000	243.679	243.679	0.000	1.430
TOTAL	4,679.939	1,721.896	0.000	2,958.042	2,637.883	320.160	23.423

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	18.460	0.000	87.342	87.342	0.000	105.802
FEB	23.214	0.000	66.739	66.739	0.000	89.953
MAR	28.863	0.000	13.735	13.735	0.000	42.598
APR	37.378	0.000	3.924	3.924	0.000	41.302
MAY	179.246	0.000	0.000	0.000	0.000	179.246
JUN	177.923	0.000	0.000	0.000	0.000	177.923
JUL	7.585	0.000	201.598	167.635	34.262	209.183
AUG	5.562	0.000	130.586	102.846	27.974	136.148
SEP	55.360	0.000	112.401	84.384	28.017	167.762
OCT	5.008	0.000	166.279	154.168	12.409	171.287
NOV	13.739	0.000	91.045	90.407	0.638	104.785
DEC	8.542	0.000	43.575	43.575	0.000	52.116
TOTAL	560.878	0.000	917.226	814.757	103.299	1,478.104



Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-18

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	383.578	77.954	0.000	305.624	305.624	0.000	2.708
FEB	343.467	75.227	0.000	268.240	268.240	0.000	2.415
MAR	363.780	267.512	0.000	96.268	96.268	0.000	4.036
APR	662.407	569.253	0.000	93.154	93.154	0.000	3.898
MAY	941.240	209.538	0.000	731.702	615.366	116.336	8.171
JUN	912.903	30.894	0.000	882.009	740.070	141.939	8.707
JUL	905.897	0.000	0.000	905.897	816.188	89.709	4.255
AUG	678.383	1.466	0.000	676.917	676.917	0.000	6.087
SEP	694.411	0.000	0.000	694.411	694.411	0.000	6.404
OCT	608.789	0.000	0.000	608.789	599.228	9.560	5.805
NOV	404.616	82.390	0.000	322.226	316.641	5.585	3.196
DEC	369.186	2.966	0.000	366.220	366.220	0.000	3.392
TOTAL	7,268.656	1,317.200	0.000	5,951.456	5,588.327	363.129	59.073

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	77.954	0.000	302.916	302.916	0.000	380.870
FEB	75.227	0.000	265.825	265.825	0.000	341.052
MAR	267.512	0.000	92.231	92.231	0.000	359.744
APR	569.253	0.000	89.256	89.256	0.000	658.509
MAY	209.538	0.000	723.531	608.494	115.037	933.069
JUN	30.894	0.000	873.302	732.764	140.538	904.196
JUL	0.000	0.000	900.737	811.539	89.198	900.737
AUG	1.466	0.000	670.830	670.830	0.000	672.295
SEP	0.000	0.000	688.007	688.007	0.000	688.007
OCT	0.000	0.000	602.984	593.515	9.469	602.984
NOV	82.390	0.000	319.030	313.500	5.530	401.420
DEC	2.966	0.000	362.829	362.829	0.000	365.794
TOTAL	1,317.200	0.000	5,891.477	5,531.706	359.772	7,208.677



Buckman Direct Diversion

Dec-17

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	395.248	84.736	0.000	310.512	310.512	0.000	2.717
FEB	383.179	26.107	3.426	353.646	353.646	0.000	3.087
MAR	547.849	17.804	11.643	518.402	518.402	0.000	4.564
APR	592.385	381.170	0.000	211.216	211.216	0.000	1.821
MAY	488.240	478.925	0.000	9.315	9.315	0.000	0.072
JUN	616.871	12.970	0.000	603.900	477.780	126.121	5.517
JUL	626.113	23.719	0.000	602.394	484.406	117.988	5.429
AUG	557.303	17.073	0.000	540.230	540.230	0.000	4.871
SEP	637.339	230.584	0.000	406.755	395.200	11.555	3.873
OCT	444.333	127.611	0.000	316.723	316.723	0.000	2.938
NOV	356.536	107.143	0.000	249.394	203.128	46.266	1.658
DEC	360.218	73.071	0.000	287.147	287.147	0.000	2.321
TOTAL	6,005.614	1,580.910	15.069	4,409.635	4,107.705	301.930	38.868

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	84.736	0.000	307.795	307.795	0.000	392.531
FEB	26.107	3.426	350.559	350.559	0.000	380.091
MAR	17.804	11.643	513.838	513.838	0.000	543.285
APR	381.170	0.000	209.395	209.395	0.000	590.565
MAY	478.925	0.000	9.243	9.243	0.000	488.168
JUN	12.970	0.000	598.383	473.415	124.969	611.354
JUL	23.719	0.000	596.965	480.040	116.925	620.684
AUG	17.073	0.000	535.359	535.359	0.000	552.431
SEP	230.584	0.000	402.883	391.437	11.445	633.466
OCT	127.611	0.000	313.785	313.785	0.000	441.396
NOV	107.143	0.000	247.736	201.777	45.958	354.878
DEC	73.071	0.000	284.826	284.826	0.000	357.898
TOTAL	1,580.910	15.069	4,370.767	4,071.470	299.297	5,966.747



Date: January 3, 2020
To: BDD Board of Directors
From: Bernardine R. Padilla *BWP*
Subject: 2019 Public Relations Report

ITEM

Update on BDD public relations and marketing efforts and educational opportunities fiscal year 2019

BACKGROUND AND SUMMARY

This public relations and outreach summary shows events, tours, education and outreach stats for calendar year 2019.

◆ **BDD Total Outreach: 5400 people learned about BDD treatment facility at 37 tours/events** (up from 5,256)

- 1,610 total Youth outreach; through tours and events combined
 - 408 total public and private schools students toured BDD onsite
 - 289 SFPS 4th grade students toured BDD through the Water Conservation Passport Program
- 231 Adult visitors toured BDD – industry professionals, community members
- 26 University level students toured BDD

◆ **BDD Tours: 26 total** (down from 37 last year)

- 12 Youth Tours
- 10 Industry Professional Tours
- 3 University Level Tours
- 2 Private School Tour
- 1 Community Tour

◆ **6 Community Outreach Event Opportunities** (down from 9)

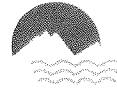
- 3458 people reached at events



2019 BDD Public Relations Event Outreach Data

Date	Group or Event	Description	Out-reach	Type
2/15	San Juan Chama Contractors Assoc.	Meeting and BDD plant tour	22	Professional Tour
3/8	Piñon Elementary Altas	Science afterschool program PPT, activity, tour	8	Youth tour
3/9-3/10	SF Homeshow Assoc.	Provided water bottles and goodies for community	100	Community event
3/11	Rice University	Student PPT presentation and tour	12	College Tour
3/22	San Juan Chama Contractors Assoc.	Meeting and BDD plant tour	22	Professional Tour
4/23	San Juan Chama Contractors Assoc.	Meeting and BDD plant tour	22	Professional Tour
5/14	NMWWA Short School	Tour and BDD treatment presentation	25	Professional Tour
5/19	Century Bike Ride	Coordinated SF water tank for 3000 riders/volunteers SFCC	3000	Community event
5/22	Rogers Family Tour - private	Homeschool family of 3 educational PPT and tour	3	Youth tour
6/6	City of Santa Fe Wellness	City Employee Wellness event	100	Community event
6/8	River Commission/Sustainability	Citywide outreach River Commission tour and talk	30	Community tour
7/9	Senior Staff Meeting	BDD hosted the Senior Staff Meeting at BDD Conf room	25	Professional Tour
7/11	Los Alamos County Interns	LA County Interns Tour	4	College Tour
7/24	Las Campanas Members	provided water bottles and goodies Ginny PPT	100	BDD PR
7/25	City of Santa Fe Rec program	provided 300 water bottles to Summer Rec kids field day and water tank; outreach to over 800 kids	700	Youth event
8/27	Professional Training Assoc.	Surface Water Treatment training	8	Professional Tour
8/27	Professional Training Assoc.	Surface Water Treatment training	1	Staff Training
8/30	City of Santa Fe	FORE Golf Tourney water bottle giveaway, tank, food	144	Community event
9/17	USBR TOUR BDD and Reuse	Reuse strategy and info with Bureau of Reclamation	20	Professional Tour
9/24	SF Realtor's Association	Water Rights Credit Class for Realtors	21	Professional Tour
10/8	Rio Grande School	Tour and BDD treatment presentation	21	Youth tour
10/10	SF County Tour	Tour and BDD treatment presentation	3	Professional Tour
10/17	Milagro Middle School	Tour and BDD treatment presentation	65	Youth tour
10/21	SFCC Water Treatment Class	Tour and BDD treatment presentation	10	College Tour
10/22	Kids Water Fiesta	Presentation and water activity for SFPS 4th graders	251	Youth event
10/23	Kids Water Fiesta	Presentation and water activity for SFPS 4th graders	251	Youth event
10/29	Amy Biehl Elementary	Tour and BDD treatment presentation	53	Youth tour
10/20	Salazar Elementary	Tour and BDD treatment presentation	40	Youth tour
10/30	Monte del Sol High School	Tour and BDD treatment presentation AP Env Science/Sustainability classes	22	Youth Tour
11/1	Gonzales Elementary	Tour and BDD Treatment presentation	38	Youth tour
11/6	Acequia Madre Elementary	Tour and BDD Treatment Presentation	30	Youth tour
11/7	Atalaya Elementary	Tour and BDD Treatment Presentation	46	Youth tour
11/12	Piñon Elementary	Tour and BDD Treatment Presentation	28	Youth tour
11/12	SF Sustainable Water Future Plan	Informational water planning community outreach	55	Community event
11/13	Piñon elementary	Tour and BDD Treatment Presentation	54	Youth tour
11/14	SF Sustainable Water Future Plan	Informational water planning community outreach	59	Community event
12/17	SF Realtor's Assoc	Water Rights Credit Class for Realtors	7	Professional Tour
Total 2019 Outreach			5400	
Total outreach counts last year			5256	
Difference in total count outreach			144	

Memorandum



Buckman Direct Diversion

Date: January 9, 2020

To: Buckman Direct Diversion Board

From: Nancy R. Long

Subject: Adoption of Annual Open Meetings Act Resolution; 2020-1

Item and Issue:

Adoption and approval of the Annual (2020) Open Meetings Act Resolution

Background and Summary:

As the Board is aware, public bodies are required by the New Mexico Open Meetings Act (Act) to annually address the issue of what determines reasonable notice for its public meetings in compliance with the Act.

In 2013, and carried forward in the 2014 - 2019 Resolutions, the Board imposed an additional requirement not required by the Act that in order for a Board member to attend a board meeting by telephone, that board member must be needed to meet Board quorum requirements. That requirement is contained in the proposed 2020 resolution.

Action Requested

Independent counsel recommends adoption by the Board of the Resolution Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board; Rescinding Resolution No. 2019-1, subject to revisions the Board may wish to make, if any.



1 **WHEREAS**, the Buckman Direct Diversion Board (the “Board”) desires to determine
2 herein what constitutes reasonable notice to the public of its meetings as required by the Act, and
3 to otherwise specify important elements of its continuing compliance with the Act.

4 **NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BUCKMAN**
5 **DIRECT DIVERSION BOARD, AS FOLLOWS:**

6 1. **Regular Meetings.** Unless otherwise noticed, regular meetings of the Board shall
7 be held each month on the first Thursday of the month in the City of Santa Fe Council Chambers
8 or at the Santa Fe County Commission Chambers. Notice of any regular meeting shall be
9 provided to those broadcast stations licensed by the Federal Communications Commission and
10 newspapers of general circulation that have made written request for such notice ten (10) days
11 before such meeting.

12 2. **Special Meetings.** A special meeting of the Board may be called by the Chair or
13 by any three members of the Board upon three (3) days’ notice at such time and place as the
14 Chair or the three members deem appropriate. Notice of special meetings shall be met by
15 posting notice of the date, time and place in a conspicuous and appropriate place at the Santa Fe
16 County Administrative building, at Santa Fe City Hall and on the Board’s, Santa Fe County’s
17 and the City’s internet websites (www.bddproject.org, www.santafecounty.org and
18 www.santafenm.gov) at least seventy-two (72) hours prior to a special meeting. Notice of a
19 special meeting shall also be provided to those broadcast stations licensed by the Federal
20 Communications Commission and newspapers of general circulation that have made written
21 request for such notice.

22 3. **Emergency Meetings.** An emergency meeting of the Board may be called by the
23 Chair or by any three members of the Board to consider unforeseen circumstances that, if not

1 addressed immediately, will likely result in injury or damage to persons or property or
2 substantial financial loss. An emergency meeting may be conducted at a time and place as the
3 Chair or the three members deem appropriate. If possible, given the emergency circumstances,
4 notice of an emergency meeting shall be posted in a conspicuous and appropriate place at the
5 Santa Fe County Administrative Building and at Santa Fe City Hall at least twenty-four (24)
6 hours prior to the meeting. If twenty-four (24) hours advance notice cannot be given, notice
7 shall be posted as soon as possible under the emergency circumstances in existence. Notice of
8 an emergency meeting shall also be provided to broadcast stations licensed by the Federal
9 Communications Commission and newspapers of general circulation that have made written
10 request for such notice. Within ten (10) days of taking action on an emergency matter, the Board
11 shall report to the attorney general's office the action taken and the circumstances creating the
12 emergency.

13 4. **Agendas.** Any notice for meetings of the Board shall include an agenda
14 containing a list of specific items of business to be discussed or transacted at the meeting, or
15 information on how the public may obtain a copy of an agenda. At least seventy-two (72) hours
16 prior to a regular or special meeting, the final agenda shall be posted in a conspicuous and
17 appropriate place at the Santa Fe County Administrative Building, at Santa Fe City Hall, and on
18 the Board's, Santa Fe County's and the City's internet web sites (www.bddproject.org,
19 www.santafecounty.org and www.santafenm.gov).

20 5. **Recessed Meetings.** The Board may recess and reconvene a meeting to a later
21 day, if, prior to recessing, the Board specifies the date, time and place for continuation of the
22 meeting, and, immediately following the recessed meeting, posts notice of the date, time and
23 place for the reconvened meeting on or near the door of the place where the original meeting was

1 held. Only matters appearing on the agenda of the original meeting may be discussed at the
2 reconvened meeting unless notice of the reconvened meeting is provided as otherwise set forth
3 herein.

4 **6. Participation by Conference Telephone.** Voting members of the Board may
5 participate in a meeting of the Board by means of conference telephone or other similar
6 communications equipment when it is difficult or impossible for the voting member to attend the
7 meeting in person and only when necessary to meet the quorum requirements for the meeting.
8 At least one voting member of the Board must be physically present at the noticed location for
9 the meeting.

10 **7. Closed Meetings.** A meeting may be closed in the following manner:

11 a. If the Board is in an open meeting when a closed meeting is desired and
12 authorized by the Open Meetings Act, then the closed meeting shall be approved on motion by a
13 majority of a quorum of the Board and the authority for the closure shall be stated in the motion.
14 The votes of the voting members of the Board shall be recorded in the minutes.

15 b. If the Board is not in a public meeting and a closed meeting is desired and
16 authorized, public notice of the closed meeting, appropriate under the circumstances, shall be
17 given stating the authority for the closure.

18 c. Following completion of any closed meeting, the minutes of the open
19 meeting that was closed, or the minutes of the next open meeting if the closed meeting was
20 separately scheduled, or held after adjournment, shall state that the matters discussed in the
21 closed meeting were limited only to those specified in the motion or notice for closure.

22 **8. Definitions: "Meeting" and "Member."** For purposes of this Resolution, the
23 term "meeting" shall be defined as a meeting of a quorum of the Board held for the purpose of

1 | formulating public policy, including the development of personnel policy, rules, regulations or
2 | ordinances, discussing public business, or taking any action within the authority of or the
3 | delegated authority of the Board. For purposes of this Resolution, the term "Member," when not
4 | otherwise qualified within this Resolution, shall mean both the voting and non-voting members
5 | of the Board.

6 | 9. Resolution No. 2019-1 is hereby rescinded.

7 | **PASSED, APPROVED AND ADOPTED this 9th day of January 2020.**

8 |
9 |
10 |
11 | **BUCKMAN DIRECT DIVERSION BOARD:**

12 |
13 |
14 | _____
15 | Anna Hamilton, BDDB Chair

16 |
17 |
18 | **ATTEST:**

19 |
20 |
21 | _____
22 | County Clerk

23 |
24 |
25 |
26 | **APPROVED AS TO FORM:**

27 |
28 |
29 | _____
30 | Nancy R. Long, Board Counsel

31 |
32 |
33 | **ATTEST:**

34 |
35 |
36 | _____
37 | Yolanda Y. Vigil, City Clerk

Memorandum



Buckman Direct Diversion

Date: January 9, 2020
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: **Consideration of Revision to the Board's Rules of Order**

ITEM AND ISSUE:

Revision of the Board's Rules of Order to change the month in which the Chair and Vice-Chair shall be elected.

BACKGROUND AND SUMMARY:

The Board's Rules of Order provide that elections for the Chair and Vice Chair shall be held in February of each year. The change from elections in April to February was made last year due to the change in City elections from March to November with City Councilors assuming their seats earlier in the calendar year.

In light of that change in City elections, the Board revised its rules to move Board elections up in the calendar year from April to February. However, due to the fact that the Board has new members from the City this year and the Chair to be elected this year must be a City member, the Board may want to consider delaying its elections to allow the City members to become better acquainted with the Board before one of them assumes the Chair position. Therefore, the Boards may wish to consider moving Board elections back to April.

ACTION REQUESTED

If the revised Rules of Order are acceptable to the Board, approval is recommended.



1 **BUCKMAN DIRECT DIVERSION BOARD**

2 **RESOLUTION NO. 2020-02**

3
4 **A RESOLUTION**

5 **ESTABLISHING RULES OF ORDER FOR THE BUCKMAN DIRECT DIVERSION**
6 **BOARD; RESCINDING RESOLUTION NO. 2019-02**

7
8 **WHEREAS**, Santa Fe County and the City of Santa Fe are parties to that certain Joint
9 Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the
10 Buckman Direct Diversion Project, dated March 7, 2005, as amended ("JPA");

11 **WHEREAS**, pursuant to Section 5 of the JPA, the Buckman Direct Diversion Board
12 (hereinafter referred to as "the Board") may adopt rules to govern the conduct of its meetings;

13 **WHEREAS**, the Board last enacted rules of order on March 7, 2019, and desires to
14 amend such rules of order to govern proceedings of the Board to address the month in which the
15 Chair and Vice-Chair will be elected and to ensure that meetings are well structured, efficient,
16 and fair.

17 **NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BUCKMAN**
18 **DIRECT DIVERSION BOARD** to adopt the following Rules of Order to govern its meetings
19 and to rescind Resolution No. 2019-02:

20 **1. Quorum and Seating of Board Members.** A majority of the voting members of the
21 Board is necessary to constitute a quorum and additionally a quorum must be constituted of at
22 least one member from the City and one member from the County. Alternate voting members
23 and both Las Campanas members (regular and alternate) shall be seated separately from the
24 voting members so as to lessen confusion during voting and provide for organized and workable
25 Board meetings. An alternate member may be recognized during Roll Call to serve on behalf of
26 an absent, regular member during the meeting and shall possess the same duties and privileges as

1 the absent board member. If, during the course of the meeting, the regular voting member joins
2 the meeting, the alternate for that voting member, if any, shall take their seat at the table reserved
3 for alternates, may not vote on any matter appearing on the agenda, but may continue to
4 participate in the meeting, including in the discussion of action and other agenda items.

5 Alternate members are permitted to attend and participate in any meeting of the Board but shall
6 have no voting power unless the alternate is attending for an absent voting member. If, during
7 the course of the meeting, a regular voting member is excused for the rest of the meeting, the
8 alternate may be recognized by the Chair to serve on behalf of the regular voting member until
9 the conclusion of the meeting and shall assume their seat with the voting members. If, during the
10 course of the meeting, a regular voting member is excused from the meeting by recusal for an
11 item, the alternate shall not be recognized by the Chair and the recusal shall not impact quorum.

12 **2. Loss of Quorum.** No action may be taken without a quorum except actions
13 determined necessary to obtain a quorum, adjournment or recess. If a quorum is lost during any
14 part of a meeting, no action may be taken in the absence of a quorum except actions necessary to
15 obtain a quorum, adjournment or recess.

16 **3. Chair and Vice-Chair.**

17 **a. Duties.** Each meeting of the Board shall be under the direction of a Chair.
18 The Chair shall open and close meetings, announce the business before the Board and manage
19 the agenda, manage the meeting, stating and calling for a vote on all motions properly made,
20 announcing the results of all votes, enforcing order and decorum, and ensuring that members of
21 the Board, staff and members of the public conduct themselves in a respectful and appropriate
22 manner.

23 **b. Duties/Vice-Chair.** Whenever the Chair is not present or is unable to
24 participate in the discussion of a matter before the Board, the Vice-Chair shall serve as the Chair.
25 If the Chair of the Board is not present when a meeting begins but arrives during the course of a

1 meeting, the Vice-Chair shall continue to act as Chair for the duration of the specific matter
2 under consideration and thereafter shall relinquish the Chair to the elected Chair. Whenever the
3 Chair and Vice-Chair are not present, the voting members may appoint a temporary chair to
4 conduct the meeting.

5 **c. Chair/Vice-Chair, Election.** During the April meeting of each year, or as
6 soon thereafter as possible a Chair and Vice-Chair of the Board shall be elected. The Chair
7 position shall rotate between a City and County member each year. The Vice-Chair shall be
8 elected from the opposite entity. Elections shall also be held when required to fill any vacancy
9 that occurs in the Chair or Vice-Chair position.

10 **d. Voting/Chair.** The Chair has all rights as any other voting member for
11 purposes of voting and making and seconding motions.

12 **e. Discussions/Chair.** The Chair may take part in any discussion of any matter
13 before the Board.

14 **4. Agenda.** The agenda shall be prepared under the direction of the Chair, and shall
15 include an item for approval of the minutes of the previous meeting, approval of the agenda,
16 matters from the Board members, matters from the public, action items to be considered during
17 the meeting, report by the Fiscal Services Audit Committee and matters from the Facilities
18 Manager. The agenda may include a consent calendar containing matters that will be considered
19 and voted upon as a group, presentations, or a closed executive session. The Board may only act
20 on those items listed on the agenda.

21 **5. Presentations.** The Chair may permit staff to present a report on a given item and to
22 answer questions from the members of the Board. Only Board members shall be permitted to
23 address questions to staff. Members of the public or interested persons may be permitted to
24 address the Board during the agenda item designated for such purpose. The Chair may impose
25 reasonable restrictions on such presentations, including time restrictions as necessary. If such a

1 presentation is made, members of the Board may be permitted to question the person.

2 **6. Motions**

3 **a. Requirement of Motion.** Before any action may be taken by the Board, a
4 motion must be made by a voting member who has obtained the floor.

5 **b. Motions/How Made.** A voting member obtains the floor by addressing the
6 Chair and asking to be recognized. After the Chair has recognized the voting member, the voting
7 member may state any request for action in the form of a motion. After a motion is made, the
8 Chair shall call for a second. A motion may be seconded by a voting member saying, "I second
9 the motion." A motion must be seconded before any further action may take place. A motion
10 that is not seconded cannot be discussed or voted upon and fails. If a motion is not seconded, the
11 Chair shall state that the motion has failed for lack of a second. After a motion has been
12 seconded, the Chair shall restate the motion or refer to the motion as stated by the voting member
13 and ask for debate on the motion. Debate shall be limited to the motion on the floor. If a
14 member wishes to debate the motion, the member shall ask to be recognized by the Chair.
15 During such debate, the Chair or a member may question staff, or other meeting attendee for
16 information. Unless specifically requested by a member and approved by the Chair, public input
17 from the floor shall not be permitted.

18 **c. Parliamentary Motions.** While a motion is on the floor, the Chair may
19 entertain a secondary motion to amend the pending motion. There are two methods to amend a
20 motion on the floor:

21 **i. Friendly Amendment.** A friendly amendment may be made if the
22 maker and the second of a motion consent to a change to the motion. If the maker and the second
23 of the motion both agree, the motion is amended as requested, without a separate vote on the
24 amendment, and the Chair shall restate the amended motion.

1 **ii. Unfriendly Amendment.** If the maker of the motion does not consent
2 to adopt a suggested change to the motion, the amendment is deemed unfriendly or hostile. The
3 Chair shall hold a vote to adopt the unfriendly amendment if seconded. If the vote is successful,
4 the main motion has changed and the Chair shall restate the amended motion.

5 **iii. Procedural Motion.** A procedural motion must be resolved by vote
6 before the primary motion may be considered. A procedural motion is non-debatable, and is a
7 motion to adjourn, a motion to table, a motion to limit, extend or end debate, or a motion to call
8 the question. The Chair has discretion to permit or disallow a motion to call the question.

9 **d. Ending Debate and Voting.** When debate has ended, the Chair or a voting
10 member shall restate the motion, as amended. The Chair shall then call for the affirmative and
11 then the negative votes and, if applicable, any abstentions. An abstention, recusal or
12 disqualification for conflict of interest, of a voting member is a non-vote, having neither an
13 affirmative or negative effect. Each voting member's vote shall be recorded. The Chair shall
14 then announce the vote. A simple majority of the voting members present shall be necessary to
15 pass a motion, unless a given matter requires the affirmative votes of a specified number of
16 voting members. If a vote results in a tie, the motion is defeated.

17
18 **e. Motions to Reconsider.** A motion to reconsider may be made to reconsider
19 any matter on which the Board has previously taken formal action. A motion to reconsider
20 formal action taken during a meeting shall be in order only when it is made no later than the next
21 meeting. A motion to reconsider shall be in order only when it is made by a voting member who
22 voted with the prevailing side on the matter proposed for reconsideration; however, in the case of
23 a tie vote resulting in a defeated motion, any voting member who voted may propose the matter
24 for reconsideration. A vote on a motion to reconsider shall only be made when the matter is
25 placed on the agenda for reconsideration. A motion to reconsider is not in order on any question

1 that has been reconsidered previously. Votes on the following matters may not be reconsidered:
2 a Motion to Adjourn, a Motion to Table, a Motion to Take a Recess, a Motion to Reconsider, a
3 Motion to Approve the Agenda, a Motion to Amend the Rules of Order, and a Motion to
4 Approve membership on any committee.

5 **f. Improper Motion.** The Chair cannot permit a motion that conflicts with these
6 Rules. A motion to suspend these Rules shall be out of order.

7 **g. Question of Order.** A member of the Board may raise a question of order. A
8 question of order may be invoked for the purpose of calling to the attention of the Chair that a
9 rule of procedure is being violated. A question of order shall take precedence over any pending
10 matter, even interrupting a speaker. The question of order, once raised, must be ruled upon by
11 the Chair, who may seek the advice of others before rendering a decision. The ruling of the
12 Chair on a question of order may be reversed only upon the affirmative vote of a majority of
13 voting members present.

14 **h. Interpretation of Rules.** If there is a question raised concerning the meaning
15 or proper interpretation of these rules or if a matter arises that is not addressed by these rules, the
16 Chair shall rule on the issue and may seek the advice of others before rendering a decision.

17 **7. Adjournment.** A meeting of the Board shall continue until terminated by motion or
18 order of adjournment. The Chair shall not arbitrarily adjourn a meeting. If adjournment is
19 moved and ordered, further business shall not be transacted.

20

21 **8. Conflict of Interest.** No member may take part in any deliberation or vote on any
22 matter in which such member or an immediate family member has a financial interest, either
23 direct or indirect, in the outcome of a matter.

24 **9. Definitions.** For purposes of this Resolution, the term "member," when not otherwise
25 specified as a "voting member," shall mean both the voting and non-voting members of the

1 Board.

2

3 **PASSED, APPROVED AND ADOPTED this 9th day of JANUARY 2020.**

4

5 **BUCKMAN DIRECT DIVERSION BOARD:**

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8 _____
ANNA HAMILTON, CHAIR

9

10 **ATTEST:**

11

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13 _____
GERALDINE SALAZAR, COUNTY CLERK

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16

17 **APPROVED AS TO FORM:**

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21 _____
NANCY R. LONG, BOARD COUNSEL

22

23

24

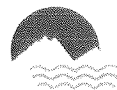
25 **ATTEST:**

26

27

28 _____
YOLANDA Y. VIGIL, CITY CLERK

Memorandum



Buckman Direct Diversion

To: BDD Board

From: Kyle Harwood, BDDB Counsel *KH*

Date: December 26, 2019

Re: Update on Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit

Item and Issue:

On December 16, 2019 EPA Region 6 agreed with the Petition of Amigos Bravos (supported by letters from the New Mexico Environment Department and the BDD Board) to require Municipal Separate Storm Sewer Systems (MS4s) permitting of the Los Alamos Urban Cluster and LANL property within Los Alamos County.

The EPA evaluated whether the receiving waters were water quality impaired; whether the storm runoff contained pollutants of concern; and whether Los Alamos County met the population criteria requiring MS4 small permits. Based upon its analysis the EPA designated stormwater runoff from the Urban Cluster and LANL as contributing to the violation of water quality standards, and stating further that the EPA will contact the responsible entities to discuss permitting options.

Background and Summary:

Amigos Bravos filed its petition on June 30, 2014 requesting that the EPA designate certain stormwater runoff in Los Alamos County as contributing to water quality violation in the State of New Mexico. On March 17, 2015 the EPA published its preliminary determination that stormwater runoff did contribute to water quality violations, received public comments, and then did not proceed to make a final determination. On September 16, 2019 Amigos Bravos filed suit against the EPA for failure to act on its petition.

On October 18, 2019 NMED Secretary Kenney sent a letter to EPA supporting the Petition. This Board sent support letters at the request of Amigos Bravos regarding the potentially harmful effects of LANL stormwater runoff containing legacy contaminants on the BDD Project source water.

The December 16, 2019 EPA Region 6 Designation letter and attachment are attached as exhibits to this memo. Earlier material has been provided to the Board in previous memos.

Action Requested:

No action recommended, updates will be provided as requested.



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Office of the Regional Administrator

DEC 7 6 2019

Rachel Conn
Projects Director
Amigos Bravos
P.O. Box 238
Taos, NM 87571

Re: A Petition by Amigos Bravos for a Determination that Storm Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit ("Petition")

Dear Ms. Conn:

Thank you for your letter dated June 30, 2014, transmitting the above referenced Petition. The Petition alleges that non de minimus stormwater discharges from Los Alamos County that are currently unregulated under the National Pollutant Discharges Elimination System (NPDES) program are contributing to exceedances of New Mexico water quality standards (WQS) in impaired waters. The Petition requests that EPA use its Residual Designation Authority under 40 CFR 122.26(a)(9)(i)(D) to require NPDES permit coverage for those discharges pursuant to Section 402(p) of the Clean Water Act.

After careful analysis of the Petition, comments on EPA's Preliminary Designation (March 17, 2015, 80 FR 13852) and all available information, the Regional Administrator of EPA Region 6 hereby designates for NPDES permitting as regulated small MS4s the following:

- MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest 2010 Decennial Census, and
- MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico

EPA's designation includes MS4s owned or operated by the following entities on LANL property and in the Los Alamos Urban Cluster:

- LANL, including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County and Santa Fe County, New Mexico,
- Los Alamos County, New Mexico, located within the Los Alamos Townsite as defined by the latest 2010 decennial Census,
- New Mexico Department of Transportation (NMDOT) located within the Los Alamos Townsite as defined by the latest decennial Census, and
- NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems in Los Alamos and Santa Fe Counties, New Mexico.

EPA appreciates your continuing stewardship concerning our natural resources. If you have any questions, please feel free to contact me at (214 665-2100), or your staff may contact, Ms. Nasim Jahan at 214-665-7522 (jahan.nasim@epa.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ken McQueen".

Ken McQueen
Regional Administrator

cc: Mr. James C. Kenney
Cabinet Secretary, New Mexico Environmental Department

Michael Sandoval
Cabinet Secretary, New Mexico Department of Transportation

Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Water Act Permits

I. SUMMARY OF PETITION AND REGION 6 DETERMINATION

On June 30, 2014, Amigos Bravos, a river conservation organization in New Mexico, submitted to the Regional Administrator of EPA Region 6 (EPA) "A Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit" (the Petition). The Petition calls for a "determination, pursuant to 40 CFR § 122.26(a)(9)(i)(D), that non-de minimis, currently non-NPDES permitted stormwater discharges in Los Alamos County are contributing to violations¹ of water quality standards in certain impaired waters throughout the area, and therefore require National Pollutant Discharge Elimination System (NPDES) permits pursuant to section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system."

The Petition alleges that urban stormwater from Los Alamos County sites, particularly urban stormwater from developed areas at Los Alamos National Laboratory (LANL), the Los Alamos Townsite, and the community of White Rock Canyon (White Rock), is contributing to violations of New Mexico state water quality standards (NM WQS), including state WQS for polychlorinated biphenyls (PCBs), copper, zinc, and nickel, and that as a result, these sites should be subject to NPDES permitting requirements. CWA § 402(p)(2)(E) and EPA's stormwater regulations at 40 CFR § 122.26(a)(9)(i)(D) provide that the Director may designate stormwater discharges as requiring NPDES permit coverage if he or she determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a WQS or is a significant contributor of pollutants to waters of the U.S. Pursuant to 40 C.F.R. § 122.2, "[w]hen there is no 'approved State program,' and there is an EPA administered program, 'Director' means the Regional Administrator." Because the State of New Mexico is not authorized to implement a state NPDES program, EPA Region 6 administers the NPDES program in the State. In response to the Petition, Los Alamos County and LANL submitted to EPA additional information and data related to stormwater discharges in Los Alamos County on November 4, 2014 and November 24, 2014, respectively.

After careful review of the Petition and the additional information provided by LANL and Los Alamos County, as well as review of the State of New Mexico's assessment of water quality in the area, on March 17, 2015, EPA Region 6 published notice in the Federal Register (80 FR 13852) of a preliminary determination that discharges of stormwater from small municipal separate storm sewer systems (MS4s) on LANL property and urban portions of Los Alamos County contribute to violations of one or more NM WQS. The notice opened a 30-day public comment period ending April 16, 2015, on the preliminary designation decision, which EPA later extended an additional 60 days to June 15, 2015. Copies of all comments received are included in Appendix 3, and EPA's responses to those comments are included as Appendix 4.

¹ The Clean Water Act uses the term "violation" but here EPA acknowledges that under the Clean Water Act, water quality standards are not directly enforceable and means that term to refer to an exceedance of water quality standards.

Based on comments received on the preliminary designation decision from interested parties, EPA re-analyzed the data and re-examined its initial determination that the discharges of urban stormwater from the preliminarily designated areas (the discharges) contribute to violations of WQS. In addition, New Mexico Environment Department (NMED) submitted to EPA a letter dated October 18, 2019 stating that NMED supports the proposed MS4 designations for the discharges at issue.² The State's letter explains that it conducted a study and confirmed that elevated levels of metals and PCBs are contained in urban stormwater leaving the impervious areas of LANL and the County. In addition, NMED's October 18, 2019 letter raises concerns about the impacts of stormwater from the Los Alamos area on water quality in the Rio Grande, a river that leads to what later becomes a drinking water source for both the City of Santa Fe and the City of Albuquerque and is used for irrigation.

In EPA's reanalysis of the data after the public comment period, EPA considered two basic factors:

- 1) **Evidence of Water Quality Impairment:** EPA asked the question, "Were the receiving waters for stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and LANL listed as impaired on the State of New Mexico's latest CWA section 303(d) list of impaired waters (available online at <https://www.env.nm.gov/swqb/303d-305b/>)?" Being listed on the state's 303(d) list would indicate that New Mexico already determined that waterbody to be water quality-impaired for one or more pollutants and thus there was no assimilative capacity remaining for those pollutants. As a result, discharges of stormwater containing those pollutants would contribute to the impairment if the discharge contained levels above NM's WQS.

Conclusion: As described below, at least some of the discharges from LANL and the Los Alamos Urban Cluster are to waters listed as impaired on the State of New Mexico's CWA section 303(d) list. While there are impairments listed for the Rio Grande River, which stormwater discharges from the White Rock Urban Cluster ultimately reach, the immediate receiving waters at White Rock are not listed as impaired.

- 2) **Evidence that the Level of the Pollutants of Concern in the Stormwater Discharges from Los Alamos County Are Contributing to the CWA § 303(d) Impairments:** EPA asked the question, "Did at least some of the stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and/or LANL have maximum or median sampling results exceeding one or more of the NM's WQS for a parameter that was listed as a cause of impairment on the state's CWA section 303(d) list?" Because waterbodies listed as impaired for a pollutant or pollutants have no remaining assimilative capacity for those pollutants, maximum or median sampling results exceeding the state's WQS for one or more of those pollutants would indicate that the discharges containing the pollutant or pollutants at levels above the WQS contribute to a violation of that WQS.

Conclusion: Available discharge data indicate that some of the stormwater discharges from the Los Alamos Urban Cluster and LANL show maximum and/or median values that exceed state WQS. No discharge data was available for stormwater discharges from the White Rock Urban Cluster. See Appendix 4.

² Letter from NMED Secretary James C. Kenney to EPA Region 6 Regional Administrator Ken McQueen dated October 18, 2019, superseding NMED letter dated June 15, 2015, which had not supported designation.

Final Designation Decision:

After re-analyzing the available data with an emphasis on the above two factors, EPA determined that the stormwater discharges from the Los Alamos Urban Cluster and LANL are contributing to violations of NM WQS. However, upon reassessment of the data, EPA has determined that there is insufficient data about the stormwater discharges from the White Rock Urban Cluster to establish that stormwater discharges from White Rock are contributing to WQS violations. A more detailed discussion of EPA's analysis and the basis for its conclusions is found below and in EPA's responses to comments in Appendix 4.

After careful analysis of the Petition, comments on the Preliminary Designation, and all available information, EPA hereby designates for NPDES permitting as regulated small MS4s the following: MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico.

EPA's designation covers MS4s owned or operated by the following entities on LANL property and in the Los Alamos Urban Cluster as stormwater discharges requiring NPDES permit coverage pursuant to 40 CFR § 122.26(a)(9)(i)(D):

1. LANL, including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County and Santa Fe County, New Mexico,
2. Los Alamos County, New Mexico, located within the Los Alamos Urban Cluster as defined by the latest decennial Census,
3. New Mexico Department of Transportation (NMDOT) located within the Los Alamos Urban Cluster as defined by the latest decennial Census, and
4. NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems in Los Alamos and Santa Fe Counties, New Mexico.

Under an NPDES permit, dischargers will be required to reduce pollutants in stormwater discharges to the Maximum Extent Practicable, effectively prohibit non-stormwater discharges into municipal separate storm sewers, and address water quality impacts as appropriate, thereby addressing concerns that these discharges are contributing to violations of NM WQS. See CWA section 402(p)(3)(B)(2)-(3) and 40 CFR § 122.34. NPDES MS4 permit(s) issued pursuant to this designation will cover only stormwater discharges from the covered MS4s. Stormwater discharges from undeveloped areas within the footprint of the designation that are not discharges from a MS4 will not be subject to permitting requirements under this designation. For example, LANL has large undeveloped areas within its property that do not appear to be served by a MS4.

II. BACKGROUND

As part of the Water Quality Act of 1987 (WQA), P.L. 100-4 (Feb. 4, 1987), Congress required EPA to establish permitting requirements for certain stormwater discharges, including discharges from large and medium MS4s. (WQA § 405, codified as CWA § 402(p), 33 U.S.C. § 1342(p)). Congress also gave EPA authority to designate additional stormwater discharges for permitting on a case-by-case basis (often referred to as EPA's residual determination authority). EPA Region 6, responding to a petition under 40 CFR § 122.26(f)(2) and (4), has determined to designate certain small MS4s in Los Alamos County pursuant to 40 CFR § 122.26(a)(9)(i)(D).

A. Current Status of Stormwater Discharges in Los Alamos County Regulated under the NPDES Stormwater Program

There are currently no regulated MS4s³ in Los Alamos County. EPA's Phase I stormwater regulations (55 FR 47990, November 16, 1990) required NPDES permits for large and medium MS4s, as defined at 40 CFR § 122.26(b)(4) and (7). The regulations included a list of incorporated places (cities) and counties that qualified as large or medium MS4s and required an NPDES permit. (40 CFR § Part 122, Appendices F through I). No areas of Los Alamos County qualified as medium or large MS4s under the Phase I regulations.

Phase I also regulated stormwater discharges associated with industrial activity. LANL has an individual stormwater permit (NM0030759) that covers certain stormwater discharges from "industrial activity" (40 CFR § 122.26(b)(14)). However, the majority of LANL activities are not regulated as "stormwater discharge associated with industrial activity," and stormwater discharges from these activities are not currently regulated under the NPDES program.

EPA's Phase II stormwater regulations (64 FR 68722, December 8, 1999) included a requirement to permit small MS4s that are either located in an "urbanized area" under the latest Decennial Census or are otherwise designated by the NPDES permitting authority (40 CFR § 122.32(a)). Los Alamos County does not include any "urbanized areas" as defined by the Census Bureau in the 2010 Decennial Census and thus small MS4s in the County have not already been designated by rule. Nor have there been any designations of small MS4 discharges in the County on a case-by-case basis before today.

B. The Petition to Designate Stormwater Discharges from Los Alamos County

The Petition alleges that the currently non-regulated stormwater discharges from Los Alamos County are contributing to violations of NM WQS and asks EPA to use its residual designation authority to determine that these stormwater discharges "require National Pollutant Discharge Elimination System (NPDES) permits pursuant to section 402(p) of the Clean Water Act and/or designation as a municipal separate storm sewer system."

In support, the Petition cites the following information:

- White Rock is located in eastern Los Alamos County, above and within approximately 0.75 miles of the Rio Grande River. Pajarito Canyon goes through White Rock on its way towards the Rio Grande. Canada del Buey goes along the northern part of White Rock.

³ "Small MS4" is defined at 40 CFR § 122.26(b)(16) as "all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings."

- LANL property contains all or parts of seven primary watersheds that drain directly into the Rio Grande. Listed from north to south, these watersheds are: Los Alamos, Sandia, Mortandad, Pajarito, Water, Ancho, and Chaquehui Canyons. The Los Alamos Townsite and the urbanized areas of LANL drain into five canyons: Los Alamos, Pueblo, Sandia, Bayo and Mortandad Canyons. White Rock drains into Rio Grande.^{4 5}
- The Petition alleges that urban stormwater pollution from Los Alamos County sites, particularly urban stormwater runoff from developed areas at LANL, the Los Alamos Urban Clusters, and the community of White Rock Canyon, is contributing to violations of NM WQS, including state WQS for PCBs, copper, zinc and nickel, and that as a result, these sites should be covered by an NPDES permit.

Although small MS4s in Los Alamos County are not automatically required to obtain NPDES permit coverage under EPA's stormwater regulations because the County does not include any "urbanized areas" as defined by the Census Bureau in the 2010 Decennial Census, Los Alamos County does have two "urban clusters" based on the results of the 2010 census.⁶ According to the 2010 Census, the county has a population of 17,950. A Census-designated urban cluster contains a population of between 2,500 and 50,000. The main population center for Los Alamos County is called the Los Alamos Townsite. The Townsite is a Census-Designated Place (CDP) and according to the 2010 Census, the population of the CDP was 12,019. ⁷According to the 2010 Census, the density of the Los Alamos Townsite CDP is 1,078.7 persons per square mile. A portion, but not all, of Los Alamos Townsite has been designated an "urban cluster" based on the results of the 2010 Census. That portion of Los Alamos Townsite designated as an "urban cluster" has a population of 10,893. The other densely inhabited place in the County is the community of White Rock, which is also a CDP. According to the 2010 Census, the population of White Rock is 5,725 and the density is 811.8 persons per square mile. A portion of the community of White Rock has also been designated as an "urban cluster," based on the results of the 2010 Census.⁸ The White Rock Urban Cluster has a population of 5,039.

C. Standards for Designation

CWA §§ 402(p)(2)(E) and 402(p)(6) provide the statutory authority for case-by-case designations of discharges composed entirely of stormwater. Under EPA's stormwater regulations promulgated pursuant to those statutory sections, small MS4s may be designated for NPDES permits pursuant to the following provisions:

- 40 CFR § 122.26(a)(9)(i)(C) -The Director determines that stormwater controls are needed for the discharge based on wasteload allocations (WLAs) that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern. Because there are no approved TMDLs with WLAs in the area, EPA is not relying on this authority.

⁴A Petition by Amigos Bravos for a Determination that Stormwater Water Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require a Clean Water Act Permit

⁵ Los Alamos National Laboratory Environmental Report 2012, 1-1 and 1-2 (2012) (LA-UR-13-27065)(2012 Environmental Report)

⁶<https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>. Accessed <11-21-2019>

⁷ <https://www.census.gov/quickfacts/losalamoscdpnewmexico>. Accessed <11-21-2019>.

⁸ <https://www.census.gov/quickfacts/whiterockcdpnewmexico> Accessed <11-21-2019>

- 40 CFR § 122.26(a)(9)(i)(D) – The Director (here the RA) determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a WQS or is a significant contributor of pollutants to waters of the United States.
- As explained above and below, EPA is relying on the first part of 40 CFR § 122.26(a)(9)(i)(D) for this designation.

III. Basis for and Scope of EPA’s Residual Designation Determination

Based on the authority of CWA § 402(p)(2)(E) and 40 C.F.R. §122.26(a)(9)(i)(D), and after review of available information, EPA has determined that stormwater discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to violations of NM WQS. As noted above, EPA examined the available data based on two factors: 1) evidence of water quality impairment; and 2) evidence that pollutant levels in the stormwater discharges are contributing to those impairments.

A. Review Criteria

1. Evidence of Water Quality Impairment

EPA first looked to see if the receiving waters for stormwater discharges from the Los Alamos Urban Cluster, the White Rock Urban Cluster, and LANL are listed as impaired on the State of New Mexico’s latest CWA section 303(d) list of impaired waters. Because a waterbody listed as impaired for a pollutant or pollutants has no remaining assimilative capacity for that pollutant(s), a discharge of stormwater containing that pollutant(s) would contribute to the impairment if the discharge contained levels of the pollutant(s) above NM’s WQS.

EPA reviewed water quality impairment information contained in the 2012-2014 State of New Mexico Clean Water Act §303(d)/305(b) Integrated Report [hereinafter "2012-2014 303(d)/305(b) Report"], with updates from the 2014-2016, 2016-2018 and 2018-2020, State of New Mexico Clean Water Act §303(d)/305(b) Integrated Reports [hereinafter 2012-2014 303(d)/305(b) Report, 2014-2016 303(d)/305(b) Report 2016-2018 303(d)/305(b) Report and 2018-2020 303(d)/305(b) Report, respectively]. After consideration of the information in the state’s Integrated Reports, as well as additional information provided by LANL and Los Alamos County, EPA finds the following:

- The 2012-2014 303(d)/305(b) Report shows Los Alamos Canyon within LANL property to be impaired for gross alpha, adjusted (a measurement of overall radioactivity and hereinafter referred to simply as "gross alpha")⁹, PCBs, aluminum, and copper.¹⁰ The 2014-2016 303(d)/305(d) Report removed copper as a cause of impairment.¹¹ Mercury was

⁹ 20.6.4.114.A NMAC defined at (5) as “Adjusted gross alpha” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding

¹⁰ State of New Mexico Water Quality Control Commission, 2012-2014 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/10/AppendixA-USEPA-Approved303dList.pdf>

¹¹ State of New Mexico Water Quality Control Commission, 2014-2016 State of New Mexico Clean

added as a cause of impairment in the 2016-2018 303(d)/305(b) Report. In addition, as stated in the Petition, NMED data show levels of PCBs in Los Alamos Canyon downgradient from most of the urbanized areas at LANL to be over 11,000 times greater than the New Mexico Human Health water quality criteria and 51 times greater than the New Mexico Wildlife Habitat water quality criteria. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired for gross alpha, PCBs, cyanide, selenium, and mercury.

- The 2012-2014 303(d)/305(b) Report shows Sandia Canyon to be impaired for PCBs, aluminum, copper, gross alpha, and mercury. In the 2014-2016 303(d)/305(b) Report and the 2016-2018 303(d)/305(b) Report,¹² thallium was added as a new cause of impairment. The 2018-2020 303(d)/305(b) Report¹³ shows this canyon is impaired with Polychlorinated Biphenyls (PCBs), aluminum, gross alpha, and mercury.
- The 2012-2014 303(d)/305(b) Report shows Mortandad Canyon to be impaired for aluminum, copper, and gross alpha. In the 2014-2016 303(d)/305(b) Report, PCBs were added as a new cause of impairment. The 2016- 2018 303(d)/305(b) Report has the same list of impairments as the 2014-2016 303d/305 Report. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired with PCBs, copper, gross alpha, and mercury.
- The 2012-2014 303(d)/305(b) Report shows Pajarito Canyon to be impaired for gross alpha, aluminum, PCBs, and copper. For the 2014-2016 303(d)/305(b) Report, arsenic and selenium were added as new impairment parameters. The 2016-2018 303(d)/305(b) Report has the same list of impairments as the 2014-2016 303d/305 Report. The 2018-2020 303(d)/305(b) Report shows this canyon is impaired for gross alpha, aluminum, PCBs, mercury, and cyanide. Note that the portion of Pajarito Canyon from the Rio Grande to the LANL boundary (which goes through White Rock) is not listed as impaired by NMED.
- The 2012-2014 303(d)/305(b) Report shows Canada del Buey to be impaired for PCBs, aluminum, and gross alpha for at least the portion within LANL property. The 2014- 2016 303(d)/305(b) Report removed aluminum as a cause of impairment. However, aluminum was added back to the list in the 2016-2018 303(d)/305(b) Report. Note that the section from the LANL boundary to San Ildefonso Pueblo has not been assessed. Based on the 2018-2020 303(d)/305(b) Report, this canyon is impaired for PCBs, gross alpha and, aluminum.
- The 2012-2014 303d/305b, 2014-2016 303(d)/305(b) Report, the 2016-2018 303(d)/305(b) Report and the 2018-2020 303(d)/305(b) Report show Pueblo Canyon (Acid Canyon to headwaters) to be impaired for gross alpha, PCBs, and aluminum. NMED data show levels of PCBs in Pueblo Canyon right in the middle of the Los Alamos urbanized area to be over 35,000 times greater than New Mexico's Human Health water quality criteria and 16 times greater than New Mexico's Wildlife Habitat water quality criteria.¹⁴ The Rio Grande (Cochiti Reservoir to San Ildefonso boundary)

Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/10/2014-2016NMList.pdf>

¹² *State of New Mexico Water Quality Control Commission, 2016-2018 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at:*

¹³ *State of New Mexico Water Quality Control Commission, 2018-2020 State of New Mexico Clean Water Act 303d/305b Integrated Report, Appendix A (303d/305b Report). Available at: <https://www.env.nm.gov/wp-content/uploads/sites/25/2018/03/Appendix-A-Integrated-List.pdf>*

¹⁴ *NMED, Pajarito Plateau Assessment for the 2010-2012 Integrated Report data set with PCBs and map of sampling stations <http://www.nmenv.state.nm.us/swq/b/303d-305b/20-10-20>*

is listed as impaired for PCBs, turbidity, E. coli, and gross alpha. This is the downstream segment of the Rio Grande receiving most of the flows from the canyons in Los Alamos County, but also flows from the entire watershed above the Los Alamos area draining north central New Mexico and parts of Colorado. Impairments to waterbodies directly receiving stormwater discharges from Los Alamos County before that stormwater flows to the Rio Grande River provide a strong case for concluding that those discharges are contributing to impairments in the Rio Grande.

- None of the state's Integrated Reports dating back to 2012 show the receiving streams within the White Rock Urban Cluster to be impaired.

Note: Atmospheric deposition - toxics, inappropriate waste disposal, natural sources, watershed runoff following forest fire, post-development erosion and sedimentation and source unknown were listed as probable sources of impairment in the 2012-2014 303(d)/305(b) Report. However, starting with the 2014-2016 303(d)/305(b) Report, the NMED Surface Water Quality Bureau (SWQB) changed how probable sources were treated state-wide and removed previously reported probable source lists from the 2014-2016 303(d)/305(b) Report. Instead the State began using "Source Unknown" for all impairments unless the probable source(s) have been established as part of the Total Maximum Daily Load (TMDL) process.

Based on the above findings, EPA determined that the receiving waters for at least some of the stormwater discharges from LANL and the Los Alamos Urban Cluster are listed as impaired on the NM CWA § 303(d) list. That said, EPA found that none of the immediate receiving waters for stormwater discharges from the White Rock Urban Cluster are listed as impaired on the NM CWA § 303(d) list, although there are impairments listed for the Rio Grande River, which the White Rock receiving waters ultimately reach.

2. Evidence that Pollutants of Concern in the Stormwater Discharges from Los Alamos County Are Contributing to the CWA § 303(d) Impairments

EPA next examined the available data to determine whether at least some of the stormwater discharges from Los Alamos, White Rock, and LANL have maximum or median sampling results exceeding one or more of the NM's WQS for a parameter that was listed as a cause of impairment on the state's CWA section 303(d) list. Because waterbodies listed as impaired for a pollutant or pollutants have no remaining assimilative capacity for those pollutants, maximum or median sampling results exceeding the state's WQS for one or more of those pollutants indicates that those discharges contribute to a violation of that WQS.

The Petition alleges that available data and studies link the water quality impairment downgradient from the Pajarito Plateau to stormwater runoff from urban areas in Los Alamos County. In support, the Petition states as follows:

LANL conducted two detailed studies of stormwater runoff from the Pajarito Plateau. One study was on PCB contamination and the second was on metals contamination. In these studies, LANL collected samples from non-urban, non-laboratory influenced reference sites as well as from sites representing runoff from the urbanized areas of the Los Alamos Townsite. Neither the reference nor the urban sites were influenced by point source discharges covered by LANL's individual stormwater permit. These studies show a significant contribution of both PCBs and metals from urban runoff on the Pajarito Plateau.

12/Pajarito/index.html (Pajarito Plateau Study).

The LANL PCB study found 40 of the 41 Los Alamos urban stormwater samples were above the New Mexico human health water quality criteria for PCBs and 19 of the 41 Los Alamos urban stormwater samples were above the New Mexico wildlife habitat water quality criteria for PCBs. ("PCB Report" ¹⁵ at 62).

Based on review of the data from the LANL PCB report, EPA also confirmed that heightened PCB concentrations above 100 ng/L were measured in Los Alamos County urban runoff (PCB report, pp 61-64). The higher concentrations are associated with the urban stormwater from the contribution of additional diffuse local sources in the urban environment

Based on an independent review of the data included in the LANL Metals Report,¹⁶ as opposed to the conclusions reached by LANL within the report, EPA determined that storm water discharges from MS4s located in the portion of Los Alamos County within the Los Alamos Urban Cluster and on LANL property within Los Alamos County and Santa Fe County are contributing to exceedances of one or more NM WQS and therefore meet the criteria for designation.

After doing further analysis, EPA notes that the mean of the urban runoff samples exceeded at least one NM WQS for aluminum, cadmium, copper, or zinc. Also, the maximum urban runoff sample value exceeded at least one NMWQS for aluminum, cadmium, copper, and zinc. The mean of the urban runoff samples exceeded the mean of the background reference site samples for aluminum, cadmium, copper, and zinc (see appendix 4 for further analysis). The LANL studies of PCB and metal contaminated runoff tie these contaminants to the urban areas of the Pajarito Plateau. In LANL's 2013 request to EPA for alternative compliance with its NPDES discharge permit for industrial stormwater, the Laboratory argues that the cause of its exceedances of New Mexico water quality criteria for zinc and copper is urban runoff from sources such as motor oil accumulation on parking lots, brake pad and tire material released on pavement, galvanized fencing, culverts and other building materials.¹⁷

In their comments on the Petition, LANL and Los Alamos County dispute certain aspects of Petitioner's characterization of the information from the various LANL reports and the possible sources of pollutants. For instance, both LANL and Los Alamos County state that although the PCB report identifies baseline values, it does not state that urban development in Los Alamos County is contributing large amounts of PCBs to receiving waters. Further, both LANL and Los Alamos County point out, as noted by EPA in Section II I.B above, that in the 2014-2016 303(d)/305(b) Report NMED has removed the probable source lists and replaced them with "Source Unknown."

As noted above, in the 2012-2014 303(d)/305(b) Report, the State of New Mexico found that water quality in Sandia, Mortandad, Pajarito, and Pueblo Canyons is impaired by urban stormwater-related causes with impervious surfaces, parking lots, and construction and development listed as probable sources of the impairment. While the 2014-2016 Report now lists the probable sources as "unknown," this does not necessarily indicate that any particular potential source has been ruled out. According to NMED, "The approach for identifying Probable Sources of Impairment" was modified by the SWQB starting with the 2012 listing cycle. Any new impairment listings are assigned a probable source of "Source

¹⁵ *Los Alamos National Laboratory, Polychlorinated Biphenyls in Precipitation and Stormwater within the Upper Rio Grande Watershed 2 (May 2012) (LA-UR-12-1081) (PCB Report)*. Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-219767>

¹⁶ *Los Alamos National Laboratory, Background Metals Concentrations and Radioactivity in Stormwater on the Pajarito Plateau Northern New Mexico 2 (April 2013) (LA-UR-13-22841) (Metals Report)*. Available at: <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/epr/ERID-239557>

¹⁷ *Alternative Compliance Request 2 at 31-2; Los Alamos National Laboratory, Alternative Compliance Request for S-SMA-.25 28 (April 2013) (Alternative Compliance Request .25)*

Unknown.” For the 2014 listing cycle, SWQB removed previously reported non-TMDL Probable Source listings from the Report and replaced them with “Source Unknown” for consistency. Therefore, all reported probable source listings on the state’s Integrated Lists have now been established through the TMDL process.”¹⁸As such, in making its final designation determination, EPA relied on independent analysis of stormwater quality data and receiving water impairment lists rather than on the probable source listings in the older NMED 303(d)/305(b) Reports.

Based on the Agency's independent review of all available information, EPA finds that pollutants associated with impairment are present at levels above WQS in stormwater discharges from MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census and on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico. As such, EPA determines that these discharges contribute to the impairments listed by the State. Again, no sampling data was available for stormwater discharges from the White Rock Urban Cluster.

A. Scope of Designation

40 CFR § 122.26(a)(9)(i)(D) allows for designation of a category of discharges within a geographic area, based upon a determination that the category "contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."

After careful analysis of available information as discussed above, the Regional Administrator of EPA Region 6 is designating for NPDES permitting as regulated small MS4s the following:

- MS4s located in the portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and
- MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico.

This designation of regulated small MS4s requiring NPDES permit coverage applies to MS4s owned or operated by:

1. LANL including Triad National Security, LLC (Triad) and the U.S. Department of Energy's National Nuclear Security Administration (NNSA) located within Los Alamos County;
2. Los Alamos County located within the Los Alamos Urban Cluster as defined by the latest decennial Census;
3. New Mexico Department of Transportation (NMDOT) located within the Los Alamos Urban Cluster and as defined by the latest decennial Census; and
4. NMDOT located within and interconnected with regulated LANL (Triad and NNSA) storm sewer systems.

IV. Final Designation Decision

Based on its analysis of available information as discussed above, EPA has determined that stormwater discharges from MS4s located in the Los Alamos Urban Cluster and the LANL property are contributing to violations of NM WQS. Therefore, under the authority of CWA § 402(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D), EPA hereby designates MS4s located in the

¹⁸ 2014 – 2016 State of New Mexico Clean Water Act Section 303(d)/Section 305(b) Integrated Report FINAL November 18, 2014. Pg 56. Available at: <https://www.env.nm.gov/swqb/303d-305b/2014-2016/2014-2016NMReport.pdf>

portion of Los Alamos County, New Mexico within the Los Alamos Urban Cluster as defined by the latest Decennial Census, and MS4s located on Los Alamos National Laboratory property located within Los Alamos County and Santa Fe County, New Mexico as small MS4s requiring NPDES permit coverage.

EPA finds there is insufficient data to determine that discharges of stormwater from the White Rock Urban Cluster are contributing to a violation of NM WQS. Therefore, EPA is not designating those discharges as requiring NPDES permits.

Region 6 will be in touch with operators of the designated MS4s to set up a call to discuss permitting options under 40 CFR § 122.33.



DEC 16 2019

Dated:

Ken McQueen

Regional Administrator, Region 6

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2. LETTER FROM NMED SECRETARY JAMES C. KENNEY TO EPA REGION 6 REGIONAL ADMINISTRATOR KEN MCQUEEN DATED OCTOBER 18, 2019
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7. LOS ALAMOS NATIONAL LABORATORY, *LOS ALAMOS NATIONAL LABORATORY ENVIRONMENTAL REPORT 2012*, 1-1 AND 1-2 (2012) (LA-UR-13-27065) (2012 ENVIRONMENTAL REPORT)
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12. NMED, PAJARITO PLATEAU ASSESSMENT FOR THE 2010-2012 INTEGRATED REPORT DATA SET WITH PCBs AND MAP OF SAMPLING STATIONS [HTTP://WWW.NMENV.STATE.NM.US/SWQB/303D-305B/2010-2012/PAJARITO/INDEX.HTML](http://www.nmenv.state.nm.us/swqb/303D-305B/2010-2012/pajarito/index.html) (PAJARITO PLATEAU STUDY).
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14. LOS ALAMOS NATIONAL LABORATORY, POLYCHLORINATED BIPHENYLS IN PRECIPITATION AND STORMWATER WITHIN THE UPPER RIO GRANDE WATERSHED 2 (MAY 2012) (LA-UR-12-1081) (PCB REPORT).

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18. 20.6.4.114.A NMAC.

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Appendix 1: Los Alamos, LANL and NMDOT (State Hwy) Map

