



AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, JULY 11, 2019

4:00 PM

CITY HALL

CITY COUNCIL CHAMBERS

200 LINCOLN

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE JUNE 6, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON JULY 9, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, rcsugrue@santafenm.gov, 955-4501)
8. Presentation on pending litigation involving LANL by other parties. (Kyle Harwood, Legal Counsel, kyle@egolflaw.com, 986-9641) **VERBAL**
9. Report from the BDD Facilities Manager. (Rick Carpenter, Interim Water Division Director, rrcarpenter@santafenm.gov, 955-4206) **VERBAL**

CONSENT AGENDA

10. Request for approval to trade-in two (2) vehicles to Power Ford for a total value of \$13,000. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

DISCUSSION AND ACTION

11. Request formal adoption of the fiscal year 2020 annual operating budget in the amount of \$9,696,409 plus \$626,706 in contributions to the major repair and replacement fund. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, August 1, 2019 at 4:00pm

ADJOURN

EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB is a participant, including, without limitation, *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610. (Nancy Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

END OF EXECUTIVE SESSION

PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE

RECEIVED AT THE CITY CLERK'S OFFICE
DATE: July 1, 2019
TIME: 4:41 PM

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

July 11, 2019

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Anna Hamilton, Chair, at approximately 4:00 p.m. in the Santa Fe City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll was called and the following members were present:

BDD Board Members Present:

Commissioner Anna Hamilton, Chair
Councilor Peter Ives
Commissioner Anna Hansen
Member Denise Fort
Councilor JoAnne Vigil Coppler
Mr. Tom Egelhoff [non-voting]

Member(s) Excused:

Councilor Michael Harris

BDD Board Alternate Members Present:

Mr. J.C. Helms [Citizen Alternate]
Ginny Selvin [Las Campanas Alternate]

Others Present:

Rick Carpenter, Acting BDD Facilities Manager
Nancy Long, BDD Board Consulting Attorney
Mackie Romero, BDD Finance Manager
Randy Sugrue, BDD Operations Superintendent
Bernardine Padilla, BDD Public Relations Coordinator
Daniela Bowman, BDD
Sara Smith, Santa Fe County
Kyle Harwood, BDD Counsel
Charles de Saillan, NM Environmental Law Center
James Bearzi, Glorieta Geoscience
Joni Arends, CCNS
Dan Frost, Snell & Wilmer
Scott Kovac, Nuclear Watch New Mexico

3. APPROVAL OF AGENDA

[Exhibit 1: Agenda]

CHAIR HAMILTON: Rick or Nancy, are there any changes to the

2019 JUL 11 11:29 AM RECORDED 11/29/2019

agenda?

RICK CARPENTER (Acting Facilities Manager): There are no changes from staff, Madam Chair.

NANCY LONG (Board Consulting Attorney): Madam Chair, there is a date correction that needs to be made and that is item 6, the FSAC Committee was July 8, not 9.

CHAIR HAMILTON: Thank you. So noted. So with that small change –

COMMISSIONER HANSEN: I move to approve.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thank you. I have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Councilor Ives was not present for this action.]

4. APPROVAL OF CONSENT AGENDA

10. Request for approval to trade-in two (2) vehicles to Power Ford for a total value of \$13,000

CHAIR HAMILTON: There is one item on the Consent Agenda. What's the pleasure of the Board?

MEMBER FORT: Move approval of the Consent Agenda.

CHAIR HAMILTON: Thank you.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: If there's no discussion, I have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Councilor Ives was not present for this action.]

5. APPROVAL OF MINUTES: June 6, 2019

CHAIR HAMILTON: So that leads us to the minutes. Commissioner Hansen.

COMMISSIONER HANSEN: On page 3, under Informational Items, under 7. Monthly Update, the first line says Commissioner Moreno. I believe that's Chair Hamilton. I do not remember Commissioner Moreno being at this meeting.

CHAIR HAMILTON: Good catch. I guess it pays sometimes to read the minutes.

COMMISSIONER HANSEN: I had a few other minor things but that's good enough.

CHAIR HAMILTON: Okay. Thank you. So what's the pleasure of the Board?

COMMISSIONER HANSEN: I move to approve with the change.

MEMBER FORT: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Councilor Ives was not present for this action and arrived shortly thereafter.]

6. REPORT ON JULY 8, 2019 FISCAL SERVICES AND AUDIT COMMITTEE

MACKIE ROMERO (BDD Financial Manager): Madam Chair, members of the Board, a Fiscal Services and Audit Committee meeting was held on Monday, July 8th. In attendance was myself, BDD Financial Manager, from the City, Councilor Harris, from the County, Commissioner Hamilton and Joe Gonzales, from Las Campanas we had Tom Egelhoff, Ginny Selvin and Linda Spingler. We discussed Consent Agenda Items #10. Discussion and Action Item #11, and then we also discussed vacancies, which will be given during the BDD Facilities Manager report. Are there any questions or comments?

CHAIR HAMILTON: No. It was as always a very useful meeting. Does anybody else have comments from that? Questions?

MS. ROMERO: Thank you.

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations

CHAIR HAMILTON: First from our new Operations Superintendent, Mr. Sugrue and I offer officially congratulations on the new position, and before you start, I want to note for the record that Councilor Peter Ives just joined us. Welcome.

COUNCILOR IVES: Good to be here, and I apologize. The agenda I think that was online said 4:15, so I thought I was early. We'll maybe see about checking into that because remember a few months ago they voted – but I never look so I didn't get messed up. So Mr. Sugrue. Thank you very much.

RANDY SUGRUE (Operations Supervisor): You're welcome. Madam Chair, members of the Board, our summertime operations are going along quite well, quite well this year. Our raw water diversions average about 5.5 million gallons per day. Drinking water deliveries through booster 4A and 5A averaged a little above 3.9 million gallons per day. That is increasing as the summer progresses. Our raw water delivery to Las Campanas has averaged a little over 1.1 million gallons per day, and our onsite storage, as always in general is about .4, .433 million gallons per day on site.

We're providing approximately 39.3 percent of the City/County water supply. That also is increasing as the summer goes on. That's due to of course higher demand in summer, although it is not spiking up but the Canyon Road water treatment plant is easing off their production a bit because the reservoirs are stabilized; they don't have the high inflow that they had earlier in the springtime.

We are out of what's called flood operations in Abiqui Reservoir. During flood operations we were not allowed, nor anyone in New Mexico to make San Juan-Chama diversions. We are now, since July 1st able to call for San Juan-Chama waters and we are doing so.

The river has subsided about a thousand cubic feet per second from a high of around 5,000/6,000 cubic feet per second. It's actually fallen now and fairly stable at

3,500 cubic feet per second, which, on average, is high for this time of year. There's still more water supply than a normal year.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: Why couldn't we have San Juan-Chama water?

MR. SUGRUE: That's part of how the Bureau of Reclamation manages the reservoirs and the San Juan-Chama operations. When they're above a certain level in Abiqui Reservoir they are releasing native waters only to transfer that water down river. Our San Juan-Chama water calls are now being made. However, we still left ourselves a good native reserve of the native waters because we could only use native waters in May and June, but we didn't use all of that native water reserve.

CHAIR HAMILTON: That's good. Do you have any more, just out of interest, comments about that, because there was a much – it was a longer period of time than you might expect just because the water's been so high for a while.

MR. SUGRUE: We were a little concerned that we didn't use all of that native water reserve through the County's native water right, because in the fall, we want to have that buffer. If we use all the native water reserve we make a San Juan-Chama water call and we have to hit that call exactly day-by-day. Our water accounting is much more strict. Operations is a much more strict procedure. This gives us a little buffer if we call for ten acre-feet a day, but we need a little more water that week, we can then divert a little more each day to make up the difference that we need, rather than having to be so strict on our San Juan-Chama call.

CHAIR HAMILTON: Great. Thank you.

MR. SUGRUE: Thanks very much. Any other questions?

CHAIR HAMILTON: Are there other questions? Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. Just looking at page 2 of item #7, you reference in the middle of the large paragraph there that the City received over 90 percent delivery from BOR of full firm yield of San Juan-Chama for year 2018; is that a fiscal year or a calendar year?

MR. SUGRUE: I'll defer to Rick on that.

MR. CARPENTER: Madam Chair, members of the Board, that's per calendar year.

COUNCILOR IVES: And then projected at 2019 for 100 percent. For some reason I was recalling that back in January of this calendar year we had already at that point in time received well over 50 percent of our full-firm yield; am I remembering that incorrectly? I call upon you to –

MR. CARPENTER: Chair, Member Ives, I don't recall that 50 percent as early as January. That seems a little odd to me that they would have sent that much water down that early. But they have been sending pretty good slugs of it. Since then, I think the report here when we wrote this is 63 percent, so we fully expect to get 100 percent this year.

COUNCILOR IVES: Yes. Understood. Understood. Okay. Thank you.

CHAIR HAMILTON: Thank you. Are there any other questions on this? Great. Thank you so much, Mr. Sugrue.

MR. SUGRUE: You're welcome.

8. Presentation on pending litigation involving LANL by other parties

KYLE HARWOOD (BDDDB Counsel): Good evening, Board. Just a quick couple of updates that were requested from the last meeting or in the intervening time. I did send a drop box link out to all of you about an hour and a half ago containing all the materials that I'm going to refer to right now. I'm happy to print them and get them to you if you also like. That includes the three letters that we worked on over several meetings. The letter regarding DOE Order 140 to the congressional delegation and the DNFSB, the LANL cleanup priorities went to the whole congressional delegation as well as we discussed, and the Rio Grande water quality priorities also went to the Governor and Secretary Kenney. They are dated June 7th but they got delayed. They kind of got lots a little bit. I won't go into the details but they have all been delivered. They've been the topic of conversations with some of those NMED staffers since. So they've got it all on their radar screen. And that's all in that drop box link so you can see it. So that's the update on the letters.

MEMBER FORT: Madam Chair, would this be an appropriate time to comment? I had asked that some of these letters be sent out in advance in particular, so I'm not addressing this to Mr. Harwood but rather I had asked Mr. Carpenter and asked on Monday whether or not people could get copies of the Notice of Intent and had several emails and did not get a response to that, Mr. Carpenter, I might ask. As a Board member, one, I'd like the courtesy of being able to send materials to the Board and secondly I'd like the courtesy of a response and third, I'd like to have materials – thanking Kyle very much for jumping in, but an hour before is only going to work for the person who brought her computer. Thank you.

MR. HARWOOD: We'll coordinate on that better going forward. Yes, and I was separately going to address the NOI if you like.

CHAIR HAMILTON: Yes. That would be appreciated.

MR. HARWOOD: Very good. So we will redouble our efforts to coordinate on that. Okay, very good.

So the next item I had was just to update you folks on – and I have 15 copies of this memo, which I know you also did get ahead of time, but I was going to provide a verbal update on the Nuclear Watch case. This again in a summary is the case that the New Mexico Environmental Law Center has brought on behalf of Nuclear Watch New Mexico challenging the 2016 Order on Consent and how it replaced the 2005 Order on Consent. Charlie has been so nice as to come and attend our Board meeting again. You all heard his presentation at the last Board meeting.

CHAIR HAMILTON: Thank you for being here.

MR. HARWOOD: So this memo, just real briefly, summarizes the case. It describes the complaint briefly and the 2016 Compliance Order on Consent, the motions to dismiss, and then just cutting to the chase, the current motions for cross summary judgment. So it's important to understand that this case is already three years old. Many matters have been decided. It's possible that some things could be asked to be reconsidered but that hasn't happened yet and so only the court's consideration on the penalties portion on that case remains.

I was asked to identify some options for the Board to consider regarding this case.

It's a very important case, as we know, regarding LANL and so I did come up with three basic concepts that I'd like to just mention to you. One is to send a letter to the Governor and Secretary Kenney urging them to reconsider their current position, which is co-defendant with LANL defending the termination of the 2005 Order and adopting the 2016 Order, so asking them to leave the defense side of that case and joined the plaintiff side, which they may do. And I think the best way to get it to the governor's attention is for the Board to send a letter to the governor.

The second option, which we're not recommending at this time is to actually intervene in the case. The case is quite far along and that would involve not insignificant expense. There is sort of a third option, which is potentially to write a letter to the organization that Charlie works with, New Mexico Environmental Law Center, and ask them as a party to file a motion with the judge to allow for the filing of an amicus brief so that potentially the Board would file an amicus, friend of the court – here's what we think about all these issues, and so NMELC may or may not do that, but as a party they could petition the judge for that permission.

So those are a couple of the general ideas. I would suggest that if the Board wants to pursue anything beyond sending a letter to the governor that we might schedule a short executive session at a future meeting, because it is relating to pending and threatened litigation, but it would be good to get some guidance from the Board on how much further you want to go down this inquiry.

CHAIR HAMILTON: Okay. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Mr. Harwood. I support sending a letter to the governor. I have sent a letter myself as District 2 Commissioner requesting that she take a look at this. I have also shared with her the minutes from our meeting, although they were draft form, so I was also trying to make her aware of those cases – of the case. So I think a letter would be really appropriate.

As to intervene or an amicus brief is a much bigger lift and I think that if we were going to go down that road we'd definitely need an executive session because this is involving a lawsuit and legal matter and what jeopardy does it put the Board in, etc. So I would support that, and I really appreciate Charlie's sobering description of what has happened with the 2016 Consent Order and it's relationship to the 2005. It is definitely – we definitely lost the farm. So that's my position at the moment, so a letter is good.

CHAIR HAMILTON: Thank you. Member Fort.

MEMBER FORT: Thank you, Madam Chair. I think we would distinguish between the amicus brief and intervention and the amicus brief is presumably a great deal less expensive and work for the Board to do. And I guess I don't know whether or not that would require executive session. But we can discuss that.

CHAIR HAMILTON: Councilor Ives.

COUNCILOR IVES: I guess what I would like to see before pursuing any of these options is a real clear understanding of how specifically the changes made between the 2005 and 2016 Consent Orders impact the issues that we deal with here on this Board, relating to the treatment of water, all those things, because I'm --

COMMISSIONER HANSEN: Councilor Ives, Madam Chair.

COUNCILOR IVES: Let me finish please. We've heard that the presence of radionuclides, for instance, in the river, and certainly experienced at Buckman is well below any and all standards that at least I have heard exist out there and

I have no clarity as to how the changes between the Consent Orders affect that in any way that this Board should be spending significant time and money with is likely by any type of involvement in the matter. So thank you, Madam Chair.

CHAIR HAMILTON: Councilor Vigil Coppler.

COUNCILOR VIGIL COPPLER: Thank you, Madam Chair. I just want to express that I agree with Commissioner Hansen on her statements to be in touch with the governor, send the letter and just sort of be more pro-active on this.

CHAIR HAMILTON: Commissioner.

COMMISSIONER HANSEN: Thank you. Councilor Ives, I'm sorry you missed the meeting last month. We had quite an extensive discussion with Charlie de Saillan about the issues that happened with the 2005 and 2016. So I think that it is significant that we stay involved, and it definitely affects our water quality, because cleanup has deteriorated and it's not happening at the rate that it was under the 2005 Consent Order.

MR. HARWOOD: If I could add an additional comment, if this is helpful is we've requested from the new staff at NMED a summary of how quickly the cleanup was occurring between 05 and 16 and how quickly the cleanup has happened between 16 and 19. Their initial response was that they did not have that material prepared already but I think a written request follow-up that they prepare that will hopefully generate a response, and so we can all see how the rate of the cleanup has changed over time.

The other sort of related item is that LANL itself has started a series of community meetings – you're probably aware of this. And then NMED has started a series of meetings including one earlier this week on moving, for example, the DOE Oversight Bureau. That was announced some time ago, they were going to move it off the hill and bring it to Santa Fe. There was, I think it fair to say, an outcry. The cabinet secretary is apparently revisiting that decision and looking for space in Los Alamos to maintain the Oversight Bureau up there. So they've started a series of meetings and they have indicated, this is the Environment Department, that they are going to hold a specific public meeting on the 2016 Consent Order and how it changed from 2005.

So I think the request that I made for that summary of cleanup progress is a natural question that they need to prepare for for their public meeting. So there's a lot of moving parts like that. And obviously the ongoing concern is all the legacy waste in LA Pueblo Canyon moves with stormwater into the river and we have the ability to turn off diversions through the early notification system. So there's all those relationships that we know of but as Charlie pointed out, the 2005 Order on Consent anticipated cleanup by 2015. It may not have happened by that date but it was on track for a date near then and of course those dates don't even exist anymore.

COUNCILOR IVES: And if I may, just on that point, I've certainly read Nuclear Watch's materials on the differences between the earlier Consent Order and the current Consent Order. I'm certainly aware of the various arguments that they have made and I suspect are the ones specifically made in the litigation that is referenced. And I understand that there is a great deal of cleanup occurring at Los Alamos which doesn't necessarily – I mean it affects perhaps in a broad sense in terms of future security the citizens of Santa Fe County and the City of Santa Fe, our charge is the Buckman Direct Diversion.

So I'm asking for information on the specific nexus to what we do on this Board,

not the generalized issues that people have trying to accomplish all of Los Alamos' cleanup. Thank you, Madam Chair.

MR. HARWOOD: Yes, sir.

CHAIR HAMILTON: Member Fort.

MEMBER FORT: Madam Chair, if I may. First, just to be clear, I do support the actions of the letter to the governor. We don't have a formal motion before us, I gather, but that would – I think it would be a very useful thing because the Environment Department will now presumably be allied with others who are seeking a quicker cleanup. I wonder if it would be useful to talk about the Notice of Intent with respect to stormwater because we sort of also had the materials and that would directly address Councilor Ives' questions or at least the allegation that's being made by Amigos Bravos in this is that a NPDES permit is required because of the effect on the intermittent streams and then the Rio Grande.

With respect to our role, we want to have the cleanest source water possible because that's what municipal water entities want to do. So we want to have the water as clean as possible, knowing that we treat it and are able to remove contaminants but we still want to have clean source water, in my opinion.

MR. HARWOOD. So I'll --

CHAIR HAMILTON: Go ahead if you have a response to that, because that was what I wanted to bring up, the Amigos Bravos Notice of Intent and to see what the relationship from that to this is. And it is different.

MR. HARWOOD: So on June 26th the Western Environmental Law Center, on behalf of Amigos Bravos filed a Notice of Intent to sue for failure to perform mandatory duties under the Clean Water Act. This dates back to a 2014 petition that they filed with then Ron Curry at EPA. No action was taken and so they've now filed this Notice of Intent to sue. In their background facts they mention that Pueblo Canyon, which is of course part of the LA Pueblo Canyon, which is one of our drainages of concern, draining the plateau into the Rio Grande upstream of BDD is impaired for gross alpha, PCBs, aluminum, copper, temperature and mercury. They further present in their NoI that urban-related impervious surfaces are adding to the power of the stormwater action that's mobilizing the legacy contaminants that are in the sediment train coming down the canyon and they reference specifically 2012 and 2013 studies that the lab prepared on these contaminants of concern.

And so this is a recent development in terms of the formal step to provide the Notice of Intent to sue, which is a precursor to the actual filing of the case.

CHAIR HAMILTON: Was there in fact – when they did their original petition in 2014, was there in fact no action on the petition? I thought NMED agreed that a stormwater permit would be needed, but then didn't act on requiring the permit. Or did I misunderstand that? Yes, thank you.

JONI ARENDS: Good afternoon, members of the Board. My name is Joni Arends. I'm with Concerned Citizens for Nuclear Safety. CCNS is also a part of the Communities for Clean Water that has been addressing stormwater issues at the lab since the 2004 timeframe. So CCW sued EPA to get the individual stormwater permit. Amigos Bravos in 2014 filed a petition for an MS4 permit for Los Alamos County due to the amount of industrial/municipal contaminants that were coming off the hill, such as where the new Smith's is on Trinity Drive, that has the highest levels of PCBs coming off into

LA Canyon. That's where those very high measurements are coming from. I don't have the number off the top of my head.

MR. HARWOOD: Thank you, Joni. So there are a number of other pending matters that Joni and I have briefly talked about that are interrelated but are not part of today's update. A number of other lawsuits and other matters.

CHAIR HAMILTON: It is different because it's not part of the Amigos Bravos NoI. Okay. Thank you.

MR. HARWOOD: Yes. So the individual stormwater permits are a different part of the regulatory structure than the MS4, which is Municipal Stormwater – and more S's. So they're different parts of the regulatory structure.

MEMBER FORT: Madam Chair, I'm sorry. So I think the Board might have before it the question with respect to at least these two pieces of pending – one piece of litigation, a another a Notice of Intent which may result in litigation, what role, if any, the Board would want to play in one or both of these. And it seems like everyone would need to have access to the materials with respect to the Notice of Intent.

CHAIR HAMILTON: So we still have to look for that.

MR. HARWOOD: Let me just point out that this is under an informational item so the thought would be is if you direct us to bring something back at a future meeting that would be sort of the nature of where we are, the noticed agenda.

CHAIR HAMILTON: Right. It seems to me what I'm hearing is that there's enough interest to get information and there seems to be some pretty broad support for doing a letter, but I suspect that if there were a lot of questions of the potential – not intervening necessarily but the third option of doing a letter to the law center to see about doing an amicus brief. So maybe we can put that as an item for executive session at the next meeting. Is that – you had suggested that and that seems like – even if we want to move forward with doing a letter we would need to discuss it further and if it's with respect to pending litigation it would have to be in executive session?

MR. HARWOOD: I may defer to Nancy on this as the primary guide through executive sessions but it seems like if we're going to talk legal strategy it would be appropriate to do it in executive session.

MS. LONG: Yes, I would agree with that.

CHAIR HAMILTON: So is the suggestion for putting it on maybe the next session, that would be good? I mean the next meeting?

MS. LONG: If the Board would like to discuss any strategy or an analysis of how and whether to become involved then it would make sense to place it on the executive session.

CHAIR HAMILTON: Does that satisfy everybody? Commissioner Hansen.

COMMISSIONER HANSEN: Yes. I agree with that, and I wanted to bring another issue up of another NPDES permit. The Buckman Direct Diversion has a permit and then there's another NPDES permit with LANL. So there's two separate ones. I'm talking about a different thing. But what I want to bring up is I think that with the one for BDD, we happen to remove some sand and one of the things that I know from my many years of studying nuclear issues is that plutonium seems to stick to solids and sand and so I'm wondering if we need to do a little bit of research with that permit and make sure that the sediment is in good shape before it's returned to the river and that there's not

plutonium in the sand.

MR. HARWOOD: Okay. I think, yes, the project has a NPDES permit for the return of sediment near the river, and if you're asking about how that permit would interface with the LANL NPDES permits – is that –

COMMISSIONER HANSEN: I don't know if they do. But I just am concerned with the other permit. Maybe we could comment on the fallout of the 051 and for the rad liquid waste facility that's draining into – I believe it drains into TA-55, into the waste facility, and then is discharged into Mortandad Canyon, and then – I don't know if that affects us but as everyone has stated here, the cleaner our source water is the better off we all are.

CHAIR HAMILTON: So I think we need some clarity. Those are LANL discharges.

COMMISSIONER HANSEN: One of them is LANL discharges; one of them is our NPDES permit.

CHAIR HAMILTON: But the last two things you mentioned about the rad waste is a LANL discharge.

COMMISSIONER HANSEN: Yes.

CHAIR HAMILTON: There are two separate issues here.

MR. HARWOOD: I just want to clarify, we have generally not, here at the Board, building on Councilor Ives' earlier comment, we have generally not gotten very engaged in issues that are in drainages draining the lab that discharge downstream of the BDD because that's obviously downstream of the BDD intake. So I will take a look at all the things you've referenced, Commissioner, and be able to sort them, I think, using that screen. If that's still the desire of the Board.

COMMISSIONER HANSEN: I agree with that.

MR. HARWOOD: Okay. Very good.

CHAIR HAMILTON: And if there are concerns about the sand that's being removed, that's considered a – well, unlike the fisheries where it's a put and take, that's kind of a take and put. Right? We're not concentrating like we might be if we're processing water over a long period of time and even if there are very low-level contaminants there might be something accumulating in the GAC. The sediment that's withdrawn is what it is in the river and it's put back to the river. Maybe we could get, if there ever has been testing of that, maybe we could get an informational report at a next meeting from Daniela at some point. I don't know if that information is readily available, if it takes some time to get it. I'm not even sure if the sediments have ever been analyzed before. But if there is any data and maybe that would inform us about whether there needs to be any testing of that so that we know what we're taking and putting as part of maybe the TREAT study or whatever.

MEMBER FORT: Madam Chair, I would comment that I came at this issue sort of from the opposite side in the beginning of the Board. I was concerned from a carbon footprint that we were taking a lot of sand and putting it in trucks and driving it up to the dump, which seemed to me a very expensive way of dealing with something that a former Board member said we could just use for plastering adobe. So we looked at the question. Kyle had looked at it some, looked at what Albuquerque was doing with its sediment but it seemed to me we did have – and I'm sure Daniela is going to say something about this – we didn't have reason to be concerned about the potential

contamination of the sand, and it's a very expensive thing to be trucking around.

CHAIR HAMILTON: Councilor Ives.

COUNCILOR IVES: Kyle, when you were summarizing what we were interested in having you do you used two adjectives, which was – and I can't remember, but the one that was not included in what you state was the why. And I certainly agree with my colleagues here that clean water is ultimately what we are – clean water is what we understand ourselves to have to deliver. That said, in terms of pollutants in the water, we have talked in the past about various types of drugs that are put by people into the river and a host of other things that constitute pollutants at some level. And for the sake of this discussion let's call them pollutants.

Again, rather than following a pathway on a particular issue that may or may not be at this point in time something other than an existential threat, I'd love to understand in terms of expenditure of dollars by this entity, where are those dollars best spent to accomplish that purpose, being able to deliver safe, clean drinking water. Because I don't want to – some folks say "nuclear" and all of a sudden the world is covered with that term, but when it comes to drinking water we know that there are other constituents of concern and we've talked about trying to establish TMDLs in regards to this section of the river, with regards to figuring that out in a better way.

So again, part of my why is understanding not only – I mean this specifically relates to changes made between the 2005 Consent Order and the 2016 Consent Order relating to LANL which is in my mind, only one piece. And my understanding of the threat level is that it's a very small piece of the picture of what affects the quality of our drinking water. And so when I ask for the why, if we're going to really open this up and try and take an aggressive stance on this I think we really need to know what we're dealing with, because certainly if it is a significant threat, I'm all for writing a letter to the governor and might even consider the other options. But I just don't understand that to be the case at this point in time, based upon any of our other prior testing or conversations. So thank you, Madam Chair.

CHAIR HAMILTON: Mr. Harwood.

MR. HARWOOD: I think it's important to emphasize what you mention there is we know the BDD produces safe drinking water and we always start there and end there. This is about protecting the source water, which is perhaps a great opportunity to just mention briefly that you all have asked me to bring back a public participation plan for the source water protection plan, which will do a lot of the risk analysis, and we'll look further upstream than the 2017 version that didn't look very far. And so I've gotten materials from Albuquerque and there's a woman there, Diane Agnew, who ran that whole program for the Utility Authority and she – I've engaged with her to make suggestions for this Board so we can not reinvent the wheel, asking her how many meetings? How advertised? What was the staff level of effort? How did they did they budget for it? So I think that work effort, when it comes back to the Board as an informational item. So I'm going to have sort of a two-page memo sitting on top of their materials, so you'll be able to see what they did, and that will help a lot in terms of doing the risk profiling that you're talking about, Councilor.

COUNCILOR IVES: Thank you.

CHAIR HAMILTON: So is everybody clear. Mr. Harwood, do you have more on this or was that the end of your presentation? Because we've offered some

direction on information for a subsequent executive session.

MR. HARWOOD: I have a lot of homework. Yes.

CHAIR HAMILTON: We can get you a list of homework. Is that it? Thank you. Well, we covered that quite a bit.

9. Report from BDD Facilities Manager

MR. CARPENTER: Madam Chair, I have a few updates regarding vacancies at the BDD. First of all, I'd like to build on your comments, Madam Chair, regarding Mr. Randy Sugrue. He has been in an acting role as the Operations Superintendent and has been doing a really good job for us. He did a very good job in his interview. I was really pleased to offer him the job with the City Manager signing off and I just wanted to say congratulations on a job well done.

A couple more updates. There's been some interest in the degree to which we're expanding our search to fill the vacant Facility Manager position. I asked Mackie to provide me with a list of wherever we have placed those advertisements and I'll just run down the list. It's pretty extensive. First of all we've listed with a job search internet source called Indeed. You may be familiar with that. That's a monthly cost of \$600. Also, the National Association of Clean Water Agencies, that's a monthly cost of \$300. American Water Works Association, \$449 and that includes job flash, social media and an email to 6,400 water industry professional that describes the job. Texas Municipal League, monthly cost of \$150. New Mexico Municipal League, which is free, and lastly, all positions are posted on the website – BDD website, City website, Facebook, Twitter, emails, and the New Mexico Water and Wastewater Association. So it's pretty extensive.

If there are any other suggestions we would be happy to entertain them.

CHAIR HAMILTON: Are you going to get to the next likely question? I bet you know what the question is, about what the response has been so far.

MR. CARPENTER: We've had a few applications come in, as I reported in the past. To date, nobody's been qualified to even get an interview. We're hopeful. We have submitted a proposed change to the job description. Then we're going to re-advertise that this next iteration. It's a slight change to the qualifications of the job. It's intention is not to diminish in any way the qualities of the applicant that would come in but to maybe cast a wider net, so that we can start interviewing some people. So that's in the works as well.

Also, the fiscal administrator position closed last Friday. I have a list of eligibles that I just picked up from Human Resources so we'll be conducting those interviews very soon. I'm sorry. Is there a question?

COMMISSIONER HANSEN: Have you raised the salary?

MR. CARPENTER: No. No. While we've talked about it a lot it's a complicated subject within the City's bureaucratic infrastructure. And I'd be happy to talk with you about that off line. There are challenges to doing that.

MEMBER FORT: Madam Chair, I guess I'd like to ask for some Board discussion on this point. Mr. Carpenter is a noble man who's going to want a vacation soon and that's not going to be possible until we find a person for the position. So could we hear some more discussion from the Board about what our role, if there is any positive role that could be played by the City?

CHAIR HAMILTON: Well, certainly we've had this discussion a few times and we've had some off line discussions, the bottom line of which is to the extent that things are market-driven, you have to give the time, which maybe we already have, but the first thing when we had this discussion last month then the response Mr. Carpenter acted on was to cast a much wider net and they've invested substantially, obviously, in advertising more broadly. Then we have to wait for that advertisement to work. If in the next 30 days, by next meeting, if there's no qualified responses I think it's perfectly valid at that point to say, the way the market drives these things is if you have a position and nobody qualified is applying because they all – everybody qualified already holds jobs that pay more than this one. The market response is to offer more money. And then we will have to have some executive session discussion or whatever is appropriate, a public discussion about now to address the complicated issues. Whether they're complicated or not we clearly would have to address them, I would think.

MR. CARPENTER: I would agree.

CHAIR HAMILTON: Excellent. So I think that's where we left it, but we still have to give it a little bit of time, but we do have a limit. That's not another year.

MEMBER FORT: Madam Chair, thank you. I guess in some sectors an executive search firm is used. That's what we use. I shouldn't say executive but a search firm is used in some instances and I don't whether that's appropriate or not. I'm actually looking at someone who works –

CHAIR HAMILTON: Councilor Vigil Coppler.

COUNCILOR VIGIL COPPLER: Thank you. Thank you, Madam Chair. I believe there was an email somewhere along the way where I reported that I did meet with the City Manager and HR and Shannon Jones and this was some – at least two months ago. Commissioner Hansen was great enough to share with me a bunch of historical documents where we have had on BDD some real problems, I think, and history, about what levels of pay we have going on in BDD. So I met with them and frankly I didn't get a – I had discussions. I presented the materials. I pointed out where I believe that the compensation plan was going the wrong direction and pointed out some history about where former HR Directors supported that BDD should be compensated in a higher level because they're different.

There was no agreement from Shannon Jones on that and I did share – the City Manager asked me to make copies of everything I had there and I did, and of course I never heard back. So one of the suggestions I made was I think in an email somewhere I think to this Board, was to ask the City Manager to come and present and hear the issues that this Board has with regard to pay. Because I don't think there's a level of understanding that needs to be there.

And as I discussed with him, the compensation plan isn't the driving force. It's the reality of how our employees live and work in our city every day. And if we have complications on issues then the City is the driver and should be the driver to incorporate those changes into a compensation plan which is a living, breathing document every day employees come to work. It's not set in stone. Things do happen. Things do change. Such as the discussion we just had now. And I don't find that there's a lot of experience in that. And so that's why I think it's important to have the City Manager hear the issues that we have, because it's a different perspective from this Board than someone internally going into his office and trying to convince him. I did my best and I won't stop but I'm not

really – I’m only one person and albeit an alternate to this Board, so there’s only so much I can carry forward.

But I do think it’s important for that group to get first-hand information on the issues that I have hear this Board discussion on more than one occasion.

CHAIR HAMILTON: Okay. That actually might not be a bad approach. Let me ask you, Mr. Carpenter. How much time do you think would be reasonable to leave that cast net out there fishing before we want to have another discussion about what the limiting issues are. Salary might be one of them. Is 30 days enough?

MR. CARPENTER: Madam Chair, I think that a minimum of 30 days. I would probably be happier with more like 45. We could report back to the Board at the next Board meeting about the progress that we’ve made, but in my experience for complicated, mission-critical positions like this, this is probably the most that I’ve ever tried to fill in my career, 45 days would be my recommendation.

CHAIR HAMILTON: Okay. So what I’m also being sensitive – so that would mean logistically that we would get a report back in the August meeting and more than likely, even though that 45 days will not have been up, we’ll plan for the September meeting to have an executive session to discuss the issues, maybe, and also to get the City Manager to come in and talk with us. I’m not sure if we’d be asking him to explain his position or whether we’re asking him to come in and listen to our position. So Nancy, first of all, I’m going to ask you what the appropriate situation would be. But I also want to say that the concern that’s clear from the Board is that we’ve had I think we’ve had an acting facility manager for a year now. So it’s a very long time.

Rick, you’re doing a great job. That’s not the issue. The issue is to have a person who’s in the job and committed to the job in a very complicated facility under circumstances that are pretty dynamic. We clearly are motivated to fill that position. So the idea of being several more months out before we make additional changes that might help us fill that position is a little concerning.

MS. LONG: Madam Chair and members of the Board, in terms of an executive session, that would only be appropriate if you are discussing a specific employee and not general policy and wage issues.

CHAIR HAMILTON: So then it would be appropriate to have that in public session.

MS. LONG: Yes. I would. And if you wanted to ask the City Manager to make a presentation you could also let the City Manager what you want to know in advance what you want to hear and what the problems have been so that of course he could come prepared.

CHAIR HAMILTON: So maybe we need some feedback. Is it too soon to put the City Manager on the schedule for August? Just to keep things rolling, even though we will still have the position open?

MS. LONG: Madam Chair, members of the Board, we can make that request.

CHAIR HAMILTON: Rick do you think that’s – do you have a problem with that?

MR. CARPENTER: I think that’s appropriate, and as the acting facility manager I’m happy to make that request. I would also make it of Shannon Jones, the Public Utilities Director, one or both of them.

CHAIR HAMILTON: Yes.

MR. CARPENTER: Just one more thing too. I intend to make the request of our Human Resources Department, which they granted before, would be to advertise this position indefinitely.

CHAIR HAMILTON: Open until filled?

MR. CARPENTER: Open until filled. Any day somebody could walk in the door that's qualified and we would interview that person. So I'll make that request as well.

CHAIR HAMILTON: Excellent. Thank you very much. I appreciate you guys being so responsive to this.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: I want to say thank you, and thank you Councilor Vigil Coppler for your comments.

CHAIR HAMILTON: Great. So, Rick, are there other things on your report?

MR. CARPENTER: Sorry, there's one more update. A piece of good news. We interviewed, as I mentioned we intended to at the last Board meeting for the Maintenance Supervisor. We did interview several very good candidates. I extended an offer and it was accepted to a person that I know has done the job very well in the past, since retired and now is offering to come back. That paperwork is on the City Manager's desk to be approved, so that should be in place very, very soon. So that's another mission-critical position that we will have filled.

CHAIR HAMILTON: Great. That's good to hear. Thank you. So are there any other questions from the Board?

MEMBER FORT: Madam Chair.

CHAIR HAMILTON: Member Fort.

MEMBER FORT: I had asked a couple of questions. I know we all have to get to a parade so I won't ask a lot about them at this time. I was actually looking at the letters we had written. We agreed – with respect to the LANL cleanup – we had agreed that we would seek – at least provide those letters to media outlets and so on, if they haven't gone out yet or if they were just dated then they have not yet been put out, but I would like to hear that they will be provided to the media as we had discussed.

MR. CARPENTER: Is that a question for me?

MEMBER FORT: I think it is, as long as you're the manager. It could also be something Mr. Harwood –

MR. CARPENTER: Given the sensitive nature of the letters and that they do involve potential litigation I'd love to run it by legal counsel first and if I get the green light on that I'd be happy to.

MEMBER FORT: Actually, to be clear, Mr. Carpenter, I'm talking about the ones that we had written, the general ones to the delegation in support cleanup.

MR. CARPENTER: Oh, that shouldn't be a problem. That should not be a problem. I'm sorry. I misunderstood your question.

MEMBER FORT: And then as we talked at that meeting, the notion would be to show the public that we are involved as well and paying attention to the Rio Grande. And in the course of looking at that I looked at our webpage, the BDD webpage,

which does not have much recent material on it in the last couple of years in a number of areas, including this area, and I wondered – I didn't look at that. I guess I would like to have a presentation and hear – well, I'd like to see the webpage be up to date to include current information about what the Board's done in any number of areas and current information about water quality and so on. I'm finding that most of the things are several years old, including this particular topic. Is there an intention to keep the webpage current?

MR. CARPENTER: There's every intention to keep it current with relevant information. If you would like to have a discussion with me off line on things that you know of that you would like to see on the webpage we'll certainly take that into consideration and do our best to keep it up to date.

MEMBER FORT: Thank you. In many areas the last thing is three or four years old.

COMMISSIONER HANSEN: Just I support sharing our letters with the press and I would like to see them sent out.

CHAIR HAMILTON: I think we actually did have agreement to do that, but they just weren't finalized. Bernardine, if you want to –

BERNARDINE PADILLA (BDD Staff): I just wanted to respond briefly about this. Since I didn't receive the letters that you're talking about I wasn't able to post them, and as Kyle just mentioned tonight, he just sent them about an hour ago, which I was in traffic coming over here. So I will post them on the website, like I had agreed to at the last meeting. Once I get them – and I was waiting for that final version, which he was waiting for signatures and that final draft. I am more than happy to post them on the website, so that's what we're waiting on for that.

As far as other information about the BDD website being current –

MEMBER FORT: May I just on that point, Madam Chair, though, and also a news release with respect to those letters is what we had talked about. Some sort –

MS. PADILLA: So we did talk about that. I spoke to my supervisor, Rick Carpenter about that, and I spoke separately to Kyle Harwood about that. Since it's not – and I'd be more than happy to speak to you all about marketing, advertising and communications. It's not typically something that you send a press release on, on a letter. I can probably put it out; whether or not the media picks it up, that's a different story. People may pick it up, the reporters may pick it up. Most likely they won't. I could send it out. Today I sent out a press release on Randy and his position. I didn't get any bites back. It's a very difficult situation. Everybody – most cities are sending out letters regarding that same topic and the whole United States is involved in that. So the media most likely won't pick up that story.

CHAIR HAMILTON: That's not – I don't think that's necessarily the issue. I think there's every possibility to do a press release. Clearly, there has to be agreement with the legal counsel and Mr. Carpenter that that's appropriate, but we had that discussion at the last meeting. So I think putting a short press release – if there's assistance needed from Mr. Harwood I'm sure he'd be more than happy. You have no control over whether it's picked up. I understand that.

MS. PADILLA: Exactly.

CHAIR HAMILTON: But putting it out has already been discussed so I think it would be a good thing to do.

MS. PADILLA: So now that we have the final version we can move forward. So I'm more than happy to –

CHAIR HAMILTON: We actually acknowledged there's no way you could send it out until you had the final version.

MS. PADILLA: yes.

CHAIR HAMILTON: But we wanted clarity that it was going to be done and it would be done with a press release. So very much appreciate it.

MS. PADILLA: Yes. And we'll discuss that more, but I would put a brief out on that as well and see what happens.

CHAIR HAMILTON: That's what's needed. Thanks very much.

MS. PADILLA: As far as the BDD website, I currently, just a month or so ago, maybe two weeks ago, I placed the CCR report that was sent to me by Alex Puglisi. That was put on there. I constantly am putting the BDD Board reports as well. I do want to comment that I've been given direction by my superiors to limit some of the information that we have and that I can be putting on the website due to our situation with litigation. So what I have in front of you, what you all have in front of you is what I have for Facebook and Twitter [*Exhibit 3*]. I put my daily, weekly, monthly informational items on there. That is human interest type information. As far as the BDD website, I like to put archival, informational, concrete information on the website and as I said, I've been directed to be a little more low key on the website. If there's something in particular that you would want besides these letters that we've talked about for the last few months, I'd be more than happy to talk to you about other things. As far as what's discussed at the Board meeting, they're on the minutes and the minutes are posted on the website too as well. So I'd be more than happy to meet with anybody separately as well.

CHAIR HAMILTON: That's great. That's appreciated. I'm sure there are some specifics that Rick already worked out to get from Member Fort and anybody else, so there are a few things that need updating I think we can communicate that.

MS. PADILLA: Yes. I keep an archive and I keep the history there, so yes.

CHAIR HAMILTON: That's great.

COMMISSIONER HANSEN: Madam Chair, and also the time of the meeting. Maybe that can be changed.

MS. PADILLA: You know, I have to work with Stephanie on that. If she changed it and she didn't communicate it with me and I need to work with them on what has been changed. Definitely.

COMMISSIONER HANSEN: Okay. Because Councilor Ives thought it was 4:15.

MS. PADILLA: I did too. I thought it was 4:15.

COMMISSIONER HANSEN: We changed it a number of months ago.

CHAIR HAMILTON: And that's just a communication issue. None of this has to do with concerns that things aren't being done well. As things are noticed the information is being brought forward so it can be shared. I don't think that there is any other level of concern that it's a problem; just that things were noticed and were being brought forward. So I think we can move on.

MEMBER FORT: I'm sorry, Madam Chair. This is not for this area. May I – just one other item for the acting director. At our last meeting we did talk about a

solarization proposal from PNM and we have not had a follow-up report about what happened with the solarization proposal but I gather that we have turned it down. I would just point out we spend about a million dollars a year in electricity so I hope that we are moving forward with solarization, perhaps using direct funding and using our land and BLM land. But just in terms of the report from the director, we had not talked about a follow-up on that.

MR. CARPENTER: Thank you for reminding me of that. Yes. And if you didn't get the email with the memo, I apologize. It sounds like maybe you didn't. We did send a memo out to each of the Board members with our analysis of the PNM proposal. We chose to do an email for a couple of reasons. First of all, we were under very tight time constraints that PNM had imposed a deadline. We wanted to get the Board informed as soon as possible.

Our recommendation is that we not go forward with that proposal so no need for a special Board meeting or anything like that. Since you did not get that memo I will see that you do get that. Sorry that you didn't.

With regard to solar in general, we already have two solar arrays. We're very proud of them. They are beneficial to the project and if there are any solar proposals that come forward or any that we can think of – I have a couple in mind – we will definitely entertain those to see what the efficacy would be for the project.

MEMBER FORT: Thank you, Madam Chair and Mr. Carpenter. With respect to solarization, this is actually a topic we pursued with various – Nick and others who have been in the position. I think the City, possibly Virginia Wheeler has some ideas about how we might finance it. So it may not be the case that someone's coming to us with a proposal but rather that we develop the proposal. I'm glad you want to do it. As you know, water's heavy and a million dollars a year in electricity means we are putting a lot of carbon in the air as we move that water uphill. So we've done a bunch on solar. We were leading within the city but there's a lot more to be done and I would just like to keep it on the agenda as something that we're working on.

MR. CARPENTER: I agree with you. I think it should be a priority, and yes, we have spent some time waiting for proposals to be brought to us but that doesn't mean we shouldn't be pro-active on our own. Like I said, I have a couple of ideas on my own that I think we could talk about at some point.

CHAIR HAMILTON: And just additionally, on the record, when we talked about in the last meeting the PNM proposal, one of the issues was the incredibly short timeframe, it wasn't enough to do it. But the other thing that was made note of was that BDD has done some already with solar and has options, has quite a few options that we are still pursuing and want to pursue. For example, the County, who did go ahead with working with PNM has very different options. So even with community solar. That was also one of the things – that doesn't actually become an issue necessarily for BDD. So I agree completely we should continue pursuing that. But that point was made when we talked about the PNM thing. So Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Rick, Madam Chair. So I think that – I agree with Member Fort that we should be a little more pro-active in working towards getting more solar on out in the field. We have lots of land out there and so we have the ability to do that and I note that the City got close to a million dollars from the state legislature for solar. We got a half million to do our buildings and so possibly we

should look at that as a way also forward. If we have a proposal, if we have a shovel-ready project, the legislature was more than willing to fund that so maybe they would be willing to fund solar for us. So I think that's something that we should think about how we can move forward with that, sooner rather than later.

MR. CARPENTER: Understood.

CHAIR HAMILTON: Excellent. Thank you.

MEMBER FORT: In your spare time.

CHAIR HAMILTON: Only if we get other things done.

DISCUSSION AND ACTION

11. Request formal adoption of the fiscal year 2020 annual operating budget in the amount of \$9,696,409 plus \$626,706 in contributions to the major repair and replacement fund

MS. ROMERO: Madam Chair, members of the Board, on March 7th the BDD Board approved the proposed annual operating budget and other fund contributions and recommended that the budget be considered and approved by our partners' governing bodies. On May 8th the City of Santa Fe Water Division annual budget was approved by Santa Fe City Council. On June 25th the Santa Fe County Public Utilities Department annual budget was approved by the Santa Fe County Board of Commissioners. Both of these approved budgets included the funding that was requested by BDD, therefore staff recommends formal adoption of the fiscal year 2020 annual operating budget for \$9,696,409, plus the annual contribution to the major repair and replacement fund of \$626,706. There were no changes to the budget from the original proposal. Are there any questions?

CHAIR HAMILTON: Thank you very much. Are there any questions from the Board? Councilor Ives.

COUNCILOR IVES: Thank you, Madam Chair. You've heard the possibility of us intervening in certain litigation with Los Alamos National Laboratories, or filing an amicus brief. Are there contingencies in this budget that would fund that type of activity if we pursued it?

MS. ROMERO: Madam Chair, Councilor Ives, there are not any specific contingencies. Our budget is pretty specific. Staff does a really good job of trying to detail the needs that are needed for the year. Yes, we would have to look at that closer if that started to move forward.

COUNCILOR IVES: Thank you. Move to approve.

CHAIR HAMILTON: Thank you.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: Thank you. I have a motion and a second. If there's no further discussion.

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

MATTERS FROM THE PUBLIC

CHAIR HAMILTON: Is there anybody here from the public who would

like to address the Board? Joni, if you could come forward.

MS. ARENDS: Good afternoon. Joni Arends again. Every five years the NPDES permit for the lab, the industrial outfalls permit, is released for public comment. The application was submitted in March. EPA says that they're going to issue a draft permit prior to the expiration date which is September 30, 2019 and I would like to encourage the Board to participate in providing public comment about this very important permit that releases tens of thousands of gallons every day into the canyon bottoms that provide a source. It might be an opportunity to address source water for the BDD, especially for the canyons of TA-3 which discharge into LA Canyon and into Sandia Canyon. There may be a way to encourage reduction in the amount of discharge that would be pushing – possibly pushing, we don't know, possibly pushing the chromium plume towards the Buckman in this very complex groundwater system

And I say that because earlier reports from the mid-2000s said that the drawdown of the Buckman wells would draw contamination from the lab. So while Councilor Ives is asking for a nexus, I think it's really important to know that it's a very fluid situation. No pun intended, but that the – we don't know. We don't know, and when you have three times the amount of waste that's destined for WIPP buried in unlined pits, trenches and shafts on the Pajarito Plateau, we don't know what's moving towards the river, what's moving towards Cochiti Dam, and what may be moving actually north through some transport mechanisms as well.

So it's very complex. It's also that the Department of Energy is not a good steward, and they just got caught today. There's media reports that they shipped waste, low-level waste from Tennessee to the Nevada test site, which they were not supposed to send and it's been going on for three or four years. There's now a call for the resignation of Rick Perry as Secretary of Energy.

And I just want to add one more fact that all of the DOE sites located on rivers have been contaminated and we shouldn't assume that our river isn't going to be contaminated. So I appreciate all the language today about protecting the source water. I would request that there would be an opportunity to meet with Kyle and others about preparing comments on this application for the NPDES permit for the industrial outfalls.

CHAIR HAMILTON: Thank you. Nancy.

MS. LONG: Madam Chair and members of the Board, I would just say this was not an action item for the Board so I would be concerned about any assignments coming out from the Board that would generate extra work and fees.

CHAIR HAMILTON: Right. Appreciate it. This was just public comment. Is there anybody else here from the public who wishes to address the Board? Seeing none, I'm going to close public comment.

MATTERS FROM THE BOARD

CHAIR HAMILTON: I think there were a lot of things discussed under the Facility Manager Report, but does the Board have any other matters? Yes.

COUNCILOR IVES: Only the continued request to get information being distributed to the Board members well in advance of the meeting as opposed to two hours before. Thank you.

CHAIR HAMILTON: I don't have an item for Matters from Staff but

SEC CLERK RECORDED 11/28/2019

Bernardine is raising her hand.

MS. PADILLA: I just want to correct that I did send an email to all of you yesterday at about 11:00 am with the sharing of the Notice of Intent. So I just wanted to correct that because it was stated earlier that it was not sent out on behalf of Mr. Carpenter and I sent it on behalf of him. So I responded to your email, Member Fort.

CHAIR HAMILTON: I didn't get it.

MS. PADILLA: I have history of it and I can forward it to you. And I also had – all the documents were attached.

COMMISSIONER HANSEN: Maybe the document was too large and it bounced back.

MS. PADILLA: But it came to me. We got it. And you had, what? Four documents? So I will try to send that back to you. If I have to divide the documents into smaller pieces I will. It was at 11:18 am. I just wanted to make sure that you knew.

COUNCILOR IVES: On that point, I think the real effort should be to make sure it's timely in the sense that it gets into the packets.

MS. PADILLA: Two to three weeks before we need the information so that we can fit it in the packet, but if not, I did forward it and I wanted to let you all know that I did forward it.

CHAIR HAMILTON: I understand you sent it but I don't know if you got notices back about –

MS. PADILLA: No.

CHAIR HAMILTON: But I didn't get it. So just –

MEMBER FORT: We didn't get it.

MS. PADILLA: Okay. I'll resend. I'll resend. I'll forward it back to you all.

J. C. HELMS: I received what you sent and something about solar. I can confirm I did get it.

MS. PADILLA: Thank you.

CHAIR HAMILTON: I am not questioning that it was sent out, just that some people didn't get it, which is something we'll just have to figure out why. I offer my apologies. I did get it. Thank you.

MS. PADILLA: So I do get a bounce-back sometimes from the County, but it does tell me when it bounces back.

CHAIR HAMILTON: Right. That's what I would have thought.

MS. PADILLA: But I didn't get those this time. So I'm sorry if you didn't get it. I'm more than happy to resend. I just wanted to clarify that for the records and that you stated that you didn't get your response from Rick and it was from me, and I wanted to make sure that you knew that.

CHAIR HAMILTON: We're still on Matters from the Board and I have something from Matters from the Board. I want to state for the record, I'll state for the record and our minutes that the only matter discussed during the executive session of our last Board meeting on June 6, 2019 was the matter stated in the motion to go into executive session and no actions were taken.

NEXT REGULAR MEETING: Thursday, August 1, 2019 @ 4:00pm

EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978 Section 10-15-1(H)(7), discussion regarding threatened or pending litigation in which the BDDB is a participant, including without limitation: *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610

CHAIR HAMILTON: We have an executive session? Ms. Long, can you tell us –

MS. LONG: Yes, Madam Chair, we do have an executive session, so I would have you ask for a motion to adjourn and go into executive session in accordance with the New Mexico Open Meetings Act, NMSA 1978 10-15-1(H)(7) for discussion regarding pending litigation in which the BDD is a participant, to include the case as described on the agenda.

COUNCILOR IVES: So moved.

COUNCILOR VIGIL COPPLER: Second.

CHAIR HAMILTON: Thank you. I have a motion and a second. Can I have a roll call?

The motion to go into executive session passed by unanimous [5-0] roll call vote as follows:

Commissioner Hamilton	Aye
Councilor Ives	Aye
Commissioner Hansen	Aye
Board Member Fort	Aye
Councilor Vigil Coppler	Aye

ADJOURNMENT

Having completed the agenda, Chair Hamilton declared this meeting adjourned at approximately 5:23 p.m.

Approved by:


Anna Hamilton, Board Chair

SEC CLERK RECORDED 11/28/2019

Respectfully submitted:

Debbie Doyle
Debbie Doyle, Wordswork

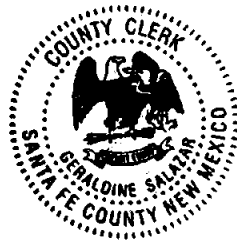


ATTEST TO:

Geraldine Salazar
GERALDINE SALAZAR
SANTA FE COUNTY CLERK

COUNTY OF SANTA FE) BUCKMAN DIRECT DIV MIN
STATE OF NEW MEXICO) ss PAGES: 31

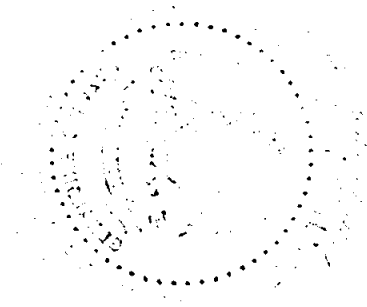
I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of November, 2019 at 03:32:12 PM
And Was Duly Recorded as Instrument # 1902400
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy *E. Stolle* County Clerk, Santa Fe, NM

Martinez

CLERK RECORDED 11/20/2019





AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, JULY 11, 2019

4:00 PM

CITY HALL

CITY COUNCIL CHAMBERS

200 LINCOLN

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE JUNE 6, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON JULY 9, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Randy Sugrue, BDD Operations Superintendent, rsugrue@santafenm.gov, 955-4501)
8. Presentation on pending litigation involving LANL by other parties. (Kyle Harwood, Legal Counsel, kyle@egolfaw.com, 986-9641) VERBAL
9. Report from the BDD Facilities Manager. (Rick Carpenter, Interim Water Division Director, rcarpenter@santafenm.gov, 955-4206) VERBAL

CONSENT AGENDA

- 10. Request for approval to trade-in two (2) vehicles to Power Ford for a total value of \$13,000. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

DISCUSSION AND ACTION

- 11. Request formal adoption of the fiscal year 2020 annual operating budget in the amount of \$9,696,409 plus \$626,706 in contributions to the major repair and replacement fund. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, August 1, 2019 at 4:00pm

ADJOURN

EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB is a participant, including, without limitation, *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-01610. (Nancy Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

END OF EXECUTIVE SESSION

PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE

RECEIVED AT THE CITY CLERK'S OFFICE
DATE: July 1, 2019
TIME: 4:41 PM

SEC CLERK RECORDED 11/26/2019



Buckman Direct Diversion



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

Memorandum

DATE: July 11, 2017

TO: Buckman Direct Diversion Board

FROM: Kyle Harwood, BDD Counsel

ITEM: Summary of litigation in the United States District Court, District of New Mexico Case No. 1:16-cv-00433-JCH-SCY, Nuclear Watch New Mexico vs. United States Department of Energy and Los Alamos National Security, LLC as defendants, and New Mexico Environment Department as intervenor.

1. Complaint - On May 12, 2016 Nuclear Watch New Mexico (hereinafter "NWNM") filed suit against the United States Department of Energy (hereinafter "DOE") and its contractor Los Alamos National Security, LLC (hereinafter "LANS") alleging violations of the Resource Conservation and Recovery Act (RCRA) stemming from the defendants' failure to comply with the 2005 Consent Order between DOE and the State of New Mexico Environment Department. NWNM sought injunctive relief, declaratory relief, and civil penalties for the defendants alleged violations of RCRA.
2. 2016 Compliance Order on Consent - Following the filing of the Complaint, DOE and the New Mexico Environment Department (hereinafter "NMED") entered into the June 2016 Compliance Order on Consent, which claims to resolve and settle any RCRA violations that were the subject of the 2005 Consent Order, as well as any violations of the 2005 Consent Order. Generally, the 2016 Compliance Order on Consent replaces the deadline driven approach of the 2005 Consent Order, with what is termed a "campaign" approach wherein the DOE will identify specific enforceable milestones for the upcoming fiscal year that are determined by the identification of broader unenforceable targets for cleanup.
3. Motions to Dismiss - Following the NWNM's Second Amended Complaint DOE, LANS and NMED all filed motions to dismiss. While these motions vary in the facts cited and legal arguments they generally sought the dismissal of the Complaint on the grounds that the District Court did not have jurisdiction over NWNM's claims because they were



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mooted by the 2016 Compliance Order on Consent, which settled all issues between NMED and DOE, and NMED's authority to settle those matters with DOE is a state law determination from which the federal court should abstain from ruling on. The court found that the 2016 Compliance Order on Consent did moot NWNM's claims for injunctive and declarative relief, because the 2016 Compliance Order on Consent "replaced" the 2005 Consent Order, and thus the violations of the 2005 Consent Order were not ongoing and could not be enjoined. However, the court did not dismiss NWNM's claims for civil penalties, stating that the question of penalties was not sufficiently briefed, and that the 2016 Compliance Order on Consent did not necessarily terminate those claims.

4. Motions for Summary Judgment - All parties to the litigation have filed motions for summary judgment, asking the court to rule that as a matter of law each is entitled to the relief it seeks. NWNM is seeking a ruling that as a matter of law DOE and LANS are liable for civil penalties for violations of the 2005 Consent Order, which are a violation of RCRA. DOE, LANS, and NMED all seek judgment that the 2016 Compliance Order on Consent terminates NWNM's claims for civil penalties, and that those claims are mooted by the 2016 Compliance Order on Consent as were the claims for injunctive and declarative relief. Because the claims for civil penalties are moot, the defendants argue, the court lacks jurisdiction to hear the case and must dismiss NWNM's remaining claims. In its response to these motions for summary judgment NWNM lays out the long history of DOE and LANS non-compliance with both the 2005 Consent Order and the investigations and determinations made by DOE and NMED under that Consent Order, and argues that the 2016 Compliance Order on Consent does nothing to insure that the findings of that Order will be addressed. These motions for summary judgment are currently pending before the court and will likely be dispositive as there is only one remaining issue, and for purposes of the competing motions, the parties have stipulated to largely the same facts.
5. Issue - As set forth by NWNM in their various pleadings in the case the issue presented is whether DOE and LANS can be held accountable for multiple violations of the 2005 Consent Order that, it claims, are not corrected or even addressed by the 2016 Compliance Order on Consent. The remaining claims relate exclusively to whether DOE and LANS will be liable for past violations of the 2005 Order on Consent.

SEC CLERK RECORDED 11/20/2019

@BDD_Water Tweets



City of Santa Fe Senior Staff and @MayorWebber toured BDD. It's great when we get to showcase BDD's advanced water treatment to our colleagues! BDD staff take great pride in our advanced drinking water treatment!

@DrinkTapDotOrg @TheValueofWater #4thSourceofWater #Redundancy



4:14 PM · 9 Jul 2019

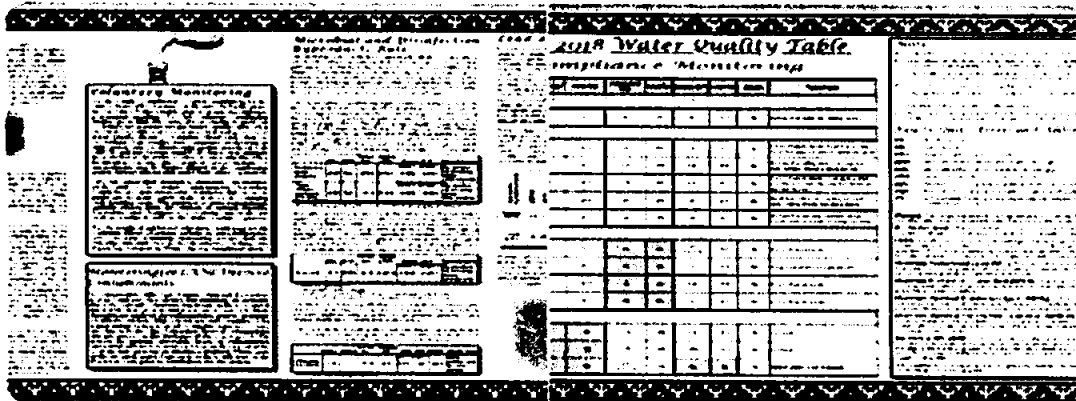
1 Like

Santa Fe Gov and Santa Fe PD



BDD Water Santa Fe @BDD_Water · Jul 3

The Santa Fe Water Quality Report is out and being mailed out to residents. Check your statements for the insert.



Santa Fe Gov



SEC CLERK RECORDED 11/20/2019



BDD Water Santa Fe @BDD_Water · Jun 8

BDD hosted the River Commission River Talks tours today. We had a great group of folks who toured BDD Plant, Diversion Intake, and learned about Advanced Water Treatment. Many great...



BDD Water Santa Fe @BDD_Water · Jun 7

Busy week ... 2 tours, 1 health fair, 1 RMWEA operator training, 1 BDD Board, lots of prep in between... BDD plant tour for City of SF Water T&D staff EJ, and Vince, Pipefitter III Angelo by BDD lead operator Matt Sandoval.



BDD Water Santa Fe @BDD_Water · Jun 7

BDD ready for the Santa Fe River Commission Water Talks Tour tomorrow...!

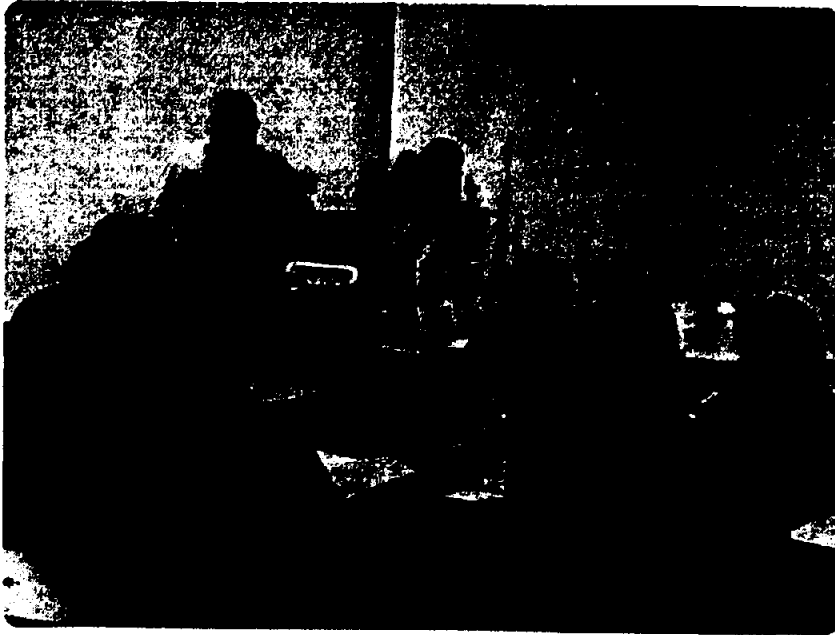


SEC CLERK RECORDED 11/26/2019



BDD Water Santa Fe @BDD_Water · Jun 7

On Thursday, Danny Carter BDD Lab Specialist and Josh Romero, a BDD Lead Operator taught a credit course on water hardness titration for the Rocky Mountain Water Environment Association, RMWEA, Professional Water Operator Seminar at the SF Community College.



Santa Fe County, Santa Fe Gov and RMWEA

👍 1 ❤️ 2



BDD Water Santa Fe @BDD_Water · Jun 7

Busy week ... 2 tours, 1 health fair, 1 RMWEA operator training, 1 BDD Board, lots of prep in between... BDD plant tour for City of SF Water T&D staff EJ. and Vince, Pipefitter III Angelo by BDD lead operator Matt Sandoval.



Santa Fe Gov and Santa Fe County

👍 1 ❤️ 1



BDD Water Santa Fe @BDD_Water · May 17

BDD is ready for the Santa Fe Century Bike Ride this Sunday! Water provided for riders and volunteers at the Century race Sunday in scenic Santa Fe! Come cheer on your Riders!

[https://www.facebook.com/BDDWaterSantaFe/photos/with_location/?set=pa&type=photo&id=10157141111111111](#)



BDD Water Santa Fe @BDD_Water · May 17

BDD staff participated in the NM Water and Wastewater Association training in Espanola, NM this week.

Charge Operator Matt Sandoval presented Advanced Water Systems training. Charge...



BDD Water Santa Fe @BDD_Water · May 17

BDD provided CPR/AED recertification training for the first staff group this week. Two more trainings scheduled this month.

A mandatory training is provided for staff as we are located out...

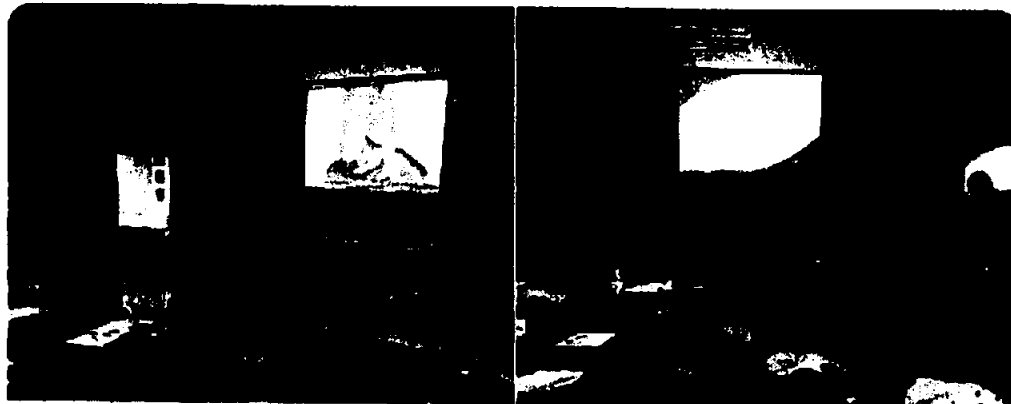
[https://www.facebook.com/BDDWaterSantaFe/photos/with_location/?set=pa&type=photo&id=10157141111111111](#)



BDD Water Santa Fe @BDD_Water · May 17

BDD provided CPR/AED recertification training for the first staff group this week. A mandatory training is provided for staff as we are located out in the desert and about 15 minutes from the closest fire station and 30 minutes drive from the Rio diversion.

[https://www.facebook.com/BDDWaterSantaFe/photos/with_location/?set=pa&type=photo&id=10157141111111111](#)



SFC CLERK RECORDED 11/28/2019