



AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, JUNE 6, 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 APRIL 4, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON JUNE 4, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Randy Sugrue, Interim BDD Operations Manager, rcsugruc@santafenm.gov, 955-4501)
8. Report on 3rd Quarter Financial Position for Fiscal Year 18/19. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
9. Report on the BDD's equipment installed at the former E109.9 site in Los Alamos Canyon. (Daniela Bowman, BDD Regulatory Compliance Officer, dkbowman@santafenm.gov, 955-4504)

10. Presentation on the BDD participation in the PNM Solar Direct Program. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506) **VERBAL**
11. Presentation by Charles de Saillan on the Los Alamos National Laboratory (LANL) Orders on Consent. (Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com, 986-9641 and Charles de Saillan, NMELC, cdessaillan@nmelc.org, 505-989-9022) **VERBAL**
12. Report from the Interim Facilities Manager. (Rick Carpenter, Interim BDD Facilities Manager, rccarpenter@santafenm.gov, 955-4206) **VERBAL**

CONSENT AGENDA

13. Request for approval to extend chemical contract bids for an additional year from various awarded vendors for a total amount of \$336,000 for FY 19/20. (Randy Sugrue, Interim BDD Operations Manager, rcsugrue@santafenm.gov, 955-4501)
14. Request for approval of Amendment No.1 to the Services Agreement Item 18-0663 with Chavez Security for security services for BDD Facilities for FY 19/20 for the amount of \$179,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
15. Request for approval of Amendment No. 1 to the Services Agreement Item 19-0056 with B&D Industries, Inc. for on-call HVAC repair services for FY 19/20 for the amount of \$50,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
16. Request for approval of Amendment No. 2 to the Professional Services Agreement Item 17-1178 with Sub Surface Contracting, Inc. for on-call maintenance and repair services for FY 19/20 for the amount of \$40,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
17. Request for approval of Amendment No 2. To the Legal Services Agreement with Snell & Wilmer, LLP for professional services for FY 19/20 for the amount of \$1,700,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
18. Request for approval of Amendment No. 1 to the Professional Services Agreement Item 18-1048 with ALS Group USA, Corp for laboratory analysis services for FY 19/20 for \$91,500 inclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

DISCUSSION AND ACTION

19. Request for approval to accept an insurance policy with American Alternative Insurance Corp. for the BDDB including real property coverages in the amount of \$131,948. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506 and George Segura, Daniels Insurance)



20. Consideration and possible action on BDD Board letters regarding Water Quality topics:
- a. BDD Board Rio Grande Water Quality Letters action (from February 7, 2019 BDDB meeting). (Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com, 986-9641)
 - b. BDD Board Letter re: DOE Order 140.1.(Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com, 986-9641)
21. Election of Vice Chair of the Buckman Direct Diversion Board. (Nancy Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, July 11, 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 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. (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: May 29, 2019
TIME: 1:36 PM

1
2
3 **MINUTES OF THE**
4
5 **THE CITY OF SANTA FE & SANTA FE COUNTY**
6
7 **BUCKMAN DIRECT DIVERSION BOARD MEETING**

8
9 **June 6, 2019**

10 **1. & 2.** This meeting of the Santa Fe County/City Buckman Direct Diversion Board
11 meeting was called to order by Commissioner Anna Hamilton, Chair, at approximately
12 4:00 p.m. in the Santa Fe City Council Chambers, 200 Lincoln Avenue, Santa Fe, New
13 Mexico.

14 Roll was called and the following members were present:

15
16 **BDD Board Members Present:**

17 Commissioner Anna Hamilton, Chair
18 Councilor Michael Harris
19 Denise Fort, Citizen Member
20 Commissioner Anna Hansen
21 Tom Egelhoff [non-voting]
22

16 **Member(s) Excused:**

17 Councilor Peter Ives

23 **BDD Board Alternate Members Present:**

24 Ginny Selvin
25

26 **Others Present:**

27 Rick Carpenter, Interim BDD Facilities Manager
28 Nancy Long, BDD Board Consulting Attorney
29 Mackie Romero, BDD Finance Manager
30 Stephanie Lopez, City Utilities Department
31 Bernardine Padilla, BDD Public Relations Coordinator
32 Randy Sugrue, BDD Interim Operations Superintendent
33 Kyle Harwood, BDD Counsel
34 Daniela Bowman, BDD
35 Marcos Martinez, City of Santa Fe
36 Regina Wheeler, City of Santa Fe
37 Sara Smith, Santa Fe County
38 Mike Kelley, Santa Fe County
39 John Dupuis, Santa Fe County
40 James P. Beazerzi, Glorieta Geoscience, Inc.
41 Charles de Saillan, NM Environmental Law Center
42 Krystle Wagner, Snell & Wilmer
43 Mike Settlege, PNM
44 Jamie Aranda, PNM
45 Sherrick Roanhorse, PNM

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

4 Commissioner Hansen moved to approve the agenda. Councilor Harris seconded
5 and the motion passed without opposition. Commissioner Hamilton noted that item 21,
6 Election of Vice Chair, should be removed from the agenda. With that change,
7 Commissioner Hansen moved approval, Councilor Harris seconded and the motion
8 carried without opposition.
9

10 **4. APPROVAL OF CONSENT AGENDA**
11

12 There were no items requiring isolation for discussion and Councilor Harris
13 moved to approve. Member Fort seconded and the motion passed by unanimous 4-0
14 voice vote.
15

16 **CONSENT AGENDA**

- 17 **13. Request for approval to extend chemical contract bids for an additional year**
- 18 **from various awarded vendors for a total amount of \$336,000 for FY19/20**
- 19 **14. Request for approval of Amendment #1 to Services Agreement Item 18-0663**
- 20 **with Chavez Security for security services for BDD facilities for FY 19/20 in**
- 21 **the amount of \$179,000, exclusive of NMGRT**
- 22 **15. Request for approval of Amendment #1 to Services Agreement Item 19-0056**
- 23 **with B&D Industries, Inc. for on-call HVAC repair services for FY 19/20 in**
- 24 **the amount of \$50,000 exclusive of NMGRT**
- 25 **16. Request for approval of Amendment #2 to the Professional Services**
- 26 **Agreement Item 17-1178 with Sub Surface Contracting, Inc for on-call**
- 27 **maintenance and repair services for FY 19/20 in the amount of \$40,000**
- 28 **exclusive of NMGRT**
- 29 **17. Request for approval of Amendment #2 to the Legal Services Agreement**
- 30 **with Snell & Wilmer, LLP for professional services for FY 19/20 in the**
- 31 **amount of \$1,700,000 exclusive of NMGRT**
- 32 **18. Request for approval of Amendment #1 to the Professional Services**
- 33 **Agreement Item 18-1048 with ALS Group USA, Corp, for laboratory**
- 34 **analysis services FY 19/20 in the amount of \$91,500 inclusive of NMGRT**
- 35

36 **5. APPROVAL OF MINUTES: April 4, 2019**
37

38 There were no corrections and Commissioner Hansen moved to approve.
39 Councilor Harris seconded and the motion passed by unanimous 4-0 voice vote.
40

41 **5. REPORT ON JUNE 4, 2019 FISCAL SERVICES AND AUDIT**
42 **COMMITTEE (FASC)**
43

44 CHAIR HAMILTON: Mackie.
45 MACKIE ROMERO (BDD Financial Manager): Madam Chair, members
46 of the Board, a Fiscal Services and Audit Committee meeting was held on Tuesday, June

1 4th. In attendance was myself, BDD Financial Manager, from the City, Councilor Harris,
2 from the County Commissioner Hamilton and from Las Campanas we had Tom Egelhoff,
3 Ginny Selvin and Linda Spingler. We discussed the 3rd quarter, which I will also be
4 presenting. We discussed all Consent Agenda items and our insurance premium renewal.
5 There were no major concerns or issues. Any questions?

6 CHAIR HAMILTON: No, just the comment that it was a very useful
7 meeting. Really appreciate it.

8 MS. ROMERO: Thank you.

9 CHAIR HAMILTON: Are there any other questions from the Board?
10 Thank you.

11
12 **INFORMATIONAL ITEMS**

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

14
15 CHAIR HAMILTON: Mr. Sugrue.

16 RANDY SUGRUE (Interim BDD Operations Superintendent): Thank
17 you, Madam Chair, members of the Board. We had a much more productive month in
18 May. Our average daily diversions were about 5.75 million gallons per day. Our drinking
19 water deliveries through our booster stations, 4.2 million gallons per day. Raw water to
20 Las Campanas, about 1.15 million gallons per day, and onsite storage about .4 million
21 gallons per day. So approximately 61.6 percent of the water supply was provided by
22 BDD in the month of May.

23 The conditions in the river are surprisingly strong for this time of year. The flows
24 are sustaining above 4500 to 5,000 cfs and that water quality is remarkably clean, less
25 turbidity units. So we're real pleased and able to produce water at the rate that we need.
26 I'm open for questions.

27 CHAIR HAMILTON: Thank you. That's actually quite remarkable, isn't
28 it? To have that kind of water quality with high flows.

29 MR. SUGRUE: This time of year with the snow melt in southern
30 Colorado we're not getting rainfall that's causing stormwater runoff into the river, so it's
31 quite clean but a surprising amount of water.

32 CHAIR HAMILTON: Fabulous.

33 MR. SUGRUE: It is.

34 CHAIR HAMILTON: Commissioner.

35 COMMISSIONER HANSEN: So you're not getting this rain that we're
36 getting in the city?

37 MR. SUGRUE: We're getting some rain but in northern New Mexico the
38 rain tends to be spotty so the rainfall's just not resulting in runoff in the river. There's
39 been some minor fluctuations but we would see more normally high rains producing, -
40 perhaps the turbidity would rise up into the hundreds. And that's just not happening. So
41 the water's much cleaner, much easier, much more economical to treat.

42 COMMISSIONER HANSEN: What about from the LANL side?

43 MR. SUGRUE: That's looking good. There's been no flow in the last
44 couple, three weeks, at all, for that matter, through the ENS system. So there's snow melt
45 above Los Alamos reservoirs sit.

46 COMMISSIONER HANSEN: Thank you.

1 CHAIR HAMILTON: Councilor Harris.

2 COUNCILOR HARRIS: Yes. Any issues with the intake?

3 MR. SUGRUE: No. Not at this time. Again, because the river is so clean
4 the screens are doing well. It's when we have higher or stormwater flows and debris in
5 the river we start to get issues this time of the year.

6 CHAIR HAMILTON: Member Fort.

7 MEMBER FORT: Just a quick question. I saw a reference somewhere that
8 the river – that we'd turned off for a little because of high levels. Was that inaccurate?

9 MR. SUGRUE: We turned off because there were flows from the Los
10 Alamos area at a higher level and we don't like to divert in those situations. Mainly we
11 watch for stormwater and this was still melt but we still turnoff just as a matter of policy.

12 MEMBER FORT: How many days was that?

13 MR. SUGRUE: There were days when we were completely off in May.
14 No days actually that were previous. I think we had a few days in March and almost two
15 weeks in April. So it did affect us certainly.

16 MEMBER FORT: Thank you.

17 CHAIR HAMILTON: Fabulous. Any other noteworthy things?

18 MR. SUGRUE: No.

19 CHAIR HAMILTON: That's great. Thank you.
20

21 **8. Report on 3rd Quarter Financial Position for Fiscal Year 18/19**
22

23 MS. ROMERO: Madam Chair, members of the Board, this report is to
24 update the Board and the partners on our 3rd quarter financial position with expenses,
25 encumbrances and projections through March 31st, BDD is projecting to spend 93 percent
26 of its operating budget with 12 vacancies. All fixed and variable costs have been billed to
27 the partners through March 31st, with 3rd quarter project-wide expenses still pending
28 billing.

29 On page 2 of the report, this includes cash and budget balances for our BDD
30 emergency reserve fund, major repair and replacement fund, and capital carve-out
31 budget. We are working on year-end reconciliation and closeout in preparation for the
32 upcoming audit and final year billings. I do plan on presenting a 4th quarter report in
33 August and if there are any questions on the report I can answer those.

34 CHAIR HAMILTON: Great. Board, are there any questions? Councilor.

35 COUNCILOR HARRIS: No questions. On Tuesday afternoon we spent a
36 lot of time on this as well as the other issues. I just think it's worth noting, we've
37 approved the amendment to the legal contract. I think it's worth noting, because you
38 talked at length about the amount that she is essentially carrying over from this year. It's
39 just worth pointing out, approximately between \$250,000 and \$300,000.

40 MS. ROMERO: That is correct, Madam Chair, members of the Board. I
41 have projected maybe an unexpended balance and litigation costs of about – or legal
42 services of about \$250,000 that would carry over to next year.

43 CHAIR HAMILTON: That's good to point out. Thank you. Are there
44 other questions? The only other thing we actually talked about was some of the savings
45 having to do with operations that were a little bit of closed down and a little bit of things

1 being easier to treat because of the good water quality, for at least some of those savings.
2 Great.

3 MS. ROMERO: Thank you.

4
5 **9. Report on BDD equipment installed at the former E109.9 site in Los Alamos**
6 **Canyon**

7
8 DANIELA BOWMAN (BDD Regulatory Compliance Officer): Madam
9 Chair, members of the Board, you have in front of you the report on the BDD equipment
10 installed at the lower Los Alamos Canyon for the past three years. I wanted to spend a
11 little more time explaining some of the information in this report so you can understand
12 better what it represents. I will move to page 5.

13 I have compiled this table a long time ago and it is posted on our website under
14 the BDD report under MOU for the years 2011 through 2014. This table contains the
15 flows, the maximum daily flows through four of the gauge stations in Los Alamos
16 Canyon. Gauge #50 is located in the middle of Los Alamos Canyon. Gauge #60 is
17 located in Pueblo Canyon. Gauge #99 is located in Guaje Canyon, and Gauge #109.9,
18 when it was in existence, was located at lower Los Alamos Canyon. This table is a very
19 good representation of how complex the weather patterns in Los Alamos Canyon are, and
20 that is probably because Los Alamos Canyon is a very long canyon. The watershed is
21 quite complicated, and you can see from this table that there were many, many dates in
22 2011, 2012 and 2013 when three of the gauges, 50, 60, and 99, did not have any flow
23 flowing through them, yet, lower Los Alamos Canyon had plenty of flow. And the
24 maximum flow that was recorded here for these three years was in 2013, 8/3, none of the
25 gauges flowed except lower Los Alamos Canyon. It flowed at the rate of 950 cfs, right
26 here.

27 So this table justifies having some kind of a flow indicator at the lower Los
28 Alamos Canyon. This means that currently it is very possible that we have situations of
29 storms and flows occurring at lower Los Alamos Canyon where many years of sediment
30 have accumulated, contaminated sediment has accumulated and that sediment may be
31 transported to the Rio Grande when the lower Los Alamos Canyon flows, but we actually
32 don't know that the lower Los Alamos Canyon flows.

33 So the intent of BDD experimenting with installing some kind of equipment at the
34 lower Los Alamos Canyon had to do with this set of data. I said experimenting because
35 once we didn't know whether we have selected equipment that was appropriate for the
36 conditions in lower Los Alamos Canyon, and second, we don't have really qualified
37 personnel that have any type of experience maintaining or selecting or monitoring,
38 figuring out equipment that monitors flows. However, we did the best that we could.

39 Recently I have come to know that we have selected excellent equipment. A radar
40 sensor that we selected is used actually by the USGS for permanent bodies of water and
41 one of them is actually installed at Embudo Station on the Rio Grande. There was a big
42 study conducted by USGS in 2015 which proved, when installed properly at the proper
43 water bodies, those radars are very good in monitoring flows.

44 The purpose of us trying that equipment was to supplement and actually not only
45 supplement but to be able to catch all the flows that are not caught by the gauges that we
46 currently monitor. And that would have been part of our early notification system.

1 Starting on page 8 through 12 I have shown you some of the readings that we
2 recorded by the radar and the bubbler. We have two different types of equipment
3 installed at the lower Los Alamos Canyon. Initially we wanted to install a distant device
4 that measures flow or linear velocity in this case from a distance. In 2014 when we were
5 selecting the equipment, San Ildefonso Pueblo was not willing to let us do much work
6 and we were not sure that we could obtain permits for installing anything else but distant
7 equipment. So that's why I selected the radar which could detect and measure linear
8 velocities up to 100 feet from the water bed.

9 So the other equipment we installed two years later was the bubbler. The bubbler
10 was installed because we determined that the radar – we needed another second
11 equipment to verify the flows of the radar and maybe we could calibrate the radar with
12 the bubbler. On the left-hand side of page 8 through 12 I have prevented on page 8 for
13 example, anywhere between a week and ten days data that we have recorded that we have
14 gotten from the radar. In 2016 all we had was the radar; the bubbler was not installed
15 until later. I could determine the radar reading as being very erratic and unreliable and
16 I'm determining that the readings are erratic and unreliable because maybe 80 to 90
17 percent of the time we would document and detect false positives or false negatives,
18 unfortunately.

19 The false positives were verified, not all of them; we couldn't do that, by the
20 operators or the compliance staff actually running to the canyon to see if there was any
21 flow flowing. But most of the times that we visited when we would get detects on the
22 radar there was no flow flowing. And later when I analyzed the data from the radar I
23 realized that some of the flows that appeared to be – the radar did not document flows
24 when there were flows and we knew that there were flows because the Guaje Canyon was
25 flowing or the bubbler was detecting flow, pretty high flows.

26 I wanted to show also here on this particular picture, you can see the yellow
27 graph. The yellow graph was obtained from the USGS study and this is a typical graph of
28 a radar such as ours. So as you see, the radar should be detecting a large value and the
29 noise could be up or down, varying about that value but not what we've got. So our graph
30 is here on the top, close up, and here is the USGS radar. I just selected a picture from
31 their article.

32 The problem with most values we get, most detects with the radar is as you see
33 that we get some detects and then the value goes back down, and as I explained earlier,
34 we need a reliable source of information, early notification. It is not of use to us if we
35 wait two or three hours to understand, to follow the trend and understand whether this is
36 actual flow or not.

37 Another problem – for example, this picture you see right here, this is a very nice
38 picture that we have from the radar. However, we already knew that it's a Guaje flow.
39 Our purpose is to document flows that cannot be detected by any of the Los Alamos
40 National Lab gauges that we already monitor. Obviously, this flow was high and nice
41 and the radar picture was nice, but even with this picture, the initial three or four values
42 are uncertain. We need data that could be programmable, meaning once we obtain the
43 data that the program will work the data and will notify the operators. Our operators don't
44 have either the time nor the capacity to follow trends from the radar on a continual basis.

1 So usually data that we obtain through SCADA is worked by the program of
2 SCADA and then alarms operators to a problem, in this case it would be to close the
3 diversion and to start the sampling.

4 As you see from the few dates that I have selected, some of the grabs are very
5 nice, like this one, which we already know the water was flowing. And this one, there is
6 no way of knowing whether there was flow. Maybe there was right here, but initially with
7 these three peaks there is no way of knowing and the time between the first peak to the
8 good data, so to speak, is like three or four hours. We don't have time to wait three or
9 four hours to figure out whether there is flow. We need to know within the first ten to
10 fifteen minutes whether there is a flow.

11 Based on the data presented here and what we've collected over the three years I
12 can conclude that neither the radar nor the bubbler is a reliable source of us being notified
13 by flows in the lower Los Alamos Canyon.

14 CHAIR HAMILTON: Thank you. So are there questions? Commissioner
15 Hansen.

16 COMMISSIONER HANSEN: Thank you, Daniela. This is really
17 important information. Part of the whole early notification system was so that we would
18 know immediately when there was water entering the Rio Grande. So what is our status
19 right now with San Ildefonso Pueblo?

20 MS. BOWMAN: We've been able to get our permits, but only associated
21 with this type of equipment. For example, one solution of having early flow detection is
22 just to put a video camera. At the time, in 2014, that probably could have been out of the
23 question. Currently, our relationship is very good. We're able to get two permits every
24 summer. We could approach them and see if they're willing to allow us to put a camera at
25 that location. However, we may have technical difficulties doing that again because we
26 transmit the signal to BDD via radio and we don't know if that signal has the capacity to
27 transmit video signal.

28 Again, Los Alamos National Lab has all the capabilities to do anything and
29 everything and they have the qualified personnel. But I asked today Eric Armstrong to
30 check on that information, whether that's a possibility, but that's one solution that could
31 be easily placed. We could place that type of equipment. Again, it will be up to San
32 Ildefonso to allow us or not or to permit us - I don't know.

33 We will only have a visual verification which means, again, the operators will
34 have to be aware and they'll have to observe the cameras. It will not be able to be
35 programmable, but it's a better solution than what we have right now. We don't have an
36 indicator.

37 COMMISSIONER HANSEN: What would be the ideal and best situation
38 for us to have?

39 MS. BOWMAN: The ideal and best situation is to give that project to Los
40 Alamos National Lab and ask them to take the responsibility. As I mentioned, they have
41 great resources. They have qualified personnel. They could do almost anything. The
42 telemetry is fine. They have a satellite connection already established in all the canyons
43 and the top of Pajarito Plateau is covered. They already have permits with San Ildefonso.
44 They could just add on to their permit for this particular site, and they could do a great
45 solution. They could do concrete trapezoid flume or not. There are many different ways
46 to do it. My conversation with some representatives of the US Corps of Engineers and the

1 UNM indicated that there are many solutions. I just don't feel that we are capable. We
2 have to keep on experimenting when there are specialists out there that could do the job
3 so much better than us.

4 COMMISSIONER HANSEN: So is this something we need to include in
5 our MOU with them?

6 MS. BOWMAN: Well, I don't know. They just suggested a couple of –
7 no, I don't think so. That is not really – consulting services is not included in that
8 particular MOU. You mean with the US Corps of Engineers?

9 COMMISSIONER HANSEN: No, with LANL.

10 MS. BOWMAN: Oh, absolutely. Yes.

11 COMMISSIONER HANSEN: So this is something we need to negotiate
12 and include in our MOU.

13 MS. BOWMAN: Absolutely. That was the plan last time we negotiated an
14 MOU.

15 COMMISSIONER HANSEN: And where did we get with that last time?

16 MS. BOWMAN: I don't know. I was not present to even one meeting so I
17 don't know. The last time the MOU was negotiated I did not participate. I was not
18 allowed to participate in the negotiations.

19 CHAIR HAMILTON: Councilor Harris.

20 COUNCILOR HARRIS: Thank you, Ms. Bowman. So I notice or, or I
21 read on I think page 5 of your report and you're very clear in underlining and then you
22 explained with your data how you came to that conclusion. But then I was struck by the
23 sentence that reads, However, LANL representatives including the LANL management
24 declined to consider BDD request for different reasons.

25 MS. BOWMAN: Yes.

26 COUNCILOR HARRIS: Were those reasons given to you in writing? Or
27 were they given to you directly? Or have you just heard them secondhand?

28 MS. BOWMAN: Those reasons were spoken during our technical
29 meetings. We used to have biannual meetings. It was a requirement of the MOU. So the
30 technical staff and management staff would get together and one of the reasons –
31 initially, the reason was that San Ildefonso Pueblo was not going to allow them to do
32 anything at that particular site, maybe for two or three years. And the last time we met
33 with them in February, Rick Carpenter was there and Kyle was also there. The reason
34 was that the channel of that particular site has changed. So these are the two different
35 reasons. And as I mentioned earlier, there are many different ways to install some kind of
36 a flow indicator there. It doesn't have to be a trapezoid flume. It could be flow/no-flow. It
37 could be video camera. It could be –

38 COUNCILOR HARRIS: I understand. You said there were many
39 solutions, but the best solution potentially would come from LANL.

40 MS. BOWMAN: Exactly.

41 COUNCILOR HARRIS: And so I assume this report is pretty current.
42 Would you typically expect to submit this type of information to LANL in one of your
43 biannual technical meetings?

44 MS. BOWMAN: This type of report – no. Councilor Ives requested this
45 report last time, in April, and he wanted me to report during this Board meeting and I put
46 it together especially for you.

1 COUNCILOR HARRIS: Okay. But anyway – I didn’t think you had
2 actually presented it yet, but again, is this something that you would take to these
3 technical meetings to try and make the case for the monitoring station and for LANL to
4 put that in place?

5 MS. BOWMAN: We have discussed my previous report. As I mentioned,
6 the data on page 5, which indicated how important the lower Los Alamos Canyon site
7 was was published a long time ago. We had special meetings discussing that report but I
8 don’t think we specifically focused on this particular table, but everything has been – I
9 have been very open during LANL meetings.

10 COUNCILOR HARRIS: Mr. Carpenter, what’s your view on this?

11 RICK CARPENTER (BDD Interim Facilities Manager): Madam Chair,
12 members of the Board, I think that I agree mostly with what Daniela is saying. I think it’s
13 very important. I think it should be resumed as a discussion topic with LANL and see
14 how far we get in trying to incorporate it in the MOU if possible.

15 COUNCILOR HARRIS: What would the timing be for the discussion,
16 first of all? When would that occur?

17 MR. CARPENTER: Kyle, when are we due for our next meeting? A few
18 weeks? Something like that? So we could resume the discussion at that time. So a pretty
19 narrow timeline.

20 COUNCILOR HARRIS: Well, I would imagine the Board would direct
21 staff to put it pretty high on their list. I don’t know what all matters are discussed, but
22 certainly – I’m a lay person so I don’t – but I’ve followed what you’ve demonstrated
23 here, Ms. Bowman, and I think that we should in fact put it back on as a topic of
24 discussion. Press it pretty hard.

25 COMMISSIONER HANSEN: I completely agree with that.

26 COUNCILOR HARRIS: Anything else to add, Mr. Carpenter?

27 COMMISSIONER HANSEN: Do we need a motion?

28 CHAIR HAMILTON: I don’t think so. I think the direction is pretty clear.

29 COMMISSIONER HANSEN: Okay. That’s good. Thank you, Daniela.
30

31 **10. Presentation on the BDD participation in the PNM Solar Direct Program.**
32

33 MS. ROMERO: Madam Chair, members of the Board, BDD had
34 expressed an interest in participating in the PNM Solar Direct Program. We have invited
35 PNM representatives to give an overview of the program and answer any of your
36 questions.

37 CHAIR HAMILTON: Thank you.

38 JAMIE ARANDA: Madam Chair, members of the Board, my name’s
39 Jamie Aranda. I am the northern local government affairs and community relations
40 manager for PNM. As you may know, energy is at a historic tipping point when it comes
41 to traditional versus more sustainable sources, and as the industry is evolving PNM is
42 taking the importance of being more flexible very seriously and looking into thoroughly
43 understanding the need of our customers.

44 So with that in mind PNM developed this voluntary program known as Solar
45 Direct. This program was developed to support counties, municipalities and large
46 customers in meeting their sustainability goals to further reduce our carbon footprint. The

1 energy for this program will be provided by competitively procured 50 megawatt solar
2 facility through a power purchase agreement with Jicarilla Solar II, LLC, over a 15-year
3 term. With anticipated PRC approval, PNM Solar Direct participants will begin receiving
4 service under the program on March 31, 2021.

5 We have seen an overwhelmingly warm response to the program with a number
6 of participants who have already submitted their signed notice of intent and hopefully
7 after today's conversation we can add you to the list of committed participants. The
8 majority of the signed NOIs came from customers who originally approached PNM about
9 a program to meet their renewable goals.

10 For customers that have not submitted an NOI but are still interested we've
11 extended the deadline to June 28th of this year. I also want to note this is a hard deadline
12 and we will work collaboratively with you to answer any of your questions to meet that if
13 you are interested in the program.

14 In working with Buckman Direct Diversion we do understand and we do share the
15 same value of stewarding our environment and this program will provide the BDD with
16 an additional 2,500 kilowatts of clean energy to power its operations. Overall costs for
17 participating in the program are favorable. There are no upfront costs of installation or
18 maintenance of the array for participating customers, coupled with the decreased need of
19 fossil fuels.

20 We're very excited about this program. My colleague, Mike Settlege, will
21 continue to dive in some details about pricing as it relates to BDD usage.

22 MIKE SETTLEGE: Madam Chair, members of the Board, thank you for
23 having me here this evening to talk about the Solar Direct Program. My name is Mike
24 Settlege. I work for PNM in the pricing department. I've been involved in the tariff and
25 other aspects of getting this application for the commission to get it approved. The Solar
26 Direct Program can help Buckman reduce their carbon footprint and reduce their utility
27 costs. Currently, I believe Buckman has 25 megawatts of solar that accounts for about 41
28 percent of your energy needs. You initial indication was for another 2.5 megawatts, and
29 together that would be about 82 percent of your energy needs that would all be from solar
30 energy.

31 There are no upfront costs with this program. Basically, we did a competitive
32 process to look for a supplier to sell us – for a PPA to sell us output from a solar facility
33 they're going to build. We received several bids. The way this is structured is that that
34 cost for that is directly passed through to the customers. There's no add-ons, no mark-
35 ups. There is a slight administrative charge and also a slight fee for the renewable energy
36 certificates but those are very small.

37 In addition to the charges there are three credits. These basically off set charges
38 on your regular PNM bills. You've got four accounts and there's various charges because
39 energy that you would buy from Solar Direct displaces that you get credits back from
40 those charges.

41 The net impact is that actually this is a credit to Buckman, so the credits are
42 higher than the charges so it ends up being a negative bill, if you will, or a credit back to
43 you. Based on the estimates we have it's almost – it's a \$7,400 credit, roughly, per
44 month, for participating in the Solar Direct Program. Your four accounts that you have
45 now are pumping accounts which have a time of use component. The Solar Direct
46 Program does not have a time of use component so it doesn't have any impact on that. In

1 other words this gives you the same credit for every hour of every day. So you figure
2 that's calculated in coming up with that monthly credit that you could get if you decide to
3 participate.

4 I can answer any more detailed or other technical type questions if you're
5 interested.

6 CHAIR HAMILTON: Thank you. So Board members. Member Fort.

7 MEMBER FORT: I guess one question – this would actually really be a
8 question I suppose for you, Rick, Madam Chair, and that would be if there's a deadline of
9 6/28 to enter into this and we're just hearing about it now, and this is not presented as an
10 action item but rather an information item, can you please clarify for me what the Board's
11 role is in this? And I guess I would just say what my second question would be, we do
12 have Regina Wheeler here from the City's Public Works Department and I'd like to hear
13 some other perspectives. Overall, I'm delighted that we're moving in a direction to
14 reduce our carbon footprint, which is just what we should be doing, but it's a complicated
15 transaction. So who are we in this?

16 MR. CARPENTER: Thanks for the question, Madam Chair, members of
17 the Board, this is a concept that's relatively new to myself. It's something that I would
18 like to look more closely at. I think that anything that helps the Board reduce its carbon
19 footprint and/or save costs is something I would look closely at. I simply don't have all
20 the details at this time that I would like to have. And if Regina has anything she would
21 like to add, she has some experience with this.

22 CHAIR HAMILTON: Nancy, and then –

23 NANCY LONG: (BDD Board Counsel): If I may, Madam Chair,
24 members of the Board, you are correct that this is not listed as an action item so if that
25 really is a hard deadline you cannot take action on it but you're hearing about it. From
26 our investigation which is not – we have not taken a deep dive into the numbers, but
27 talking to some utility lawyers, the point is that you would get a credit, Buckman would
28 get a credit, but it would not lower your overall bill to PNM. In fact it would increase it,
29 and that could happen over time.

30 CHAIR HAMILTON: Over a number of years? Because the County is
31 looking at this also.

32 MS. LONG: That's right. In a small amount.

33 CHAIR HAMILTON: So it's a fixed period of years.

34 MS. LONG: So we would obviously have to do that analysis because it
35 would have a financial impact by the Board.

36 CHAIR HAMILTON: Councilor Harris.

37 COUNCILOR HARRIS: I didn't hear the answer from Mr. Carpenter to
38 Ms. Fort's question, but Ms. Long I think really provided a better understanding of where
39 we are. And June 25, we do need analysis – no question about it. I don't know if that
40 would drive a special meeting, perhaps, but we can talk about that later. Without the
41 numbers I certainly can't move forward on this. And I respect Ms. Long's kind of cursory
42 – the short amount of time you've had to work on it and you've spoken to utility lawyers
43 who've perhaps had a chance to look at it in more detail and overall, in this 15-year
44 timeline, as guess there's going to be more out of pocket energy costs to BDD than our
45 current formula.

1 MS. LONG: That is my understanding. So it has to be, and I think maybe
2 the County has done some analysis of their participation in a small way and to have
3 concluded that it will increase their costs as well. So it's one of those – we're doing a
4 good thing. We're decreasing the carbon footprint, but we're going to pay for it. Because
5 it is a premium program.

6 CHAIR HAMILTON: So just for the record, the amount of increase isn't
7 huge, and we feel like the small increase in investment – it's really actually very small.
8 So the County's position is a little different from the BDD's position because as a county,
9 under the Bateman Act we cannot incur future debt without having a revenue stream that
10 goes with it. And so that's what we're working on now, but it looks like the revenue
11 stream – that we would be able to do that. So there were a few other legal issues in the
12 binding commitment which was a timing thing. The idea of being able – to us it was a
13 worthwhile tradeoff because we could do a big jump in how much we were getting from
14 renewable energy very quickly compared to other options. The County, like the City and
15 BDD are looking to use all the possible tools.

16 I think the tradeoff for BDD, and I don't know if any of the other Board members
17 were going to say this, and this to me is a little bit of the time crunch, is the analysis is the
18 value and the cost/benefit of doing this compared to further direct solarization. So the
19 BDD is a singular facility and had the option for putting in solar arrays directly, and
20 that's not something for many of the buildings the County had the option for.

21 So I don't know what the possibility would be for looking at that kind of – the
22 numbers. But between the City and the County – and I actually talked about this at the
23 County and the County already has given Mackie some support but would be perfectly
24 willing to work with the City and Mackie jointly to try to generate some numbers.
25 Commissioner Hansen.

26 COMMISSIONER HANSEN: That's what I wanted. I wanted some
27 numbers. I wanted some costs of what we're looking at and we have not done – we need
28 to do a deeper dive. So because I do think that for Buckman it might be a better position.
29 We might be in a better position to do some direct solar ourselves on our own land. It's a
30 different situation than the County. So I think it would be hearing from Ms. Wheeler.

31 CHAIR HAMILTON: I was just going to say, Regina, do you have any
32 thoughts on what information you may have already generated that might be pertinent
33 and could be pulled together quickly enough or whatever?

34 REGINA WHEELER (City Public Works): Madam Chair, members of the
35 committee, thank you so much. Really great discussion and brand new, late breaking
36 opportunity for the City and Buckman to consider. Just a little correction. I think
37 Buckman currently had 2.5 megawatts of solar. Is that correct? And would that make
38 about ten percent?

39 MR. SETTLEGE: It's a significant percentage. I don't know. It depends
40 on how you use it and when you use it, but it's significant.

41 MS. WHEELER: I think there's great financial benefit of that solar that's
42 been installed at Buckman. Part of it was funded by the Drinking Water Revolving Loan
43 Fund, where half of the cost of the solar array was actually funded by the State of New
44 Mexico, so the facility is getting energy at a rate of about 2.5 cents a kilowatt-hour off of
45 that system. There may be other opportunities as the Board has said to get that type of

1 solar array installed again at Buckman which provides incredibly cost-competitive
2 electricity and probably is the first place to look.

3 And I think as has been mentioned here, there's a number of tools in the toolkit to
4 achieve the carbon neutrality, which include the direct solar, then hopefully community
5 solar at some point which the City of Santa Fe and the Sustainable Communities
6 supported this year would like to really see happen so that we could build a community
7 solar array in Santa Fe and use that as an offset.

8 The City is starting this year to undertake another survey of all the facilities in our
9 portfolio that could be solarized directly. We received \$950,000 from the State
10 Legislature to support that project and I believe that some of the Buckman meters are
11 included on that survey as well. So we will be taking a look at where direct solar could be
12 hooked up for a cost-effective solution.

13 CHAIR HAMILTON: A question, just to clarify that. The City, where
14 they're considering doing that direct solarization, they're including Buckman and not just
15 other purely City facilities?

16 MS. WHEELER: That's correct. I believe it is because you guys spend
17 hundreds of thousands of dollars on electricity.

18 CHAIR HAMILTON: That's great. I just didn't know that.

19 MS. WHEELER: And so we included, and I believe that we've been
20 working with Nick Schiavo and we definitely need to get with Rick about this, Mr.
21 Carpenter about that, about including you guys in that assessment.

22 CHAIR HAMILTON: That's great. I just wanted to throw out there that I
23 agree with Mr. Carpenter. All these opportunities we should be looking at. The City and
24 the County came to somewhat different conclusions for any number of reasons, including
25 the county is way more spread out than the city. There are all kinds of reasons. The
26 County definitively is supporting and has testified and is looking to support community
27 solar, which would be applicable to Buckman as well, as well as just direct non-
28 community.

29 So to look at all possibilities, I just am concerned about the issue that everybody's
30 mentioned and that Member Fort brought up initially, which is how do we look at – how
31 do we assess the options in a very, very short timeframe?

32 MS. WHEELER: Madam Chair, if I might, I wonder if we might ask PNM
33 if there might be another opportunity to participate in the next solar direct array, because
34 my understanding is that there's quite a bit of this array that's already been allocated to
35 other users that are interested in it and so I'd be really interested to know if there might
36 be another project that might give us some time to really analyze that.

37 CHAIR HAMILTON: That would be great if you have some thoughts –

38 MS. WHEELER: Another question that I might ask is whether it's been
39 approved by the PRC? Is this a done-deal? And that might help us understand how solid
40 the financial analysis we might be able to do is. Are there any opportunities for
41 influencing that? Those are some of the things that I'm curious about in this offer that I
42 wonder if PNM might be able to provide.

43 CHAIR HAMILTON: Thank you.

44 MR. SETTLEGE: Thank you, yes. The filing was made last Friday with
45 the Utilities Commission and so far we've had one intervener. We don't expect there to
46 be any issues with this, but all the numbers are in that filing. The final numbers are in

1 there, the ones that are known. Some of them, the credits, are based on whatever the
2 prevailing rates are but the actual cost numbers are all known and specified in that filing.

3 As far as another opportunity, this was a test, if you will, to see if there was going
4 to be interest. There has been interest by a lot of parties, so there's a good chance we're
5 going to try to do another one. We don't know at this time for sure but there's a good
6 chance there's be another one later.

7 CHAIR HAMILTON: Member Fort.

8 MEMBER FORT: Thank you, Madam Chair. Just one other question
9 please. Is new transmission involved in this? The transmission lines?

10 MR. SETTLEGE: No. The all-in cost is included in this. Everything
11 necessary. It's just connecting to existing transmission.

12 MEMBER FORT: Thank you.

13 MS. WHEELER: Madam Chair, members of the Board, we would be
14 happy to also work with you and pull these cost analyses. We already have the numbers
15 and we could provide that to you at a later time, as early as next week or tomorrow, if
16 that's helpful.

17 CHAIR HAMILTON: If Mackie is willing to – and I know the City
18 people and the County people, if it's possible to pull numbers together. Because like I
19 said, I actually think that the options for BDD are different. But we have done one solar
20 array so we do have those numbers which we could look at for ballpark and
21 understanding general costs and maybe updating those quickly. That's my thinking, and
22 then we would be in a position of, if it looked favorable, of having to do a special
23 meeting. So if Mackie and Rick and Nancy and Kyle made that decision – I guess Mackie
24 and Rick initially and then if it looks like something that we should reconsider, it's
25 probably a three-day notice to call a special meeting.

26 MS. LONG: Madam Chair, I was wondering if PNM might also indicate
27 what's driving that deadline. I know there's already been one extension, but since the
28 program hasn't been approved yet – they just did their filing last week, I think that might
29 be a helpful answer.

30 MR. SETTLEGE: That deadline is stated in the filing that we made last
31 Friday.

32 CHAIR HAMILTON: Can you explain what it's a deadline for?

33 MR. SETTLEGE: It's a deadline for us receiving the Notice of Intents for
34 parties to express interest.

35 CHAIR HAMILTON: And so it's in the filing, but why was that deadline
36 put in the filing so that it's driving these decisions at this point?

37 SHERRICK ROANHORSE: Madam Chair and members, my name is
38 Sherrick Roanhorse. I work with Ms. Aranda. So what's driving it, we stated in the filing
39 that those that expressed interest who haven't signed a Notice of Intent had a June 28th
40 deadline. There are other customers who have signed a Notice of Intent, such as the City
41 of Albuquerque, the City of Deming and a few others. Western New Mexico University,
42 and these are customers who've expressed interest and signed a Notice of Intent, and
43 through this process they've asked us similar question. They've asked for pricing
44 information. They wanted more details and we worked with them.

1 I know that the BDD needed more time and so we wanted to ensure that we
2 provided them enough time so we found a way to extend some time, but June 28th is
3 what's stated in the –

4 CHAIR HAMILTON: I understand that but I'm still wondering what
5 subsequent actions would be prohibited. I know that Albuquerque's, their level of use is
6 not the full facility. I know that's a fact. That's why you looked for other participants. I
7 know the County was interested but they have certain constraints. So what stops – like do
8 you have to make certain construction commitments or certain land lease commitments,
9 or anything that you can't do – that you have to do by the 28th that that's a deadline?

10 MR. ROANHORSE: So really, everything with this project is tied to a
11 timeline. We're hoping to get this project online by March 2021 and there are timelines to
12 get there. The first thing is getting this heard before the PRC and next to that is the
13 construction time. And so everything's tied to the timeline that we have and it's also
14 stated within the PPA that's associated with this. So it's all on a timeline basis.

15 CHAIR HAMILTON: Councilor.

16 COUNCILOR HARRIS: So, I'm sympathetic, but it seems to me like the
17 timeline is a little bit arbitrary on the part of PNM and the PPA. So that's not compelling
18 for me to really push on this. It seems – clearly, we need more information and if I
19 understand it we're really potentially talking about three alternatives, Solar Direct,
20 expanding or in some fashion adding to our own facility and I assume that we have the
21 land to do that.

22 CHAIR HAMILTON: I'm not certain but I believe that at least for some
23 of the unserved facilities we do.

24 COUNCILOR HARRIS: And on the City's side, Rick –

25 MR. CARPENTER: Madam Chair, members of the Board, we don't have
26 in our special use permit the type of acreage that we'd be talking about. That doesn't
27 preclude us, however, from going back to BLM or the Forest Service and expanding that
28 permit or getting a new one but I think that's what would be required.

29 CHAIR HAMILTON: Thank you so much, Rick.

30 COUNCILOR HARRIS: That would be interesting because the time – and
31 I met with Ms. Aranda before hand and so one of the things I said is just when can a
32 facility go online? We have – the good news about having an arbitrary timeline is you're
33 project-based and you're organizing everything to get done and in service by March of
34 2021 and that actually is to your advantage. The unknowns associated with negotiating
35 with BLM or the Forest Service, I mean that could push us out quite a ways. On the City
36 side, community solar survey has been talked about. I'm looking at Ms. Wheeler out in
37 the audience to know how far. We just really passed the discussion phase or the
38 aspirational stage, which is where we find ourselves in the City of Santa Fe very often.

39 So I would look at the numbers associated and the constraints of whether there's
40 land or anything else and then put a pretty high value on which solution can be put in
41 service. But again, those considerations just take a little bit of time. I think it can be done
42 pretty quickly and not just by Ms. Romero. I think she needs the support perhaps of both
43 the City and the County.

44 CHAIR HAMILTON: Agreed.

45 COUNCILOR HARRIS: And staff in really providing the technical and
46 financial backup that she would need as well as I'm sure PNM will move quickly, I hear

1 provide information the first of next week, which is what it would take. Did you want to
2 add to that, Ms. Romero? You stepped forward.

3 MS. ROMERO: Madam Chair, members of the Board. Yes, if I could get
4 that support from both the City and the County and PNM we can definitely put some
5 numbers together and get that out to you and see where you want to go from there.

6 COUNCILOR HARRIS: Okay.

7 CHAIR HAMILTON: Well, I did check in the County and the Manager
8 committed to having to provide that support to you as needed.

9 MS. ROMERO: Perfect. Thank you.

10 COUNCILOR HARRIS: Madam Chair, on the City side we'll get you the
11 support you need as well.

12 CHAIR HAMILTON: I'm sure. Yes.

13 MEMBER FORT: Madam Chair, I would clarify for Council Member
14 Harris that community solar requires legislative action. We were unsuccessful in getting
15 that this year and so that pushes us. I'm glad we all have the goal of doing this quickly, so
16 to me, there would be two alternatives. I think research has been done on the Direct
17 Solar, and this would be a little bit with conversations I have had with Nick Schiavo and
18 Peter Ives and others at other times, so I believe some of that research has been done for
19 Direct Solar. My question about it might be the financing options if we were to go from
20 the public side and I'm glad to hear there are alternatives at both the County and City
21 level and I'd like to learn more about those just to make sure we've got something firm as
22 a way we can do it from the public side. Thank you.

23 COUNCILOR HARRIS: Thanks for the clarification. So those are my
24 thoughts and just – it's a particular point of pride for myself as a City Councilor to know
25 what we're doing at our waste treatment facility. There we've had an array across from
26 the facility. We're doing co-generation right now and when that's complete and online
27 we'll be somewhere around 95 percent. So I very much like being able to control our own
28 destiny but I also don't want to wait too long to do that. So anyway.

29 CHAIR HAMILTON: I think that sums it up pretty well. Mr. Carpenter or
30 Ms. Long, are there further comments about what's possible in terms of this short
31 timeframe and just maybe pulling some data together and if we get there, fine, and if not,
32 fine.

33 MS. LONG: Madam Chair, that's how I'm looking at it, that we'll
34 certainly look at the numbers that are provided and do the research as best we can. And I
35 think the other options that have been described should also be reviewed including an
36 additional solar facility at Buckman, since that has worked very well for us. So I don't
37 think we need to – I think we need to evaluate it and obviously, if we felt that a special
38 meeting were needed to act in an urgent fashion we would do that but I think it's a good
39 jumping off point for evaluating solar anyway.

40 CHAIR HAMILTON: Right. I just want to add that I think there's – I
41 can't speak for anybody else but I think everybody sitting up here has quite directly
42 expressed in general the commitment to really solarize everything in the City and the
43 County. We've been pushing on that. I don't think that's a mystery. This is another
44 potential tool but there are constraints in terms of analysis. That's the only – well, thank
45 you for bringing it forward very much.

1 COUNCILOR HARRIS: I agree. I appreciate the initiative on the part of
2 PNM to do this.

3 CHAIR HAMILTON: Thank you.
4

5 **11. Presentation by Charles de Saillan on the Los Alamos National Laboratory**
6 **Orders on Consent**
7

8 KYLE HARWOOD (BDD Counsel): Good afternoon, members of the
9 Board. It's my great pleasure to introduce my colleague and co-attorney in the world of
10 natural resources law, Charlie de Saillan, who has a long and very distinguished career
11 and many of our fine state agencies and is currently with the New Mexico Environmental
12 Law Center. He was instrumental in drafting the 2005 order on consent and is I guess a
13 student of LANL like I am. And so based on comments from the Board in the past
14 months I invited Charlie on behalf of the Board to come and give a little background.

15 He prepared an hour-long presentation – no, I'm joking. He's tried to reduce his
16 presentation as much as he can. I know that this is a topic of great interest to the Board so
17 I'm going to let Charlie finish the introduction by telling him a little bit about himself and
18 then about LANL.

19 CHAIR HAMILTON: Welcome, and thank you so much.

20 CHARLES DE SAILLAN: Good afternoon, members of the Board,
21 Madam Chair. Again, my name is Charles de Saillan and I'm a staff attorney with the
22 New Mexico Environmental Law Center. And I really appreciate the opportunity to speak
23 to you today and talk about sort of the history of the cleanup efforts at Los Alamos
24 National Laboratory.

25 Just a little bit of background about me. I've been practicing environmental law
26 now for about 35 years. Hard to believe. I worked for about eight years for the US
27 Environmental Protection Agency and the US Department of Justice in Washington, DC
28 enforcing our nation's environmental laws. I came to New Mexico in 1993 to work for
29 then Attorney General Tom Udall in what was the new Environment Division at the
30 Attorney General's Office. I then worked for about 14 years at the New Mexico
31 Environment Department, and one of my assignments while I was there, and one of my
32 accomplishments was to negotiate the 2005 cleanup order for comprehensive
33 investigation and cleanup of Los Alamos National Laboratory and I did that with the then
34 chief of the Hazardous Waste Bureau at the Environment Department who by
35 coincidence is in the audience today.

36 So I'm going to begin by – well, mostly what I'm going to do is talk about the
37 history of the cleanup efforts at Los Alamos National Laboratory. As you know the
38 laboratory has operated since the early 1940s continuously and its operations have
39 resulted in sort of a legacy of soil, surface water, groundwater contamination and
40 contamination with just a medley of different toxic and radioactive substances.

41 Now, when I first came to New Mexico in the 1990s through the 1990s and into
42 the early 2000s, the efforts at cleanup at Los Alamos were not very effective. Overall I
43 would say that the progress of investigation and cleanup of contamination was piecemeal,
44 uncoordinated, sporadic, protracted, underfunded, and ultimately ineffective. So in about
45 2001 the Environment Department began was concerned and began to take a concerted

1 effort to try and compel the laboratory, to compel DOE to do the investigation and
2 cleanup at the laboratory.

3 And I was working there at the time and we decided to issue what's called an
4 imminent hazard order under Section 13 of the New Mexico Hazardous Waste Act.
5 Without getting into too much detail here, that provision allows the Environment
6 Department to issue an administrative order requiring the responsible party, in this case
7 DOE and its contractor to conduct a cleanup of the contamination at the laboratory. Part
8 of our thinking at the time was to try to get the DOE under an enforceable order, to get an
9 enforceable order in place with schedules and deadlines, and if the requirements of the
10 order aren't met, penalties. So the idea was to make non-compliance more costly, more
11 painful than compliance.

12 So on May 2, 2002 the Environment Department issued a compliance order
13 finding an imminent substantial endangerment to human health and the environment at
14 the laboratory. That compliance order at that point was issued in draft form and it was put
15 out for public comment. The Environment Department received a lot of public comment
16 and responded to it and about six months later, on November 26, 2002, issued a final
17 order to the laboratory and its contractor, which was then the University of California.
18 DOE and the university responded by promptly suing the Environment Department
19 challenging the order.

20 The parties then moved into negotiations and those negotiations turned out to be
21 very protracted. They lasted for approximately two years. There were some bumps along
22 the way. Negotiations broke down completely at one point. Governor Richardson was
23 governor at the time. He held a press conference. He excused DOE of extortion and said
24 if DOE wants to play hardball well, I can play hardball too. Some of you probably
25 remember that.

26 Anyway, eventually DOE relented, came back to the table and we shortly
27 thereafter reached a settlement agreement, which again, we put out for public comment,
28 received public comment, responded to all of the public comment. And then finally on
29 March 5, 2005, the Environment Department, Department of Energy and the University
30 of California entered into the compliance order on consent. Now, I have a copy of it here.
31 It's a fairly substantial document. It's about 250 pages, single spaced. During the
32 negotiations I started referring to it as Fat Man.

33 I'm going to just briefly go over some of the key provisions of the 2005 consent
34 order. First of all, it had a schedule, and that's very important. It's a very detailed
35 schedule. It provided deadlines for completing the investigation, for installing
36 groundwater monitoring wells, for evaluating different remedy alternatives, for selecting
37 remedies and for completing remedial actions at all of the sites at the laboratory. And
38 importantly – and I'm going to get back to this date later on – so keep it in mind. The
39 final deadline for cleanup of all of the laboratory was December 2015.

40 The next provision that was very important was stipulated penalties. So the
41 stipulated penalties applied to not all of the deadlines but a lot of them and certainly the
42 more important ones. And the way the stipulated penalties work is if DOE and its
43 contractors don't meet this deadline then they automatically owe the Environment
44 Department penalties in a specified amount for each day that the laboratory is out of
45 compliance. There is an exception to the stipulated penalties and that is that the DOE
46 could come to the Environment Department and request an extension of time, but it had

1 to show good cause, and that happened quite a few times during the implementation of
2 the 2005 consent order.

3 The consent order also included detailed requirements for investigation of
4 contamination at the site. And this was comprehensive. So all of the canyons, the major
5 technical areas, all of the material disposal areas, all of the individual disposal sites at the
6 laboratory were covered by the investigation requirements and ultimately the cleanup
7 requirements. There are also detailed provisions for procedures for remedy selection, on
8 cleanup standards, on risk assessment, and there were also detailed technical
9 requirements on things like installation of groundwater monitoring wells and collection
10 and analysis of samples.

11 Now, after the consent order was entered in 2005, for about five or six years until
12 around 2011 or so, the DOE and its contractors actually made quite a bit of progress in
13 investigation and cleanup of contamination at the laboratory. So I'll just go through a
14 couple of highlights here. This is by no means comprehensive. The DOE completed
15 cleanup at seven material disposal areas. Those were material disposal areas AA, B, NR,
16 U and V and Y, and a couple of those I want to highlight MDA-B and MDAs U and V
17 are all in Technical Area 21, which is the former plutonium processing plant, TA-21, and
18 that's right off of Los Alamos Canyon, so something that might be of concern to the
19 Board.

20 The DOE also completed investigation at five major MDAs, and those were MDA
21 C at TA-50, MDAs G, H, and L at TA-54, and MDA T, which is also at TA-21. Overall,
22 investigation was completed at about 90 percent of the sites at Los Alamos National
23 Laboratory.

24 The DOE also completed removal of the buildings and about 80 percent of the
25 soil at TA-21. DOE discovered and largely delineated the groundwater plume of
26 hexavalent chromium in Mortandad Canyon. Also groundwater monitoring networks
27 were completed at TAs 49 and 50, and they were largely completed at TAs 16 and 54. So
28 we were really making progress on getting to final cleanup of Los Alamos National
29 Laboratory. A lot of other sites were close to remedy selection at that point.

30 But then around 2011, 2012, things began to slow down. A new administration
31 came in, the new governor, and the new administration realigned their priorities and
32 cleanup at LANL became a lower priority. DOE diverted funds from cleanup,
33 demobilized some of its cleanup efforts and cleanup progress slowed markedly. And as a
34 consequence, DOE and its contractors requested and the Environment Department
35 granted about 150 requests for extension of time on the deadlines in the 2005 consent
36 order. A lot of those were granted without any showing of good cause, which is what the
37 Environment Department had previously expected and was required by the consent order,
38 and the Environment Department often summarily granted the extension requests without
39 any real evaluation.

40 Some of the deadlines for certain tasks, there were sometimes as many as three or
41 four requests for extension for the same deadlines. And eventually DOE quit asking for
42 extensions of time. As a result of that, DOE and its contractors missed a lot of the
43 deadlines and they hadn't gotten extensions of time for those deadlines. As a result DOE
44 quickly fell out of compliance with the consent order, with the deadlines in the consent
45 order and was in violation. Violations included things like failure to complete
46 investigation at individual sites, failure to install groundwater monitoring wells, failure to

1 submit groundwater monitoring reports, failure to evaluate alternatives for remedies, and
2 failure to complete remedies.

3 So under the provision of the consent order DOE became liable for literally
4 millions of dollars in penalties. There was one calculation that was done and this
5 certainly is a high level calculation and high level estimate, but put the number at \$300
6 million in penalties.

7 But then in June 2016 the Environment Department unveiled the 2016 consent
8 order, and that had gone out for public comment in draft form before it was finalized.
9 Now, just a few of the key points of the 2016 consent order I want to mention. First of all,
10 it supersedes the 2005 consent order, so at least ostensibly the 2005 consent order is
11 gone. And it settles all outstanding claims that the Environment Department had for civil
12 penalties. So DOE wound up paying no penalties under this settlement. The Department
13 essentially forgave all of those penalties. The other thing that the 2016 order did was
14 largely, and I'll talk about this a little bit more in a second, but largely got rid of the
15 schedules. And most importantly, the final deadline that I mentioned a few minutes ago
16 of December 2015, that was gone and it wasn't replaced with anything. So there's no
17 final deadline for completing corrective action, for completing cleanup at Los Alamos
18 National Laboratory.

19 Now, the way that the schedule works now, under the 2016 consent order, once a
20 year the Environment Department and the Department of Energy are supposed to sit
21 down and negotiate an enforceable schedule for the next year. That's as far out as it goes.
22 And that yearly schedule is based on the DOE budget for that year. So instead of the
23 schedule and the consent order driving the cleanup and driving DOE's budget, it's the
24 other way around. DOE's budget determines what the schedule is and what the cleanup is
25 in any given year.

26 So the Environment Department is no longer in control. The State of New Mexico
27 is no longer in control. I was on the governor's transition team for the Environment
28 Department and one of the biggest complaints that I heard from the staff that were
29 working on LANL was we're no longer in the driver's seat. DOE tells us what they can
30 do in the next year based on their budget and we really have no choice but to accept it.

31 And effectively, by forgiving all of those penalties the Environment Department
32 gave up all of the leverage, all of the chips that it had to negotiate a schedule. And so they
33 have no ability to sort of push back against DOE's decisions on what the schedule is
34 going to be.

35 Now, there's one other point that I want to make about the 2016 consent order and
36 that is that it is procedurally flawed. I have to step back a little and give you a little bit of
37 background because this gets a little bit complicated. Under the New Mexico Hazardous
38 Waste Act, which is the authority that the Environment Department is using here there
39 are a couple ways that corrective action, the cleanup can be accomplished. The first one
40 is an order and that's what we used. That's what we decided to use. But the second one
41 and which is probably the more common one, is through a permit. Now there's an
42 important distinction between corrective action that's conducted under a permit and
43 corrective action that's conducted pursuant to an order. When you're operating under a
44 permit there are regulations. There are a lot of procedural requirements that apply. So for
45 example, for certain actions under a permit, there has to be an opportunity for a public
46 hearing. Not just public comment but a public hearing, and we're pretty rigorous in our

1 public hearings in New Mexico. That means sworn testimony and cross examination and
2 exhibits and objections and all of that.

3 That procedure, the opportunity for a public hearing, is required under the
4 regulations, if you're operating under a permit, for any final cleanup decision, for any
5 major modification to the permit, and importantly, for any modification to the final
6 deadline for completing corrective action. Remember we talked about that December
7 2015 deadline. Now, these procedural requirements don't apply if you're operating under
8 an order and we were operating under an order and we were very – when we were
9 negotiating it we were very conscious of that. We actually got criticism from the public.
10 Hey, none of these procedures are going to apply to you. So what we actually did in the
11 negotiations is we effectively incorporated all of those procedures into the order. So we
12 said that even though this is under an order, all of the procedural requirements for a
13 permit are going to apply here; we're going to follow them.

14 So as I mentioned, under the regulations, any change to the final deadline is
15 subject to an opportunity for a public hearing. And as I also mentioned, the 2016 consent
16 order, obviously changed that December 2015 deadline. It had to. Not only it changed it,
17 it got rid of it altogether. There's no final deadline anymore. So under the order the
18 Environment Department was obligated to allow an opportunity for a public hearing on
19 the change in the schedule. What the Environment Department did was put it out for
20 public comment but it did not allow an opportunity for a public hearing. So as a
21 consequence, the 2016 order is procedurally defective to this day.

22 That has been challenged. The New Mexico Environmental Law Center has
23 challenged the 2016 consent order because of that procedural defect. So far the courts
24 have not been very favorable in ruling on that, but at this point it's very difficult to tell
25 how that's going to come out. So that's where things stand now.

26 So where do we go from here? I really don't know. I don't have an answer for
27 that. I'm sorry. I don't have a silver bullet. The Environment Department pretty much
28 gave DOE a free pass and it's very hard to pull that back now. I've been talking to Kyle
29 about some strategies and some potential options that the Board might have to help move
30 things along here, and I'm happy to continue to engage in those discussions and maybe
31 we can come up with some recommendations for the Board.

32 That concludes my presentation. I want to thank you all again very much for
33 listening to this. This is some issues that I think have been neglected for a long time and
34 I'd be very happy to at least try to answer whatever questions you might have.

35 CHAIR HAMILTON: Excellent. Thank you so much. That was incredibly
36 well done and informative. Very interested to hear that. Mr. Harwood, do you actually
37 have anything you would like to add at this point before I open it up?

38 MR. HARWOOD: I think I'd like to recommend that we open up for
39 Board members' questions and then I might have a recommendation at the end.

40 CHAIR HAMILTON: Thank you so much. So Board members,
41 Councilor.

42 COUNCILOR HARRIS: Thank you for the presentation. Again, unless
43 we're living this it's hard to really keep track of how this has evolved. But now, under the
44 2016, and you didn't characterize it as a free pass but close, is there any requirement then
45 to put a new consent order in place? Again, any timeline at all?

1 MR. DE SAILLAN: No. The short answer is no. The 2016 order would
2 theoretically continue in effect until cleanup at Los Alamos is completed.

3 CHAIR HAMILTON: Which might be infinity.

4 COUNCILOR HARRIS: So what role did the cleanup play, how did it
5 factor into the decision for a new operator, which is – that group has only been in place
6 for just few months, hasn't it?

7 MR. DE SAILLAN: Madam Chair, Mr. Harris, I really don't know.

8 COUNCILOR HARRIS: Okay.

9 CHAIR HAMILTON: Commissioner Hansen.

10 COMMISSIONER HANSEN: Thank you very much, Mr. De Saillan.
11 That was a really nice, concise presentation. What I would be concerned or would like to
12 know from really the New Mexico Environment Department is why can't we just go back
13 to where we were in 2005 and re-sue again?

14 MR. DE SAILLAN: Madam Chair, Ms. Hansen, that would be difficult.
15 The 2016 consent order, as I said, superseded by its terms the 2005 consent order. And
16 it's now an agreement, in some respects it's a contract between the Environment
17 Department and the DOE. And undoing that is not going to be easy. Even if the new
18 administration, the new Environment Department is very much in favor of doing so
19 they've got to get DOE to come on board. They've given up, as I mentioned, all of the
20 leverage that they had, and those are penalties, to try to get DOE to the table and to agree
21 to – let's have some real deadlines here.

22 So the litigation might have that effect if it's successful but that could take years
23 still and there's no guarantee that that litigation is going to be successful.

24 COMMISSIONER HANSEN: Thank you. It's slightly – well, more than
25 slightly, very depressing.

26 CHAIR HAMILTON: Member Fort.

27 MEMBER FORT: Thank you, Madam Chair. Riveting presentation. Is
28 there any chance that the State would change its position with respect to whether or not it
29 complied with – you're smiling – the litigation?

30 MR. DE SAILLAN: Madam Chair, Professor Fort, we can always hope. I
31 would say sure there's a chance, but I don't know for sure.

32 MEMBER FORT: Is the Attorney General handling the litigation?

33 MR. DE SAILLAN: No, Madam Chair, Professor Fort, no, I don't believe
34 so.

35 MEMBER FORT: And could you identify your clients in this, the
36 Environmental Law Center's clients?

37 MR. DE SAILLAN: Madam Chair, Professor Fort, in speaking to you
38 today I'm not representing anybody. I'm speaking on my own. In that litigation, the Law
39 Center, and I'm not involved in that litigation, but the Law Center is representing Nuclear
40 Watch New Mexico.

41 MEMBER FORT: Oh. Thank you. Madam Chair, if I might, just for a
42 minute longer, just kind of thinking strategically about this. I wonder if the – we don't
43 have Council Member Ives here, but if the Los Alamos Communities Organization, if the
44 delegation of others have any pressure on the DOE to consider entering what was
45 obviously a flawed consent order, whether it could be reopened on that basis.

1 MR. DE SAILLAN: Madam Chair, Professor Fort, I welcome whatever
2 allies we can find in that endeavor.

3 CHAIR HAMILTON: That was an oblique answer. Have you been
4 involved in any way with the LANL Communities group in their negotiations? I don't
5 know what they do exactly. I don't know how to characterize what they do in terms of
6 trying to move some cleanup forward.

7 MR. DE SAILLAN: Madam Chair, personally, I have not, no.

8 CHAIR HAMILTON: Are there other questions? Mr. Harwood.

9 MR. HARWOOD: So not knowing the Board's full interest in this topic,
10 one thought is that I could bring back a summary of the current lawsuit contesting the
11 2016 order for your perusal and continue the conversation there. We always struggle a
12 little bit on LANL topics to know how far and deep to go, given the Board's unique
13 location and posture in our existing MOU and the negotiation schedule for the next
14 MOU. So I didn't want to assume where the Board's interest is or what the appetite is but
15 one thought is to bring a summary of the current lawsuit to the next meeting so you can
16 think about whether you as a Board wish to get further into this topic.

17 CHAIR HAMILTON: Frankly, I would like to get some of your thoughts
18 and Ms. Long's thoughts. It seems to me that perhaps the Board should be at least
19 informed of some of these activities because we have active negotiations with them on
20 the MOU and stuff and some interest in the sampling and what not, but there's probably a
21 limit to exactly how much we need to know to protect and further the Board's interest in
22 BDD. I don't know what other people's thoughts are on that. Councilor.

23 COUNCILOR HARRIS: Actually, you phrased it exactly correctly,
24 Chairwoman Hamilton. How best to protect our interest. And we had a very interesting
25 presentation by Ms. Bowman. We heard of some intransigence on the part of DOE on a
26 very simple and probably inexpensive monitoring station. I don't know what the timeline
27 is for MOU negotiations but I think a bit more background about what's going on and
28 where we might stand. Having that type of information I think will help us make the
29 connections and hopefully the right decision down the line.

30 CHAIR HAMILTON: Commissioner Hansen.

31 COMMISSIONER HANSEN: I support Mr. Harwood's recommendation
32 and I would like to move forward with that.

33 MR. HARWOOD: Okay.

34 CHAIR HAMILTON: Thank you. That sounds good. Ms. Long, do you
35 have anything to add?

36 MS. LONG: Madam Chair, no. I think that's the right place to start and we
37 can bring that back to you in terms of the evaluation of the current lawsuit.

38 CHAIR HAMILTON: Thank you. Very much appreciated. Excellent
39 presentation. Thank you so much.

40 MR. DE SAILLAN: It was actually my pleasure.

41
42 **12. Report from the Interim Facilities Manager**

43
44 MR. CARPENTER: Thank you, Madam Chair and members of the Board.
45 I just have a couple of quick updates. The first is in regard to the source water protection
46 plan that's been before this Board at least once, I think maybe more than that. We'll be

1 working in the coming weeks to develop a public involvement plan as a component of
2 that and then to bring that package back to the Board at the July meeting.

3 Also, just a quick update on staffing. We've had several discussions with the
4 Board with regard to reclassifying some of the operator positions. That has gone through.
5 The City Manager did approve them and just in the last couple of days four of those
6 positions advertised and so I'll be working as rapidly as I can to fill those vacancies.

7 A couple more positions: our maintenance supervisor, as you know, retired last
8 month. We were poised at that time to advertise that position. We did so and I have a new
9 list of eligible candidates on my desk right now so I'll be working to conduct those
10 interviews over the next couple of weeks.

11 And lastly, the operations superintendent, which was an acting position, that has
12 been filled and is on the City Manager's desk for his approval.

13 CHAIR HAMILTON: That all sounds like an incredible amount of
14 progress. Thank you. Any questions?

15 COMMISSIONER HANSEN: Thank you, Mr. Carpenter.

16 CHAIR HAMILTON: That's a lot. It's great to hear us moving forward.
17

18 **DISCUSSION AND ACTION**

19 **19. Request for approval to accept an insurance policy with American**
20 **Alternative Insurance Corp. for the BDDB including real property coverages**
21 **in the amount of \$131,948**
22

23 MS. ROMERO: Madam Chair, members of the Board, the joint powers
24 agreement requires the BDD Board to carry insurance coverage separate and apart from
25 the respective partners' policies. Therefore the Board has contracted with Daniels
26 Insurance to serve as the broker. Daniels Insurance has remarketed our account to several
27 companies for competitive bids. We received a bid from our current policyholder,
28 American Alternative insurance, a bid from Travelers' Insurance. However, based on the
29 terms and conditions we are recommending that the Board accept a policy from
30 American Alternative Insurance at an annual premium of \$131,948, with the policy
31 effective date of July 1, 2019 to July 1, 2020. Mr. Segura from Daniels Insurance is here
32 if you have any specific questions about the policy.

33 CHAIR HAMILTON: Great. Thank you for attending. Are there any
34 questions? Commissioner.

35 COMMISSIONER HANSEN: I would like to move to approve.

36 COUNCILOR HARRIS: Second.

37 COMMISSIONER HANSEN: Great. So much for the questions.

38 GEORGE SEGURA: Just a marvelous job.

39 CHAIR HAMILTON: That's pretty much it.

40 MR. SEGURA: Something like the gentleman before me. That was very
41 informative.

42 CHAIR HAMILTON: Worth listening to. So if there isn't any further
43 discussion I have a motion and a second.
44

45 **The motion passed by unanimous [4-0] voice vote.**
46

1 **20. Consideration and possible action on BDD Board letters regarding water**
2 **quality topics**

3 **a. BDD Board Rio Grande Water Quality Letters action**

4 **b. BDD Board letter re: DOE Order 140.1**
5

6 MR. HARWOOD: I am going to try to get us done on time. I'd like to
7 suggest we take the second letter first. This is a letter that I worked on with – this is
8 regarding the DOE order 140.1. It starts on page 7 behind tab 20. I relied extensively on
9 materials provided by Commissioner Hansen and did my own research and review in
10 order to prepare this letter. I don't know if you have any questions about it at this time.

11 CHAIR HAMILTON: Commissioner Hansen.

12 COMMISSIONER HANSEN: Thank you, Kyle, for your diligence in
13 working on this letter and doing the additional research and making sure that we have
14 noted all of the correct citings. I appreciate that very much. I also want to let the Board
15 know that I am bringing forward a resolution at NACo, the National Association of
16 Counties on the suspension of this order. The other day when I was at the LANL
17 breakfast, meeting the new director, I asked a question about this order and they stated
18 that they are no longer letting the Defense Nuclear Facilities Safety Board look at any
19 preliminary designs and the problem with that is when the Defense Nuclear Facilities
20 Safety Board was able to look at preliminary designs they were able to catch the fact that
21 the contractors who were designing the plutonium PIT facility were using the wrong
22 valves and it was a million dollar expense in the mistake and this was something that the
23 Defense Nuclear Facilities Safety Board caught in the early stages so that it would not be
24 such a problem. So there is a lot of trouble with DOE trying to rewrite this order and I
25 have been working diligently on this with my colleagues across the country.

26 And so with that, do we need a motion to approve?

27 MEMBER FORT: Could we do them all at once?

28 CHAIR HAMILTON: Either way. Pleasure of the Board. Do you want it
29 all at once, Mr. Harwood.

30 MR. HARWOOD: I was just going to – I wanted to just double check two
31 small details. It is addressed, Commissioner, to the two representatives on the House
32 Armed Services Committee. Mr. Perry is the head Secretary of DOE and then the acting
33 chair of the board itself. I was going to suggest that I cc the whole congressional
34 delegation, if that makes sense.

35 COMMISSIONER HANSEN: That's what I would do and also, I have
36 also written a letter from Santa Fe County requesting a congressional hearing on DOE
37 order 140 and I have given that letter to Representative Deborah Haaland and Xochitl
38 Torres Small who both sit on the Arms Services Committee and that is the correct
39 committee for this to be heard at in Congress.

40 MR. HARWOOD: I'll add those cc's that are not on the letter now. And
41 then we had worked through the signature block for the WOTUS letter two months ago
42 where it was the main – I believe what we did, well, of course we had a different chair
43 then.

44 COMMISSIONER HANSEN: I would prefer to see all of our names on
45 this letter. I think it's – I was going to suggest that. I think it's great if we do it with the

1 chair and every – unless there are people who prefer not to sign, which I think would be
2 their choice, but to list individuals I think would be respectful.

3 MR. HARWOOD: Very good. Well, I'll do it the same way we did the
4 WOTUS letter if that's okay and get it to you for signatures. Okay, very good.

5 And then turning to the other letters, the first one on page 1 is directed to the
6 governor and her cabinet secretary James Kenney of the Environment Department.
7 We've done some wordsmithing over the last couple of months with this. I stand for any
8 questions on this letter. Professor Fort, do you have an abiding interest in this topic?

9 MEMBER FORT: Ready to go with the second letter.

10 MR. HARWOOD: And then we have one to Senator Udall and
11 Congressman Ben Ray Lujan which are the same letters, and just urging cleanup
12 priorities at LANL. Yes, ma'am.

13 COMMISSIONER HANSEN: And Senator Heinrich?

14 MR. HARWOOD: That was going to be one question. I'm not quite
15 remembering how we got to just these – well, these are the two – no, I'm remembering
16 now why we only have two. I can send the same letter to the whole congressional
17 delegation if you'd like.

18 COMMISSIONER HANSEN: I would support that.

19 MR. HARWOOD: Okay. Very good. So just so I'm clear with the
20 modifications we've talked about, the cc's, the signature block, and the additional letters.
21 I think I'm clear on all the changes.

22 COMMISSIONER HANSEN: If you look on page 2, the first full
23 paragraph, the second paragraph, the middle sentence, in is both – I don't know why. It
24 just jumped out at me.

25 MR. HARWOOD: Thank you for that. Details are important. Okay. Very
26 good. I think I'm clear on the suggested edits.

27 CHAIR HAMILTON: So I'll entertain a motion.

28 COMMISSIONER HANSEN: I move to approve all of these letters and
29 have them sent to all the respective parties.

30 COUNCILOR HARRIS: And I would ask that the Board see any
31 responses received on these letters.

32 MR. HARWOOD: It will be my pleasure.

33 MEMBER FORT: Second.

34 CHAIR HAMILTON: So I have a motion and a second.

35
36 **The motion passed by unanimous [4-0] voice vote.**

37
38 MEMBER FORT: Madam Chair, may I ask – I'm really happy that the
39 Board is taking a hard look at the water quality as it's affected by Los Alamos in
40 particular in all of these actions, and I wondered if we could – it seems like often don't
41 have the press attention we should on the meetings of this important Board and I
42 wondered if we could ask our press officer, Bernardine, if you could make copies of these
43 letters available to the appropriate local media to tell them what we're doing in some
44 fashion. Thank you.

1 MR. HARWOOD: On that point I can report that I did get an inquiry from
2 Albuquerque media because of these letters in our packet today. And so I'm talking with
3 Bernie about how to follow up with that inquiry.

4 CHAIR HAMILTON: Okay. Great. Thank you.

5 MR. HARWOOD: They are finding it as well.

6 CHAIR HAMILTON: Do any Board members or Ms. Long or Mr.
7 Carpenter have any comments they want to provide officially about how that gets
8 handled?

9 MS. LONG: I would just think there would need to be a protocol, Madam
10 Chair and members of the Board, or process, because if you would put something out like
11 that there may be follow-up questions that people would have, so we'd just have to have
12 that in place. Whether that would be Kyle or whoever that would be, but you just have to
13 be ready for who's going to give the comments if requested.

14 CHAIR HAMILTON: I suppose the corollary to that is that it would be
15 good for the Board members to know when press releases like that go out. Bernardine's
16 pretty good at sending things to us. You're always sending out articles of interest. So if
17 that was followed then people would know when to expect stuff.

18 BERNARDINE PADILLA: Madam Chair, members of the Board, when
19 we do send press releases we do notify the Board and then we do put a contact for that,
20 which is usually the facilities manager. In this case since it was generated by Kyle, Kyle
21 would be the contact on that.

22 CHAIR HAMILTON: Great.

23 MS. PADILLA: I think we'll probably have some conversation on that as
24 far as doing a press release and how to do that. We could probably have a little bit more
25 discussion on that. As you all know, there is a new PIO here with the City who I just met
26 this afternoon and I can also pick her brain as well on that.

27 CHAIR HAMILTON: There is, as a matter of fact, a new PIO at the
28 County too.

29 MS. PADILLA: She's a great resource.

30 CHAIR HAMILTON: Very good. That sounds good. I knew the process
31 was potentially in place and that you've been good at being informative and if that keeps
32 up that would serve the purpose.

33 MS. PADILLA: It's hard to put a press release on certain items and like
34 Ms. Long said, it's going to generate questions. So in order to be prepared for that I think
35 it's good to have discussion. Also, I think Ms. Fort had asked me previously to put it on
36 the website. I could do like a photo, like a graphic of it and a link. It would be a little
37 easier - I think it's going to be a little too difficult to list letters, but a link that people can
38 refer to would be much easier for people to reference. So we could do something like
39 that, definitely if you're so inclined to do that.

40 COMMISSIONER HANSEN: Thank you.

41 COUNCILOR HARRIS: My only issue is just I think it needs to go back
42 to Kyle, but we agreed to that. I think that's - I would be comfortable with that.

43 COMMISSIONER HANSEN: I think we all are comfortable with that.

44 CHAIR HAMILTON: Excellent. Thank you.

1 **MATTERS FROM THE PUBLIC**

2
3 No matters were brought forward.

4
5 **MATTERS FROM THE BOARD**

6
7 CHAIR HAMILTON: Matters from the Board?

8 COMMISSIONER HANSEN: I just want to quickly mention that in my
9 district we have a new community farm called Reunity Community Farm and they are
10 having their grand opening and open house and farm on June 15th from noon to 3:00 and I
11 would highly suggest that people go out and see this great new agricultural event in our
12 community.

13 CHAIR HAMILTON: Great. Thank you. Any other Board members?

14 I have something. I just want to make a statement as the chair, I'll state for the
15 record and our minutes that the only matter discussed during the executive session of our
16 last Board meeting on April 4, 2019 was the matter stated in the motion to go into
17 executive session and no action was taken. So if there are no other Matters from the
18 Board –

19 COMMISSIONER HANSEN: I have another, briefly. I want to thank
20 Councilor Harris for agreeing to be our vice chair and continuing. So thank you.

21
22 **NEXT REGULAR MEETING: Thursday, July 11, 2019 @ 4:00 p.m.**

23
24 **EXECUTIVE SESSION**

25 **In accordance with the New Mexico Open Meetings Act NMSA 1978 Section**
26 **10-15-1(H)(7), discussion regarding threatened or pending litigation in which**
27 **the BDDDB is, or may become a participant, including without limitation:**
28 ***Buckman Direct Diversion Board v. CDM Smith, et al., First Judicial District***
29 **Court Case No. D-101-CV-2018-01610**

30
31 CHAIR HAMILTON: Do you need to announce what our executive
32 session is?

33 MS. LONG: Madam Chair, you should ask for a motion to adjourn and go
34 into executive session in accordance with the New Mexico Open Meetings Act 10-15-
35 1(H)(7) for the matter as described on the agenda.

36 COUNCILOR HARRIS: So moved.

37 MEMBER FORT: Second.

38
39 **The motion to go into executive session passed by unanimous [4-0] roll call vote as**
40 **follows:**

41
42 Commissioner Hamilton Aye
43 Councilor Harris Aye
44 Commissioner Hansen Aye
45 Board Member Fort Aye
46 Councilor Ives Not Present

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2 **ADJOURNMENT**

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4 Having completed the agenda, this meeting adjourned at approximately 6:00 p.m.

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6 Approved by:

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11 Anna Hamilton, Board Chair

12 Respectfully submitted:

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14 Karen Farrell, Wordswork

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17 **ATTEST TO:**

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21 **GERALDINE SALAZAR**
22 **SANTA FE COUNTY CLERK**

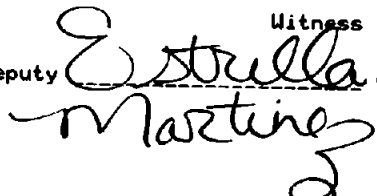


COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BUCKMAN DIRECT DIV MIN.
PAGES: 29

I Hereby Certify That This Instrument Was Filed for
Record On The 22ND Day Of August, 2019 at 02:14:57 PM
And Was Duly Recorded as Instrument # 1894701
Of The Records Of Santa Fe County



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

SFC CLERK RECORDED 08/22/2019



AGENDA

The City of Santa Fe
And
Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, JUNE 6, 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 APRIL 4, 2019 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. REPORT ON JUNE 4, 2019 FISCAL SERVICES AUDIT COMMITTEE (FSAC)

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Randy Sugrue, Interim BDD Operations Manager, rsugrue@santafenm.gov, 955-4501)
8. Report on 3rd Quarter Financial Position for Fiscal Year 18/19. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
9. Report on the BDD's equipment installed at the former E109.9 site in Los Alamos Canyon. (Daniela Bowman, BDD Regulatory Compliance Officer, dkbowman@santafenm.gov, 955-4504)

10. Presentation on the BDD participation in the PNM Solar Direct Program. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506) **VERBAL**
11. Presentation by Charles de Saillan on the Los Alamos National Laboratory (LANL) Orders on Consent. (Kyle Harwood, BDD Legal Counsel, kyle@egolfllaw.com, 986-9641 and Charles de Saillan, NMELC, cdessaillan@nmelc.org, 505-989-9022) **VERBAL**
12. Report from the Interim Facilities Manager. (Rick Carpenter, Interim BDD Facilities Manager, rccarpenter@santafenm.gov, 955-4206) **VERBAL**

CONSENT AGENDA

13. Request for approval to extend chemical contract bids for an additional year from various awarded vendors for a total amount of \$336,000 for FY 19/20. (Randy Sugrue, Interim BDD Operations Manager, rsugrue@santafenm.gov, 955-4501)
14. Request for approval of Amendment No.1 to the Services Agreement Item 18-0663 with Chavez Security for security services for BDD Facilities for FY 19/20 for the amount of \$179,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
15. Request for approval of Amendment No. 1 to the Services Agreement Item 19-0056 with B&D Industries, Inc. for on-call HVAC repair services for FY 19/20 for the amount of \$50,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
16. Request for approval of Amendment No. 2 to the Professional Services Agreement Item 17-1178 with Sub Surface Contracting, Inc. for on-call maintenance and repair services for FY 19/20 for the amount of \$40,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
17. Request for approval of Amendment No 2. To the Legal Services Agreement with Snell & Wilmer, LLP for professional services for FY 19/20 for the amount of \$1,700,000 exclusive of NMGRT. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)
18. Request for approval of Amendment No. 1 to the Professional Services Agreement Item 18-1048 with ALS Group USA, Corp for laboratory analysis services for FY 19/20 for \$91,500 inclusive of NMGRT: (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506)

DISCUSSION AND ACTION

19. Request for approval to accept an insurance policy with American Alternative Insurance Corp. for the BDDB including real property coverages in the amount of \$131,948. (Mackie Romero, BDD Financial Manager, mmromero1@santafenm.gov, 955-4506 and George Segura, Daniels Insurance)



20. Consideration and possible action on BDD Board letters regarding Water Quality topics:
- a. BDD Board Rio Grande Water Quality Letters action (from February 7, 2019 BDDB meeting). (Kyle Harwood, BDD Legal Counsel, kyle@egolfaw.com, 986-9641)
 - b. BDD Board Letter re: DOE Order 140.1. (Kyle Harwood, BDD Legal Counsel, kyle@egolfaw.com, 986-9641)
21. Election of Vice Chair of the Buckman Direct Diversion Board. (Nancy Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT REGULAR MEETING: Thursday, July 11, 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 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. (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: May 29, 2019
TIME: 1:36 PM