

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

March 4, 2021

1. This meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Commissioner Anna Hansen, Chair, at approximately 4:00 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, public entities are authorized to conduct virtual meetings. All votes were conducted by roll call.

[For clarity purposes, repetitive identification and confirmations of those on the line and their audibility have been eliminated and/or condensed in this transcript.]

2. Roll was called and the following members were present:

BDD Board Members Present:

Commissioner Anna Hansen, Chair
Councilor Carol Romero-Wirth
Commissioner Anna Hamilton
J.C. Helms, Citizen Member
Councilor JoAnne Vigil Coppler
Tom Egelhoff, Las Campanas [non-voting]

Member(s) Excused:

None

BDD Board Alternate Members Present:

Peter Ives, Community Alternate – Former City Councilor
James Lightfoot, Las Campanas Alternate

Others Present:

Rick Carpenter, BDD Facilities Manager
Nancy Long, BDD Legal Counsel
Kyle Harwood, BDD Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Randy Sugrue, BDD Operations Superintendent
Jamie-Rae Diaz, City Administrative Assistant
Mackie Romero, Former BDD Finance Director
Joe Abeyta, City IT
Marcos Martinez, City Assistant Attorney
Greg Shaffer, County Attorney

Monique Maes, BDD Contract Administrator
Jesse Roach, City Water Division Director
Jay Lazarus, Glorieta Geoscience
James Bearzi, Glorieta Geoscience
Caryn Gross, City Project Administrator
Regina Wheeler, City Public Works Director
Joni Arends, Concerned Citizens for Nuclear Safety
Donald Burg, Public
Jennifer Von Rohr, Public

3. APPROVAL OF AGENDA

CHAIR HANSEN: Mr. Carpenter do you have any changes to the agenda?

RICK CARPENTER (Facilities Manager): Yes, Madam Chair. There has been a lot of discussion all week long around Action Item 8. B. There are still some unresolved questions and details that staff would like some more time to work out. It is our recommendation that this item be tabled for now, get the details worked out and bring it back for a special session at some later date that would not jeopardize the overall schedule of the project.

CHAIR HANSEN: Okay, Commissioner Hamilton.

COMMISSIONER HAMILTON: Mr. Carpenter, I think that's a good idea and I'm happy to make a motion. My question is, is that both agreements, the cost sharing agreement and the transfer agreement?

MR. CARPENTER: Yes, Commissioner Hamilton, both.

COMMISSIONER HAMILTON: I'll make the motion to table that item.

CHAIR HANSEN: Is there any other changes to the agenda from anyone?

[A discussion ensued on the agenda item 8.B. showing as 9.B. on a published agenda.]

CHAIR HANSEN: I will accept Commissioner Hamilton's motion to table 8.B. and as shown in the City packet as 9.B.

NANCY LONG (BDDDB Counsel): Madam Chair, I would just point out that although there's an item after this item that saying, Approval of Consent Agenda, we don't actually have a consent agenda. Apparently, prime.gov doesn't let you get rid of that. I just wanted to let you know that.

CHAIR HANSEN: Commissioner Hamilton, do you want to make a motion to approve the agenda with the item tabled.

COMMISSIONER HAMILTON: Sure, I already -- I'll move to approve the agenda with the amendment of tabling that one item.

BOARD MEMBER HELMS: Second.

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

4. APPROVAL OF CONSENT AGENDA - There were no items listed.

5. APPROVAL OF MINUTES: February 5, 2021

CHAIR HANSEN: Are there any changes to the February 5, 2021 minutes? What's the pleasure of the Board? Commissioner Hamilton.

COMMISSIONER HAMILTON: I'll move to approve the minutes.

BOARD MEMBER HELMS: Second.

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

6. MATTERS FROM THE PUBLIC

CHAIR HANSEN: Are there any matters from the public, Jamie-Rae?

JAMIE-RAE DIAZ [Administrative Assistant]: Yes, Madam Chair, there is matters from Joni Arends and she is here. So we can give her two minute to talk.

CHAIR HANSEN: Okay, is she in the meeting? I don't see her.

MS. DIAZ: I will allow her to talk once you give me the okay.

CHAIR HANSEN: I give you the okay.

MS. DIAZ: Joni, you'll have two minutes to talk. Please make sure to unmute yourself.

JONI ARENDS (CCNS): Good afternoon. Thank you. My public involves the New Mexico Environment Department lawsuit against the Department of Energy last week with regard to the failed to 2016 Consent Order for LANL. This is an important lawsuit for the Buckman Direct Diversion Board to be aware of and to monitor. CCNS, the Concerned Citizens for Nuclear Safety, is urging the Environment Department to create opportunities for the public to participate in the negotiations. We are also recommending that the Department update and reissue its May 2, 2002 Imminent and Substantial Endangerment to Health and Environment Determination that supported the draft consent order after the Cerro Grande Fire. CCNS urges the Board to also recommend to the Department these two items.

Also, last week data from the New Mexico Environment Department and LANL reveal evidence of PFAS and forever chemicals in the canyon bottoms and springs at the Rio Grande. Working to finalize a map and we'll provide it to y'all of locations where the PFAS have been found.

Thank you so much for your consideration of our comments.

CHAIR HANSEN: Thank you, Ms. Arends. Is there anyone else who wishes to make a comment, Jamie-Rae?

MS. DIAZ: There are a couple of people – if you don't mind, let me just ask. I don't recognize any of the names. Donald, are you here to provide a public comment?

DONALD BURG: No, I am just here to listen.

MS. DIAZ: Thank you. Jennifer, are you here to provide a public comment? You'll have to unmute yourself?

JENNIFER VON ROHR: No, I'm just listening. Thank you.

MS. DIAZ: Thank you. There's two more. [The other phone numbers were not present to comment.] There is no more public comment.

CHAIR HANSEN: Thank you to the public and thank you for being here. And thank you to Ms. Arends for making public comments. I will now close matters from the public.

7. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

CHAIR HANSEN: Randy Sugrue. Hi, Randy, welcome

RANDY SUGRUE (Operations Superintendent): Thank you very much, Madam Chair, members of the Board. BDD operations for the month of February 2021, went pretty well under the circumstances and under cold weather conditions. Our raw water diversions were 4.95 million gallons per day average. Our drinking water deliveries through our Booster Stations 4A/5A averaged 4.7 million gallons per day. Las Campanas did not divert during the month of February. Our onsite treated and non-treated water storage was about a quarter million gallons per day. BDD provided approximately 81 percent of the water supply to the City and County for the month. We do have a brief regional demand drought summary on page 2 with a bit of storage information.

Our year to date diversions is listed in the graph. February was somewhat above our monthly average for the last 10 years. Daily metered regional demand was about 6.1 million gallons per day. Rio Grande flows, even in a dry winter, averaged approximately 550 cubic feet per second. The storage is listed in the graph. We have a fair amount of water still in Abiquiu, El Vado, Heron. It still looks like a dry winter. We'll see what March has to bring.

I did want to mention that we'll be bringing a brief presentation to the next Board meeting on BDD low river flow operations to give you an update on our assessment of our ability to divert should we have low river flow again this spring and summer. So we'll bring that to the next meeting. That being said, I stand for questions.

CHAIR HANSEN: Are there any questions from the Board? Seeing none, thank you, Randy, for your excellent report.

7. b. Report from the Facilities Manager

MR. CARPENTER: Yes, Madam Chair, I just have a couple of brief items dealing with filling vacant positions. I am happy to report we believe that we have satisfied all the requirements to fill the position of BDD maintenance superintendent. We're merely waiting on Human Resources to provide us the approval to go ahead and fill that position. I think we'll be able to do that in very short order. So I'm excited about that.

Similarly, the posting for Mackie Romero's old position which is now financial supervisor that closed last Friday the 28th. I looked at the list of eligibles this past Tuesday which is very rapid. It looks good. We've got a good group of candidates and we'll be moving forward with interviews just as quickly as we can. And with that, Madam Chair, I would stand for questions.

CHAIR HANSEN: Are there any questions from the Board? Commissioner Hamilton.

COMMISSIONER HAMILTON: Is Mackie by chance going to be on the interview panel?

MR. CARPENTER: No, Commissioner Hamilton, she has decided that this is something that would probably not be appropriate for her to do. That doesn't mean I don't ask her a lot of questions.

COMMISSIONER HAMILTON: It would be valuable. I don't know that it would be appropriate either but it would be valuable. Thank you.

CHAIR HANSEN: Are there any other questions from the Board? Thank you, Mr. Carpenter.

7. c. Report on March 2, 2021 Fiscal Services Audit Committee (FSAC)

CHAIR HANSEN: It is so nice to see you, Mackie. It was nice to see you yesterday. Welcome and thank you for being here.

MACKIE ROMERO (Former BDD Finance Manager): Madam Chair, a Fiscal Services and Audit Committee meeting was held yesterday, Wednesday, March 3rd. We did discuss the budget which I will be presenting today and then we also discussed the solar project which has been tabled.

There were no major concerns over the budget but I will go over that and hopefully be able to answer any of your questions. That's the end of my report.

CHAIR HANSEN: Are there any questions? Anybody have any questions about the budget?

COMMISSIONER HAMILTON: Yes, yes, about the budget but that hasn't come up yet, right?

CHAIR HANSEN: Okay. Thank you, Mackie. Let's move on.

7. d. Update on BDD Board priorities regarding Rio Grande water quality issues

MR. CARPENTER: Madam Chair, we've been discussing over the last few Board meetings a variety of issues and priorities related to LANL and DOE. Mr. Harwood has put together a pretty concise memo that lists those out and he would like to just step through that memo briefly and then we can stand for questions.

KYLE HARWOOD (BDD Counsel): Thank you, Rick. Yes, I put together this memo summarizing a lot of loose ends that we have briefed to the Board over the last several months. So I'll step us through these five items as efficiently as I can. Then as fate would have, as soon as we finalized the agenda and packet last week, we learned of the NMED complaint that was the topic of one of the public comments and so we did issue an amended agenda to add the next item to the discussion today.

- **Cleanup Project On Pajarito Plateau**

Let me turn to the items that are in the memo first. I actually have some later breaking news on number one, for those of you who remember we, in our surveillance program flagged a permit on the Pajarito Plateau that rather surprisingly described some very significant water diversions, some 600-plus acre-feet of diversion as part of our remediation project without describing that that water would not be consumptively used because the permit and the legal notice didn't say that. So counsel for the Board as well

as counsel for Santa Fe County did coordinate on a joint protest for that permit over concerns of what it basically did not say regarding the remediation project. So I can report that as of late this afternoon, it appears that we've got a resolution in principle of getting a fuller update to John Utton tomorrow. But it seems like there is a resolution afoot. I hope to bring settlement of that protest to the Board at the April 1st meeting. Again, this is for a cleanup project on Pajarito Plateau, so as the Board has expressed in the past, we are very supportive of cleanup projects but we also want to make sure we understand the permitting that supports those projects.

Should I stop now, Madam Chair, and see if there are questions on that before we go to the next topic?

CHAIR HANSEN: I think that's a good idea. I do see Commissioner Hamilton has her hand raised.

COMMISSIONER HAMILTON: I know you said you're going to give us an update, I don't know, next month or something – is there any indication that based on this protest that they're actually doing what is needed to show how that water is going to be used? Do you get a sense that progress is being made – appropriate progress is being made?

MR. HARWOOD: To the last question, Commissioner, I do think appropriate progress is being made. And I do sincerely believe I'll be able to bring you a fully prepared resolution and settlement at the April 1st meeting. If it's okay, I'd just as soon stop there for now and bring you the whole package next month but it does look like this matter is on track to be resolved. Any other questions from anybody? Yes, Councilor Ives.

PETER IVES: I believe you indicated that the protest was filed both on behalf of the Board and the County of Santa Fe so we are a party to that protest so is it reasonable to assume that we'll be briefed in executive session at the next meeting?

MR. HARWOOD: I'm sorry, but I should have maybe said this more clearly, but the BDD and the County actually filed separate independent protests.

MR. IVES: Okay.

MR. HARWOOD: I don't know that that was clear. And, yes, I do think that subject to – Nancy, is often the keeper of executive sessions, so I will obviously work with her on making sure that we get a discussion in executive session that fits with the other matters that are before the Board.

MR. IVES: Part of the reason that I asked the question is that we usually adjourn our meeting and then go into executive session and come out in the next meeting so that would, if there is an agreement put in place to settle the matter, that might not be acted upon until the meeting after the next meeting.

MR. HARWOOD: I think I'm following your concern. Let me put you somewhat at ease in that the remediation project is functioning now and has been under emergency authorizations. Obviously, the Lab desires some permanent permitting status for the project but I don't think the Board's current calendar of meetings and whether we take it up in April or finalized action in May should adversely affect the project as far as I understand. But I will double-check on that as we bring you the settlement proposal. But if I understand your concern that our schedule might delay something physically going on, I don't believe that is actually the case right now.

MR. IVES: Thank you. Just curious on that point, thank you, Madam Chair.

CHAIR HANSEN: Thank you, Councilor Ives. Any other questions on this item? Okay, we'll go onto number 2, which is the LANL MOU Negotiation.

- **LANL MOU Negotiation**

MR. HARWOOD: Yes, thank you, Madam Chair. We've had a reboot since the holidays and the change in the administration of our MOU negotiations with LANL staff. We have Jay Lazarus, I believe he was somewhere on the call earlier as well as James Bearzi who have been leading the technical topics in that negotiation. As my memo summarizes, we are continuing to operate in 2021 under a one-year extension of the prior three-year MOU and getting the benefits of another calendar year of the old MOU while we work on a revised MOU. And I believe it is fair to say that the action item for the technical folks is to do a Covid safe and frankly winter safe site visit in the E-109.1.10 reach to see if we can't develop a consensus about the request that the Board has made with respect to that part of the early notification system.

We are very much hoping to bring back to this Board a consensus MOU or one that has as much consensus as can and highlighting the areas of disagreement, I would hope at the May meeting so that the Board can consider its options at that time.

I would like to ask Jay if he has anything else that he wants to add on this. Jay, don't feel like you have to get into any of the details. I don't know that we're doing that level of briefing right but I did want to make sure you had a chance to add anything because I know the Board likes to hear from you on this topic.

JAY LAZARUS (Glorieta Geoscience): Chairwoman Hansen, Kyle, thank you, we have nothing to add to that. And really we'll have a lot better idea of how we want to approach this when we do our field trip. And truly, James does all the heavy lifting, but thank you, Kyle.

MR. HARWOOD: Very good. Are there any questions from the Board on the MOU? Very good. We are looking forward to bringing you back an update. The next topic is –

CHAIR HANSEN: I'm sorry, Kyle. I want to thank Jay and James Bearzi for all the work that they are doing on our behalf on the MOU. So thank you and then we can go on to the Triennial Review.

MR. HARWOOD: Yes, so we flagged for the Board for the preceding quarters that there is a new triennial review afoot. This is the review of water quality standards. We are located in what's called Segment 114 of the Rio Grande, the intake is. And the Board might remember – I think only Rick and Nancy and I were around back when we did the last triennial review which was some 11.5 years ago. But we have reviewed the current posture of the triennial review and the Board's comment letters to NMED in 2020 and the recommendation from Rick first, myself, and Glorieta Geoscience is that we continue to monitor the triennial review but that we not file expert testimony or an entry of appearance in the matter. That deadline is not very far out so this is sort of the best time for y'all to tell us if you do not wish to follow the recommendation but it is the recommendation that we monitor and not pre-file expert testimony or an entry of appearance. So this relatively speaking, probably the biggest item on the memo for today. With that, I'll stand for questions on this sub-item.

CHAIR HANSEN: Are there any questions on the triennial review?
Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. What's the basis for that recommendation? Is this a financial issue or what?

MR. HARWOOD: No, Councilor. The Board previously in 2009 argued for some segment specific and contaminate specific monitoring standards. Those are not being proposed to be changed by any of the other parties based on our surveillance of other parties' filings. And none of the other apparent changes that are being sort of pursued through what we've been able to track so far appear to materially affect the Board's previously expressed priorities with respect to Rio Grande water quality. So I think as you know, we make our recommendations first and then work with the Board on budget second. So this is our recommendation independent of budget.

COUNCILOR ROMERO-WIRTH: Okay. I think it is just helpful when you make a recommendation if you can give us a little background on the basis of the recommendation just so we know why you're saying it. Thanks.

MR. HARWOOD: Yes. And I'm sorry for not providing that level of detail, Councilor.

CHAIR HANSEN: Are there any other questions from the Board on the triennial review? Councilor Ives.

MR. IVES: Thank you, Madam Chair. Just a quick question about what other opportunities than this review would there be to try and request the development and imposition of sort of TMDLs the water quality standards for this reach of the Rio Grande?

MR. HARWOOD: Yes, thank you, counselor and I keep calling you Counselor with an "s" not with a "c."

There is a substantial list of topics to speak with NMED about as soon as we get past noon on March 20th which is the end of the session. Development of TMDLs and I won't list all the list of topics but certainly there are issues like primacy and TMDLs and many other programmatic things that we feel would be helpful and protection to source water quality and that is on the long list of topics to speak with our partner regulator about.

MR. IVES: I take it what you're saying is that the triennial review is not the only place we can raise those issues and, in fact, we're planning on raising them through other mechanisms with NMED.

MR. HARWOOD: I think that is fair to say. It is on a long list of topics that we do talk with those staffers about. They are fairly unavailable right now as you can imagine. But hopefully they get their budget request and they'll be able to stand up increased activities on things like TMDLs that they have not been able to make much progress on in recent years.

MR. IVES: Good, thank you.

CHAIR HANSEN: Thank you. Are there any other questions for Kyle on that topic? Next we'll go on to item four, the LANL Site.

- **LANL Site-Wide EIS**

MR. HARWOOD: Thank you, Madam Chair. I'm sorry the heading got at the very bottom of the page there but the text begins at the top of the next page. So as you all, I think know, the City and County have been active on the site-wide EIS topic.

What I have learned about this is that the federal regs contemplate site-wide EIS, this is site-wide environmental impact statements, being prepared about every five years. The last one for LANL was prepared in 2018 with an update, a supplemental update prepared in 2018. Supplemental update, I should just say, the supplement, did not involve significant public involvement. It was a review of the then existing site-wide EIS was still current which they concluded it was. So, obviously because our – should we call them parent governments to the BDD have both taken action on this topic it seemed appropriate to include it on a Board agenda. If the Board wanted to pass a resolution similar to the ones that our parent governments have done, it would be a very small exercise to bring that back to the April meeting. Alternatively, the fact that our parent governments have already passed or are considering their own resolutions may make that not necessary. I don't know if Nancy is going to kick me for calling them parent governments or not – but anyway, be that as it may. [laughter and joking] So that's the topic on the memo for your consideration.

CHAIR HANSEN: I was hoping that my constituent liaison Sara Smith could take a stab at combining our two resolutions into one for BDD and bringing that to Kyle and then we could bring it forward at the April meeting. So that is my suggestion. Any other comments on this? Mr. Ives.

MR. IVES: Thank you, Madam Chair. Just a quick question. Obviously, the statement is the regulations require the update every five years; are those state or federal based regulations that require that is my first part.

CHAIR HANSEN: Its federal regulations.

MR. HARWOOD: Federal.

MR. IVES: And I suppose just the general question given that it is called for at five years, do we have any explanation or indication why it was not done in compliance with existing regulations?

MR. HARWOOD: I think it is fair to say that the regulations don't mandate it be done every five years but it is considered best practice – when the mission of the Lab facility, the DOE facility is undergoing evolution that it would be appropriate to do it. I suppose there is a joke somewhere there about the Lab not following a rule that I won't make but they are getting a lot of pressure to do it now and apparently the new administration is quite interesting in getting these things current is my understanding.

MR. IVES: Good, and I thought your joke would be as opposed to referring to our respective governmental entities as current entities to them as apparent entities.

CHAIR HANSEN: Another slight joke there I see. Thank you, Member Ives.

COMMISSIONER HAMILTON: Very, very slight.

CHAIR HANSEN: I think that it's fair to say that the previous federal administration did not always follow best practices so I think that we are now in a new era so possibly best practices will be followed.

MR. IVES: Madam Chair, you are a master of understatement.

CHAIR HANSEN: Thank you. Next we will go to BDD project SWPP. Kyle, number five.

- **BDD Project SWPP** - Source Water Protection Plan

MR. HARWOOD: Yes, ma'am, Madam Chair. This is a Board approved priority and funded project that has largely been on hold for Covid reasons and also knowing that it is an important but not urgent project. But it seems like this will be a good time to stand this project up in the new year that we are in. Rick, did you want to – I know that you have had many more contact on this topic than I have most recently.

MR. CARPENTER: I think at this point I don't have any specific details to add. If it is something that develops further we might bring it back as a standalone item.

MR. HARWOOD: Very good. They'll be some kind of an update to the Board as that outward facing activity stands up so you're aware of it as it unfolds.

CHAIR HANSEN: Commissioner Hamilton.

COMMISSIONER HAMILTON: Is this suggesting that we're actually ready to proceed with public meetings because I would not stand in favor of that.

MR. HARWOOD: No, no. I think they will be Covid safe Zoom meetings.

COMMISSIONER HAMILTON: We could have done that at any time during this past year.

MR. HARWOOD: Well, I know but like I said this is an important but perhaps not urgent matter. So it has been pushed down a little bit because it's important but not urgent because we had a number of urgent things I think in this space over the preceding months. So I think it's – I'm sorry, if we could have moved forward earlier and we did not then we should perhaps do so now.

COMMISSIONER HAMILTON: It just seemed to be confusing and I was a little concerned that we are planning to go forward with public meetings because that's what I got from it, that we wanted to have them in person and that's not appropriate yet. It could be very, very soon. So either way is fine but that's what I was asking about, that's all.

MR. HARWOOD: I'm pretty sure that's what Ms. Komer intends to do is to not have in person meetings.

Very good, that concludes the memo contents, Madam Chair.

CHAIR HANSEN: Okay, thank you, Kyle.

7. e. ***Presentation on New Mexico Environment Department v US Department of Energy, D-101-CV-2021-00386***

MR. HARWOOD: Yes, thank you. This is, I think fair to say fascinating development in the LANL world. For those of you who don't remember the history it was a lawsuit not unlike this one that ultimately concluded with the 2005 Consent Order that did so much work up on LANL campus with respect to cleanup and also provided the environment for Congress to make significant appropriations of money for the cleanup of a lab facility that has not only got historic legacy waste but also has an active mission in national security. And so as the complaint describes and I provided it along with the summons to you and there is a cover memo as well that I believe was provided, that complaint describes the dispute resolution mechanisms in the 2016 order on consent which is a very different agreement that provides a bare fraction of the protection and operative provisions for cleanup. But the complaint describes the 2016 provisions that

were placed in the 2005 Consent Order have failed between NMED and the Lab over the preceding months and that's the proximate cause – proximate reason I should say for the filing of the lawsuit.

There's a lot in the lawsuit and I should note that with James and Jay's help we've reviewed some of the cleanup projects that are described and at least two of them are in the LA Pueblo Canyon watershed. As I think many of you know, half of LANL campus drains into the Rio Grande above our intake and the half drains into the Rio Grande below our intake. We tend to focus most specifically on activities that are in the LA Pueblo Canyon watershed because it is upstream of our intake and so we did confirm that.

I did have occasion to speak to counsel Bruce Baizel earlier this week he is about to be the new general counsel at NMED. He is replacing Jennifer Hower who many of you might know. Jennifer Pruet the assistant cabinet secretary has also given notice of her departure from the agency. So there are a lot of changes going on at NMED and it was very interesting to speak to Bruce Baizel about the lawsuit. And this is not an action item in any manner. This is just an information item this evening. It is a very recent development and it's going to bear watching to see what comes of this complaint. There is more than one theory that it is going to get removed to federal court. And the complaint also requests court administer mediation among other things, including the payment of penalties. It's a very interesting complaint. I don't know if you'd like to talk about it more today or whether you'd like to direct us to bring back some kind of an update or summary. It's also possible we could invite back folks from NMED or other people that you have heard from in the past like Charlie de Saillan, obviously these are folks that are either paid for by other government entities or are available to the Board not as consultant but people like Charlie who enjoy coming and speaking to the Board who are not Board consultants. But at any rate, there's a much of different ways we could continue to update the Board on this important development. So I stand for any questions or direction you might have.

CHAIR HANSEN: Is there any questions from the Board?

Commissioner Hamilton.

COMMISSIONER HAMILTON: Not really a question but I would think that some efficient way to get future summaries would be of interest because it could have implications to our Board.

MR. HARWOOD: Very much.

COMMISSIONER HAMILTON: There were some NMED people that spoke to us before like Stephanie Stringer who worked quite a bit on this. So you know, I think it's a good idea.

MR. HARWOOD: Very good.

CHAIR HANSEN: I thank you, Commissioner Hamilton. I also agree. I have to share with everybody that on the day that the lawsuit was filed Stephanie Stringer was the first phone call that I received and it made my day. So I was quite happy to take her phone call and I think that we should continue to get updated. I would love to hear Charlie's take on this and then also update an update from NMED. I was also wondering if our E109.9 station could possibly have any role or how we could actually bring that to their attention.

MR. HARWOOD: That's a fascinating question, Commissioner. I think the answer largely here after only a couple of work days after filing the complaint is that it remains to be seen. I did see that Jay Lazarus unmated there; Jay, did you want to add something?

MR. LAZARUS: Chairwoman, Kyle, thank you. The field trip that we'll be having in May is directly related to E109.9 and E110.

CHAIR HANSEN: There was also on that day of the filing of that lawsuit I happen to have a meeting scheduled with Kirk Lachman who is also now the new DOE-EM manager. He comes from WIPP and Washington DC. This meeting had been scheduled some time before. He was not aware of E109.9 but I did make him aware of it and I have invited him to also come to our meetings so that we can hear from all sides. So I just wanted to share that piece of information and it seems like to be the proper place to do that. Are there any other questions? Go ahead, Kyle.

MR. HARWOOD: No, I was just going to ask the same; are there, other than the request that we provide efficient updates to the Board as this case unfolds, is there any other direction or questions that we can work on for you? Okay, hearing none, we'll contact some of those folks that have helped bring information to the Board in the past and I think most of the state folks I think are going to be pretty worn out after the 20th so I don't know that we're going to get them to commit to April 1st. We are having a meeting on April Fools' Day; is that right?

CHAIR HANSEN: That's what it says in the packet.

MR. HARWOOD: Okay, so we'll see who is available for that day and do our best to provide effective and efficient updates to the Board.

CHAIR HANSEN: Thank you, Kyle. I appreciate that. And our meeting is on April 1st it is not April Fools. Okay, thank you for those presentations everybody.

8. ACTION ITEMS: Discussion and Action

a. Request for approval and recommendation to Santa Fe County Board of County Commissioners and City of Santa Fe City Council to approve the Fiscal Year 2022 Buckman Direct Diversion Operating Budget and Other Fund Contributions

1. Presentation of the proposed FY2022 BDD Operating Budget and Other Fund Contributions
2. Public Comment
3. Request for approval of the proposed Fiscal Year 2022 Operating Budget and Other Fund Contributions and recommendation to approve by the County Commission and the City Council

MR. CARPENTER: Thank you, Madam Chair. Just briefly we were asked again this year to create as closely as we could a flat budget resembling last year. There have been a few changes we had to make here and there but you'll see when Mackie begins her presentation that a lot of it is going to look pretty familiar to you. We'd be happy to stand for questions. So, Mackie, take it away.

MS. ROMERO: Madam Chair, members of the Board, the BDD is pleased to present the proposed annual operating budget for fiscal year 2022. The proposed budget accounts for all projected and necessary costs to meet the Board's

service level objectives and to continue to provide high quality water to our partners, the City of Santa Fe, Santa Fe County and the Club at Las Campanas and the Las Campanas Water and Sewer program. The BDD did actively collaborate with our partners on the development on this budget and therefore the BDD would like the Board to approve and recommend \$8,842,711 for our operations for fiscal year 2022. We also recommend that the Board approve contribution to the major repair and replacement fund of \$626,706.

As Rick mentioned, for the most part the budget did remain flat while reallocating expenses between categories but the budget does include a slight increase of \$78,996. This is related to a projected increase in electricity and chemicals as the County has projected to serve some additional customers in fiscal year 2022 and therefore these costs were solely allocated to Santa Fe County's contributions. So if you see on page 8 of your packet, table C, I did include comparison. So there's a budget comparison from our adopted budget, fiscal year 2021 to the proposed budget of fiscal year 2022. And from there you can see that the only increase is the \$78,000 that's being allocated to the County. This table also includes actuals so that you can get a comparison of what we spent in fiscal year 2020 and our overall expense is \$8,665,134. This is important because BDD wants to try and get as close as possible between budget and actuals. The table does include several of our categories that we budget. I did include more details for our materials and supplies so if you look at Table C-1 on page 9, I do have a breakout of what contributes to materials and supplies and then on Table C-2 what contributes to our other operating costs that are included in the budget.

BDD's annual operating budget consists of fixed, variable and project-wide costs. These costs are allocated by percentages that are contained in the Facilities Operations and Procedures Agreement. We also use our water projections for the year. These water projections affect how we budget our variable costs and our project-wide costs. I have included on page 11 of your packet there's Table D and Table E. Table D does represent all of the cost sharing principles that were used in developing this budget and then Table E includes not only actual water deliveries for prior fiscal years but then the projections for fiscal year 2022, which as I said was used to develop this budget. Because we do use water projections to develop the majority of the budget, even though our budget did remain flat with the exception of the \$78,000, the actual – each partners' individual contribution or revenue from the fiscal year 2021 does shift and the partners are aware of this. And, again, it shifts because of how much water they are projecting to take in fiscal year 2022.

If you go to the last page of your Board packet which is page 18, you'll see the funding allocation by partner and it does include some additional revenue sources. Our PNM solar rebate revenue is a revenue source that we use for the budget. We do receive federal funds from the Department of Energy and then the County Conservation fee which since that's a different revenue source that comes from the County's customers, that's also just separated out. And then I do have the major repair and replacement fund broken out by each partner.

That is the end of my presentation. Overall, the budget is for, including the contributions, it is \$9,469,417. And I am happy to answer any specific questions.

CHAIR HANSEN: Thank you, Mackie, very much. Are there any questions from the Board? Commissioner Hamilton.

COMMISSIONER HAMILTON: Does the budget include the couple of unfilled positions that we had talked about that are still on the books but that are deemed necessary that might be filled in the coming year?

MS. ROMERO: Madam Chair, members of the Board, Commissioner Hamilton, yes. All of the vacant positions does include filling those positions and for the full year. So if you remember for fiscal year 21 we only partially funded those positions but now they are fully funded in this request.

CHAIR HANSEN: Next I will go to Councilor Vigil Coppler, if you are finished Commissioner Hamilton.

COMMISSIONER HAMILTON: Yes, thank you, Madam Chair.

COUNCILOR VIGIL COPPLER: Thank you, Madam Chair. I wanted to ask about litigation costs. We were a little bit over in our actuals and I'm wondering – and then we're budgeting at the same amount; is that just to see how we go? I guess we normally do that.

MS. ROMERO: Madam Chair, members of the Board, yes, we have been budgeting about \$2 million each year. And you are right, last year we did go over and we did have to submit some BARs to cover those costs. Maybe Nancy can answer but I think the majority of the costs were really high in that year so we're hoping – and the majority of the work was being done in that year, so hopefully and we don't anticipate or project that we would go over that \$2 million budgeted mark for litigation next year.

COUNCILOR VIGIL COPPLER: Okay, thank you. And then the other question I have is in the salaries and benefits section. I note that the salaries, the budgeted amount just slightly went up but the benefits went down in our request; is there a reason?

MS. ROMERO: Madam Chair, members of the Board, it could have just been some shifting of some of the positions and at what level we budgeted those benefits and so I probably had brought them down for some of the higher insurance rates that we use. So it was really just shifting of those.

COUNCILOR VIGIL COPPLER: And then I wanted to ask, last year we made an effort to get on the City's budget hearing schedule so that we could assert the independence of the Board and I'm wondering if any thought has been given to that? I know that the budget hearing schedule has come out but we don't have the departments yet listed on it. So I'm wondering if we're going to bow out of that this year or do you think we're going to bow in?

MR. CARPENTER: Chair, Councilor, it would be my preference as it was last year to have a standalone presentation during those hearings. I think you supported that as well last year. I haven't had a chance to discuss that with Dr. Roach or Shannon Jones. I don't know where they stand on that but I will certainly be willing to take that up with them.

COUNCILOR VIGIL COPPLER: Okay, well just as a point of information, I actually worked with Finance Director Mary McCoy to arrange for scheduling and the importance of that. However you wish. Okay, thank you.

CHAIR HANSEN: Councilor Romero-Wirth, you had your hand up next.

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. I just wanted to have somebody speak to the water projections. It looks like we're thinking that we'll need more water. We'll be pulling more water in fiscal year 2022. I assume that's

because of drought and I'm just wondering how you got to the number that you got to. If you could just give a little more background?

MR. CARPENTER: Madam Chair and Councilor Romero-Wirth, we have ongoing discussions with both the City and the County on what they think their level of demand will be and the projected use of water and the various sources of those waters. It's sort of a moving target but yes a lot of it has to do with the coming drought or the continued drought and what we think Nichols and McClure reservoirs might be able to produce and therefore whether we need to take more out of the Rio Grande. So that's a projection that is somewhat conservative, it could change. I don't want to speak for the hydrologists at the City of the County but that has been considered for a long time looking at a lot of the models – not the least of which snow tell, snowpack, snow water equipment, things like that and these projections that they put together that they give to the BDD. I see that Dr. Roach is on the call and I don't know if he would like to add to that or not.

JESSE ROACH (City Water Division Director): Thanks Rick. I think you covered it pretty well. We do have a weekly meeting and we develop monthly projections and then in the case of the BDD budget we develop annual projections that are out a ways and it's probably too far for us to really understand what the snowpack will be doing. But we did our best to take into consideration all of variables that we could estimate. And we do as Rick mentioned, we do account for the fact that we are planning to drawdown Nichols completely at the end of this year through the winter. That may be why the City projection at least is higher than what we have seen previously.

COUNCILOR ROMERO-WIRTH: Okay, thank you. And, Madam Chair, I'm on page 13, it looks historically – well, more often than not, let's say that, our predictions for the number of gallons delivered are higher than what actually happens. I just want to make sure that I'm reading that correctly.

MS. ROMERO: Madam Chair, Councilor Romero-Wirth, you are correct which does make it difficult to budget and so it really is a balance between what we think will come in in actuals and then the water predictions so that we don't budget too much money and then they don't take the water and they I have too much budget tied up.

COUNCILOR ROMERO-WIRTH: Okay, yeah, it sounds tricky because none of us has a crystal ball. But I just thought it would be interesting to hear from you all directly on that side. Thank you and thank you, Madam Chair.

CHAIR HANSEN: Thank you, Councilor Romero-Wirth. I do wish we all had a crystal ball. Commissioner Hamilton, I saw you had your hand up again.

COMMISSIONER HAMILTON: It's just a follow-up to Councilor Vigil Coppler's question. This is just an issue, and I gather, well it looks like I'm the only one who does not understand, but I guess I thought the benefits would be proportional to the payroll estimate. And I had noticed that and then failed to ask the question. But I don't understand the answer. JoAnne did, but I didn't.

MS. ROMERO: Madam Chair, members of the Board, I do apologize. I was looking at my spreadsheet after I answered. What happened is actually our workers comp, and this may be something that the City tends to shift a lot of our allocations to the City Water Division's budget and so I haven't been billed water compensation costs and so because of that I removed that from the budget. It was almost \$100,000 and so I took that off because it just isn't a cost that BDD is picking up right now.

COMMISSIONER HAMILTON: In benefits?

MS. ROMERO: Yes, that's usually where it hits our budget.

COMMISSIONER HAMILTON: Okay.

COUNCILOR VIGIL COPPLER: Mackie, excuse me, Madam Chair, Mackie, you meant to say workers' comp; right? I think you said water.

MS. ROMERO: Oh, yes, workers' comp sorry.

CHAIR HANSEN: Okay, is everybody clear and have their questions answered? I think it's probably a good idea to present at the City Finance Committee and maybe we can work with Dr. Roach, Mr. Carpenter and Councilors Vigil Copper and Romero-Wirth on those issues. As Vice Chair, Councilor Romero-Wirth, do you think that would be appropriate?

COUNCILOR ROMERO-WIRTH: Sure, and I do sit on the Finance Committee and I would be happy to also work with staff in reaching out to Mary McCoy and just emphasizing that as something that this Board would like to do.

CHAIR HANSEN: And I would be happy to attend but I want to leave that in your court, sort of speak. Thank you. Anymore questions from anyone?

COUNCILOR VIGIL COPPLER: Madam Chair.

CHAIR HANSEN: Yes, Councilor Vigil Coppler.

COUNCILOR VIGIL COPPLER: I want to, if I may, just kind of reiterate a bit of history. The reason that we wanted to participate in the City's budget hearings, because it was a little different, but the reason and I just want to reiterate is that we wanted to – and I said this awhile ago – emphasize our independence and more educate, for lack of a better word, how our organization chart works and how we're administratively attached to the City by having them be our fiscal agent, but that we make our own decisions. So I think we made some good headway in that goal. I would recommend that you continue that goal and see if there's any other outstanding things that maybe we want to communicate other than that.

There may be some other things that you come up with, Madam Chair, that you also want to get across. But I really believe that it was a very good exercise in undertaking the differences in our organizational chart. We did have some new people join the City including the Finance Director. It's not always apparent how these organizational anomalies work so that was really the goal as well as asserting our budget and educating the City on what their portion is and why and how our budget is allocated among the partners – the expenses, I should say. So I felt it was a really good exercise. It was fairly smooth, fairly. But you keep that in mind as you go forward and what else you would like to convey because I don't know how much stuck.

CHAIR HANSEN: I really appreciate your comments and I think that our negotiations over this solar project is definitely an example of the complications and the intricacies of the BDD and the partners and all of the things that we are working on. I can definitely see some benefit in this exercise.

COUNCILOR VIGIL COPPLER: Thank you.

CHAIR HANSEN: Anyone else from the Board? So what is the pleasure of the Board?

COUNCILOR VIGIL COPPLER: Move to approve the Fiscal Year 2022 Budget.

CHAIR HANSEN: Thank you. Do I have a second?

BOARD MEMBER HELMS: Second.

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

8. c. Appointment by the Chair of Committee Members to FSAC (Fiscal Services and Audit Committee) of the Buckman Direct Diversion Board

CHAIR HANSEN: As the Chair, I have asked Vice Chair Councilor Romero-Wirth to serve on the FSAC committee with me and I think that we just needed to put it in the minutes for the record so that people knew who was serving on the committee. Commissioner Hamilton.

COMMISSIONER HAMILTON: Do you need – does there have to a motion to that effect?

CHAIR HANSEN: It says appointment by the Chair.

COMMISSIONER HAMILTON: I saw that. I was just double-checking.

CHAIR HANSEN: We will ask Ms. Long.

MS. LONG: Yes, Madam Chair and Commissioner Hamilton, it is just an appointment by the Chair and that is how we have handled it. But it is always good to check.

COMMISSIONER HAMILTON: Yes, just checking.

CHAIR HANSEN: Okay, so I am appointing myself and Councilor Romero-Wirth as members and ask if Commissioner Hamilton would like to be the alternate, I am more than happy to have that also happen.

COMMISSIONER HAMILTON: Yeah, sure but I thought that we'd all be alternates if anybody not available.

CHAIR HANSEN: Right.

9. MATTERS FROM THE BOARD

CHAIR HANSEN: Commissioner Hamilton.

COMMISSIONER HAMILTON: On the item that we tabled, do we need to schedule a special meeting and do we need to do that now? Not a loaded question, I was just curious. I thought that was mentioned earlier by Rick.

MS. LONG: Madam Chair, because of the City's deadline which I believe is March 29th for the finance, we need to get these agreements approved by the Board before that date. And we don't know when the issues will be worked out. I certainly hope they will be by next week. But I think Jamie-Rae can probably circulate around some options for a special meeting, and of course we have to have three days notice and the agenda ready prior to that. So it will occur before that date in order to meet the deadline before March 29th.

COMMISSIONER HAMILTON: Great thank you and thank you, Madam Chair.

COUNCILOR ROMERO-WIRTH: Madam Chair.

CHAIR HANSEN: Yes, Councilor.

COUNCILOR ROMERO-WIRTH: I think it would be important to try and get a date to aim at sooner rather than later. It doesn't have to be during this meeting but I think we all have quite a few meetings already on our calendars and I know the City Council has one or two meetings that are special meetings – oh, they may be in April so that may not matter – around a land use issue. The sooner we can look out there and block out some time, I think the better. Thank you.

CHAIR HANSEN: Yes, I agree with you, Councilor Romero-Wirth. All of our schedules get filled up rather quickly. I know that we normally meet on a Thursday, but for me Thursdays throughout the month is usually a very busy meeting day. I hope that we don't have to go until the 25th. I hope that we can resolve this beforehand but I would think that that might be our deadline. I do also think that these agreements have to be approved by both the City and the County again. I think maybe aiming for something in the week of the 15th might be more accurate in giving everybody enough time to make sure that we can get the agreements wrapped up. I do agree that this is an important project and we want to see more solar everywhere but we also have to do this right.

And I saw that you joined our meeting, Marcos, do you have anything that you would like to add or say?

MARCOS MARTINEZ (City Assistant Attorney): Thank you, Commissioner Hansen. I don't have a lot to add. I am hopeful that the parties can resolve the issues. I will say that we have a meeting scheduled on Monday with the County Attorney's Office and Nancy Long's office and I hope we can hammer out all of the unresolved issues at that time. We, the City, are prepared to move forward with this on Wednesday and so if we're unable to resolve it by then we'll have to also have some kind of special meeting. But it is my great hope that we can resolve all of the issues by Monday and therefore have it moved to the City Council on the 10th.

CHAIR HANSEN: Thank you very much, Marcos Martinez, for that piece of information. Are there any other comments from the Board? Councilor Vigil Coppler.

COUNCILOR VIGIL COPPLER: Thank you, Madam Chair. I would like to thank Mackie Romero for coming back and reincarnating on our screen and doing all this work on the budget. I very much appreciate it because I know you have another job. Kudos to you and thank you. And also I would like to recognize Bernardine Padilla for my background photo which also matches hers, so we are twins, instead of Councilor Romero-Wirth and Kyle. So that's all, Madam Chair. Thanks, Mackie.

CHAIR HANSEN: Thank you. I thanked Mackie last night at the FSAC meeting and we are grateful to have her expertise available to us at this Board. So we are grateful.

Just so all of you know, Bernardine sends out the best news updates ever. So thank you, Bern, for those updates. I really appreciated the one today from the Colorado WOTUS lawsuit. So thank you.

10. NEXT MEETING: Thursday, April 1, 2021 at 4:00 p.m.

CHAIR HANSEN: It is likely that we will have a special meeting in between then. So we will have the next meeting before that.

11. 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

CHAIR HANSEN: I would like to ask Ms. Long to please take it away.

MS. LONG: Yes, Madam Chair. If you could ask for a motion to adjourn this meeting and go into executive session in accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1(H)(7) for discussion regarding pending litigation in which the BDDB is a participant and specifically for the case as described on your agenda.

CHAIR HANSEN: Do I have a motion to adjourn and go into executive session? Commissioner Hamilton.

COMMISSIONER HAMILTON: So moved.

COUNCILOR ROMERO-WIRTH: Second.

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

Councilor Romero-Wirth	Aye
Mr. J.C. Helms	Aye
Councilor Vigil Coppler	Aye
Commissioner Hamilton	Aye
Chair Hansen	Aye

ADJOURNMENT

Chair Hansen declared this meeting adjourned at approximately 5:25 p.m. as the Board moved to executive session.

Approved by:

Anna Hansen, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

Kristine Bustos-Mihelcic
SANTA FE CITY CLERK