## MINUTES OF THE

**THE CITY OF SANTA FE & SANTA FE COUNTY**

**BUCKMAN DIRECT DIVERSION BOARD MEETING**

###### August 5, 2021

**1. CALL TO ORDER**

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 CALL**: Roll was called and the following members were present:

**BDD Board Members Present:** **Member(s) Excused**:

Commissioner Anna Hansen, Chair None

Councilor Carol Romero-Wirth

Commissioner Anna Hamilton

Councilor JoAnne Vigil Coppler

J.C. Helms, Citizen Member

Tom Egelhoff, Las Campanas [non-voting]

**BDD Board Alternate Members Present**:

None were present

**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

Jason Valencia, BDD Maintenance Supervisor

Antoinette Armijo-Rougemont, BDD Financial Manager

Monique Maes, BDD Contract Administrator

Jesse Roach, City Water Division Director

**Others Present** (cont.):

Sara Smith, County Constituent Liaison

Marcos Martinez, City Assistant Attorney

James Bearzi, Glorieta Geoscience

Jay Lazarus, Glorieta Geoscience

John Evans, Department of Energy

#### 3. APPROVAL OF AGENDA

CHAIR HANSEN: Are there any changes to the agenda from staff?

RICK CARPENTER (BDD Facilities Manager): , there are not.

Upon motion by Councilor Vigil Coppler and second by Mr. Helms, the agenda was unanimously [5-0] roll call vote.

**4. MATTERS FROM THE PUBLIC**

Chair Hansen asked for public comments and Jamie-Rae Diaz confirmed no one got in touch with her to speak.

**5. APPROVAL OF CONSENT AGENDA**

COMMISSIONER HANSEN: Are there any items requested to be pulled off? If not, what is the pleasure of the Board?

COUNCILOR VIGIL COPPLER: Move to approve.

MR. HELMS: Second.

COMMISSIONER HANSEN: I have a motion from Councilor Vigil Coppler and a second from JC Helms.

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

**CONSENT ITEMS**

**a. Request for Approval for Professional Services Agreement with Alpha Southwest, Inc. in the amount of $253,833.30 plus NM GRT to install new pump**

**b. Request for approval to re-authorize forward unexpended funds approved by the BDDB from the BDD Major Repair and Replacement Fund from FY2021 to FY2022**

**c. Request for approval to carry forward $310,000 of unexpended funds from the FY2021 Operating Budget to the FY2022 Operating Budget to be utilized as authorized by the BDD**

**d. Request for approval of purchase with Malloy to purchase a replacement truck out of the Major Repair and Replacement Fund in the amount of $75,402.00**

**6. APPROVAL OF MINUTES**

**a. July 1, 2021 Buckman Direct Diversion Board Meeting**

There were no changes offered and Mr. Helms moved to approve. Councilor Vigil Coppler and the motion passed by unanimous [5-0] roll call vote.

**7. PRESENTATION/INFORMATIONAL ITEMS**

**a. Monthly Update on BDD Operations**

CHAIR HANSEN: Randy Sugrue.

RANDY SUGRUE (Operations Superintendent): Thank you, and members of the Board. My operations report for operations in the month of July 2021: BDD diverted approximately 8.21 million gallons per day. Drinking water deliveries at our Booster Stations 4A/5A averaged 7.63 million gallons per day. Our raw water delivery to Las Campanas through our booster 2A was about .46 million gallons per day. And our onsite treated and non-treated water storage was about .12 million gallons per day. BDD was providing approximately 65 percent of water supply to the regional City - County distribution system. Item 3, our year-to-date diversion projections from a couple of weeks ago, was over 250 million gallons per day; however, due to the rainfall which we can all appreciate, storm events added quite a bit of turbidity to the Rio Grande for the past couple of weeks, so we were actually almost exactly on the 10 year average for July. We diverted 177 million gallons for the month of July due to those storm events in the river. Rainfall, of course, results in a little bit lower demand in the system so our production was somewhat lower as well.

On page 2, item 4, regional demand summary, the demand for the month of July was approximately 11.9 million gallons per day. The Rio Grande flows measured at Otowi was about 450 cubic feet per second on average. I believe this morning it was nearly twice that. So the stormwater flows have made for quite a variable flow above our diversion. The Canyon water treatment reservoir storage situation had an update since this report was published. This morning, McClure Reservoir was about 31.1 percent full. Nichols Reservoir, 58.2 percent full for a combined storage capacity of about 35.72 percent of total capacity. And due to storm activity, the Santa Fe River inflow above McClure Reservoir was 7.2 million gallons.

Back to my report, our graph is essentially correct. For early July that was its most recent update. Heron Reservoir – this is our City – SJC water, San Juan-Chama water was a little bit less than 8,000 acre-feet. Abiquiu – another approximately 6,000 acre-feet – I’m sorry, about 5,000 acre-feet for a total at the time of about 12,885 acre-feet in storage. Our project San Juan-Chama allotment for the year I believe came in over just 60 percent but we do maintain from previous years a substantial storage of more SJC water as needed. Our ENSO summary mid-July 2021, is a projection of neutral conditions for the remainder of the year. And then we have our monthly totals the final on page 3 for the month of July. I stand for any questions or comments.

CHAIR HANSEN: Are there any questions or comments from the Board? I want to thank you for putting the reservoir storage on our water overview, thank you very much. Tom.

TOM EGELHOFF: Randy, I was wondering. I know we all enjoy the monsoon storms and the added flow in the river but do you see – from my perspective, I know we can’t divert when the turbidity is high, so the extra flows seems to go by without being able to divert. What’s the advantage to the diverters if the added flows can’t be diverted? Is it more that we save the San Juan-Chama water for later in the season? I was just curious about that. Whether maybe Albuquerque hasn’t diverted and they’re able to postpone diversions. It just seems like the added flow in the river is unavailable.

MR. SUGRUE: It is kind of bonus water and good for the health of system, the reservoirs and the river. Rick, do you have from your experience a better overview of how that stormwater contributes to the system?

MR. CARPENTER: Sure, I was going to jump in on that. Tom, you’ve asked a pretty complicated question. When flows go up of course turbidity goes up so it’s good and bad. As far as how the BDD calls for water and how much it calls for water and whether or not we’re able to divert it, that is the subject of an ongoing, as recently as this week, discussions on what the policy should be, what the accounting should be and whether we can recover some of that water that we call for and that flows on by because we can’t divert because of turbidity. So it’s a pretty complicated issue. It’s not just a BDD issue. There are other agencies that are involved and we are managing it pretty well. We’ve got a system in place that we’re thinking about – is there a better way to do things? Especially, if we get into critical low flows later in the year. We’ve got to be very precise and we’ve got to keep very accurate records.

We are pretty efficient. The system has been handled down through the years and we’ve worked with BOR and the State on how to manage that and how account for it. So I think that answers your question. If I didn’t quite get to it, please let me know.

MR. EGELHOFF: No, that’s fine. It’s kind of mixed feelings for me because I know it’s adding water to the system but really not to what – it doesn’t seem to have much advantage to the BDD when a) you can’t take the water you called for and, b) you can’t take advantage of the extra flows in the river.

MR. SUGRUE: Yes, it’s a mixed blessing. It doesn’t increase storage in the reservoirs, again and in times of **–** as drought goes on that extra water in the reservoirs does make our SJC water somewhat more available because the stormwater flows can act as carrier water to bring water to us but the turbidity and debris in the river are problematic.

MR. EGELHOFF: Thanks.

COMMISSIONER HANSEN: Thank you, Tom and thank you Randy. Do you have anything else?

MR. SUGRUE: No, thank you so much for your time.

**7. b. Report from the Facilities Manager**

MR. CARPENTER: Thank you, . Good afternoon, members of the Board. Tom, your last question was part of my update. So we are actively meeting and strategizing on how to manage the calls for water that we make during these high turbidity events but also if that is exacerbated by low flows when we don’t have thunderstorms and how deal with that physically at the diversion but also how we account for and what our policy should be. So we’re working on getting that much more precise because it’s something that is probably going to be paid a lot of attention to this year with all the activity around the river. Staff is working on that but we still have a very good system in place right now for diverting water that we need to divert and accounting for it. So that’s one update.

Another update is some good news. We are an RFP that is finally ready for prime time on access control systems for the BDD. That may sound a little bit simplistic at first but it’s very complicated. It’s very technical and it’s pretty costly. I can’t talk about what we think what the cost is going to end up being because we don’t have the bids yet but the RFP is ready to go. We’re routing it to purchasing and hopefully we’re going to hit the street with that very soon. This project because of its cost in some cases and other reasons it has just been hard to get a scope of work developed. It has been delayed for several years and we’re just not going to do that anymore. So I’ll update the Board on the progress that we have with this and it ranges all the way from the river and how to get into and out of and monitor access as data logging for all of our facilities, all of our systems including security gates for example and our internal lines and the software that goes on with that is very – first of all, it is very proprietary, but it’s detailed and very technical. So this will be a big deal and I’ll let the Board know as we make progress on this because it’s a big project.

Lastly, there was a job fair this past Saturday that was held with a lot of City divisions and sections, especially the water division and wastewater even attended on Saturday and BDD was able to staff that. We had a lot of interest in several of our current openings and openings that will be advertised in the future and have really good prospects that came out of that job fair. So that’s one example of the proactive nature that we have these days on filling our vacancies. Bernardine Padilla was actually heading that up and so kudos for her for doing that and we have a lot of follow-up to do but it yielded a lot of results and I wanted to report that to the Board as well.

I think that’s my report, Madam Chair, and I would be happy to answer questions.

COMMISSIONER HANSEN: Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you. The complicated project on access controls and whatnot, can you remind me if we have that in budget and how we’ve budgeted for that or what it would fall under?

MR. CARPENTER: Yes, Commissioner and Madam Chair, it is budgeted. My report would have been entirely different if it hadn’t have been. It’s in the budget. It is a line item in the budget and unless the bids come in way higher than we’re expecting, and I don’t think that they will, then the financial end of that is not going to be an issue.

COMMISSIONER HAMILTON: Where is it?

MR. CARPENTER: I’m not sure I understand your question, Commissioner.

COMMISSIONER HAMILTON: When I go look at the budget what line item should I look under to find it? What’s it titled?

MR. CARPENTER: Oh, I don’t have the budget in front of me but I would be happy to research that this evening or tomorrow morning and mail that to you.

COMMISSIONER HAMILTON: Oh sure. I just figured I’d go look for it and struggle and I thought I could ask and thought maybe you’d have it off the top of your head.

MR. CARPENTER: I’ll save you some work, I’ll send it to you.

COMMISSIONER HAMILTON: Cool, thanks.

COMMISSIONER HANSEN: Any other questions from the Board?

ANTOINETTE ARMIJO-ROUGEMONT (Financial Manager): I would just like to add, Madam Chair, that that is under service contracts. It was budgeted under service contracts.

COMMISSIONER HAMILTON: Thanks, Antoinette.

MS. ARMIJO-ROUGEMONT: Sure.

COMMISSIONER HANSEN: Anybody else have any other questions for Rick?

**7. c. Report on August 3, 2021 Fiscal Services Audit Committee (FSAC)**

MS. ARMIJO-ROUGEMONT: Yes, Madam Chair, we held a Fiscal Services Audit Committee meeting on Tuesday, August 3rd at 4 o’clock. In attendance was myself, Chair Hansen, Councilor Romero-Wirth, Tom Egelhoff from Las Campanas, Rick Carpenter, BDD’s Facilities Manager, Jess Roach, Water Division Director. We reviewed the following items: replacement of the pump with Southwest, re-authorize unexpended funds from the BDD Major Repair and Replacement Fund, request approval to carry forward $310,000 of the unexpended funds from fiscal year 2021 to fiscal year 22 and request the approval to replace the maintenance truck. So we covered all four items and answered questions. And that’s the end of my report. If anybody has any questions, I’ll stand for questions.

COMMISSIONER HANSEN: Any questions from the Board? Seeing none, thank you, Antoinette, and thank you for a good meeting on the Fiscal Services Audit committee.

**7. d. Update on Wild Earth Guardians Notice of Intent to Sue (US Fish & Wildlife, US Bureau of Reclamation, State of NM, Middle Rio Grande Conservancy District) for violations of the Endangered Species Act**

KYLE HARWOOD (BDD Counsel): Thank you, Madam Chair. I’ll jump in unless you had anything to start with Rick?

MR. CARPENTER: I don’t, but I’ll fill in as needed.

MR. HARWOOD: Thank you very much, Madam Chair. So as the Board knows the Wild Earth Guardians filed a Notice of Intent to Sue at the beginning of June. The way that a lawsuit may be brought under this particular federal statute is that the plaintiff needs to go ahead and give notice to the agencies and then there’s a 60 day window before they’re permitted to file a lawsuit under the statute. That was filed in early June, as I mentioned, and it received some media coverage. The calculated end date of that 60 day notice of intent period actually runs on Monday. If the Wild Earth Guardians is going to proceed with the lawsuit we will see it after Monday.

It is important to note that the Board is not listed as a party with this contemplated lawsuit would be brought against. It is brought against the enumerated parties that are in caption. I’ll go ahead and just show a screen real quick. Give me one second to make sure I’ve got the right document up. Can you all see that? Hopefully. This is the June 9th letter. It did go to the Department of Interior, the Bureau of Reclamation with Interior, the Secretary herself, Fish and Wildlife Service, State Engineer, Interstate Stream Commission, the Rio Grande Conservancy District and another officer at the Fish and Wildlife Service.

So scrolling down here to a highlighted paragraph that I want to bring to the Board’s attention. This is probably the part of the lawsuit that relates most directly to BDD project operations .This is where Wild Earth Guardians expresses concern about complaints of the Endangered Species Act regarding the state’s administration, distribution and regulation of water in the Middle Rio Grande. This is obviously also picking up MRGCD’s activities which as we all know is below Cochiti. So there’s a couple of concepts in this middle sentence in the highlight there. But that is the reason why we’re monitoring the case. As many of you might know, there’s a long history of minnow litigation on the Rio Grande regarding the minnow. Let me just bring your attention also these other two highlighted sentences in the NOI. An assertion here that the state has and continues to authorize diversions and depletions within the Middle Rio Grande, that the state thereafter fails to properly regulate. This is Wild Earth Guardian’s assertion and will be hotly and vigorously contested by many of the parties that are listed in this NOI.

And then here is just sort of a summary of what Wild Earth Guardians is requesting, which is a reinitiation. Reinitation is a term of art under ESA, the Endangered Species Act, that would, if reinitiation was started, that would effectively set aside the current biological opinion that regulates the management and recovery of the minnow and it would start a new process.

Bottom line for those of you who may not be remembering, the current biological opinion that we operate under now took many years to develop and is commonly considered by many of the parties involved with minnow activities to be successful. Obviously, others may have their own opinion, as Wild Earth Guardians does, and also just to mention by way of context that this Board agreed to join in the executive committee of the collaborative program agreed to welcome this Board as an executive member some two years ago. And so Rick Carpenter and I continue to be involved in that Endangered Species Act Collaborative Program. The meetings have become much less frequent of recent years but I think it’s very important that the BDD Board is present at those continued discussions about the minnow because it does have the potential to affect how water is managed on the Rio Grande.

So our recommendation, again, is just to continue to monitor this. We did mention this to the Board back in June briefly and wanted to make sure we had it as an agenda item It’s in the open session for, given that the BDD Board is not a named party in this matter and with that I’d be happy to stand for any questions. I’m obviously not getting into any details in my summary report. This is mostly just to let you all know that this is going on.

As one final comment before I quit talking, the State of New Mexico does intend to provide a written response to this Notice of Intent to Sue. I believe they are planning on getting it out the door next week and that should be a very interesting part of the story and I’d be happy to forward it on to Board members and present on it at a future Board meeting if you’d like.

COMMISSIONER HANSEN: Thank you, Kyle. Are there any questions from the Board?

COUNCILOR ROMERO-WIRTH: Madam Chair.

COMMISSIONER HANSEN: Yes, Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Kyle, can you send us that letter? Is it real, real long?

MR. HARWOOD: The packet is pretty significant. The –

COUNCILOR ROMERO-WIRTH: Just the letter.

MR. HARWOOD: Sure. It’s a 57-page cover letter and the Notice of Intent to Sue with exhibits and I’d be happy to forward it on to the Board.

COUNCILOR ROMERO-WIRTH: Okay. Maybe it’s not necessary. I just thought if the cover letter wasn’t too long it might be interesting.

MR. HARWOOD: It’s absolutely fascinating reading, all 57 pages of it, Councilor. Since we’re not paying to reproduce it or paying stamps I will, if it’s okay to send you the PDF and you can read the parts of interest. If that’s okay.

COUNCILOR ROMERO-WIRTH: Thank you. Thank you, Madam Chair.

COMMISSIONER HANSEN: Thank you. Any other questions? Anybody else want a copy of the letter? Send it to me also, Kyle.

MR. HARWOOD: If it’s okay, Madam Chair. I will go ahead and just send it to the Board so that folks have it if they are interested.

COMMISSIONER HANSEN: Okay. That sounds great.

**7. e. Update on *NM Environment Department v. US Department of Energy*, Case 1:21-cv-00278-KG-JFR**

MR. HARWOOD: Thank you, Madam Chair. This also is a matter that we brought to the Board’s attention back at the March BDD Board meeting when NMED initially filed its complaint regarding the consent order with Los Alamos, and we offered, and the Board indicated it would like to receive updates at that presentation in March. Since March, the defendant has moved the case from state court to federal court, so that was accomplished in May, I believe, of this year, so a month or two after we initially reported about the filing of the case. And at this point in the Federal District Court for the District of New Mexico there is an order setting a settlement conference mid-November, about a week before Thanksgiving, and so we are monitoring this case as a non-party and are hoping that those settlement discussions yield – are productive for both parties, both the State of New Mexico and the lab.

So again, this is an update that we offer that you asked us to bring you later in the year as things unfolded, and so that’s really all the update I have. As a non-party we are monitoring it and obviously very interested in the outcome whether or not involved in the proceeding. So I guess I’ll end there and ask if there are any questions from the Board.

COMMISSIONER HANSEN: Thank you. So Kyle, I have a question. One of the things that concerns me is that I know that James Bearzi and I have been sitting on this Technical Working Group for quite some time. Of course, this has not been mentioned but what also has never been mentioned at the Technical Working Group is that there are drums up on the hill that can explode as reported in the paper from the Defense Nuclear Facility Safety Board. And so that is concerning to me.

MR. HARWOOD: I understand, Madam Chair. Mr. Bearzi, I believe you’re logged in. Did you want to add anything to the discussion?

JAMES BEARZI (Glorieta Geoscience): No. Maybe just a tiny bit of touching the top of the weeds. The lawsuit is really about under the 2016 Consent Order, if there’s a dispute between the Environment Department and the Department of Energy it goes to arbitration and then if they can’t agree then there’s really no remedy except a lawsuit. And the Environment Department did not believe that the Department of Energy had established yearly targets and milestones under the consent order, correctly and in good faith and so on and so forth. So that’s – the lawsuit is really about the consent order.

COMMISSIONER HANSEN: Right. But James, have you ever heard in any of these meetings at the Technical Working Group or anywhere about these drums that could explode at any moment, so to speak. At least that’s how it was reported in the paper that if they’re moved they could explode?

MR. BEARZI: No, Madam Chair. I have not.

COMMISSIONER HANSEN: Okay. I just wanted to make sure I didn’t miss something. Thank you.

MR. HARWOOD: Madam Chair, we can certainly make an inquiry along a number of avenues if you would like.

COMMISSIONER HANSEN: It’s just concerning that that information is not shared, about having waste on the hill that cannot be moved and that it’s so explosive. It seems to me another reason why there needs to be a site-wide environmental impact statement.

MR. HARWOOD: Right. And of course, that’s another initiative that the Board has joined others in in requesting a site-wide environmental impact statement for the LANL campus, which is adjacent to but not directly related to this lawsuit. It might be easiest, Madam Chair – Rick and I and James of course all have contact with the LANL staff on a number of topics and we plan on bringing you an update on our MOU negotiations here in the near future, without me digging through the media if you or Ms. Smith have a copy of that article it might be fairly easy to get an update back to you and the Board on that particular reference. Unless you’d like to handle it some other way. We’re available. We’ve got obviously a strong communication with the lab on a number of issues.

COMMISSIONER HANSEN: Okay. Well, we’ll find that article.

MR. HARWOOD: Okay.

COMMISSIONER HANSEN: Okay. Is there any other questions or comments from the Board on these topics for Kyle? Okay, seeing none, I’m going to move on to Matters from the Board.

**9. MATTERS FROM THE BOARD**

COMMISSIONER HANSEN: Are there any Matters from the Board? I have one matter that I want to read into the record. I want to say for the record and our minutes that the only matter discussed during the executive session at our last Board meeting on July 1, 2021 was the matter as stated in the motion to go into executive session and no action was taken.

Is there any other comments from the Board?

**10. NEXT MEETING: Thursday, September 2, 2021 at 4:00 p.m.**

**12. ADJOURN**

**13. EXECUTIVE SESSION**

**a. In accordance with the New Mexico Open Meetings Act NMSA 1978, §I0-15-l (H)(7), discussion pertaining to threatened or pending litigation in which the BDD Board is or may become a participant, specifically in the matter of proposed amendments to Standards for Interstate and Interstream Waters, 20.6.4 NMAC, Water Quality Control Commission No. 20-51 (R); and formal protest of Application RG-00485-S-6 and -S-7; RG-00486, RG-00486-S, RG-00486-S-2, S-3, and S-4; RG-00487, RG-00487-S, S-2, S-3 and S-4; RG-00488, SP-01503 and SP-01802, 01802, amended, 0108-B and -C for permit to divert 679 acre-feet per year for uses at Los Alamos National Laboratory, Municipal and Industrial Uses, Office of State Engineer Hearing Unit.**

CHAIR HANSEN: Okay, I believe we have another executive session, so I want to go to Nancy Long.

MS. LONG: Yes, . If you could please ask for a motion to adjourn the open meeting and go into executive session in accordance with the New Mexico Open Meetings Act Section 10-15-1 (H)(7) for discussion pertaining to threatened or pending litigation in which the BDD Board is or may become a participant, specifically in the matter of proposed amendments to standards for interstate and interstream waters before the Water Quality Control Commission, and for the matter regarding the permit to divert 679 acre-feet per year for uses at Los Alamos National Laboratory, which is pending before the Office of State Engineer as herein described in the caption for executive session

COUNCILOR ROMERO-WIRTH: So moved.

MR. HELMS: Second.

COMMISSIONER HANSEN: So I have a motion from Councilor Romero-Wirth and a second from J.C. Helms.

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

Commissioner Hamilton Aye

Chair Hansen Aye

Councilor Romero-Wirth Aye

Mr. J.C. Helms Aye

Councilor Vigil Coppler Aye

[The Board adjourned and met in executive session at 4:40 p.m.]

**ADJOURNMENT**

Chair Hansen declared this meeting adjourned at approximately 4:40 p.m.

Approved by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Anna Hansen, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

KRISTINE BUSTOS-MIHELCIC

SANTA FE CITY CLERK