

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

September 2, 2021

1. CALL TO ORDER

This meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Chair Anna Hansen 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 a quorum was present as shown:

BDD Board Members Present:

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

Member(s) Excused:

None

BDD Board Alternate Members Present:

Peter Ives, Citizen
Ben Lee, Las Campanas

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
Antoinette Armijo-Rougemont, BDD Financial Manager

Others Present (cont.):

Jesse Roach, City Water Division Director
Marcos Martinez, City Assistant Attorney
James Bearzi, Glorieta Geoscience
Jay Lazarus, Glorieta Geoscience
Andres Gamez, CliftonLarsonAllen

3. APPROVAL OF AGENDA

Councilor Vigil Coppler moved to approve the agenda as published. Mr. Helms seconded.

Facilities Manager Carpenter's internet connection was lost and in the interim, Chair Hansen invited Ben Lee to introduce himself. Mr. Lee stated that he was present to learn about the Buckman system as well as water sustainability and conservation. He said he was a chemical engineer in the industrial sector and involved with a desalination of sea water project. He looked forward to participating. Chair Hansen welcomed him.

With his connection back up, Mr. Carpenter confirmed there were no changes to the published agenda.

The motion to approve the agenda passed by unanimous [5-0] roll call vote.

4. MATTERS FROM THE PUBLIC

Chair Hansen asked for public comments. Jamie-Rae Diaz confirmed no one signed up nor was anyone in the waiting room asking to speak.

5. APPROVAL OF CONSENT AGENDA

CHAIR HANSEN: Does anyone have anything they would like to pull off the Consent Agenda or can I have a motion? Commissioner Hamilton.

COMMISSIONER HAMILTON: I wonder if we shouldn't pull off item 8.b. on how much it would cost to do that and whatnot.

CHAIR HANSEN: Okay, that is fine we will pull off item b. Can I have a motion to approve the Consent Agenda with the removal of item 8.b.

COMMISSIONER HAMILTON: So moved.

COUNCILOR ROMERO-WIRTH: Second.

CHAIR HANSEN: Motion from Commissioner Hamilton and second from Council Romero-Wirth.

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

CONSENT ITEMS

- a. **Request for Approval for letter from BDD Board Concerning Los Alamos National Laboratory Consent Order Public Participation**

6. APPROVAL OF MINUTES

- a. **August 5, 2021 Buckman Direct Diversion Board Meeting**

There were no changes offered and Mr. Helms moved to approve. Councilor Romero-Wirth seconded. The motion passed by unanimous [5-0] roll call vote.

7. PRESENTATION/INFORMATIONAL ITEMS

- a. **Monthly Update on BDD Operations**

CHAIR HANSEN: Randy Sugrue. Welcome, Randy.

RANDY SUGRUE (Operations Superintendent): Thank you very much, Madam Chair and members of the Board. This is my report for the BDD operations for the month of August 2021: BDD diversions, raw water diversions averaged 7.89 million gallons per day. Our drinking water deliveries through Booster Stations 4A/5A averaged 7.37 million gallons per day. Our delivery to Las Campanas at 2A averaged .39 million gallons per day. Our onsite treated and non-treated water storage was about .13 million gallons per day. BDD is providing approximately 70 percent of water supply to the City and County for the month of August. Our year-to-date diversion are depicted in the graph. In August we were able to produce significantly more than the average due to the City request for such. On the second page, item 4, our regional demand drought summery. Our daily metered regional demand was about 11.3 million gallons per day, perhaps a little bit more. Rio Grande flows for August, actually averaged approximately 500 cubic feet per second. We have fallen as low as about 300 cubic feet per second. As we speak flows are somewhat over 400 cubic feet per second because of rainfall. So the river is fairly healthy. Canyon Road water treatment plant storage levels, Nichols about 61 percent. That has actually gained near to actually 70 percent now due to storm water. McClure, 34 percent – about 38 to 39 percent combined storage at Canyon Road. The inflow is a little less than 4.4 million gallons per day at this time.

City, County, Las Campanas storage as updated by our partners, here's the City San Juan-Chama, storage in a graph, combined storage, still over 10,000 acre-feet. And our ENSO summary as of August 16th, neutral conditions are still present to the end of summer and into fall with La Niña possibly emerging later in fall. So, that's my report at this time. If you have any questions, please ask.

CHAIR HANSEN: Okay, are there any questions from the Board? I was waiting for you Member Ives, I was expecting a question from you. Please join us. And nice to see you, welcome.

PETER IVES (Community Alternate): Yes, I apologize for being a few minutes late. Simple question and you may not know the answer which is what's the cfs running in the Santa Fe River?

MR. SUGRUE: I would have to defer that question to perhaps Jesse Roach, Dr. Roach, with the Water Division.

MR. IVES: I am certainly glad to hear there's about 4 million gallons

coming in on a daily basis, that's great.

JESSE ROACH (City Water Division Director): Yes, I think that's the answer. I saw that 4 million gallons came in yesterday and I don't know off the top of my head what that is in cfs.

MR. IVES: So we wouldn't be storing any of that and just allowing it to flow through?

MR. ROACH: The Santa Fe River we have bumped up production to about 4 million gallons per day so that's pretty much passing right through.

MR. SUGRUE: That would be about 6 cfs, approximately.

MR. IVES: Got you. I walk across one of our bridges everyday and I always peer down to see what's happening and it looked like it was running well today. So, congratulations. Thank you, Madam Chair.

CHAIR HANSEN: Thank you, Mr. Ives. Are there any other questions? Seeing none we will move on.

7. b. Report from the Facilities Manager

MR. CARPENTER: Thank you. We have resumed our efforts on the Source Water Protection Plan. That was sort of put on the back burner for awhile. We expect to be back to the Board in October with a full report on the status, schedule, scope, goals on that plan. So we'll have a full report on that in October.

Also, we've had a surge in activity on MOU discussions with DOE. Mr. Harwood and Mr. Bearzi especially and others from GGI have been helping us to make, I think, what is some pretty significant progress and we intend to keep that momentum going forward. And, again, we will bring a full report back to the Board in October on where we are and what we hope to achieve in the near term. With that, Madam Chair, I would stand for questions.

CHAIR HANSEN: Are there any questions from the Board? If not, I have a question. Where are we in the process of hiring an administrator for you, Rick?

MR. CARPENTER: Thank you, Madam Chair. Jamie-Rae Diaz and Antoinette have been very helpful in this. The paperwork is making its way through. It has been approved at the lower division levels and I think it is with HR right now in terms of getting a position on a re-class approved. So we are making progress and I'll report back out to the Board as we move through that.

CHAIR HANSEN: Any other hires moving their way forward?

MR. CARPENTER: The instrumentation and control technician is in a similar position. We have done a position only re-class for that, seeking to adjust the pay band for that. And also request to advertise and that's about in a similar status. And I will get back to the Board as that moves through our Human Resources Department.

CHAIR HANSEN: Okay, thank you. Any other questions? Kyle.

KYLE HARWOOD (BDD Counsel): Mr. Carpenter, did you want me to do that other small matter under matters from the facilities manager that we discussed?

MR. CARPENTER: I do, but I am not sure whether there are any more questions of me before we turn it over to you.

CHAIR HANSEN: Seeing none, I'll call on Mr. Harwood.

MR. HARWOOD: Thank you, Madam Chair. We decided that this is probably the best spot on the agenda to just give the Board an update on a recent meeting we had with New Mexico Environment Department Cabinet Secretary Kenney. I wanted to let the Board that we addressed five topics in that discussion with Cabinet Secretary Kenney updating him on where we are with the BDD Board –LANL MOU. We also discussed briefly the triennial review which is a matter, as you know, which is getting towards the end of its calendar with the transcribing issue with some final filings being made here this fall. And we also discussed the consent order litigation between NMED and the Department of Energy. We visited briefly on the chromium 6 plum and some of the issues related to chromium 6. And, finally, discussed at some length stormwater and water quality monitoring of LA Pueblo Canyon watershed, which was noticed as a watershed of concern that drains from the lab into Rio Grande upstream and to the BDD project.

Those are all regular topics of coordination with the primary regulator for water quality and it was a pleasant and productive meeting. That's all I have to report, Madam Chair.

CHAIR HANSEN: Thank you very much, Kyle. Are there any questions from the Board? Okay, we'll move on.

7. c. Presentation of the Buckman Direct Diversion Project Auditor Report on completed “Financial Statements and Supplemental Information” for fiscal year ended June 30, 2020

ANTOINETTE ARMIJO-ROUGEMONT (BDD Accounting Supervisor): I'll go ahead and introduce Mr. Gamez. Madam Chair, members of the Board, the fiscal management and fiscal service, the fiscal agent's responsibilities includes that after the end of each fiscal year and in accordance with the New Mexico State Audit Rule, that the BDD is to provide audited financial statements to its partners. On July 28, 2021, a report from an independent certified accountant was issued by CliftonLarsonAllen for the activities of the Buckman Direct Diversion fiscal year June 30, 2020. The BDD is a single-purpose governmental entity and having only business type activities. The financial statement include consolidated activity of the following enterprise funds: the BDD operating fund, the BDD emergency reserve fund and the BDD major repair and replacement fund.

The auditors have disclosed the following audit finding which is a late submission of [inaudible] report and prior year findings have been resolved and the auditors issued an unmodified report.

I'll turn it over to Andres Gamez from CLA.

ANDRES GAMEZ (CliftonLarsonAllen): Madam Chair, members of the Board, thank you for having me today. I wanted to go over just a high level overview of the financial statements. As Antoinette mentioned, the overall opinion was unmodified which is a clean opinion, stating that the financial statements are free of any material misstatements. And then there was one audit finding related to the state audit rule for timely submission of the financial statements.

Overall high level the BDD did have significant changes from year to year. When you look at the net assets there was an increase of about \$4 million for BDD. Meanwhile, the liabilities also increased. So a net difference of about \$400,000. And then also in terms of operating revenues, revenues did increase as well close to 10 percent, about \$800,000.

There was also a kind of proportional increase on the expenses. So it was net operating income of about \$86,000 in total. So that's a change, a positive change. Overall, about \$383,000 for the year. With those together what we did see was that BDD was having improvements in their financial statement – as I mentioned earlier those financial statements, we did issue an unmodified opinion overall and then also just that one audit finding.

I would like to open myself up to any questions at this point from the Board.

CHAIR HANSEN: Are there any questions from the Board? Okay, seeing none. Does that conclude your report, Mr. Gamez?

MR. GAMEZ: Yes, that does. Thank you, Madam Chair.

CHAIR HANSEN: Thank you. Then we will move on.

8. ACTION ITEMS: CONSENT AGENDA

b. Approval of direction to staff to submit comments to the Environmental Protection Agency regarding “Request Recommendations: Waters of the United States”

CHAIR HANSEN: Commissioner Hamilton, you seem to have had a question.

COMMISSIONER HAMILTON: Yes, I just thought it would be nice to get a little bit of a briefing on how of what had been done before is appropriate and available to use now because we've been dealing with this issue which is really important on a lot of levels. But I'm assuming – I'm not fixed on the possibility if there's new work that needs to be done. I just thought it would be useful to get a real small briefing on what was intended.

MR. CARPENTER: Fine, Madam Chair and members of the Board. We have had a lot of activity on this issue as well. Mr. Bearzi is pretty much leading the effort and James, not to put you on the spot but maybe you could provide a brief summary that addresses the Commissioner's question.

JAMES BEARZI (Glorieta Geoscience): I'd be happy to. Good afternoon, Madam Chair and members of the Board, Commissioner Hamilton. Good to see everyone again. You're right; there has been a considerable effort over the months on the WOTUS issue. The EPA and the Army, Department of the Army, who together implement the Clean Water Act, have posted in the Federal Register about a month ago, a 30-day public comment period on what they have in mind to undo the Navigable Waters Protection Rule which itself undid the Clean Water Rules that was in the Obama administration which itself attempted to codify definitions of WOTUS for statutory and regulatory purposes to move forward. That comment period ends tomorrow. So in your packet is a memo that has the outlines – a memo from Kyle – that has the outline of issues that we would touch on and with respect to your question about the level of effort, the draft letter has already been drafted and its undergoing internal review. So that level of effort will end tomorrow one way or the other. If the Board wants to go forward with comments that letter will be prepared and we'll submit it through regulations.gov and if the Board doesn't want to go forward then the level of effort is about the same.

COMMISSIONER HAMILTON: Well, yeah, would we be able to meet tomorrow's deadline?

MR. BEARZI: Yes, we will. And just a tiny little bit of weed part and Kyle and Rick will roll their eyes, what's different about this effort is that EPA and the Army are proposing a two-step, what they call, a two-step process. Step one is to put the rule back to what they call the pre-Obama era rule. So that's defining Water of the U.S. as it has been covering, for our purposes most importantly, ephemeral streams. And then their step two is to lay a foundation that codifies recent Supreme Court decisions so that it is harder for future administrations to undo it. And so our comments, we propose to support that two-step process. Step two also has a lot more public engagement than has happened before. And then we also have along the lines of what the Board has seen before in our comments to EPA and others about why we think that ephemeral streams should be covered in the definition of the Waters of the U.S.

COMMISSIONER HAMILTON: Madam Chair, and thank you for that. And thank you for just giving that little clarification. I think that it is interesting that – having expressed why we're doing this.

Madam Chair, would you be looking for a motion at this point or did you want to do that yourself?

CHAIR HANSEN: I was just going to make a few comments also. Yesterday, also, or the day before, a judge vacated the Navigable Waters of the U.S., also which happened. And the other point that I wanted to share with the Board is that the counties, all of the counties in the United States have an extra month to make a comment. So their deadline is October 2nd whereas all cities and public municipalities have until tomorrow. I have brought this up at our board meeting earlier this week so I just wanted to be clear about that.

So, thank you, Mr. Bearzi. Yes, I would love to entertain a motion from you Commissioner Hamilton.

COMMISSIONER HAMILTON: I move to approve.

COUNCILOR ROMERO-WIRTH: I have a question.

COUNCILOR VIGIL COPPLER: I'll second for discussion.

CHAIR HANSEN: Okay, thank you, Councilor Vigil Coppler. I am sorry I didn't see your hand up, Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. So when you say in this two rule process that they want to bolster future roll backs by regulatory or statutory changes, have they picked one path or another? Are they thinking of doing both paths and how hard is that to do?

MR. BEARZI : Councilor, that is an excellent question because they have not been really clear about what the step two is going to look like and how will they bar some future administration. So we don't really know what they're going to do. They have committed to having a very public process about it and I'll also note that there have already been hundreds of comments logged in the run up to tomorrow and mainly industry groups. Their main comment is it shouldn't be 30 days, it should be 90 days. So there may be a further comment period and maybe EPA will tell us more. I was on a public meeting today with EPA and a couple hundred interested parties and they're not saying anything about what the specifics of step two are.

COUNCILOR ROMERO-WIRTH: So in our letter should we ask that there be clarification about that or do we have a preference for one path versus the other or should we be just silent on that? I don't know.

MR. HARWOOD: I think those are all great questions, Councilor. They have not yet identified a way of adopting a new rule that's not equally subject to executive order as the previous rules have been. So the hope is that if they can come up with something that is well substantiated in science and consistent with some of the earlier Supreme Court cases that it might be harder to attack legally and might survive longer than these ice cubes on a hot day which is kind of what the changing WOTUS rules seemed to have been over the last couple of years. It's a little hard from my perspective to recommend a particular path until the federal lawyers come up with what they think is doable.

So I was going to suggest that we report back to this Board when things get a little clearer and then we could figure out what to put our shoulder into, if that seems appropriate to you.

COUNCILOR ROMERO-WIRTH: Okay. And I just, Madam Chair, I am just curious – statutory changes that's legislation that moves through Congress, just curious how sticky this is with lawmakers. Is this something that is likely to be contentious?

MR. HARWOOD: I think it is likely to be contentious.

MR. BEARZI: And if I could add also.

CHAIR HANSEN: Yes, please.

MR. BEARZI: On the statutory change, that's really what it could take. I think as we've briefed the Board before, the definition of WOTUS is not in statute. It's not in the Clean Water Act and it's been given, and Congress has specifically said, the agencies get to figure it out and that's kind of where some of the lack of clarity comes from. So I think that the statutory fix would be, okay, we're going to codify all of these Supreme Court decisions and these federal court decisions in statute. And then I'll just amplify what Kyle said and that would be environmental war in Congress.

COUNCILOR ROMERO-WIRTH: Okay, that's helpful. Thank you.
Thank you, Madam Chair.

CHAIR HANSEN: The other thing that I will share is that this is a very huge topic at NACo, the National Association of Counties, and that is why the counties have an additional month to make comment on this rule. And it is also, as many of you probably know, NACo is a fairly conservative body. So having a voice there which I am glad that we have on the Environmental, Energy and Land Use where the Clean Water Act gets discussed primarily, it is really important.

So thank you for all of your comments. We have a motion from Commissioner Hamilton and a second from Councilor Vigil Coppler and may I please have a roll call vote.

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

9. ACTION ITEMS: DISCUSSION AND ACTION - There were no items

10. MATTERS FROM THE BOARD

COMMISSIONER HANSEN: Are there any Matters from the Board? I would like to state for our minutes and the record that the only matter discussed during the executive session at our last Board meeting on August 5, 2021 was the matter as stated in the motion to go into executive session and no action was taken.

Then I would like to ask if there are any other comments or statements from the Board?

JAY LAZARUS (Glorieta Geoscience): Madam Chair.

CHAIR HANSEN: Yes.

MR. LAZARUS: Madam Chair, it is with great sadness we need to announce to the Board that Mr. Bearzi will be retiring. Kyle and Rick and Nancy know about this. James has been working way longer than his intended period before retirement. He will be retiring in the near future but will be available in some capacity to help out what we're doing with the Board.

CHAIR HANSEN: Thank you, Mr. Lazarus for mentioning that. I am grateful that James stayed on for as long as he has. I personally asked him to not retire because –

MR. LAZARUS: Yes, we've asked him the same thing.

CHAIR HANSEN: -- but because I respect him so much and his expertise. And I am grateful for the time and energy and input that he has given us and we look forward to the opportunity to consult with you again. Mr. Bearzi, would you like to say something?

MR. BEARZI: Only that it has been my privilege and honor to serve the Board. It's been great and I thank you for the esteem and respect that you've given me and I share it back with you.

CHAIR HANSEN: Thank you, James. You are highly respected by this Board and we are grateful. Thank you so much. Any other comments from the Board?

11. NEXT MEETING: Thursday, October 7, 2021 at 4:00 p.m.

12. ADJOURN

Chair Hansen declared this meeting adjourned at approximately 4:30 p.m.

Approved by:

Anna Hansen, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

KRISTINE BUSTOS-MIHELIC
SANTA FE CITY CLERK