Date: October 7, 2021

To: Buckman Direct Diversion Board

From: Randy Sugrue, BDD Operations Superintendent

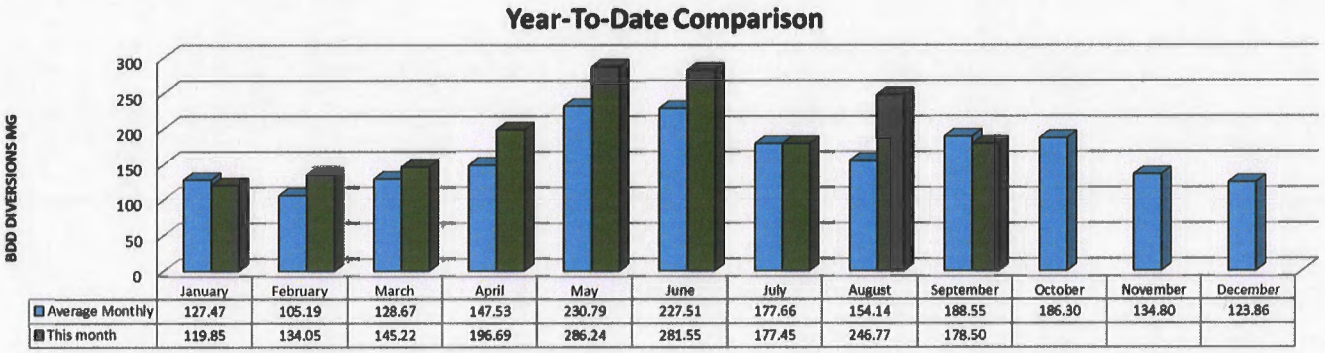
Subject: Update on BDD Operations for the Month of September 2021

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDB) on BDD operations during the month of September 2021. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
   a. Raw water diversions: 5.95 MGD.
   b. Drinking water deliveries through Booster Station 4A/5A: 5.48 MGD.
   c. Raw water delivery to Las Campanas at BS2A: 0.30 MGD.
   d. Onsite treated and non-treated water storage: 0.17 MGD Average.

2. The BDD is providing approximately 50% percent of the water supply to the City and County for the month.

3. The BDD year-to-date diversions are depicted below:



	January	February	March	April	May	June	July	August	September	October	November	December
Average Monthly	127.47	105.19	128.67	147.53	230.79	227.51	177.66	154.14	188.55	186.30	134.80	123.86
This month	119.85	134.05	145.22	196.69	286.24	281.55	177.45	246.77	178.50			

4. Regional Demand/Drought Summary and Storage-see page 2.

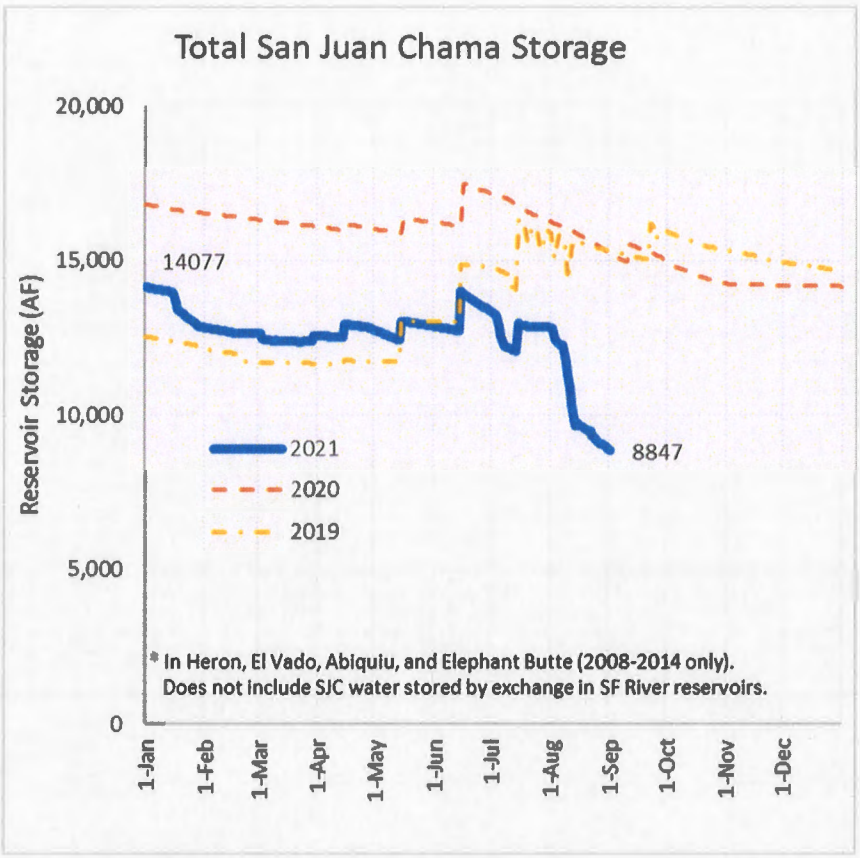
Regional Water Overview

Daily metered regional water demand for the month of September 2021 is approximately 11.9 MGD.

Rio Grande flows for September 2021 averaged approximately 300 CFS (cubic feet per second.)

CRWTP reservoir storage: Nichols: 68.9%/McClure: 27.1% (34.2% combined) Watershed Inflow: 1.3 MGD

City/County/LC Storage- as updated by partners.



ENSO Summary

September 20, 2021

ENSO Alert System Status: La Niña Watch
ENSO-neutral conditions are present.*
Equatorial sea surface temperatures (SSTs) are near-to-below average across most of the Pacific Ocean.
A transition from ENSO-neutral to La Niña is favored in the next couple of months, with a 70-80% chance of La Niña during the Northern Hemisphere winter 2021-22.*

Buckman Direct Diversion Monthly SJC and Native Diversions

Sep-21 In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	**378.548**	**42.119**	**0.000**	336.429	**336.429**	**0.000**	3.456
FEB	**408.601**	**191.550**	**0.000**	217.051	**217.051**	**0.000**	2.229
MAR	**442.832**	**442.832**	**0.000**	0.000	**0.000**	**0.000**	0.000
APR	**624.282**	**506.349**	**0.000**	117.933	**117.933**	**0.000**	1.195
MAY	**868.184**	**483.518**	**0.000**	384.666	**384.666**	**0.000**	2.477
JUN	**879.493**	**302.801**	**0.000**	576.692	**576.692**	**0.000**	3.555
JUL	**562.156**	**-17.518**	**0.000**	579.674	**579.674**	**0.000**	2.767
AUG	**758.665**	**-0.154**	**0.000**	758.819	**758.819**	**0.000**	3.757
SEP	**547.995**	**0.000**	**0.000**	547.995	**547.995**	**0.000**	2.108
OCT	**0.000**	**0.000**	**0.000**	0.000	**0.000**	**0.000**	0.000
NOV	**0.000**	**0.000**	**0.000**	0.000	**0.000**	**0.000**	0.000
DEC	**0.000**	**0.000**	**0.000**	0.000	**0.000**	**0.000**	0.000
TOTAL	**5,470.756**	**1,951.496**	**0.000**	**3,519.260**	**3,519.260**	**0.000**	**21.544**

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	13.720	0.000	108.306	108.306	0.000	122.026
FEB	62.394	0.000	69.875	69.875	0.000	132.269
MAR	144.245	0.000	0.000	0.000	0.000	144.245
APR	164.934	0.000	37.971	37.971	0.000	202.906
MAY	157.498	0.000	123.871	123.871	0.000	281.369
JUN	98.632	0.000	185.788	185.788	0.000	284.420
JUL	-5.706	0.000	186.765	186.765	0.000	181.059
AUG	-0.050	0.000	244.396	244.396	0.000	244.346
SEP	0.000	0.000	178.500	178.500	0.000	178.500
OCT	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	**635.666**	**0.000**	**1,135.472**	**1,135.472**	**0.000**	**1,771.139**

Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-20 In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	438.797	134.433	0.000	304.364	298.249	6.115	2.759
FEB	396.508	218.194	0.000	178.314	178.314	0.000	1.679
MAR	357.764	185.598	0.000	172.165	172.165	0.000	1.621
APR	372.408	187.945	0.000	184.463	122.188	62.275	1.737
MAY	641.374	529.897	0.000	111.477	111.477	0.000	0.889
JUN	637.220	509.818	0.000	127.402	1.618	125.784	1.017
JUL	784.520	0.000	0.000	784.520	784.520	0.000	3.663
AUG	886.856	12.503	0.000	874.354	839.919	34.435	4.214
SEP	762.357	0.000	0.000	762.357	682.674	79.683	3.556
OCT	593.109	0.000	0.000	593.109	539.638	53.472	5.845
NOV	390.743	353.481	0.000	37.261	37.261	0.000	0.345
DEC	392.394	355.317	0.000	37.077	37.077	0.000	0.377
TOTAL	**6,654.050**	**2,487.186**	**0.000**	**4,166.864**	**3,805.100**	**361.764**	**27.701**

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	43.789	0.000	98.103	96.304	1.975	141.892
FEB	71.073	0.000	57.454	57.454	0.000	128.527
MAR	60.456	0.000	55.473	55.473	0.000	115.928
APR	61.220	0.000	59.435	39.440	20.101	120.655
MAY	172.605	0.000	35.812	35.812	0.000	208.417
JUN	166.065	0.000	40.927	0.520	40.407	206.992
JUL	0.000	0.000	252.754	252.754	0.000	252.754
AUG	4.073	0.000	281.681	271.072	11.113	285.754
SEP	0.000	0.000	245.686	219.960	25.726	245.686
OCT	0.000	0.000	191.019	174.109	17.252	191.019
NOV	115.140	0.000	12.008	12.008	0.000	127.148
DEC	115.738	0.000	11.937	11.937	0.000	127.676
TOTAL	**810.158**	**0.000**	**1,342.289**	**1,226.843**	**116.574**	**2,152.447**

Dec-19	In Acre-Feet						
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	327.677	56.671	0.000	271.007	271.007	0.000	2.483
FEB	278.357	71.266	0.000	207.090	207.090	0.000	1.908
MAR	134.335	88.610	0.000	45.725	45.725	0.000	3.498
APR	126.924	114.750	0.000	12.175	12.175	0.000	0.110
MAY	550.285	550.285	0.000	0.000	0.000	0.000	0.000
JUN	546.222	546.222	0.000	0.000	0.000	0.000	0.000
JUL	649.014	23.285	0.000	625.729	519.383	106.345	2.907
AUG	422.340	17.075	0.000	405.265	318.606	86.659	1.912
SEP	518.606	169.956	0.000	348.650	261.901	86.749	1.564
OCT	531.254	15.373	0.000	515.881	477.452	38.429	4.676
NOV	325.023	42.180	0.000	282.843	280.865	1.978	2.936
DEC	334.880	48.808	0.000	286.071	286.071	0.000	2.893
TOTAL	4,744.916	1,744.482	0.000	3,000.434	2,680.275	320.160	24.886

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	18.460	0.000	87.342	87.342	0.000	105.802
FEB	23.214	0.000	66.739	66.739	0.000	89.953
MAR	28.863	0.000	13.735	13.735	0.000	42.598
APR	37.378	0.000	3.924	3.924	0.000	41.302
MAY	179.246	0.000	0.000	0.000	0.000	179.246
JUN	177.923	0.000	0.000	0.000	0.000	177.923
JUL	7.585	0.000	201.598	167.635	34.262	209.183
AUG	5.562	0.000	130.586	102.846	27.974	136.148
SEP	55.360	0.000	112.401	84.384	28.017	167.762
OCT	5.008	0.000	166.279	154.168	12.409	171.287
NOV	13.739	0.000	91.045	90.407	0.638	104.785
DEC	15.899	0.000	92.109	92.109	0.000	108.008
TOTAL	568.235	0.000	965.760	863.292	103.299	1,533.995

Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-18 In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	383.578	77.954	0.000	305.624	305.624	0.000	2.708
FEB	343.467	75.227	0.000	268.240	268.240	0.000	2.415
MAR	363.780	267.512	0.000	96.268	96.268	0.000	4.036
APR	662.407	569.253	0.000	93.154	93.154	0.000	3.898
MAY	941.240	209.538	0.000	731.702	615.366	116.336	8.171
JUN	912.903	30.894	0.000	882.009	740.070	141.939	8.707
JUL	905.897	0.000	0.000	905.897	816.188	89.709	4.255
AUG	678.383	1.466	0.000	676.917	676.917	0.000	6.087
SEP	694.411	0.000	0.000	694.411	694.411	0.000	6.404
OCT	608.789	0.000	0.000	608.789	599.228	9.560	5.805
NOV	404.616	82.390	0.000	322.226	316.641	5.585	3.196
DEC	369.186	2.966	0.000	366.220	366.220	0.000	3.392
TOTAL	7,268.656	1,317.200	0.000	5,951.456	5,588.327	363.129	59.073

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	77.954	0.000	302.916	302.916	0.000	380.870
FEB	75.227	0.000	265.825	265.825	0.000	341.052
MAR	267.512	0.000	92.231	92.231	0.000	359.744
APR	569.253	0.000	89.256	89.256	0.000	658.509
MAY	209.538	0.000	723.531	608.494	115.037	933.069
JUN	30.894	0.000	873.302	732.764	140.538	904.196
JUL	0.000	0.000	900.737	811.539	89.198	900.737
AUG	1.466	0.000	670.830	670.830	0.000	672.295
SEP	0.000	0.000	688.007	688.007	0.000	688.007
OCT	0.000	0.000	602.984	593.515	9.469	602.984
NOV	82.390	0.000	319.030	313.500	5.530	401.420
DEC	2.966	0.000	362.829	362.829	0.000	365.794
TOTAL	1,317.200	0.000	5,891.477	5,531.706	359.772	7,208.677

7c

To: BDD Board

From: Kyle Harwood

Date: September 29, 2021

Re: Summary and Status of 2021Triennial Review of State Water Quality Standards

This memorandum presents a summary of the Triennial Review filings and the hearing conducted in front of the New Mexico Water Quality Control Commission (WQCC) from July 13, 2021 to July 16, 2021, with an additional half-day of testimony on July 21, 2021.

Written Testimony:

On June 22, 2021 the Buckman Direct Diversion ("BDD") Board (the "Board") filed its written rebuttal testimony. The Board's written testimony focused on three specific issues that were raised by the written direct testimony of the owner and co-operators of Los Alamos National Laboratory ("LANL") and others, including: 1) LANL's proposal to eliminate a proposed definition of Contaminants of Emerging Concern (CECs) and the New Mexico Environment Department's ("NMED") proposal to include CECs within the definition of Toxic Pollutants; 2) LANL's proposal to limit the definition of Toxic Pollutants to those included in EPA's promulgated list, and other toxic pollutants that may be added to a list through WQCC rulemaking; and 3) LANL's proposal to limit sampling and testing methods for purposes of monitoring and compliance to those approved by the EPA in 40 CFR 136 (also known as Part 136 Methods). As described in the Board's written rebuttal testimony, LANL's proposals in these three areas would weaken NMED's ability to monitor and protect the quality of New Mexico's surface water. These three issues are summarized below.

1. Contaminants of Emerging Concern: LANL proposed to eliminate a narrative definition of CECs proposed by NMED, which would limit NMED authority to oversee emerging contaminants such as per- and polyfluorinated alkyl substances (PFAS), personal care products, and pharmaceuticals. NMED proposed to add a narrative definition of contaminants of emerging concern at 20.6.4.7.C(7) NMAC and in the general criteria for toxic pollutants at 20.6.4.13(F) NMAC. CEC's are suspected to have adverse ecological or human health effects; however, for many of these compounds the technical basis for their effects on human health and aquatic organisms is evolving. The Board submitted testimony supporting the monitoring and sampling for CECs.

2. Definition of Toxic Pollutants: LANL proposed to revise the definition of toxic pollutants from the current narrative definition which includes any substance meeting the narrative definition that "will

cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring." 20.6.4.7.T(2) NMAC. LANL's proposal would limit the definition of Toxic Pollutants to those listed by the EPA under Section 307(a) of the Clean Water Act, and those toxic pollutants that have been added to the list by subsequent EPA or WQCC rulemaking. This proposal would remove NMED's ability to protect the State's surface water from contaminants that are known to be toxic but have not gone through the lengthy and laborious rulemaking process to add toxic pollutants to either the EPA or WQCC lists.

3. Testing Methods: LANL proposed to limit analytical methods for purposes of compliance and enforcement to those methods specified in 40 CFR 136 (Part 136 Methods). The current WQCC regulations provide that the WQCC may establish numeric water quality criteria that are below the detection limits of testing methods in Part 136 provided that other recognized testing methods have detection limits at or below the concentrations listed in the numeric criteria. The relevant example of what LANL has proposed here is the methods for testing for polychlorinated biphenyl compounds (PCBs). The WQCC has established numeric criteria for PCBs of 0.014 micrograms per liter for Wildlife Habitat and Aquatic Life and 0.00064 micrograms per liter for Aquatic Life and Human Health-Organism Only. These concentrations of PCBs cannot be detected using the Part 136 method (Method 608.3) but can be detected using the congener method (Method 1668C), which was published by the EPA's Office of Water, but which has not been formally adopted as a Part 136 Method. The current WQCC standards allow for the use of Method 1668C. This issue was recently highlighted in the Santa Fe New Mexican at <https://www.santafenewmexican.com/news/local_news/u-s-seeks-to-ease-testing-of-los-alamos-labs-cancer-causing-contaminants/article_bf8340a2-1aef-11ec-8171-9374b5a7d12f.html>

The Board was not alone in its objections to these three LANL proposals. NMED, Amigos Bravos, and Communities for Clean Water also filed written testimony, and presented oral testimony objecting to the LANL proposals. The written rebuttal testimony submitted on behalf of the Board, without its voluminous exhibits, is attached hereto as Exhibit A.

In addition to the three issue areas described above, parties to the Triennial Review submitted testimony on may other topics, including proposing adding a definition of "climate change" to the water quality standards; adding various additional definitions to the water quality standards; making changes to water quality monitoring and enforcement criteria; addressing the standards that apply to the perennial waters located within the boundaries of LANL; and proposing a range of formatting and grammatical corrections. In support of these proposed revisions the parties submitted thousands of pages of testimony and supporting exhibits.

Oral Testimony:

The hearing on the Triennial Review began on July 13, 2021 with each party presenting an opening statement, then proceeding into the issues which had been categorized into eight "bins" by agreement of the parties. As described in the Procedural Order for the Triennial Review issued by the Hearing Officer Gregory Chakalian, oral testimony was a brief summary of the issues on which each party had pre-filed written testimony. Each party presenting oral testimony then stood for cross examination by the other parties, members of the WQCC, and the public.

On each issue NMED presented their proposed amendments to the water quality standards first, followed by the other parties. James Bearzi, the Board's expert witness, testified on the three issues described above on July 14th and July

15th. On the issues of CECs and Toxic Pollutants, Mr. Bearzi was cross examined by the San Juan Water Commission's attorney, the New Mexico Environment Department's attorney, the LANL attorney, and WQCC Commissioner Bruce Thomson. This cross examination was limited in scope and was effectively answered by Mr. Bearzi. On the issue of Part 136 Methods, cross examination of Mr. Bearzi was by LANL alone and limited to the issue of what other permits required the use of the congener method. Mr. Bearzi effectively addressed this cross examination.

Oral testimony for the hearing was conducted before Hearing Officer Chakalian in front of the WQCC, in a properly noticed meeting of the WQCC. Because of the volume of issues, which included 76 individual issues organized into eight separate "bins," testimony was taken over five days, with opportunity on each day for public comment. Generally, public comment was supportive of the position of Amigos Bravos and Communities for Clean Water, which overlapped with the Board's position on the issues on which it submitted testimony. Public comment was limited to five minutes per speaker of non-technical testimony.

Post Hearing Procedure:

The court reporter submitted the transcript of the proceedings on August 9, 2021. Forty-five days following the submittal of the transcript, on September 24, 2021, the parties submitted their proposed statements of reasons and closing briefs. The proposed statement of reasons of the Board, which is based upon the technical testimony submitted in the hearing is attached to this memo as Exhibit B. Forty-five days following the parties' filings the Hearing Officer shall file his Report and Draft Proposed Statement of Reasons, which shall be served on all parties. The parties shall then have thirty days to file Exceptions to the Hearing Officer's Report and Draft Proposed Statement of Reasons. Then, approximately thirty days later, at the next regular WQCC meeting, the Hearing Officer shall present his final Report and Proposed Statement of Reasons to the WQCC for its review and consideration.

Additional Considerations:

The hearing on the Triennial Review was requested by NMED so the WQCC could hear and consider NMED's proposed amendments to the State water quality standards. In response to NMED's proposal, some of the parties – including the Board through its rebuttal testimony – offered alternative proposals. LANL not only offered its own proposals through this Triennial Review, but also asked for a separate rulemaking hearing on a variety of other water quality issues – including the three on which the Board provided rebuttal testimony in the Triennial Review – months before the hearing. LANL characterized its request for hearing on its own proposals as a "protective" step, retaining its ability to seek consideration of its proposals should the WQCC decline to do so through the Triennial Review based on NMED's petition. The WQCC granted a hearing and named a hearing officer for LANL's request, but did not schedule a hearing pending the outcome of the Triennial Review. Should the WQCC schedule a hearing pursuant to LANL's request, the Board may wish to consider filing direct or rebuttal testimony in that proceeding.

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF:

PROPOSED AMENDMENTS TO
STANDARDS FOR INTERSTATE AND
INTRASTATE SURFACE WATERS
20.6.4 NMAC **NO. WQCC 20-51(R)**

REBUTTAL TESTIMONY OF JAMES P. BEARZI ON BEHALF OF THE BUCKMAN DIRECT DIVERSION BOARD

JUNE 22, 2021

I. WORK EXPERIENCE AND BACKGROUND

I am James P. Bearzi and I am employed by Glorieta Geoscience, Inc. ("GGI") as a Senior Environmental Geologist. I am presenting this written rebuttal testimony (**Exhibit 1**) on behalf of the Buckman Direct Diversion ("BDD") Board (the "Board"), in the hearing regarding a petition filed by the New Mexico Environment Department ("NMED") with the New Mexico Water Quality Control Commission ("WQCC") to amend the Interstate and Intrastate Surface Water Quality Standards (the "Standards") at 20.6.4 NMAC (WQCC 20-51 (R)). My testimony is provided in rebuttal to Triad National Security, LLC ("Triad"), and the United States Department of Energy National Nuclear Security Administration (collectively, "DOE") Notice of Intent to Present Technical Testimony in the above-captioned matter.[1] The specific portions of DOE's direct testimony to which I provide rebuttal are discussed in Part III below.

GGI is a consulting firm specializing in groundwater and surface water resource evaluation, including vadose zone, saturated zone and surface water contaminant

[1] Other parties to this proceeding have made proposals substantively similar to DOE's. For purposes of my testimony, reference to "DOE" includes reference to other parties where applicable.

characterization. I have held the position of Senior Environmental Geologist at GGI since 2014. I have a Master of Science degree in earth sciences from Montana State University, obtained in 1987, and a Bachelor of Science degree in geology and geography from Portland State University, obtained in 1985. In addition to my educational background, I have received and been provided training and continuing education over the years in various environmental topics including water quality and water rights, contaminant fate and transport, sampling, nature and extent studies, groundwater and vadose zone multi-phase transport, risk assessment, remediation technology, waste characterization and management, compliance, and regulation and policy. I also attended and completed *Strategic Management of Regulatory and Enforcement Agencies* at Harvard University's Kennedy School of Government. I have conducted, supervised, and reviewed numerous projects involving investigation and assessment of water quality, groundwater flow, contaminant source investigations, risk assessment, and contaminant transport in the saturated and vadose zones.

At GGI, I serve as Project Manager for a wide range of water resource, environmental, and other projects, many with complex regulatory and compliance issues. I am responsible for the assessment and evaluation of complex hydrologic, geologic, and ecological problems; federal and state law and regulatory compliance; waste profiling and characterization; evaluation of hydrologic models; and collection and evaluation of water quality and quantity data. I have authored numerous reports for clients and regulatory entities related to soil and groundwater contamination.

From 1989 to 2012 (except for 1990), I served in various technical, scientific, and leadership positions in the New Mexico Environment Department ("NMED"). I was a NMED Bureau Chief for 21 years, including a period as Surface Water Quality Bureau ("SWQB") Chief where I had overall responsibility for, and management of New Mexico's surface water quality

protection programs, including those required by the federal Clean Water Act ("CWA"), the New Mexico Water Quality Act, and the Water Quality Standards for Interstate and Intrastate Surface Waters at 20.6.4 NMAC. In 2012, I provided direct testimony to the WQCC in support of NMED's petition to amend designated uses for the lower Dry Cimarron River, and to establish water quality standards for lakes. Prior to serving as SWQB Chief, I served for 12 years as Hazardous Waste Bureau Chief, where I had overall responsibility for New Mexico's hazardous waste management program, including regulation of cleanup and monitoring of Los Alamos National Laboratory ("LANL"). From 2012 to 2014 I served as technical staff and technical supervisor for the New Mexico Interstate Stream Commission. Throughout my service to the State of New Mexico, I had responsibilities similar to those as outlined above, and in addition provided testimony in litigation and administrative proceedings, and to legislative bodies; developed and implemented public policy, regulations, and statutes; and managed the technical and administrative aspects of large agency organizations.

A copy of my resume is attached and marked as **Exhibit 2**. It is accurate and up-to-date.

II. BUCKMAN DIRECT DIVERSION

The BDD is a municipal water supply project that is jointly operated by the City of Santa Fe and Santa Fe County to divert their San Juan-Chama and native Rio Grande water rights, and is managed by the Buckman Direct Diversion Board. The BDD treats diverted surface water to federal and state Safe Drinking Water Act standards to supply clean and safe water to the citizens of the City and County of Santa Fe. I provide this testimony on behalf of the Board to offer its unique perspective as a public water utility that diverts surface water that will be directly and adversely impacted by several of DOE's and other parties' proposed amendments to 20.4.6.4 NMAC (*see* footnote 1) introduced in their direct testimony.

The BDD is located west of the City of Santa Fe on the Rio Grande and downstream of several communities and NPDES permittees on the Rio Grande and its tributaries, including the community of Los Alamos, and LANL, which is owned by DOE and co-operated with DOE by Triad. **Exhibit 3** is a map showing these geographic relationships. LANL is located on the Pajarito Plateau, to the west of the Rio Grande, and includes watersheds with a number of perennial, intermittent, and ephemeral streams that are tributaries to the Rio Grande, at least two of which are upstream of the BDD intake structure. Numerous sites where pollutants from industrial outfalls and storm water discharge to tributaries of the Rio Grande are located at LANL or lands formerly occupied by LANL. Dozens of these sites are in the Los Alamos Canyon watershed, whose confluence with the Rio Grande is just below the Otowi Bridge approximately three miles upstream of the Buckman Direct Diversion Project intake structure. **Exhibit 4** is a map showing a portion of LANL and the Los Alamos Canyon watershed, and locations used by LANL to monitor run-on to and runoff from contaminated sites. As a result of these discharges, and other LANL operations that generated hazardous, mixed, and radioactive wastes, legacy contamination is entrained in sediments in the canyons and periodically migrates downcanyon with storm water in response to flood events.

The BDD Board has worked with LANL to establish an Early Notification System ("ENS") to alert BDD operators when a storm water event in Los Alamos Canyon is occurring (*see* **Exhibit 3**). The ENS is a group of strategically-placed storm water monitoring locations in Los Alamos Canyon that detects storm water flow and transmits real-time data that the BDD operators can use to determine if the BDD intake structure should be shut down to avoid diverting contaminated water. The ENS is one facet of the Board's efforts to mitigate the potential impacts of LANL legacy contamination on the BDD, and to instill public confidence in the BDD. The ENS provides critical information to the BDD operators, the Board, and the public

on runoff in Los Alamos Canyon and its tributaries that could adversely affect the Rio Grande, the BDD's source water. Any potential for increase in contamination or sedimentation of the Rio Grande caused by LANL, or reduction or limitation of monitoring of the Rio Grande or its tributaries, is of keen interest to the Board and the public it serves. The water quality of the Rio Grande and its tributaries has a direct impact on the BDD's ability to divert and on the associated expense to treat this source water to federal and state drinking water standards.

The BDD relies on the New Mexico water quality standards at 20.6.4 NMAC to ensure that discharges to receiving waters in the BDD source area are appropriately regulated to protect human health and the environment, and is part of the statutory and regulatory framework that ensures cleanup of legacy pollution at LANL is accomplished to levels that maintain and preserve its source water quality. Any federal permit issued under the CWA by the U.S. Environmental Protection Agency ("EPA") in the State of New Mexico must be certified by NMED to ensure full compliance with the WQCC's surface water quality standards. Several of DOE's proposed amendments would undermine the WQCC's surface water quality standards and NMED's ability to certify that EPA-issued permits are protective of those standards, as explained in Part III below.

III. PROPOSED AMENDMENTS

The Board generally is supportive of NMED's Amended Petition. However, the Board has serious concerns with several of DOE's and NMED's proposals set forth in their Notices of Intent to Present Technical testimony. My testimony addresses the following issues:

- DOE's proposal to restrict analytical methods and compliance to those approved by the U.S. Environmental Protection Agency ("USEPA") under 40 CFR Part 136;

- DOE's proposal to limit the WQCC's definition of "toxic pollutants" to those listed by EPA, and NMED's proposal to include Contaminants of Emerging Concern ("CECs") as toxic pollutants; and
- DOE's and other parties' proposal to remove any reference to contaminants of emerging concern ("CECs").

A. Part 136 Methods

DOE proposes to limit analytical methods for purposes of compliance and enforcement of standards to those specified at 40 CFR Part 136 ("Part 136 Methods") in its proposed amendments to 20.6.4.12.E. NMAC (2020 TR LANL-00011). The WQCC has authority to establish a numeric water quality criterion at a concentration that is below the minimum quantification level of a Part 136 Method, so long as another method allowed by 20.6.4.14.A NMAC can achieve detection to the concentration in the criterion. In such cases, the water quality standard is enforceable at the minimum quantification level set forth in the allowed method (20.6.4.12.E NMAC). For example, the WQCC has established use-specific numeric criteria for polychlorinated biphenyl compounds ("PCBs") of 0.014 micrograms per liter ("µg/L") for Wildlife Habitat and Aquatic Life Chronic and 0.00064 µg/L for Aquatic Life Human Health-Organism Only (20.6.4.900.J(1) NMAC), which are less than the equivalent minimum quantification level of Part 136 Method 608.3. DOE does not challenge this in its direct testimony. The WQCC's current regulations account for the fact that Part 136 Methods may not be sufficiently sensitive to detect contaminants at the numeric limits set by the WQCC for certain contaminants, and so it has adopted a number of other acceptable sampling and analysis techniques for use by NMED (*see* 20.6.4.14.A. NMAC). Section 20.6.4.14.A(3) NMAC defines one such category of techniques or laboratory analysis of waste samples for monitoring and compliance purposes as "*Methods For Chemical Analysis Of Water And Waste*, and other

methods published by EPA office of research and development or office of water." Under this provision, the NMED can require that monitoring and reporting of PCBs by LANL be performed in accordance with Method 1668C or later revisions. Method 1668C (EPA-820-R-10-005; **Exhibit 5**) was published in April 2010 by the EPA's Office of Water, and therefore is an allowable method under 20.6.4.14.A(3) NMAC.

Method 1668C is not only allowed under existing regulations, but is the only available method to detect PCBs at concentrations at or below the WQCC numerical standards discussed above. NMED has stated in its *State Certification Los Alamos National Laboratory Industrial Wastewater NPDES Permit No. NM0028355* (**Exhibit 6**) that "Method 1668C is a State approved method for testing surface wastewater discharges. Additionally, Method 1668C has a Minimum Quantification Level (MQL) set at or below the applicable and limiting State WQS found in 20.6.4.900(J)(1) NMAC. Further supporting this requirement is that Method 1668C is the only known and least restrictive and readily available laboratory wastewater sampling method that can reasonably assure that the proposed discharges do not exceed the WQS limits of 20.6.4.900(J)(1) NMAC." While EPA has not adopted Method 1668C as a new method under 40 CFR Part 136, it stated in its notice of deferral of action that it "...is still evaluating the large number of public comments and intends to make a determination on the approval of this method [1668C] at a later date...***This decision does not negate the merits of this method for the determination of PCB congeners in regulatory programs or for other purposes when analyses are performed by an experienced laboratory***." (**Exhibit 7**, emphasis added.)

In response to LANL's comment that "LANL is the only facility in New Mexico where use of the Congener Method 1668 is required to determine compliance with an NPDES permit limit," NMED stated that while LANL is the only facility for which Method 1668C is used for compliance, it also

"...is the only facility whose discharge has been shown to have a reasonable potential to exceed State WQS for PCBs. The State also notes that LANL is not the only NPDES permittee in New Mexico subject to the specific use of USEPA Method 1668C (*see* **Exhibit 6**). For example, six other NPDES permits are required to use this method for monitoring and reporting only. These are discharges to waters where PCBs have been identified as a probable cause of a water quality impairment, but there was insufficient data to determine if the discharge had a reasonable potential to exceed State WQS or may contribute to a listed impairment. Therefore, based on these facts, use of Method 1668C is the least restrictive means known by the State to assure that the proposed activity will not exceed or contribute to the degradation of state water quality." (*see* **Exhibit 6).**

The practical effect of DOE's proposal to limit analytical methods to Part 136 Methods is that contaminants like PCBs in LANL surface and storm waters that are detectable and enforceable ***under current rules*** would be undetectable and unenforceable going forward. Ensuring compliance with the WQCC's numeric standards for PCBs is critical because some of the highest inventories of PCBs at contaminated sites on the Pajarito Plateau are in the Los Alamos Canyon watershed. Six of the 17 NPDES individual permit site monitoring areas where automated samplers collected compliance storm water samples in 2019 are in the Los Alamos Canyon watershed. In 2019 ***every*** storm water or base flow result for total PCBs measured by LANL exceeded the Human Health-Organism Only water quality standard (**Exhibit 8**; p. 6-25). DOE's proposal would make many of these exceedances invisible because the minimum detection limits or method limits for Part 136 Methods are not sufficiently sensitive.

Simply put, DOE's proposal would ***roll back current protections*** the BDD and the public rely upon to protect its source waters. The Board urges the Commission to reject DOE's

proposal, and maintain the current regulations which provide authority for NMED to enforce the WQCC's water quality standards.

B. Toxic Pollutants

DOE proposes to limit the existing definition of "toxic pollutants" to those listed by EPA under CWA §307(a) in its proposed amendments to 20.6.4.7.T(2) NMAC (2020 TR LANL-00004). DOE's proposal would delete longstanding language from the WQCC's definition of toxic pollutants that protects the BDD's source water, and human health and the environment generally. Moreover, DOE proposes to eliminate existing language that defines toxic pollutants as including "...disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformation in such organisms or their offspring" (2020 TR LANL-00147). Replacing this language with a definition that limits "toxic pollutants" to EPA's list of "toxic pollutants" would take away the State's authority to protect New Mexico waters from contaminants that have been well-established by the scientific community as "toxic," but that have not gone through the lengthy and laborious rulemaking process that EPA must undertake to add to its definition of "toxic pollutants." The State should have the flexibility and discretion, relying on reproducible data and transparent science, to protect the public and environment from contaminants that are toxic under the broader narrative definition in the current regulations. In combination with the general water quality criteria at 20.6.4.13.F(1) NMED, the existing definition of "toxic pollutants" ensures that New Mexico's waters are free of toxic pollutants as the WQCC and EPA have intended.

C. Contaminants of Emerging Concern

DOE proposes to remove any reference to contaminants of emerging concern ("CECs"), a category of pollutants that NMED proposes to add as a new term at 20.6.4.7.C(7) NMAC and in the general criteria at 20.6.4.13(F) NMAC. CECs include pharmaceuticals, personal care products, polyfluorinated alkylated substances ("PFAS"), and other chemicals that do not have regulatory standards but are suspected to have adverse ecological or human health effects. For many of these compounds, the technical basis of their deleterious effects on organisms, including humans, is evolving.

Nevertheless, some of these CECs, including three PFAS compounds, are listed as toxic pollutants at 20.6.2.7.T(2)(s) NMAC. PFAS have recently been detected in the groundwater beneath and in springs on the Pajarito Plateau **(Exhibit 9).** DOE's proposal would remove any authority NMED has to require further sampling for PFAS or any other CEC in either surface water or storm water. The BDD has conducted sampling of its source water for many of these CECs (**Exhibit 10**), and while it has confirmed that its treatment of source water is consistently able to supply safe drinking water to the public, ongoing and routine monitoring of CECs by permittees subject to the CWA and WQA will protect BDD's source water and to sustain public confidence in the BDD.

I agree with DOE that without clearly stated criteria, compliance with narrative water quality standards for CECs at this time could be unclear to permittees. However, DOE's proposed elimination of CEC's from the water quality standards is an overreaction. NMED's proposed inclusion of CECs as toxic pollutants under the general criteria is also problematic, as it would conflate CECs and toxic pollutants, inappropriately impose compliance requirements for toxic pollutants on CECs, and assume that all CECs are toxic pollutants where no such determination has been made. Instead of adopting either DOE's or NMED's proposal, the WQCC could protect surface water quality in the State and develop the evolving science behind

the toxicity and deleterious effects of CECs by giving NMED the authority to include sampling and monitoring of CECs as a condition of an individual federal permit under CWA §401.

IV. CONCLUSION

For the foregoing reasons, limiting sampling methods for purposes of compliance to Part 136 Methods and limiting the definition of "toxic pollutants" to EPA's list of toxic pollutants would result in diminution of New Mexico's water quality, adversely affect the BDD's ability to provide safe and reliable drinking water to its customers, and undermine NMED's ability to monitor and enforce New Mexico's water quality standards, and should be rejected. Including CECs as toxic pollutants under the general criteria conflates CECs and toxic pollutants, imposes compliance requirements for toxic pollutants on CECs, and assumes that all CECs are toxic pollutants where no such determination has been made, and should also be rejected. NMED should be given authority to require monitoring of CECs as a condition of individual federal permits. This concludes my rebuttal testimony.

James P. Bearzi

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF:

PROPOSED AMENDMENTS TO STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS, 20.6.4 NMAC **No. WQCC 20-51 (R)**

THE BUCKMAN DIRECT DIVERSION BOARD'S PROPOSED STATEMENT OF REASONS

In accordance with the New Mexico Water Quality Control Commission's ("WQCC") Rulemaking Procedures at 20.1.6.304 NMAC, and the Hearing Officer's Procedural Order issued on November 9, 2020, the Buckman Direct Diversion ("BDD") Board submits its proposed Statement of Reasons relating to the 2021 Proposed Amendments to Standards for Interstate and Intrastate Surface Waters at 20.6.4 NMAC, (the "Triennial Review"). On August 19, 2020 the New Mexico Environment Department ("NMED") filed it Petition to Amend the Standards for Interstate and Intrastate Surface Waters, which was subsequently amended by NMED's Amended Petition, filed on March 12, 2021. The Buckman Direct Diversion generally supports the Petition as amended and opposes several proposed amendments to the surface water standards put forward by the Department of Energy ("DOE") in the proceeding, as set forth below. The BDD submitted its Notice of Intent to Present Rebuttal Testimony along with the technical testimony of its witness James P. Bearzi, on June 22, 2021. The BDD submitted rebuttal testimony covering three issues raised by the Technical Testimony of DOE National Nuclear Security Administration and Triad National Security, LLC (collectively "LANL"), including: 1) LANL's proposal to restrict analytical methods and compliance to those approved

by the U.S. Environmental Protection Agency, ("EPA") under 40 CFR Part 136; 2) LANL's proposal to limit the definition of "toxic pollutants" to those listed by the EPA, and NMED's proposal to include contaminants of emerging concern ("CECs") in the definition of toxic pollutants; and 3) LANL's proposal to remove NMED's proposed references to contaminants of emerging concern.

PROPOSED FINDINGS OF FACT

I. BDD'S EXPERT WITNESS

1. The BDD is a municipal water supply project that is jointly operated by the City of Santa Fe and Santa Fe County to divert their San Juan-Chama project water and native Rio Grande water rights, and which is managed by the Buckman Direct Diversion Board. BDD Ex. 1 at 3.

2. The BDD is located west of the City of Santa Fe on the Rio Grande and downstream of several communities and federal Clean Water Act ("CWA") National Pollutant Discharge Elimination System ("NPDES") permittees on the Rio Grande and its tributaries, including the county of Los Alamos, and LANL, which is owned by the DOE and co-operated with DOE by Triad National Security, LLC. BDD Ex. 1 at 4.

3. LANL is located on the Pajarito Plateau, to the west of the Rio Grande, and encompasses watersheds with numerous perennial, intermittent, and ephemeral streams that are tributaries to the Rio Grande, at least two of which are upstream of the BDD intake structure. Numerous sites where pollutants from industrial outfalls and storm water discharge to tributaries of the Rio Grande are located at LANL or lands formerly occupied by LANL and dozens of these sites are in the Los Alamos Canyon watershed, which joins with the Rio Grande approximately three miles upstream of the BDD project intake structure. BDD Ex. 1 at 4

4. In addition to discharges under its NPDES permits, LANL is the site of extensive contamination from past activities, some of which is entrained in the sediments in the canyons that drain the Pajarito Plateau and will periodically migrate downcanyon in response to storm flood events. BDD Ex. 1 at 4.

5. The BDD has engaged with LANL to establish an Early Notification System ("ENS") to alert BDD operators when a storm water event in Los Alamos Canyon is occurring. BDD's only recourse when such events occur is to shut down its intake structure to avoid diverting contaminated waters from the Rio Grande.

6. In addition to the ENS, the BDD relies on the New Mexico surface water quality standards at 20.6.4 NMAC to ensure that discharges to the Rio Grande and its tributaries upstream of the BDD intake are appropriately regulated to protect human health and the environment. The BDD also relies on these standards as part of the regulatory framework that ensures the cleanup of legacy pollution at LANL. BDD Ex. 1 at 5.

7. The BDD presented one witness, Mr. James P. Bearzi, at the hearing on this matter.

8. At the time of the hearing Mr. Bearzi was employed by Glorieta Geoscience, Inc. ("GGI") as a Senior Environmental Geologist.[1] Mr. Bearzi has a Bachelor of Science degree in geology and geography from Portland State University and a Master of Science degree in Earth Sciences from Montana State University. From 1989 to 2012 Mr. Bearzi served in various technical, scientific, and leadership positions within the NMED, including serving as Bureau Chief for 21 years, including a period as Surface Water Quality Bureau Chief. As Surface Water Quality Bureau Chief Mr. Bearzi oversaw and was responsible for the management of New

[1] Mr. Bearzi has since left employment with GGI.

Mexico's surface water quality protection programs, including those required by the CWA, the New Mexico Water Quality Act, and the Water Quality Standards for Interstate and Intrastate Surface Waters at 20.6.4 NMAC. Mr. Bearzi has provided technical testimony before the WQCC, including in the 2012 petition to amend the designated uses for the lower Dry Cimarron River, and to establish water quality standards for New Mexico lakes. Prior to serving as Surface Water Quality Bureau Chief, Mr. Bearzi served as the Hazardous Waste Bureau Chief, where he was responsible for the regulation of cleanup and monitoring of hazardous and mixed waste at LANL. Mr. Bearzi's extensive experience at NMED included providing testimony in litigation, administrative proceedings, and to legislative bodies; developing and implementing public policy, regulations, and statutes; and managing the technical and administrative aspects of large agency organizations. BDD Ex. 1, at 3. Mr. Bearzi's resume is included in the record as BDD Ex. 2.

II. ANALYTICAL METHODS: 20.6.4.12.E NMAC COMPLIANCE WITH WATER QUALITY STANDARDS.

9. LANL proposed to amend the existing language at 20.6.4.14.E NMAC as follows:

> E. The commission may establish a numeric water quality criterion at a concentration that is below the ~~minimum quantification level~~ lowest minimum level (ML) of the analytical methods approved by EPA under 40 CFR part 136 for the measured pollutant or pollutant parameter. In such cases, the water quality standard is enforceable at the ~~minimum quantification level~~ ML of the sufficiently sensitive method approved by the EPA under 40 CFR part 136. [2]

LANL Ex. 2, at 11.

[2] Proposed deletions from the existing rule are indicated by strikethrough, i.e., ~~deletion~~. Proposed additions to the existing text are indicated by underline, i.e., addition.

10. The practical effect of LANL's proposal is that contaminants like polychlorinated biphenyl compounds ("PCBs") in LANL surface and storm waters that are detectable under the current rules would be undetectable and unenforceable going forward. BDD Ex. 1 at 8.

11. The current rule, set out at 20.6.4.14.E, provides that the water quality standard is enforceable at the minimum quantification level set forth in the allowed method. For example, the WQCC has established use-specific numeric criteria for PCBs of 0.014 micrograms per liter ("µg/L") for Wildlife Habitat and Aquatic Life Chronic and 0.00064 µg/L for Aquatic Life Human Health-Organism Only (20.6.4.900.J(1) NMAC), which are less than the equivalent minimum quantification level of Part 136 Method 608.3. BDD Ex. 1 at 6.

12. The WQCC's current regulations take account of the fact that Part 136 Methods may not be sufficiently sensitive to detect contaminants at the numeric limits set by the WQCC for certain contaminants, and has adopted a number of sampling and analysis techniques for use by NMED, in addition to those approved under 40 CFR §136 (*see* 20.6.4.14.A. NMAC). One such category of techniques or laboratory analysis of waste samples for monitoring and compliance purposes is "*Methods for Chemical Analysis of Water and Waste*, and other methods published by EPA office of research and development or office of water." (20.6.4.14.A.(3) NMAC). The NMED therefore requires that monitoring and reporting of PCBs by LANL be performed in accordance with Method 1668C or later revisions. BDD Ex. 1 at 6-7.

13. Method 1668C is therefore allowed as the only available method to detect PCBs at concentrations at or below the WQCC current numerical standards. NMED has stated in its *State Certification Los Alamos National Laboratory Industrial Wastewater NPDES Permit No. NM0028355* that "Method 1668C is a State approved method for testing surface wastewater discharges. Additionally, Method 1668C has a Minimum Quantification Level (MQL) set at or

below the applicable and limiting state standard set forth at 20.6.4.900(J)(1) NMAC. BDD Ex. 1 at 7; BDD Ex. 6.

14. Six of the 17 NPDES Individual Permit site monitoring areas where automated samplers collected compliance storm water samples in 2019 are in the Los Alamos Canyon watershed. In 2019 ***every*** storm water or base flow result for total PCBs measured by LANL exceeded the Human Health-Organism Only water quality standard. BDD Ex. 1, at 8; BDD Ex. 8 at 6-25.

15. The minimum detection limits for Method 608.3, which is a Part 136 Method, are not sufficiently sensitive to detect PCBs at the numeric water quality standards under the current rule. BDD Ex. 1, at 9; AB Ex. 22 at 2-3.

16. Adopting the LANL proposal to limit enforcement of water quality permits to the minimum level detectable under a Part 136 method would undermine the ability of NMED to enforce the Commission's numeric water quality standards for certain contaminants, including PCBs, under undermine the Water Quality Act's purpose of preventing, abating, and controlling water pollution in the state. NMSA 1978 § 74-6-13.

III. TOXIC POLLUTANTS: 20.6.4.7.T(2) NMAC DEFINITIONS

17. LANL has proposed to amend the current definition of toxic pollutant at 20.6.4.7.T(2) as follows:

> (2) "Toxic pollutant" means those pollutants, or combinations of pollutants~~, including disease causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly be ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring~~ listed by the EPA administrator under section 307(a) of the federal Clean Water Act, 33 U.S.C. §1313(a) or in the list below.

LANL Ex. 1, at 4.

18. LANL's proposed definition would limit what are considered to be toxic pollutants from the current narrative definition, to those listed by EPA under the Clean Water Act at § 307(a), or under a list adopted, through rulemaking, by the WQCC. BDD Ex. 1 at 9.

19. Replacing the current narrative definition of toxic pollutants with EPA's list of toxic pollutants would take away the State's authority to protect New Mexico waters from contaminants that have been well-established by the scientific community as "toxic," but that have not gone through the lengthy and cumbersome rulemaking process that EPA must undertake to add to its definition of toxic pollutants. *Id.*

20. The general water quality criteria at 20.6.4.13.F(1) NMAC provide that the surface waters of the state shall be "free of toxic pollutants, from other than natural causes in amounts, concentrations, or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms..." 20.6.4.13.F(1) NMAC.

21. The state should have the flexibility and discretion, relying on good science, to use the existing narrative definition of toxic pollutants combined with the general water criteria for state surface waters to protect the public and environment from contaminants that are toxic in nature, but have not been described as such by a formal rulemaking. BDD Ex. 1 at 9.

22. LANL's proposed amendment to the definition of toxic pollutants is contrary to the purpose of the Clean Water Act, that "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited," 33 USC § 1251(a)(3) and the purpose of the Water Quality Act which aims to prevent and abate water pollution in the state." NMSA 1978 §74-6-13.

IV. CONTAMINANTS OF EMERGING CONCERN: 20.6.4.7.C(7) NMAC, DEFINITIONS; 20.6.4.13.F NMAC, GENERAL CRITERIA

23. LANL has proposed to delete the NMED proposed amendment to the Definitions section under NMAC 20.6.4.7.C(7) that would add a definition of contaminants of emerging concern:

> (7) "Contaminants of emerging concern" or "CECs" refer to water contaminants including, but not limited to, pharmaceutical and personal care products that may cause significant ecological or human health effects at low concentrations. CECs are generally chemical compounds that, although suspected to potentially have impacts, may not have regulatory standards, and the concentrations to which negative impacts are observed have not been fully studied.

NMED Amended Petition, at 7; NMED Ex. 110 at 3. LANL proposes to reject this amendment. LANL Ex. 1 at 2.

24. CECs include pharmaceuticals, personal care products, polyfluorinated alkyl substances ("PFAS"), and other chemicals that do not have regulatory standards but are suspected to have adverse ecological or human health effects. BDD Ex. 1, at 10.

25. Some CECs, including three PFAS compounds, are listed as toxic pollutants in the Ground and Surface Water Protection regulations at 20.6.2 NMAC. *Id.*

26. PFAS have recently been detected in groundwater beneath the Pajarito Plateau. BDD Ex. 9.

27. LANL's proposal would remove NMED's authority to require further sampling for PFAS or any other CEC in either surface water or storm water. BDD Ex. 1, at 10.

28. NMED has further proposed to amend 20.6.4.13(F) NMAC to include CECs within the definition of toxic pollutants. NMED Amended Petition, at 6.

29. Without clearly stated criteria for CECs, including CECs in the definition of toxic pollutants conflates CECs with toxic pollutants and presumes that CECs have the characteristics of toxic pollutants even where no such determination has been made. BDD Ex. 1 at 10.

30. The BDD supports NMED's definition of CECs in the amended petition at 20.6.4.7.C(7) but opposes NMED's proposed amendment to 20.6.4.13.F that would include CECs within the general criteria for toxic pollutants. *Id.*

31. In his testimony at the hearing on this matter Kris Barrios, Program Manager for the Monitoring, Assessment, and Standards Section of NMED acknowledged that including CECs within the definition of toxic pollutants may create ambiguity and added "[t]o avoid the mistaken assumption that all CECs are toxic pollutants, the Commission may wish to reference CECs in the general criterion for toxic pollutants as "those CECs meeting the definition of toxic pollutants." Tr. 457:6-10.

32. The BDD supports NMED's proposed definition of CECs as set forth in its Exhibit 110 and so that NMED may establish and impose monitoring requirements for CECs when conditioning federal Clean Water Act permits. BDD Ex. 1 at 11.

33. Under the CWA, NMED has the authority to condition EPA issued permits to require monitoring of discharges for CECs in compliance with state water quality requirements. 33 USC 1341(d).

For the foregoing reasons, the BDD respectfully requests that the WQCC consider its Statement of Reasons as to the three matters set out above, in its rulemaking proceedings in the Proposed Amendments to Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing pleading was emailed to the WQCC Administrator and the following listed counsel on September 24, 2021.

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/s/ Luke Pierpont

Memorandum

Buckman Direct Diversion

Date: October 7, 2022

To: Buckman Direct Diversion Board

From: Jamie-Rae Diaz, Public Utilities Administrative Manager

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ITEM AND ISSUE:
2022 Buckman Direct Diversion Board Meetings Calendar

BACKGROUND AND SUMMARY:
The Buckman Direct Diversion Board meetings are normally conducted on the 1st Thursday of each month.

The following is the proposed 2022 meeting calendar:

DATE OF MEETING:

Thursday, January 6, 2022 @4:00

Thursday, February 3, 2022 @ 4:00

Thursday, March 3, 2022 @ 4:00

Thursday, April 7, 2022 @ 4:00

Thursday, May 5, 2022 @4:00

Thursday, June 2, 2022 @ 4:00

Thursday, July 7, 2022 @ 4:00

Thursday, August 4, 2022 @ 4:00

Thursday, September 1, 2022 @4:00

Thursday, October 6, 2022 @ 4:00

Thursday, November 3, 2022 @ 4:00

Thursday, December 1, 2022 @4:00

RECOMMENDED ACTION:

For your approval.

Memorandum

Buckman Direct Diversion

Date: September 29, 2021

To: Buckman Direct Diversion Board

From: Antoinette Armijo-Rougemont, BDD Accounting Supervisor

Re: 2022 FSAC Meeting Calendar

ITEM AND ISSUE:

2022 Fiscal Services and Audit Committee (FSAC) Meeting Calendar

BACKGROUND AND SUMMARY:

The BDD FSAC meetings are normally conducted within the 1st week of each month, prior to the BDD Board meetings.

The following is the proposed 2022 schedule for the Fiscal Services and Audit Committee meetings:

FSAC	BDDB	BCC
Tuesday, January 4, 2022 @ 4:00	Thursday, January 6, 2022	January 11th & 25th
Tuesday, February 1, 2022	Thursday, February 3, 2022	February 8th & 22nd
Tuesday, March 1, 2022	Thursday, March 3, 2022	March 8th & 29th
Tuesday, April 5, 2022	Thursday, April 7, 2022	April 12 & 26th
Tuesday, May 3, 2022	Thursday, May 5, 2022	May 10th & 31st
Wednesday, June 1, 2022	Thursday, June 2, 2022	June 14th & 28th
Tuesday, July 5, 2022	Thursday, July 7, 2022	July 12th & 26th
Tuesday, August 2, 2022	Thursday, August 4, 2022	August 9th & 30th
Monday, August 29th, 2022	Thursday, September 1, 2022	Sept. 13th & 27th
Tuesday, October 4, 2022	Thursday, October 6, 2022	Oct. 11th & 25th
Tuesday, November 1, 2022	Thursday, November 3, 2022	November 8th & 29th
Monday, November 28, 2022	Thursday, December 1, 2022	December 13th

ACTION REQUESTED:

For your approval.