

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

October 7, 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
J.C. Helms, Citizen Member
Tom Egelhoff, Las Campanas [non-voting]

Member(s) Excused:

Councilor JoAnne Vigil Coppler

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
Monique Maes, BDD Contract Administrator
Jesse Roach, City Water Division Director
James Bearzi, Glorieta Geoscience
Jay Lazarus, Glorieta Geoscience
Luke Pierpont, Egolf + Ferlic + Martinez + Harwood, LLC

3. APPROVAL OF AGENDA

There were no changes to the published agenda.

Commissioner Hamilton moved to approve the agenda and Mr. Helms seconded. The motion passed by unanimous [4-0] 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

There were no concerns regarding items listed on the consent agenda.

Mr. Helms moved to approve and Commissioner Hamilton seconded. The motion passed by unanimous [4-0] roll call vote.

8. ACTION ITEMS: CONSENT

- a. Request for Approval of the 2022 Buckman Direct Diversion Board Meeting Dates**
- b. Request for Approval of the 2022 Fiscal Services and Audit Committee (FSAC) Meeting Calendar**

6. APPROVAL OF MINUTES

- a. September 2, 2021 Buckman Direct Diversion Board Meeting**

There were no changes offered and Commissioner Hamilton moved to approve. Mr. Helms seconded. The motion passed by unanimous [4-0] roll call vote.

7. PRESENTATION/INFORMATIONAL ITEMS

- a. Monthly Update on BDD Operations**

CHAIR HANSEN: Randy Sugrue, welcome, and we look forward to hearing your monthly update.

RANDY SUGRUE (Operations Superintendent): Madam Chair, members of the Board, thank you very much. Buckman Direct Diversion operations for the month of September 2021, raw water diversions of about 5.95 million gallons per day, drinking water deliveries through Booster Stations 4A/5A, 5.48 million gallons per day. Raw water delivery to Las Campanas .3 or 300,000 gallons a day. Our treated and untreated storage, .7 million gallons per day. BDD provided about 50 percent of the water supply to City and County for the month. Our annual diversions dropped a little below average for the month of September. We did have a little bit of turbidity in the river to contend with. On page two is a regional water overview of the average need of demand for the

month was around 11.9 million gallons per day. Rio Grande flows for September were about 300 cubic feet per second past Otowi Bridge – actually that has increased a bit in the last week or so, closer to 350 cubic feet per second. I list the Canyon Water Treatment Plant Reservoir levels and watershed inflows has varied a bit. There has been some rainfall which we appreciate. On San Juan-Chama storage and reservoirs is noted in the graph and our El Niño/La Niña summary for September is now leaning a little bit towards La Niña as we move into the next few weeks. So we shall see if things start to dry out and if our monsoon season is complete. Apologize for the blank page on 3, and we have our chart on page 4 of our annual diversions of SJC and native waters and a little conveyance losses included. That’s essentially it and I stand for questions if you have any.

CHAIR HANSEN: Okay, are there any questions from the Board? I was wondering Randy, what do you think our average is over the year for water that we divert from Buckman to the City and County. Would you say that 50 percent is kind of the average or would you say it more than that?

MR. SUGRUE: It is a difficult question to parse. BDD specifically, BDD water, City-County – when we’ve used a useful working average, yearend average, of about 1.5 million gallons per day of BDD water going to the County. The bigger picture then would be, say right now, we’re putting out 6 million a day that would be 75 percent City and 25 percent County. In the higher demand months then it would lean closer to say, 80-85 percent City and 15 percent County. It’s a balance. So we tend to still kind of lean on that average of about 1.5 million gallons of BDD water to the County a day. But we can’t really fix on that and that varies, of course, with demand.

RICK CARPENTER (BDD Facilities Manager): Madam Chair, if I could just build on that. It really depends – I don’t know if an annual average is all that helpful, but it depends mostly on the season because our demand goes way down in the winter and very high in the summer. And then how BDD interfaces with the rest of the sources of supply can also vary with regard to usage of wells and the Canyon Road water treatment plan. So it’s a little bit more of a complex question but we’re a significant percentage, I think if we’re talking annual averages, I think we can say we’re a very significant percentage. And the point I think is that I want to emphasize using surface water over ground water and we are doing a good job of doing that.

CHAIR HANSEN: Thank you, Rick and thank you, Randy, I appreciate that answer. Any other comments from Randy or Rick on the monthly update? Okay, thank you very much.

7. b. Report from the Facilities Manager

MR. CARPENTER: Thank you, Madam Chair and members of the Board. So that was a good segue. I don’t have a whole lot to report on this month. Operation and maintenance are doing a very good jobs. However, we have had a lot of movement on the Source Water Protection Plan, as we have spoken about, Madam Chair. And are embarking on the first step of that which will be the public outreach and public participation, prior of that plan, and also an effort to integrate as best we can with the Source Water Protection Plan that the City just rolled out and then also, I believe, very soon the City’s return-flow pipeline project and making sure our public outreach messaging is consistent between all of

those efforts. And so that is underway as we speak, actually. And if there are any questions on that. I would be happy to answer them, Madam Chair.

CHAIR HANSEN: Any questions from the Board? I would just like to comment as a member of the City of Santa Fe River Commission I was given a presentation of the City's Source Water Protection Plan with NMED and I found it very informative and very well done. I think they are still working on a few details and drafts but I appreciated it. So I look forward to us working on ours.

MR. CARPENTER: Madam Chair, I don't have anything else to report out.

CHAIR HANSEN: Okay, thank you very much, Mr. Carpenter. Are there any other questions from the Board for Mr. Carpenter? Okay, thank you.

c. Update on 2021 Triennial Review of Proposed Amendments to Standards for Interstate and Intrastate surface water quality, 20.6.4 NMAC, Water Quality Control Commission Hearing WQCC 20-51 (R)

CHAIR HANSEN: I see we have Kyle, Luke Pierpont, and I see Jay Lazarus and I don't see James Bearzi but I have enjoyed listening to his testimony and to Luke cross examining him during the Triennial Review. So I am happy to have you here to give us an update.

MR. CARPENTER: Madam Chair, I'll just kick things off and then turn it over to Jay and Kyle. We have had a lot of activity on the Triennial Review. I think the process went very well. I think that the BDD was very well represented in those proceedings and that we are pretty well situated going forward as a result. So with that, I don't know – Kyle or Luke if you want to add some more detail.

KYLE HARWOOD (BDD Counsel): Let me jump in first. Thank you, Madam Chair and members of the Board. So we did prepare, I guess it's a 27-page item in your packet with a cover memo that attempted to sort of provide some of the detail related to the Triennial Review so you'll see description of when the triennial review occurred which is end of July, the Board through our firm and primarily with Luke's leadership on it did provide written testimony at the end of June which I believe we described to you previously at the Board's meetings and previewed with you the topics that were testified on behalf of the Buckman project so that's on pages 1 and 2 of the memo. We also described some of the oral testimony on the bottom of page 2. It was a fairly complex proceeding because there were a lot of parties involved talking about a lot of different topics over a fairly complex set of regulations that led the hearing officer to sort things into what they call "bins," eight bins. And different experts spoke on these different topical areas that were reflected by the bins.

As the Chair has already described, James Bearzi capably provided testimony with Luke's –

CHAIR HANSEN: And he's now joined the meeting – I see he's on the screen also.

MR. HARWOOD: Very good. So thank you, Madam Chair. On page 3, and I'm sorry the page numbers get a little obscured by the filter that we used for the Board's letter head here, but in the middle of page 3 you have a description of the posting procedure, copy of the transcripts were provided, and in early August there was a summary that we completed a couple of weeks ago in September and the schedule continues forward.

We wanted to provide the Board an update on the Triennial Review because we feel like it's in our active work on the Triennial – as far as we know, this is a good time to kind of give the Board an update. There will be a hearing examiner scope and then there will be a Water Quality Control Commission study that come after today going forward and so we've described some of those issues in the additional considerations and then the balance of the 27 pages which is most of them are copies of materials that were provided in the Triennial Review. So today's a little hard to know exactly what level of detail to get into both with the packet materials and the presentation so I'll just ask Luke, if you're there Luke, – so do you want to add anything else of particular interest to the Board before we stand for questions?

LUKE PIERPONT (Egolf + Ferlic + Martinez + Harwood, LLC): I think I can provide a little more detail that might be helpful to the Board on the additional steps that Kyle mentioned. On the 24th of September we filed our Proposed Statement of Reasons, whenever the Water Quality Control Commission adopts regulations under the Triennial Review process they have to file it with a Statement of Reasons that explain their rationale for adopting the new regulations. Within 45 days of our filing, the hearing officer will put together a report and his proposed Statement of Reasons that would be due on November 8th. And then 30 days from that date, the parties may file exceptions to the hearing officer's report. That would be due on December 8th. So depending on what the hearing officer comes back with the Board may or may not want to consider additional filing.

Following that, the Water Quality Control Commission will consider the final report of the hearing officer on or about January 7th at their regularly scheduled meeting. And at that point, they'll adopt a Statement of Reasons.

As noted in our memo under additional considerations, LANL had actually filed a competing petition competing with the NMED's petition for rulemaking under Triennial Review. And they described it as a protective filing which may or may not become relevant if the hearing officer decides that everything that LANL put forward in this Triennial Review may be considered by the Water Quality Control Commission in this proceeding. Alternatively, if the hearing officer determines that it was not properly before the Commission, there is this outstanding petition filed by LANL that may then become an active proceeding.

MR. HARWOOD: Thank you, Luke. So it's still very much a work in progress. Again, this seemed like an appropriate time to tie off the work that was done over the summer in anticipation of the hearing examiner's and commission's action here in the winter going into the beginning of next year. We do have Jay and James available for any technical questions you might have which I think in the past we've sort of briefed for you and have summarized in the memo, but with that, Madam Chair, we'll go ahead and stand for any questions. Thank you.

CHAIR HANSEN: I will go to Commissioner Hamilton.

COMMISSIONER HAMILTON: Did I understand you to suggest that the hearing officer could dismiss LANL's petitions because of procedural – because of some procedural – did I miss that?

MR. PIERPONT: That is sort of the legal question, the reason that LANL filed this alternate petition. It is a question of logical outgrowth and whether LANL's proposals were a logical outgrowth of NMED's petition and if the hearing officer

determines that they were not a logical outgrowth, LANL has this backup petition that it may proceed on.

MR. HARWOOD: It's largely a procedural step that we won't really know the import of until some additional steps have been taken; if that makes sense.

COMMISSIONER HAMILTON: It doesn't sound like it matters that much. Either way, LANL's proposal is still going to be on the table and Water Quality Control Board is going to decide between that and NMED's suggested recommended language.

MR. HARWOOD: There's a lot of guessing that can be done at this step, Madam Commissioner. I think in general, sort of word on the street, is if they're not pleased with what they get out of the Triennial they may try something under this separate petition but whether that would actually succeed is unknown.

CHAIR HANSEN: So what would they try if their petition doesn't succeed?

MR. HARWOOD: We have to wait and see what both the hearing examiner and the Water Quality Control Commission do with the actual Triennial, to see what is outside of that and then they would need to bring that petition forward and try to succeed on its merits. And that is very hard to guess because we'll need to know what the core of the Triennial decision is before we sort of know what is outside of it. Does that help? Luke, do you see it differently than how I said it?

MR. PIERPONT: I would remark that the issues presented in both of the petitions are essentially the same, substantively the same. The question is just whether the Commission considers them as part of this Triennial Review or whether it elects to consider them as a separate rulemaking.

CHAIR HANSEN: Jay.

JAY LAZARUS (Glorieta Geoscience): Thank you, Madam Chairman. I think we'll know a little bit more on this Tuesday. We attend all the Water Quality Control Commission meetings and on this Tuesday's agenda there is a 30-minute time reserved for the hearing officer to give an update on the Triennial Review. This hearing officer is relatively new, not very active, no questions were asked of witnesses which is really different for us for all of the hearings that we have attend at the commission. So there's 30 minutes reserved for this, like I said, and we'll know a lot more at the end of Tuesday morning.

CHAIR HANSEN: You're talking about Tuesday morning, October 12th at 9 a.m.

MR. LAZARUS: Yes, Madam Chair.

CHAIR HANSEN: Okay. Are there questions from the Board? I found it really quite disturbing the kind of things that LANL considers to be protected – PFAS and poly-fluorinated substances and to just discount them as non-existent or of no concern and that's what they're doing to be protective; I found that really disturbing language.

MR. HARWOOD: We'll know more as this unfolds, Madam Chair, and we'll bring you updates as we learn more. The Councilor has her hand up.

CHAIR HANSEN: Okay. I'm sorry, I didn't see that little hand up in the corner. Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: So there were other people who were involved at this hearing testifying and can you talk a little bit about the nature of that, of the other people. Are lots of people having problems with this or are they having any support?

MR. PIERPONT: The parties were the Environment Department which was the petitioner, Los Alamos National Lab which made a sort of joint filing between Triad and DOE which is kind of a counter-petitioner in this instance. This Board, Amigos Bravos put on extensive testimony, Communities for Clean Water and the Gila Resources Information Project represented by the New Mexico Environmental Law Center put on testimony, not quite as extensive as Amigos Bravos but each party put forth expert witnesses and proposals in the proceeding. There was also participation by the San Juan Water Commission. And forgive me I'm not remembering the name of the party, but a mining concern put on some testimony, mostly non-technical testimony that they submitted to the Commission.

In terms of alignment, this Board was aligned closely with NMED in the issues that we presented on and with Amigos Bravos, Communities for Clean Water and the Gila Resources Information Project.

COUNCILOR ROMERO-WIRTH: Okay, that's helpful.

MR. PIERPONT: I don't know if you have other questions but I'm happy to answer anything else you have.

COUNCILOR ROMERO-WIRTH: Not at the moment. I'm just trying to understand how this works and who is involved and how it lines up.

MR. PIERPONT: We have all of the pleadings, it's thousands of pages of pleadings, if you have a specific interest, we can provide a link to the different testimony that the parties have provided as well.

COUNCILOR ROMERO-WIRTH: Okay, thank you.

CHAIR HANSEN: Commissioner Hamilton.

COMMISSIONER HAMILTON: I was just thinking about previous Triennial Reviews while you were talking about that, Luke. There have been times where it has taken years to sign on what would turn into a rulemaking coming from any revisions out of the Triennial Review; didn't they at some point a few years ago get pretty behind so that the next Triennial Review was five years after the previous one? What kind of time do you expect this to be wrapped up in? I mean, they just did all of the testimony but that doesn't mean that decisions are going to be next month.

MR. HARWOOD: We will know quite a bit once the Commission acts. I think maybe where you're remembering a significant delay and Jay and James may have an additional response to this, is that it then gets submitted to EPA and EPA has to sort of adopt it.

COMMISSIONER HAMILTON: Yeah, that's very true.

MR. HARWOOD: And that's where in the past there has been a long delay. And then just to fill in more of the gaps, Luke, the New Mexico Mining Association was represented by I believe by the Modrall Law Firm, that was the other entity that you were missing the name of a moment ago.

MR. PIERPONT: Thank you.

MR. HARWOOD: Yeah, sure. There are some mandated schedules that the memo referenced for some of the near term steps and then the part that is a little bit

more of a black hole, as I recollect it, is that state-based action then going into the EPA process. Jay, did you want to add anything?

CHAIR HANSEN: I was going to ask James if he had any comments that he would like to make, James Bearzi?

JAMES BEARZI: No, I think that Luke and Kyle and Jay captured it nicely. Thank you for asking.

CHAIR HANSEN: Okay. Are there any other questions on this issue on the Triennial Review? I suggest reading James Bearzi's statement. I found it compelling to read and to listen to. And thank you for your contribution during the Triennial.

9. ACTION ITEMS; DISCUSSION AND ACTION

None were presented.

10. MATTERS FROM THE BOARD

None were presented.

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

12. ADJOURN

13. EXECUTIVE SESSION

- a. **In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB is a participant or may become a participant, including, without limitation: (i) *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District Court Case No. D-101-CV-2018-0610; and (ii) *New Mexico Environment Department v. U.S. Department of Energy*, Case No. 1:21-CV-00278-KG-JFR**

NANCY LONG (BDDDB Counsel): Yes, Madam Chair. The motion should be in adjourn and go into executive session in accordance with the New Mexico Open Meetings Act, NMSA 1978, 10-15-1H7, for discussion regarding pending litigation in which the BDD Board is a participant in the cases of *Buckman Direct Diversion Board versus CDM* and the case of *New Mexico Environment Department versus U.S. Department of Energy*. Both case captions are on the agenda.

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

MR. HELMS: So moved.

COUNCILOR ROMERO-WIRTH: So moved.

CHAIR HANSEN: Okay, it looks like everyone is happy to move into executive session. I'm going to accept Commissioner Hamilton –

COMMISSIONER HAMILTON: That was Councilor Romero-Wirth and JC Helms.

CHAIR HANSE: Okay, I'm going to accept Councilor Romero-Wirth as the motioner and JC Helms would you like to second it?

MR. HELMS: I do, yes.

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

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

[The Board adjourned and met in executive session at 4:35 p.m.]

ADJOURNMENT

Chair Hansen declared this meeting adjourned at approximately 4:35 p.m.

Approved by:

Anna Hansen, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

KRISTINE BUSTOS-MIHELIC
SANTA FE CITY CLERK