

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

**March 2, 2023**

**1. CALL TO ORDER**

This regular meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Councilor Carol Romero-Wirth, Chair, at approximately 4:00 p.m. in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

**2. ROLL CALL:** Roll was called and a quorum was present as shown:

**BDD Board Members Present:**

Commissioner Anna Hamilton  
Commissioner Anna Hansen  
Councilor Carol Romero-Wirth, Chair  
Councilor Renee Villarreal  
Peter Ives, Alternate for Citizen Member  
Tom Egelhoff, Las Campanas [non-voting]

**Member(s) Excused:**

J.C. Helms, Citizen Member

**Others Present:**

Rick Carpenter, BDD Facilities Manager  
Nancy Long, BDDB Legal Counsel  
Kyle Harwood, BDDB Legal Counsel  
Randy Sugrue, BDD Operations Superintendent  
Bernardine Padilla, BDD Public Relations Coordinator  
Monique Maes, BDD Contracts Administrator  
Delfin Peterson, BDD Administrative Assistant  
Antoinette Armijo-Rougement, BCC Accounting Supervisor  
Jeff Young, County Attorney  
Michelle Hunter, County Interim Utilities Director  
Jay Lazarus, BDDB Consultant, Glorieta Geoscience, Inc.  
James Bearzi, BDDB Consultant, BRZ Consulting

[Chair Hamilton read the agenda captions throughout the meeting.]

### **3. APPROVAL OF AGENDA**

Nancy Long, BDD Board Counsel, requested that item 8. A, Discussion and Request for Approval of the Revised major Repair and Replacement Fund Policy, be removed from the agenda noting it was not quite ready for action.

Councilor Romero-Wirth moved to approve the agenda as amended. Commissioner Hansen seconded and the motion passed by unanimous [5-0] voice vote.

### **4. APPROVAL OF CONSENT AGENDA**

Mr. Ives noted he had a question on the one consent item and thus there was no action necessary.

### **5. APPROVAL OF MINUTES: February 2, 2023**

The following corrections were offered:

Page 4: "MR. HARWOOD: You raise some really good points. We should **not** be penalized for our progressive conservation that we have done.

Page 4: "MR. HARWOOD: ... In the last eight years we've had years where that has dipped below to 85 percent including last year..."

Commissioner Hansen moved to approve the February 2, 2023 as amended. Her motion was seconded by Councilor Romero-Wirth and passed by [5-0] voice vote.

### **6. PRESENTATION/INFORMATIONAL ITEMS**

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

RANDY SUGRUE (BDD Operations Superintendent): Thank you. I will speak up if you can't hear me. My report is on the operations for the month of February, 2023. Raw water diversions averaged 2.38 million gallons per day. Drinking water deliveries to our booster stations 2.17 million gallons per day. There was no raw water diversion to Las Campanas for February. Onsite water storage, .21 million gallons per day on average. We provided about 35 percent of the water supply for the City. You can see our annual diversion there in the graph is still somewhat below average as Canyon Road has been running at a higher rate through the winter to bring the reservoir levels down.

On page 2, the regional water overview demand for the month of February is around 6.2 million gallons per day on average for City and County. The Rio Grande flow around 675 cubic feet per second on average. That is increasing as the weather warms a bit. Combined storage at Canyon Road, in both reservoirs combined, was about 34.9 percent that has now dropped to about 30 and that's their target for the spring runoff season, below 30 percent. Watershed inflow was about 1.8 million gallons per day and that should increase as temperatures increase.

San Juan-Chama storage and City storage in Abiquiu around 12,700 acre-feet and as we mentioned there was a January 1<sup>st</sup> update to San Juan-Chama allocations. The

allocation for January 1<sup>st</sup> was zero. There will be more information in April as they monitor runoff of snows up in the south part of Colorado begins to melt. I did make one note on the snowfall gauge this morning, that the snow pack at the very upper Rio Grande site, headwaters of the Rio Grande was 148 percent of a snow water average so there's a good amount of snow up there. So weather cooperating, runoff is looking good at this point.

I did include a new graph from the Bureau of Reclamation on San Juan-Chama storage and that should have better information as time goes on. It was just something that they started last year. Our El Niño summary is predicting neutral conditions within the next couple of months and so hopefully that is better than La Niña. Neutral conditions like El Niño means a little more moisture so we hope for that.

That's my report. I'll stand for questions.

CHAIR HAMILTON: Does the Board have any questions? Mr. Ives.

MEMBER IVES: Thank you, Madam Chair. Just a couple of quick ones Randy. One the chart in #3 it shows diversions, of course since January 1 we haven't had any San Juan-Chama, so I assume those are all raw water diversions or native water.

MR. SUGRUE: There was a little bit of San Juan-Chama early in January. And then generally our strategy to divert most out of native water to make sure we get the most out of that in a year where there is potential for low river flows.

MEMBER IVES: So if we use San Juan-Chama that was carried over from last year that –

MR. SUGRUE: In January?

MEMBER IVES: Yes.

MR. SUGRUE: Well, no, it still counts for this year's diversion. We didn't change the call so I kind of got a sense of what the forecast would be for the year and depending on the snow melt runoff, we just don't know what it'll be. Last year it was somewhat [inaudible – changing microphones]

MEMBER IVES: I was just curious because on page 2 you had stated that there were zero acre-feet of San Juan-Chama.

MR. SUGRUE: On that's the month of February.

MEMBER IVES: Oh, okay.

MR. SUGRUE: That was February.

MEMBER IVES: Okay, got you. Next question was up at the top of page 2, so if we have a total of 6.2 MGD in terms of daily regional demand that means roughly 4.1 was coming from the Santa River and/or wells in the City and the County?

MR. SUGRUE: Correct.

MEMBER IVES: Okay. And then down at the bottom, just a follow up question on the shift from La Niña to the neutral conditions, do we have any sense of if and when that will impact precipitation in terms of what month of the year and any sense of how much precipitation that might affect?

MR. SUGRUE: It's pretty broad. They are just estimating as they go based on temperatures in the Pacific. I don't have anything else to say.

MEMBER IVES: Got you. Fair enough. Thank you. Thank you, Madam Chair, that's all I had.

CHAIR HAMILTON: Of course. Are there any other questions? Thank you. Thanks so much.

## **B. Report from the Facilities Manager**

MR. CARPENTER: Thank you, Madam Chair and members of the Board. I just have a couple of quick updates for the Board. We've been struggling for months to fill some vacancies that we have in the maintenance department. I think we have five vacancies right now. The good news is that we were able to advertise two of those positions. They close either today at the end of the day or tomorrow. And I have asked for an update and an expedited list of eligibles for those positions and our goal is to make those hires as soon as possible. So we are well on our way there.

Also, a position that we call the Warehouse Planner Tech that is also currently advertised and it closes on the 8<sup>th</sup> of this month and we'll be asking for an expedited list of eligibles for that as well.

Lastly, I try to give an update to the Board each month on the status of where we are at with the settlement funds and the engineering RFP and things like that. So proposals were received. The evaluation committee for those proposals will meet on March 10<sup>th</sup>. Final selection by the committee is scheduled for March 14<sup>th</sup> and the goal is to bring a contract back to the Board at the April Board meeting. So we'll be off and running in that regard after a long delay.

That's my report and I stand for questions.

CHAIR HAMILTON: Excellent. Any questions? No questions. Thank you very much for that.

## **C. Report on February 27<sup>th</sup> Fiscal Services Audit Committee (FSAC)**

ANTOINETTE ARMIJO-ROUGEMONT (BDD Accounting Supervisor): Good afternoon Madam Chair and members of the Board. We did hold a FSAC meeting on Monday, February 27<sup>th</sup> at 2:30 via zoom. In attendance were Rick Carpenter, Councilor Romero-Wirth, Chair Hamilton, Nancy Long, Jesse Roach, Stephen Raab and myself.

We discussed two items on today's agenda which were the request for approval to award the RFP for legal services to Long, Komer & Associates. They were selected for another four-year term to begin this month in March. There was some discussion about how the budgeted amount would be distributed between both POs for the fiscal year and the calculation was based on averages of the invoices that have been paid so far this year. The current PO will be closed out once the February invoices are paid and then the new PO will be opened.

The second item we discussed on the agenda was the Major Repair and Replacement revised policy which has been pulled from today's agenda. It was determined, after much discussion that this item was not ready to be presented today. We received some last minute changes and we will meet again on the 15<sup>th</sup> to review the final changes and bring it back to the Board for approval at the April meeting.

We also briefly touched on the budget and Major Repair and Replacement contribution which has been sent to all of the partners for review and it's also been revised based on recommendations that we received and the Major Repair and Replacement is expected to be presented with an annual plan for the plant's major repair and replacement needs. Due to lack of funding and the potential salary increases for next fiscal year, we plan

to bring both the fiscal year 2024 operating budget as well as the major repair and replacement fund contribution to the Board in April. It may be a handout just depending on when we receive the information from finance.

That's all that I have. Does anyone have any questions?

CHAIR HAMILTON: Any questions? Thank you.

**D. Presentation regarding *WildEarth Guardians v. US Fish and Wildlife Service and US Bureau of Reclamation*, Case No. 1:22-cv-914**

MR. HARWOOD: Thank you, Madam Chair. A quick update on the WildEarth Guardians' minnow lawsuit which named Bureau of Reclamation and the US Fish and Wildlife Service. The Middle Rio Grande Conservancy District has intervened successfully in that case even though they weren't initially named. And the parties immediately asked for a stay to negotiate a settlement which is possible. So I will bring back news in the future when there is more to report unless the Board has any questions.

CHAIR HAMILTON: Are there any questions of that piece before Kyle goes on. What prompted – why did that intervention prompt a request for settlement?

MR. HARWOOD: They may have been planning on settling anyway and they were coincident. I mean having settlement discussions, that's a long way from settling as we all know. I will continue – this update is part of a quarterly update on such things and I'll continue to do it in that way unless the Board directs otherwise.

CHAIR HAMILTON: Sounds good.

**E. Presentation of Rio Grande Water Quality Update pursuant to BDDB Resolution No. 2022-2 for calendar year 2023**

MR. HARWOOD: In your packets you have the memo that we discussed at some length last year during several Board meetings which is responsive to the resolution that this Board passed and the resolution which I may have sent you electronically but now you also have it in this packet, it's the last two pages of this packet item, and that's the fully-signed recorded resolution for your records which is 2022-2 and that resolution directed in section 9, on page 8 of this packet, it's the second page of the resolution talks about first calendar quarter of this year we'll review the prior year's water quality issues and BDDB actions and we'll also present on the anticipated water quality issues for the current calendar year so the BDDB may prioritize its engagement with those issues. And then, as always, we will periodically bring updates to you when something is pertinent and relevant. That is the context that hopefully all of you remember from a couple of months ago. So the main packet item is that same memo. You'll recognize many of these topics because we sort of did a version of this memo about a year ago which was the introduction to the resolution process we all went through. A memo like this came to you, we engaged in the resolution and then the resolution calls for this kind of a memo to happen annually and that's what we're doing today.

So with that context, if you'd like me to just quickly take you through the topics and I'm going to primarily run down to the recommendation section because I think a lot of you have a working knowledge of most of these topics. I do want to do this efficiently and stand

for questions as soon as possible. And, Madam Chair, I do think it makes sense for folks to ask me questions as I'm doing each one if that's okay or if –

CHAIR HAMILTON: Yeah.

MR. HARWOOD: So the first item is the long standing Memorandum of Agreement that this Board has with LANL. We had a lot of activity last year. We are expecting less activity this coming year. The activity last year, if you all remember, is getting a new stormwater gauge down where LA Pueblo Canyon meets the Rio Grande so that we can more accurately than the gauging system that we have had for years, know when storm flow is in fact reaching the Rio Grande. And that was a big part of last year and so the top of the second page is where the recommendations for this item primarily are articulated. We have an annual review according to the MOU which is a staff and consultants meeting with our peers at LANL and we've already got the planning underway for that. It will be in either April or May.

This Board asked for a tour of the Early Notification System last year. It wasn't something that we were able to organize last fall. I have already started the ball rolling to try and get a tour organized for this spring but I'd love to know from the Board your level of interest in doing a tour. It would likely be April, May at the earliest. After the session, before the summer, every month is crazy as we know these days. But if that is of interest, it would be great to get a sense of who might want to go on a tour. [All present Board members indicated a desire to tour the system] All right, so we'll go ahead and continue to work on scheduling a tour with Mr. Mikolanis and his staff to take a look at the Early Notification System and that should be – those are always very informative because there is nothing quite like seeing a thing to understand how it works.

CHAIR HAMILTON: Are you still on that same topic because I know we have at least one question on that before you go to item 2.

MR. HARWOOD: And I was just going to say as the end of this recommendation section notes, the Intake Sampling Program will continue with the grant money we received under the MOU. I would be happy to take any questions.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I was wondering if the Board would think it would be appropriate for Mr. Mikolanis to come and give a presentation to the Board? We've done this in the past.

MR. HARWOOD: Are there particular topics that you'd like us to ask him to present on, Madam Commissioner?

COMMISSIONER HANSEN: The hexavalent chromium plume and chromium-3. I think it might be advantageous to have both NMED and Mr. Mikolanis come. Maybe not at the same meeting but at different meetings.

MR. HARWOOD: Very good. And we will address the chromium-6 remediation well protest later in the –

COMMISSIONER HANSEN: I know. I saw that. I just since we were on the MOU with DOE, I thought I would bring up that suggestion of having him come and speak now.

MR. HARWOOD: I would be happy to communicate that request to LANL if it's the wishes of the Board. Okay. I don't think we need a vote but I'll request it and work with the Chair on the agendas as we do in the normal course of informational items if that is

acceptable. Okay. Great. Any other questions about the MOU which as we all know is one of our main pillars of water quality for the Board.

The next item which you've heard about over the years is NMED's Triennial Review of the state's surface water quality standards. I should also note that we have our two amazing consultants on technical issues here with us today, Mr. Lazarus and Mr. Bearzi. So if you want to hear from the technical side, please don't hesitate to ask because they are here for this matter this evening.

We understand that the Triennial Review will be initiated this year in the normal schedule but probably not public involvement until next calendar year and that's the normal sequence of things it is called the Triennial Review. And we hope to monitor that process as we have in the past and bring to the Board issues of concern that they Board may want to speak to and I'll leave that one there for now unless there are any questions.

COMMISSIONER HANSEN: I'll just comment that I think it was very beneficial for us to participate in the Triennial Review and I want to thank Mr. Bearzi for his comments at the Triennial Review which were, I think, very important.

MR. HARWOOD: Yes. I think it was a good round of engagement and it's important for us to participate in that. There's only a couple of water projects in the state, drinking water project I should clarify, that divert directly out of flowing rivers and many of them don't have, in Albuquerque's case, Cochiti upstream from them to mitigate the system wide issues. The San Juan Water Commission, the BDD and other entities do participate in that and that seems very appropriate given the nature of the regulations that they are reviewing. Very good.

With respect to WOTUS there is a lot going on, with respect to Waters of the United States under this federal administration and the challenges to that rule set and I think we will bring you some news on WOTUS when there is something emerging from the fog. That's the best way to describe it. There's a lot going on that we are very loosely monitoring. We are not spending a lot of time on it because there are so many threads running every which direction with litigation and threatened litigation. So when there's more to come – I guess I should say that the Biden Administration did reset the WOTUS issue back to something more conservative and protective. That probably was the first sentence I should have mentioned but it's getting challenged around the country. Are there any questions on WOTUS?

COMMISSIONER HANSEN: Madam Chair, so I appreciate you following up on this. It will go into effect on March 20<sup>th</sup> this month and it was a hot topic at NACo but it does really protect us at the moment. We regained 90 percent of our protection that we had lost under the Navigable Waters Rule. So it's good for us not so good for people who don't want regulation but we'll see where it goes and thank you for keeping an eye on it.

MR. HARWOOD: Thank you. Any other questions from the Board regarding WOTUS? Sorry if I went too quickly there. Okay, very good.

The next item is a regular NMED report regarding stream segments and the applicable standards to those stream segments. As some of you know, we've engaged with NMED on their delayed implementation of what are called "TMDLs," total maximum daily loads and how that might be implemented to improve water quality in general. And just jumping down to the recommendation section on this is that the new integrated report process for the 24 to 26 timeframe will be initiated sometime this year and we will monitor

that for issues of concern to the Board. We don't quite know what the new report will address that will be of interest but we'll bring you back an update on that when it becomes clearer. Are there any questions about the integrated report process?

Next one is we generally try to monitor LANL's NPDES permits especially if they're in the half of the LANL campus that drains to the Rio Grande above the BDD intake. We've come to you in the past with proposed comment letters that have gone in and I think that those have been useful. We don't know of any specific actions on that front for the near term but we will again bring you any updates as those permit changes or additions or new permits come to light. Any questions on that?

COMMISSIONER HANSEN: Thank you, Madam Chair. On that issue, when I was in D.C. I did speak with EPA and EPA is coming here at the end of the month to meet about a number of different issues and since they oversee all of our NPDES permits, I'll just ask them if there's any updates when they're here.

MR. HARWOOD: That would be great. Very good.

The next one is a little bit of trouble but there is an NMED LANL consent order process that we've briefed you on the past and you've had guests to the Board, like some of the NGOs that have come and spoken to you about these consent order issues. We continue to hope that we would like to see some changes made at the consent order. We're not a party to the consent order so our input is important but not essential in this process so we will continue to monitor this litigation. We don't expect any specific action but as this matter continues forward we hope that some of the requests we've made at NMED will be accommodated. As you may or may not know, there have been a number of folks departing NMED over the recent months including the lawyer that we worked with on this matter, John Verheul, he has gone on to work at PNM. So we will continue to monitor this matter and bring you any updates as appropriate. Is there any question about – this is a little bit of a black box but we keep it on the list because it is of significant importance if a settlement has come forward on this particular topic.

CHAIR HAMILTON: Yes, Mr. Ives.

MEMBER IVES: Thank you, Madam Chair. Just one quick question which is, is it unusual for NMED not to provide any response for such an extended period of time?

MR. HARWOOD: This is another series of stays that apparently are providing space for negotiation of some kind and it is not – since we're not a party we don't really learn much until that process is concluded and with the change in staffing I'm not exactly sure where it is and what its schedule is. We do an annual meeting with NMED leadership that we're trying to organize and we will ask after this topic when we meet with them.

MEMBER IVES: Very good. Thank you. Thank you, Madam Chair.

CHAIR HAMILTON: Thank you.

MR. HARWOOD: Any other questions on this particular item? Okay. I am happy to report that we are halfway through. The next item is one that we are expecting some activity on this calendar year. LANL after much delay and some obfuscation I think, did decide to initiate a Sitewide Environmental Impact Statement for the lab and the draft Sitewide Environmental Impact Statement is expected to be released for public comment sometime in the middle of the year so we are planning on bringing that to the Board. When we submitted our comments we tried to request that an extended comment period be provided since for organizations such as ours that meet monthly, a 30- or 45-day window



can be a real burden because we rushing to bring it early or at the last minute or god forbid a special meeting so that we can be timely on whenever they happen to start their deadline. So we are very much hoping that they'll give, I think we requested a 120-day window to comment so that we can come to the Board in a measured way and get your feedback on that process. So this is one that, unlike many of the other ones I've already referenced, this is one that we are planning on budgeting to participate in and we'll let, of course, the Board direct us on how to participate in that process when it becomes a little clearer.

CHAIR HAMILTON: Kyle.

MR. HARWOOD: Yes.

CHAIR HAMILTON: Weren't there scoping comments provided.

MR. HARWOOD: That's what we provided.

CHAIR HAMILTON: So do you know whether they took any of those responses or – the next thing we'll see is the draft report itself.

MR. HARWOOD: We know we got them in on time. They don't really tell you what they're going to do about them until they do the next step.

CHAIR HAMILTON: They just do it. They don't have to provide a comment response thing as part of the process? Okay.

MR. HARWOOD: They will have to provide the comments they received and their response to them in an appendix to their draft and then final. So we will see all of our comments and everyone else's comments. When we do these ourselves, when Rick and I did the EIS for this project, there's an art and a science to responding to comments as we know.

CHAIR HAMILTON: I'm quite aware of that.

MR. HARWOOD: I expect we'll experience the same and we'll need to, obviously, respond appropriately and hope to get our questions answered.

CHAIR HAMILTON: And how that art is applied can be the light side of the Force or the dark side of the Force. Commissioner Hansen.

COMMISSIONER HANSEN: So on the topic of NNSA, I also had the pleasure of meeting with under secretary Jill Hruby when I was in Washington, D.C. and I specifically asked her to come here and do a townhall on definitely the surplus plutonium but also anything constituents in New Mexico are concerned about. And lo and behold she agreed to come here and she will be here on April 6<sup>th</sup> and the townhall will be the same day as our meeting but it will be from 6:30 to 8:30 and I'm hoping that it will be at the Convention Center. But I have been very clear with them about the type of townhall that we need to have here for constituents to be able to participate. One is that participants are allowed to ask questions and that those questions be answered at the time that they're asked and not written on cards and not selected by the people who are running the meeting. So they have agreed to all of those things and the fact that the undersecretary for NNSA is coming here I think is a big deal.

CHAIR HAMILTON: Could you do us a favor and maybe send the date and information for that meeting to the Board?

COMMISSIONER HANSEN: Yeah, but it will be April 6<sup>th</sup> the same day as our next meeting and I will be sending out a newsletter, obviously, and I'll make sure that the Board gets all that information.

MR. HARWOOD: Maybe we can have pizza and beer and then go to that.

[laughter]

CHAIR HAMILTON: We'll set the agenda accordingly. Mr. Ives.

MEMBER IVES: Thank you, Madam Chair. Kyle, if we've submitted recommendations on the scope presumably the DOE would be contracted with somebody to perform the environmental impact and do the reporting. Is it something that we can FOIA and –

MR. HARWOOD: Jay, do you happen to know anything about the services for that? No.

JAY LAZARUS (Glorieta Geoscience): I'm Jay Lazarus, Glorieta Geoscience, thank you. Generally, the lab has the choice of doing it in-house through NNSA or they hire outside contractors to do it. That's their choice on how they want to do it. It will probably be done in-house is my guess.

MR. HARWOOD: That's my understanding at this point is that they are proceeding, at least so far, with in-house staff and we'll let you know whether there's an outside contractor or not. I think a lot of those materials are generally protected as draft until they're released.

CHAIR HAMILTON: That would be typical.

MR. HARWOOD: We can always FOIA stuff after the fact and see all the gory history that led to the process.

MEMBER IVES: It just seems to be besides the point to wait for the report to see whether or not anything made it in there.

CHAIR HAMILTON: It is a catch-22; isn't it?

MR. HARWOOD: Yeah.

MEMBER IVES: I know that drafts are protectable generally under IPRA but –

MR. HARWOOD: Yeah, you know, it's funny being on either side of these NEPA procedures you – the NEPA procedures themselves try to balance out opportunities for input but then letting folks turn the crank but NEPA doesn't on its own select alternatives. It is providing the background for an alternative selected. I suspect they got a fair number of comments and I suspect that we'll be talking about this in some detail later in the year. Is that okay for now?

MEMBER IVES: Thank you, Madam Chair.

CHAIR HAMILTON: More questions on this? Okay, thank you.

MR. HARWOOD: Number eight is kind of like the LANL discharge permits where we keep an eye on them and recommend comments where we think it's appropriate. This is not a LANL permit directly. This is a Los Alamos County MS4 permit and we'll continue to monitor the development of that permit. This is again related to stormwater and sewer interconnections and – I'm sorry, let me not stay that.

This permit deals with the stormwater discharges in the county outside of LANL as the description here describes. So we will be monitoring this permit and bring you back any updates or any other opportunities to contribute to that permit. Any questions on the MS4 Los Alamos County permit?

Next is we did approach the Office of Natural Resources Trustee, that was already two years ago, a year and a half ago now, and we have shared with them some basic information that fits into their rubric which is looking at harm to natural resources and I don't think we are expecting anything in the near term on that. That tends to be a very, very slow process. And if there is any feedback from the Office of Natural Resources Trustee on

evaluating NRDA claims and incorporating the affects of LANL on the Rio Grande we'll let you know. Any questions on that initiative? Okay.

Number 10, there was a consent order entered into the Nuke Watch litigation against LANL and in that settlement agreement the new gauge was described which we have successfully installed. So that's that one unless you have any questions.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. So I want to thank Nuke Watch for making that valiant effort to make sure that we got the flow station and that that was part of their lawsuit for us to be able to get that even though DOE EM pretended like they were being really the good guys when they knew that this was coming.

MR. HARWOOD: Yes, I will email them and convey the Board's thanks for including a BDD issue in their settlement agreement.

COMMISSIONER HANSEN: Yeah, I think it was incredibly generous of them.

MR. HARWOOD: Excellent. And now we get down to the last couple. The next one, if you remember some years ago now we noticed a legal notice in the newspaper which is a required step for a State Engineer application and it described the remediation wells for the chromium-6 plume and we felt that that application was missing some very significant pieces. So both this Board and Santa Fe County separately filed protests against that water right application because on the face of it, it contemplates diverting quite a bit of water much closer to the river and then the application as it was filed didn't describe the reinjection. Fast forward to the last couple of months and that reinjection has been in the paper, I think you all know, a couple of times. NMED has directed LANL to cease that part of the process and they are and I understand the late breaking news they're waiting to get an answer back from LANL that they are in fact going to cease that reinjection. And so this State Engineer protest which has been long simmering and which we had hoped several times last year was getting close to settlement seems to be kind of appropriately delayed until NMED and LANL can figure out what the remediation program is going to be and then whether there are changes to the State Engineer permitting and whether they will need to start over again or amend their current permit and that will have implications for our protest. So we will bring that whole story back to you when there's more to know. But that whole story has definitely gotten – I shouldn't say story. That whole program has gotten very complicated recently and we probably need to let the actual remediation plan get to a place where both the regulator and LANL know what they're doing and then we'll see what implications are for the State Engineer permitting will be.

CHAIR HAMILTON: Before I got to Commissioner Hansen because she has a broader question I'm sure. But specifically, are you saying that despite the protest for the application to do these – to operate these wells, they have been operating them?

MR. HARWOOD: Yes, ma'am. I'm sorry if I didn't add that piece of –

CHAIR HAMILTON: Isn't that a little bit egregious?

MR. HARWOOD: Well, no. They are operating under an emergency authorization. They are operating under an emergency authorization that they applied for and was granted. It's the full permitting of the remediation wells both diversion and injection that was legally noticed and protested. So, yes, it – how do I say this – certain projects are eligible for emergency authorizations and will operate under emergency authorizations for awhile. This was deemed by the State Engineer to be one of those

projects that was eligible for an emergency authorization in part because they needed to collect the data to refine the reinjection plan. At least that was one of the reasons early on. Then they kept delaying and now we find ourselves where we are now that that are real concerns that the injection is added to the problem and not helping to fix it.

CHAIR HAMILTON: And that was part of the basis for having the protest in the first place because the wells are closer to the river and whatnot. That should have been obvious and they nevertheless granted emergency operation anyway?

MR. HARWOOD: Yes.

CHAIR HAMILTON: Mr. Bearzi, are you surprised at this?

JAMES BEARZI (Consultant): No, ma'am.

CHAIR HAMILTON: Okay, thank you.

MR. HARWOOD: I think at the time, part of the emergency authorization was that this is a plume that is moving and that they should get started trying to remediate it.

CHAIR HAMILTON: By increasing the problem – yeah, that makes total sense.

MR. HARWOOD: That wasn't the plan, I know. And of course there is what we call "LANL Time," right where everything seems to take so much longer than it ought to or could. So we're now multiple years into the emergency authorization on finding these problems with the remediation plan.

CHAIR HAMILTON: Okay. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. So since we're under this emergency authorization, don't you think that we should be testing for hexavalent chromium in our wells and BDD? And get information from NMED, like where is – is the hexavalent chromium in the Buckman Wells? Is the hexavalent chromium moving down towards the river? These are all unknown questions.

MR. HARWOOD: As you know, with respect to the Buckman Wellfield that's a City facility and we should really have someone from the City answer questions about chromium-6 and the groundwater because that's not something we work on directly and I try not to, if I can, to not give answers to City staff because I'm not in those conversations these days. With respect to chromium-6 discharging from groundwater to surface water in the vicinity of the intake – Rick, do you want to say something about that?

MR. CARPENTER: We're tracking it. The City is tracking it through their water resources program. We've had numerous conversations among the esteemed technical experts and it's something that we're following very closely.

COMMISSIONER HANSEN: Okay, because hexavalent chromium has an ability to move and travel and just because there's a plume somewhere doesn't mean that that plume hasn't seeped down to somewhere or moved into somewhere else so I think it's due diligence for us to know what's happening.

MR. CARPENTER: I couldn't agree more. As far as the Buckman Wells are concerned that's what the City's resources group is following directly. The BDD I think should be probably more interested in whether or not or the extent to which there is surface water groundwater interaction that could involve that plume.

COMMISSIONER HANSEN: I agree. I think that's definitely necessary. And even knowing what level of chromium-3 is in the mix because that's supposedly what they are diluting the chromium-6 to chromium-3 even though chromium-3 is not as toxic

chromium-6 is very toxic. And I'm using the words chromium-6 and hexavalent chromium interchangeably because they're the same thing.

MR. HARWOOD: If it's okay, Madam Chair, I think this probably is one of the topics that we should bring back an informational half-page memo on or something in the near term if that makes sense.

CHAIR HAMILTON: If the City cares to share data and that's an appropriate thing to do. If NMED is not sampling in surface waters and – I would think that our colleagues from Glorieta Geoscience would actually know if there are any studies on – and Mr. Carpenter might know himself – surface water groundwater interactions in that vicinity.

MR. HARWOOD: My suggestion, if it's okay, Madam Chair, is this update was really on the State Engineer permitting related to the chromium-6 project and the water being withdrawn much closer to the river. I think what I would like to recommend if it's okay is that we bring you back just a quick update on what sampling is being conducted so that you'll understand that piece of these questions, if that's okay.

CHAIR HAMILTON: Sure. Sounds great. Thank you.

MR. HARWOOD: Almost done. We –

CHAIR HAMILTON: Oh, I'm sorry. Mr. Ives, I apologize.

MEMBER IVES: No worries. It was a late question. Thank you, Madam Chair. In the past my recollection is that the director of environmental services at LANL has indicated that there is no hydrologic connection between as a geological circumstance was always my understanding between the plume and certainly Buckman Wells. It sounds like that is not necessarily so clear anymore. So if we do have any look-see I'd love to have somebody address the geology so we can understand that. Surface discharge is obviously a different circumstance in terms of entering the river. But I'd love to have an update on that because that is my specific recollection of what we've been told in the past at different meetings. So if we could include that that would be great.

MR. HARWOOD: Thank you, citizen member Ives. I will pass that on and hope to get the question related to the City wellfield answered by City staff and then we'll bring you back a short summary of sampling activities if that's okay.

MEMBER IVES: Yep. Thank you and thank you, Madam Chair.

CHAIR HAMILTON: Thank you.

MR. HARWOOD: Any other questions on anything before number 12? Okay, number 12. Primacy, we often raise with NMED leadership that we really think it would be appropriate if New Mexico had primacy and I think with primacy under the Clean Water Act, I think my observation today as with some of the important staffers that were working on that topic who have departed, I think we're going to find this item is probably delayed again. There was a report prepared on funding and FTEs required to take over primacy and it's a daunting project for the state but when we have our leadership meeting with NMED we will get an update and report it back.

CHAIR HAMILTON: So a quick question. I saw that and I don't remember that report. If we got it and you distributed it, I failed to look at it. Do we have that?

MR. HARWOOD: We got it from staff after our leadership meeting in August and I think we didn't forward it because it's like a big, thick programmatic staffing report.

CHAIR HAMILTON: Didn't have an executive summary, maybe.

MR. HARWOOD: I am happy to send it to the Board. I didn't do so then because it seemed to argue the case of how hard it was going to be for New Mexico to actually do primacy. But that was not a good reason to not send it to you. So let me forward it to you now.

CHAIR HAMILTON: That's great. Thank you. Commissioner Hansen.

COMMISSIONER HANSEN: The other thing I mentioned to EPA when I did meet with them in D.C. was that they should think about funding primacy for us since New Mexico –

MR. HARWOOD: For BDD?

COMMISSIONER HANSEN: No, for the state.

MR. HARWOOD: Oh, I see. I'm sorry.

COMMISSIONER HANSEN: For the state to have primacy and for them to help create that because we are under their auspices at the moment.

MR. HARWOOD: I am sure they loved that idea.

COMMISSIONER HANSEN: They loved all my ideas including the idea of moving us out of District 6.

MR. HARWOOD: Lots of institutional moving parts there that have been long stuck and if there's any movement, we'll bring an update back to the Board.

COMMISSIONER HANSEN: And if the Board doesn't understand, District 6 – we're in the same district with Louisiana, Texas and Alabama –

CHAIR HAMILTON: Oklahoma.

COMMISSIONER HANSEN: Oklahoma and it seems that we should really be in the same district with at least Arizona and Colorado and Utah, or something like that. They did like the idea of a four-corner district.

MR. HARWOOD: When you overlay the way that all of these federal agencies set up their districts, the BLM, the Bureau, the Corps, EPA, Fish and Wildlife Service – it looks like one of those prints where you're suppose to see multiple figures if you blur your eyes. \

Lastly, we come to the PFAS monitoring item. We think that PFAS may be an issue of higher profile this year given what's going on generally and also with respect to LANL's annual data reports regarding PFAS. This is a very important issue and one that we think will probably be moving forward this year. So it is on our work plan and I don't have a lot of specifics to share with you today but this is one of the two or three topics out of these 13 items that we do think will be active this calendar year. I don't know if you have any questions right now. This is one that we're developing –

CHAIR HAMILTON: Mr. Ives, we'll just work our way down.

MEMBER IVES: Thank you, Madam Chair. Kyle, a couple of questions. First I'd love to see the annual data report so I can understand this better because it does sound like an issue of significant concern. In the brief statement here you indicate that they sampled 15 locations in terms of putting data together for that report. Three of which were supposed to be in the Los Alamos Canyon Watershed. and it states, none of which were sampleable – able to be sampled; why not?

MR. BEARZI: Good evening. I am James Bearzi one of the technical consultants. I took a look at this report which was part of a settlement agreement on one of the protests to the state certification of the NPDES permits for the stormwater. So that's one

of the reasons we pay attention to that. So to try to clarify, as part of the settlement agreement the parties, which would be LANL and NMED, agreed on 15 locations to sample. Only three of those locations were sampleable because there wasn't flow or there were other problems at the other 12. And none of those three samples were in the Los Alamos Watershed. So that's the answer there. There was one Ancho Canyon and two in Sandia.

MEMBER IVES: Would there be no way to do sampling showing the presence of the PFAS through other mechanisms? Sampling, for instance, dirt as opposed to actual flow?

MR. BEARZI: This was settlement of the stormwater NPDES permit so it is specifically targeted at sampling stormwater that runs off of solid waste management units that are in the hazardous waste facility permit so it has to be stormwater. It has to come from one of these solid waste management units. LANL has done a bunch of sampling on soils and sediments but it is not in this particular data report that we're talking about tonight.

MEMBER IVES: Do you know whether those other sampling regimes have found PFAS in soil samples?

MR. BEARZI: I do and they have, sir. In fact, if I could just add to that, the three stormwater samples that they were able to take even though they are not in Los Alamos Canyon, you may recall that two of the PFAS have EPA Drinking Water advisory levels. Three of the PFAS are toxic pollutants under state Water Quality Standards. All three were detected at one or more of these three samples. And one of them, known as PFOA was detected at a concentration that is above the drinking water advisory level. This is stormwater, nobody is going to be drinking stormwater. But it does show that it's there and in more than just detectable concentrations.

MEMBER IVES: And were the three samples that were able to be taken upstream from any introduction of stormwater from any LANL facility?

MR. BEARZI: These three, remember all of these proposed locations including the three that were sampled are sampling stormwater running off from solid waste management units which means they're polluted sites. Now, no one prior to 2016 nobody thought about PFAS. But the chances that LANL, industrial or waste disposal practices have created PFAS reservoirs, as it were, doesn't really come to any surprise to anyone who is an environmental professional looking at this. No surprises just disappointment.

MEMBER IVES: Well said. I was going to ask as a follow-up what's the threat level given those samples but it sounds like if they are described as toxic and there is a good potential that there would be a significant impact there.

MR. BEARZI: That's right. The framework for the sampling is like with an NPDES permit. So if they find something that shouldn't be there in the contaminants, then they have to build these best management practices of BMPs. So they have to control the stormwater, keep runoff from happening and build physical things to keep the stormwater from running off. It really isn't a risk reduction exercise. It is more of a stormwater and sediment migration mitigation exercise.

MEMBER IVES: So does the report address what is proposed by way of remediation or management and what those best management practices are or would be in this case?

MR. BEARZI: No. It is just a data dump.

MEMBER IVES: Thank you.

CHAIR HAMILTON: Thank you. Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: I have a question when we get done with this one.

CHAIR HAMILTON: With PFAS? Are there any other PFAS questions? I was forwarded a link to a new study which showed PFAS at unexpectedly high levels from waste water treatment plants source being toilet paper in the paper pulp processing PFAS use as a hydrator and to make the pulping process more efficient. And so they're finding contamination from PFAS in treated wastewater. So I'm wondering what the implications in the short term are going to be of that study in terms of – and given the interest in PFAS, it is certainly an interest to BDD since we're downstream from the Española wastewater treatment plant and the City pipeline might take treated wastewater and put it upstream of our intakes. Oh, wait it's putting it right downstream, still putting it in the water, but you're right it is immediately downstream. My bad.

MR. BEARZI: My comment would be more of an anecdote. I noted that one of the most serious PFAS contamination problems in the country is in the State of Maine and it was due to state sanctioned and urging people to use biosolids on their farms. And the biosolids come from wastewater treatment plants and it was chock full of PFAS, as they say technically, and contaminated a number of agricultural operations including a major dairy that has since been put out of business which is another linkage with the State of New Mexico.

CHAIR HAMILTON: So this is apparently a concern in the [inaudible] primary and in toilet paper made from recycled papers for the same reason. This is a concern that I had not ever anticipated and it seems like a big one. I will forward the link around.

MR. BEARZI: And if I can add that paper is something to pay attention to. The incinerator ash pile by the Los Alamos airport is an old solid waste management unit that had screaming high PCB levels. They got it cleaned up and nobody could figure out where it came from and it turns out that in the '50s the sole source for paper for Los Alamos company had a process for making paper that used a lot of PCBs and all of that paper got incinerated and dumped off the side of the canyon. So not a surprise again just another disappointment.

CHAIR HAMILTON: A new philosophy. Any other questions on this? Mr. Harwood, does that wrap it up for you?

MR. HARWOOD: Yes, Madam Chair. That completes my memo. I think I have stood for questions so I think I am done.

COUNCILOR ROMERO-WIRTH: Not quite. Not quite, Madam Chair.

MR. HARWOOD: Oh, sorry.

CHAIR HAMILTON: Councilor.

COUNCILOR ROMERO-WIRTH: So this is the first time that we've seen this memo in conjunction with the resolution that we passed and I guess I would be curious – well just a couple of things. One, I think it would be helpful if from one year to the next have whether it's the proceeding year's list just so we can see year-to-year what's changing and how your shifting the direction. And then I don't know – again, the whole idea behind the resolution was really to kind of direct in a constructive way where the Board should be focusing attention and making sure that we don't – I mean there are so many things and we're all very curious and you know we probably could quickly get astray from what we



really need to be concerned about in terms of the risk assessment and where we should be putting limited resources. So, I guess I don't know whether each one of these things if you can pinpoint to the resolution kind of how it fits under what we said we wanted to be looking at. And I guess I would also be interested if while a lot of this stuff is nothing specific at this point, just sort of keeping an eye out, maybe it's all fine. Jay, do you have a – have you looked at this? Do you have thoughts about whether we're capturing where the Board's attention should be. Are we casting the net too far? Not far enough? Just right?

MR. LAZARUS: Thank you, Councilor. I go back and forth on it. I like the way that the memo has been structured with specific items recommending action, and specific items recommending no action. And I think you're on the right track to compare it year to year to see if the action items need to be continued for action. If the no action items remain that way and if there's other items that we need to bring to you. So I think that's a great idea.

COUNCILOR ROMERO-WIRTH: Okay, and would you advise anything else we ought to do – again, to make sure that we're really targeting our focus in appropriate ways given the type of facility we are and where we should be focusing our attention.

MR. LAZARUS: I think really the type of facility LANL is guides us to where we should be focusing our attention.

COUNCILOR ROMERO-WIRTH: Okay.

MR. LAZARUS: The wastewater treatment plants upstream are all in compliance with their permits – I can tell you the Abiquiu plant is not in compliance with its permit, they're on a notice of violation but that's further upstream on the Chama. But I think the focus should be on both Los Alamos and Los Alamos County. Los Alamos County more because of the stormwater and then, of course, the protest on the chromium-6 plume.

COUNCILOR ROMERO-WIRTH: Okay.

MR. LAZARUS: Thank you.

COUNCILOR ROMERO-WIRTH: Thank you. I think that's – although I guess I am kind of curious, besides the year-to-year if we wanted, and I don't know that I want to go through, we passed a resolution and I want to make sure that it's connected to your memo and that we don't – that the resolution doesn't become just something that is out there but that we – when you put this together did you reference the resolution in your mind that these things fall under the things that we have acknowledged in the resolution that should be of concern to us.

MR. HARWOOD: So Madam Vice Chair, I think that since we are sort of doing this for the first time these are all really wonderful questions for sort of focusing the work that the resolution directs us to do. So this memo perhaps is doing two things: it's both kind of reminding us the issues that were on this same memo a year ago and then it's talking about which topics we expect to have activity on at this point in the year anyway and the coming year. And so I think what I understand you're asking there are sort of several pieces, right. We may bring you something in May or September and we may want to capture that and we'll want to next year show you progress from this memo. What's fallen off the list, what's come on the list, what have we updated you on between the two resolution directed updates, it'll happen in the first quarter of each year. And so I think I understand what you're getting at and this memo doesn't do that so I need to do that in order

to show that continuity and so this becomes a working work plan, a functional and transparent work plan for the resolution's goals.

COUNCILOR ROMERO-WIRTH: Okay. And it is the first time that we've had it in connection to the resolution. So I just want to make sure that this is an evolving thing, for sure. I think having the context in time and across years would be helpful.

MR. HARWOOD: What I'd like to suggest, if it's okay, because as we all know, Councilor you were one of the driving forces behind the resolution, maybe if I could get a couple of minutes of your time to map out a tool that will help us track this and you and I could just talk about that and we could bring something back to the Board for their update.

COUNCILOR ROMERO-WIRTH: Right. And last year's memo didn't have the benefit of the direction that is in this resolution too. So there might things that as a result of the resolution that don't fit anymore and was part of the reason for the resolution.

MR. HARWOOD: Right. So part of what I'm thinking in my mind is there's some kind of easily digestible code that maybe is at the bottom of each item next to the recommendation that tells us, Hey, this has been on the memo for three years and it's still important or a list of the things that have fallen off the memo because they've moved on. So there will be an easy way to track those but if I could get a minute with you to just sort of talk through that then make sure that what I bring back to you is what you're requesting.

COUNCILOR ROMERO-WIRTH: Okay. I think that's all I had. Thank you, Madam Chair.

CHAIR HAMILTON: That was good. Great, thank you.

MR. HARWOOD: Thank you, Madam Chair and the Board.

## 7. ACTION ITEM: CONSENT

### A. Request for approval to award RFP 3/29P to Long, Komer & Associates, P.A. to provide legal services for the Buckman Direct Diversion Board and for a total amount of \$120,000.00 plus NMGRT tax for the remainder of Fiscal Year 2023

CHAIR HAMILTON: This is the item that we pulled from consent regarding the contract for Long, Komer & Associates; right? There were questions? Mr. Ives.

MEMBER IVES: Thank you, Madam Chair. And it's just a question really on format and possibility. And it's probably a question to Ms. Long. I'm looking at page 9 under what is section 18, insurance, C.3 it identifies professional liability for the contractor and all contractor employees who perform professional services. It later on in that same paragraph under G it says that each policy shall expressly provide an endorsement and an endorsement shall be submitted to the BDD of the policy or policies providing coverage, and here it states for commercial general liability must be endorsed to include additional insurers. And I just wasn't sure about each policy reference and then the reference to the commercial general liability because as far as professional liability insurance I don't think you can – at least I've never seen an endorsement like that.

So just to make clear that we're specifically talking about only the commercial general liability as opposed to broadly stated each policy and that was my only concern.

MS. LONG: Yes. Madam Chair and member Ives, you are correct I do not think that professional liability insurance could be written to include an addition insured so this is just for the commercial general liability. And, of course, the contract was not drafted by us but was taken from the standard contracts that BDD issues for all of its vendors. But, yes, I would interpret that to be just commercial general liability that we also have in addition to professional liability.

MEMBER IVES: Good. That was the only thing I wanted. Because I have dealt with the standard forms and every now and then I see things that in my mind don't make sense and just wanted to make sure I understood this one so it did make sense.

Thank you, Madam Chair. That's all I had. I move to approve.

CHAIR HAMILTON: Thank you.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: I have a motion and second. Is there further discussion? Were there any other questions? Good, I have a motion and a second.

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

8. Deleted at agenda approval.

**9. MATTERS FROM THE PUBLIC**

None were presented.

**10. MATTERS FROM THE BOARD**

None were presented.

**11. NEXT MEETING:** Thursday, April 6, 2023 at 4:00 p.m.

Chair Hamilton reminded the Board that the townhall meeting with Jill Hruby, Under Secretary of Energy for Nuclear Security and Administrator of the National Nuclear Security Administration, is scheduled for April 6<sup>th</sup> 6:30 to 8:30.

**12. ADJOURN**

Having completed the agenda and with no further business to come before the Board, Chair Hamilton declared this meeting adjourned at approximately 5:16 p.m.

Approved by:

  
\_\_\_\_\_  
Anna Hamilton, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

**ATTEST TO**



KATHARINE E. CLARK  
SANTA FE COUNTY CLERK





