

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

**November 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 County Commissioner Anna Hamilton, BDD Board Chair, at approximately 4:05 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  
Councilor Carol Romero-Wirth  
Commissioner Anna Hansen  
Councilor Renee Villarreal

**Member(s) Excused:**

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

**BDD Board Alternate(s) Present:**

Commissioner Hank Hughes, County Alternate

**Others Present:**

Jesse Roach, City Water Utility Director  
Nancy Long, BDDDB Legal Counsel  
Kyle Harwood, BDDDB Legal Counsel  
Bernardine Padilla, BDD Public Relations Coordinator  
Delfin Peterson, BDD Administrative Assistant  
Emily Oster, City Finance Department Director  
Jay Lazarus, Glorieta Geoscience, Inc.  
Bot Pierce, Glorieta Geoscience, Inc.  
James Bearzi, BRZ Consulting  
Joni Arends, Concerned Citizens for Nuclear Safety  
Caitlin Martinez, NMED Hazardous Waste Bureau  
Shelly Lemon, NMED Surface Water Protection Bureau  
John Rhoderick, NMED Water Protection Division Director  
Eric Spurlin, Carr, Riggs & Ingram Auditors

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

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

Councilor Villarreal moved to approve the agenda as presented. Commissioner Hansen seconded and the motion passed by unanimous voice vote.

### **4. APPROVAL OF MINUTES: October 5, 2023**

Commissioner Hansen offered the following corrections:

Page 2, item 7b, Commitment

Page 8, item 10, COMMISSIONER HANSEN: So, I want to know if it's possible for us to write a letter in support of Secretary Kenney's MDA C request for ~~cleaning~~ cleanup of Material Disposal Area C...

Commissioner Hansen moved to approve the October 5<sup>th</sup> minutes as corrected. Councilor Villarreal seconded and the motion passed by unanimous voice vote.

### **5. PRESENTATION/INFORMATIONAL ITEMS**

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

JESSE ROACH (City Water Division Director): Thank you Madam Chair and members of the Board, I will briefly summarize Randy's report and then stand for questions.

The average raw water diversions for BDD were 5.2 million gallons per day and drinking water deliveries to the City and County were 4 and 2/3s million gallons per day. Raw water delivered to Las Campanas averaged half-million gallons per day. BDD is provided approximately half of the water supply to the City and County for the month.

There is a graphic showing the monthly production at BDD from January through October and how that compares to averages and we see for this past October it is fairly similar to the long-term average, just a little bit below.

The total water demand for the City-County combined system for October was about 10 MGD which is very high for us. Rio Grande flows averaged about 1,500 CFS, cubic feet per second and reservoir storage in the Santa Fe River was about 43 percent of capacity. The City has almost 10,000 acre-feet of San Juan-Chama water in storage in Abiquiu as of October 10<sup>th</sup>. And we received a full allocation – both the City and the County – received a full allocation of San Juan-Chama water this year.

COMMISSIONER HANSEN: I have a question on that, Madam Chair.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Dr. Roach. Does this mean that we used our allocation or that we received it? That was really clear to me.

MR. ROACH: Understood, Commissioner Hansen. We received the full allocation and I don't have in front of me how much of that allocation has been used. In fact, I would say that none of that allocation has been used because we generally use previous allocations before and we have almost 10,000 acre-feet in storage.

COMMISSIONER HANSEN: Okay, it just wasn't clear. Okay, thank you for that clarification.

MR. ROACH: Understood.

CHAIR HAMILTON: Thank you. Is that it?

MR. ROACH: Yes, I'd be happy to stand for questions.

CHAIR HAMILTON: Are there any other questions? Very small speculative question, you mentioned the October water demand was kind of high, is that maybe a reflection of not having had any rain since September?

MR. ROACH: Madam Chair, I think it's two different things. One of them is that October was very warm and dry compared to other Octobers. And another is that this year potable water was used during October for the Country Club golf course, so that's another additional demand on the potable system.

CHAIR HAMILTON: Great, thank you. Any other questions? Thanks so much.

**b. Report from the Facilities Manager**

CHAIR HAMILTON: Nancy, were you going to cover that briefly?

NANCY LONG (BDDDB Counsel): Madam Chair, I can add to his report since he couldn't be here. In addition to what's contained in the report I think Mr. Carpenter planned on giving you some more details on some of the vacancies and some of the succession planning that is going on. I don't have detailed information about that. But I did want the Board to know that our BDD Accounting Supervisor has announced her upcoming retirement and is taking leave until then. So Rick is working hard to get that workload covered. She is still assisting with some tasks and Mackie, of course, continues to help in the financial area to help the Board. That position should be ready for advertising as soon as all of the paperwork is in order. We just wanted the Board to be aware of that and Rick is covering the items and looking at multiple avenues for doing that the account supervisor would handle.

CHAIR HAMILTON: Right. And the formal retirement – I understand she's gone because of the leave but the retirement is actually at the end of the year; is that true?

MS. LONG: I think it is the first part of next year. I don't have an exact date.

CHAIR HAMILTON: But the idea is that they are going to try and move ahead and get permission to advertise which might involve, technically, double-filling the position so we can get someone in the role as soon as possible.

MS. LONG: Right. And they are working to do that. Rick is working with HR and with Jesse, Dr. Roach, to make that happen.

CHAIR HAMILTON: Great and that is really appreciated. Thank you.

MS. LONG: And that was all that I had to report in addition from Mr. Carpenter.

CHAIR HAMILTON: Excellent. Any questions? Councilor.

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. I just want to take issue with this word "succession" planning. I think what we need to do clearly is fill vacancies but I don't know if in government we talk about succession planning the same

way that we do in perhaps business or in the non-profit world. Maybe, I would just flag that maybe that is not the best word because we do have to advertise for these positions and people have to be considered according to the criteria and their qualifications and that sort of thing. So it is not exactly the same as we use in other sectors. I'm just flagging that, that's all.

CHAIR HAMILTON: I appreciate that. Words matter but in the broader sense and I think that maybe we had a conversation but there's an aspect of training people who are moving up in a professional way and sooner or later come in line for that level of position. There's no guarantee that they're going to stick around and take it even if a higher level position opens up and you point is well taken that you still have to advertise. But some aspects of it do allow coverage of – for vacations and absences and for professional development. So with that in mind maybe some better term can be used.

COUNCILOR ROMERO-WIRTH: Yes, and just because you're training for it doesn't mean you're going to get the job. You may not want the job when it comes open or you may not be selected for it. I just want us to be cognizant of the use of that term. And, yes, we need to be thinking about the fact that there are people who are in line to retire and we need to think about the timing of those things and how we go about building a pipeline so that we have people to pick from who are qualified to do that job. But it just feels to me a little different.

CHAIR HAMILTON: I totally agree and now it is also being applied to almost every position. And really I think the issue comes up more with having somebody at the most senior level, running a department for years and having all of this institutional knowledge which is not replicated anywhere. Where there has been no effort to develop anybody who could take the position when they do retire. It's not really an issue in lower level positions and it should be called something else. So I think we apply that more broadly. But, yes, I think it is a point well made.

COMMISSIONER HANSEN: We use that word at the County and I agree that it is for a higher level position. But I also think that thinking about the future and thinking about the line in the chain-of-command is really important and who is going to be there. Like right now, we don't have a finance director and that's something that, in my humble opinion, succession planning would be something to think about. How to make sure that we're prepared and we have that covered because finances are an incredible important aspect. And part of the other issue with succession planning is like sometimes there is a deputy. That deputy is not guaranteed to definitely get the job but it might be the perfect person and at least there is somebody who has the knowledge and the information that is needed to carry on the position.

If somebody can come up with a better word that describes that I would be open to those discussions.

CHAIR HAMILTON: I want to point out that even for some positions there is no succession planning. There is nobody to preplan succeeding Antoinette's position since it's a one all position. To me, at the County, we talk at all levels of professional development and steps. But the director and deputy director situation is a potentially valuable concept. Are there other questions or comments on this facility management report?

COMMISSIONER HANSEN: It says here, solar update. So since Rick is not here, it says that staff has addressed the maintenance and repair issue and is in the process of financial approval so that's all we have on that issue at the moment.

MS. LONG: Yes, Madam Chair and Commissioner Hansen, I understood from a conversation with Rick that the issues that you were advised about by the solar contractor before the last meeting, that they have been addressed and he was just trying to get the payment process off.

COMMISSIONER HANSEN: Thank you.

CHAIR HAMILTON: Other questions? Thank you.

**c. New Mexico Environment Department Presentations**

KYLE HARWOOD: Good afternoon, Madam Chair and members of the Board. As you know we have a persistent and very productive relationship with NMED across a number of issues. We visit with their staff and counsel on occasion and in response to a request from this Board we have invited John Rhoderick who is the director of the Water Protection Division here this evening to give some short presentations on a number of issues and he has brought a number of his staff. I have enjoyed working with John over the last couple of years. He and I both served on the Water Policy and Infrastructure Task Force for the governor and I'm going to let him come on down as they say.

And I'm going to let John also introduce his staff that he brought with him this evening. So, thanks for coming, John.

JOHN RHODERICK (NMED Water Protection Division Director): Thank you. It's a pleasure to be here and it's always a pleasure to work with this Board. We've had the opportunity to meet several times more informally and I always appreciate that opportunity to meet with the folks that we work for.

I do have several staff with me tonight that will be giving various presentations. I'll ask them to stand and introduce themselves and tell you what their positions.

CHAIR HAMILTON: I'll need you to come down to the microphone so that it is recorded.

SHELLY LEMON: Good afternoon. My name is Shelly Lemon. I am the Surface Water Quality Bureau Chief for the New Mexico Environment Department and I will be presenting on our state permitting program development.

CAITLIN MARTINEZ: I'm Caitlin Martinez and I'm working in the Hazardous Waste Bureau as an environmental scientist. And I'll be doing an update on the chromium interim measures.

CHAIR HAMILTON: Thanks so much.

MR. RHODERICK: So I'll give an overview at the end on our rulemaking that we're in the process of for reuse that impacts everybody here in New Mexico. But a little bit about the Water Protection Division just in general and this may be old news to some of you but there might be a few folks that don't realize what the Water Protection Division actually handles. We have the Ground Water Quality Bureau which issues discharge permits for wastewater treatment plants that are not under a federal discharge permit. In addition to that we house the Super Fund program so we deal with all the Super Fund sites in the state. We have the voluntary remediation programs. We have the state cleanup program. We have the Brownfields Program which helps restore sites. And in the

Surface Water Quality Bureau we deal with not only all the surface water issues, we have the River Stewardship Program there and Shelly will be talking more about what we're doing with our permitting program in that area. We have the Drinking Water Bureau which oversees all of the public drinking water systems in the state. And then we have Construction Programs which is our funding arm which helps provide funding specifically through the Clean Water State Revolving Fund for, surprisingly enough, wastewater systems and stormwater versus the Drinking Water State Revolving Fund.

With that, I'm going to turn this over to Caitlin for our first presentation and I'd be happy to answer questions afterwards. Thank you.

MS. MARTINEZ: Madam Chair, members of the Board, thank you for the opportunity to present. Like I said, my name is Caitlin Martinez with the Hazardous Waste Bureau and I'll be talking a little bit about just a brief update on the chromium plume interim measures and I'm sure you guys have heard lots about it in the past year.

We'll start with just a brief to kind of orient here. So, the interim measure was a system that we, as the Hazardous Waste Bureau, approved for the implementation of injection wells, extraction wells and a treatment train. The intention was to remove hexavalent chromium contaminated groundwater, treat it at the ground surface and then re-inject it back. So before we approved the design, we just approved the concept first and the first interim measure were planned for intermediate action to protect the southern border with the Pueblo of San Ildefonso that we see at the bottom. So that happened in 2015. We did the approval and the injection and extraction wells were installed in 2018. And by 2019 we had the system up and running.

So since then, we've had about five years of operations that have allowed us to really evaluate the effectiveness of our interim measures and allow us to look at it from a high-perspective point of view to see if changes need to be made. And one of the key components of the original interim measures was based off of this assumption that, from what we knew at the time the hexavalent chromium was presumptively in the top 50 feet of the regional aquifer. So we designed the system to target that 50 feet, top 50 feet in the extraction pulls from there and the injection pushes back right into that zone.

And what we've found since then, since the installation of these injection wells and we've also done further investigation activities from groundwater monitoring wells to help us determine the extent of contamination of the plume, we have found that contamination is actually deeper than our original assumption. So that's one key component that forced us to really reevaluate our design and really look at what's happening. And, still to now, we don't have our plume depth determined. It's still an unexplored. We're still trying to figure out deep in the center of the plume it goes and also how far it extends towards the eastern boundary here.

And one of the things that we look at now that we've operated the system, we've ran it for long enough for us to really get a key view over whether hydrologic control exists here. And what we see really is that we see we have a hydrologic response, we see a water table drop around extraction networks so that shows us that extraction is having a positive benefit on the system. But we don't see the same hydrologic rise in the water level along the injection wells which is what we would hope to see. Just to kind of determine that we have hydrologic control over mitigating movement of this plume as much as we can.

In addition to those responses, we've also had some unfavorable responses. We've had concentration in monitoring wells that from the discharge permit and I'll talk about –

selected to monitor performance of these injection wells. And some of those have increased where we didn't see increase above regulatory standards before. So this all put together really tells us that maybe our original picture of the IM system needs to be reevaluated.

So we have issued over the course of the past couple of years NMED has responded in technical comments to DOE kind of talking about what these unfavorable responses are and how we can evaluate the system to determine a path forward here. And what we did agree to was we have finished some of the work plan activities, the investigative work plan activities on the original IM and we still have some more characterization to do for us to be able to select the final remedy. So we spent about a year with DOE and we sat down and talked about what needs to come to the table. What are the data gaps that we need to move this project out of interim measure and into final remedy. So that led to this new chromium IM work plan that was submitted September 2022. And the intention of this work plan was supposed to layout all of our data gap categories that will allow us to make a final remedy selection after those activities have been completed. And we reviewed the submission and NMED responded with a Notice of Disapproval. And one of our key requirements in a revised document was that DOE look for an alternative injection location outside of the plume boundary.

And what we'd like to see is continued operation. We'd like to see removal and treatment of a contaminated groundwater until we move to final remedy. And we thought this expansion of the IM is the easiest way for us to continue remediation efforts now. Finish the characterization activities then move to a final remedy in a protective manner.

So that's the hazardous waste of the house. We, like I said, approved the interim measures, the construction – for us to construct and design that system. And a lot of that is also regulated by Groundwater Quality, John's group, and they are regulating the underground injection control wells. That's this DP-1835 discharge permit. And that's for the actual discharge of the groundwater. They discussed the standards that need to be met for it to be a safe reinjection of treated water. And that discharge permit mentions specific monitoring wells that are there for us to keep an eye on and to monitor IM performance and monitor the injection performance on the system.

So in April of 2022 that well I talked about briefly, it's R-45 on the eastern side, but that went over regulatory standards for the first time. So Groundwater notified DOE that they were not in compliance with their permit conditions and it was a process to get a Notice of Violation and finally a corrected action plan from DOE. What was proposed was let's model these impacts from injection operations on R-45. Let's put in a few more monitoring wells down gradient of that and let's really verify what contamination, if any, has moved passed the injection well. And NMED Ground Water Quality Bureau accepted those and said implement those, let's do the investigation. But we also want to be protective and we want to cease injection in these wells in the meantime until we're certain that you aren't doing further harm to the aquifer with the injection activities, let's take a break and stop injection into these wells under 1835. So DOE did so in time and since then we have been on this push for this alternative injection locations and we have supported and given opportunity under both Ground Water Quality and Hazardous Waste Bureau the regulatory pathway for DOE to propose and implement an alternative injection location. And the intention is that we are extracting a lot of water and the long-term goal is going to continue extracting and treating that water and reality is that we do need a displacement alternative for that. And if it can't be disposed back into existing injection wells because of negative

impacts then let's put another in a place that regulators agree is a good location. Let's continue the extraction operation and reevaluate the system. We'll have more data when we move to final remedy.

This kind of phased-interim measures approach we've seen successfully implemented at places like Kirtland has a groundwater plume and they have done a phased-remediation similar to this under the interim measures. So that's what we'd like to see and that's what we have asked for. And to support that, now that it has been six months since injection stopped under DP-1835 and we've had no proposal yet from DOE regarding an alternative injection location so to facilitate action as soon as possible both the division directors sent a letter to DOE, NMED from RPD and WPD, both the division directors sent a letter to DOE requesting that they submit another corrective action plan and this corrective action plan would allow a partial system restart at some injection wells on a temporary one-year basis while the conditions are met. And we'll talk a little bit about what this says. So the Pueblo of San Ildefonso and 4, that's on the southern boundary with the Pueblo of San Ildefonso, and that's where we've seen the most positive responses. It's more the eastern side that is a really a cause of concern and was the primary cause for the direction from the state. So what we'd like to say is that we'll concede to a partial restart of it as soon as DOE can agree that these conditions will be met. And we'll allow injection into that southern boundary and once a monitoring well, an additional monitoring well, on the Pueblo of San Ildefonso is constructed, CrIN 3, which will be in a better location for us to get data monitoring what responses are south of the injection along that region. And if we get data that suggests contamination isn't present in that region of the Pueblo of San Ildefonso then we would allow CrIN 5 to also start under that partial operation scenario. And then we'd like to use the wells that they committed to in their first corrective action plan, R-80, to kind of guide our path forward in the eastern side. And if R-80 shows positive responses then we would consider injections into CrIN 1 and 2.

But for now, we thought this was a good middle ground. We'll give a partial concession for operation and the main thing that we've asked for that we've saying for a while now is that we want an alternative injection location outside so the condition of this is that in a year develop an alternative injection location outside the plume boundary and we'd like that one to be able to dispose of the treated water for all five extraction wells. So it would be a bigger system, take all of the treated water so we could extract from all five extraction wells at the same time and have a disposition for that treated water.

So that's what we sent in September as an update just to kind of say, now we're looking at six months here so here's a concession for us to move forward. From the state's perspective no action until final remedy is not a desirable outcome. We'd like to revise for action and then some extraction and treatment should occur until we can move to final remedy.

So this is just to re-orient us. I know it's a little tough to see here. But these are the data gap wells that DOE has already committed to constructing – the time it's going to build all of these data gap delivery wells – you know, it's not going to happen immediately. But this shows [inaudible] 3, that's the location that will better monitor the southern boundary. That's what we have on the Pueblo San Ildefonso. R-80 is the step out from R-45 and that should tell us how that region has been impacted. And then we have some in central – we're trying to get a depth. So we have monitoring wells in that region but we haven't found



contamination down deep yet. So that's what we're working on now and if you have any questions.

CHAIR HAMILTON: Thank you. Excellent and informative presentation. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you very much for your presentation. Last night DOE held an environmental management cleanup forum which was challenging to say the least. But they mentioned the National Association of Scientists who you were willing to accept as possible third-party reviewers. So I am wondering and I don't remember the exact name, I was in the chat. They are a contractor and they do work for DOE and so that is concerning to me if they're going to be independent and they work for DOE how are we going to get an independent review. I understood Mr. Mikolanis' concern that this was an easy pathway because he already has him in house or he has a contract with him that he could use them. But at the same time, are we really going to get an independent review if they work for DOE.

MS. MARTINEZ: Definitely a concern for us as well. I think that's a decision that we'll stick with the Division Directors and Mikolanis. But we're concerned with the same and we have had I believe that the group Mikolanis was talking about did do a review, it wasn't prompted, but they did do a review of modelling of the chromium model and RDX models in the region. And that's something that we reviewed and looked at but haven't been in a position where it would be a regulatory driver yet. But, John would have more information on that.

MR. RHODERICK: Thank you, Caitlin. So allow me to speak to that a little bit. First off, let me say that I am a little surprised that Mr. Mikolanis brought that up because he was telling us that we needed to keep that under wraps until we formalized something and we have not formalized anything yet. We are reviewing that. As a matter of fact, I am meeting, Rick Shean, Director Shean and I are meeting with Mr. Mikolanis next week if we can catch a time to discuss the proposal that we got last week to look at. We spoke briefly on the phone about it but we are still in the evaluation. The decision has not formally been made and unless we can ensure that it is unbiased, then we're not going to be satisfied.

One thing I can tell you is that we're requiring the entire thing be done in public. There has to be full disclosure on all of it which I think is probably the biggest single thing we can do to make sure that it is unbiased. As we've explained to LANL multiple times in different groups, we try to make our decisions based on science and while modelling is a wonderful thing. The models are only as good as the information they have. And LANL does agree that there are major gaps in the knowledge that we have so when they do a model it assumes a whole lot and I don't work off of assumptions. So we're looking at it. And we're looking more into process that has been employed previously.

As we move forward and, again, my commitment is that everything that occurs with whomever we move forward with in an independent third-party review is going to be done fully in the public eye. It's got to be open to scrutiny.

COMMISSIONER HANSEN: Thank you. I appreciate that. I do want to state that Mr. Mikolanis said he shouldn't be revealing this. So just to be fair, okay. But it is a public forum and he knew there were elected officials there besides myself.

The other question I had is about the alternative areas of injection. What is the possibility, what are the areas where we could or you could or they could inject the treated

water that they have? Do we have locations? Do we have ideas? Do we have suggestions that might be feasible?

MS. MARTINEZ: We have talked a little bit about it and before the cessation actually happened we went back and forth between what are the alternative disposal options and can we land apply some of the water? What can we do now if anything? Some of the ideas that were thrown out were converting an existing monitoring well that's definitely outside of the plume boundary into an injection well on a basis, you know, for us to be able to do something temporarily that wouldn't be a total well construction. But from the state's perspective, we are looking to DOE for a proposal. We're saying what the main concern is at the time the injection wells were drilled the detected concentrations were above regulatory standards. So that was our main concern. We didn't know that when we approved the IM. None of that was knowledge until we drilled the injection wells and a decision was made to operate and see what happens essentially. Now that we have looked and we've evaluated the system we're looking for DOE to make a proposal outside of that 50 part per billion boundary of contamination or at least propose a location that NMED could evaluate and assess on a scientific basis once we know. We try and delete out – potentially there could be communication in using maybe PM 3 is a temporary well, we've looked at them to evaluate these alternative scenarios and tell us what's feasible, tell us what is not and tell us what a time line looks like.

COMMISSIONER HANSEN: Thank you very much. I'll leave it there for the moment.

CHAIR HAMILTON: Councilor Villarreal.

COUNCILOR VILLARREAL: Thank you, Madam Chair. Thank you so much for the presentation and the rich information that I am always curious about and I don't always have access to it. You read in the paper and then there are all of these questions that come about and this was very helpful to break it down. And actually I was trying to remember the complete historical background; how far back do you think this plume began forming?

MS. MARTINEZ: It's from legacy waste operations so I believe it was 1970 that they discharged from towers they used potassium dichromate and that led to the chromium plume. That's part of our concern is that since it was legacy waste and there's a migration there's certainly contamination in the subsurface above the regional aquifer separate from what's been detected. So we'd like to see active remediation and it will be a long term for that process.

COUNCILOR VILLARREAL: And to me, it is highly justifiable concerning that we have learned from our mistakes, at least LANL hasn't. So I appreciate the fact that you all are holding them accountable and there a lot of, in my opinion, leeway for them to even have the ability to even do something right. So that's helpful to understand. And I think the question I was curious about with these alternative locations for injection of treated water, I was just curious, so DOE must have an alternative location for injection of treated water to continue the IM operations. So when we inject treated water does that also affect groundwater or potential well contamination? I am just curious about that.

MS. MARTINEZ: They are injecting in wells that go into the regional aquifer. So they are groundwater wells and they are cleaned to a certain standard. So they have to meet regulations and clean water regulations to able to be reinjected back into the

aquifer. So the water that we're putting back in is clean and that's part of our concern is that if you're putting a bunch of clean water in zones that might have contamination below it then we could be affecting how that contamination moves below the clean water. So everything that should be injected back in is clean treated water.

COUNCILOR VILLARREAL: I just feel that you all give LANL a lot of leeway to do the right thing and it is just hard because it seems to be drawn out for a long period of time. And I appreciate that you all are taking the necessary precautions and do they push back saying they don't want to be doing this or do you feel like we're at a point where they are complying?

MS. MARTINEZ: What the discussion is is that we're saying that we're in an interim measure and the purpose of an interim measure under RCRA is protective as quickly as possible. So you're supposed to implement a system that might not be your final remediation but you can do something to be safe in the meantime. So what we're saying is, let's expand the interim measures. We don't have enough data to select a final remedy and be competent in the state's decision in that and give the public the opportunity to really have an opinion in that remedy selection. But DOE would like to submit and get to remedy now. So what they say is, We'll expand the system but we'll do it under a final remedy and we'll propose that expansion in the CME report so that it can happen. They don't disagree with our directives in that sense. But where we disagree is that we say, Do it now under the interim measures work plan we have yet to be approved and then we can see what changes need to come later. So it's not an if, it is more of a when.

COUNCILOR VILLARREAL: Thank you for your great work. No further questions.

CHAIR HAMILTON: Thank you. Are there other questions from Board members? Just as a very small follow-up to the previous two questioners, it seemed from your presentation that you've been asking them for alternate injection sites for quite awhile.

MS. MARTINEZ: I will say that we started by asking them, Hey, if these trends are increasing, take a look at it and tell us what could be the cause. If it's not injection then what else is it? So we kind of started easing our way in saying these are all the negative responses, tell us why they're not related to injection or these are what you're saying is happening hydraulically; tell us why it is not as evident as we'd like it to be. I will say we started more in that direction. But once we did pass regulatory standards we really said that something here is not working the way it was intended to and we've given the opportunity to evaluate that and give us a perspective, a real evaluation of the system instead of just saying it's working as intended and it's removing mass and operating. But to look at these negative impacts and when we didn't receive really that kind of assessment then we move to this – let's make a decision and get an alternative injection location.

CHAIR HAMILTON: That seems fabulous to me because you can keep going and have unintended consequences that other people might ignore and that would be to everybody's detriment so that's very well done. But it was a little bit of a loaded question, not loaded for you however. It seems to me that if has been a year or so and they're not coming up with a site, it can't be hard. There might be practical issues in that you don't know if it will work exactly the way you think and there might access or ownership – they have to get another injection site to keep going whether it's as an interim measure or a final measure. They are not going to do something completely different for final remediation. So they are going to have to address this. I'm just wondering why, not

from your point of view, why this is dragging on and being unresponsive to getting an additional injection location that you guys can evaluate?

MS. MARTINEZ: It's been a concern. Our thought is that when we make a final remedy for the public's sake and all of our sake, we want to make sure that our choice is protective because it's a final remedy and from that point our regulatory oversight on that changes a little bit from interim measures. So for us, we're saying we've all agreed that there are data gaps. We've talked about it and came up with this interim work plan and now the state is expanded that just a step further saying we think that due diligence should occur in finding that alternative injection location. So we think it is a quicker pathway for us.

CHAIR HAMILTON: Excellent. Thank you. If there are no other questions we can move along. And thank you for your excellent and very informative answers.

MS. MARTINEZ: Thank you, Madam Chair and members of the Board.

CHAIR HAMILTON: John, will you introduce the next.

#### **b. Surface Water Permitting Update**

MR. RHODERICK: Certainly. Next we'll have Shelly Lemon, the Bureau Chief of the Water Quality group.

CHAIR HAMILTON: Hi, Shelly. Thanks for coming.

SHELLY LEMON: Good afternoon, Madam Chair and members of the Board. Thank you for the opportunity to talk with you today about NMED's current development of the state led surface water quality permitting program.

I decided to give a brief outline of what I'm going to talk about today and basically I want to start with our existing surface water quality protections and then briefly talk on the Supreme Court's decision in the Sackett versus EPA case and how that may impact our water quality permitting and then talk about a preliminary state permitting program survey that we sent out to various folks out in the New Mexico community and finally provide an overview of the state permitting program development.

Surface water quality protections do exist currently under both the federal Clean Water Act and the New Mexico Water Quality Act. And the Clean Water Act was established in 1972. It made it illegal to discharge pollutants into navigable waters or waters of the United States without a permit. In addition, the New Mexico Water Quality Act has authorized the state to require permits for discharges of pollutants to waters. Although currently the state only has a permitting program for groundwater discharges and not for surface water discharges.

Forty-seven out of fifty states in the United States have a National Pollutant Discharge Elimination System Program Authority or NPDES. I'm going to refer to it as NPDES. New Hampshire, Massachusetts and New Mexico are the only three that do not. Incidentally, three states have assumed administration of the Clean Water Act section 404, dredge and fill program. Those states are Michigan, New Jersey and Florida. And in New Mexico the Clean Water Act, section 402 NPDES's permit program is administered by the EPA. And the Clean Water Act, Section 404 dredge and fill permit program is administered by the Army Corps of Engineers.

New Mexico NMED does issue water quality certifications under Clean Water Act section 401 for both the NPDES permits and the dredge and fill permits. The purpose of

such certifications is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with state water quality standards including our anti-degradation and the statewide water quality management standards.

As you all know, in May of 2023, May of this year, the Supreme Court made its decision on the Sackett versus the EPA case. I have details here and I think you all are familiar with the Sackett decision. Basically, the decision was that the relatively permitted test is the test used to determine federal jurisdiction under the Clean Water Act. The decision was amended by the EPA in the court – actually, the definition I should say was amended by EPA and the Corps and the new definition for Water of the US using this relatively permanent test became effective on September 8<sup>th</sup>. NMED's understanding of this new rule is that existing – that these permits are in effect unless they are terminated or they are not renewed and so in the case of the two individual LANL permits, the storm water permit and the industrial discharge permits, those should remain in effect while we figure out what's going on, while we develop a state permitting program and they don't expire until 2027 and 2028. Which is good news.

New Mexico's definition of surface waters of the state is more inclusive than the Waters of the U.S. and so although the ramifications of the Sackett decision aren't entirely known at this point, we do know that using only the relatively permitted tests to establish federal jurisdiction is going to result in less waters being protected under the Clean Water Act. Like I said, New Mexico's definition of surface waters of the state is more inclusive and the current definition of our surface waters of the state includes lakes, rivers, streams including intermittent and ephemeral streams, wetlands, playa lakes, reservoirs, natural ponds and all tributaries to these waters including adjacent wetlands. Approximately 4 percent of New Mexico's surface waters are perennial or relatively permanent. Whereas, non-perennial waters make up 96 percent of New Mexico's surface waters. So it can have a big impact. In addition, many perennial streams and rivers are interrupted and therefore may not be subject to Clean Water Act protections under this new ruling. So without a surface water quality permitting program it will be very difficult for New Mexico to protect surface waters of the state from contamination and degradation.

The Surface Water Quality Bureau sent a brief survey to the Bureau's list serve and also the Groundwater Quality Bureau's list serve. We also sent it to NPDES's individual permit holders and key stakeholders that we identified. And this was not a scientific survey by any means and it doesn't quantify stakeholder opinion but it did give us some insight into the range of stakeholder concerns which was the intended purpose and it gathered – the intent of the survey was to gather thoughts about a state permitting program to help NMED understand concerns, perspectives and questions that the community has. We received 424 responses, 14 of which were repeat responses and most of the people identified as interested state residents but we also have responses from environmental organizations and outdoor recreation. We have responses from federal, state, tribal and local government, acequias, irrigation districts, agriculture and Soil & Water Conservation districts and also industry and then other people who classified as other and put a description of what they identify as. So it was a pretty well-rounded response. Preliminary results, basically, survey respondents rated their support for developing a state-led water quality permit program for surface waters in New Mexico. And using a scale from very supportive on the left to not very unsupportive on the right. Most respondents were supportive at 81 percent or some less supportive at 8 percent and only 3 percent reported lacking information to form an opinion

on the topic. The second question of the survey asked respondents to state why they chose their specific level of support and of those respondents who indicated support they most often cited water quality and quantity issues, local knowledge and control, and recent changes related to the Water of the United States definition. Most of the concerns identified related to the state permitting program included program implementation issues, such as the scope of the program, NMED's staffing levels and expertise as well as concerns about additional regulations and requirements and fees that may result as a part of a permitting program.

So the survey will help NMED to guide further development of our state permitting program outreach strategy and it will also help NMED shape options for the program and also answer some questions related to program development and implementation. There will be additional opportunities to share thoughts, concerns and questions about a state-led surface water quality program. If you want to stay informed about this process we do have an email so you can send questions or if you want to be put on our list serve you can email that address which is, [swq.pd@nmed.nm.gov](mailto:swq.pd@nmed.nm.gov). We also have a website that we're updating periodically as we get new information and new initiatives.

Getting to the meat of this presentation: What does the state-led water quality permitting program look like in New Mexico. I have a couple of corrections here because we've updated the number of permittees. So New Mexico's federal NPDES' permitting universe consist of approximately 4,641 permittees at the latest count. That number changes because we have general permits that are construction general permits. So when the construction is happening we have a permit. When it is ended, it terminates. So it fluctuates. The latest count is 4,641. That includes individual, municipal, and industrial dischargers, concentrated animal feeding operations, stormwater dischargers covered by general permits and then additional facilities covered by non-stormwater general permits. And a state permitting program is to protect waters of the state beyond waters of the United States including wetlands protection may result in additional permittees and NMED will be required to build capacity in several different areas including permit writing, pre-treatment, we'll need to build capacity in bio-solids, compliance, enforcement, data management and handling to name a few as required program elements.

NMED is considering the major steps towards developing a state discharge program and acquiring NPDES's program authorization from EPA. So we have two pathways. One is a state program for state waters. And the other is NPDES authorization for water of the US. And it includes the four phases that are outlined on this slide. As you can see, there is going to be a significant level of effort necessary to develop and implement a state surface water discharge program with phased implementation of the program. One year we're not going to implement all types of permits all at once. It will be phased in over time. So we may start with municipal permits and then we move to stormwater permits and then we could move to industrial permits. So we would be implementing it over several years. When we look at a state permitting program from initial development to full implementation we're estimating approximately seven to 10 years for NPDES implementation – full NPDES implementation which would municipal, industrial, stormwater, pre-treatment, sludge and all of the program areas associated with the NPDES program. For a state only surface waters of the state program we are estimating a shorter timeline. Maybe like four to six years to develop regulations, legislation, process development like guidance documents and

procedures, database development and capacity building and training and then implementing it and starting to write permits and enforcing those permits.

Currently, NMED is in phase 1 of permit program development and we're engaging stakeholders and hoping to gain support and identify issues early in this process. We are reviewing existing statutes and regulations and will develop the necessary regulatory and statutory changes that will be necessary as a result of that analysis and we are developing a program outline for all major program components.

As we move forward with developing a permitting program, we'll be working with stakeholders to evaluate the scope and application of a state discharge program. A state NPDES permitting program cannot be less stringent than the federal program under the Clean Water Act. And program development will evaluate how a discharge permitting program would be implemented and applied to surface waters of the state including wetlands protections.

Projected resources needed at full NPDES and Surface Waters of the State – that's the SWOT implementation -- is approximately 40 to 50 fulltime employees and that would include technical staff like permit writers, pre-treatment coordinators, compliance assistance, enforcement. And we would need a database manager and data stewards to manage the data that we're receiving from the permittees and also administrative IT, HR, and financial support staff. As well as dedicated lawyers for program implementation. So that's going to be probably a big bill somewhere in the range of \$6 to \$9 million annually depending on the level of implementation and the scope of the program which are yet to be determined. Currently, NMED has received two special appropriations from the FY22 and FY23 legislative sessions and we're planning to request additional funding for program development in the FY24 session. With this funding we have hired three staff to start developing the state discharge permitting program. We have two lawyers who are working on this project. One is an internal lawyer with NMED's Office of General Counsel and one is a contract lawyer. And we're working with a contractor to assist NMED with outreach and planning and developing a public outreach and involvement plan to build support and also to identify concerns for a state discharge permitting program.

We should be developing draft regulations and statute for the next FY25 legislative session which is the 60-day session. And we will work – we're developing a database at this time so we just started database development that will meet the E permitting and E reporting requirements for surface water and groundwater so we are combining the two programs into one database.

As we move forward, obviously, we're going to have questions that we need to consider and answer. This bullet list are just some of the things that we were thinking about: What do we do about groundwater? How do we integrate groundwater into this? Will NMED or OCD or ETA implement the NPDES program for oil and gas operations? What is the funding or fee structure going to look like? What is the scope of the state permitting program for discharges to surface water of the state going to look like? How will ephemeral or indirect discharges be addressed by state-only program and will a state-only program be more stringent than EPA's? Where does environmental justice factor into this? And then a whole bunch of other questions that are bound to come up as we engage with stakeholders.

With that, I'm going to leave some contact information for myself, Director Rhoderick and Christal Weatherly who is our attorney on this. So I'll open it up for some questions.

CHAIR HAMILTON: Excellent. Thanks so much, Shelly, for a really good presentation. I'm going to start at this end and go to Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Thank you. I don't have a whole bunch of questions. Thank you for the presentation. I am curious on your survey – it looks like your sample size was 424 respondents; am I getting that correct?

MS. LEMON: Yes.

COUNCILOR ROMERO-WIRTH: And I'm curious if of the people who fall outside of the very supportive or somewhat supportive can you characterize those folks? Do you have a sense of who – not specifically who they are but just broadly, do they fall into particular categories?

MS. LEMON: Yes, but not off the top of my head. But on the previous slide it talks about the self-identified stakeholder type and so that information is paired with the results that are in the graph. I just don't have that information in front of me.

We are working with our contractor to synthesize these results and have a report of the results that we will post to our website so it will have some of those details in there. But right now I don't have that information on me.

COUNCILOR ROMERO-WIRTH: Okay. I would just be curious of who was in support of this.

You said you had two legislative appropriations over the last two sessions; what do they total?

MS. LEMON: The first one is FY22 was \$180,000 and then last year in FY23 it was \$680,000.

COUNCILOR ROMERO-WIRTH: And that number goes to the \$7 to \$10 million that will take to fully implement or is it outside of that?

MS. LEMON: It's outside of that.

COUNCILOR ROMERO-WIRTH: So this is more like start-up money, rev-up money?

MS. LEMON: Exactly, it's to develop the program. Once the program is developed we should be able to generate income and depending on how that is based – the fees are based, it may pay for the full program. It may be a combination of state appropriations and fee based or it may be 100 percent state appropriations. That is still to be determined.

COUNCILOR ROMERO-WIRTH: This number of \$6 to \$9 million with 40 to 50 FTE is once it is fully ready to go? It doesn't factor in the amount of money you need to get to that point. Do you have a sense of that estimate?

MS. LEMON: I do, again, not on me. I have I think I planned it out for five years and each year we need probably another \$500,000 to \$750,000. It depends because there's going to be different stages. When we are in this first initial stage it's not a whole lot of staff that are required because we're developing regulations. We're developing the guidance, the SOPs all of that information for the program. But once we start getting ready to implement the program, we need to hire two years, maybe even more before we start implementing because you have to train people, you have to get them in place and understand what their jobs are going to be before that initial permit is issued. So it's not a big lift in the initial stages but probably after next year it's going to be bigger and so we can fees or some sort of generation to pay for the program.



COUNCILOR ROMERO-WIRTH: Yes, 40 to 50 FTEs is not something that happens overnight for sure.

MS. LEMON: No, three was a lot.

COUNCILOR ROMERO-WIRTH: Just like we could assume who falls outside of very supportive, we can probably assume that your answer to my next question will be but I'm going to ask it anyway. Do you think the amount of funding that you got in the last two years is appropriate for what you need to get started?

MS. LEMON: Yes because right now we need funding to get people in-house and get things running. We are requesting additional funding in this upcoming session. It's hard to spend – I mean, each special appropriation is one year and it is a huge ask especially if you don't have staff who are in place to do it, like if it's a new program. So I think for right now, yes. In the next year or so, we're going to need more. We also need the infrastructure, like internal people who are in place to help buildup that program, training staff, work on the implementation piece.

COUNCILOR ROMERO-WIRTH: Have you looked at how other states get these programs up and running in terms of funding and also seven to ten years is a long time for us to be kind of not with the appropriate level of regulation that we need. So have you looked at other states and how fast they do it and what do they do to go faster if they did or not or does it just take this much time? I worry. This is a huge lift and I want to have a sense of what it takes to be successful and where you are on that.

MS. LEMON: We are talking to other states. The two most recent states who actually went through this are Idaho and Alaska. We've been talking with them about it. Other states have been doing this since the 80s. But we have been talking with Idaho and Alaska and seven to ten years is for a full NPDES implementation. A state program for surface waters of the state that are not waters of the U.S., we're thinking four to five years. So it's a smaller timeline which is still fast when you think about it. Building a program, building a database, you know, we don't have a database and we need to have a database in place so we can receive permit applications. We can receive fees. We can get the discharge data submitted electronically and not have it be on paper. So there's four to five years is what we're estimating for a state program. We're in year one so we're looking three years to four years out which isn't that long but it is long at the state time because we need it today. We can't get there today if we're going to do it right. Like if we're going to get the regulations and the protections that we need in place.

COUNCILOR ROMERO-WIRTH: And is there federal funding available for any of this or this is a state legislative commitment?

MS. LEMON: It's for a state program and it's a state commitment. For the NPDES program that is still to be determined. We do receive federal funding for Clean Water Act activities but that funding is used across the board not only for [inaudible] regulation but also for monitoring of our waters, assessment of that data, TMDL development, non-point source pollution – so we're doing all of that and a program would require a lot more. I haven't gotten a definitive answer on if we're taking over the program from EPA, why aren't we getting the funding that EPA is currently using for the program in New Mexico.

COUNCILOR ROMERO-WIRTH: That's a good point. And I guess my last question, I also worry about over seven to ten years the political dynamics. What have

states done to make sure things are keeping steady as maybe you get changes in leadership? Have you looked at that?

MS. LEMON: We are thinking about that a lot. This is something that needs to be hardy enough to cross political boundaries. That is part of our outreach strategy that we're developing and when we go out, we're going and talking to everyone because we need that commitment from people to say, yes, this is a good idea. We may have issues and we're going to try and work through those issues. There are going to be compromises but we need the majority of the permittee universe to consider this a good option for them and for the state. We've gone through this before in 2005, 2006 and it did get derailed from opposition. So we are aware, critically aware, of the key things that we need to do to get success out of this and we're looking at partnering with everyone to try and get this implemented because it is to the benefit of everyone in our state.

COUNCILOR ROMERO-WIRTH: Good. Thank you for being here.  
Thank you, Madam Chair.

CHAIR HAMILTON: Councilor.

COUNCILOR VILLARREAL: Madam Chair, I had one question on how historically things came to be. Why do you think New Mexico didn't create a surface water permitting program back in the '80s?

MS. LEMON: I would guess that it was just a resource constraint. I think back then we were spending \$220,000 a year on water quality in the state because I know that number because it's a match number for my federal grant. We have to spend the same amount we spent at the initiation of this program. I think it was just probably a resource constraint and if the federal government was able to do it then it was an easier path.

COUNCILOR VILLARREAL: Even though there were administrations that had different opinions about where we are now obviously.

MS. LEMON: It has been, I mean the definition of Waters of the U.S. stood the test of time – there were issues and different Supreme Court hearings but we've been operating under a relatively same program since 2015 and then it's gone one way, it's gone another way, it's gone back and then it's gone back since 2015. So it's really a recent history that has been tumultuous.

COUNCILOR VILLARREAL: Good to know. Thank you for that. No further questions.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Shelly and everybody from NMED for being here. We are grateful for your presentation. I know we're running late and I want to thank Councilor Romero-Wirth for asking many of the questions that I also wanted to ask. But I do wonder if you can't use the pre-2015 rules as a template so that possibly you can move a little faster. I don't know if that's possible. How much money are you planning to ask for in the 24 legislative session? I think that I know in the past you asked for \$2 million last year and you got \$680,000 and so that's concerning to me because I feel that protection of the surface water is a primary thing that we need to do. It's not, oh, that would be nice. It is number one in my book. I am really unhappy that the Sackett decision happened on my birthday. I was not a present. It makes me feel really sad that we have a Supreme Court that doesn't value arid states like us and the kind of WOTUS rules that have been written that basically exclude New Mexico, Arizona, and Utah and other states but they have surface water rules where we don't. And so that is very concerning.

What I am also really concerned about is the protection of the waters running off from LANL. You say you have until 2027. That's only three years away – four years away. That's not a very long time.

MS. LEMON: Yes. Is there a question?

COMMISSIONER HANSEN: I asked a question. I wanted to know how much money you're asking for this year and what we can do to help you?

MR. RHODERICK: Madam Chair, let me take that one. Unfortunately, I have to say that I don't know exactly what that number is because I don't know for sure yet what is going to be proposed. We propose numbers to our secretary and then they get proposed to the Governor's Office and the Governor's Office decides what gets to move forward to the legislature. I will say that it's approximately the same amount that we asked for the last time but we have also got a lot of conversations going with our state legislators at various levels because they are very interested in supporting our service water permitting program and all of our water efforts. So we are anticipating some substantial efforts from the legislature directly to fund some of our programs outside of our request. But what we have proposed is approximately the same as what we asked for last year.

Let me make one comment to the LANL issue. We, whenever the Sackett decision occurred one of the things that we did is we sent out a letter through our list serve units to approximately 4,000 entities just mentioning to them, making them aware, that there are certain protections and exceptions they enjoy if they have a NPDES permit that would not be there if they lose their NPDES permit and it could expose them to substantial enforcement under RCRA. And we sent that out on purpose just to make sure that we didn't have a run on people deciding to walk away from their permits. As we kind of suspected we didn't get any movement. Nobody decided to drop their permits. Nobody decided to – it was all quiet and we did that on purpose to let people know that just because you don't need federal permit doesn't mean you're not going to need a state permit. Silver City is a prime example. Their wastewater treatment plant fell out because they're in a closed basin. They were not required to have a NPDES permit because they don't discharge, right, into the surface waters of the U.S. But they do have to have a state discharge permit through groundwater and incorporated into that permit or protections that were under the NPDES. So we have capability – we're one of the very few states in the nation that has groundwater protection regulations at all. Most of them do not. And that gives us a little bit more to work with than what other states have.

COMMISSIONER HANSEN: Thank you. I am happy to hear that. So last year you asked for \$2 million. Santa Fe County has consistently always supported whatever requests that you have from the Environment Department and I'm sure we will continue to because we do feel that this is an incredibly important issue. I know we're running out of time so I'm going to leave it there. But I also would like to make sure that we get the slides. I know the City has the slides but I don't know if we got them.

DELFIN PETERSON (BDD Administrative Assistant): They should have been included in the attachments with the electronic files.

CHAIR HAMILTON: Thank you.

COMMISSIONER HANSEN: BoardDocs?

CHAIR HAMILTON: I didn't actually look on BoardDocs but if we don't have them, we'll contact you.

COMMISSIONER HANSEN: Okay, I just want to make sure we have access to your slides and thank you once again.

CHAIR HAMILTON: Thanks. Just very, very briefly. There was a lot of great answers around the funding and I know a lot of this is looking forward but of the funding, the \$6 to \$9 million, the estimate, how much of that is new? I mean, NMED has some mechanism of funding themselves now. So is that entirely outside of current funding and could you say 37 seconds worth of how your division how it is funded now, either by fee or by – you know, by legislation.

MS. LEMON: Yes. Currently, our point source regulations section which helps EPA administer the NPDES program is funded under our federal Clean Water Act grant for the Section 106 activities. The federal grant pays about \$600,000 a year for point source regulation section activities, compliance, enforcement, inspections – things like that. We also have some, about \$220,000 that I talked about, that's our state match for the program. So part of that maybe \$87,000 or \$85,000 will be for the point source regulation section. So that maybe around \$700 or \$750,000 existing right now.

CHAIR HAMILTON: So it's a really big lift. Most of it is new funding. And it sure seems like the state is going to really have to step up to this.

MS. LEMON: Yes, yes. Right now we have seven people in point source regulation section for the state.

CHAIR HAMILTON: Thank you. Thank you so much for the presentation.

MS. LEMON: Thank you, Madam Chair and members of the Board.

MS. HARWOOD: Madam Chair, given the obvious interest in the last couple of presentations, John and I were just talking about perhaps his next presentation could come at a later Board meeting so we can get to the rest of the agenda.

CHAIR HAMILTON: Yes, apparently we have to leave this place by 6 p.m.

COMMISSIONER HANSEN: I agree to it later. You can come back.

### **c. Water Protection Division Rulemaking on Reuse - Deferred**

MR. RHODERICK: We are happy to do that. I want to make just a couple of closing comments on these. Number one is with regard to the water reuse, we just opened on November 1<sup>st</sup> the public comment, the 30-day public comment period on those reuse regulations, the first phase. They are not complete. But we would encourage you to go to our website and feel free to review and add your public comments. Our intent with that is to go to WQCC in December to request a hearing in March of 24 for phase one rulemaking and it's going to be rolling rulemaking. We are committed to being in front of WQCC many times over the next several years with all kinds of years. So we invite you to do that. Thanks again for this opportunity. I'm happy to come back. You've got our contact information and happy to answer any questions that might come up. Just send them to us and we'll be happy to get back to you. Thank you for the opportunity again.

CHAIR HAMILTON: Thank you so much. And honestly, we really appreciate they were such well done, information and interactive presentations and we really appreciate that and look forward to further sessions.

**d. Presentation of 2021 BDD Audit and an Update on the Proposed Schedule for Completion of the 2022 BDD audit**

ERIC SPURLIN (Carr, Riggs & Ingram): Good evening, Madam Chair and members of the Board. Thank you for having us this evening. For those of you who I have not met, my name is Eric Spurlin and I'm a partner with Carr, Riggs & Ingram Accounting Firm and today we'll be going through the results of the fiscal year 2021 annual financial statement audit.

So we'll do a little bit of recap of the timeline as it relates to the 2021 audit, give you a quick refresher of the scope of work, what we were here to do and then talk about the auditor's report which are really the high level result of the financial statement audit itself. And then we'll have a little bit of time for questions.

The audit, originally we were engaged to perform the 2021 audit back in November of 2022. The audit itself actually kicked off in the January timeframe and really January through June we were performing our planning procedures, our risk assessment procedures, and executing those procedures that we needed in order to gather our audit evidence that supports the opinion of the financial statement itself. We also had an exit conference meeting to go over the results of the audit in detail back on June 30<sup>th</sup> and that was also the date of the independent auditor's report and when the audit was submitted to the state's Auditor's Office. The State Auditor goes through a review process as well once that report is received. They provide any comments they have back to us regarding that report, we respond and so ultimately the report was issued to the public July 31<sup>st</sup> of this year.

As a part of the financial statement audit there's really two things that we are primarily responsible for. The first is the audit of financial statements for the year ended in June 30, 2021. And what this is is essentially us rendering an opinion as to whether the information presented in the financial statement themselves is materially correct and accurate and presented in accordance with the applicable recording standards or essentially the rules for how financial information gets presented in those financial statements. And additionally in the State of New Mexico and the State Auditor's Office release the New Mexico State Audit Rule every year and included within that statute there are a handful of items from a regulatory standpoint that they ask for us to review and look at like procurement testing, travel reimbursement testing, and so forth. So those are really the two areas that we are focused on when we're performing the audit.

Moving onto the results: You'll see within the financial statement itself the independent auditor's report. This is the actual opinion on the financial statements itself and the result this year was what we call an "unmodified opinion." That's the best opinion that you can receive. It means that there were no areas of the audit where we could not render an opinion on. Those financial statements present fairly in accordance with U.S. GAAP which is the reporting itself and you'll find that on pages 2 through 4 of the audited financial statements.

Additionally, there is a second report that we are required to prepare, a second letter that is included in the audited financial statements. That arises as a result of governmental auditing standards which we must follow in executing and performing the audit and that really centers around any matters related to internal controls and

compliance that are identified as a result of the audit procedures that we perform. It's important to note that that is a negative assurance report which is to say that we're not doing any true audit and exhaustive search for internal control problems and compliance problems. We are simply reporting the items that do come to our attention as a result of the audit procedures that we performed. And that report is on pages 27 through 28 in the audit financial statements and there was one state audit rule finding this year and at that finding was related to the audit obviously being completed after the statutory deadline which would have been December 15<sup>th</sup> of 2021. And the schedule of findings and responses for the details on that particular finding are located on pages 29 through 30 of the audited financial statement.

CHAIR HAMILTON: Just for clarity, wasn't the 2021 audit due – it was due in 2021. That's good, sorry.

MR. SPURLIN: Correct. And I sort of jumped the gun there but you see the one audit finding listed there is on page 29, which is related to the late submission of that report.

With that, we'll open the floor to any questions or comments.

CHAIR HAMILTON: Any questions on the 2021 part? Okay, we can move right along.

MR. SPURLIN: So you were looking for an update on the status on the 2022 audit?

CHAIR HAMILTON: Yes, please.

MR. SPURLIN: Okay, from an audit perspective, the fiscal year 2022 audit is something that we are actively working through at this point in time. In fact, we had a team onsite last week who was working with the City team and also BDD 's team to work through the audit procedures that we're performing and I think that more or less is the status of where we're at at this point in time.

CHAIR HAMILTON: Do we have dates, estimated dates?

MR. SPURLIN: Estimated dates, I think that we're continually working through things. It is very difficult to pick a specific point in time when the audit is going to be completed just because as issues continually come up it changes the trajectory and what our end point is going to be so while we have sort of a general idea and aim that we're shooting for, we don't have a specific date that we can tell you that the audit will be complete for fiscal year 2022's audit.

CHAIR HAMILTON: So the FY2022 audits are due December 15<sup>th</sup> –

MR. SPURLIN: 2022.

CHAIR HAMILTON: And so – those are late. So BDD's work is late. So the FY2023 audit is due in six weeks so that obviously is going to be late also.

MR. SPURLIN: That's not a discussion that we've really had at this point in time.

CHAIR HAMILTON: But it hasn't been started.

MR. SPURLIN: It has not been started.

CHAIR HAMILTON: So we don't have a target for when the previous late audit is going to be available for BDD to be able to use.

MR. SPURLIN: Correct. Fiscal Year 2022 we have a sort of general idea and aim –

CHAIR HAMILTON: What are you aiming at?

MR. SPURLIN: We're aiming for the December 4<sup>th</sup> was kind of the date that kicked around. That's what we're shooting for. But, again, it is subject to change based on what comes about in the audit itself.

CHAIR HAMILTON: Okay. Is that the end of this presentation?

EMILY OSTER (City Finance Department Director): Madam Chair, members of the Board, if I can add. We are actively working on the FY22 audit as Mr. Spurlin mentioned and we are making progress. At this time, I believe that the City and all of the related entities will be able to meet that deadline but as Mr. Spurlin said, there may be unexpected things that come up so we can't guarantee with absolute certainty any particular date but we are still working with that goal and we are making progress on the completion of the 22 audit.

CHAIR HAMILTON: So we very much appreciate the progress that is being made and it's good that we are catching these things up. But one of the things that I'd like have on the very near term future agenda is the discuss of in the processing of catching these up, an update on the splitting of the BDD accounts from the City accounts so they are all held separate. So that the BDD audits are no longer held up by the City audits. We've been talking about that for a few years and I know that there were many things that interfered with that but the latest thing was that the City – and this is totally appreciated fact that there was a lot to catch up on and there was no personnel to work on splitting that but it's also now going to be multiple years before we can consider it. So I think we want to consider further possibilities for how we can address doing and accomplishing this.

MS. OSTER: Madam Chair and members of the Board, I think that is certainly something that the Board can discuss. I will tell you in the context of completing the FY21 and 22 audits we did evaluate the relationship between the City, BDD and the other component unit SWMA and based on that evaluation BDD doesn't qualify to be a primary government to be audited on its own as a separate entity. So we did evaluate that relationship as we are working with CRI that is a required part of our work that we do. We look at the relationship and we look at the GASB definition of a primary government and you know that includes things like the ability to impose tax and a board that consists of several elected officials that serve for that particular purpose; for example, being elected to the BDD Board. So we did evaluate the relationship between the entities as a part of these audits.

Now that being said, we are looking for opportunities within MUNIS and on the City side, we are working on enhancements to MUNIS to allow for more detailed information to be stored in MUNIS and that will assist us in the future as we – I don't think it will facilitate a separate audit for BDD that is not dependent on the City because it will still be a component unit unless the structure of the entity is changed but it will provide for more granular and more segregation.

We do currently have separate funds in the MUNIS system for BDD. So we have that already in place. We also have a separate investment account for the BDD settlement funds.

CHAIR HAMILTON: I understand that and I appreciate that you did an evaluation but that now, since it was never reported previously back to BDD it also becomes an issue that we need to put on the agenda and have reviewed. Because it's actually, in my view, not the final word. Having part of the issue is that as fiscal agents

BDD accounts should all have been separate and not have cash accounts comingled which is a different question than an independent audit. It still would allow BDD funds and accounts to be reconciled earlier. There is no reason, simply because the City is the fiscal agent for BDD, that they have the latitude to force the BDD audits to be late. It's kind of an issue of non-compliance. So this is just an issue that has to be resolved further and investigated further. Ms. Long.

MS. LONG: Madam Chair, I just note in the auditor's report, it isn't in the financial statements but it is termed required communications, there is another matter listed and it states that, "The BDD Board and the City of Santa Fe have been in communication to have separate accounts to assure audit submittals are not dependent on the City. The City indicated that they would look into this after the audits are finalized and to have them implemented for the beginning of a calendar year." So it's not addressed as a closed issue at least in the report from the auditor.

CHAIR HAMILTON: Great, very much appreciate it.

COMMISSIONER HANSEN: What page is that? My question is regards to that topic, is maybe it's time we start thinking about a true regional authority like the one that Bernalillo and Albuquerque have and have a separate regional authority. I know that's not something to discuss here but when I hear that we can't be separated from the City then it makes me think that if you're saying we can't be separated then the Bernalillo Albuquerque water authority is a separate unit and they are separated. So maybe that is something we need to think about. And I know we're short on time but I think we'll need further discussion on this.

CHAIR HAMILTON: Yes. Others?

COMMISSIONER HANSEN: And what page was that on?

MS. LONG: Madam Chair and Commissioner Hansen, it is not in the financial statement but it's a document that was presented to I believe Mr. Carpenter and it is called, Required Communications, and it is from CRI.

COMMISSIONER HANSEN: Okay, and can we get a copy of that?

MS. LONG: Yes.

CHAIR HAMILTON: Thank you so much for this information.

MR. SPURLIN: Thank you very much for your time.

**e. Presentation and Update on the 2022 Annual Report of the Middle Rio Grande Endangered Species Collaborative Program**

MS. LONG: Madam Chair, would you ask for a motion to postpone this item until our next meeting.

COMMISSIONER HANSEN: So moved.

COUNCILOR ROMERO-WIRTH: Can we just be clear about what we're postponing.

MS. LONG: Item 5 e, presentation and update.

COUNCILOR ROMERO-WIRTH: And 6a?

CHAIR HAMILTON: No.

COUNCILOR ROMERO-WIRTH: Okay, I'm sorry. Just 5e. Did you get a second, Madam Chair?

CHAIR HAMILTON: No.



COUNCILOR ROMERO-WIRTH: Second.

**The motion to postpone item 5e passed by unanimous [4-0] voice vote.**

**8. ACTION ITEMS: DISCUSSION AND ACTION**

- a. Request for Approval of a Budget Adjustment Request (BAR) in the amount of \$182,864.38 including estimated freight and applicable tax from the Major Repair and Replacement Fund for the approved contract with Andritz Separation Inc. for centrifuge VFD replacement**

CHAIR HAMILTON: This is the BAR that we couldn't act on last meeting. We acted on the other portion of it but we couldn't do the BAR because it actually had been left out of the title. Does anybody have any questions or what is the pleasure?

COUNCILOR ROMERO-WIRTH: Move to approve.

COUNCILOR VILLARREAL: Second.

**The motion passed by unanimous [4-0] voice vote.**

- b. Discussion and possible action of a letter of support to the New Mexico Environment Department concerning the Statement of Basis for Selection of Remedy for Corrective Action at Los Alamos National Laboratory's (LANL's) Material Disposal Area C**

CHAIR HAMILTON: It was mentioned last time to have this letter brought forward and I think Mr. Harwood spent a very small amount of time drafting something that was in the BoardDocs. Mr. Harwood, do you want to say a few words?

MR. HARWOOD: I can stand for questions. I think the letter is pretty straight forward. I don't know what you need to know about the site or the cleanup. I've attached the NMED public notice 2308. So I think in the interest of time I'll stand for questions, Madam Chair.

CHAIR HAMILTON: Yes, Councilor Romero-Wirth.

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. I see in your memo that you point to the Resolution 2022-2 and all of the things that we care about. I'm curious this particular comment and this particular corrective action for this particular disposal area, what is the nexus of that to be BDD's operation?

MR. HARWOOD: Thank you for the question. The site itself is actually outside of the surface water drainage part of LANL's campus that we commonly focus on that drains to the Rio Grande above the intake but there is a risk of – I'm not the person to characterize the risk, as you know – but there is a risk of a groundwater contamination flow path where if this site is not adequately addressed in some manner and pollution were to escape the site that it would go through the groundwater pathway and reach the Rio Grande discharging above the intake. And Mr. Bearzi has thought about this a little bit more than I have, if you would like him to speak to it as well from a technical perspective.

COUNCILOR ROMERO-WIRTH: Yeah, and at some point too, I would love to see a map to better understand these things and to understand also the level of risk that we're talking about, high risk, not so high. And this comes from a place where I want

to make sure that when we're signing letters, when we're making public comments that we're not diluting the impact of what we're commenting on by kind of commenting on everything. And that there really is a nexus and a risk to us that is worthy of us making that comment. And so I think you're aware of my concerns here and I bring them up again.

MR. HARWOOD: I am and I appreciate your use of the verb dilute since we are in the water business. So if it's okay, Madam Chair, I would – I know we're short for time – I understand the Councilor's concern about the resolution that was based by this Board last year, and obviously we are here to implement whatever the wishes of the Board are.

CHAIR HAMILTON: Are there any other questions or what are the wishes of the Board. Yes.

COUNCILOR VILLARREAL: Thank you, Madam Chair. I guess I see us as the region so we are all connected so I think that this is pertinent to BDD and what we are charged with doing. I guess what I was trying to understand is this letter is kind of a modification that the County sent out and I don't know what was – was this simplified or what was the main difference between what we're seeing and what Santa Fe County just signed on and approved I think at a meeting. And I guess the reason I'm bringing that up is because part of me wanted to have some kind of language in this letter that says something to the effect that halting all activities that may contribute to the spread of contamination until remediation of all sources of surface and groundwater pollution are completed.

So I don't know if that makes sense. It just seems to me that these things need to occur before anything else happens and I don't really see that. It is more like a cautionary, where we urge you to do this and make sure to seek mitigation and remediation but it doesn't say anything – not that we can control that we don't have any regulatory charge – what's the word?

MR. HARWOOD: Jurisdiction.

CHAIR HAMILTON: Influence.

COUNCILOR VILLARREAL: Part of me just wanted to get our colleagues take and your take on that.

MR. HARWOOD: This is not a copy of the County letter. This is a parallel support letter to the one passed by the County on Tuesday night urging and supporting NMED's jurisdiction and their oversight of LANL on this particular issue. I might ask Karen, if you'd like that sentence for it and you would like it added in, I might ask Karen. I don't know if that was a suggestion or not but we are happy to do whatever this Board directs us to do.

COUNCILOR VILLARREAL: It was a suggestion if it made sense in the context of our again jurisdiction.

MR. HARWOOD: We're typically providing comments to NMED so we would be urging NMED to make sure that LANL completes the cleanups that they need to do.

COUNCILOR VILLARREAL: Right, that's what I was thinking. I don't know the best way or even if we have time to wordsmith.

COUNCILOR ROMERO-WIRTH: You are the queen of wordsmith.

COUNCILOR VILLARREAL: We don't like to do it on the fly; so I guess that was my question to my colleagues if we need to add anything.

CHAIR HAMILTON: Commissioner Hansen, do you have thoughts about that addition?

COMMISSIONER HANSEN: Since this letter is going to NMED, they only have regulatory authority over cleanup. They don't have any regulatory authority over pit production. Part of the reason the letter from the County is much more extensive and covers a lot more issues is because I think that this is something that affects the entire region but also affects the BDD and our drinking water. One of the things that we know about water is that water goes in many different places and you can't always follow it. And at least living in New Mexico even on brooks you're told that you don't know where the water goes so I am satisfied with the letter the way it is so that we can have a letter in support of NMED.

So I would like to move to approve the letter as presented.

COUNCILOR VILLARREAL: Second.

**The motion passed by unanimous [4-0] voice vote.**

CHAIR HAMILTON: Thanks for the fast action on these and thanks for your work on this, Kyle.

7. **MATTERS FROM THE PUBLIC** – None were presented.

8. **MATTERS FROM THE BOARD** – None were presented.

9. **NEXT MEETING:** Thursday, December 7, 2023 at 4:00 p.m.

10. **ADJOURN**

Having completed the agenda and with no further business to come before the Board, Chair Hamilton declared this meeting adjourned at approximately 6:00 p.m.

Approved by:

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Anna Hamilton, Board Chair

Respectfully submitted:  
Karen Farrell, Wordswork

**ATTEST TO**

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KATHARINE E. CLARK  
SANTA FE COUNTY CLERK