



Agenda

**Regular Meeting of the
Buckman Direct Diversion
Board
December 5, 2024 at 4:00 PM
Council Chambers
City Hall
200 Lincoln Avenue**

Procedures for Buckman Direct Diversion Board Meeting

A zoom link is available for this meeting: <https://santafenm.gov.zoom.us/j/89581997982>.

The agenda and packet for the meeting will be posted at <https://santafenm.portal.civicclerk.com/>

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Consent Agenda
5. Approval of Minutes
 - a. Approval of minutes from the September 5, 2024, Buckman Direct Diversion Board Meeting. - ,
6. Executive Session
 - a. In accordance with the New Mexico Open Meetings Act, NMSA 1978, §10-15-1(H)(2), discussion regarding the hiring and assignment of specific applicants for the position of Facilities Manager. (Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 505-982-8405, Jesse Roach, City of Santa Fe, Water Division Director, jdroach@santafenm.gov, 505-955-4309). - ,
7. Presentations and Informational Items
 - a. Announcement of New BDD Facilities Manager. (Jesse Roach, City of Santa Fe, Water Division Director, jdroach@santafenm.gov, 505-955-4309). - ,
 - b. Monthly Update on BDD Operations. (Matt Sandoval, BDD Operations Superintendent, mgsandoval@santafenm.gov, 505-955-4501). - ,

- c. Report from the BDD Facilities Manager. (Bradley Prada, BDD Facilities Manager, bxprada@santafenm.gov, 505-955-4507). - ,
- d. Presentation regarding 2024 Compliance Order Between the New Mexico Environment Department and the U.S. Department of Energy. (Jay Lazarus, BDDDB Consultant/GZA Inc., jay.lazarus@gza.com, 505-983-1625, Kyle Harwood, BDDDB Legal Counsel, kyle@harwoodpierpont.com, 505-660-6818). - ,
- e. Presentation regarding the Settlement Agreement filed 11/19/24 in the case Wild Earth Guardians v US Fish and Wildlife Service 1:22-cv-00914-GJF-JMR (Rio Grande Silvery Minnow). (Kyle Harwood, BDDDB Legal Counsel, kyle@harwoodpierpont.com, 505-660-6818, Bradley Prada, BDD Facilities Manager, bxprada@santafenm.gov, 505-955-4507). - ,

8. Action Items: Consent Agenda

- a. Request for Approval of the 2025 Buckman Direct Diversion Board Meeting Dates. (Delfin Peterson, BDD Administrative Assistant, dapeterson@santafenm.gov, 505-955-4512). - ,

9. Action Items: Discussion Agenda

- a. Request approval to delegate to the BDD Board Chair to execute an Amendment to the "Memorandum of Understanding between the US Department of Energy, Office of Environmental Management, Los Alamos Field Office and the Buckman Direct Diversion Board Regarding Notification of Streamflow and Water Quality Monitoring in Los Alamos and Pueblo Canyons " extending the termination date and allowing additional time to negotiate a new MOU. (Verbal) (Kyle Harwood, BDDDB Legal Counsel, kyle@harwoodpierpont.com, 505-660-6818, Bradley Prada, BDD Facilities Manager, bxprada@santafenm.gov, 505-955-4507). - ,

10. Matters from the Public

11. Matters from the Board

12. Next Meeting: Thursday, January 9, 2025 at 4:00 PM

13. Adjourn

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

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

September 5, 2024

1. CALL TO ORDER

This meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Carol Romero-Wirth, BDD Board Chair, at approximately 4:01 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:

<u>BDD Board Members Present:</u>	<u>Member(s) Excused:</u>
Councilor Carol Romero-Wirth, Chair	None
Commissioner Anna Hansen	
Commissioner Anna Hamilton	
Councilor Jamie Cassutt	
Rolf Schmidt-Petersen, Citizen Member	
Tom Egelhoff, The Club at Las Campanas [non-voting member]	

Alternates Present:
Commissioner Justin Greene, County Alternate
Peter Ives, Citizen Member Alternate

Others Present:
Jonathan Montoya, Interim Facilities Manager
Matthew Sandoval, Interim Operations Superintendent
Nancy Long, BDD Legal Counsel
Kyle Harwood, BDD Legal Counsel
Delfin Peterson, BDD Administrative Assistant
Valerie Romero, BDD Accounting Supervisor
Monique Maes, BDD Contracts Administrator
Bernardine Padilla, BDD PR & C Officer
Brian Snyder, Public Works Director, Santa Fe County
Jesse Roach, City PUD Water Division Director
Jay Lazarus, Glorieta Geoscience, Inc.
Peter Hunt, Glorieta Geoscience, Inc.
Larry Boot Pierce, Glorieta Geoscience, Inc.
Carina Julig, *Santa Fe New Mexican*
Joni Arends, Concerned Citizens for Nuclear Safety

[Chair Romero-Wirth read the agenda captions throughout the meeting.]

3. APPROVAL OF AGENDA

There being no changes recommended by staff or the Board, Commissioner Hamilton moved to approve the agenda as published. Councilor Cassutt seconded and the motion passed by unanimous [5-0] roll call vote.

4. APPROVAL OF CONSENT AGENDA

CHAIR ROMERO-WIRTH: We have one item on the Consent Agenda. Are there change to the Consent Agenda at all, from staff? Okay. Changes from the committee?

COMMISSIONER HANSEN: Madam Chair, yes. I want to –

CHAIR ROMERO-WIRTH: You'd like to pull that item?

COMMISSIONER HANSEN: Yes.

CHAIR ROMERO-WIRTH: Okay. So then we have no Consent Agenda to approve, because there was only one item on the Consent Agenda which has now been pulled for discussion. So we will move on to Approval of the Minutes of our August 1st meeting.

5. APPROVAL OF MINUTES

a. August 1, 2024 Buckman Direct Diversion Board Meeting

CHAIR ROMERO-WIRTH: Are there changes to those minutes from staff?

JONATHAN MONTROYA (Interim Facilities Manager): No changes.

CHAIR ROMERO-WIRTH: All right. Any changes from the committee? Did you find anything this month, Commissioner Hansen?

COMMISSIONER HANSEN: I did but I marked it up on my other copy, and thank you very much dropping a copy off at the County. It was minor.

CHAIR ROMERO-WIRTH: Okay.

COMMISSIONER HANSEN: It was just a –

CHAIR ROMERO-WIRTH: A typo or a space or something.

COMMISSIONER HANSEN: Yes.

CHAIR ROMERO-WIRTH: Nothing substantial. All right. Is there a motion?

COMMISSIONER HANSEN: I'll move to approve the minutes.

COUNCILOR CASSUTT: Second.

CHAIR ROMERO-WIRTH: We have a motion and a second to approve the August 1st meeting minutes of this Board.

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

6. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

CHAIR ROMERO-WIRTH: We have Matt Sandoval, our BDD Interim Operations Superintendent here to give a monthly update on BDD operations. Welcome, Mr. Sandoval and thank you for being here.

MATTHEW SANDOVAL: Thank you, Madam Chair, members of the Board. So the BDD operations update for the month of August 2024 is as follows: Raw water diversions averaged 6.47 million gallons per day. Drinking water deliveries through Booster Station 4A/5A averaged 5.64 million gallons per day, and raw water delivery to Las Campanas at Booster Station 2A is .71 million gallons per day.

The BDD has provided approximately 45 percent of the water supply to the City and County for the month. If you have any questions I'll stand for your questions.

CHAIR ROMERO-WIRTH: Okay. Questions from the Board? Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. It looks like we're higher. Is that because of Nichols being empty?

MR. SANDOVAL: It's because of the demand, Madam Chair, members of the Board. The demand is up this time of year. But Nichols is at zero percent. They're still working on that.

COMMISSIONER HANSEN: Okay. Thank you. That's all I had.

CHAIR ROMERO-WIRTH: Board Member Schmidt-Petersen.

MEMBER SCHMIDT-PETERSEN: Thank you, Madam Chair. Just a question about upcoming river flows. I understand the Middle Rio Grande Conservancy is going to be out of stormwater, maybe even right now. So it's anticipated the flows at Buckman would be down by half. Do you guys see any issues there with operations set 300 cfs as opposed to 600 from the river?

MR. SANDOVAL: Madam Chair, members of the Board, no, we don't foresee that because we're calling for SJC water so we put our call in advance, so it shouldn't affect raw water deliveries.

MEMBER SCHMIDT-PETERSEN: Thank you.

CHAIR ROMERO-WIRTH: Other questions from the Board? All right. Thank you. Thank you for being here. Appreciate it.

6. b. Report from the BDD Facilities Manager

CHAIR ROMERO-WIRTH: So with that we go on to our second presentation, which is a report from the BDD Facilities Manager, that's Jonathan Montoya, the Interim Facilities Manager. Thank you, Mr. Montoya and welcome.

MR. MONTOKYA: Thank you, Madam Chair, members of the Board. I'd like to report we didn't have any major repair or replacement charges to our MR&R fund for the month of August. As noted in my memo here, the BDD rebuild project process is still ongoing. We're continuing work with the City of Santa Fe Procurement Office to further along in selecting a design-build firm. As soon as we have more updates we'll provide more unfortunately I don't have anything major to share right now.

So some good progress has been made on our partner billing for FY24. We were a little behind and we have caught up with Quarter 1, Quarter 2 and Quarter 3 of FY 24 and progress is being made on Quarter 4, and hopefully that's coming very soon.

Also we've posted several vacancies through the City of Santa Fe. We've posted equipment repairmen, several different levels, automation and security administrator, and different levels of water operations, and there's actually, since I've developed this memo there's been a couple more that have come out. So we're working really hard to fill those

vacancies.

A couple late developments I wanted to share. So we had GGI take a look at the Nuke Watch that the Prokop Ketterer report that came out in the media a couple weeks ago, and they're working to provide recommendations to us, any recommendations or considerations that we may need to take through the findings of that report.

The other thing is our LANL MOU, we're still continuing work on that, on negotiating the success agreement, and we will also be – unless new developments come along we'll provide updates at the next or at an upcoming Board meeting. The current MOU is scheduled to expire on December 10, 2024.

And then very recently, we all learned that a new consent order between NMED and LANL has come out and we're working on reviewing that and our team is going to see if there are any recommendations or potential effects to our project or any developments or major impacts to us all, we'll bring information forward as I learn it. With that I'll stand for questions.

CHAIR ROMERO-WIRTH: Questions from the Board? Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. So with the Ketterer Report, I don't remember – I only remember it affecting the flow meter that's running off – the flow running down off the hill would be affected by that report. If some of you don't know, Mr. Ketterer designated that there was a really high concentration of plutonium in the canyons above Los Alamos and he documented it. I hope I'm saying his last name right. It was done with Nuke Watch. But are you looking into the effects that it would have on the Buckman?

MR. MONTOYA: Madam Chair, members of the Board, yes. We're having GGI take a look at that and they're going to provide recommendations and any considerations that we need to make with the operation of the facility or any impacts that it could potentially have. But as of right now they're reviewing it.

COMMISSIONER HANSEN: So I also understand that the flow meter has been – that was installed a couple of years, a year and a half ago, is underwater or – the one that we just had installed near the Rio Grande.

MR. MONTOYA: Madam Chair, members of the committee, so I believe that's going to be something that's discussed in our MOU and there could be developments that are made regarding that catchment station. I think you're talking about early notification flow station.

COMMISSIONER HANSEN: Yes.

MR. MONTOYA: It's not related to the plutonium report.

COMMISSIONER HANSEN: No, it's separate, but plutonium is moved by water sometimes and since we don't – is it functional still? The flow meter?

MR. MONTOYA: Yes. It is functional.

COMMISSIONER HANSEN: It just got buried.

MR. MONTOYA: It did at one point.

COMMISSIONER HANSEN: Okay. Kyle, you want to say something?

CHAIR ROMERO-WIRTH: If you could just introduce yourself for the record and for people who are in the room that would be great.

KYLE HARWOOD (Board Co-Counsel): Thank you, Madam Chair. Kyle Harwood, Board co-counsel with Nancy Long.

Just to add to Jonathan's answer, the E-1-10.7 gauge is occasionally inundated when there's very high flows in the Rio Grande, which we haven't seen since about last spring, the spring of 24. So it is functioning but it is a topic of the MOU discussions. So we'll be bringing the update back on that when we bring an update back on the MOU. Is that okay?

CHAIR ROMERO-WIRTH: Yes.

MR. HARWOOD: Thank you, Madam Chair.

CHAIR ROMERO-WIRTH: Commissioner Hansen. So basically – Commissioner, if I can. So the issue around the report, Nuke Watch report, is going to be looked at by our contractor GGI. We'll be getting back to you all on that once they've had a chance to review it. The meter that was just spoken of is part of our MOU conversation and you'll also be getting that once we're ready to do that. So I think two separate, sort of related things and they are both on the radar for staff and we'll be hearing more about those.

COMMISSIONER HANSEN: I'm happy to hear that, but then my next question is, so the design-build firm, so it's been put out to bid? Or it's still in Procurement?

CHAIR ROMERO-WIRTH: So – I'm going to refer that to our attorney because we do have – we are in an active procurement and there are rules about what we can and can't talk about at this point. So I apologize for all of this but all of this is coming forward soon and it is all being worked on.

NANCY LONG (Board Counsel): I would just add, Madam Chair, that that is correct. It's still an active procurement. We are now entering Phase 2 of that procurement and preparing the necessary documents for Phase 2 that will be submitted to qualifying firms.

COMMISSIONER HANSEN: Okay. Thank you.

CHAIR ROMERO-WIRTH: Commissioner Hamilton.

COMMISSIONER HAMILTON: At the same time, can we get a brief update on the status of the procurement for the owner's rep, Manager?

MS. LONG: Yes, Madam Chair and Commissioner, that procurement is closing, I believe in the next week. Perhaps Monique knows the date. It's closing this month. And we do already have the team put together, the evaluation team, so as soon as we get all of that information from the proposers, and we hope we get some nice qualified firms to choose from then that evaluation committee will meet and hopefully we can have something to you by November.

COMMISSIONER HAMILTON: Great. Thanks. Thank you, Madam Chair.

CHAIR ROMERO-WIRTH: Other questions? Board Member Ives.

PETER IVES: Thank you, Madam Chair. Just a quick question on the partner billing updates. Obviously, at the last meeting we covered new hires and the fact that hopefully this process is going to be smoothed out. The only question I had is how long should it take to get a quarterly billing out after the end of that particular quarter?

MR. MONTOYA: Madam Chair, Mr. Ives. That's a good question. Hopefully, we can expedite the process to where it doesn't take very long at all and hopefully we can move away from quarterly eventually and go monthly so it's not so cumbersome and have to do a huge data crunch. But to put a number on that, I'm not exactly sure until we get our process ironed out completely.

MR. IVES: I'd love to hear an answer to that, maybe at an ensuing meeting or two if possible just next week if at all, to get our heads around it, so to speak. So thank you.

CHAIR ROMERO-WIRTH: Yes, I'd just remind the Board that we do have a new hire in that area which is going to make, I think, a big difference and part of the reason

why things have gotten behind. And that position, remind me, is the accounting manager we just hired.

MR. MONTOYA: Correct.

MS. LONG: And she's here. Valerie.

CHAIR ROMERO-WIRTH: So just so you know, we have filled that position and it's a really critical position to the BDD and to being able to deal with the financial end of it. So I think our new hire has now been on the job roughly a month and was brand new at the last meeting. And I'm happy to hear there's been progress as part of the Facility Manager's report and I think we'll be able to report more progress soon.

I just want to remind everybody about that new hire and how that's making a difference in all this work. Other questions from the Board?

7. ACTION ITEMS: CONSENT

- a. Request for approval of purchase for laboratory analysis services with Eurofins Environment Testing South, LLC, for FY25 in the total amount of \$86,082.95**

CHAIR ROMERO-WIRTH: I don't know if Danny is in the room, but we do have Monique Maes who's our BDD contracts administrator. Welcome. Thank you for being here tonight, and Commissioner Hansen, did you want Monique to give you and the folks here a brief talk about what this exactly is and then go to questions or did you just want to dive right into questions? [Response away from microphone]

So Monique, if you wouldn't mind just giving us a brief synopsis of what this item is, why these services are needed and then we can go to any questions from the Board.

MONIQUE MAES (Contracts Administrator): Madam Chair, members of the Board, Commissioner Hansen, I am more than happy to answer any procurement questions or anything related to finance. This is a purchase for some testing and analysis for Danny's laboratory analysis work. If you have any other particular questions we have Jay Lazarus here and he can fill in any of the work that Danny does that this would be related to.

COMMISSIONER HANSEN: Madam Chair, Thank you, Monique, maybe Jay Lazarus. So this is special, but I'm assuming this is part of what the MOU, DOE pays for, for our sampling and I'm wondering if we have another contract that we have also fulfilled, because this one's for \$86,000 and our agreement with LANL for its testing the sampling is I think \$92,000 or \$96,000. So I'm wondering if we have another contract to do more sampling, because one of the recommendations that has been suggested to me is that we do more sampling after an event besides before an event. I'm all for – I support this completely but I want to make sure that we have enough sampling dollars and availability to do sampling, especially in light of all of these reports that have come out of plutonium in the ground and then also what happens after a flood event or a runoff. What is the level of contaminants at that point? So those are some of my questions and I don't expect you to be able to answer that since it's not in your department.

MS. MAES: Madam Chair, members of the Board, Commissioner Hansen, yes. This is in addition to our normal sampling. This is directly related to the MOU contract and this is – some of this funding, the funding for this is reimbursable from LANL.

COMMISSIONER HANSEN: The DOE.

MS. MAES: From the DOE, yes. We are working with – I am working with Valerie to get reimbursed for this purchase.

COMMISSIONER HANSEN: But there's been more.

MS. MAES: Madam Chair, members of the Board, this is a separate contract from what we normally use for our laboratory sampling.

COMMISSIONER HANSEN: So this is in addition.

MS. MAES: Yes. This is an additional supplementary contract that is strictly for the MOU with DOE, sampling.

COMMISSIONER HANSEN: So maybe that needs to be taken into consideration in the negotiations with DOE.

CHAIR ROMERO-WIRTH: I don't think that's something we need to discuss here, but I hear you.

COMMISSIONER HANSEN: I'm just making that suggestion.

CHAIR ROMERO-WIRTH: So I don't think anybody can respond to you on that.

COMMISSIONER HANSEN: Right. I get it. Okay. I think Commissioner Hamilton has another question.

CHAIR ROMERO-WIRTH: I'll chair. Board Member Schmidt-Petersen, thank you.

MEMBER SCHMIDT-PETERSEN: Thank you, Madam Chair, and one question, pretty simple and it's just what constituents are being sampled for or analyzed, and how many? And if anybody has a general kind of answer for that that's all I'm looking for.

CHAIR ROMERO-WIRTH: So we have Jay Lazarus, if you want to just – I think most of the people in the room know who you and who you're associated with but maybe just state it for the record.

JAY LAZARUS: Jay Lazarus, Glorieta Geoscience. Madam Chair, members of the Commission, Member Schmidt-Petersen, it's almost a laundry list of heavy metals and radionuclides. In terms of the actual list itself, Danny has that but he does it on a regular basis as well as after the flood events and as Chair Romero-Wirth says, it's part of the MOU negotiations and we can't discuss it right now in public like this.

MEMBER SCHMIDT-PETERSEN: But generally the constituents that are being analyzed for are done consistently with the same methodologies. So we can have a record and when we look at that we can know we're looking at these things in a consistent manner and we're analyzing them the same way.

MR. LAZARUS: That's right. Danny has very detailed spreadsheets on it for all these sampling events.

MEMBER SCHMIDT-PETERSEN: Thank you.

CHAIR ROMERO-WIRTH: Further questions from the Board? Commissioner Hamilton.

COMMISSIONER HAMILTON: No questions.

MR. LAZARUS: Thank you.

CHAIR ROMERO-WIRTH: Is there a motion on this item?

COMMISSIONER HANSEN: I guess I will move to approve the purchase of laboratory analysis services with Eurofins Environment Testing South, LLC, for FY25 in the total amount of \$86,082.95.

COMMISSIONER HAMILTON: Second.

CHAIR ROMERO-WIRTH: We have a motion and a second to approve our Consent item this evening. I guess we do need a roll call on this.

The motion passed by unanimous [5-0] roll call vote as follows:

Chair Carol Romero-Wirth	Aye
Commissioner Anna Hansen	Aye
Commissioner Anna Hamilton	Aye
Councilor Jamie Cassutt	Aye
Rolf Schmidt-Petersen	Aye

8. MATTERS FROM THE PUBLIC

There were no Matters from the Public.

9. MATTERS FROM THE BOARD

There were no Matters from the Board.

10. NEXT MEETING: Thursday October 3, 2024 at 4:00 p.m.

11. ADJOURN

12. EXECUTIVE SESION

In accordance with the New Mexico Open Meetings Act, NMSA 1978, §10-15-1(H)(2), discussion regarding the hiring of specific applications for the position of Facilities Manager

CHAIR ROMERO-WIRTH: We are going to go into an Executive Session but just so everybody knows how we do this, we will go into – I think this is a little backwards on the agenda. We’re going to go into Executive – I just don’t know how we entertain a motion after we adjourn. So we’re going to make a motion to –

MS. LONG: Madam Chair, it will be a joint motion, a motion to adjourn and go into executive session. So it’s really one motion.

CHAIR ROMERO-WIRTH: Okay. So one motion to do both those things. We will not be coming back after the end of the Executive Session tonight, but we will do the necessary motions on October 3rd that are required under the Open Meetings Act after an Executive Session has been closed. So this Board operates a little differently than we do at the City. I don’t know how you all do this at the County, but just so everybody here knows, don’t wait around because we going to disperse after Executive Session.

And I guess my other question is, are we staying in this room for Executive Session? Or did we reserve the conference room?

MS. LONG: The Councilors Conference Room is reserved.

CHAIR ROMERO-WIRTH: Okay. All right. So the Board will be adjourning to the Councilors Conference Room down the hall.

All right. So all that being said, in accordance with the Open Meetings Act – our Attorney, Nancy Long, will correct me if I’m wrong, but here we go. I am moving – pursuant to the Open Meetings Act, NMSA 1978, §10-15-1(H)(2), I move that the Buckman Direct

Diversion Board go into Executive Session to discuss the hiring of specific applications for the position of Facilities Manager, and I also move that the Board meeting for this evening is adjourned.

COUNCILOR CASSUTT: Second.

CHAIR ROMERO-WIRTH: Does that work?

MS. LONG: That will work. You'll need a roll call.

CHAIR ROMERO-WIRTH: I have a motion and a second, if we could get a roll call.

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

Chair Carol Romero-Wirth	Aye
Commissioner Anna Hansen	Aye
Commissioner Anna Hamilton	Aye
Councilor Jamie Cassutt	Aye
Rolf Schmidt-Petersen	Aye

Having completed the agenda and with no further business to come before the Board, this meeting adjourned at approximately 4:27 p.m.

Approved by:

Carol Romero-Wirth, Board Chair

Respectfully submitted:

Wordswork

ATTEST TO

GERALYN F. CARDENAS
CITY OF SANTA FE INTERIM CLERK

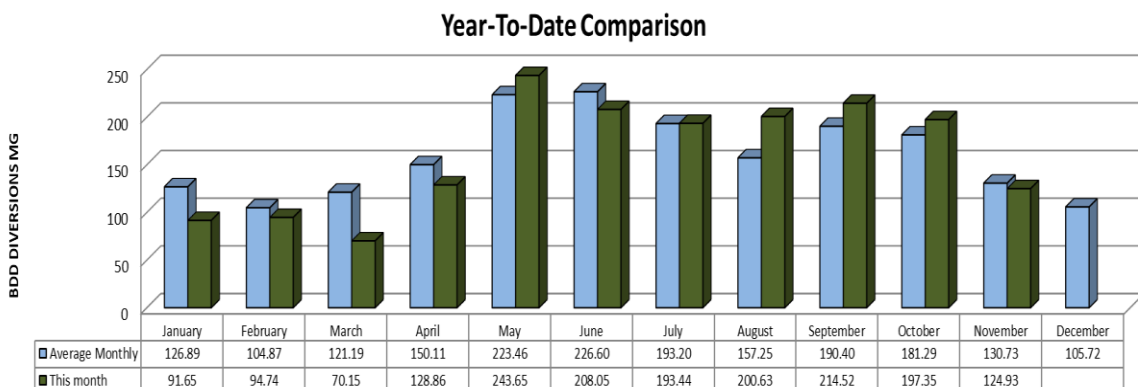
Date: December 5, 2024
To: Buckman Direct Diversion Board
From: Matthew Sandoval, BDD Operations Superintendent
Subject: Update on BDD Operations for the Months of September, October and November 2024

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the months of September, October, and November 2024. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD), as follows:
 - a. Raw water diversions were:
 - September 7.19 MGD
 - October 6.34 MGD
 - November 4.16 MGD
 - b. Drinking water deliveries through Booster Station 4A/5A were:
 - September 3.15 MGD
 - October 2.91 MGD
 - November 2.02 MGD
 - c. Raw water delivery to Las Campanas at BS2A were:
 - September 0.59 MGD
 - October 0.37 MGD
 - November 0.0 MGD

2. The BDD provided approximately 55.3% of the water supply to the City and County for the month of September, 54.5%; for the month of October; and 65.3% for the month of November.

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



Regional Water Overview

Daily metered regional water demand for each month averaged approximately:

- 10.7 MGD for the month of September
- 9.4 MGD for the month of October
- 4.9 MGD for the month of November

2024 Rio Grande flows averaged approximately:

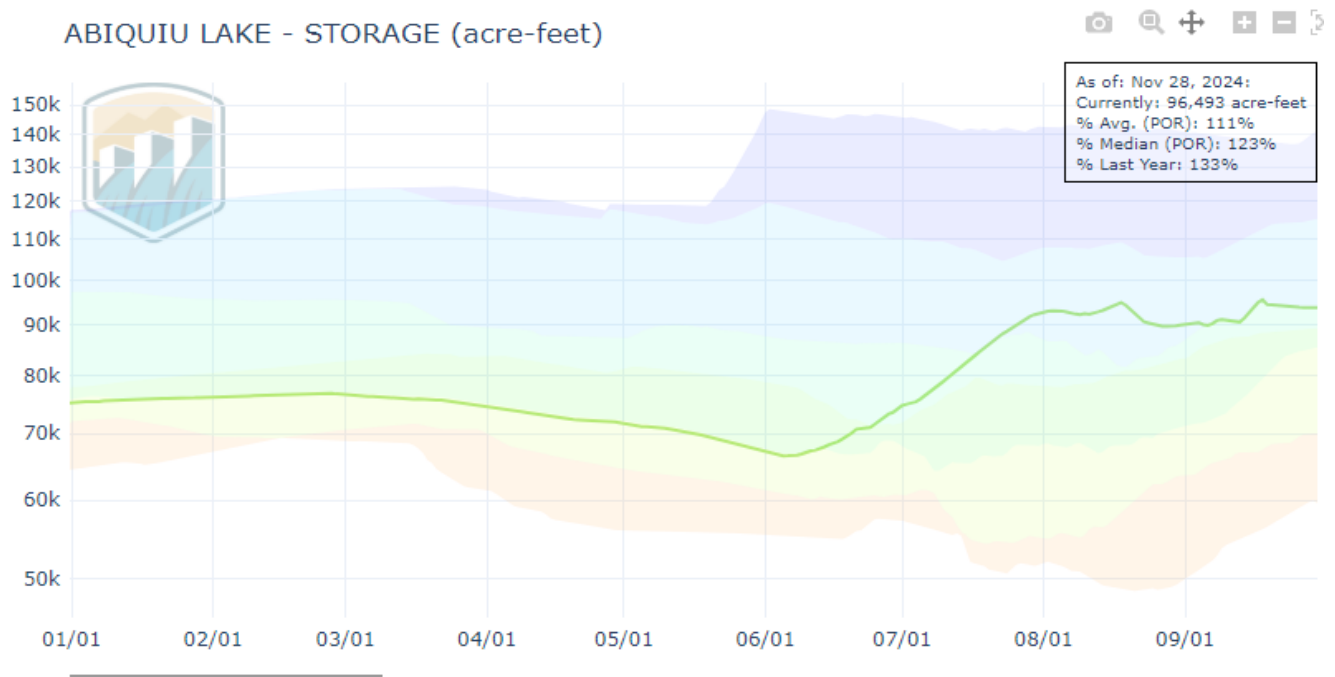
- 380 CFS (cubic feet per second) for September
- 407 CFS (cubic feet per second) for October
- 650 CFS (cubic feet per second) for November

CRWTP reservoir storage:

	September	October	November
Nichols	0%	0%	0%
McClure	52%	51%	55%
Watershed Inflow	7.9 mgd	3.3 mgd	2.5 mgd

City/County/Las Campanas Storage- as updated by partners. As of August 1, 2024 City of SF Abiquiu SJC storage is at about 5671 AF.

As of August 1, 2024 the City of Santa Fe has been allocated 5230AF of 5230AF, and SF County has been allocated 358AF of 375AF of SJCP water.





Buckman Direct Diversion Monthly SJC and Native Diversions								
Nov-24								
In Acre-Feet								
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-04842-A RG Native VIA SFC LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	283.691	91.173	0.000	192.518	192.518	0.000	0.000	1.986
FEB	293.064	112.967	0.000	180.097	180.097	0.000	0.000	1.858
MAR	217.014	95.914	0.000	121.100	121.100	0.000	0.000	1.475
APR	396.998	255.245	67.230	74.523	74.523	0.000	0.000	1.004
MAY	750.899	395.038	123.438	232.423	232.423	0.000	0.000	1.347
JUN	642.136	371.118	7.114	263.905	191.170	72.735	0.000	1.743
JUL	652.169	320.362	74.513	257.295	257.295	0.000	0.000	1.166
AUG	647.277	0.000	0.000	659.885	590.172	69.713	12.608	3.210
SEP	666.797	0.000	0.000	776.587	719.865	56.722	109.791	3.604
OCT	612.559	0.000	0.000	631.170	594.446	36.724	18.612	5.811
NOV	385.325	184.691	0.000	200.634	200.634	0.000	0.000	1.521
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	5,547.928	1,826.508	272.294	3,590.137	3,354.244	235.893	141.010	24.726

In Million Gallons								
Month	Native COUNTY	SFC Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions	
JAN	29.698	0.000	61.974	61.974	0.000	0.000	91.672	
FEB	36.797	0.000	57.976	57.976	0.000	0.000	94.773	
MAR	31.242	0.000	38.910	38.910	0.000	0.000	70.153	
APR	83.142	21.899	23.913	23.913	0.000	0.000	128.954	
MAY	128.677	40.208	74.921	74.921	0.000	0.000	243.805	
JUN	120.885	2.317	84.961	61.545	23.416	0.000	208.164	
JUL	104.352	24.271	82.879	82.879	0.000	0.000	211.503	
AUG	0.000	0.000	208.462	186.346	22.497	4.107	208.462	
SEP	0.000	0.000	214.522	196.209	18.313	35.762	214.522	
OCT	0.000	0.000	197.347	185.855	11.856	6.062	197.347	
NOV	60.160	0.000	64.765	64.765	0.000	0.000	124.925	
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000	
TOTAL	594.954	88.695	1,110.631	1,035.293	76.083	45.932	1,794.280	



Buckman Direct Diversion Monthly SJC and Native Diversions								
Dec-23			In Acre-Feet					
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-04842-A RG Native VIA SFC LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	202.766	170.639	0.000	32.127	32.127	0.000	0.000	0.316
FEB	198.863	198.863	0.000	0.000	0.000	0.000	0.000	0.000
MAR	298.509	283.752	0.000	14.757	-0.183	14.940	0.000	0.148
APR	539.513	456.749	68.929	13.835	13.835	0.000	0.000	0.050
MAY	594.828	462.276	132.552	0.000	0.000	0.000	0.000	0.000
JUN	584.178	458.973	125.205	0.000	0.000	0.000	0.000	0.000
JUL	775.090	29.584	0.000	745.506	600.980	144.526	0.000	3.448
AUG	691.219	0.000	0.000	691.305	661.055	30.250	0.086	3.300
SEP	543.466	0.000	0.000	548.792	488.899	59.893	5.325	2.629
OCT	450.861	0.000	0.000	462.141	409.826	52.315	11.280	4.339
NOV	305.383	0.000	0.000	310.512	297.964	12.549	5.129	3.046
DEC	201.257	0.000	0.000	214.254	214.254	0.000	12.996	2.142
TOTAL	5,385.935	2,060.836	326.686	3,033.229	2,718.756	314.473	34.816	19.417
In Million Gallons								
Month	Native COUNTY	SFC Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions	
JAN	55.583	0.000	10.347	10.347	0.000	0.000	65.930	
FEB	64.776	0.000	0.000	0.000	0.000	0.000	64.776	
MAR	92.427	0.000	4.752	-0.059	4.819	0.000	97.179	
APR	148.778	22.453	4.484	4.484	0.000	0.000	175.714	
MAY	150.579	43.176	0.000	0.000	0.000	0.000	193.755	
JUN	149.503	40.783	0.000	0.000	0.000	0.000	190.286	
JUL	9.636	0.000	240.180	193.965	46.562	0.000	249.817	
AUG	0.000	0.000	222.731	213.366	9.764	0.028	222.731	
SEP	0.000	0.000	176.814	157.483	19.331	1.735	176.814	
OCT	0.000	0.000	148.909	132.288	16.887	3.674	148.909	
NOV	0.000	0.000	100.009	95.960	4.049	1.671	100.009	
DEC	0.000	0.000	68.993	68.993	0.000	4.233	68.993	
TOTAL	671.282	106.412	977.219	876.827	101.412	11.341	1,754.914	



Date: December 1st, 2024
To: BDD Board
From: Bradley Prada, BDD Facilities Manager
Re: BDD Facilities Manager Monthly Update to the BDD Board

Below is the monthly update from the BDD Facilities Manager for the December 2024 Board meeting:

- **Major Repair and Replacement (MR&R) Fund.**
There were no Major Repair & Replacement items for September, October or November 2024.
- **LANL MOU Negotiations Update**
The LANL MOU negotiations are ongoing and nearing completion. Staff are hopeful of bringing a new agreement forward for BDDB approval soon.
- **BDD Re-Build Project Progress.**
The BDD staff are continuing to work with City of Santa Fe Procurement to further the progress in selecting a design/build firm. The first phase of this process has been completed. The procurement process for the Owners Representative portion of this project has also commenced and a selection team has been appointed. Staff will provide further information as it becomes available.
- **Partner Billing update.**
FY24 Quarter 4 Billing has been sent out and we are on track to catch up and re-establish a regular billing cycle.
- **Current Job Vacancy Updates**

Title	Status
PUD Facility Manager (BDD)	Filled- Start Date 11/9/24
Operations Superintendent	Filled- 10/28/24
Maintenance Planner Scheduler	Filled-10/28/24
Safety and Training Admin	Filled- 12/7/24
Equipment Repairman Intermediate	Offer made, Pending HR 10/16/24
Water Operator Entry	Offer made, Pending HR 10/23/24
Water Operator Advanced	Candidate selected, Pending Dept.
Equipment Repairman Entry (Multiple)	Pending Interviews
Water Operator Intermediate (Multiple)	Pending Interviews
Journeyman Electrician	Closed, Reposting in progress



Memorandum

Date: October 23, 2024
To: Buckman Direct Diversion Board (BDDDB)
From: Jay Lazarus, Glorieta Geoscience (GGI)
Kyle Harwood, EFMH

Subject: 2024 Compliance Order on Consent New Mexico Environment Department and US Department of Energy (“2024 LANL Compliance Order”)

On August 30, 2024, the New Mexico Environment Department (NMED) and the US Department of Energy/Los Alamos (DOE) entered into a Settlement Agreement pertaining to the environmental cleanup of legacy hazardous waste located at the Los Alamos National Laboratory (“LANL”).

Review of the Consent Order was included as Item 7 of the BDDDB’s 2024 Water Quality work plan. Topics included in the Consent order that are pertinent to the BDDDB are summarized below. A complete copy of the Consent Order can be found at: <https://www.env.nm.gov/public-notice/wp-content/uploads/sites/32/2024/09/2024-Settlement-Agreement-and-Modified-Consent-Order.pdf>.

General Purposes

1. provide a framework for current and future actions to implement regulatory requirements
2. establish an effective structure for accomplishing work on a priority basis through cleanup Campaigns with achievable milestones and targets
3. drive toward cost-effective work resulting in tangible, measurable environmental clean-up
4. minimize the duplication of investigative and analytical work and documentation and ensure the quality of data management
5. set a structure for the establishment of additional cleanup Campaigns and milestones as new information becomes available and Campaigns are completed
6. facilitate cooperation, exchange of information, and participation of the Parties;
7. provide for effective public participation
8. define and clarify its relationship to other regulatory requirements.

Corrective Action

Corrective action activities conducted under the Consent Order are organized into Campaigns using a risk-based approach to grouping, prioritizing, and accomplishing such activities at Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs). A Campaign may consist of one or more projects, and projects may consist of one or more tasks and deliverables. Campaigns, projects, tasks, and deliverables may be subject to Milestones.

Hazardous Waste Permit

Five items that will be addressed in the Hazardous Waste Permit and not in the Consent Order:

1. New releases and newly discovered releases of hazardous waste or hazardous constituents from hazardous waste management units at the Facility.
2. The closure and post-closure care requirements, as they apply to hazardous waste management units at the Facility.
3. Implementation of the controls, including long-term monitoring, for any SWMUs or AOCs listed in the Permit
4. Any corrective action conducted to address releases of hazardous waste or hazardous constituents that occur or are discovered after the date on which this Consent Order terminates pursuant to Section 38 (Termination).
5. Newly created SWMUs or AOCs from non-permitted operations.

Storm Water Runoff

The Consent Order does not establish requirements for releases of Contaminants from SWMUs or AOCs to storm water runoff that:

1. Are permitted under DOE's National Pollutant Discharge Elimination System (NPDES) Individual Permit for storm water discharges from SWMUs and AOCs (Individual Permit) (NM0030759 or as reissued); or
2. Are from SWMUs or AOCs that DOE and EPA have determined did not require coverage under the Individual Permit (i.e., SWMUs and AOCs that were not exposed to storm water, did not contain significant industrial materials, and/or did not potentially impact surface water); or
3. Are from SWMUs or AOCs formerly permitted under the Individual Permit that were deleted from the Individual Permit.

Exclusions from Scope

The Consent Order imposes no requirements on any SWMUs or AOCs previously investigated by DOE and reviewed and determined by EPA or NMED to require no further investigation or other action, except as provided for in Section 7.E (NMED reserves right for additional data or investigations).

Public Participation

A general purpose of this Consent Order is to provide for effective public participation and to provide opportunities for such public participation that include:

- (a) annual public meetings regarding changes agreed to between the Parties
- (b) a public comment period and an opportunity for a public hearing on Statements of Basis issued by NMED
- (c) a publicly accessible database, which contains all data from analysis of environmental media samples collected by DOE as part of environmental investigations and monitoring under this Consent Order or the 2005 Consent Order, and all historical data presented in documents prepared under this Consent Order or the 2005 Consent Order
- (d) an opportunity to receive email notifications concerning certain groundwater analytical data
- (e) quarterly public meetings hosted by DOE regarding actions taken pursuant to this Consent Order
- (f) an email address for which the public may submit comments to DOE regarding this Consent Order
- (g) public input for, and access to, independent third-party audits DOE will host a public meeting regarding actions taken pursuant to this Consent Order at least once per quarter of a

fiscal year, including proposed changes, if any, to Appendices A, B, and C. At least seventy-two (72) hours before each quarterly meeting, DOE will: (i) publish on its website an agenda of topics to be discussed at the quarterly meeting; and (ii) make the published agenda available to NMED to post on NMED's website. At each quarterly meeting, DOE will provide time for public comment regarding corrective actions taken pursuant to this Consent Order, including proposed changes, if any, to Appendices A, B, and C.

RECOMMENDATIONS

- Meet with the NMED Hazardous Waste Bureau "Designated Agency Manager"
- Continue to monitor clean-up progress focusing on remedial efforts in Los Alamos and Pueblo Canyons.
- Attend and participate in quarterly public meetings.

Date: November 27, 2024
To: BDD Board
From: Kyle Harwood, Board Counsel
Re: Wild Earth Guardians v US Fish and Wildlife Service 1:22-cv-00914-GJF-JMR

ITEM

On November 19, 2024, a Settlement Agreement was filed in the above captioned case concerning the Rio Grande Silvery Minnow.

BACKGROUND

The Rio Grande Silvery Minnow is an endangered species in the Rio Grande. The environmental permits that are held by Buckman Direct Diversion Board (BDD Board) on behalf of the BDD Project partners (County, City and Las Campanas) specifically address the impact of the Project on the Minnow and proscribe mitigation measures.

In 2022 the Wild Earth Guardians sued the US Fish and Wildlife Service (FWS), US Bureau of Reclamation (BOR), and Intervenor-Defendant Middle Rio Grande Conservancy District (MRGCD) alleging violations of the Endangered Species Act (ESA) and specifically the FWS's December 2, 2016 Biological Opinion.

Among other provisions, the Settlement Agreement requires reinitiation of ESA consultation within 30 days and issuance of a new Biological Opinion by October 30, 2028.

RECOMMENDATION

No specific action is recommended at this time. The impact of the re-consultation process on the environmental permits that are held by Buckman Direct Diversion Board (BDD Board) on behalf of the BDD Project partners is unknown. Updates and future recommendations will be provided when available.



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	
v.)	No. 1:22-cv-914 -GJF-JMR
)	
UNITED STATES FISH AND)	
WILDLIFE SERVICE, et al.,)	
)	
Federal Defendants.)	
)	
and)	
)	
MIDDLE RIO GRANDE)	
CONSERVANCY DISTRICT,)	
)	
Intervenor-Defendant.)	
)	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Plaintiff WildEarth Guardians, Federal Defendants U.S. Fish and Wildlife Service (“FWS”) and U.S. Bureau of Reclamation (“Reclamation”), and Intervenor-Defendant Middle Rio Grande Conservancy District (“MRGCD”) (collectively, “the Parties”), who state as follows:

WHEREAS, Plaintiff filed its “Petition for Review of Agency Action,” ECF No. 1, on November 30, 2022;

WHEREAS, Plaintiff’s Petition alleges that Federal Defendants violated various provisions of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, in relation to Reclamation’s Middle Rio Grande operations and maintenance activities and FWS’s December 2, 2016 Biological Opinion;

WHEREAS, MRGCD was granted intervention as a Defendant on January 30, 2023, ECF No. 5;

WHEREAS, proceedings in this matter were stayed to allow the Parties to continue settlement discussions from February 6, 2023 (ECF No. 8) to April 19, 2024 (ECF No. 28) and, after an in-person Settlement Conference with the Court on May 10, 2024 (ECF No. 36), again from May 15 to present (ECF Nos. 38, 39);

WHEREAS, Plaintiff has reviewed letters dated October 31, 2024, that Reclamation and FWS exchanged identifying eight issues that Reclamation and/or FWS will consider, as appropriate, in any new ESA Section 7(a)(2) consultation on Reclamation's Middle Rio Grande operations and maintenance activities conducted pursuant to this Settlement Agreement.

WHEREAS, the Parties, through their authorized representatives, have reached a settlement that they believe is in the public interest and consider it to be a just, fair, adequate, and equitable resolution of the claims set forth in Plaintiff's Petition and "Supplemental Notice of Intent to Sue," dated on or about March 15, 2024;

THEREFORE, Plaintiff, Federal Defendants, and Intervenor-Defendant stipulate and agree to the following:

1. ESA Consultation

A. Reclamation will send a letter to FWS requesting reinitiation of ESA Section 7(a)(2) consultation on its Middle Rio Grande operations and maintenance activities within 30 days of the date of entry of this Settlement Agreement.

B. Reclamation and FWS will complete the reinitiated ESA Section 7(a)(2) consultation, and FWS will issue a new Biological Opinion, by October 30, 2028.

C. No less than 30 days before issuing a final biological assessment and final Biological Opinion, Federal Defendants will provide Plaintiff, and any member of the public who had requested them, draft versions of these documents to allow opportunities to comment. Additionally, Federal Defendants will provide status updates to Plaintiff on the progress of the consultation every six months. Following receipt of those status updates, Plaintiff may request a

meeting with Reclamation and/or FWS representatives to discuss the progress made toward completion of each action.

2. Interim Terms Pending Completion of the New Biological Opinion

A. Interim Measure 1: Implementation of Remaining Conservation Measures in the 2016 Biological Opinion

- (1) During the pendency of the reinitiated consultation, Federal Defendants will prepare a list of priorities to implement the remaining conservation measures in the 2016 Biological Opinion. Continued monitoring of species will be included as high priority. MRGCD will continue implementation of conservation measures in the 2016 Biological Opinion.

B. Interim Measure 2: Fallowing/Environmental Water Leasing, On-Farm Upgrades, and Infrastructure Efficiency Improvements for Interim Species Protection

- (1) MRGCD will pursue environmental water savings in the following acreage ranges based on verifiable reductions in irrigated acreage through MRGCD's fallowing program:
 - o 2025 irrigation season: 2,500-3,500 acres (potentially 7.5-10.5k AF)
 - o 2026 irrigation season: 2,500-3,500 acres (potentially 7.5-10.5k AF)
 - o 2027 irrigation season: 2,500-3,500 acres (potentially 7.5-10.5k AF)
 - o 2028 irrigation season: 2,500-3,500 acres (potentially 7.5-10.5k AF)
- (2) Water newly conserved through MRGCD's On-Farm Program and/or infrastructure efficiency improvement projects initiated after the settlement date may also count towards the annual acreage or acre-foot commitments described above. All water savings accounting shall be made in conformity with the protocols of MRGCD's Environmental Water Leasing Program.
- (3) If MRGCD is unable to secure environmental water savings through fallowing, on-farm projects, and/or infrastructure efficiency improvements to meet the above volumetric commitments in any given year, it will

dedicate for environmental purposes 10% of its annual San Juan Chama Project contract water allocation or equivalent volume of storeable native water.

- (4) Consistent with the proposed action that is the subject of the 2016 Biological Opinion, Reclamation will continue to seek to secure environmental water in the minimum amount of 5,000 AF per year during pendency of the reinitiated consultation.
- (5) Annually, Reclamation and MRGCD will report to Plaintiff how the water was put to an environmental benefit, i.e., through diversion dam bypass, strategic outfalls, or conservation storage. To describe how the environmental water savings set forth in Paragraph 2.B.1. are met, the annual report will include a description of the water savings accounting using the protocols set forth in Paragraph 2.B.2.

3. Modification of Agreement

A. This Settlement Agreement may be modified (1) by written stipulation among the Parties filed with and approved by the Court, or (2) upon written motion filed by any Party and granted by the Court.

B. In the event of a disagreement among the Parties concerning any aspect of this Settlement Agreement, or if any Party believes that another Party has failed to comply with any term or condition of this Agreement, the Party raising the dispute or seeking enforcement will provide the other Parties with notice of the claim and provide a minimum 120-day window to remedy the alleged dispute. The Parties agree that they will meet and confer (telephonically or in-person) at the earliest possible time in a good-faith effort to resolve the dispute before seeking relief from the Court. If the Parties are unable to resolve the dispute themselves, any Party may seek relief from the Court after the minimum 120-day window has elapsed. If Plaintiff believes that Federal Defendants or Intervenor-Defendant has failed to comply with a term of this Agreement and has not sought to remedy the alleged failure after being provided notice as set forth above, Plaintiff's sole remedy will be a motion to enforce the term. Nothing related to this

Agreement will be enforceable through a proceeding for contempt of Court. No Party will be entitled to monetary damages for any breach of the Agreement.

4. Dismissal of Action

A. Upon approval of this Settlement Agreement by the Court, all counts of Plaintiff's Petition will be dismissed with prejudice. Notwithstanding the dismissal of this action, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms, until Federal Defendants satisfy their obligations under the Agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Plaintiff also waives any and all claims challenging implementation of, or alleging required reconsultation of, the 2016 Biological Opinion, including the claims raised in the March 15, 2024 "Supplemental Notice of Intent to Sue."

B. The Parties agree that nothing in this Settlement Agreement extends the Court's jurisdiction to hear any dispute over the adequacy, scope, analyses, content, or conclusions that will be contained in the new draft and final biological assessment and new draft and final Biological Opinion, or any other materials relating to the ESA Section 7(a)(2) consultation processes prepared under this Agreement for Reclamation's Middle Rio Grande operations and maintenance activities. The Parties agree that any such challenges must be brought through a new judicial action and/or any applicable agency objection process, and must raise claims pursuant to law outside the context of this Agreement. In no event would any enforcement action be available through a motion for contempt.

5. Attorneys' Fees and Costs

A. Federal Defendants agree to pay Plaintiff \$41,000.00 in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), ESA Section 11(g)(4), 16 U.S.C. § 1540(g)(4), and/or any other statute and/or common law theory, for any and all attorneys' fees, costs, and expenses incurred for or in this litigation.

B. Federal Defendants' payment as identified in Paragraph 5.A above, will be accomplished by electronic fund transfer into the Client Trust Account for WildEarth Guardians. Plaintiff's counsel will provide the appropriate account number, tax identification, and other information needed to facilitate payment to undersigned counsel for Federal Defendants. Federal Defendants will submit the paperwork for the payment within thirty (30) business days after this Settlement Agreement is approved by the Court or Plaintiff provides the necessary information as required by this paragraph to facilitate the payment, whichever is later. Plaintiff's counsel will notify undersigned counsel for Federal Defendants when payment is received.

C. Plaintiff agrees that receipt of the full amount specified in Paragraph 5.A above will operate as a release of any and all claims for attorneys' fees and costs that Plaintiff has incurred for or in this litigation or in relation to the March 15, 2024 "Supplemental Notice of Intent to Sue."

D. Plaintiff and its attorneys agree to hold harmless Federal Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon \$41,000.00 settlement amount pursuant to Paragraph 4.a. Under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5, 901.3; and other authorities, the United States will offset against the attorney fee award Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

6. Representative Authority

The undersigned representatives of Plaintiff, Federal Defendants, and Intervenor-Defendant certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this Settlement Agreement and to legally bind those parties to it.

7. Compliance with Other Laws

Nothing in this Settlement Agreement will be interpreted as, or will constitute, a commitment or requirement that Federal Defendants obligate or pay funds, or take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law. Nothing in this Agreement will be construed to deprive a federal official of authority to

revise, amend or promulgate regulations, or to amend or revise management or operations plans. Nothing in this Agreement is intended to or will be construed to amend or require amendment of any management or operations plan; to waive any obligation to exhaust administrative remedies; to constitute an independent waiver of the United States' sovereign immunity; to change the standard of judicial review of federal agency actions under the Administrative Procedure Act ("APA") or ESA; or to otherwise extend or grant this Court jurisdiction to hear any matter, except as expressly provided in the Agreement.

8. Mutual Drafting and Other Provisions

A. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by Plaintiff, Federal Defendants, and Intervenor-Defendant. Accordingly, the Parties hereby agree that any and all rules of construction, to the effect that ambiguity is construed against the drafting party, will be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

B. This Settlement Agreement contains all of the agreements among Plaintiff, Federal Defendants, and Intervenor-Defendant, and is intended to be and is the final and sole agreement among the Parties concerning the complete and final resolution of Plaintiff's claims. The Parties agree that any other prior or contemporaneous representations or understandings not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force or effect. Any subsequent modifications to this Agreement must be in accordance with Paragraph 3.A.

C. This Settlement Agreement is the result of compromise and settlement, and does not constitute an admission, implied or otherwise, by Plaintiff, Federal Defendants, or Intervenor-Defendant to any fact, claim, or defense on any issue in this litigation. This Agreement has no precedential value and will not be cited in any other litigation.

8. Force Majeure

The Parties understand that notwithstanding their efforts to comply with the commitments contained herein, events beyond their control may prevent or delay such compliance. Such events may include natural disasters as well as unavoidable legal barriers or

restraints, including those arising from actions of persons or entities that are not party to this Settlement Agreement. Force majeure will not continue beyond the circumstances and conditions that prevent timely performance, and will not apply if alternative means of compliance are available. The Party claiming force majeure will have the burden of proof in proceedings to enforce or modify the Settlement Agreement.

9. Effective Dates

The terms and agreements contained in this Settlement Agreement do not go into effect unless and until the District Court enters an order approving this Settlement Agreement. The Parties request the Court to retain jurisdiction for the sole purpose of enforcing the Agreement or resolving any disputes concerning its implementation. The Parties obligations contained in this Settlement Agreement terminate and become unenforceable upon FWS's issuance of the new Biological Opinion contemplated in Paragraph 1.B.

The undersigned parties hereby consent to the form, substance, and entry of the foregoing Settlement Agreement.

Respectfully submitted this 15th day of November, 2024,

*/s/ Samantha Ruscavage-Barz (by permission
11/15/2024; original signature preserved by Party)*

Samantha Ruscavage-Barz

Timothy Davis

WildEarth Guardians

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Phone: (505) 401-4180

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tdavis@wildearthguardians.org

Counsel for Plaintiff

TODD KIM

Assistant Attorney General

Environment & Natural Resources Division
United States Department of Justice

/s/ Andrew A. Smith (11/15/2024; original signature
preserved by Party)

ANDREW A. SMITH (NM Bar No. 8341)
Senior Trial Attorney
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Counsel for Federal Defendants

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

/s/ Christina J. Bruff (by permission 11/18/2024;
original signature preserved by Party)

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Counsel for Defendant-Intervenor

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	Case No. 1:22-cv-00914-GJF-JMR
)	
v.)	
)	
UNITED STATES FISH AND WILDLIFE)	
SERVICE, UNITED STATES BUREAU OF)	
RECLAMATION,)	
)	
Federal Defendants,)	
)	
and)	
)	
MIDDLE RIO GRANDE CONSERVANCY)	
DISTRICT,)	
)	
Intervenor-Defendant.)	
_____)	

JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND DISMISS CASE

Plaintiff WildEarth Guardians, Federal Defendants U.S. Fish and Wildlife Service and U.S. Bureau of Reclamation, and Intervenor-Defendant Middle Rio Grande Conservancy District respectfully request that the Court approve the attached Settlement Agreement and, pursuant to Federal Rule of Civil Procedure 41, dismiss this action with prejudice, retaining jurisdiction only to oversee compliance with the Settlement Agreement.

The basis and terms for the Settlement Agreement are set forth in the Agreement. A proposed form of order accompanies this Joint Motion.

Respectfully submitted on this 19th day of November 2024.

/s/ Samantha Ruscavage-Barz (by permission)
Samantha Ruscavage-Barz

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/s/ Andrew A. Smith

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Counsel for Federal Defendants

LAW & RESOURCE PLANNING
ASSOCIATES,
A Professional Corporation

/s/ Christina J. Bruff (by permission)

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https://www.santafenewmexican.com/news/local_news/endangered-minnow-lawsuit-settled-after-two-years/article_a48d086a-a76d-11ef-bf20-2f040cf587de.html

Endangered minnow lawsuit settled after two years

★ Follow Alaina Mencinger

By Alaina Mencinger amencinger@sfnewmexican.com

Nov 20, 2024



A U.S. Fish and Wildlife Service biologist holds a dead Rio Grande silvery minnow that was found in 2013 in the riverbed near Socorro.

Associated Press file photo

Thirty years after being declared endangered, the Rio Grande silvery minnow has reeled in an incremental victory.

Conservation group WildEarth Guardians, the U.S. Fish and Wildlife Service, the Bureau of Reclamation and the Middle Rio Grande Conservancy District reached a settlement Tuesday in a 2022 lawsuit that alleged violations of the Endangered Species Act.

A 2016 assessment, known as a biological opinion, on the impact of river management on threatened and endangered species was insufficient to ensure protection of the silvery minnow and other species that rely on the river, said Daniel Timmons, wild rivers program director for WildEarth Guardians.

Now, the groups will have to go back to the drawing board and come up with a new biological opinion by 2028, this time further taking into account climate change and the impact of a dry river on vulnerable species such as the silvery minnow and river-dwelling birds like the southwestern willow flycatcher and the yellow-billed cuckoo.

“We remain extremely concerned by the plight of the species,” Timmons said. “We’re encouraged by the conversations with the agencies and hope that there is a path forward to protect these species in a meaningful way and do it in a more collaborative way going forward ... finding a path to really restore a living Rio Grande.”

Requests for comment to the bureau, fish and wildlife service and the conservancy district about the impact of the settlement on their respective agencies were not immediately returned.

The silvery minnow was declared endangered in 1994. It's a boom-or-bust species, Timmons said, but while there have been a few good spawning years since 1994, there has been scant population growth.

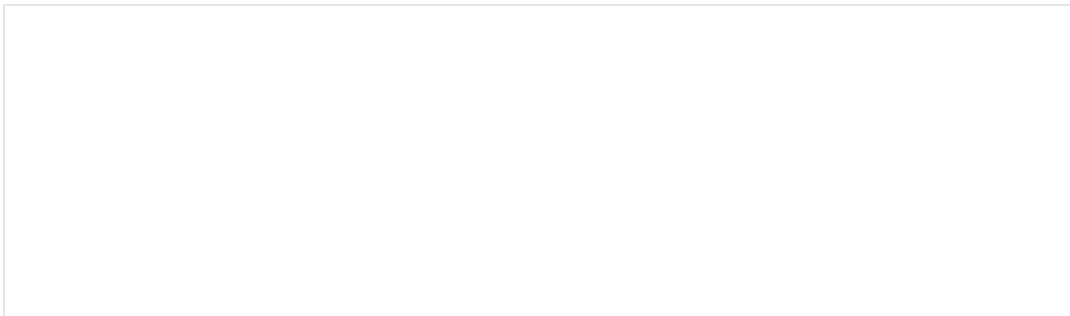
The 2016 biological opinion, which acknowledged proposed actions were likely to affect the silvery minnow and other species, mandated the density of the silvery minnow population not drop below 0.3 fish per 328-foot squared in two out of 15 years. The population is measured in October.

The population dropped below that threshold in 2018 and 2020, said Timmons, then again in 2021 and 2022, when historically low river flows caused the river to run dry in areas around Albuquerque. That should have automatically triggered a consultation process, Timmons said — but didn't.

The settlement agreement adds a public input process not typically seen for these type of assessments, Timmons said, which he hopes will help figure out “the path forward with the new knowledge we have from climate change and new opportunities to understand how to better balance human water uses and the needs of the Rio Grande ecosystem.”

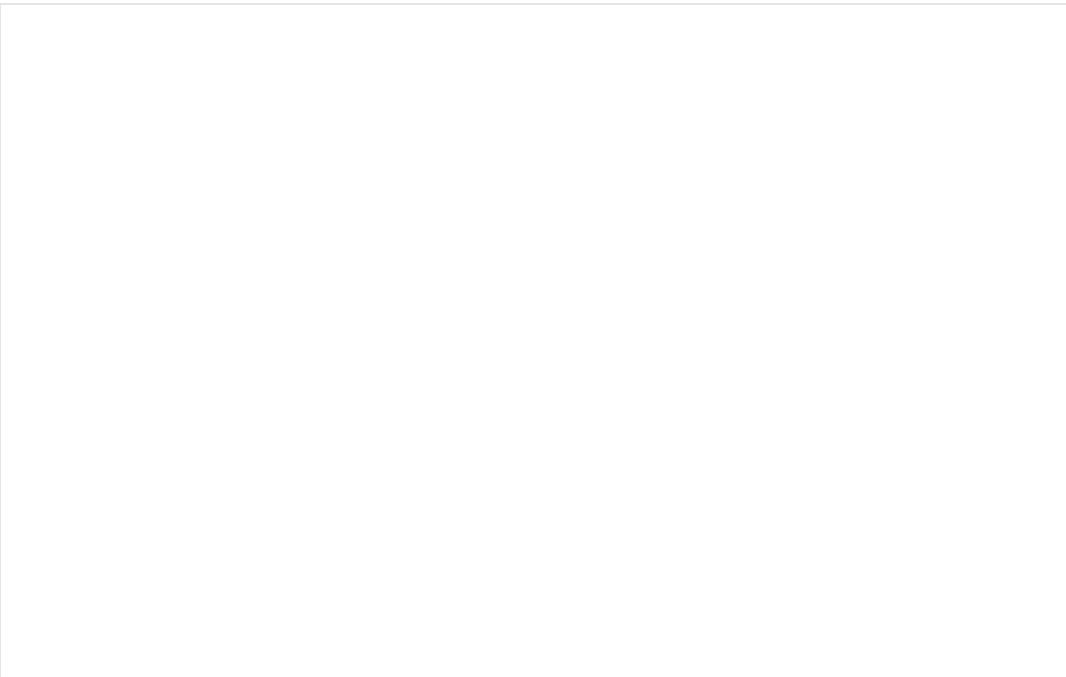
Going forward, Timmons said he would like to see the enforcement of flow requirements.

“There's got to be some point at which there isn't enough water in the river, and so collectively, we need to stop taking water out,” Timmons said.





More endangered minnows released in Rio Grande





Officials help endangered minnow amid strong Rio Grande

Alaina Mencinger

Reporter



ENVIRONMENT & CLIMATE CHANGE

BRIEFS

Environmental group, feds and irrigation district reach settlement in silvery minnow suit

BY: DANIELLE PROKOP - NOVEMBER 21, 2024 5:01 AM





📷 Silvery minnows are placed in an oxygenated tank for transport upstream after being rescued in the San Acacia reach in June 2022. Fish who are rescued from pools have a much lower survival rate than fish pulled from running water. (Photo by Diana Cervantes for Source NM)

A big fight over a small, endangered fish that lives in the Rio Grande has come to a resolution, as a federal judge in New Mexico OK'd a settlement Tuesday proposed by the parties.

U.S. District of New Mexico Magistrate Judge Gregory Fouratt approved an agreement between WildEarth Guardians, an environmental and

conservation nonprofit based in Santa Fe, the U.S. Fish and Wildlife Service and a middle Rio Grande irrigation district.

The [deal](#) ends a [2022 lawsuit](#) brought by WildEarth Guardians alleging the federal government mismanaged the Rio Grande and promoted unsustainable water uses, which violated provisions of the Endangered Species Act to restore habitats for the silvery minnow and two other species.

The dual strains of climate change and human diversions for irrigation are contributing to the Rio Grande drying more frequently, especially the crucial stretch of river between Cochiti Dam and Elephant Butte, where silvery minnow live.

The 4-inch long minnow, is unlike most freshwater fish. Silvery minnow directly spawn into the water in the spring, and the fertilized eggs slip downstream, a method more common to marine fish. When the river was slower and shallower, the minnow was prolific along Rio Grande from Española to Gulf of Mexico. Federal and local irrigation projects straightened the river, making it deeper and faster, and built dams that prevented fish from moving freely in the river. Now, the short-lived fish is limited to one reach, which [dries almost completely each year](#). After years of population decline, the fish was named an endangered species in 1994.

Feds, irrigation district say keep your wheels off of the silvery minnow



A recent uptick in off-roading by trucks and other vehicles in the Rio Grande near

Belen has prompted the U.S. Fish and

The minnow holds an important role as an indicator of the Rio Grande's health, said Daniel Timmons, the wild rivers program director for Wild Earth Guardians.

“The Rio Grande through Albuquerque used to support sturgeon and catfish that were 200 pounds. And today, the river is barely able to support a 4-inch minnow,” he said. “If it's not able to support a minnow, it's not able to support the entire web of life.”

The settlement makes some immediate changes, such as outlining specific provisions of the the Middle Rio Grande Water Conservancy District to fallow 2,500-3,500 acres farmland for the next four years or offer imported Colorado River water to keep in the riverbed.

Other provisions, such as the agreement to start the process for new federal conservation measures – called a Biological Opinion – will take four years.

While the U.S. Fish and Wildlife Service will be “driving the bus” to produce a new Biological Opinion; there will be more opportunities for public comment as part of the agreement.

That's unusual, he said, adding that Biological Opinions are often made behind closed doors.

“I'm hopeful the agencies will be more transparent throughout the process and will be engaging the public to make sure it's more of a participatory process than it has been in the past,” Timmons said.

The federal government also agreed to pay \$41,000 for WildEarth Guardian's legal fees.

Currently, federal wildlife officials are going to continue using conservation measures from the 2016 Biological Opinion in the interim, said Debra Hill, a supervisory biologist for the U.S. Fish and Wildlife Service Rio Grande Basin.

One of the goals is to make the 87 conservation measures from the 2016 opinion less vague and more focused, she said.

The settlement shows that government agencies will have to work together to address creative solutions as the Rio Grande is expected to shrink further from climate change, she said.

“We are really going to have to figure out how to work with what is limited, and so it’s going to take working together as much as we can,” Hill said.

Hill called the minnow a “canary in a coal mine,” for life on the river.

“If we’re starting to see that a fish doesn’t have what it needs to survive in the Middle Rio Grande, we need to, as a society, realize that water is the same water that we rely on,” Hill said.



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DANIELLE PROKOP

Danielle Prokop covers the environment and local government in Southern New Mexico for Source NM. Her coverage has delved into climate crisis on the Rio Grande, water litigation and health impacts from pollution. She is based in Las Cruces, New Mexico.

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Date: November 07, 2024
To: Buckman Direct Diversion Board
From: Delfin Peterson, Administrative Assistant
Re: Memo for Approval of the Buckman Direct Diversion Board 2025 Meeting Dates

Item and Issue

2025 Buckman Direct Diversion Board Meetings Calendar

Background

The Buckman Direct Diversion Board Meetings are normally conducted on the 1st Thursday of each month. The meetings are held in person in the City Council Chambers starting at 4:00pm. The following is the proposed 2025 Meeting Calendar;

January 9, 2025

February 6, 2025

March 6, 2025

April 3, 2025

May 1, 2025

June 5, 2025

July 3, 2025

August 7, 2025

September 4, 2025

October 2, 2025

November 6, 2025

December 4, 2025

Recommended Action

For your Approval.

BDD Board Chair Carol Romero Wirth

