

# AGENDA



BUCKMAN DIRECT DIVERSION BOARD  
AUGUST 04, 2022 AT 4:00 PM  
COUNCIL CHAMBERS  
CITY HALL  
200 LINCOLN AVENUE



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## PROCEDURES FOR BUCKMAN DIRECT DIVERSION BOARD MEETING

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

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 July 7, 2022 Buckman Direct Diversion Board Meeting.
6. **PRESENTATION/INFORMATIONAL ITEMS**
  - a. Monthly Update on the BDD Operations. (Randy Sugrue, BDD Operations Superintendent, [rcsugrue@santafenm.gov](mailto:rcsugrue@santafenm.gov), 505-955-4501)
  - b. Report from Facilities Manager. (VERBAL)(Rick Carpenter, BDD Facilities Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 505-955-4507)
  - c. Report on August 1, 2022 Fiscal Services Audit Committee (FSAC) (VERBAL)(Antoinette Armijo-Rougemont, BDD Accounting Supervisor, [amarmijo@santafenm.gov](mailto:amarmijo@santafenm.gov), 955-4506)
  - d. Update on San Juan Chama Return Flow Pipeline Permit.(Bill Schneider, Water Resources Manager, [whschneider@santafenm.gov](mailto:whschneider@santafenm.gov), 955-4203; Rick Carpenter, BDD Facilities Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4507; Kyle Harwood, BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

# AGENDA



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## 7. ACTION ITEMS: CONSENT

- a. Request for approval of Professional Services Agreement with Snell & Wilmer, LLP in the amount of \$180,000.00 plus applicable gross receipts tax for Legal Services in FY2023. (Monique Maes, Contracts Administrator [1-505-955-4508 mmmaes@santafenm.gov](mailto:mmmaes@santafenm.gov))
- b. Request for Approval of Amendment #2 to United States Forest Service Permit ESP104603 for Solar Arrays at Buckman Direct Diversion Raw Water Lift Station to add archeological monitoring; (Caryn Grosse, Project Administrator Senior, [clgrosse@santafenm.gov](mailto:clgrosse@santafenm.gov), [505-955-5938](tel:505-955-5938))
- c. Request for approval to re-authorize unexpended funds in the amount of \$292,744.00 from the BDD Major Repair and Replacement Fund from FY2022 to FY2023. (Antoinette Armijo-Rougemont, BDD Accounting Supervisor, [amamrijo@santafenm.gov](mailto:amamrijo@santafenm.gov), [955-4506](tel:955-4506))
  - 1) Request for Approval of a Budget Amendment Resolution (BAR) in the amount of \$292,744.00

## 8. MATTERS FROM THE PUBLIC:

## 9. MATTERS FROM THE BOARD

10. **NEXT MEETING: Thursday, September 1, 2022 at 4:00 PM**

## 11. 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**  
**THE CITY OF SANTA FE & SANTA FE COUNTY**  
**BUCKMAN DIRECT DIVERSION BOARD MEETING**

**July 7, 2022**

**1. CALL TO ORDER**

This regular meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Chair Carol Romero-Wirth at approximately 4:05 p.m. in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

[The microphone system in the Council Chambers was not functioning and the minutes are provided in a summary and verbatim format.]

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

**BDD Board Members Present:**

Councilor Carol Romero-Wirth, Chair  
Commissioner Anna Hansen  
Commissioner Anna Hamilton  
J.C. Helms, Citizen Member  
Tom Egelhoff, Las Campanas [non-voting]

**Member(s) Excused:**

Councilor Renee Villarreal

**Others Present:**

Rick Carpenter, BDD Facilities Manager  
Nancy Long, BDD Legal Counsel  
Kyle Harwood, BDD Legal Counsel  
Jamie-Rae Diaz, Administrative Manager  
Antoinette Armijo-Rougemont, BDD Financial Manager  
Monique Maes, BDD Contract Administrator  
Randy Sugrue, BDD Operations Superintendent  
Bernardine Padilla, BDD Public Relations Coordinator  
Alexis Lotero, City Interim Finance Director  
Ricky Bejarano, City Interim Assistant Finance Director  
Rachel Brown, County Interim Attorney  
John Dupuis, County Utilities Director  
Michelle Hunter, County Water Resource Manager  
Jay Lazarus, Glorieta Geoscience  
Cheryl Rodriguez, DOE EM-LA  
Joni Arends, CCNS

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

Commissioner Hansen requested that item 6.e. be heard following item 6.b.

With that change, Commissioner Hansen moved to approve the agenda as modified. Mr. Helms seconded and the motion passed by unanimous [4-0] voice vote.

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

Commissioner Hamilton moved to approve the Consent Agenda as published. Her motion was seconded by Commissioner Hansen and passed by unanimous [4-0] voice vote.

#### **Consent Agenda Items:**

- a. Request for Approval of Amendment No. 1 to the Service Agreement #21-0521 with Alpha Southwest Inc. to extend the term to a date of June 30, 2023**
- b. Request for Approval of Amendment No. 3 to the Service Agreement #19-0301 with Alpha Southwest, Inc. to extend term to a date of April, 4, 2023 and increase compensation in the amount of \$60,000 plus applicable tax, to provide on-call emergency repair services**
- c. Request formal adoption of the Fiscal Year 2023 Annual Operating Budget in the amount of \$8,235,780 plus \$1,000,000 in contributions to the Major Repair and Replacement Fund**

### **5. APPROVAL OF MINUTES**

- a. June 2, 2022 Buckman Direct Diversion Board Meeting Minutes**

No changes were offered and Mr. Helms moved to approve the minutes as published. Commissioner Hamilton seconded and the motion passed by unanimous [4-0] voice vote.

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

- a. Monthly Update on BDD Operations**

RANDY SUGRUE (Operations Superintendent): Thank you, Madam Chair and members of the Board, this is my update on BDD operations for the month of June. Raw water diversions averaged around 7.21 million gallons per day to reflect the City-County demand due to the hot weather. Our drinking water deliveries from Booster Station 4A and 5A combined were around 5.97 million gallons per day. Las Campanas pumped 1.01 million gallons per day on average. The BDD is providing approximately 46 percent of the water supplied within the City-County. That's due to an increase in production from Canyon Road Water Treatment Plant through a significant amount of the month. The year-to-date diversions are noted on the graph. Again, our monthly total of

about 216 million gallons is somewhat below the average, again, due to increased production from Canyon Road.

Our regional demand and drought summary is shown on page 2 and briefly the demand in June when it wasn't raining was a little over 12 million gallons per day. That is moderated, certainly, with our monsoon rains. Rio Grande flows averaged about 500 cubic feet per second. That has increased for the last week or two due to the rains so we are taking advantage of that. Canyon Road storage, Nichols and McClure combined, total storage was about 20 percent. That has increased somewhat, again, due to rainfall. The watershed inflow, and this was over a week ago, 5.56 million gallons per day. That also has been very increased at times due to rain fall. Our San Juan-Chama project storage graph has finally been updated showing somewhat more than 12,000 acre-feet of San Juan-Chama project storage water in Abiquiu. Our ENSO summary that was done on June 20<sup>th</sup> La Niña is certainly present and projected to continue to the end of year with a 52 percent chance July through September of continuing somewhat dry due to that fact. Our totals are on page 3 and if you have any questions, I am available.

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

COMMISSIONER HANSEN: The raw water delivers to Las Campanas, is that normal for you, Tom?

MR. EGELHOFF: We had a little more – I think a little more was delivered at the end of the month. There was a communications problem. I think we were shooting for 700,000 instead of 1 million.

MR. SUGRUE: Yeah, it varies. When it's dry weather they will fill up their reservoirs sometimes and take a few days when river conditions are pretty good and pumping is going well, and they will go maybe 2 million and something in a day just to gain while the gaining is good.

COMMISSIONER HANSEN: Thank you, Madam Chair.

CHAIR ROMERO-WIRTH: Other questions from the Board?

**b. Report from the Facilities Manager**

RICK CARPENTER (BDD Facilities Manager): Thank you, Madam Chair. Just a couple of updates. We did have two candidates that made the list of eligible for the administrative assistant position. Those interviews were scheduled for Tuesday and one of the candidates did not show up. The other one that did have was very promising and I was really pleased with how the interview went. However, later that day she let me know that another position within the City had made an offer to her so she declined my offer. So we'll start over again.

Another update, on the notice of publication for the return-flow project was in the newspaper today or yesterday. So that is moving along. I will invite the Water Division Director Dr. Roach to the next Board meeting to give the Board an update on the status of that project. So you can look for that on the agenda for next month.

And lastly, just an update on the technical working group. We do continue to meet weekly. We'll meet next Thursday morning again. The focus of the technical working group is how best to utilize the skills and the knowledge that Wright Water Engineers has developed over the last two years. They would have no time at all to get up to speed –

they're already up to speed. They were preparing for a trial that was eventually settled. So the technical working group is focusing on that and will report back out to the Board at the next Board meeting of where we stand. That concludes my report, Madam Chair. I stand for questions.

CHAIR ROMERO-WIRTH: Thank you. Yes, Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. On procurement what's happening with the City's procurement and the process that you're going through to possibly get an engineer on board or are you just relying on Wright Water?

MR. CARPENTER: Madam Chair and Commissioner, that's one of the things that the working group is working on. We have reached out to procurement. We have engaged the legal team to help us get through those matters and I don't believe it will be an unreasonable delay in any case. We'll report that back up to the Board when we have something more.

COMMISSIONER HANSEN: Okay, thank you.

There were no further questions.

e. **Report and Update regarding the May 26, 2022 Annual Review Meeting pursuant to Section H of the 2022 Memorandum of Understanding between the US DOE, Office of Environmental Management, Los Alamos Field Office and the Buckman Director Diversion Board Regarding Notification of Streamflow and Water Quality Monitoring in Los Alamos and Pueblo Canyons**

MR. HARWOOD: Good afternoon. It is wonderful to see everyone in person. It's really delightful.

So by way of introduction, as many of you remember we did sign a new MOU with LANL earlier this year and Section H of that MOU calls for an annual review meeting of the workings of the MOU. That is Section H. We did not pick a date or a timeframe for performing the annual review so with our colleagues at LANL we decided to try and have a May meeting following the execution of the new MOU going into the summer season and the work that was contemplated in the MOU, most importantly, as many of you will remember, the new gaging station is down very close to the confluence of Los Alamos Pueblo Canyon and the Rio Grande. We used to do these annual review meeting under an earlier version of the MOU. It had dropped out of the most recent MOU that preceded the one we signed earlier this year so I think this was a good addition to put this structurally back in our relationship. And as we had done those previous meetings with our LANL colleague, this is really at a staff-consultant level. So Rick ran the meeting from the BDD side and we did have Mr. Mikolanis who many of you remember from our negotiation, he brought a number of staff. I attended and so did some others. It was a productive conversation. We had a long agenda of items to get through. The memo in your packet summarizes the top level kind of take-away points from the meeting.

The E110.7 is now the name we have given the new station. So that's going to be our new handle. What you may or may not remember is the way that the stream segments are numbered comes from a United States Geologic Service system. So we've had E109.9, E110. We now have E110.7 is the new name. We have been working with folks at LANL

on the implementation of the new station. They did have to do some permitting and some procurement through the spring and early summer. And we have successfully now done most of those issues and we are expecting a construction start date a week from tomorrow. So I know that we have missed some of the monsoons this summer which is unfortunate but these things do take time.

LANL has given themselves a two-week window to complete the construction. I don't think that it is very intense construction but with the monsoons they may need to be out of the drainage and just practical issues with building something essentially in a fairly significant drainage there at the confluence with the Rio Grande.

That is probably the most important update for the Board. We do continue to touch base with our counterparts at LANL on a very regular basis to make sure that we're in good contact and that we're following the terms of the MOU.

On the DOE grant for Rio Grande sampling which as many of you remember was a significant issue in the negotiations, not much of that budget has been used at this point in the year which is not uncommon. But we are developing a plan to even do sort of baseline testing so that we can exhaust that grant as appropriately as possible to make sure that we do exercise those funds that are available to us for water quality sampling.

There are lots of issues up at LANL but on the limited topic on this agenda which is the annual review meeting, I think that completes my summary of the memo. There's other information in the memo and if you have any questions, I would be happy to answer them. Thank you.

Mr. Carpenter had nothing additional to add.

COMMISSIONER HANSEN: Thank you for the update. Everything is moving forward with San I?

MR. HARWOOD: To the best of my knowledge, everything is moving forward with San I and if there's any changes to that, I'll get an update out to the Board directly.

I should have mentioned, I intend to, if it's okay with you Chair, if we have any material news, like there's a delay or a start date for the gage between now and the next Board meeting, I would like to just get that news out to you directly on email; if you like. And if it doesn't rise to the level of an agenda item, we'll have Rick update you under matters from the manager.

CHAIR ROMERO-WIRTH: Okay.

COMMISSIONER HANSEN: So you said a week from Monday?

MR. HARWOOD: A week from Friday, Friday the 15<sup>th</sup> is when they intend to start construction.

COMMISSIONER HANSEN: So July 15<sup>th</sup>. Let's hope that happens. Also, where are we on the water quality working – we were going to be working with Lynn Komer, is that her name?

MR. CARPENTER: Madam Chair, Commissioner Hansen, yes, Lynn Komer is her name. We have not brought in yet. We are not yet ready to do that. She is still on deck.

MR. HARWOOD: And just to be clear, that is the source water protection plan. And Ms. Komer was going to do the public involvement part to sort of scope the next

source water protection plan. The one that was done a number of years ago, only looked three miles upstream from the BDD intake cause that was sort of the NMED program at the time that funded that initial study, and yes, as Rick said, it is still on the list.

COMMISSIONER HANSEN: Okay. And then have you been doing sampling during the monsoon further upstream?

MR. HARWOOD: I'm not up to speed on what sampling may have actually occurred.

MR. CARPENTER: Sampling upstream on the Rio Grande or up at LANL?

COMMISSIONER HANSEN: Up on Los Alamos Canyon.

MR. CARPENTER: Well, LANL does that. We would sample during a special storm event and then we take note of that.

COMMISSIONER HANSEN: And there hasn't been any storm events?

MR. CARPENTER: We have not had an early notification system advance of that.

MR. HARWOOD: Which is remarkable given the monsoon; right? But even – as I understand it and I'm not a hydrologist, as I understand it these monsoons have been so gentle that they haven't triggered some flooding where you might think that there had been surface flow.

COMMISSIONER HANSEN: So the monsoons have stayed over the Sangre de Cristos for some reason.

MR. HARWOOD: I think it has rained in the Jemez but just not sufficiently to generate a large flow that would trigger the ENS; is that right, Rick?

MR. CARPENTER: That's correct.

There were no further questions.

**c. Report on the June 30, 2022 Fiscal Services Audit Committee - FSAC**

ANTOINETTE ARMIJO-ROUGEMONT (BDD Accounting Supervisor): Good afternoon, Madam Chair and members of the Board. We did hold a FSAC committee meeting on June 30<sup>th</sup>. In attendance was Chair Romero-Wirth, Rick Carpenter, Tom Egelhoff, John Dupuis, Commissioner Hamilton, Nancy Long, myself, Monique Maes and Ron Spilman. We reviewed five items on the agenda.

The first item was an update regarding the City's audit by Ricky Bejarano and he will be presenting today to the Board. I think they have since met with OSA and he should have some updated information for us today on how the City will be preceding with the new audit and the City's current cash situation. We also discussed having separate accounts for BDD and SWMA and he mentioned that we should have separate accounts by July 2023.

Our next item was request for approval of amendment #1 to a service agreement with Alpha Southwest to extend the term to 6/30/23. We're going to be carrying over funds from last fiscal year for this project and it's the raw water lift station project.

The third item was request that request for approval of amendment # 3 to the Service Agreement with Alpha Southwest, to extend the term and increase the compensation for fiscal year 23 and this is for on-call emergency repair services.

The fourth items was, request formal adoption of the Fiscal Year 2023 Annual Budget. This was brought to the Board three times prior. In March we were asked to

increase the Major Repair and Replacement Fund amount to \$1 million, which we did. We brought that back in April. And then we were asked by the Chair to increase the salaries from 4 percent to 8 percent. So we brought that back in May for approval. Since then it has been approved both by the City Council and the County Commission and this is for the formal adoption by the Board.

Our fifth item was for request for approval to extend chemical contract bids for an additional year from various vendors for a total of \$791,288 for fy23. The amount included in the budget for this current fiscal year was \$385,000 which was around \$13,000 more than the previous fiscal year. We weren't aware until recently about this large increase and the large price increase is associated with the chemical industry from labor to materials, energy cost, transportation and virtually every cost associated with manufacturing. Per the memo included in your packet from the vendor there is an imbalance in supply and demand causing project shortages worldwide due to various reasons including political reasons and the pandemic. Due to the fact that we currently have inventory on hand, our system will calculate an average weighted cost between the current inventory and then new inventory. So I don't expect the costs to be this high but we will continue to monitor it on a monthly basis but we won't know until we get further to the end of the fiscal year if we'll need to come back with budget request or not. We are going to do everything that we can to purchase locally whenever possible and to absorb the costs in other sections of our budget. Like I said, we don't know if the budget increase will be necessary until the end of the fiscal year. We'll still be able to enter all of our purchase orders because this is an inventory account that hits the balance sheet, so the expenses are incurred as we use the product. This is Monique's item. As we all know, there's unforeseen and unpredictable costs across all industries right now. So Monique will review this with you again and if you have any other questions Rick and Randy will be able to answer those for you.

There were no questions.

**d. Buckman Direct Diversion Audit: Update on City of Santa Fe Fiscal Year 2021 Audit**

RICKY BEJARANO (Accounting Officer and Acting Assistant Finance Director): Thank you. By way of update, we continue discussions with OSA and DFA primarily DFA since this started. On Tuesday, May 17<sup>th</sup>, we met with both DFA and the Office of the State Auditor. They provided a listing that had been generated by the auditors that had withdrawn, CliftonLarsonAllen, there were 27 items on that listing of things that they wanted to see. We actually had hundreds of others provided by client items that had been completed up to that point.

On Friday, June 24<sup>th</sup> we met again with both the Office of the State Auditors and the Department of Finance Administration. The Office of the State Auditors presented a different format that they wanted – it was essentially a Gantt Chart off of AMS project which we have completed and we are ready to submit.

At our behest, we met for a working session with the Department of Finance and Administration since these are operational issues. DFA is helping us and working with us towards that end. We presented the hundreds of items that we had already had ready for

audit. DFA agrees. And DFA agrees that we'll be ready for the readiness for audit assessment on July 15<sup>th</sup> or thereabouts.

I continue discussions with the CliftonLarsonAllen firm. I talked to their essentially their auditor in charge, Matt Bone. We are having discussions about when they will be coming in to do the readiness for audit assessment and we're still waiting on that. But it will probably be either July 15<sup>th</sup> or very shortly the beginning of the week after. With that I stand for questions.

CHAIR ROMERO-WIRTH: A couple of things before we go to the Board. So we're going to be ready for audit July 15<sup>th</sup>. Can you talk a little bit about who is going to be doing the audit? What's happening with that?

MR. BEJARANO: There are two components to this. The first is the readiness for audit assessment. That definitely will be done by CLA. They have agreed to do that. Once they give us the go ahead, then we are ready to be audited. They may or may not take on the audit at this point. We do have an RFP issued currently that will come due, I believe it's the 17<sup>th</sup>, and at that point it will be awarded and either if CliftonLarsonAllen declines to do the 21 audit because of their schedule then the auditor selected as a result of the RFP would be conducting the audit. We did the RFP flexible enough so that it can either be an RFP for the three years beginning 21, including 21, 22 and 23. If CliftonLarson decides to do the 21 audit, then the RFP would be for 22, 23 and 24. So we're in a little bit of a holding pattern there but we're confident that we can get it out.

CHAIR ROMERO-WIRTH: And we issued that RFP with the blessing of the Office of the State Auditor.

MR. BEJARANO: Madam Chair, that is correct.

CHAIR ROMERO-WIRTH: I just want everybody to be up to speed with what's been going on and all of the hard work that you all are doing. There was a concern of this Board about the fact that the money – the BDD's chart of accounts is comingled with the City and that's part of what's delayed the audit for this Board and I believe it was referenced in an earlier report and maybe you can speak to that, that you believe we'll be able to have a separate chart of accounts in about a year; correct?

MR. BEJARANO: Yes, our drop dead date for that is June 30<sup>th</sup> of 2023. And I think that's a reasonable time period. The reason for waiting – well, not necessarily waiting but for hitting that as the target date is so that that can be audited as is and then we start 7/1/23 fresh and with the separation having been done.

CHAIR ROMERO-WIRTH: And then we – and that should resolve this problem that we have of this Board's audit being late because of the City's audit being late. I think what I'm hearing is that the City's audits are going to start to be on time now and in addition, this Board will no longer be attached to the City in that same way. We'll have a separate chart of accounts and we can have on time audits as well.

MR. BEJARANO: Madam Chair, that is correct.

CHAIR ROMERO-WIRTH: That's what I wanted to make sure was clarified. Other questions from the Board?

MR. HELMS: About comingling – at present everything is comingled but what our chair just mentioned is a separate chart of account or number of accounts but that's still comingled even though there may be accounting differences, the money is all in the same pot. Is that correct?

MR. BEJARANO: Madam Chair, Board member that is not correct. By June 30<sup>th</sup> of 23, we plan to have separate bank accounts and the money completely separated.

MR. HELMS: But presently, there is not a separate bank account; is that correct.

MR. BEJARANO: That is correct.

MR. HELMS: But there will be a separate bank account with everything that goes in and out that is just Buckman stuff and who has the authority over that account?

MR. BEJARANO: That would be BDD.

MR. HELMS: You mean our own person would be writing the checks for our purchases?

MR. BEJARANO: If I may, that still needs to be ironed out. But the plan is even if we continue maintaining the account, it would be a separate bank account and there would have to be internal controls in place with signature authority to authorize us to issue those checks from separate bank accounts.

MR. HELMS: But does the \$70 million that we got stay solely there or is some of it loaned out to the City –

CHAIR ROMERO-WIRTH: If I can. So you're talking about the \$70 million in settlement money.

MR. HELMS: Right.

CHAIR ROMERO-WIRTH: I don't know who can speak to that but that money is in a separate account currently. That is not comingled.

MR. HELMS: Under the control of BDD?

CHAIR ROMERO-WIRTH: Who can answer that?

MR. BEJARANO: It's with the investment firm.

MR. HELMS: No, no, not the investment firm. Who at City Hall or Buckman has the authority?

MR. BEJARANO: Currently, I would have to look into that to see who has signatory authority. But currently there is no activity other than it is in that brokerage account.

MR. HELMS: Thank you.

CHAIR ROMERO-WIRTH: Yes.

ALEXIS LOTERO (Interim Finance Director): Madam Chair, members I have a six slide presentation to just kind of show you about where that settlement money is and where it's at. I can't really address any of the specific, I will be honest. Brad Fluetsch was our investment officer and he resigned and has moved on. We are looking at contracting out those duties. We haven't established who we will be contracting with yet. I sent the presentation to Jamie-Rae, did you receive it? We could put it up and show the account if you'd like.

The Chair pointed out that the presentation was not on the agenda and could be on the next agenda.

CHAIR ROMERO-WIRTH: The bottom line is that that money is in a separate account and is not comingled.

MS. LOTERO: Yes, it is in a separate account and you'll be able to see where the account is in total at this point in time. If you'd like, I can send the presentation in advance of the meeting.

CHAIR ROMERO-WIRTH: We'll need to talk about putting it on the agenda and in advance to put it in the packet.

MS. LOTERO: I didn't have an invitation and I wasn't really prepared. So I apologize to everybody.

CHAIR ROMERO-WIRTH: We'll get that on the agenda for next time.

COMMISSIONER HANSEN: I wonder where is the cash balances of the present time for the Buckman Direct Diversion? So where are they at the moment?

MS. LOTERO: I have the current status of accounts for the investments. I don't have the specific information for the other cash balances that belong to BDD. It's comingled and that's probably part of the audit process they'll be able to definitively tell us what those balances are.

COMMISSIONER HANSEN: So we're not going to be able to file our audit until you get your audit done; isn't that correct? Okay, they shook their heads yes. And when do you estimate that you will actually have your audit done?

MR. BEJARANO: That will depend on who does the audit. If it's CliftonLarsonAllen it can be done probably within 90 days. If they decide not to conduct the audit then it will be depend on the firm that we hire that is awarded the RFP.

COMMISSIONER HANSEN: Okay, so it's an unknown. I can assume that it's an unknown when we will have the audit finished at the moment.

MR. BEJARANO: Yes.

COMMISSIONER HANSEN: But probably next month you'll have better news for us.

MR. BEJARANO: We hope to.

COMMISSIONER HANSEN: And then as you're going through this process, to help me understand, you get through 21 and the goal is to separate us by June 2023. So as we start this year and you sign the next audit is that when you'll start pulling out and separating the accounts so that you can get your ducks in a row?

MR. BEJARANO: The plan is to actually begin now. As soon as the 21 audit is complete but we're not waiting until it's complete, we'll have a better picture. But the plan is to extricate the accounts now and begin to set up the separate bank accounts, separate accounting, because it is going to take about a year to get everything extricated. And then be ready for audit on June 30<sup>th</sup> of 23 – it will essentially continue to be comingled but the cutoff is 7/1/23 is when the separate accounting begins to occur in earnest.

COMMISSIONER HANSEN: Okay and once again, Ms. Lotero, you are the interim finance director?

MS. LOTERO: Correct.

COMMISSIONER HANSEN: And you have a presentation that you would like to provide to us at our next meeting.

MS. LOTERO: I had requested that Mr. Fluetsch prepare a presentation for you that I am happy to go through with you and then if there are follow up questions I'm happy to get those answered for you, yes.

COMMISSIONER HANSEN: I would really like to see that. I would also like to request that you come to SWMA and give us the same presentation.

CHAIR ROMERO-WIRTH: Just a point of order. That presentation has to do with the settlement funds only. So it's not relevant to SWMA. It is only relevant to this Board.

COMMISSIONER HANSEN: Okay, I apologize.

CHAIR ROMERO-WIRTH: Just to be clear, the presentation that we're talking about is the \$70 million in settlement funds that the City and County and BDD Board have acquired to do work with the Buckman Diversion project. The presentation is around how those funds are invested and just so you all know, State law dictates very closely what can and can't happen with those funds. So the presentation is just to make you all aware of how that works. There are very tight controls over what can happen with that money. But I think if we talk to Mr. Carpenter he will tell us that the investment of those funds is very important because we have an opportunity to make a little bit of money which is very important given the fact that we have inflationary costs that are making everything more expensive.

So that presentation I thought was on the agenda and I'm very sorry it was not. We will have it on the agenda next meeting so that you all know exactly what is happening with that money. It is in a separate account.

There were no further questions and the presenters were thanked.

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

### **a. Request for approval to extend chemical contract bids for an additional year from various awarded vendors for a total amount of \$791,288 for FY22/23**

MONIQUE MAES (Contract Administrator); Madam Chair, members of the Board, I can provide you with information as to how we arrived at these figures. But ultimately I'll have to refer questions to Randy and Rick and Antoinette. We do use an inventory module and we store and use chemicals as we need them. I'll stand for questions.

CHAIR ROMERO-WIRTH: Mr. Carpenter, do you want to answer the question that Commissioner Hansen had about why you were not amending the budget for this and I think we also heard about how we're going to be monitoring this expense. Maybe just a little bit more on that.

MR. CARPENTER: Yes, Madam Chair. So this is in an increase in cost. We will be monitoring the drawdown of chemicals and also the costs that are associated with that and possibly we could bring that back to the Board at some point during the fiscal year. As we approach the end of next fiscal year, we'll have a much better idea of whether or not we might need to bring a BAR back to the Board and at that time –

CHAIR ROMERO-WIRTH: To cover the cost?

MR. CARPENTER: Yes, that's correct.

CHAIR ROMERO-WIRTH: Questions; is that clear as mud?

COMMISSIONER HANSEN: I see this long list of people who we get the chemicals from. I understood from Antoinette that we still have chemicals and so – but we're going to need to purchase chemicals but how soon, we don't know. Is that a good assumption?

MR. SUGRUE: I can answer that. It's a moving target and I think you understand that. Some chemicals we have to budget for but we don't order any because it's a contingent as if needed. If we don't need them, we don't order them. We have some in stock. We base our initial chemical budget on City-County estimates of the water that they may as from us. Those estimates are usually low. The last couple of years we have really focused on surface water use and so we produced over 2 billion gallons a year and therefore our chemical costs are certainly higher. It also depends on water quality in the river. The more mud in the river – to muddy it even more – the more mud, higher the chemical usage to treat that drinking water. So it's a moving target, as I say. The cost of course, unanticipated increases, we just have to make the best of that. And we do as operators foremost in our mind is economy and using the chemicals in the most economic treatment way that we can. That's why we do have a turbidity target in the river, we don't divert water if it's over 600 turbidity units because we know that stuff is going to be more difficult and therefore more costly to treat. So that is always on our mind, to economize our chemical usage.

COMMISSIONER HANSEN: So, Madam Chair, turbidity in the river with the monsoons, as that increased turbidity?

MR. SUGRUE: A couple of times we went over 600 and we shut down therefore because we don't want to pull that much more sediment up into the system. All in all though, it has been a good year for turbidity. There are times when the turbidity would go over 2,000. Right now it's probably around 100 and that water is very treatable. The best turbidity in the winter time might be around 10 and the water looks as clear as a glass out of your closet in your kitchen.

So this has not been a bad year. But we do manage it based on how difficult the water might be to treat.

COMMISSIONER HANSEN: Thank you.

CHAIR ROMERO-WIRTH: I think that was really helpful. Thank you for a little lesson in your world.

MR. SUGRUE: Sure, I am always available, just shoot me an email.

CHAIR ROMERO-WIRTH: We do need to get out there and do a little visit. The pandemic has thrown a wrench in things. I think it is always good to get out there so we'll look forward to doing that. We need a motion to approve.

MR. HELMS: Move to approve.

COMMISSIONER HANSEN: Second.

CHAIR ROMERO-WIRTH: There is a motion and a second to approve the request to extend chemical contract bids for an additional year from various awarded vendors for a total amount of \$791,288 for FY22/23.

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

**9 MATTERS FROM THE PUBLIC – None were presented**

**10. MATTERS FROM THE BOARD**

MR. HELMS: Yes, I have a few questions. Did we make formally a statement to the public regarding the litigation?

NANCY LONG (BDD Counsel): Madam Chair, Mr. Helms, there was not a formal press release issued. There was an article in the *Santa Fe Reporter* and a reported did call for comments. So it was covered there but it was at a time when we were still wrapping up the settlement in terms of receiving funds so we were careful about it. We did not issue a press release.

MR. HELMS: Thank you for that. I tried to get to that reporter although my browser isn't up to date so I run into that problem.

My second question is, is there an accounting of all of the expenses – money in and a certain amount out for lawyers or whatnot – is there a statement of hours specifying that topic? The economics of that topic? Do you understand what I mean?

CHAIR ROMERO-WIRTH: In terms of what we spent on the law suit.

MR. HELMS: Yes, what did we spend getting to this juicy award; what is our net?

CHAIR ROMERO-WIRTH: It has been reflected in the budget documents but I don't know that we've done a standalone.

MS. LONG: I don't think that we have, Madam Chair and Member Helms. We can calculate the attorney fees that we have spent, the expert fees and costs and that would be the amount expended to get to the settlement amount.

MR. HELMS: I would like for that to be done and I would like to receive a copy of it.

MS. LONG: All right. We can do that.

MR. HELMS: The third was – I guess when we talked about who has control of the money – but I am very interested in seeing that and to follow the money. I don't want it buried in a bunch of different accounts. I'd like it in a specific account.

CHAIR ROMERO-WIRTH: Just a point of clarification, I think when we have a separate charge of accounts and then we have an audit that will tell a lot about the overall operation. Are you talking about the settlement money now or are you talking about –

MR. HELMS: I am talking about the settlement money which is a very discrete topic.

MS. LONG: Madam Chair, yes, the settlement funds are sitting in a separate account and the City of Santa Fe is our fiscal agent in investing those funds. And that's a presentation we'll hear about next month. We have not made any expenditures from that account yet. The plan will be to expend that money on the Buckman –

MR. HELMS: I'm not talking about that. I'm looking at it as sort of the head of a company and I want the economics of that law suit that is now wrapped up. What are the economics? What are the finances of that? It seems to me that we can do that in-house

MS. LONG: I believe that that's correct. We can calculate what the fees have been attributable to that settlement amount since the beginning.

MR. HELMS: We can do that?

MS. LONG: Yes.

MR. HELMS: And will we be doing it? I am requesting it but it's just for me personally –

CHAIR ROMERO-WIRTH: I think we can do it. A one pager or whatever it is of what we spent.

MS. LONG: We can work with Antoinette to come up with that and we can give her names of the law firms and I separate my time attributable to the litigation. So I think with that and our expert costs which came through as sort of a flow through on Snell and Wilmer's invoices, it should not be difficult to put together.

MR. HELMS: Good. Thank you.

CHAIR ROMERO-WIRTH: Commissioner Hansen.

COMMISSIONER HANSEN: Just for clarity sake. BDD paid, the City and the County and Las Campanas paid for all of the lawsuit and everything separately. It did not come out of settlement money.

MR. HELMS: I understand that. But my point was, as a businessman let's put it that way, I have a certain number of employees off doing something and now that it is all over, I want an accounting of that something and want to track that.

MS. LONG: We can do that.

**11. NEXT MEETING:** Thursday, August 4, 2022 at 4:00 p.m.

**12. ADJOURN**

Having completed the agenda and with no further business to come before the Board, Chair Romero-Wirth declared this meeting adjourned at approximately 4:56 p.m.

Approved by:

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Carol Romero-Wirth, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

**ATTEST TO**

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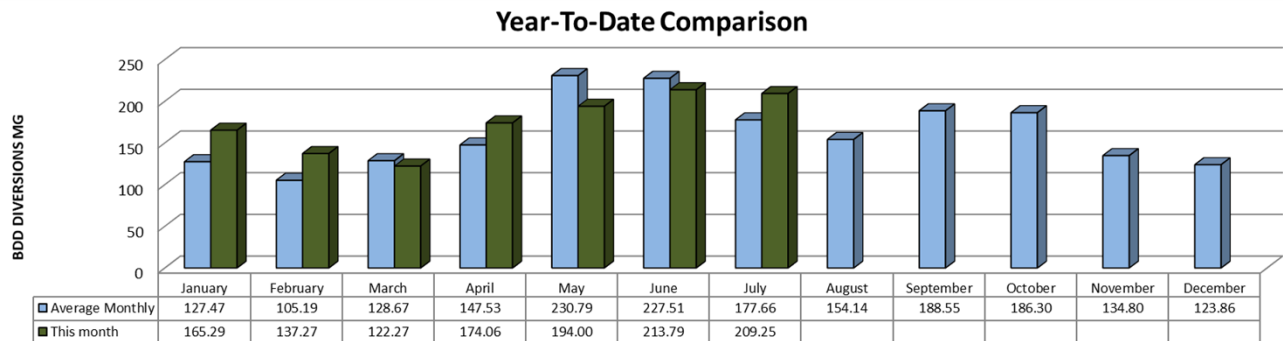
KRISTINE BUSTOS-MIHELIC  
SANTA FE CITY CLERK



**Date:** August 4, 2022  
**To:** Buckman Direct Diversion Board  
**From:** Randy Sugrue, BDD Operations Superintendent  
**Subject:** Update on BDD Operations for the Month of July 2022

**ITEM:**

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of July 2022. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
  - a. Raw water diversions: 6.75 MGD.
  - b. Drinking water deliveries through Booster Station 4A/5A: 6.28 MGD.
  - c. Raw water delivery to Las Campanas at BS2A: 0.37 MG
  - d. Onsite treated and non-treated water storage: 0.10 MGD Average.
2. The BDD is providing approximately 57% percent of the water supply to the City and County for the month.
3. The BDD year-to-date diversions are depicted below:



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



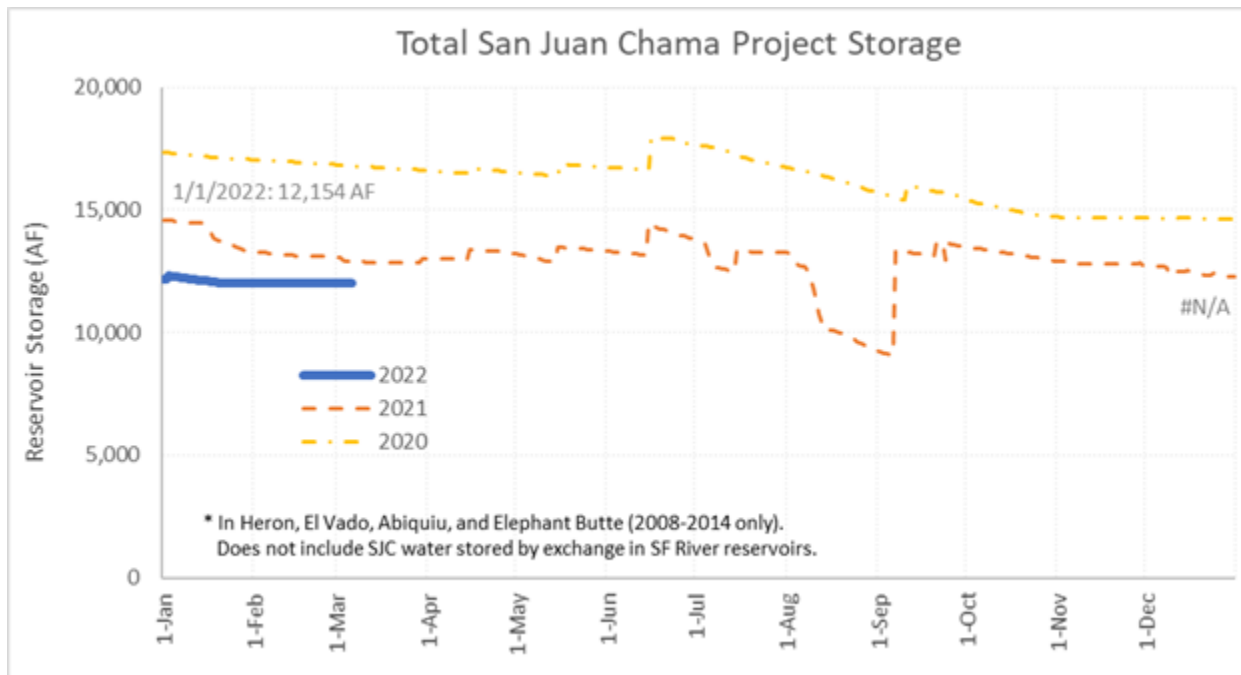
## Regional Water Overview

Daily metered regional water demand for the month of July 2022 is approximately 11.0 MGD.

Rio Grande flows for July 2022 averaged approximately 475 CFS (cubic feet per second.)

CRWTP reservoir storage: Nichols: 75.3%/McClure: 8.9% (20.1% combined) Watershed Inflow: 5.56 MGD

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



## ENSO Summary

July 18, 2022

### La Niña is present.\*

Equatorial sea surface temperatures (SSTs) are below average across most of the Pacific Ocean.

The tropical Pacific atmosphere is consistent with La Niña.

La Niña is favored to continue through 2022 with the odds for La Niña decreasing into the Northern Hemisphere late summer (60% chance in July-September 2022) before increasing through the Northern Hemisphere fall and early winter 2022 (62-66% chance).



## Buckman Direct Diversion Monthly SJC and Native Diversions

In Acre-Feet							
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	511.288	154.905	0.000	356.382	356.382	0.000	3.203
FEB	421.814	421.814	0.000	0.000	0.000	0.000	0.000
MAR	376.496	302.219	0.000	74.277	74.277	0.000	0.758
APR	538.222	408.237	0.000	129.985	129.985	0.000	1.327
MAY	596.137	596.137	0.000	0.000	0.000	0.000	0.000
JUN	660.831	300.636	0.000	360.194	360.194	0.000	2.397
JUL	642.400	181.900	0.000	460.500	460.500	0.000	1.593
AUG	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000
<b>TOTAL</b>	<b>3,747.187</b>	<b>2,365.848</b>	<b>0.000</b>	<b>1,381.338</b>	<b>1,381.338</b>	<b>0.000</b>	<b>9.278</b>

## In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	50.458	0.000	114.878	114.878	0.000	165.336
FEB	137.399	0.000	0.000	0.000	0.000	137.399
MAR	98.443	0.000	23.913	23.913	0.000	122.356
APR	132.976	0.000	41.848	41.848	0.000	174.825
MAY	194.181	0.000	0.000	0.000	0.000	194.181
JUN	97.927	0.000	115.951	115.951	0.000	213.878
JUL	59.251	0.000	150.000	150.000	0.000	209.251
AUG	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000
<b>TOTAL</b>	<b>770.635</b>	<b>0.000</b>	<b>446.591</b>	<b>446.591</b>	<b>0.000</b>	<b>1,217.226</b>



## Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-21							
In Acre-Feet							
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	378.548	42.119	0.000	336.429	336.429	0.000	3.456
FEB	408.601	191.550	0.000	217.051	217.051	0.000	2.229
MAR	442.832	442.832	0.000	0.000	0.000	0.000	0.000
APR	624.282	506.349	0.000	117.933	117.933	0.000	1.195
MAY	868.184	483.518	0.000	384.666	384.666	0.000	2.477
JUN	879.493	302.801	0.000	576.692	576.692	0.000	3.555
JUL	562.156	-17.518	0.000	579.674	579.674	0.000	2.767
AUG	758.665	-0.154	0.000	758.819	758.819	0.000	3.757
SEP	542.059	-49.305	0.000	591.364	591.364	0.000	2.930
OCT	553.705	-22.895	0.000	576.600	576.600	0.000	5.614
NOV	423.977	368.177	0.000	55.800	55.800	0.000	0.543
DEC	423.345	-0.732	0.000	424.077	424.077	0.000	2.367
<b>TOTAL</b>	<b>6,865.847</b>	<b>2,246.741</b>	<b>0.000</b>	<b>4,619.106</b>	<b>4,619.106</b>	<b>0.000</b>	<b>30.890</b>

### In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	13.720	0.000	108.306	108.306	0.000	122.026
FEB	62.394	0.000	69.875	69.875	0.000	132.269
MAR	144.245	0.000	0.000	0.000	0.000	144.245
APR	164.934	0.000	37.971	37.971	0.000	202.906
MAY	157.498	0.000	123.871	123.871	0.000	281.369
JUN	98.632	0.000	185.788	185.788	0.000	284.420
JUL	-5.706	0.000	186.765	186.765	0.000	181.059
AUG	-0.050	0.000	244.396	244.396	0.000	244.346
SEP	-16.060	0.000	190.470	190.470	0.000	174.409
OCT	-7.458	0.000	185.724	185.724	0.000	178.266
NOV	119.927	0.000	17.973	17.973	0.000	137.901
DEC	-0.238	0.000	138.136	138.136	0.000	137.898
<b>TOTAL</b>	<b>731.837</b>	<b>0.000</b>	<b>1,489.275</b>	<b>1,489.275</b>	<b>0.000</b>	<b>2,221.113</b>



DATE: August 04, 2022  
TO: Buckman Direct Diversion Board  
FROM: Bill Schneider, Water Resources Manager

**SUBJECT:** Update on San Juan Chama Return Project. (Bill Schneider, Water Resources Manager, [whschneider@santafenm.gov](mailto:whschneider@santafenm.gov), 955-4203; Rick Carpenter, BDD Facilities Manager, [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov), 955-4507; Kyle Harwood, BDD Legal Counsel, [kyle@egolflaw.com](mailto:kyle@egolflaw.com), 986-9641)

**ITEM:** The San Juan Chama Return Project (Project) has reached several major milestones since the November 2-3, 2021, Public Scoping Meetings. This informational item will highlight the process underway to address permitting and engineering requirements for the Project.

### BACKGROUND:

Several major milestones have been reached for the Project, which include:

1. Collective Funding Agreements (CFAs) with the 3 Federal Agencies are completed with United States Forest Service (USFS), Bureau of Land Management (BLM), and Bureau of Reclamation (USBR). These Agreements are designed to cooperatively complete an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA). The Latest EA developments, include:
  - a. Cultural and Biological Surveys
  - b. Lower Santa Fe River Hydrology Reporting
2. Return flow Plan (Plan) Application with the Office of the New Mexico State Engineer (OSE) submitted and publicly noticed. The Plan demonstrates the timing and amount of Project return flows, a field measurement strategy, and details on hydrologic conditions.
3. Receipt of 4 proposals for services to complete a 100% engineering design of the Project.
4. Submittal of financial requirements necessary to institute the Project award of \$6,000,000 from USBR under the Title XVI Program.
5. Development of a planning framework for the Santa Fe County led Lower Santa Fe River Planning Process which included public participation and contributions of the methodology and objectives.

Details for these 5 major milestones will be presented on August 4<sup>th</sup> to the Buckman Direct Diversion Board.

### Requested Action:

None. Information only.





# Memorandum



**Buckman Direct Diversion**

**Date:** June 24, 2022  
**To:** The Buckman Direct Diversion Board  
**From:** Monique Maes, BDD Contract Administrator  
**Via:** Rick Carpenter, BDD Facilities Manager  
Antoinette Armijo-Rougemont, BDD Accounting Supervisor  
**Subject:** Snell & Wilmer, LLP Professional Services Agreement

## ITEM

Request for approval of Contract to the Legal Services Agreement in the amount of \$180,000.00 Plus applicable tax for FY2023 legal service with Snell & Wilmer, LLP.

## BACKGROUND

On March 1, 2018, the Buckman Direct Diversion Board granted RFP '18/12/P for litigation services to Snell & Wilmer, LLP to serve as legal counsel for the Buckman Direct Diversion Board. This four year contract has culminated and per the purchasing manual we exercise the option to create a new contract for the remainder of services needed.

This request is in an amount of \$180,000.00 for fiscal year 2023.

## ACTION REQUESTED

Staff recommends approval of the Legal Services Agreement with Snell & Wilmer, LLP. Funding is available within our approved FY2022 Operating Budget.

ORG/OBJ: Legal Service #8000801.510200

MUNIS Contract # 3200242

Approved By BDDDB June 2<sup>th</sup>, 2021

BDDDB Chair Carol Romero-Wirth



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



**BUCKMAN DIRECT DIVERSION BDDB  
PROFESSIONAL SERVICES AGREEMENT  
WITH SNELL & WILMER, LLP**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the Buckman Direct Diversion Board (“BDDDB”) and Snell & Wilmer, LLP (“Contractor”). The effective date of this Agreement shall be the date when it is executed by the BDDDB.

**1. SCOPE OF SERVICES**

Contractor shall perform the following under this Agreement, if and as requested by the BDDDB:

- Evaluation of the reprocurement issues for the Buckman Direct Diversion Project (“BDD Project”): evaluation of potential project delivery methods for redesign and reconstruction of the BDD Project; working with consulting engineers regarding potential RFP’s and scope of work for engineers and contractors; and s advice regarding contract forms;
- Attend BDDDB meetings as needed and requested, and relevant meetings of the Governing Body of the City, the Board of County Commissioners and BDD project staff meeting to provide legal advice and updates related to reprocurement of BDD Project, also as needed and requested; and
- Brief BDD Project Partners’ officials and staff members as directed by the BDDDB.

**2. STANDARD OF PERFORMANCE; LICENSES**

A. Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor’s services are rendered.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

### **3. COMPENSATION**

A. Compensation under this Agreement shall be One Hundred Eighty Thousand Dollars (\$180,000.00) plus applicable gross receipts tax, as described in the attached Exhibit A.

B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the BDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services performed.

### **4. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

### **5. TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the BDDB and terminate June 30, 2023.

### **6. TERMINATION**

A. This Agreement may be terminated by the BDDB upon thirty (30) days written notice to Contractor. In the event of such termination:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the BDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

## **7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

A. Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

## **8. CONFIDENTIALITY**

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the BDDB.

**9. CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

**10. ASSIGNMENT; SUBCONTRACTING**

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDDB.

**11. RELEASE**

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. Contractor agrees not to purport to bind the BDDDB to any obligation not assumed herein by the BDDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

**12. INSURANCE**

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDDB's request provided to the BDDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB

reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (ii) obtained BDDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDDB's exposure to loss for the duration of this Agreement.

C. **Types of Insurance.** At all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

(1) **Commercial General Liability.** Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (other than Products/Completed Operation)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

(2) **Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the BDDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractor's policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDDB is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives”. In the event Contractor’s insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDDB within four working days of Contractor’s receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated “A-” and “V” or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDDB. The BDDDB will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of New Mexico.

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of Contractor.

G. **Specific Provisions Required.**

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDDB.

(a) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDDB's exposure to loss.

(b) Before performing any Professional Services, Contractor shall provide the BDDDB with all Certificates of Insurance accompanied with all endorsements.

(c) The BDDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDDB. The BDDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

(d) Contractor may obtain additional insurance not required by this Agreement.

### **13. INDEMNIFICATION.**

**General Indemnification.** To the greatest extent permitted by law, Contractor shall indemnify and hold harmless the BDDDB, City of Santa Fe and Santa Fe County, and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's fault or negligence under this Agreement as well as the performance or non-performance of Contractor's employees and those directly under Contractor's control.

**Indemnification for Professional Acts, Errors or Omissions.** The General Indemnification shall apply only to professional acts, errors or omissions covered by Contractor's Professional Liability insurance.

**Limitations.** The terms of this General Indemnification shall not apply to the actions of any of Contractor's independent contractors, nor shall it apply to any claims relating to the fault or negligence of the BDDDB, the City of Santa Fe or Santa Fe County.

### **14. NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the BDDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**15. THIRD-PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

**16. RECORDS, DOCUMENT CONTROL AND AUDIT**

A. Contractor shall conform with and participate in the Document Control policies of the BDDB or City of Santa Fe. Contractor shall maintain, throughout the term of this Agreement and for a period of three (3) years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDB and City of Santa Fe shall have the right to audit the billing both before and after payment to Contractor. Payment under this Agreement shall not foreclose the right of the BDDB or City of Santa Fe to recover excessive or illegal payments.

**17. APPLICABLE LAW; CHOICE OF LAW; VENUE**

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**18. AMENDMENT**

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

**19. SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**20. NON-DISCRIMINATION**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

**21. SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof shall not in any way be affected or impaired thereby.

## 22. NOTICES

Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

**BDDB:** Rick Carpenter  
Facilities Manager  
Buckman Direct Diversion  
341 Caja Del Rio Road  
Santa Fe, NM 87506  
Email: rrcarpenter@ci.santa-fe.nm.us

**With a copy to:** Nancy R. Long, Esq.  
BDDB Independent Counsel  
Long, Komer & Associates, P.A.  
1800 Old Pecos Trail, Ste. A.  
P. O. Box 5098  
Santa Fe, NM 87502-5098  
Email: nancy@longkomer.com

**CONTRACTOR:** Snell & Wilmer, LLP  
Daniel R. Frost  
1200 Seventeenth Street, Suite 1900  
Denver, CO 80202-5854  
Email: dfrost@swlaw.com

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the email stating that the notice has been received, in which case the notice shall be deemed effective as of

the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth below.

***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]***

**BUCKMAN DIRECT DIVERSION BOARD**

**CONTRACTOR:  
Snell & Wilmer, LLP**

By: \_\_\_\_\_  
Carol Romero-Wirth, BDDDB Chair

Signature: \_\_\_\_\_

Printed Name: Daniel R. Frost

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

Nancy R. Long  
Nancy R. Long, BDDDB Counsel

NM Taxation & Revenue  
CRS # \_\_\_\_\_

City of Santa Fe Business  
Registration # \_\_\_\_\_

**APPROVED**

\_\_\_\_\_  
City Finance Director

**ATTEST**

\_\_\_\_\_  
City Clerk

File Date: \_\_\_\_\_

EXHIBIT A

June 22, 2022

**VIA E-MAIL**

Monique Maes Contracts  
Administrator Buckman Direct  
Diversion (BDD) 341 Caja Del Rio  
Road Santa Fe, NM 87506

**Re: Buckman Direct Diversion Board v. CDM Smith, et al.  
Source Procurement for FY 2023**

Dear Monique:

This letter is in reference to the May 12, 2022, memorandum captioned: “Sole Source Procurement for FY 2023” (“Memo”) for the Buckman Direct Diversion Board. This is to acknowledge that because of its extensive past background in the litigation with the owner’s consultant and the design-builder, Snell & Wilmer LLP is the only source for the services referred to in the Memo. Our budget for those services is \$180,000 for FY 2023, at \$15,000 per month. It is anticipated that those services would be provided by Daniel Frost at the rate of \$560 per hour.

Please let me know if you have questions. We very much appreciate the continued opportunity to be of service. Very truly yours,

Snell & Wilmer

Daniel R. Frost

cc: Nancy Long  
Rick Carpenter  
Jennifer Catero

4881-4344-9893

ALBUQUERQUE BOISE DENVER LAS VEGAS LOS ANGELES LOS CABOS ORANGE COUNTY PHOENIX PORTLAND  
RENO SALT LAKE CITY SAN DIEGO SEATTLE TUCSON WASHINGTON, D.C.



# City of Santa Fe, New Mexico

## Memorandum



**DATE:** July 22, 2022

**TO:** Buckman Direct Diversion Board

**VIA:** Regina Wheeler, Public Works Department Director *RW*  
RW (Jul 22, 2022 10:12 MDT)

**FROM:** Caryn Grosse, Facilities Project Administrator Sr. *Cg*

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### **ACTION**

Approval of Amendment #2 to United States Forest Service Permit ESP104603 for solar arrays at Buckman Direct Diversion Raw Water Lift Station to add archeological monitoring; (Caryn Grosse, Project Administrator Senior, [cgrosse@santafenm.gov](mailto:cgrosse@santafenm.gov), 505-955-5938)

### **BACKGROUND AND SUMMARY:**

As part of a City wide renewable energy and water conservation project that is currently underway, a total of approximately 1 megawatt of solar will be installed at BDD Booster Station #1A and BDD Lift Station.

In June 2020, the Special Use Permit (SUP) applications for BDD Lift Station and BS1A array locations were submitted to U.S. Forest Service. In October 2021, US Forest Service completed their review, and provided a decision letter and Special Use Permit which combined the two applications for BDD Booster Station 1A and BDD Raw Water Lift Station into a single Special Use Permit, ESP104603. The BDD Board approved the permit at the November 4, 2021, meeting.

USFS sent Amendment #1 to ESP104603, which required archeological assessment and monitoring at BDD Booster Station 1A. This amendment was approved by BDD Board on June 2, 2022, and the amendment was finalized by USFS on June 22, 2022.

As required by Amendment #1, the archeological contractor completed an archeological assessment of the area to the east of the array sites and found soil disturbance from vehicles driving across the archeological site. In addition, the archeologist marked the access route to the solar array site adjacent to BDD Booster Station 1A, and confirmed with USFS that the marked route was acceptable. Under the supervision of the archeological contractor and in coordination with the BDD Facilities Manager, the solar subcontractor began surveying and clearing work at BDD Booster Station 1A during the week July 18, 2022. Regular reports are being made to USFS and BDD leadership as the work progresses.

USFS informed the City on July 19, 2022, that their review of the area near the BDD Raw Water Lift Station during the permitting process had been incomplete, and that there was an historic site near the intended construction area that needed additional review. The City provided the requested information the same day, and USFS was quickly able to complete their review. As a result, USFS has presented Amendment#2, which contains requirements to protect the cultural site. As the cultural site is more than 150' away from the array site, these restrictions should have no impact on the project boundaries. The schedule is affected, as start of work at this location has been delayed, as well as the need to coordinate the trenching schedule with the archeological contractor.

The City of Santa Fe will be responsible for the additional archeological monitoring costs and continue to coordinate with BDD staff on activities in the field.

### **EXHIBITS:**

Amendment #2 to ESP104603 Special Use Authorization for Solar Power Facility

Amendment #1 to ESP104603 Special Use Authorization for Solar Power Facility-signed  
Special Use Permit #ESP104603-Signed

Auth ID: ESP104603  
Contact ID: BDDDB  
Use Code: 623

FS-2700-23 (v. 10/09)  
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
AMENDMENT  
FOR  
SPECIAL-USE AUTHORIZATION**

**Amendment#: 2**

This amendment is attached to and made a part of the ESP104603 special use authorization for SOLAR POWER FACILITY issued to BUCKMAN DIRECT DIVERSION BOARD on 11/24/2021 which is hereby amended as follows:

For the purposes of protecting sensitive resources in the area indicated in red on the attached Appendix A-Map, this amendment places the following restrictions on the access to the construction site for the solar array at the Buckman Lift Station:

1) No mechanical disturbance will be permitted outside the proposed project footprint indicated by the blue rectangle and green line in the attached Appendix A-Map; 2) during project construction, vehicles and equipment are not allowed to enter the project area from the area south of the northeast corner of the proposed project location; 3) no parking of vehicles or staging of equipment will be permitted south of the existing facility parking location; and 4) no parking or staging off of the existing access road (Old Buckman); and 5) an archaeological contractor, operating under a special use permit issued by the Santa Fe National Forest, will be present and monitor while the conduit trench is dug.

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to Appendix A – Map attached hereto and made a part of this Amendment.

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Holder BUCKMAN DIRECT DIVERSION BOARD  
Holder Signature and Date

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Authorized Officer Signature and Date:  
for Debbie Cress  
Santa Fe National Forest  
Forest Supervisor

ESP401603 Amendment 2: Appendix A - Maps  
Buckman Direct Diversion Board, Solar Array by Lift Station

Red = Resource Sensitive Area; ground disturbance and equipment/vehicle staging is not permitted in this area

Blue = Solar Array

Green = underground powerline going from solar array to lift station



Auth ID: ESP104603  
Contact ID: BDDDB  
Use Code: 623

FS-2700-23 (v. 10/09)  
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
AMENDMENT  
FOR**

**SPECIAL-USE AUTHORIZATION**

**Amendment #1**

This amendment is attached to and made a part of the ESP104603 special use authorization for SOLAR POWER FACILITY to BUCKMAN DIRECT DIVERSION BOARD which is hereby amended as follows:

This amendment places additional requirements on the holder in regards to site restoration, access, and monitoring. This amendment is hereby incorporated into this special use authorization:

1. BDDDB must hire an archaeological contractor, working under a valid special use authorization issued by the SFNF, to complete a damage assessment report and update the site record. Tierra ROW is the preferred contractor, since they performed the initial cultural inventory and report. Prior to initiating work, that contractor must coordinate with Jana Comstock, Zone Archaeologist/Heritage Staff for the Espanola and Coyote Ranger Districts, at [jana.comstock@usda.gov](mailto:jana.comstock@usda.gov), to define the necessary scope of work and obtain documentation of the initial damage assessment performed SFNF archaeologists prior to commencing any work.
2. That archaeological contractor must document the cultural resource site 200 meters to both the north and south of the currently documented extent of the site to ensure a sufficient buffer around the project area and to account for damage beyond the currently documented southern portion of the site that was impacted.
3. The contract archaeologist must monitor all further construction activities related to the solar array, and upon project completion submit a monitoring report to Jana Comstock at [jana.comstock@usda.gov](mailto:jana.comstock@usda.gov).
4. BDDDB or its designee must repair the fence.
5. The unauthorized access road may not be used again for any vehicular travel, including related to addressing the requirements outlined in this letter and to the proposed installation of the solar array. All access to the proposed construction site must adhere to the requirement to use the surveyed access route specified in the draft special use authorization.

This Amendment is accepted subject to the conditions set forth herein, and to conditions to attached hereto and made a part of this Amendment.

Signature and Date:

  
6/20/2022  
HOLDER:  
BUCKMAN DIRECT DIVERSION BOARD

Signature and Date:

**DEBBIE CRESS**

Digitally signed by DEBBIE  
CRESS

Date: 2022.06.22 07:53:02 -06'00'

Authorized Officer

Debbie Cress

Santa Fe National Forest, Forest Supervisor

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Authorization ID: ESP104603  
Contact Name: BUCKMAN DIRECT DIVERSION BOARD  
Expiration Date: 12/31/2041  
Use Code: 623

FS-2700-4 (VER. 03/17)  
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE**  
**FOREST SERVICE**  
**SPECIAL USE PERMIT**  
**Authority: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

**BUCKMAN DIRECT DIVERSION BOARD** of P.O. BOX 909 C/O MR. RICK CARPENTER PROJECT MANAGER - CITY OF SANTA FE SANTA FE NM 87504 (hereinafter "the holder") is authorized to use or occupy National Forest System lands in the SANTA FE NATIONAL FOREST, subject to the terms and conditions of this special use permit (the permit).

This permit covers 3 acres in the Sec. 36, T. 19 N., R. 7 E., NEW MEXICO PRINCIPAL MERIDIAN, ("the permit area"), as shown on the map attached as Appendix A. This and any other appendices to this permit are hereby incorporated into this permit.

This permit issued for the purpose of:

The Buckman Direct Diversion Board (BDD) will construct two ground-mounted solar photovoltaic (PV) systems: one at the BDD Booster Station 1A and the other at the BDD lift station, near the Rio Grande. Both facilities will be constructed and operated on National Forest System lands USFS land within the Santa Fe National Forest, Espanola Ranger District.

At the Booster Station 1A, the ground-mounted net metered solar PV system will have a capacity of 687.50 kW AC. The area required to develop the solar PV system is about 100,000 square feet (approximately 2 acres), which will be enclosed in a security fence. The solar PV system will be connected to the existing BDD facility through 190-foot-long buried conduit.

At the Lift Station, the ground-mounted net metered solar PV system will have a capacity of 250 kW AC. The area required to develop the solar PV system is 35,428 square feet (about one acre), which will be enclosed in a security fence. The solar PV system will be connected to the existing BDD facility through 165-foot-long buried electrical conduit.

To protect known cultural resources adjacent to the project area, 1) no mechanical disturbance should be permitted outside the proposed project footprint; 2) during project construction, vehicles and equipment not allowed to enter the project from the east side of the Booster Station; 3) no parking of vehicles or staging of equipment should be permitted on the east side of the Booster Station.

**TERMS AND CONDITIONS**

**I. GENERAL TERMS**

**A. AUTHORITY.** This permit is issued pursuant to the FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

**B. AUTHORIZED OFFICER.** The authorized officer is the Forest Supervisor.

**C. TERM.** This permit shall expire at midnight on 12/31/2041, 20 years from the date of issuance.

**D. CONTINUATION OF USE AND OCCUPANCY.** This permit is not renewable. Prior to expiration of this permit, the

holder may apply for a new permit for the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Issuance of a new permit is at the sole discretion of the authorized officer. At a minimum, before issuing a new permit, the authorized officer shall ensure that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

**F. AMENDMENT.** This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

**F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS.** In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

**G. NON-EXCLUSIVE USE.** The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

**H. ASSIGNABILITY.** This permit is not assignable or transferable.

**I. TRANSFER OF TITLE TO THE IMPROVEMENTS.**

1. Notification of Transfer. The holder shall notify the authorized officer when a transfer of title to all or part of the authorized improvements is planned.

2. Transfer of Title. Any transfer of title to the improvements covered by this permit shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. The Forest Service is not obligated to issue a new permit to the party who acquires title to the improvements. The authorized officer shall determine that the applicant meets requirements under applicable federal regulations.

**J. CHANGE IN CONTROL OF THE BUSINESS ENTITY.**

1. Notification of Change in Control. The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated.

(a). In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

(b). In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and

operations of the entity.

(c). In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

2. Effect of Change in Control. Any change in control of the business entity as defined in paragraph 1 of this clause shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit to the party who acquires control. The authorized officer shall determine whether the applicant meets the requirements established by applicable federal regulations.

## **II. IMPROVEMENTS**

A. LIMITATIONS ON USE. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

C. CONSTRUCTION. Any construction authorized by this permit shall commence by 12/01/2021 and shall be completed by 12/31/2022.

## **III. OPERATIONS**

A. PERIOD OF USE. Use or occupancy of the permit area shall be exercised at least 365 days each year.

B. CONDITION OF OPERATIONS. The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

C. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder shall comply with inspection requirements deemed appropriate by the authorized officer. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

## **IV. RIGHTS AND LIABILITIES**

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR 214 and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

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**B. VALID EXISTING RIGHTS.** This permit is subject to all valid existing rights. Valid existing rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

**C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

**D. SERVICES NOT PROVIDED.** This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

**E. RISK OF LOSS.** The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

**F. DAMAGE TO UNITED STATES PROPERTY.** The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and damage to government-owned improvements covered by this permit.

1. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources resulting from the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.J.

2. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

**G. HEALTH AND SAFETY.** The holder shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during the term of this permit that causes or threatens to cause a hazard to the health or safety of the public or the holder's employees or agents. The holder shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations of the holder for hazardous conditions or compliance with health and safety standards.

#### **H. ENVIRONMENTAL PROTECTION.**

1. For purposes of clause IV.H and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

2. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such

as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. Environmental damage includes but is not limited to all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. If the environment or any government property covered by this permit becomes damaged in connection with the holder's use and occupancy, the holder shall as soon as practicable repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

3. The holder shall as soon as practicable, as completely as possible, and in compliance with all applicable laws and regulations abate any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during or after the term of this permit that causes or threatens to cause harm to the environment, including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources.

**I. INDEMNIFICATION OF THE UNITED STATES.** The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

**J. BONDING.** The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

## **V. RESOURCE PROTECTION**

**A. COMPLIANCE WITH ENVIRONMENTAL LAWS.** The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

**B. VANDALISM.** The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

### **C. PESTICIDE USE.**

1. **Authorized Officer Concurrence.** Pesticides may not be used outside of buildings in the permit area to control pests, including undesirable woody and herbaceous vegetation (including aquatic plants), insects, birds, rodents, or fish without prior written concurrence of the authorized officer. Only those products registered or otherwise authorized by the U.S. Environmental Protection Agency and appropriate State authority for the specific purpose planned shall be authorized for use within areas on National Forest System lands.

2. **Pesticide-Use Proposal.** Requests for concurrence of any planned uses of pesticides shall be provided in advance using the

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Pesticide-Use Proposal (form FS-2100-2). Annually the holder shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time a Pesticide-Use Proposal was submitted.

3. Labeling, Laws, and Regulations. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by the Forest Service.

**D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES.** The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall follow the applicable inadvertent discovery protocols for the undertaking provided in an agreement executed pursuant to section 106 of the National Historic Preservation Act, 54 U.S.C. 306108; if there are no such agreed-upon protocols, the holder shall leave these discoveries intact and in place until consultation has occurred, as informed, if applicable, by any programmatic agreement with tribes. Protective and mitigation measures developed under this clause shall be the responsibility of the holder. However, the holder shall give the authorized officer written notice before implementing these measures and shall coordinate with the authorized officer for proximate and contextual discoveries extending beyond the permit area.

**E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA).** In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the holder shall as soon as practicable notify the authorized officer of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

**F. PROTECTION OF THREATENED AND ENDANGERED SPECIES, SENSITIVE SPECIES, AND SPECIES OF CONSERVATION CONCERN AND THEIR HABITAT.**

1. Threatened and Endangered Species and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or within designated critical habitat shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on listed species or designated critical habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing threatened or endangered species or designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. Sensitive Species and Species of Conservation Concern and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals designated by the Regional Forester as sensitive species or as species of conservation concern pursuant to FSM 2670 shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on sensitive species or species of conservation concern or their habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit

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area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

**G. CONSENT TO STORE HAZARDOUS MATERIALS.** The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

#### **I. CLEANUP AND REMEDIATION.**

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

#### **VI. LAND USE FEE AND DEBT COLLECTION**

A. **LAND USE FEES.** The holder shall pay an initial annual land use fee of \$87.25 for 2021, and thereafter on January 1<sup>st</sup>.

B. **MODIFICATION OF THE LAND USE FEE.** The land use fee may be revised whenever necessary to reflect the market value of the authorized use or occupancy or when the fee system used to calculate the land use fee is modified or replaced.

#### **C. FEE PAYMENT ISSUES.**

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. **Disputed Fees.** Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

#### **3. Late Payments**

(a) **Interest.** Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

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(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

(d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall remain responsible for the delinquent fees.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the United States Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.

(d) Disclosure to consumer or commercial credit reporting agencies.

## **VII. REVOCATION, SUSPENSION, AND TERMINATION**

**A. REVOCATION AND SUSPENSION**. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension and a reasonable period, typically not to exceed 90 days, to cure any noncompliance.

**B. IMMEDIATE SUSPENSION**. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

**C. APPEALS AND REMEDIES**. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

**D. TERMINATION**. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a

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specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

**E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT ISSUANCE OF A NEW PERMIT.** Upon revocation or termination of this permit without issuance of a new permit, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

### **VIII. MISCELLANEOUS PROVISIONS**

**A. MEMBERS OF CONGRESS.** No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

**B. CURRENT ADDRESSES.** The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

**C. SUPERIOR CLAUSES.** If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

**D. CULTURAL RESOURCES PROTECTION.** The holder, contractor, or lessee shall be responsible for the protection from damage of all identified cultural resources within the area which may be affected by their actions. In addition, the holder, contractor, or lessee shall be liable for all damage or injury to the identified cultural resources caused by their actions. The holder, contractor, or lessee shall immediately notify the agency Project Administrator if any damage occurs to any cultural resource and immediately halt work in the area in which damage has occurred until approval to proceed has been granted by the Project Administrator after consultation with the Forest Archeologist. All provisions of the Region 3 Cultural Resources Damage Assessment Handbook are incorporated by reference herein.

**E. NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION.** Pursuant to the Native American Grave Protection and Repatriation Act (NAGPRA) 25 USC 3002(d); 43 CFR Part 10.4, if any human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during the course of ground disturbing activity, the holder will immediately cease activity in the area of the discovery and will make a reasonable effort to protect the remains and objects. The holder will provide immediate telephonic notification of the discovery to the Forest Service and will follow up with written confirmation to the authorized officer. The holder will not resume the activity that resulted in the discovery until the authorized officer gives written approval. Approval to resume the activity, if otherwise lawful, will be given thirty (30) days after certification by the authorized officer of the holder's written confirmation of the discovery, or at any time that a written binding agreement is executed between the Forest Service and the affiliated tribes adopting a recovery plan for the remains and objects.

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**THIS PERMIT IS ACCEPTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.**

**BEFORE ANY PERMIT IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE PERMIT.**

ACCEPTED:

**ANNA HANSEN  
BDD BOARD CHAIRPERSON**



Nov 24, 2021

HOLDER NAME, PRECEDED BY NAME AND TITLE  
OF PERSON SIGNING ON BEHALF OF HOLDER,  
IF HOLDER IS AN ENTITY


SIGNATURE

DATE

APPROVED:

**DEBBIE CRESS  
FOREST SUPERVISOR**

**DEBBIE  
CRESS**



Digitally signed by  
DEBBIE CRESS  
Date: 2021.11.30  
10:37:35 -07'00'

NAME AND TITLE OF AUTHORIZED OFFICER

SIGNATURE

DATE

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.



**Date:** July 26, 2022  
**To:** Buckman Direct Diversion Board  
**Via:** Rick Carpenter, BDD Facilities Manager /s/  
**From:** Antoinette Armijo-Rougemont, BDD Accounting Supervisor  
**Re:** Request to Reauthorize Funding for the MRRF

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**ITEM AND ISSUE:**

Request for approval to reauthorize unexpended funds approved by the BDDB from the Major Repair and Replacement Fund.

**BACKGROUND AND SUMMARY:**

The Buckman Direct Diversion Board authorized funding from the BDD Major Repair and Replacement Fund for the purpose of funding multiple projects. As of July 1, 2022 the following projects were still on-going and are expected to be completed within the current fiscal year.

On-going project balance:

- \$217,342 – Replace Pump #4 at the Raw Water Lift Station (approved 8/5/2021)
- \$75,402 – Replace Maintenance Fleet Work Truck (approved 8/5/2021)

City Finance requires all carry forward funding for on-going projects to be re-appropriated by the governing board. Therefore, we are requesting that the BDD Board reauthorize \$292,744 from the Major Repair and Replacement Fund. These funds will be budgeted in the BDD operating fund and transferred from the reserve fund upon actual expenditure.

**ACTION REQUESTED:**

Staff recommends approval of the attached Budget Amendment Resolution to reauthorize \$292,744 from the Major Repair and Replacement Fund.

Approved by BDDB August 4, 2022

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Councilor Romero-Wirth, BDD Chair



Log # {Finance use only}:	
Journal # {Finance use only}:	

# City of Santa Fe, New Mexico

## BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME PUD/Buckman Direct Diversion	DATE 7/26/2022
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ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<u>EXPENDITURES</u>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
System Equipment	8000825	570550		292,744	
Interfund Transfer Out To 800	801815	755800		292,744	
<u>REVENUES</u>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
Interfund transfer in from 801	8000825	655801		(292,744)	

**JUSTIFICATION:** *(use additional page if needed)*  
 --Attach supporting documentation/memo

\$ 292,744	\$ -
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To use approved MRRF funding for the purchase of a new pump to replace #4 at RWLS. To use approved MRRF funding for the purchase of a new maintenance work truck. Due to supply issues, we were unable to secure that purchase in FY2022.

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
	Fund Balance
Fund(s) Affected	Increase/(Decrease)
801	(292,744)
<b>TOTAL:</b>	
	<b>(292,744)</b>

BDDB Approved 8/4/2022

Antoinette Armijo-Rougemont	7/26/2022	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>  <b>CITY COUNCIL APPROVAL</b>  City Council Approval Date <input style="width: 100px; height: 20px;" type="text"/>  Agenda Item #: <input style="width: 100px; height: 20px;" type="text"/>		
Prepared By <i>{print name}</i>	Date		Budget Officer	Date
Division Director Signature <i>{optional}</i>	Date		Finance Director <i>{≤ \$5,000}</i>	Date
Department Director Signature	Date		City Manager <i>{≤ \$60,000}</i>	Date