

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

February 2, 2012

This meeting of the Santa Fe County/City Buckman Direct Diversion Board meeting was called to order by Rebecca Wurzburger, Chair, at 4:10 p.m. in the Santa Fe City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll was called and the following members were present:

BDD Board Members Present:

Councilor Rebecca Wurzburger, Chair
Ms. Consuelo Bokum
Councilor Chris Calvert
Commissioner Danny Mayfield [for Commissioner Stefanics]
Commissioner Kathy Holian

Member(s) Excused:

None

BDD Board Alternates:

Councilor Carmichael Dominguez

BDD Support Staff Present:

Rick Carpenter, Water Resources & Water Conservation Manager
Robert Mulvey, Facility Manager
Nancy Long, BDD Board Consulting Attorney
Steve Ross, Santa Fe County Attorney
Marcos Martinez, Santa Fe City Attorney
Teresa Martinez, Santa Fe County Finance Director
Erika Schwender, BDD staff
Gary Durrant, BDD staff

[Exhibit 1: Sign-in Sheet]

3. APPROVAL OF AGENDA

[Exhibit 2: Agenda]

Upon motion by Councilor Calvert and second by Commissioner Mayfield the agenda was unanimously approved as published.

[Recorder note: There were problems with the sound system in the Council Chambers.]

4. **APPROVAL OF MINUTES: January 5, 2012**

Councilor Calvert moved approval of the minutes and his motion was seconded by Commissioner Mayfield. The minutes were unanimously approved.

5. **APPROVAL OF CONSENT AGENDA**

There were no matters under the Consent Agenda.

6. **MATTERS FROM STAFF**

None were presented.

7. **FISCAL SERVICES AND AUDIT COMMITTEE REPORT**

No committee meeting was held.

DISCUSSION AND ACTION ITEMS

8. **Update, Discussion and Possible Action on Buckman Restoration and Recreation Plan and Proposed Strategy for the Construction and Maintenance of a Vault Toilet**

RICK CARPENTER (Water Resources & Water Conservation Manager): Good evening, Madam Chair, members of the Board. I was hoping Mr. Hamilton would be here tonight. I don't see him in the audience but I think I can cover the item. The New Mexico Wildlife Federation as you know is proposing a recreation area adjacent to the some of the restoration work this Board has done. As part of the proposal there is a one-page memo in your packet associated with this item. The New Mexico Wildlife Federation has asked the Board [inaudible] might be in funding a vault toilet down near the river as part of their proposed facilities. There would be design and construction costs and ongoing maintenance costs for a period of seven years for a total of \$38,000. They're looking for funding for that, a commitment for funding for that from this Board. I would stand for questions.

CHAIR WURZBURGER: Questions from the committee? Yes, Councilor Calvert.

COUNCILOR CALVERT: Yes. In talking with [inaudible] I had some concerns about where it would be located and what we would be disturbing or not. So where is a big, important issue. Before I vote on allocating money I'd like to have a little more detail around that issue.

CHAIR WURZBURGER: Do we have any information on that, Rick?

MR. CARPENTER: Councilor Calvert, Madam Chair, we've had some discussions about that. I don't have any diagrams. I'd be happy to bring back a map or a diagram, but the discussions that we had are about the toilet would be located near the electrical facility [inaudible] at the river, preferably within line of sight of the security

cameras or at least the sign that says there are security cameras. I know that Mr. Mulvey and myself has come concerns about susceptibility to vandalism and that sort of thing. So that would be a consideration. Those discussions have taken place but it would be in close proximity, hopefully within the sight of the security camera or at least the sign that says security cameras.

If you want something with more detail I'd be happy to work with Mr. Hamilton to work up some sort of schematic or map or something that demonstrates that.

CHAIR WURZBURGER: What's your pleasure?

COUNCILOR CALVERT: Is there any urgency on this one?

MR. CARPENTER: Councilor Calvert, if we brought this back in a month or two it would be just fine as far as their timeline is concerned.

COUNCILOR CALVERT: I'd just ask that maybe just bringing it back at the next meeting with more detail about location and the security and all those issues. I just –

CHAIR WURZBURGER: So we could make a motion to postpone. Do you have a question? Do you want to make that in form of a motion? I'm sorry. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, just in line with Councilor Calvert's comments or questions as far as security, what liability is imposed on the Board if somebody gets hurt at these facilities?

MR. CARPENTER: Commissioner Mayfield, I would let the Board's attorney talk specifically to the topic of liability, but generally speaking, this would not be on our easement. It would be on the real property that the New Mexico Wildlife Federation is seeking from the Forest Service, who is the landowner. To the extent that the Board being asked to fund a portion of that, I don't know what that would mean.

NANCY LONG (BDDDB Consulting Attorney): Commissioner, if there were any claims made against the Board as a public body it would be subject to the defenses under the Tort Claims Act. We would have insurance as well. It would depend on what the claim was and whether we were named or not, I suppose. There are some scenarios you could come up with where there would be some claim that could be made against the Board but it is unlikely that there would be anything that would survive a Tort Claims Act defense.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Thank you, Ms. Long.

CHAIR WURZBURGER: Commissioner.

COMMISSIONER HOLIAN: Thank you, Madam Chair. So who actually would own the toilet?

MR. CARPENTER: Not the Board. That's a good question. I don't know who would own it. I think the easement would go to the New Mexico Wildlife Federation. Maybe the Forest Service. I know the Forest Service has expressed an interest in not having any responsibility for maintenance.

CHAIR WURZBURGER: [inaudible]

COMMISSIONER HOLIAN: No, no.

CHAIR WURZBURGER: Does that mean we're making a gift of the toilet and we have to be concerned about anti-donation? Sounds like we have a few questions.

MS. LONG: The maintenance of the toilet would be handled by the Wildlife Federation or the Forest Service.

MR. CARPENTER: The Forest Service would issue the contract for the maintenance.

CHAIR WURZBURGER: It seems like we should request a motion because it seems like there are a lot of questions and perhaps if we think of any more that we could get those staff before our next meeting, individually. So do you want to make that motion?

COUNCILOR CALVERT: Yes, I'd move that we postpone to the next meeting where we get more answers on those that we've discussed and also making sure on the siting that we're not disturbing any areas that we don't want to be disturbing.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR WURZBURGER: Okay. Thank you. Further discussion?

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

CHAIR WURZBURGER: To postpone to a date specific, our next meeting, correct? Thank you.

9. Discussion and Possible Action on Close-Out of BDD Capital Budget
[Exhibit 3: Mutual Release; Exhibit 4: Payments, Credits, Adjustments]

CHAIR WURZBURGER: We're now at a historic moment. I feel as though we should stand up and do something.

COUNCILOR CALVERT: Do a drum roll?

CHAIR WURZBURGER: Do a drum roll or something at least. But better than a drum roll, we have Steve Ross, who's going to talk to us and explain how we've gotten to this momentous occasion of actually having a close-out on the BDD capital budget. Mr. Ross.

STEVE ROSS (County Attorney): Madam Chair, members of the Board. What has occurred in the last few days is of course the culmination of about a year and a half of work on two subjects: the close-out of the capital budget and the issue of the proper fiscal agent fee to be applied by the project manager. So what has occurred in the last few days is the City and County legal staffs and the managers have agreed to the form of a mutual release on all those issues. I think you all have a copy of it. If you don't I have a lot of extras. I'm seeing a no. Let me get you a copy. Anyone else need a copy?

CHAIR WURZBURGER: If we don't have sufficient copies for members of the audience who would care for them would you please make a few?

MR. ROSS: I have about ten copies.

CHAIR WURZBURGER: Okay. Then maybe we'll have enough. Okay. I presume it is the pleasure of the Board to walk through this, even though I think some of us have independently been discussing this for weeks, but this is the final version. Is that acceptable? Okay. You may walk us through this please.

MR. ROSS: I will skip the whereases and move right to the terms of the agreement which start on page 2. As I said, the agreement deals with about two large issues –

CHAIR WURZBURGER: Excuse me. I had asked Stephanie, would you please get copies of those [inaudible] as we can. This has never been in the packet because this has just been worked on 24 hours a day since we last met, and we have had individual meetings getting highlights of where we were in the process. So the public is hearing this at the same time that we are. I'll be happy – she'll have your copy in just a moment. Let's start with the introduction and I think you'll be able to follow it as we start it and we'll share this. Go ahead please.

MR. ROSS: Thank you, Madam Chair. Despite the fact that this has been a year and a half in gestation it's pretty simple. There's really three issues covered. The first is the application of the loans/grants that were received by the City from the Water Trust Board, in particular the last two. The County participated in the first two with the City, but did not participate in the last two and this agreement says that we will participate in the last two and we will be credited for \$400,000 that would pre-pay, essentially, the loan portion of the loan/grant, our half of the loan portion on both of those grants in the amount of \$800,000 to settle that issue of how to properly apply federal and state loans and grants to the project.

As you recall, the JPA says we take all that stuff off the top. There was a lot of confusion during implementation of the project with the City and the County getting funding from different sources and applying it to the project. This clarifies that issue. All such grants are applied on the top and since the City obligated itself to \$800,000 principal amounts on the last two grants it's only fair that the County contribute \$400,000 for each of those two grants in a total amount of \$800,000. So that's how we proposed to settle that issue.

The second issue is the fiscal agent fee which has been discussed for a long time. There are lots of different ways to interpret the various statements and the agreements about that, so essentially, how this was resolved was interpreting the agreements as providing for a one percent fiscal agent fee for the implementation of the entire project, which as you recall is \$210 million-plus, and so the proposed fiscal agent fee is \$2.1 million, which we'll apply for the implementation of the project up until the first, I think it's FY 12. And from that point it will be handled as a budget item routinely by this Board going forward.

Then the third issue that's dealt with in here and mostly on the spreadsheet. I think I handed you the final version of that is how much is everybody paid and how did that compare to the agreement to share costs equally, and how are we going to resolve the slight differences that result from the manner in which we have paid for the project, and also accounting for the \$800,000 that we had not contributed thus far to the loan/grants.

The bottom line is set forth on this spreadsheet and in the agreement. The parties overpaid for the project, not including the current contingency issues, the sum of \$550,848. Of that amount, the County has contributed a bit more. The County has overpaid \$508,122 and the City has overpaid \$42,726, leading to a credit of \$550,000 which can be applied against contingency items that I know are on the Board's table right now.

So that's an important accounting issue that's now been finally resolved we think correctly and it yields a resolution of the third and final issue. Paragraph 6 of the agreement is boiler plate that indicates that of the fiscal agency, which is of course not properly payable from bond proceeds that any amounts contributed by this agreement to the fiscal agency is not to be applied from bond proceeds, and then the rest of the agreement basically says this is a full and final agreement among the parties and any unsettled issue that needs to be resolved by this agreement will be put on City and County agendas in ensuing weeks and be voted on by the governing bodies which are of course the parties to the agreements that are being resolved in this mutual release.

CHAIR WURZBURGER: Okay. Questions from the Board, starting with Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Mr. Ross, in the mutual release here it lists an amount, the County shall have the credit of \$550,848, and yet on the spreadsheet here the bottom line looks like \$508,122.

MR. ROSS: That would be the total of the two. Adding the \$508,122, the \$42,726 and you'll get \$558,848.

COMMISSIONER HOLIAN: But then it does say in here that the City has a credit of \$42,726.

MR. ROSS: Right. So the County's credit is \$508,122, down at the very bottom of the spreadsheet. The City's credit is \$42,726, leading to a total credit against the contingency in the amount of \$550,000.

COMMISSIONER HOLIAN: So, but here, in this mutual release it actually says that the County shall have a credit of \$550,848 against such expenditure and the City shall have –

MR. ROSS: That's incorrect. I see. I got you. Thank you.

CHAIR WURZBURGER: Do you see that, Steve?

MR. ROSS: Yes. We'll correct that.

COMMISSIONER HOLIAN: Okay. Thank you. No other questions.

CHAIR WURZBURGER: Other questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Madam Chair, Mr. Ross, excuse me. On the spreadsheet that's provided, with the asterisk next to Las Campanas for the \$13,294,000 credit, where is that money being credited to?

MR. ROSS: I think that's a billing that's about to occur to Las Campanas.

COMMISSIONER MAYFIELD: So why then are we splitting the difference of the \$210 million? Are they going to take that off the top once that's paid?

MR. ROSS: The \$210 – Las Campanas' contribution comes off the top, and it's applied against the City and County indebtedness, if you will, for the project equally. Just like loans and grants and all that other stuff. So any time you're dealing with a Las Campanas contribution it comes off the top and is applied to City and County equally. So what they've done here is they take control of the project budget of \$224 million, deducted this amount that Las Campanas has contributed or is going to contribute, arriving at the amount that's to be split 50-50 between the partners, \$210 million.

COMMISSIONER MAYFIELD: Thank you, Mr. Ross.

CHAIR WURZBURGER: Any other questions? Okay, so this will go to our respective governing bodies and I just want to publicly before the Board really thank

Teresa and now Teresita and all the people in the County for having working with Teresa whom I don't know, and the lawyers who worked on it, Marcos and Stephen. This is no small accomplishment. So we really appreciate your diligence and I know it was not easy at times and I highly respect the positive way in which sometimes frustrating condition was addressed by all of you. Thank you so much.

MR. ROSS: Thank you.

CHAIR WURZBURGER: Yes. Anybody else?

COMMISSIONER HOLIAN: Madam Chair, I would just like to make a comment too. I would really like to say thank you to staff and everybody who worked on this. I was extraordinary lucky coming on as a new member of this Board and to actually have this settled as I came on; it was an incredible gift to me. So thank you, Mel and Teresa and Steve and all of you who worked on this.

CHAIR WURZBURGER: You guys did the work and kept the numbers for nine years, paid the bills all along. It's so amazing that we as a community have pulled this off. Anyone else? Thank you so much.

So I assume that at the close-out discussion we will assume that we are each expeditiously getting this on our individual agendas so that we can have it totally finished.

INFORMATION ITEMS

None were presented.

MATTERS FROM THE PUBLIC

COUNCILOR WURZBURGER: Would anyone like to speak?

JONI ARENDS: Good afternoon. My name is Joni Arends. I'm with Concerned Citizens for Nuclear Safety. I have a couple of questions about this budget, or this close-out. Where does the monthly payments that people make on their water bill? Where is that on this piece of paper?

CHAIR WURZBURGER: This is the construction budget.

COUNCILOR CALVERT: That's the operating you're talking about. Operating budget.

MS. ARENDS: Okay. So then why did the New Mexico Environment Department pay \$187,000 on the shared grants?

CHAIR WURZBURGER: They gave us a grant. You're asking why they gave us a grant?

MR. ROSS: She's asking about the NMED grant and the DOE grants. I don't have any details about those, but I believe they are grants.

CHAIR WURZBURGER: They are grants that we received. Right, Rick and Teresa?

MS. ARENDS: Were they a 319 Grant or were they –

TERESA MARTINEZ (County Finance Director): They were grants received on behalf of this project.

MS. ARENDS: Well, are they Clean Water Act grants? Are they Safe Drinking Water grants? What's the source of the grants?

COUNCILOR WURZBURGER: She's asking for what was the intention of the grant and the purpose. Sounds as though we may have to go back to our files and provide that to you. We will do so.

MS. ARENDS: Okay. And I would also like to know about the Department of Energy grant.

COUNCILOR WURZBURGER: Okay. We will get that for you. Is that clear to staff, what the nature of the question is? So not only where did it come from but what was the line item in their budgets that authorized us to have this money. We'll get that as soon as we can.

MS. ARENDS: Okay. The second thing that I have today is about – it's a very strange meeting today that the microphones aren't working properly and that there weren't copies of this budget available, readily available, especially on such a momentous occasion where it's the close-out budget. I think it's important to have copies for the public here, because we have been watching this project for a number of years, probably over a decade. I think it's important for government officials so that there's transparency that we have copies.

COUNCILOR WURZBURGER: So we regret that. We – in the record will show that we provided them to you immediately, within five minutes of the time that we received them.

MS. ARENDS: Thank you.

CHAIR WURZBURGER: You're welcome.

MS. ARENDS: And then my last item is Concerned Citizens for Nuclear Safety, the Partnership for Earth Spirituality, and the Multi-Cultural Alliance for a Safe Environment today released it's map about water and land, a sacred trust, about protecting and preserving our future, and I have copies for all of you. *[Exhibit 5]*

CHAIR WURZBURGER: Thank you.

MS. ARENDS: So I would just like to take a moment and have you look at this. This photo is of the Buckman, and as you open it up we look at the threats to water, air and land. We see the coal-fired power plants. We see the contamination of Los Alamos National Laboratory. And then when you open it up you can see up here in the corner, the 30-mile radiuses around the coal-fired power plants, around here, around the Grants area, up here in Raton. This big area in the middle of the state is the plume from the Trinity test in 1945 where over ten pounds of plutonium was not fissioned and was dispersed around this entire area. We also show the impaired streams and rivers. They're red. We show oil and gas, mines, oil and gas facilities, as well as superfund sites, brownfields. We also show the boundary of the Española Basin sole source aquifer designation by the Environmental Protection Agency and the turquoise line around the edge. And we also show impacts from gas and oil and potential future areas.

This is a project that we've been working on for about 18 months with the Sisters of Mercy who funded this project out of the northeast. And we're going to use this for a tool and many people will be using it for a tool to protect and preserve our future, and to really address the contamination in the State of New Mexico and how we need to clean it up. And so this is part of our work to address the concerns about the plutonium out at the Buckman.

We support the toilet that the Wildlife Federation is proposing out there. We think that that's important, but we also want to urge, and in the comments that we made to the

Forest Service and to BLM that under the National Environmental Policy Act, that DOE be called in to address the plutonium out there. We have to make cleanup a priority. Thank you for your time today.

CHAIR WURZBURGER: Thank you for being here. Anyone else? Please come forward and state your name for the record.

MICHAEL AUNE: My name is Michael Aune. I'm a citizen. At the December meeting there was a very good presentation by a young man who was talking about solar panels, and the way that was going to produce some additional energy savings for the Buckman project as well as provide a future revenue source. As I recall the Board was encouraged by that and was actually encouraging him to try to take some action on it in spite of the holidays. At the January meeting and at this particular meeting I've heard no update. I'd just like to know how that is proceeding.

CHAIR WURZBURGER: Do we have a comment on that from staff?

ROBERT MULVEY (Facility Manager): Madam Chair, I don't have materials with me today to comment on that but I do know that we are moving forward with the permitting for that site and we're attempting to expedite this to the fullest extent possible. We can get a presentation back to you at the next Board meeting.

CHAIR WURZBURGER: Good. We can have it at the next meeting. Thank you.

MR. AUNE: And as a part of that, if there's a funding issue, hearing that the Buckman project was just closed out and there's some credits to both the City and the County, if funding is an issue then I would encourage you to look at those revenue sources as a way to make this a reality, because we need to become more self-sufficient and not have those additional expenses to PNM or whoever for those energy sources. And I would advise you to take a look at those resources. Thank you.

CHAIR WURZBURGER: Thank you for your comments. Anyone else?

MATTERS FROM THE BOARD

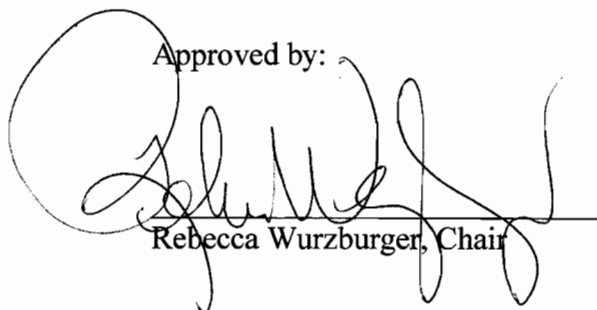
None were presented

NEXT MEETING: March 8, 2012 @4:00 P.M.

ADJOURNMENT

Having completed the agenda, Chair Wurzbarger, this meeting was declared adjourned at approximately 4:40 p.m.

Approved by:



Rebecca Wurzburger, Chair

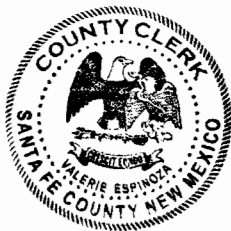
Respectfully submitted:

Debbie Doyle, Wordswork

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

SEAL OF THE COUNTY OF SANTA FE
NEW MEXICO
YOLANDA VIGIL
SANTA FE CITY CLERK



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BUCKMAN DIRECT DIV MIN
PAGES: 26

I Hereby Certify That This Instrument Was Filed for
Record On The 3RD Day Of April, 2012 at 09:17:43 AM
And Was Duly Recorded as Instrument # 1665173
Of The Records Of Santa Fe County

Deputy Marcella Salazar Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 04/03/2012

BUCKMAN DIRECT DIVERSION BOARD MEETING

SIGN IN SHEET

February 2, 2012

| NAME (Please print) | ORGANIZATION |
|----------------------|------------------------------------|
| Erika Schwender | BDD |
| Gary Durrant | BDD |
| Jan Boyer | citizen |
| Brian Shelton | BDD |
| TERESA MARTINEZ | JFL Finance |
| Judith Lawson | independent journalist |
| MICHAEL AUNE | CITIZEN |
| Wendell T. Egelhoff | The Club at Las Campanas |
| Mike Smitson | Las Campanas |
| Betsy Millard (SENA) | Southeast Neighborhood Association |
| Rick Coppenhaver | BDD |
| Joni Arends | CCNS |
| Brenda X | Citizen |
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SPC CLERK RECORDED 04/03/2012



CITY CLERK'S OFFICE

DATE 1-27-12 TIME 10:25am

SERVED BY Stephanie Lopez

RECEIVED BY [Signature]

AGENDA



THE CITY OF SANTA FE
And
SANTA FE COUNTY

BUCKMAN DIRECT DIVERSION BOARD MEETING

THURSDAY, FEBRUARY 2, 2012
4:00 PM
CITY HALL
CITY COUNCIL CHAMBERS
200 Lincoln Avenue

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES FOR THE JANUARY 5, 2011 BUCKMAN DIRECT DIVERSION BOARD MEETING
5. APPROVAL OF CONSENT AGENDA
6. MATTERS FROM STAFF
7. FISCAL SERVICES AND AUDIT COMMITTEE REPORT

CONSENT AGENDA

None

DISCUSSION AND ACTION ITEMS

8. Update, Discussion and Possible Action on the Buckman Restoration and Recreation Plan and Proposed Strategy for the Construction and Maintenance

SFC CLERK RECORDED 04/03/2012

of a Vault Toilet. (Rick Carpenter and Allan Hamilton, New Mexico Wildlife Federation)

9. Discussion and Possible Action on Close-Out of BDD Capital Budget.
(Shawn Stack)

INFORMATION ITEMS

None

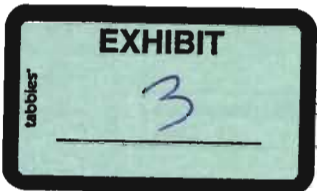
MATTERS FROM THE PUBLIC

MATTERS FROM THE BOARD

NEXT MEETING: THURSDAY, MARCH 8, 2012 @ 4:00 P.M.

ADJOURN

PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE.



MUTUAL RELEASE

This mutual release, effective as of the date of the last signature, is made by and between the City of Santa Fe ("the City") and Santa Fe County ("the County"), and is intended to effect the extinguishment of obligations of the parties as described in this Mutual Release, as otherwise provided by the Project Management and Fiscal Services Agreement for the Buckman Direct Diversion Project (the "PMFSA"), and the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project (2005)("the JPA").

RECITALS

A. Differences have arisen between the parties with respect to the implementation of Article 8 of the PMFSA, which states that the "Project Manger, the City and the County shall be compensated for service rendered, or credited for services rendered prior to the date of this Agreement or of any Project Agreement."

B. Differences have arisen between the parties with respect to the implementation of Article 8(A) of the PMFSA, in particular whether the fiscal agent fee applies prior to 2005 or 2007, whether the fiscal agent fee should be based on the total implementation costs of the Buckman Direct Diversion Project ("the BDD Project") or just annual operating budgets, and whether a fiscal agent fee is appropriate for any year prior to FY 2011 when the first operating budget was approved; Article 8(A) of the PMFSA provides for payment of a fiscal agent fee to the City as project manager based on a percentage of the approved annual operating budget of the BDD Project.

C. Differences have arisen between the parties with respect to the implementation of Article 8(B) of the PMFSA, in particular whether Article 8(B) applies to personnel expenses of the City implementing the project as project manager, whether Article 8(B) applies to expenses incurred by the City implementing the project prior to execution of the Joint Powers Agreement, and the extent to which uncommitted funds can be used to reimburse any party pursuant to Article 8(B) given the fact that a portion of unencumbered funds may derive from bond proceeds; Article 8(B) of the PMFSA permits the parties to assign to the BDD Project (through a supplement budget document) certain expenditures of the parties made prior to execution of the PMFSA, including dedication of real and personal property.

D. Differences have arisen between the parties with respect to the implementation of the second paragraph of Article 16 of the JPA; Article 16 provides that additional State or federal assistance implementing the BDD will be applied to the total cost of implementing the project, before the contributions of the City and County

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SFC CLERK RECORDED 04/03/2012

are computed.

E. The parties recognize the importance of the project and the need to move quickly through these issues, and have therefore agreed to the matters set forth in this Mutual Release as a settlement of disputed matters in full satisfaction of the above-described issues, to execute this mutual release in settlement of such differences, and thereby waive any remaining claims on these subjects, and to implement Article 8 of the PMFSA and Article 16 of the JPA as set forth in this Mutual Release.

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Deleted: Articles 8(A) and 8(B)

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F. At the time of execution of this Mutual Release, the approved capital budget of the BDD was \$210,904,184, which included an estimated capital fund carveout (contingency) of \$2,390,618.

AGREEMENT

1. In consideration of: 1) the mutual relinquishment of their respective legal rights with reference to Article 8 of the PFMSA; 3) the mutual relinquishment of their respective legal rights with respect to Article 16 of the JPA; 4) the covenants and agreements set out in succeeding paragraphs of this Mutual Release; 5) the execution of this mutual release; and 6) payments by the parties as described in this Mutual Release, each party releases the other from all liability for claims, suits, and demands (including any demand for binding arbitration under the PMFSA or JPA) arising out of the above-described Agreements.

Deleted: Article 8(A) of the PMFSA; 2) the mutual relinquishment of their respective legal rights with reference to Article 8(B)

Deleted:)

2. As set forth on the attached spreadsheet (Exhibit A), all grants and loan/grants received by the City from the State and federal governments shall be credited to each of the parties equally as described in Article 16 of the JPA, except for the loan/grant received from the New Mexico Finance Authority in the amount of \$140,000 for a solar energy project, which will be credited solely to the City. The County shall pay its share (1/2) of the principal of the loan for each loan/grant received, and shall pre-pay any such amounts that are unpaid upon execution of this Mutual Release. It is agreed that the County has previously separately arranged (through a loan repayment schedule) to pay its share of the loan component of NMFA WTB 68 (11-2-07), and NMFA WTB 134 (3-27-2009), but has not paid or pre-paid NMFA WTB 170 (5-7-10), in the amount of \$400,000 and NMFA WTB 202 (5-6-11), in the amount of \$400,000. However, since the County has overpaid its share of the costs of implementing the BDD Project in general (see Exhibit A), the County's \$800,000 obligation shall merely be credited to the County as reflected on Exhibit A.

3. The City shall be entitled to a fee in the amount of \$2,100,000 for its fiscal services as project manager to date implementing the BDD Project and operating the

CLERK RECORDED 04/03/2012

BDD Project since its acceptance during fiscal year 2011 from the design-build contractor. The fee described in the previous sentence shall apply to the implementation of the capital improvement (the BDD) in total and from inception of the project, as well as fiscal services provided in fiscal year 2011 after operation of the facility commenced, but shall not apply to any subsequent year, which shall instead be addressed through the budget process described in Article 8(A) and 8(C) of the PMFSA.

4. The net effect of the foregoing is that the County of Santa Fe shall have a credit in the project in the amount of \$508,122, and the City shall have a credit in the project in the total sum of \$42,726. *See* Exhibit A.

5. The parties agree that the capital budget carveout is still unresolved but that the net effect of the previous paragraphs is that \$550,848 (\$508,122 from the County of Santa Fe and \$42,726 from the City of Santa Fe) shall be credited to the carveout budget and the obligations of each party as those expenses are addressed. Thus, once a carveout expenditure has been approved by the BDD Board and addressed, the County shall have a credit of \$550,848 against such expenditure, and the City shall have a credit of \$42,726 against such expenditure. The parties agree that the Buckman Direct Diversion staff shall justify all expenses in the proposed carveout budget to the parties and that additional funds may be needed to effect a final project close out.

6. The parties agree that the settlement herein is reached on the basis that accumulated capital expenditures for the Buckman Direct Diversion Project prior to execution of the PMFSA exceeds the present uncommitted value of the BDD contingency fund, and that this settlement is predicated upon the settlement of a claim for unreimbursed capital expenditures and donation of real or personal property of the City or County pursuant to Article 8 of the PMFSA (as well as other matters), and that any funds paid pursuant to this Mutual Release for the fiscal agent fee is not being reimbursed from bond proceeds. Specifically, the parties agree that the funds paid pursuant to this Mutual Release shall either (a) not be allocable to proceeds of tax-exempt bonds, or (b) if allocable to proceeds of tax-exempt bonds, satisfy the following requirements: (i) the payment shall reimburse capital expenditures incurred no more than 60 days prior to either (aa) the issuance of the tax-exempt bonds from which the proceeds are derived, or (bb) an official statement by the issuer of the bonds of its intent to reimburse itself for capital expenditures from the proceeds of the bonds; and (cc) in either case, shall reimburse expenditures incurred no more than three years prior to the date on which the issuer of the bonds made a written reimbursement allocation as provided in Treasury Regulations 26 C.F.R. Section 1.150-2(c), (d), (e) and (f); or (ii) the payment shall reimburse "preliminary expenditures" within the meaning of Treasury Regulations 26 C.F.R. Section 1.150-2(f), e.g. costs of architectural services, engineering, surveying, soil-testing and similar costs incurred before commencement of construction,

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SFC CLEAR RECORDED 04/03/2012

which costs shall not exceed 20 percent (20%) of the issue price of the bonds from which the proceeds are derived.

7. The parties agree that proceeds from the County Capital Outlay Gross Receipts Tax, County Ordinance No. 2002-5, as amended, may be used to pay the City of Santa Fe for the City's expenditures as fiscal agent and project manager and that these expenditures were related to the "acquisition, construction or improvement of water, wastewater or solid waste systems or facilities and related facilities, including water or sewer lines and storm sewers and other drainage improvements," consistent with NMSA 1978, § 7-20E-21(C)(2).

8. Each party agrees that this Mutual Release releases the other from all liability for claims, suits, and demands (including any demand for binding arbitration under the PMFSA of JPA) arising out of the PMFSA, Article 8 and Article 16 of the JPA. The remainder of each Agreement referred to herein shall continue in full force and effect.

Deleted: Articles 8(A) and 8(B)

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SEC. CLERK RECORDED 04/03/2012

Signatures:

For the County:

Chair, Board of County Commissioners

Date

Approved as to Form:

Stephen C. Ross, Santa Fe County Attorney

Date

Attest:

Valerie Espinoza, Santa Fe County Clerk

Date

SFC CLERK RECORDED 04/03/2012

For the City:

David Coss, Mayor
City of Santa Fe

Date

Attest:

Yolanda Y. Vigil, City Clerk

Date

Approved as to Form:

Geno Zamora, City Attorney

Date

Finance Director

Date

SFC CLERK RECORDED 04/03/2012

BDD PAYMENTS, CREDITS AND ADJUSTMENTS
2/1/2012

| | | |
|----------------------|----|--------------|
| TOTAL PROJECT BUDGET | \$ | 224,199,246 |
| Las Campanas* | \$ | (13,294,878) |

| | | |
|--|-----------|--------------------|
| TOTAL TO BE SPLIT BY CITY AND COUNTY PARTNERS | \$ | 210,904,368 |
|--|-----------|--------------------|

(Includes final billing amount as confirmed by the City of Santa Fe)

| PROJECT COSTS | Santa Fe County | City of Santa Fe |
|---|---------------------|--------------------|
| | \$ | \$ |
| | 105,452,184 | 105,452,184 |
| Shared Loans | | |
| NMFA WTB 68 Official Date : 11-2-2007 | \$ 100,000 | \$ 100,000 |
| NMFA WTB 134 Official Date: 3-27-2009 | \$ 400,000 | \$ 400,000 |
| NMFA WTB 202 Official Date: 5-6-2011 | \$ 400,000 | \$ 400,000 |
| NMFA WTB 170 Loan Official Date: 5-7-2010 | \$ 400,000 | \$ 400,000 |
| Subtotal | \$ 1,300,000 | \$ 1,300,000 |
| Non-Shared Loans | | |
| NMFA Solar Energy | \$ - | \$ 141,400 |
| Subtotal | \$ - | \$ 141,400 |
| Shared Grants | | |
| NMFA 3 Official Date : 12-10-2004 | \$ 1,000,000 | \$ 1,000,000 |
| NMFA WTB 68 Official Date: 11-2-2007 | \$ 900,000 | \$ 900,000 |
| NMFA WTB 134 Official Date: 3-27-2009 | \$ 1,600,000 | \$ 1,600,000 |
| NMFA WTB 202 Official Date: 5-6-2011 | \$ 1,600,000 | \$ 1,600,000 |
| NMED | \$ 187,500 | \$ 187,500 |
| Department of Energy | \$ 141,624 | \$ 141,624 |
| NMFA WTB 170 Grant Official Date: 5-7-2010 | \$ 1,600,000 | \$ 1,600,000 |
| Subtotal | \$ 7,029,124 | \$ 7,029,124 |
| Payments Made | \$ 99,481,182 | \$ 95,174,387 |
| Total Loans, Grants & Payments | \$ 107,810,306 | \$ 103,644,910 |
| OVER/UNDER PAYMENT | \$ (2,358,122) | \$ 1,807,274 |
| ADJUSTMENTS AND OTHER CREDITS | | |
| Fiscal Agent Fee | \$ 1,050,000 | \$ (1,050,000) |
| Loan Pre-Payment | \$ 800,000 | \$ (800,000) |
| | \$ 1,850,000 | \$ (1,850,000) |
| OVER/UNDER PAYMENT TO BE APPLIED TO CARVEOUT | \$ (508,122) | \$ (42,726) |

| | |
|--------------|--------------------|
| <u>Total</u> | |
| \$ | <u>210,904,368</u> |
| | |
| \$ | 200,000 |
| \$ | 800,000 |
| \$ | 800,000 |
| \$ | 800,000 |
| \$ | <u>2,600,000</u> |
| \$ | 2,600,000 |
| | |
| \$ | 141,400 |
| \$ | <u>141,400</u> |
| \$ | 141,400 |
| | |
| \$ | 2,000,000 |
| \$ | 1,800,000 |
| \$ | 3,200,000 |
| \$ | 3,200,000 |
| \$ | 375,000 |
| \$ | 283,247 |
| \$ | 3,200,000 |
| \$ | <u>14,058,247</u> |
| \$ | 14,058,247 |
| | |
| \$ | 194,655,569 |
| \$ | <u>211,455,216</u> |
| \$ | 211,455,216 |
| | |
| \$ | (550,848) |
| \$ | (550,848) |
| | |
| \$ | - |
| \$ | - |
| \$ | - |
| \$ | (550,848) |

Water, Air and Land A Sacred Trust

Protecting and Preserving Our Future

© Anna C. Hansen (2)

Of all our natural resources, water has become the most precious.

RACHEL CARSON, SILENT SPRING

The water, air, land and people of New Mexico are intertwined in the web of life.

This map, brochure and website information document a steady and growing assault on the health of the Land of Enchantment and all of its sentient beings. This information invites you to participate in the public policy discourse. The following guiding principles are essential for shifting public policy to a life-affirming paradigm.

THE PUBLIC TRUST DOCTRINE is the principle that the government has an affirmative duty to protect natural resources for public use. It is built upon Indigenous wisdom and spiritual traditions and became U.S. common law in 1647.

THE EARTH CHARTER is an ethical global framework created over a ten-year period with input from communities all over the Earth. It outlines principles calling for the health of the human and natural world. <http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html>

THE PRECAUTIONARY PRINCIPLE states that if an action could harm the public or the environment, the burden of proof falls on those advocating the action. <http://www.sehn.org/precaution.html>

ENVIRONMENTAL JUSTICE refers to "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." Environmental Health and Racial Equity: Building Environmentally Just, Sustainable, and Livable Communities. Bullard, 2011.

CLIMATE CHANGE CRISIS will increasingly affect water, land and air. In New Mexico long droughts, hotter and longer spring-fall seasons may result in more fires, dust storms and water shortage

THREATS TO WATER, AIR AND LAND

Throughout New Mexico

As the Southwest becomes more arid due to growth and climate change, water resources become ever more stretched. As water quantity decreases water quality is more easily compromised. Approximately 90% of New Mexicans rely on groundwater for drinking.

OIL AND GAS INDUSTRIAL CONTAMINATION

New Mexico ranks second in natural gas production and fifth in oil production within the U.S. During 2001, 69.9 million barrels of oil and 1.6 trillion cubic feet of natural gas were produced.

- Safeguards such as the 2008 Pit Rule reduce contamination of shallow groundwater aquifers. Before 2008, 800 cases of groundwater contamination were documented. Since the safeguard rule became effective, no cases of groundwater contamination have been found.
- Hydrofracking is a method of injecting fluid at high pressure into oil or methane gas deposits to fracture rock which releases liquid or gas. It is a growing concern.
- Hydrofracking is exempt from the Safe Drinking Water Act because of the Halliburton Hole.
- Each coalbed methane well uses from 50,000 to 350,000 gallons of water.
- Deeper horizontal shale wells can use 2 to 10 million gallons of water per well.



Four-Corners power plant

Northwest New Mexico

The San Juan River Basin provides the major source of drinking water for the area.

COAL CYCLE

Surface water and groundwater are contaminated during extraction of coal, its subsequent preparation and the disposal of mine waste. No mitigating measures are used.

- Coal mining and power plants utilize large amounts of water.
- In 2010, coal-fired power plants emitted 72.3% of greenhouse gases (GHG) in the U.S.
- In 2010, the San Juan Generating Station produced more than 8.5 million tons of carbon pollution and consumed more than 9.3 billion gallons of clean water.
- According to the Environmental Protection Agency (EPA), the San Juan Generating Station is the 18th highest nitric oxide and nitrogen dioxide emitter of the 496 U.S. coal-fired power plants.
- Over 90% of the state's power-related GHG emissions occur at coal-fired power plants. The plants at San Juan and the Four Corners produce 75% of the total emissions.
- Because of intensive gas, oil and coal industries in New Mexico, the per capita GHG emissions are almost twice the U.S. average (42 vs. 25).

Western New Mexico

Regional aquifers, springs and small rivers provide water for this area.

- Groundwater and soil in the Churchrock area is threatened and contaminated.
- More uranium mining is being proposed in the Grants uranium mining belt.

URANIUM MINING AND MILLING

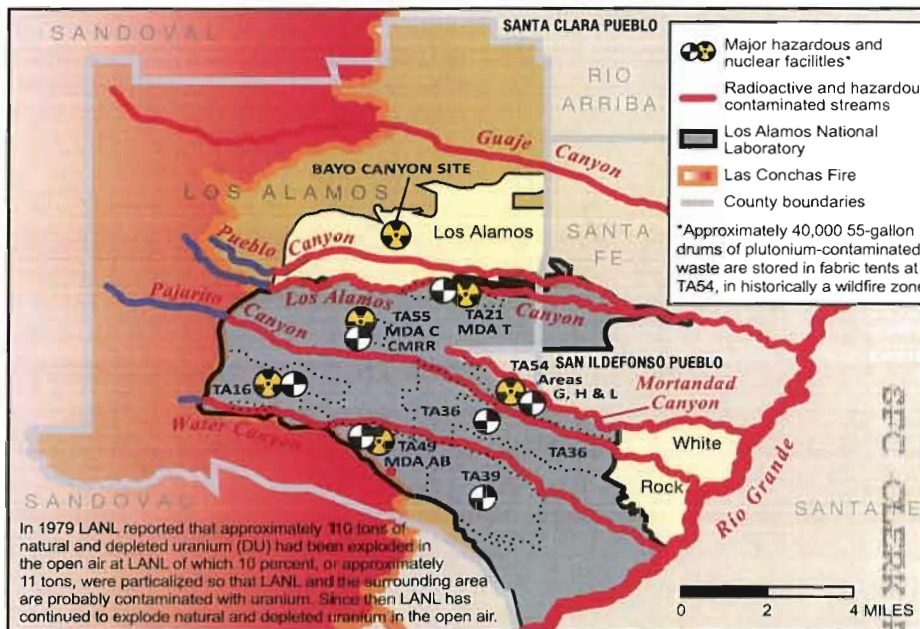
- About 40% of the uranium extracted in the U.S. was mined and milled in New Mexico.
- From 1952 to 1990, the Homestake Mill produced 21 million tons of uranium mine tailings.
- On July 16, 1979, the Churchrock Mill dam of uranium milling wastes collapsed, spilling 100 million gallons of radioactive liquid and 1,100 tons of mill tailings into the Puerco River.
- Today, years after mine and mill closures, contaminants affect aquifers, surface water, air and land.

North Central New Mexico

In 2008 the EPA designated Española Basin as a sole source drinking water aquifer.

NUCLEAR WEAPONS MANUFACTURING AND WASTE STORAGE AT LOS ALAMOS NATIONAL LABORATORY (LANL), A DEPARTMENT OF ENERGY (DOE) FACILITY OPERATED BY LOS ALAMOS NATIONAL SECURITY, LLC

- Over 21 million cubic feet of chemical and radioactive waste have been buried in unlined pits, trenches and shafts at LANL, with 2,100 sites that have the potential to release contaminants into canyons feeding the Río Grande and recharging the regional aquifer.



- May 2000 Cerro Grande fire burned more than 7,000 acres of LANL; June 2011 Las Conchas fire burned the upper watershed. Both fires resulted in increased erosion, flooding and runoff of pollutants into the Río Grande.
- A proposed new nuclear facility would manufacture 50 to 80 plutonium nuclear weapon triggers annually, increasing water usage 142%.

Central New Mexico

Aquifers and the Rio Grande Basin provide drinking water for Central New Mexico.

KIRTLAND AIR FORCE BASE (KAFB) NUCLEAR WEAPONS STORAGE, A DEPARTMENT OF DEFENSE (DOD) FACILITY

- Kirtland Underground Munitions Storage Complex is the largest nuclear weapons storage facility in the world.
- Nuclear weapons are moved by air through the Albuquerque Sunport and by truck.
- Contaminated debris lingers from a 1957 accident in which a hydrogen bomb was dropped from a plane south of KAFB.
- Both eight million gallons of leaked jet fuel as well as perchlorate from open-air detonation and burning of rocket motors now contaminate Albuquerque's aquifer.

SANDIA NATIONAL LABORATORIES (SNL), A DOE FACILITY OPERATED BY LOCKHEED MARTIN

- 1.5 million cubic feet of radioactive and hazardous waste are buried in unlined pits and trenches at the mixed waste landfill dump. No effective monitoring is in place.
- Sandia's annular core research reactor has no peripheral containment structure to protect the public from a possible radiation release.

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY

Open-air testing of depleted uranium (DU) weapons took place in the 1970s. One test site, on the top of Socorro Mountain, is in range of drinking water wells that supply the 8,000 residents of Socorro who live less than two miles away, down gradient and downwind.

- DU weapons create a cloud of microscopic radioactive particles capable of long distance travel and contamination for 4.5 billion years.

TRINITY NUCLEAR WEAPON TEST SITE, A DOD FACILITY

- The first plutonium-based atomic device detonated at the Trinity Site on July 16, 1945 released 13.2 pounds of weapons-grade plutonium, of which 2.6 pounds fissioned. The remaining 10.6 pounds dispersed over farms, ranches, fields, milk cows and rainwater cisterns.
- Cancer mortality rates for the four counties surrounding the Trinity Site (Lincoln, Otero, Siererra and Socorro) are three to eight times the national rate.

There's a misconception that when the Trinity test took place in 1945 the four counties surrounding the test site were sparsely populated. In fact the census data from that time frame shows that more than 30,000 people lived within a 60-mile radius. The radiation exposure subsequent to Trinity was significant for the people and has continued since then.

TINA CORDOVA, TULAROSA BASIN DOWNWINDERS CONSORTIUM

Southeastern New Mexico

The Ogallala Aquifer lies under almost all of Eastern New Mexico and West Texas. The Pecos River is a major surface water body.

NUCLEAR WEAPONS WASTE STORAGE AT THE WASTE ISOLATION PILOT PLANT (WIPP), A DOE FACILITY OPERATED BY WASHINGTON TRU SOLUTIONS, LLC

- WIPP's mission is limited by law to 175,564 cubic meters of defense-related transuranic (plutonium) waste from 20 government nuclear weapons facilities across the U.S.
- WIPP is the world's first waste repository for nuclear and toxic materials from nuclear weapons that are hazardous for thousands of generations.

URANIUM ENRICHMENT, PROCESSING AND DECONVERSION FACILITIES

- In 2010, Urenco began enriching uranium, generating tons of DU hexafluoride waste near Eunice where 5,016 containers can be stored on site.
- International Isotopes proposes a DU hexafluoride deconversion facility near Hobbs to deconvert DU hexafluoride to DU oxide, which would be disposed at a yet-to-be-determined location.

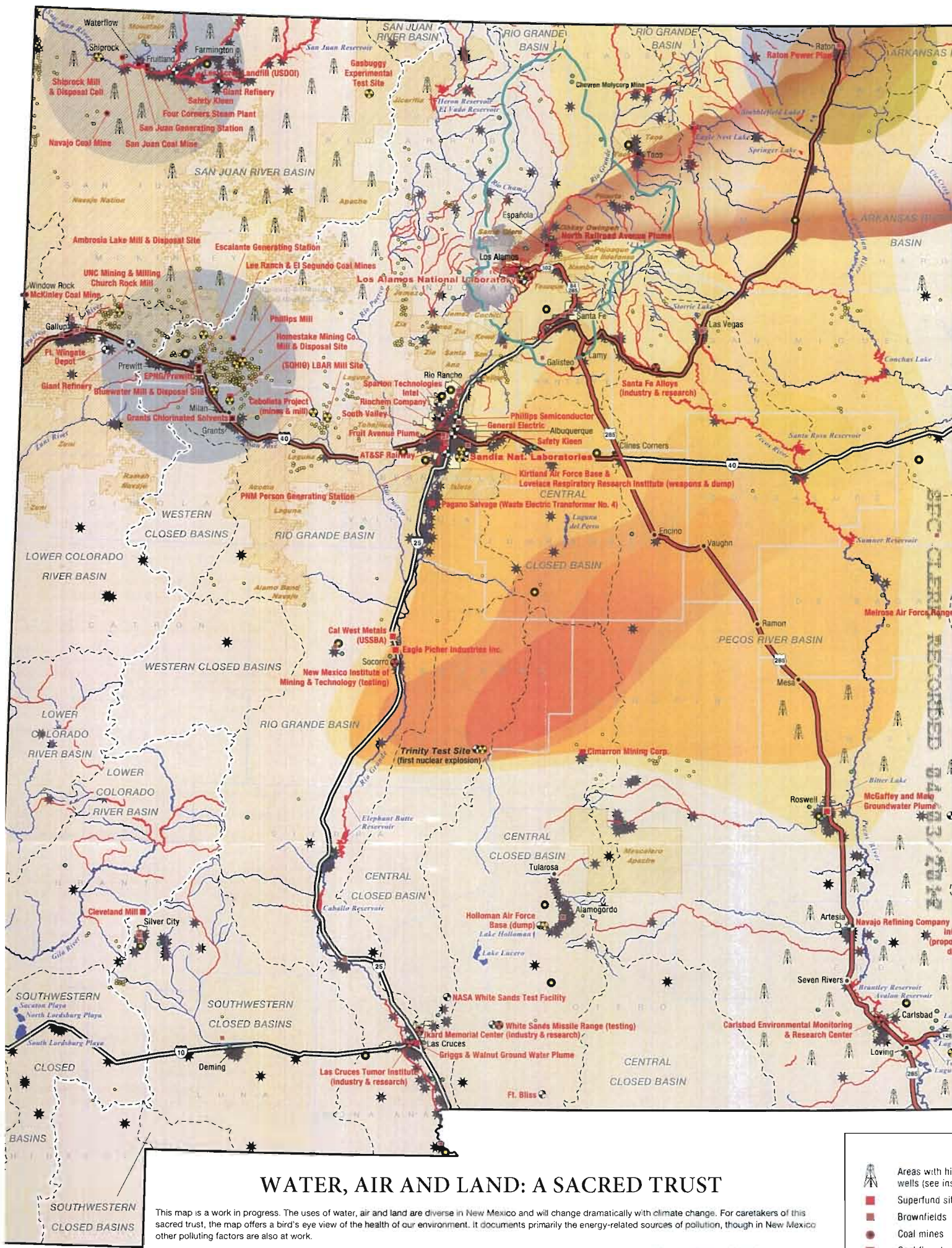
WASTE CONTROL SPECIALISTS, LLC, A PRIVATE WASTE DISPOSAL FACILITY

- The Texas Commission on Environmental Quality issued conditional licenses to dispose of DU oxide and low-level radioactive waste.

For more information about the specific sites, health effects from the discharges, emissions and waste disposal practices, references and things you can do to protect and preserve our future please visit www.nuclearactive.org, <http://masecoalition.org> and www.earthspirituality.org.



Photos: Buckman Diversion Project at Río Grande



WATER, AIR AND LAND: A SACRED TRUST

This map is a work in progress. The uses of water, air and land are diverse in New Mexico and will change dramatically with climate change. For caretakers of this sacred trust, the map offers a bird's eye view of the health of our environment. It documents primarily the energy-related sources of pollution, though in New Mexico other polluting factors are also at work.

This map does not cover *abatement sites, solid waste facilities and voluntary remediation sites*, among other things. Also, this map shows major water basins only.

-  Areas with high wells (see inset)
-  Superfund sites
-  Brownfields
-  Coal mines
-  Coal fire plumes
- Sites containing...