



## Buckman Direct Diversion

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**RE: 2016 COMPLIANCE ORDER ON CONSENT FOR LOS ALAMOS NATIONAL  
LABORATORY  
COMMENT FROM BUCKMAN DIRECT DIVERSION BOARD**

Dear Ms. Stringer:

This letter constitutes comments on and suggestions for changes to the 2016 Compliance Order on Consent (Consent Order) for Los Alamos National Laboratory (LANL) from the Buckman Direct Diversion Board, the governing body for the Buckman Direct Diversion. The Diversion is a single diversion point on the Rio Grande that the City of Santa Fe, Santa Fe County, and their limited partner, Las Campanas, share to divert their San Juan-Chama and native Rio Grande water rights. Diverted water is treated and introduced into the regional water system. The government entities are represented on the Board.

The Buckman Direct Diversion is on the Rio Grande, approximately 3 miles downstream of Otowi Bridge, a short distance downstream of the location of the confluence of Los Alamos Canyon and the Rio Grande. The 2016 Consent Order governs investigation, characterization, and cleanup of dozens of contaminated sites in the Los Alamos Canyon watershed<sup>1</sup>. The Board is therefore understandably concerned about runoff in Los Alamos Canyon and its tributaries, and the rigor of regulatory oversight of LANL's actions to protect human health and the environment, including the Buckman Direct Diversion intake structure and the residents and businesses that rely on the utility for their drinking water.

The Board has identified several overarching issues with the 2016 Consent Order that it believes compromises the New Mexico Environment Department's (NMED's) ability to be an effective regulatory body that can assure the protection the Board and its ratepayers expect for this important source of drinking water.

1. Issue: As LANL's owner and, along with NMED, a cosignatory of the 2016 Consent Order, the U.S. Department of Energy (DOE) sets the clean-up priorities based on its budget for one

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<sup>1</sup> For purposes of these comments, the Los Alamos Canyon watershed includes Los Alamos, Pueblo, and Guaje Canyon, and all of their tributaries.

to three years out. Under the 2016 Consent Order, NMED has no authority to deny or approve this priority list, which DOE readily admits is primarily driven by budget. DOE's priorities may or may not include sites and activities important to Rio Grande water quality at and above the BDD Project intake. Clean-up priorities should be based on risk to human health and the environment, not the DOE budget.

Comment: Priorities should be established until the last site is cleaned up (presumably still MDA G in the Pajarito Canyon watershed), and should include all sites, including – and perhaps especially – those that have the potential to immediately affect the Buckman Direct Diversion intake and Rio Grande water quality. The Board concedes that NMED and DOE should collaboratively establish priorities, but they should be based on risk to human health and the environment. The Consent Order should give NMED authority to deny any milestone or target. Any unresolvable dispute should default to dispute resolution, which should be subject to public notice before final action is taken.

2. Issue: Milestones (one-year out activities) and targets (two- to three-year out activities) are currently set by DOE, and many milestones and all targets are not enforceable by stipulated penalties [see CO VIII.B.(4)(c)].

Comment: Stipulated penalties should apply to (at least) milestones and targets, subject to annual revision by NMED.

3. Issue: With few exceptions, the 2016 Consent Order severed the relationship between issuance of a Certificate of Completion for a solid waste management unit or area of concern (SWMU/AOC) and migration of contaminants regulated under the federal Resource Conservation and Recovery Act (RCRA) beyond the boundaries of a SWMU/AOC via stormwater. [see VII.H]. This is particularly important because of the proposed *waters of the U.S.* (WOTUS) rule change.

Comment: Remove or amend section VII.H to clarify that the Consent Order establishes requirements for corrective action at SWMU/AOCs from which contaminants have migrated via stormwater.

4. Issue: Maintenance of the Los Alamos Canyon Weir is not clearly subject to NMED review and approval under the 2016 Consent Order or the Hazardous Waste Facility Permit (HWFP). Maintenance, including removal of sediment and the decision process to conduct maintenance, appears to be at the discretion of DOE and its contractor. The Board acknowledges that DOE submitted the “decision tree” to NMED for its review and approval in 2017, which NMED granted later that year. NMED should have notified and consulted with the Board before issuing a final determination.

Comment: Clearly require that maintenance of the Los Alamos Canyon Weir be subject to NMED review and approval. Include a requirement that NMED notify and consult with the Board on all documents related to the structure before it takes final agency action. The Board prefers that the Consent Order provides a process whereby NMED notifies the Board of the receipt of *any* document to or from DOE or its contractor(s) that concerns activities in the Los Alamos or Rendija Canyon watersheds under the Consent Order. If requested, NMED

should consult with the Board on any of the subject documents before final agency action is taken.

5. Issue: Public participation is severely limited under the CO. In fact, modification of the Consent Order itself is expressly excluded from public notification (see CO VII.G), a provision that could not exist if corrective action was conducted under the aegis of the HWFP. Public notification of completion of work at SWMU/AOCs (e.g., Certificates of Completion) or other updates to SWMU/AOC status is not required under the 2016 Consent Order; DOE can avoid notifying the public until the Consent Order is terminated (see CO VII.D). Finally, the Consent Order is based on a “campaign approach” which is in turn based on an “Annual Planning Process,” which is opaque to the public.

Comment: Any modifications to the Consent Order and the Annual Planning Process should incorporate some mechanism to require public participation. DOE should be required to update the status of SWMU/AOCs and provide notification to the public. Modification of the Consent Order should be subject to public notice, meeting, and formal comment. DOE should be required to develop, operate, and maintain an e-mail notification to interested parties about certain Consent Order activities.

As a final issue, the Board is currently seeking information about conditions and past activities in the Los Alamos Canyon watershed from DOE. As the Board receives, compiles, and processes this information we may have additional recommendations to NMED that are specific to this geographic location.

Thank you for the opportunity to provide these comments. We appreciate the ongoing dialog with NMED, and look forward to your serious consideration of our concerns.

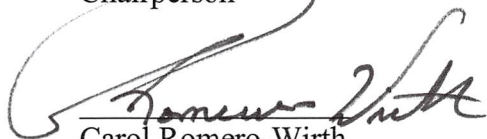
Respectfully,



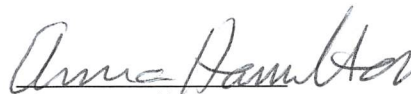
JoAnne Vigil Coppler  
Chairperson



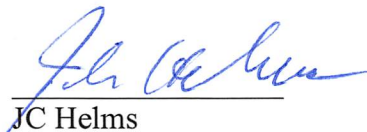
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