



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Regular Meeting Minutes
August 11, 2005**

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1. Call to Order and Roll Call

Chairman Brown called the Regular Board Meeting to order at 9:05 a.m. Thursday, August 11, 2005. Roll was noted as follows:

Directors present: Chairman Ronald D. Brown
 Director Daniel Lyon
 Director Tim Eichenberg
 Director Janet Saiers
 Director Danny Hernandez

Others present: John Kelly, Executive Engineer
 Sam Bregman, Attorney
 Staff

A quorum was present.

2. Approval of Agenda

Mr. Kelly stated there were no changes to the agenda.

Director Hernandez made a motion to approve the agenda. Director Eichenberg seconded the motion, which passed unanimously (5-0).

3. Meetings Scheduled

- a. September 22, 2005, 9:00 a.m. – Regular Meeting
- b. October 27, 2005, 9:00 a.m. – Regular Meeting
- c. November 17, 2005, 9:00 a.m. – Regular Meeting
- d. December 15, 2005, 9:00 a.m. – Regular Meeting

Director Eichenberg suggested that, as meetings had been running around four hours long, the meeting time be changed to 10:00 a.m., with lunch brought in at noon. The Board agreed. Chairman Brown stated he would be out of town on September 22, and suggested the September meeting be changed to Tuesday, September 20, 2005 at 10:00 a.m.

Director Lyon made a motion to move the September 2005 meeting to September 20, 2005, at 10:00 a.m., and to change the standard Board meeting time to 10:00 a.m. Director Eichenberg seconded the motion, which passed unanimously (5-0). The revised meeting schedule is as follows:



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- a. **September 20, 2005, 10:00 a.m. – Regular Meeting**
- b. **October 27, 2005, 10:00 a.m. – Regular Meeting**
- c. **November 17, 2005, 10:00 a.m. – Regular Meeting**
- d. **December 15, 2005, 10:00 a.m. – Regular Meeting**

4. Approval of Minutes

a. June 23, 2005

Director Eichenberg made a motion to approve the minutes of the June 23, 2005, Regular Board Meeting. Director Saiers seconded the motion, which passed unanimously (5-0).

b. June 24, 2005

Director Eichenberg made a motion to approve the minutes of the June 24, 2005, Special Board Meeting, with one deletion, the word "rhetorically" in the 6th paragraph on the second page. Director Lyon seconded the motion, which passed unanimously (5-0).

c. July 19, 2005

Director Hernandez made a motion to approve the minutes of the July 19, 2005, Special Board Meeting. Director Eichenberg seconded the motion, which passed unanimously (5-0).

5. Financial Matters

a. Approval of June 2005 Expenditures and July 2005 Expenditures

Irene Jeffries, AMAFCA Business Manager, presented the June 2005 and July 2005 Expenditure Reports. Ms. Jeffries also provided the Board with the unaudited ending balances for the Operating Fund, FY-05, as of June 30, 2005.

Director Eichenberg asked if the figure for UNM was correct in the July Report. Mr. Kelly stated that, once school is out, a large number of grad students become available for longer hours of work in the lab. As a result, the dollar amount usually goes up this time of year.

Director Saiers made a motion to approve the June 2005 and July 2005 Expenditure Reports. Director Hernandez seconded the motion, which passed unanimously (5-0).

b. Investment Report

For Information.



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c. Financial Recap June 16, 2005 through August 10, 2005

For Information.

d. Financial Forecast August 11, 2005 through September 15, 2005

Ms. Jeffries presented the Financial Forecast for the period August 11, 2005 through September 15, 2005.

Director Lyon made a motion to approve the Financial Forecast. Director Eichenberg seconded the motion, which passed unanimously (5-0).

e. Acceptance of Inventories

Ms. Jeffries presented the Office Inventory (separate lists for items under \$1000 and over \$1000), and the Maintenance Inventory (separate lists for items under \$1000 and over \$1000). She reported that all items had been accounted for except one computer, which had been purchased in January 2001 for use as a weather station. It was taken out of service in October 2004. The computer, which had no AMAFCA information on it, subsequently disappeared from storage.

Mr. Kelly added that the computer had been stored in the lunchroom for a time, prior to the new security door locks being added in December, 2005. It was his assumption that the computer had disappeared during that time.

In response to a question as to the computer's value, Ms. Jeffries stated that it had been purchased for \$1241 and was being depreciated over 5 years. The current depreciated value was therefore approximately \$250.

Director Saiers made a motion to accept the Inventory Lists. Director Hernandez seconded the motion, which passed unanimously (5-0).

f. Certification of Budget by DFA

Ms. Jeffries reported that DFA had certified AMAFCA's FY06 Budget. No Board action was necessary.



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g. County Boundary Change Update

Mr. Kelly reported that he had been involved in further discussions with Bernalillo County, Sandoval County, and DFA regarding the impact of the County Boundary change on setting AMAFCA's mill levy, and on collection of AMAFCA taxes by Sandoval County for the outstanding indebtedness.

Mr. Kelly stated that DFA has advised AMAFCA that the area in question is responsible for debt service on all bonds authorized prior to the boundary change vote. This is different from what they had indicated previously. He stated that DFA plans to schedule a meeting with AMAFCA, Bernalillo County, and Sandoval County later in August to discuss the boundary change, bonds, and tax distribution.

In response to a question, Mr. Kelly stated that taxes from that area would be collected by Sandoval County and disbursed to the appropriate agencies.

6. Approval of Resolution 2005-10, Ad Valorem Tax Levy, Debt Services Fund

Mr. Kelly introduced Kevin Powers, of RBC Dain Rauscher. He stated that staff concurred with RBC Dain Rauscher's recommendation that the Debt Service mill levy remain at its current level of \$0.675 per \$1,000 assessed valuation.

Mr. Powers answered several questions from the Board.

Director Hernandez made a motion that the Board adopt Resolution 2005-10, Ad Valorem Tax Levy, Debt Services Fund, setting the mill levy at \$0.675. Director Saiers seconded the motion, which passed (4-1). Director Eichenberg voted against the motion.

7. Approval of Resolution 2005-11, Ad Valorem Tax Levy, Operating Fund

Mr. Kelly stated that AMAFCA had asked the DFA for information regarding the maximum rates allowed under the yield control formula, so that the 2006 mill levy could be set proportionately. This information was not yet available.

Director Eichenberg supplied the Board with a report of final centrally assessed valuations in the state, broken down by counties.

Mr. Powers stated that the yield control formula would probably change the rate set by the Board. He anticipated that any rate change would result in a revenue change of about \$30,000. Chairman Brown stated that bond rates and terms could easily be adjusted so that the FY06 Budget would still balance.



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Mr. Powers stated that RBC Dain Rauscher recommended that the Operating Fund mill levy remain at its current level of \$0.183 residential and \$0.442 non-residential. However, the Board would need to be prepared to revisit the issue at a special meeting after DFA's determination of the yield control rates.

Mr. Powers answered several questions from the Board. The Board was reluctant to set the mill levy before they knew what the maximum rates allowed by the yield control formula would be.

Chairman Brown suggested a special meeting, after all the facts were in, to set the Operating Fund mill rates. At that time the Debt Service Fund mill rate could also be revised, if necessary.

Director Lyon made a motion that the Board defer setting the mill levy for the Operating Fund until it has all necessary information, and to possibly revisit the Debt Service Fund mill rate at that time. Director Eichenberg seconded the motion, which passed unanimously (5-0).

8. Legal – Status Report

Attorney Sam Bregman briefed the Board on the status of various legal matters.

9. Tijeras Arroyo Bank Protection – Award of Construction Contract

Christy Burton, AMAFCA GIS Manager, presented the results of the August 4, 2005 bid opening for the Tijeras Arroyo Hidden Valley Improvements Project. She introduced Jon Peña of HDR, who was available to answer questions.

She stated that seven contractors submitted bids. One bidder, Armour Pavement, was rejected as non-responsive due to the fact that they did not hold the proper contractor's license required to do the project. Of the remaining six bids, Salls Brothers Construction had the low bid with a bid of \$300,077.39. This was less than the engineer's estimate of \$340,000.00.

She stated that HDR Engineering had checked the bid tabulations and found no mathematical errors on the bids. HDR recommended the contract be awarded to Salls Brothers Construction. Staff recommends the same.

Director Eichenberg asked a question about the required contractor's license.

Mr. Kelly stated that the New Mexico Regulation & Licensing Department, Construction Industries Division (CID), had determined that this project needed a GF-4 (drainage and flood



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control structures) or GF-98 (all classifications of fixed works) license classification. Armour Pavement had listed GA-98 (paving and roadwork) and GF-01 (paving specialty) licenses on their bid documents.

In response to a question from Director Hernandez, Mr. Kelly stated that although CID had determined a GF-98 or GF-04 license was required for this project, another project could have another determination. That is why the bid documents specify "GF-98 or other satisfactory classification."

Director Lyon made a motion that the Board accept Salls Brothers Construction, Inc., as the lowest responsible bidder and authorize the Chairman to execute a contract with Salls Brothers Construction, Inc., in the amount of \$300,077.39, excluding New Mexico Gross Receipts Tax, for construction of the Tijeras Arroyo Hidden Valley Improvements Project. Director Eichenberg seconded the motion.

After brief discussion, the motion passed unanimously (5-0).

10. 35,000 GVWR Dump Truck – Award of Bid

Jerry Lovato, AMAFCA Field Engineer, stated that 3 equipment suppliers picked up the Request for Bids for the 35,000 GVWR Dump Truck. Two suppliers declined to bid, stating they were uncomfortable with the level of detail in AMAFCA's specifications. The other supplier, Roberts Truck Center, submitted a bid of \$60,478.00. This bid was under the budgeted amount estimated for the truck, and met all AMAFCA specifications.

In response to a question from Director Lyon, Mr. Lovato stated that Roberts Truck Center is an Albuquerque company that had recently changed its name. Previously they were called Sun Land International.

Director Eichenberg made a motion that the Board accept Roberts Truck Center as the lowest responsible bid and authorize the Executive Engineer to execute a contract with Roberts Truck Center for the purchase of the 35,000 GVWR Dump Truck in the amount of \$60,478.00. Director Hernandez seconded the motion, which passed unanimously (5-0).

11. Amole Arroyo Phase III & 98th Boulevard Crossing

a. Consideration of Amendment to Agreement with Curb, Inc. for Modified Design and Provision of Portion of Construction Engineering Funding

Loren Meinz, AMAFCA Drainage Engineer, introduced Bo Johnson of Curb, Inc.



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Mr. Mainz presented Amendment One to the Agreement with Curb, Inc, specifying that Curb would provide additional design plans for the project and surveys/plats for final project right-of-way, and contribute a lump sum of \$100,000.00 for Construction Management Services for the project. He stated that Curb has reviewed and approved the Amendment.

Director Saiers asked how the concrete shortage and increased cost of concrete will affect AMAFCA projects.

Mr. Mainz replied that there would be some minor scheduling delays of a few days on some pours, but nothing significant. He also stated that costs would go up.

Mr. Kelly added that the Mayor's recent negotiations would increase the local concrete supply from about 80% to about 90% of normal, which would help but not eliminate the shortage. He stated that AMAFCA may need to allow more time on contracts with concrete work. This could be handled during the RFB process on new contracts, and via change order on existing contracts.

Director Saiers made a motion that the Board approve Amendment One to the Agreement for Improvement of a Portion of the Amole Arroyo Drainage Facility from Amole Dam to Snow Vista Channel. Director Hernandez seconded the motion, which passed unanimously (5-0).

b. Consideration Approval of Cost Sharing Agreement with City of Albuquerque for Construction of Project

Mr. Kelly introduced Dan Hogan, of the City of Albuquerque. Mr. Mainz introduced Bo Johnson, of Curb, Inc.

Mr. Mainz presented the Cost Share Agreement with the City of Albuquerque and Albuquerque Bernalillo County Water Utility Authority (ABCWUA) for funding improvements to the Amole Arroyo from Blake Boulevard NW to north of the Snow Vista Channel/Amole Arroyo confluence.

He stated that AMAFCA will be the lead agency for the project construction. Construction cost, including prorated construction management costs, will be paid by each agency for the construction cost of their project elements. AMAFCA will procure construction management services via the RFP/SAC process, with participation by the City and the ABCWUA on the SAC. Each agency will maintain their respective project elements after construction. The agreement has been reviewed by each agency's legal department.



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He also stated that Curb, Inc., will provide all design plans and bid documents for the project and right-of-way surveys, and will contribute a lump sum of \$100,000.00 for construction management services.

Director Eichenberg asked the timeframe of the original agreement that AMAFCA provide the flood control channel in this area. Mr. Kelly replied that the timing was undetermined in the original agreement, but was tied to the timing of the roadway improvements.

Director Saiers made a motion that the Board approve the cost sharing agreement with City of Albuquerque and Albuquerque Bernalillo County Water Utility Authority for funding improvements to the Amole Arroyo from Blake Boulevard NW to north of the Snow Vista Channel/Amole Arroyo confluence, subject to review of the Agreement by AMAFCA's counsel, and if any substantive changes were necessary, that the Agreement be brought back before the Board.

Director Lyon seconded the motion, which passed unanimously (5-0).

12. Paradise Storm Drain

a. Consideration Approval of Funding Agreement with NMDOT

Lynn Mazur, AMAFCA Development Review Engineer, presented the Capital Cooperative Agreement for construction of the Paradise Boulevard Storm Drain west of Lyon Boulevard. The agreement was prepared by NMDOT. She reminded the Board that State Representative Thomas Anderson had obtained \$150,000 of state funds for construction of this storm drain.

She stated that the Agreement names AMAFCA as the local sponsoring agency for construction, and specifies how the funds would be disbursed. NMDOT bonds for the project will be sold in December. The Agreement also requires that AMAFCA adopt a written resolution in support of the project. Staff recommends approval, and that the Executive Engineer be appointed the Chairman's designee to certify the project to NMDOT.

Director Eichenberg asked what would happen to the project if the State didn't issue the bonds funding their portion of this project. Mr. Kelly replied that the design portion of the project would be done before the sale, so that AMAFCA is ready to begin construction quickly once the bonds are sold. If they are not sold, the construction will need to wait for other funding.

Ms. Mazur added that waiting until December would not hold up Salls Brothers, as they would not be at the intersection of Paradise and Lyon with the Lyon Storm Drain Project until about February. In response to a question from Director Eichenberg, she stated that the estimated construction cost for the Paradise project is \$370,000.



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Director Lyon made a motion that the Board approve and authorize the Chairman to sign the Cooperative Agreement with the New Mexico Department of Transportation for the Paradise Boulevard Storm Drain Project, substantially as presented, subject to review by AMAFCA's counsel. Director Hernandez seconded the motion.

Director Eichenberg repeated that the state may not fund their portion of the project. He also expressed his unease with handling this as a change order on an existing contract, stating that a change order adding 10% to the existing contract was too large of a change. He suggested that this project should be bid separately.

Discussion followed, regarding the state's funding and the change order process. Mr. Kelly pointed out that the \$150,000 for this project was a separate line item in the state's budget, to be used at Representative Anderson's discretion.

Director Saiers asked what would happen if the state didn't sell the bonds that would fund this line item. Mr. Kelly replied that AMAFCA would have done the design of the project, but would not construct it at this time.

After further discussion, Chairman Brown stated that he would support waiting for state funding before committing AMAFCA to the project, and having the project bid as a separate bid package rather than being added as a change order to an existing contract.

Mr. Kelly reported that doing the design as a stand-alone bid package would cost approximately \$3,000 TO \$5,000 more. Dan Aguirre of Wilson and Company confirmed this additional cost.

Chairman Brown supported AMAFCA having the project designed, but not putting it out to bid until state funding was obtained. He suggested that if the Agreement were approved, it improves AMAFCA's chances to keep state funding for the project.

Chairman Brown pointed out that the Agreement requires AMAFCA to pass a resolution supporting the project.

Director Saiers stated it was her experience that the state provided these standard funding contracts as a procedural tool so that local agencies could bill the state. The resolution indicates that the agency's governing board supports the project.

Mr. Kelly stated that the resolution, to be considered in Item 12b, would need to have the language regarding a change order removed. Director Hernandez pointed out the agreement didn't state the resolution needed to be passed immediately.



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Chairman Brown called the question. The motion passed (3-2), with Chairman Brown and Director Eichenberg voting nay.

b. Consideration Approval of Resolution 2005-12, for Support of Project

Ms. Mazur presented Resolution 2005-12 for Support of the Paradise Boulevard Storm Drain Project.

Chairman Brown stated the Board could defer approving the resolution, or could approve it subject to the language regarding a change order be revised to refer to putting the project out to bid.

Director Eichenberg asked why a resolution supporting the project was needed. Ms. Mazur replied that the state required it. Director Saiers explained that some time ago, the state had decided to require a local agency resolution supporting projects to insure that the local agency would accept appropriated monies and use them as intended.

Mr. Bregman pointed out that paragraph 5 of the agreement just approved, required a written resolution supporting the project.

Director Eichenberg made a motion that the Board defer a decision on the resolution. The motion died for lack of a second.

Director Lyon made a motion that the Board adopt and authorize the Chairman to sign Resolution 2005-12 for Support of the Paradise Boulevard Storm Drain Project. Director Hernandez seconded the motion.

Chairman Brown questioned passing the resolution with the "change order" language in it.

Mr. Bregman stated that the resolution could be adopted later, as the agreement with NMDOT did not state if the project should be let as a separate bid or as a change order, and the resolution stated it would be done as a change order.

Directors Lyon suggested that the "Whereas" paragraph regarding the change order be deleted, which would eliminate the difficulty. Directors Hernandez and Saiers agreed. Mr. Bregman stated that would be satisfactory. Director Lyon pointed out that would not commit AMAFCA to change order or separate bid, it could be done however the Board wished.

Director Lyon amended his motion to adopt Resolution 2005-12 with the second "Whereas" paragraph, regarding the change order, removed. Director Hernandez amended his second.



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Director Eichenberg asked about the "excess funds" referred to in the resolution. Mr. Kelly replied that "excess funds" referred to the savings from the project schedule estimate versus the actual bid price on the project.

The amended motion passed unanimously (5-0).

c. Consideration Approval of Amendment to Agreement with Wilson & Company for Design of Project

Ms. Mazur presented an amendment to the Agreement with Wilson & Company that would allow them to proceed with design of the Paradise Storm Drain. The Agreement for Design and Construction Engineering Services, dated June 29, 2004, would be amended to include design and construction engineering services for this project. The additional fee due under this amendment is \$23,611 for engineering design and contract documents, and \$15,500 for construction management/inspection, for a total of \$39,111.

Director Hernandez made a motion that the Board approve and authorize the Chairman to sign Amendment No. 5, substantially the same as attached, to the Agreement with Wilson & Company for the Lyon Boulevard Storm Drain Extension Project Design and Construction Engineering Services in the amount of \$39,111, excluding NMGRT. Director Saiers seconded the motion.

The Board discussed whether design should be done as an amendment, an on-call task, or as an RFP. Consensus was that the design work could be done as an on-call task order on Wilson's on-call services contract.

Director Hernandez amended his motion to state that the design would be done as an on-call task order on the existing on-call services contract. Director Saiers amended her second.

Mr. Kelly declared his preference to bring the approval back before the Board as an on-call task order under the existing contract for on-call engineering services.

Mr. Bregman pointed out that this item had not been advertised as approval of an on-call task order. He recommended that it be deferred.

Director Hernandez asked when the decision needed to be made. Mr. Kelly stated that it could be brought back before the Board at the September meeting without hurting the design process timeline.



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Director Eichenberg made a motion that the Board defer the item, to be brought back before the Board at the September 20, 2005 meeting as an on-call task order. Director Hernandez seconded the motion, which passed unanimously (5-0).

13. U.S. Army Corps of Engineers SW Valley Drainage Improvements Project – Consideration Approval of Amendment to Agreement for Planning, Engineering and Design

Mr. Lovato requested that the Board approve the Amendment to the Agreement for Planning, Engineering and Design (PED), to expand the Southwest Valley Drainage Improvements Project as discussed at the June 23, 2005 meeting.

Director Eichenberg made a motion that the Board approve the Amendment to the PED between the U.S. Army Corps of Engineers, AMAFCA and Bernalillo County for the Southwest Valley Project Drainage Improvements, substantially as attached, and authorize the Chairman to execute the Amendment upon final approval from the Corps.

Director Hernandez seconded the motion, which passed unanimously (5-0).

14. Sundoro Subdivision, Units 8 & 9 – Consideration of Funding Agreement with Dragonfly Development, Inc.

Mr. Kelly introduced Joe Hahn, of Dragonfly Development, Inc., and Dave Thompson of Thompson Engineering Consultants, engineer on the project.

Ms. Mazur stated that Westland had sold a portion of the Sundoro Subdivision to Dragonfly Development, Inc. She requested that the Board approve the Funding Agreement with Dragonfly Development, Inc., which provides for Dragonfly to reimburse AMAFCA \$2,719.50 per acre for its portion of the funding of the West I-40 Phase III Diversion Channel.

In response to a question from Director Eichenberg, Ms. Mazur stated that the existing retention pond would be reclaimed after the West I-40 Channel is extended in the future.

Director Eichenberg asked when the amount of \$2,719.50 per acre was set. Mr. Kelly replied that \$2,590.00 was used in an agreement with Westland approximately two years ago, and was adjusted for inflation in a February 2005 agreement, making the current figure \$2,719.50. He stated that this money takes care of Dragonfly's share of existing construction on the channel from Estancia to Unser.

Director Saiers asked if this agreement would fund any new projects. Mr. Kelly clarified that the funding agreement reimburses AMAFCA for work already done and currently being done.



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No additional work is authorized. He explained how funding for the West I-40 Diversion Channel project was set up, so that surrounding developers would pay into the project.

Director Lyon made a motion that the Board approve the Agreement and authorize the Chairman to execute the Agreement for Funding of West I-40 Phase III Diversion Channel, Estancia Road to Unser Boulevard as Related to the Sundoro Subdivision, Units 8 and 9. Director Eichenberg seconded the motion, which passed unanimously (5-0).

15. Consideration of Cooperative Funding Agreement for Continued NPDES Storm Water Management Public Outreach and Education Program

Mr. Mainz requested that the Board approve the Cooperative Funding Agreement for Continued NPDES Storm Water Management Public Outreach and Education Program. He stated that this would continue the cooperative agreement at the same level of funding, on an annual basis, similar to that for the Ditch Safety Program.

Director Hernandez made a motion that the Board approve the Cooperative Agreement for Joint Funding with AMAFCA, the City of Albuquerque, UNM, NMDOT, and Bernalillo County for the Storm Water Quality Public Outreach/Education Program. Director Eichenberg seconded the motion.

Director Saiers asked if this was the "Scoop the Poop" campaign. Mr. Mainz replied that the "Scoop the Poop" campaign was a part of the public education portion of the program, along with trash reduction.

The motion passed unanimously (5-0).

16. Authorization to Issue Request for Proposals for Construction Engineering Services, North Camino Arroyo, Boca Negra Dam and Amole Arroyo Phase III

Ms. Burton requested that the Board authorize the issuance of a RFP for construction engineering services on the North Camino Arroyo, Boca Negra Dam, and Amole Arroyo Phase III Projects. Mr. Kelly stated that staff's intention was to issue one RFP, and make multiple awards based on that RFP. Each firm would be able to be awarded only one project.

Discussion followed about whether these should be advertised as one RFP, as presented, or as three separate RFPs. Director Hernandez was concerned that bidders would be confused over the process. Director Lyon objected to the clause that each firm could only be chosen for one of the three projects. He asked what would happen if the best company for all three projects happened to be the same firm. Director Eichenberg stated he thought it was discriminatory to state each firm could only do one project.



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Mr. Kelly suggested that AMAFCA split apart the RFP to three separate RFPs. The Amole Arroyo Phase III Project construction engineering services RFP would be the first one to be published.

Mr. Bregman stated his legal opinion that it was not appropriate to limit companies to just one job.

Director Hernandez made a motion that the Board approve the issuance of three separate RFPs for construction engineering services for the North Camino Arroyo, Boca Negra Dam, and Amole Arroyo Phase III Projects. Director Eichenberg seconded the motion.

Chairman Brown suggested that the three RFPs have different deadlines and be spaced appropriately when advertised.

The motion passed unanimously (5-0).

17. Authorization to Issue Request for Proposals for On-Call Geotechnical/Environmental, Survey, Appraisal, Title & Oblique Aerial Photography Services

Martin Eckert, AMAFCA Real Estate Manager, stated that the on-call contracts for the above services had been extended the maximum number of times and now needed to be put out to bid.

Director Hernandez made a motion that the Board approve the issuance of the RFP for Geotechnical/Environmental, Surveying, Site Photography, Appraisal, and Title Services. Director Eichenberg seconded the motion, which passed unanimously (5-0).

18. Hartline / Isleta Boulevard Tributary Storm Drains Briefing

Mr. Kelly introduced Roger Paul, of the Bernalillo County Public Works Department. He also introduced Pat Conley, of Smith Engineering, who is doing the design on this project.

Mr. Kelly briefed the Board on the Hartline / Isleta Boulevard Tributary Storm Drains project. With the aid of a map, he showed the Board the areas of floodplain that the project would remove. He stated that the County would contribute \$250,000 towards the project. He stated that there would be a significant cost savings in merging all the storm drain projects in the area, and constructing them as one project. Mr. Kelly added that the project would remove 61 acres and 143 structures from the floodplain.



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Mr. Paul stated that Bernalillo County funding for the project has been identified.

The Board discussed the project, with several questions and comments on the project concept. Board consensus was that this was a good project, they supported it, and for staff to prepare an agreement along the lines discussed.

19. Real Estate

a. Final Sale Approval – Ridgecrest Properties LLC Surplus Property at South Domingo Baca Channel at Tramway Boulevard

Mr. Eckert introduced Brian Knight and Bill Hauenstein, of Ridgecrest Properties.

Mr. Eckert stated that no other parties had submitted written offers for the property, but that the State Property Tax Division had some concerns about the appraisal that would delay Board finalization of the sale. Director Eichenberg excused himself from the discussion of this item.

Chairman Brown repeated that it was important for the record to reflect that no other parties were interested in the property. Discussion followed, with Mr. Eckert answering several questions.

Director Lyon made a motion that the Board defer final action on this sale. Director Saiers seconded the motion, which passed (4-0).

Director Eichenberg was absent from the vote, but rejoined the meeting shortly thereafter.

b. Quitclaim/Partial Release of Floodplain Easement, Stormcloud Subdivision

Ms. Mazur requested that the Board approve a Quitclaim/Partial Release of Floodplain Easement, subject to receipt of a LOMR, for a temporary easement in the Stormcloud Subdivision. She also requested approval of an Encroachment Agreement for improvements in the AMAFCA Easement and FEMA floodplain until the LOMR is approved.

Director Saiers made a motion that the Board approve:

1. Subject to receipt of a LOMR, Quitclaim Deed / Partial Release of the Temporary Floodplain Easement granted with the Bulk Land Plat Westland North filed December 27, 2000, in Book 2000C, Page 316.
2. Encroachment Agreement for improvements in the AMAFCA Easement and FEMA floodplain until the LOMR is approved.



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Director Lyon seconded the motion, which passed (4-0). Director Hernandez was absent from the vote.

Chairman Brown called a brief recess at 11:14 a.m. The meeting reconvened at 11:20 a.m.

20. Field Highlights

a. Construction Report

b. Field Report

In response to a question earlier in the meeting, Mr. Lovato stated that AMAFCA is facing approximately a 15-20% increase in the cost of concrete on its projects. AMAFCA will modify construction schedules slightly to accommodate this change.

He then presented a slide show depicting current projects. He showed slides of the West I-40 Diversion Channel Phase III Project, and a graph showing progress to date and the revised construction schedule. Work is on-going. Laurelwood Pond filled with water from a recent storm event and had to be pumped dry, as the outlet was not complete.

Mr. Mainz described the Bear Canyon Arroyo Water Quality improvements. He showed slides of the revised pond area, and debris caught in the debris screens. A dumpster test demonstrated that the dumpsters could be easily emptied by the Solid Waste trucks.

He stated the Amole Phase II project was nearly complete, with the exception of a water line that is a part of the Amole Phase I project. Paving of the Amole Phase II service road has been delayed to avoid the need to dig up pavement for the water line, then repave.

Ms. Mazur discussed progress on the Lyon Storm Drain project. One slide depicted the largest excavator currently in New Mexico, which is being used on the project.

Mr. Kelly also commented on a picture of Board members and AMAFCA staff with Congresswoman Heather Wilson at a press conference last month, announcing federal funding of the Southwest Valley Flood Reduction project. Chairman Brown and Directors Lyon and Hernandez were able to attend the ceremony.



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21. Unfinished Business

a. Further Discussion on Floodplain Development in North Albuquerque Acres

Mr. Kelly briefed the Board on preliminary results of Mussetter Engineering's hydraulic analysis of the impact of pier houses on the La Cueva Arroyo. The first analysis involved pier houses built on lots partially in the floodplain. Analysis was to determine if the water level would increase by 1/10 foot during a storm event. Initial evaluation of the computer modeling data shows no cumulative effects of having a row of pier houses. Any effects are local.

Mussetter also evaluated the effects of adding a pier section onto an existing house, encroaching into the arroyo. Analysis was to determine if the water level would increase by 1/10 foot during a storm event, or by 1/2 foot during a flood event with the piers plugged with debris. Once again, nearly all effects were local, rather than cumulative. In one case, clogged piers would impact the upstream lot.

Mr. Kelly stated that additional scour from the piers was negligible, around 1-2 feet, only during the 100-year event. Because of the width of the floodplain, many houses are out of the water flow area in 1-, 2-, and 5- year events.

Mussetter was also asked to look at shift of the arroyo. The piers did not appear to shift the path of the arroyo.

The initial conclusion is that a sequence of pier houses will not cause a cumulative impact on the arroyo. Minor local impacts are seen.

Mr. Kelly stated that AMAFCA and Bernalillo County will develop guidelines and criteria for development in the floodplain, including requirements for the well, septic tank and leach field, setbacks, egress, and so on. Development would also be required to not raise the water level more than 1/10 foot.

Mussetter Engineering will be providing a full analysis and report in early September.

Mr. Kelly stated he would seek input from the DPM Technical Review Subcommittee. He expected to have either a draft checklist or a policy resolution in draft form available at the September 20, 2005 Board meeting. Guidelines could apply to all areas in AMAFCA's jurisdiction, not just the North Albuquerque Acres.



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22. New Business

a. Rio Bravo LOMR

Mr. Kelly reported that the FEMA LOMR had been issued for the Rio Bravo Channel. Copies of the letter were provided to the Board.

23. Ceremony for Retiring AMAFCA Employee Loren Meinz

Chairman Brown stated that this would be the last Board meeting that Drainage Engineer Loren Meinz would be attending, due to his upcoming retirement. Mr. Kelly spoke regarding Mr. Meinz's 17-year career with the City and AMAFCA. Chairman Brown then presented Mr. Meinz with a plaque from the Board thanking him for his service.

Mr. Meinz thanked the Board for the opportunity to work with them. He expressed special appreciation for the chance to work on water quality, public education, experimental projects, and increased awareness of water quality in the design community.

24. Items from the Floor/Public Comment

Mr. Kelly stated that Mr. Meinz's replacement would be Brad Bingham, currently with the City. He would start work at AMAFCA on September 7. Mr. Bingham was introduced, and thanked the Board for the opportunity to work for AMAFCA.

There were no other items from the floor.

Chairman Brown called a recess at 11:50 a.m. He reconvened the meeting at 12:05 p.m.

25. West I-40 Phase III Diversion Channel Project – Appeal of Executive Engineer's Decision to Not Allow Suspension, Modification or Stay of Liquidated Damages

Chairman Brown stated that this was a hearing on an appeal on the West I-40 Phase III Diversion Channel Project. Albuquerque Excavators, Inc. (AEI) had appealed the Executive Engineer's decision to not allow suspension, modification or stay of liquidated damages on the contract. Mr. Kelly stated that he had provided the Board with copies of relevant correspondence.

Jerry Padilla and Ed Demarey of AEI, and their attorney, Mike Menicucci of Calvert-Menicucci, arrived at 12:06 p.m.



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Mr. Kelly stated that AEI originally asked Wilson & Company for a suspension, modification or stay of liquidated damages, which was denied. AEI then asked AMAFCA for the same thing. He stated that he did not have the authority to do this, and the contract with AEI did not have any provisions for such an action, so he had denied the request. The reasons for the denial were spelled out in his July 7, 2005 letter to AEI.

Mr. Kelly added that AEI had appealed the decision to the Board of Directors by way of a letter dated July 14, 2005, so it was now before the Board. Mr. Kelly explained the administrative procedure for appeals as spelled out in the contract. The Board had 90 days to make a decision on the appeal.

Chairman Brown stated that 90 days from that letter would be October 12, 2005.

Director Hernandez asked for more specific information on the appeal. Mr. Kelly replied that AEI was appealing his decision to not modify liquidated damages down to actual costs, to not suspend liquidated damages until substantial completion, and to not stay liquidated damages until the end of the contract.

Chairman Brown invited Mike Menicucci, of Calvert Menicucci, P.C., attorney for AEI, to address the Board.

Mr. Menicucci handed out copies of correspondence faxed to AMAFCA the evening of August 10, and another faxed at about 10 a.m. on August 11, 2005. Mr. Kelly informed the Board that the August 10 and 11 letters had not been distributed to the Board in their meeting packets, and that he, Mr. Bregman, and Mr. Lovato had not yet had a chance to review those letters.

Director Eichenberg asked Mr. Bregman if the Board was allowed to accept information at the meeting. Mr. Bregman responded that additional information could be provided by the parties, but needed to be specific to the appeal rather than unrelated information.

Mr. Bregman asked Mr. Menicucci how the correspondence was relevant to the appeal, as it was a response to the letter of apparent default AMAFCA had sent August 2, not the appeal of the July 7 denial of their request to suspend, modify, or stay liquidated damages.

Mr. Menicucci replied that the letter contained the reasons why AEI thought AMAFCA should suspend, modify, and stay liquidated damages, and contained a proposed schedule that was relevant to the appeal. It was backup information to their request for reconsideration of the denial.



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Director Lyon asked Mr. Bregman to explain the sequence of recent events involving the liquidated damages suspension request and the subsequent correspondence, and the letter of apparent default, for the Board's information.

Mr. Bregman reviewed the timeline of AEI's request to Wilson & Company sometime in June to modify, stay, or suspend liquidated damages, which was denied. AEI took the request to the Executive Engineer, who also denied it. AEI then appealed that decision to the Board on July 14. This was a separate issue from the August 2, 2005 letter from AMAFCA to AEI regarding their apparent default of the contract.

He continued that on August 2nd, the Executive Engineer had sent AEI a letter detailing all the reasons that the contractor now appeared to be in apparent default. The letters the Board had just been handed appeared to be responses to that August 2 letter.

Mr. Menicucci stated that the reason he brought the letter was that he was hoping to convince the Board to stay liquidated damages and allow AEI to complete the project. He declared he was not there to address the apparent default.

Mr. Menicucci stated that AMAFCA could declare AEI in default and go through the bonding company. The bonding company investigation would take some time, and it would be 45-60 days before work could begin again. Or AMAFCA could stay the liquidated damages, allowing AEI to be paid for the next two months, and allowing them to reach substantial completion in about 2.5 months. The final payment due AEI could be withheld to cover liquidated damages. The decision about liquidated damages would be made at the end of the contract.

Mr. Menicucci stated he was presenting this option under the theory that it was important to complete the work, as opposed to deciding that it could be completed through the bonding company. AEI believes it can complete the work faster than the bonding company can. AMAFCA needs to look at the schedule and the manpower loading, to determine if it is realistic and reasonable, and decide if it presents a viable option to get the job finished.

He also stated that the bonding company had stepped in to pay Rinker Materials. Several other subcontractors would probably be paid by the bonding company as well.

Chairman Brown stated that AMAFCA and AEI had previous discussions about AEI being behind schedule on the project. AMAFCA was reluctant to resort to the final option of having the bonding company come in and finish the project, but AEI had not made significant progress on the project in the last few months. AEI's proposed schedule to finish approximately \$2 million of work in 2 ½ months would require about \$800,000 of work each month. AEI has not done any work on the contract at this pace to date.



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He continued, stating liquidated damages aside, the overhead to complete the contract at that accelerated pace would be extensive. AEI would not be bringing in enough money to make it work. AEI could not complete the job at the rate they were going.

Mr. Menicucci countered that AEI proposed a new method of riprap installation that would be faster. Pre-gradated rock would be purchased from Salls Brothers Construction, rather than AEI breaking its own rock on-site. It would be placed mechanically, using a trench box for placement, rather than manually, as had been done previously.

Chairman Brown repeated that even if liquidated damages were stayed, AEI did not appear to be able to finish the job.

Mr. Menicucci replied that if liquidated damages were not stayed, and if the old schedule were followed, in two months the job would be only half done. If liquidated damages were stayed and if the new schedule were followed, the job could be 100% done. He requested AMAFCA look at the new schedule to see if it was viable and realistic.

Mr. Bregman asked if Mr. Menicucci was aware of the contract suspension earlier this year. Mr. Menicucci stated he was. Mr. Bregman continued, stating the suspension was to allow AEI to regroup, come up with a new plan, and start moving forward on the job. Since then, AEI has only done about \$92,000/month.

Mr. Bregman asked how the plan had changed, and how AEI was planning to pay the new people they would need to hire. He asked if there had been a cash infusion into the company.

Mr. Menicucci replied that there had not. He stated that the change in approach for installing riprap would free up people currently doing riprap, to do other work.

Mr. Bregman asked how AEI would pay for materials. Mr. Menicucci responded that materials are currently backed up by the bonding company, so AEI's cash requirement is for labor.

Mr. Bregman asked if the final payment due AEI would be enough to cover the liquidated damages. Mr. Menicucci replied that the final payment due AEI would be far in excess of the amount of the liquidated damages.

Mr. Bregman then asked how many new employees AEI would be hiring for this job.

Mr. Demarey stated that riprap completion was a critical item that held up everything else on the project. Bringing in "store-bought" riprap solved the problem of slow progress. He stated



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that AEI had tried to do the job the wrong way – using free rock from Ventana Ranch, broken on site. This was too labor-intensive, using 15 laborers to do hand-chinking, and took too long. Using "store-bought" riprap and a trench box to hold riprap in place would allow much quicker mechanical placement.

Mr. Demarey stated that there was 2000 feet of riprap needing correction, as well as new sections to complete. He planned to have a group of 12 people working on the repair section, and another 12 on the new section.

Mr. Bregman expressed the concern that AMAFCA has seen correspondence from AEI where they said they did not make payroll, and they did not pay the employees on the job. He asked if AEI had the money in the bank to pay 24 people two week's worth of salary.

Mr. Demarey replied that AEI went to bi-weekly payroll to give them time to collect money from other sources.

Mr. Bregman asked if AEI had that money now.

Mr. Demarey responded that AEI would be liquidating some assets at 1:30 that afternoon, to provide a cash infusion to the company. They did not currently have the cash on hand.

Director Lyon stated that he'd been out to the site several times in the last two weeks, and was disappointed at the lack of progress. He asked when AEI was planning to hire the new people and buy the store-bought rocks.

Mr. Demarey stated that the purchase was delayed while they waited for verification that the new material met specifications. Chris Perea, of Wilson and Company, confirmed that material submittals can be no more than a year old, so the riprap had to be retested before installation.

Director Lyon added that he had talked to the neighborhood and they were concerned. He stated that the Board could perhaps defer action on the appeal to give AEI a chance to prove the new method would work, but could not modify, suspend, or stay liquidated damages.

Mr. Bregman declared that, for the record, he wanted to make one thing clear. Referring to the contract, he pointed out that it is unacceptable to pay employees biweekly. It is not allowed by the contract, and is probably not allowed by law. He believed the Department of Labor had already informed AEI of that fact. Regardless, the contract was very clear that AEI had to pay employees "not less than once a week."



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Chairman Brown asked if the bonding company was paying for the rock. Mr. Menicucci replied that the supplier hadn't supplied the rock yet, but the bonding company would pay for the rock if the contractor was unable to pay for it. The bonding company had paid claims for the RCP, and they had claims before them for the fuel oil and the structural concrete. Chairman Brown asked for written confirmation with respect to those claims.

Mr. Kelly asked if the riprap supplier had asked for a joint check agreement. Mr. Menicucci stated they had not, but he had no problem with a joint check agreement with any of the suppliers.

Mr. Bregman asked if there was currently a contract with Salls Brothers to furnish the rock. Mr. Menicucci replied that if the rock meets gradation, there will be a subcontract. Mr. Bregman asked if they had actually signed anything yet. Mr. Menicucci replied they had not.

Mr. Bregman asked when the rock would be purchased. Mr. Menicucci replied that AEI would purchase the rock when they were sure it would meet specifications. Mr. Bregman asked what would happen if it didn't meet specifications. Mr. Menicucci stated that AEI couldn't buy the rock in that case.

Mr. Bregman asked if AEI would walk off the job if they couldn't buy the rock. Mr. Menicucci replied that AEI would continue with the old method of riprap placement, and apparent default would be next.

Director Lyon reminded the Board that one of the actions they could take would be to defer their decision. He pointed out that Mr. Menicucci seemed optimistic that AEI could complete the job. Mr. Menicucci responded that his optimism was conditioned on payment.

Director Eichenberg remarked that Mr. Demarey had said earlier that they were going to liquidate other assets that afternoon, and asked if this would be used for next week's payroll. Mr. Demarey confirmed this.

Director Eichenberg stated that the letter AEI's attorney had supplied was a response to AMAFCA's letter of apparent default to AEI. It appeared that AEI did not have sufficient resources to cover liquidated damages. He asked Mr. Kelly what the next step would be.

Mr. Kelly replied that if AEI responded to everything he raised in the letter of August 2nd in a satisfactory manner, they would continue on the project. If not, the next step would be to declare AEI in default and terminate the contract.

Director Eichenberg asked if AEI was current on their taxes. Mr. Menicucci replied in the negative. Mr. Demarey added that AEI was approximately \$4300 behind on taxes.



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Mr. Demarey then stated that the last part of the letter Mr. Menicucci had given them was incomplete. A part of the letter to be finished included the ability of AEI to absorb liquidated damages. The completed letter would be AEI's response to the August 2nd "apparent default" letter.

Chairman Brown stated he was inclined to defer a decision on the appeal until information is received to verify the bonding company is paying for the rock, pipe, fuel oil, and fencing; that AEI has sufficient cash to make their current payroll; and that past due taxes have been paid.

Mr. Bregman clarified that the Board needed this information in order to make a decision. Denial or acceptance of the appeal was not guaranteed or conditioned upon whether or not the information was provided. Chairman Brown stated this information would be required in order for a decision to be made.

Director Hernandez declared that AEI would not only need to be able to cover payroll, they would need to find a sufficient number of people to hire to complete the job.

Director Saiers added she would also like to see verification that the assets liquidated that afternoon would supply sufficient funds to provide adequate working capital.

Mr. Menicucci stated that liquidating assets would help with, but not cover the entire payroll. The bank might want an assignment of payment from AMAFCA.

Mr. Kelly asked which suppliers were to be paid by the bonding company.

Mr. Menicucci replied that Rinker Materials' check had been cut the day before. Three other subcontractors had made claims to the bonding company.

Mr. Kelly listed eight subcontractors who had told AMAFCA that they have not been paid (Coyote Concrete, Valley Fence, JB Manufacturing, Ace Rebar, Zia Concrete, Southwest Safety, Twin Mountain Construction, and Continental Bridge). All eight have been provided with surety information. Mr. Menicucci stated that of those listed, only JB Materials and Valley Fence had already made their claim. The other subcontractor with a pending claim was EverReady Oil.

The Board discussed how long to defer this matter. Several Board members wanted to defer action for a week. Director Lyon thought that wouldn't be long enough to see if AEI was going to make any progress using the new riprap method.



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Mr. Menicucci interjected that there wouldn't be any change a week from now compared to right now, because he was coming in asking for money to institute a new type of procedure. He stated AEI has admitted that how they've done the riprap before was not working.

Director Saiers said that she didn't understand the statement, "I'm coming in to ask for money"?

Mr. Menicucci clarified that he was coming in asking for suspension of liquidated damages so that when AEI does perform work, they can be paid for it. Right now, liquidated damages are being imposed which can wipe out a pay estimate.

Mr. Bregman pointed out that even if the approximately \$60,000/month of liquidated damages were available to AEI, they would still be far short of meeting monthly expenses. He asked if AEI had the \$740,000 a month they would need to get the job finished.

Mr. Menicucci replied that they didn't, but the bonding company was taking care of suppliers, and AEI was trying to get a line of credit with the banks, based on the fact that they will get paid for their work. He restated that they were not asking for AMAFCA to make final payment. AEI was not asking AMAFCA to put itself in financial jeopardy.

Director Eichenberg asked, if the bonding company can cover payroll, why AEI hadn't already hired the 20 extra people. Mr. Menicucci replied that the bonding company pays for materials only, and won't look at wage claims till the job is complete.

Director Eichenberg made a motion to defer the hearing until Friday, August 19, 2005, at 8:30 a.m. Director Hernandez seconded the motion, which passed (4-1). Director Lyon voted nay.

Mr. Menicucci asked the Board what additional information they wanted, and Chairman Brown repeated the information requested by the Board to verify what the bonding company was doing to support completion of the project.

26. Adjourn

With no further business to discuss, Chairman Brown adjourned the meeting at 1:15 p.m.

Tim Eichenberg, Secretary-Treasurer 9/20/05

Recorded by Pam Woodruff, Secretary to the Executive Engineer