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Arroyo Flood Control Authority**
Regular Meeting Minutes
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1. Call to Order and Roll Call

Vice Chairman Hernandez, as Acting Chairman, called the Regular Board Meeting to order at 10:00 a.m. Thursday, January 27, 2011. Roll was noted as follows:

Directors present:	Vice Chairman Danny Hernandez Director Ronald D. Brown Director Tim Eichenberg Director Daniel Lyon Director Bruce Thomson
Director excused:	None
Others present:	Jerry M. Lovato, P.E., Executive Engineer Attorney Marcus Rael, Jr. Staff Other attendees on file at AMAFCA

A quorum was present.

2. Approval of Agenda

Mr. Lovato noted that there was a late mailout and a handout on agenda item 14. Acting Chairman Hernandez noted wording of agenda item 9c had changed more than 24 hours before the meeting, and had been posted with the corrected wording with sufficient notice to the public.

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

3. Meetings Scheduled

- a. **Thursday, February 24, 2011, 10:00 a.m. – Regular Meeting**
- b. **Thursday, March 24, 2011, 10:00 a.m. – Regular Meeting**
- c. **Thursday, April 28, 2011, 10:00 a.m. – Regular Meeting**

There were no changes to the meeting schedule.



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4. Election of Officers

- a. **Chairman**
- b. **Vice Chairman**
- c. **Secretary-Treasurer**
- d. **Assistant Secretary-Treasurer**

Director Eichenberg made a motion to nominate the following slate of officers:

Danny Hernandez, Chairman
Ronald D. Brown, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Tim Eichenberg, Assistant Secretary-Treasurer

Director Brown seconded the motion, which passed unanimously (5-0) on a roll-call vote.

Chairman Hernandez chaired the rest of the meeting.

5. Approval of Resolution 2011-1, *Open Meetings Standards*

The memo from Mr. Lovato stated that Resolution 2011-1, *Open Meetings Standards*, was the same as last year, with the dates updated. Attorney Rael had reviewed the resolution.

Director Brown made a motion that the Board approve and adopt Resolution 2011-1, *Open Meetings Standards* and authorize the Chair and Secretary to execute same on behalf of AMAFCA. Director Eichenberg seconded the motion.

Director Thomson suggested that language be added to the resolution stating that in addition to the written notification spelled out in the resolution, notice of all meetings and all agendas are posted on the AMAFCA website.

Attorney Rael stated that he could add the appropriate language to the resolution to make that addition. He stated that AMAFCA is allowed to make meeting notices by other methods in addition to those required by law, as long as the methods required by law are also followed. Mr. Lovato noted that a bill had been introduced in the legislature to allow legal notices be posted on a centralized website, www.nmlegalnotices.com, rather than being published in the paper.

Director Thomson made a motion to amend the motion to state that the Resolution be passed subject to it being amended, at the end of section two, to state that in addition to the written notification spelled out in the resolution, notifications are also posted on the AMAFCA website. Director Brown seconded the motion, which passed unanimously (5-0).

The motion to adopt the Resolution, as amended, passed unanimously (5-0) on a roll-call vote.



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6. Items from the Floor / Public Comment

None.

7. Approval of Minutes

a. December 16, 2010

Director Eichenberg made a motion to approve the minutes of the December 16, 2010 Regular Board Meeting. Director Lyon seconded the motion, which passed (4-0). Director Thomson abstained from the vote, as he was not on the Board as of the date of that meeting.

b. January 3, 2011

Director Eichenberg made a motion to approve the minutes of the January 3, 2011 Special Board Meeting. Director Thomson seconded the motion, which passed (4-0). Director Brown abstained from the vote, as he was not present at the meeting.

8. Financial Matters

a. Approval of December 2010 Expenditures

Irene Jeffries, AMAFCA Business Manager, presented the December 2010 Expenditure Report. There were no questions from the Board.

Director Lyon made a motion to approve the December 2010 Expenditure Report. Director Brown seconded the motion, which passed unanimously (5-0).

b. Investment Report for December 2010

Ms. Jeffries presented the investment report for December 2010. There were no questions, and no Board action was required.

c. Financial Recap December 12, 2010, through January 15, 2011

Ms. Jeffries presented the Financial Recap for December 12, 2010 through January 15, 2011. There were no questions, and no Board action was required.



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d. Financial Forecast January 16, 2011, through February 15, 2011

Ms. Jeffries presented the Financial Forecast for the period January 16, 2011, through February 15, 2011. She noted that under the Operating Fund, she included the transfers to the Contingency Fund and the Building Fund, per the budget. The Debt Service includes interest payments on the bonds. The Contingency Fund and the Building Fund show transfers in from the Operating Fund.

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

e. Consideration of Resolution 2011-2, FY 2011 Debt Service Fund Budget Adjustments

Ms. Jeffries stated that Resolution 2011-2, *FY 2011 Debt Service Fund Budget Adjustments*, would adjust Interest Income to reflect the interest premium received as a result of the Bond sale in September, and would also include the interest payment for the bonds under Expenditures. The net effect of the budget adjustment would be an increase of \$133,255.00 to the projected balance on June 30, 2011. She stated that the resolution had been reviewed by legal counsel.

Director Brown made a motion that the Board adopt Resolution 2011-2, *FY 2011 Debt Service Fund Budget Adjustments*, and authorize the Chairman and Secretary-Treasurer to sign the Resolution. Director Eichenberg seconded the motion.

Responding to a question from Director Eichenberg, Ms. Jeffries stated that at the time the budget was prepared and adopted in the spring, AMAFCA did not know what the interest rate and premium amount would be at the bond sale in September. Director Eichenberg suggested that, in the future, an estimated amount be included in the budget.

The motion passed unanimously (5-0), on a roll-call vote.

f. Consideration of Resolution 2011-3, FY 2011 Budget Adjustments

Ms. Jeffries explained that Resolution 2011-3, *FY 2011 Budget Adjustments*, would make several adjustments to the budget. These were necessary because at the time of the budget process, it was not known what the costs for the Absences Payable to the retiring Executive Engineer would be, nor were the total costs of the transition period known. Estimated amounts were included in the Contingency Fund budget, to be transferred to the Operating Fund budget. The adjustment would change these estimated amounts to the actual amounts.



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She noted that the Building and Yard Improvement Fund expenditures also need to be adjusted to reflect actual expenses.

Ms. Jeffries stated that the adjustments would have no effect on the FY 2011 Operating Fund Budget projected balance on June 30, 2011, but would decrease the FY 2011 Building and Yard Improvement Fund projected balance on June 30, 2011 by \$553.00.

Director Lyon made a motion that the Board pass and adopt Resolution 2011-3, *FY 2011 Budget Adjustments*, and authorize the Chairman and Secretary-Treasurer to sign the Resolution. Director Brown seconded the motion. Discussion followed.

As there was some confusion regarding the various transfers among line items, Director Eichenberg suggested staff rework the resolution and bring it back as two separate resolutions, one dealing with the Executive Engineer transition and related expenses, and the other dealing with the building remodel expenses.

Director Eichenberg made a motion that the Board defer a decision on this matter, and that staff bring the budget adjustments back as two separate resolutions. Director Brown seconded the motion, which passed unanimously (5-0).

g. Mid-Year Budget Recap 2011 Operating Fund Budget

Ms. Jeffries gave a brief recap of the mid-year budget review of the Operating Fund Budget. Total Revenues are projected to be \$3,500.00 over budget. Employee Expenses are projected to be at 98.9%, excluding additional overtime for emergency work. Other Operating Expenses are projected to be at 97.8% of budget. This includes the purchase of the Compact Track Loader, which was included in the budget.

Ms. Jeffries answered a question from Director Eichenberg, stating that the collection rate for tax receipts so far this year is running a little higher than in prior years.

Director Brown noted that some expense line items include non-recurring expenses that were scheduled in the first six months or last six months of the fiscal year.

h. Follow-up Regarding "Rewards" Credit Card

Pamela Woodruff, AMAFCA Executive Secretary, stated that AMAFCA's current business credit cards through Wells Fargo Bank have no annual fee and there is a 30-day grace period on all charges. Wells Fargo does not offer a rewards program on business credit cards.



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She noted that she had researched more than a dozen different business credit cards offering rewards, through five different providers including two airline rewards cards. All cards researched either had no grace period or charged an annual fee, or both. Based on AMAFCA's historic use of the credit cards, the value of the reward is more than offset by the increased cost in annual fees and interest. Staff concluded it is fiscally responsible and prudent to continue to use Wells Fargo Bank for our business credit cards.

Brief discussion followed. Consensus of the Board was to support staying with Wells Fargo for AMAFCA's business credit cards.

9. Legal

a. Status Report

Attorney Marcus Rael, Jr., briefed the Board on the status of various legal matters, answering several questions from the Board.

Director Lyon asked whether the Open Meetings Act allows Directors to participate in meetings via telephone, including voting. Attorney Rael stated there is a provision in the Open Meetings Act that allows a Board member to call in for a meeting, but it is up for debate whether they are allowed to vote, due to the difficulty of determining identity. Discussion followed.

Chairman Hernandez stated there would be a question of whether or not there was a quorum, and that there would be audibility issues on both sides. He was not in favor of telephonic participation in Board meetings.

Director Thomson stated he would support Directors being able to participate via phone.

Director Eichenberg stated that he thought that there was an Attorney General opinion stating that elected officials must be present to vote, and suggested Attorney Rael research the issue further.

Director Lyon stated that the difference between the AMAFCA Board and the State boards he is on, where some members participate via telephone on occasion, may be the difference between being elected versus being appointed to the Board. He supported having Mr. Rael research the question.

Chairman Hernandez stated Mr. Rael could look into the question, and the Board could then decide if they wished to allow Directors to participate via phone.



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After further discussion, Director Brown made a motion that the Board set a policy of permitting Directors' telephonic participation in a Board meeting, including voting, if allowed by state law. Director Thomson seconded the motion, which passed (3-2). Chairman Hernandez and Director Eichenberg voted against the motion.

b. Follow-up Regarding Wells Fargo Financial Copier Lease

Attorney Rael explained that the original copier lease had been for a five year period, with unfavorable terms. After he reviewed the lease and determined it was invalid, he and staff met with representatives from Imaging Concepts and re-negotiated the lease. The old lease was for \$640 a month for 5,000 black and white copies, plus \$0.009 per page for excess black and white copies, and \$0.06 per page for color copies. The new lease is for \$568 a month for 30,000 black and white copies, with the same rates for excess black and white copies and for color copies as before.

d. Update on Potential Litigation and Personnel Matters

Chairman Hernandez stated that discussion of potential litigation and personnel matters would be in closed session.

Director Brown made a motion that the meeting be closed, pursuant to the Open Meetings Act, §10-15-1 NMSA 1978, Subsection H, to preserve the confidentiality of the information to be discussed, and as further described in "*The Open Meeting Act, A Compliance Guide for New Mexico Public Officials and Citizens*," seventh edition, 2010, to discuss potential litigation and personnel matters. Director Eichenberg seconded the motion.

Chairman Hernandez stated that the closed session would be for purposes of discussion only, regarding potential litigation and personnel matters. The motion passed unanimously (5-0), on a roll call vote.

Chairman Hernandez closed the meeting at 10:44 a.m.

Director Brown made a motion that the meeting be re-opened, stating that the Board had taken no action during the closed meeting, but had discussed potential litigation and personnel matters. Director Thomson seconded the motion, which passed unanimously (5-0), on a roll call vote.

Chairman Hernandez reopened the meeting at 11:29 a.m.



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10. Executive Engineer's Report

a. Notification of Past Month's Activities

Chairman Hernandez stated that he had asked Mr. Lovato to provide a summary of major events that have happened in the past month, which do not quite rise to the level of an agenda item.

Mr. Lovato highlighted significant activities of the past month. There were no questions. He also introduced Brad Bingham, who will be joining AMAFCA as the new Drainage Engineer on February 14, 2011. Chairman Hernandez welcomed him, and Mr. Bingham thanked AMAFCA and the Board for the opportunity to work at AMAFCA.

b. Notification of On-Call Services Task Orders

Mr. Lovato stated that one on-call task order had been issued to Easterling Consultants, as detailed in his memo. There were no questions.

11. Bike Trail Update – Briefing by the City of Albuquerque

Loren Hines, AMAFCA Real Estate Manager, introduced Theresa Baca, Associate Trails Planner with the City of Albuquerque Parks and Recreation Department. He stated that AMAFCA entered into a License Agreement with the City of Albuquerque in 1994 which allows the City to use AMAFCA Right of Way to construct and maintain a system of multi-use bike trails throughout the City. Amendments over the years have added new trails to the system.

Ms. Baca briefed the Board on proposed new and improved bike trails in Albuquerque, including several additional "notches" in the North Diversion Channel at Comanche, Candelaria, Menaul, Singer, and Osuna to provide safe crossings under the major intersections of the trail system with Albuquerque roads, and a bridge which will increase bicycle and pedestrian safety at an upgraded roadway intersection at Wyoming and South Domingo Baca.

12. Osuna Area Projects Update – Briefing by the City of Albuquerque

Kurt Wagener, AMAFCA Field Engineer, introduced Melissa Lozoya, City of Albuquerque Engineering Division Manager.

Ms. Lozoya briefed the Board on a number of upcoming City of Albuquerque projects in the Osuna area of the City's North Valley Planning Zone, including the widening of Osuna (Phase I and Phase II), a bike and pedestrian trail notch under Osuna, construction of a new road alongside the North Diversion Channel from Osuna to Alameda with a break at Paseo del Norte



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(Essayons Road), Singer bridge widening, trail connectivity along the North Diversion Channel, and the Alameda Drain Study.

Mr. Lovato noted that the name "Essayons" comes from the Corps of Engineer's motto, which means "let us try."

Ms. Lozoya stated that the City will have detailed presentations of these projects at future Board meetings.

Ms. Lozoya stated that some of the projects will require new cost share agreements with Bernalillo County and AMAFCA, along with some federal funding. The City may also request Right of Way easements at several locations. She stated that the City proposes the property for the bridges over the North Diversion Channel at Singer and Osuna be changed to City ownership with an underlying AMAFCA drainage easement, similar to what was done at Unser over the Amole Channel.

She noted that the existing Trail License will need a new amendment, an agreement will be necessary for use of the easement for Essayons Road, the Alameda Drain Study will require a Memorandum of Understanding, the City will request that AMAFCA funding for the Jefferson Storm Drain currently in the AMAFCA Project Schedule for FY 14 be moved to FY 12 for Osuna Phase I, and the City will request AMAFCA's help with the storm drain improvements and right of way acquisition for Osuna Phase II. Federal funding will be used for a portion of Essayons Road, the Osuna Bike Notch and the Osuna widening projects.

Discussion followed. In response to Mr. Lovato's query regarding drafting the necessary Memorandums of Understanding and Trail License Amendment, and the request to move money from FY 14 to FY 12, the consensus of the Board was move forward with beginning to draft the necessary agreements. The Alameda Drain Study will be decided after a more in-depth briefing at a later meeting.

13. Time Extension of Pino Dam Turnkey Agreement with Dr. William Galbreth

Director Brown excused himself at 12:13 p.m., stating that, although he is not involved in any way with Dr. Galbreth's project, he had been involved in the sale of the subject land to Dr. Galbreth.

The memo from Mr. Lovato stated that the project will address identified deficiencies in the emergency spillway of the Pino Dam. However, the approval of the New Mexico Office of the State Engineer's Dam Safety Bureau (OSE) is not likely to occur in sufficient time to start the project before the June 22, 2011 date specified in the agreement. He asked the Board for a one-year extension on that deadline.



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Director Eichenberg made a motion that the Board direct staff to prepare an amendment to the Pino Dam Turnkey Agreement with Dr. William Galbreth that would add an additional year before construction has to be started. Director Lyon seconded the motion.

In response to a question from Director Eichenberg about a bond or guarantee on the extension, to be sure that he is capable of doing the improvements, Mr. Rael stated the Board could request a payment bond.

Mr. Lovato stated that estimated cost of the project is now close to \$900,000. The current design proposed by Dr. Galbreth addresses flows attributed to a 24 hour Probable Maximum Precipitation (PMP). The OSE has asked for an additional analysis of a 72 hour PMP event. The current cost estimate may not be enough to cover any additional work that may be required to address the results of the new analysis.

Director Eichenberg was unsure if the project would even be feasible for Dr. Galbreth to continue to pursue at this point, considering the condition of the real estate market.

Mr. Lovato stated that the State Engineer has asked them to look into a series of smaller structures along the spillway, rather than one structure within the existing small easement. The deadline extension will allow more time for this activity as well.

The motion passed (4-0), Director Brown being absent. He returned to the room at 2:17 p.m.

14. 2010 Legislative Session – Briefing by Alarid Consulting

Chairman Hernandez introduced Vanessa Alarid, of Alarid Consulting, AMAFCA's Legislative Liaison. He also noted that there was a late mailout and a handout on this agenda item.

Ms. Alarid briefed the Board on the bills introduced in the legislative session thus far. She had focused on a list of key words, and asked Board input on which bills they would like her to continue tracking, and which AMAFCA will oppose, support, or simply follow. The Board gave her guidance on which bills they wished to follow.

Ms. Alarid reported that she had recently agreed to represent another client, Maximus, which is concerned with health care and insurance exchange. Her subcontractor, Mark Fleisher, reported that he was now representing the police union in Albuquerque, the fire union in Albuquerque, and Western Water & Power in Estancia, a biomass company. The Board did not have any objections.



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Director Eichenberg gave further information to the Board on a bill he had been asked to introduce, which would make changes in the Mileage and Per Diem Act.

The Board suggested some additional keywords for future bill searches. Ms. Alarid will give the Board another briefing at the February 24, 2011, Board meeting. Chairman Hernandez stated he was also following the bills that were being introduced, to determine which have an effect on AMAFCA.

Due to a prior commitment, Director Eichenberg left the meeting at 12:40 p.m.

15. Field Highlights

a. Construction Report

Mr. Wagener had provided a memo regarding current construction projects. There were no questions.

b. Field Report

Chairman Hernandez briefly left the meeting at 12:44 p.m., returning at 12:51 p.m. Vice Chairman Brown chaired the meeting during his absence.

Mr. Wagener gave a report of various projects and events over the past two months, answering several questions from the Board.

16. Real Estate

a. Agricultural Lease – Terpstra Property

Mr. Hines stated two bids were received for the Terpstra Property. The lessee will also be responsible for paying the MRGCD water service charge of \$624.40 per year. The best bid was Scott Rasband with a bid of \$1,950.00 per year. He provided a cashier's check in the amount of his bid proposal plus \$1,000.00 damage deposit and \$600.00 water service charge deposit, as required in the Request for Bids. He also completed an AMAFCA Campaign Contribution Disclosure Form.

Mr. Hines asked that the Lease Agreement be approved for signature, stating that Attorney Rael had reviewed the lease.

Direction Brown made a motion that the Board approve a Lease Agreement with Scott Rasband and authorize the Executive Engineer to execute the Lease on behalf of AMAFCA. Director



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Thomson seconded the motion, which passed (4-0), Director Eichenberg being absent at the time of the vote.

17. Unfinished Business

None.

18. New Business

None.

19. Adjourn

There being no further business to come before the Board, Chairman Hernandez adjourned the meeting at 1:01 p.m.

Bruce M. Thomson, Secretary-Treasurer 2/24/11

Recorded by Pamela Woodruff, Executive Secretary