

**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
July 19, 2005**

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1. Call to Order and Roll Call

Chairman Brown called the Special Board Meeting to order at 8:06 a.m. Tuesday, July 19, 2005. Roll was noted as follows:

Directors present: Chairman Ronald D. Brown
 Director Daniel Lyon
 Director Tim Eichenberg
 Director Janet Saiers (arrived at 8:12 a.m.)
 Director Danny Hernandez

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

A quorum was present.

2. Approval of Agenda

Director Hernandez made a motion to approve the agenda. Director Eichenberg seconded the motion, which passed (4-0).

3. Meetings Scheduled

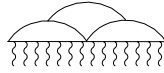
- a. August 11, 2005, 9:00 a.m. – Regular Meeting**
- b. September 22, 2005, 9:00 a.m. – Regular Meeting**

There were no changes to the meeting schedule as set forth. A Special Meeting may need to be scheduled to hear an appeal from the West I-40 Phase III Diversion Channel contractor, if the Chairman decides to have this in a separate meeting rather than as a part of a regular meeting.

6. New Business

Chairman Brown stated that as there was a guest in the audience, item 6 would be heard next. He introduced Wendy Vigil, of the Mid-Region Council of Governments (MRCOG).

Ms. Vigil stated that AMAFCA and Bernalillo County had received the Public Partnership Award for the Sanchez Farm Project. All Board members were invited to the Golf Tournament and to the Awards Dinner on Friday, August 12, 2005. RSVPs are due to MRCOG by August 3, 2005.



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4. La Cueva Arroyo Encroachment Analysis – Consideration of On-Call Engineering Services Task Order #3 with Mussetter Engineering, Inc.

Lynn Mazur, AMAFCA Development Review Engineer, stated that AMAFCA had asked Mussetter Engineering for a proposal to evaluate the La Cueva Arroyo floodplain between Elena and Eubank. She explained the various scenarios and variables that Mussetter would evaluate.

Mr. Kelly discussed the methodology Mussetter would use to conduct the evaluation. There will be a considerable amount of manual data input into the computer model in order to run the various scenarios.

In response to a question from Director Lyon, Ms. Mazur stated that Mussetter Engineering had been chosen for this task from among AMAFCA's on-call engineering firms, because Mussetter had done a considerable amount of similar analysis work on other sand-bed natural arroyos in Albuquerque.

In response to another question, Ms. Mazur stated that Bernalillo County doesn't allow septic tanks in the floodplain, although leach fields are sometimes located in the floodplain. Wells may be located in the floodplain if properly designed.

Director Lyon also asked about Bernalillo County's role in this analysis.

Chairman Brown stated that there were several public interest elements to be considered. AMAFCA's responsibility includes determining the possible impact on the floodplain of allowing development in the floodplain, and setting policy to control development in the floodplain. Consideration of other issues, including visual and aesthetic impact, and septic systems and wells, are the responsibility of Bernalillo County.

Attorney Sam Bregman added that, as a part of the permitting process, AMAFCA determines whether or not a building in the floodplain will be safe.

In response to a question from Director Lyon, Mr. Kelly stated that the proposed hydraulic analysis is within the parameters of AMAFCA's mission statement.

Director Eichenberg asked about notification. Ms. Mazur confirmed that she had notified both the property owner, Ashot Tumagyan, and his engineer, Larry Read, of the meeting and possible analysis of the arroyo.

Director Eichenberg also asked about the advisability of modeling other pier shapes. Mr. Kelly stated that the type of pier proposed by Ashot would be used for the computer modeling



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as it had been proven to work structurally, and was the most common and most easily built type of pier. Introducing other pier shapes would overly complicate the computer model, increasing its cost.

Director Saiers asked if Ashot had any comments about the meeting.

Ms. Mazur replied that Mr. Ashot wondered why AMAFCA was delaying approval of his plans for this analysis, stating that one house on piers would not have a significant effect on the arroyo. He contended that the other floodplain lots may possibly never be developed.

Mr. Kelly pointed out that lots in the North Albuquerque Acres area are becoming very valuable, and will probably be built upon, if a way to do so safely is established. Mr. Bregman stressed that the policy set must be fair to everyone and consistent with AMAFCA's mission to protect the health and safety of its citizens.

Director Hernandez made a motion that the Board approve the proposal from Mussetter Engineering, Inc., not to exceed \$15,800.00, excluding Gross Receipts Tax. The motion was seconded by Director Eichenberg.

Director Saiers stated that she and Director Hernandez had discussed neighborhood issues of privacy, view, and *de facto* "open space". Chairman Brown pointed out that these issues were not part of AMAFCA's purview. Director Hernandez replied that neighbors may still be angry at AMAFCA for allowing this development, and AMAFCA should be ready to handle the public relations issues that could result.

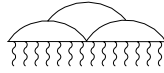
In response to a question from Director Lyon, Mr. Kelly confirmed that the initial technical analysis would be delivered to AMAFCA by August 8, with the final full report due September 1.

Chairman Brown called the question.

The motion passed unanimously (5-0).

Chairman Brown asked Ms. Mazur to be sure the owner understands that AMAFCA is trying to set one fair policy for every property owner in the area, including him. Mr. Kelly stated that he would send such a letter, with attorney input.

Director Lyon wondered if there would be enough room on unencumbered portions of the affected lots in North Albuquerque Acres for the necessary wells and septic systems. Director Eichenberg expressed his concern that a septic leach system within a floodplain could fill with water during a storm event and back up into the tank, causing an overflow sewage spill.



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5. West I-40 Phase III Diversion Channel – Status Report

Mr. Kelly stated that the contractor on the West I-40 Phase III Diversion Channel Project, Albuquerque Excavators, Inc. (AEI), had appealed his decision of July 7, 2005, to not suspend, waive, or modify liquidated damages. They had requested a hearing on the matter, but wanted additional time to prepare. As he and Mr. Bregman would be unavailable the week of July 25, Mr. Kelly suggested a hearing at a special meeting on August 2, or at the regular meeting on August 11. The Board has 90 days to make a decision on the appeal.

Jerry Lovato, AMAFCA Field Engineer, stated that there were currently four issues to resolve on this project:

1. AEI asked to have liquidated damages suspended. This was denied by the Executive Engineer, and appealed by AEI.

Mr. Bregman pointed out that AEI is dangerously close to defaulting on the contract. AEI is expressing a concern over \$1700 a day in liquidated damages, while they are failing to complete about \$500,000 of the planned work each month, with only 60% of the job complete.

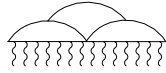
2. Continued violation of the City fugitive dust ordinance. The original one-year permit expired, and the area disturbed is also greater than that allowed under the former dust permit. A fine of \$9840 has been levied by the City. Compliance and enforcement are both at issue. AMAFCA has been doing much of the dust control as AEI was not doing it.

Mr. Kelly stated that the City has been trying to work with AMAFCA to keep the construction going, but the City is frustrated that AEI isn't doing what they said they'd do to control dust.

Mr. Lovato added that there is a deadline of July 29 for payment of the fine. If AEI doesn't pay it, AMAFCA will, subtracting the fine from the next pay estimate. He added that AMAFCA will meet with the surety, attorney for the surety, and their construction manager on July 21, 2005. In response to a question from Director Eichenberg, he confirmed that AMAFCA's attorney would also be present.

Mr. Lovato continued his list of issues to be resolved:

3. Effective July 17, 2005, AEI did not have any liability insurance covering the project. A faxed insurance certificate was received on July 18 from their insurance agency showing new coverage effective July 18, but no policy numbers were listed on



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the certificate so coverage could not be verified. There had been one worker on the site on July 17, without any liability insurance coverage on the job.

4. AEI stated that they hadn't paid anyone the week of July 9-15.

In response to a question from Director Saiers, Mr. Kelly explained the administrative procedure outlined in the contract.

The Board discussed whether the appeal should be handled in a special meeting. Consensus was that the Chairman would decide when to schedule the hearing for AEI's appeal of the Executive Engineer's July 7 decision.

Chairman Brown summarized that the Board was concerned about AEI's lack of insurance, failure to pay its workers, and the lack of a dust permit.

7. Items from the Floor/Public Comment

None.

8. Adjourn

With no further business to discuss, Chairman Brown adjourned the meeting at 9:15 a.m.

Tim Eichenberg, Secretary-Treasurer 8/11/05

Recorded by Pam Woodruff, Secretary to the Executive Engineer