



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Regular Meeting Minutes
November 19, 2009**

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1. Call to Order and Roll Call

Chairman Brown called the Regular Board Meeting to order at 9:31 a.m. Thursday, November 19, 2009. Roll was noted as follows:

Directors present:	Chairman Ronald D. Brown Director Janet Saiers Director Danny Hernandez Director Tim Eichenberg Director Daniel Lyon
Directors excused:	None
Others present:	John Kelly, Executive Engineer Marcus Rael, Jr., Attorney Sam Bregman, Attorney Staff Other attendees on file at AMAFCA

A quorum was present.

2. Approval of Agenda

Mr. Kelly noted that there were late mailouts on agenda items 3, 11, 19a, and 20a, and a handout on item 17. Director Hernandez made a motion to approve the agenda. Director Saiers seconded the motion, which passed unanimously (5-0).

3. West I-40 Diversion Channel Property Condemnation

Chairman Brown stated that discussion of pending litigation needed to be in closed session.

Director Hernandez 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,"* fifth edition, January 2004. Director Saiers seconded the motion.

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



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Chairman Brown closed the meeting at 9:33 a.m. Real Estate Manager Loren Hines, Drainage Engineer Jerry Lovato, and Attorneys Rael and Bregman were asked to remain in the closed meeting.

Director Hernandez made a motion that the meeting be re-opened. Director Eichenberg seconded the motion, which passed (4-0), on a roll call vote, Chairman Brown abstaining.

Vice Chair Saiers reopened the meeting at 9:58 a.m. She stated that the Board had taken no action during the closed meeting, but had discussed pending litigation and given direction to Attorney Sam Bregman. Chairman Brown had left the room and did not participate in the discussion.

Chairman Brown thanked Vice Chair Saiers, and resumed chairing the meeting.

4. Executive Engineer Evaluation

Chairman Brown stated that discussion of personnel matters needed to be in closed session.

Director Hernandez 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*," fifth edition, January 2004. Director Saiers seconded the motion.

Chairman Brown stated that the closed session would be for purposes of discussion only, regarding personnel matters. The motion passed (4-0), on a roll call vote, Director Eichenberg being temporarily absent. He returned to the meeting after the vote. Chairman Brown closed the meeting at 10:00 a.m.

Director Lyon made a motion that the meeting be re-opened. Director Hernandez seconded the motion, which passed unanimously (5-0), on a roll call vote.

Chairman Brown reopened the meeting at 10:39 a.m. He stated that the Board had taken no action during the closed meeting, but had discussed personnel matters.

5. Meetings Scheduled

- a. **Thursday, December 17, 2009, 10:00 a.m. – Regular Meeting**
- b. **Thursday, January 28, 2010, 10:00 a.m. – Regular Meeting**
- c. **Thursday, February 25, 2010, 10:00 a.m. – Regular Meeting**

There were no changes to the meetings as scheduled.



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Director Hernandez left the meeting at 10:40, returning a few minutes later.

6. Items from the Floor/Public Comment

None.

7. Approval of Minutes

a. October 22, 2009

Director Lyon made a motion to approve the minutes of the October 22, 2009 Regular Board Meeting. Director Saiers seconded the motion, which passed (4-0).

8. Financial Matters

a. Approval of October 2009 Expenditures

Irene Jeffries, AMAFCA Business Manager, presented the October 2009 Expenditure Report. There were no questions. Director Saiers made a motion to approve the October 2009 Expenditure Report. Director Lyon seconded the motion, which passed (4-0).

b. Local Government Investment Pool Reserve Primary Fund – Update

Ms. Jeffries stated the distribution received last month was allocated to the affected funds, giving the current balance remaining in the LGIP Reserve for each fund. There were no questions.

c. Investment Report for October 2009

For information. There were no questions.

d. Financial Recap October 16, 2009, through November 15, 2009

Ms. Jeffries noted that in the Construction Fund, \$1,000,000 was transferred to the special account for the Paseo del Norte/Coors Pond project. Per Resolution 2009-2, \$500,000 was removed from reserve and transferred to the Construction Fund for the Parkway Storm Drain.

e. Financial Forecast November 16, 2009, through December 11, 2009

Ms. Jeffries presented the Financial Forecast for the period November 16, 2009, through December 11, 2009. She noted the Operating Fund forecast included payments for the water truck awarded by the Board last August, payroll, and a payment to the USGS. The Construction Fund



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forecast included payments to a contractor and an engineering firm. The forecast is for a shorter period because the December meeting was moved up due to the upcoming holidays.

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

9. Legal

a. Status Report

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

10. Notification of On-Call Services Task Orders

Mr. Kelly noted that four on-call services task orders had been issued in the past month, as described in his memo. In reply to a question raised by Director Saiers, he explained that a "paleo-flood reconnaissance level investigation" is a study of the geomorphologic record to see if there is any evidence of massive floods that may have occurred in the past. This will help determine the design flows which could be anticipated for emergency spillways on AMAFCA dams.

11. Mid Valley DMP – Briefing on Project by City of Albuquerque

Chairman Brown introduced Michael Riordan, Acting Director of the City of Albuquerque's Department of Municipal Development.

Mr. Riordan briefed the Board on the Mid Valley DMP. The City will fully fund the \$100,000 first phase, verification of the existing drainage system in the mid valley. He asked AMAFCA to jointly fund the remaining \$500,000 of the project. The study will determine the actual, rather than estimated, drainage needs of the mid valley and will potentially locate other multi-use ponding sites, freeing up the Interim Post Office Pond site for a better use. He stated that the transition team had briefed the mayor-elect on this and other projects.

After discussion, the consensus of the Board was to support moving ahead on this project. Mr. Kelly stated that he will begin drafting a cost-share agreement for the Board's consideration. The City will be the lead agency for the project. The City will fund the as built verification of the system, estimated at \$100,000, and there will be a 50-50 split on the remainder of the project.

Pursuant to Director Saiers' request, Chairman Brown removed agenda items 13 and 15 from the consent agenda and placed them on the regular agenda.



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Consent Agenda (items 12, 14, 16, and 17):

12. AMAFCA General Counsel Services – Consideration of Second Extension to General Counsel Services Agreement with Robles, Rael and Anaya, P.C.

The memo from Mr. Kelly stated that the first extension of the General Counsel Agreement with Robles, Rael and Anaya, P.C., expires on January 24, 2010. The standard one-year agreement may be renewed up to three times at the mutual agreement of the parties. The agreement provided that the fee schedule remain unchanged over the life of the agreement. Mr. Rael had indicated he was willing to extend the agreement at the same rates. The AMAFCA Campaign Contribution Disclosure Form had been completed and was on file. This would be the second one-year extension of the agreement. The memo requested the Board's approval to extend the agreement for a second time.

14. Consideration of First Extension of Agricultural Lease with Ron and Patsy Maestas – Herring Property

The memo from Loren Hines, AMAFCA Real Estate Manager, stated Ron and Patsy Maestas are currently leasing the "Herring" property on an Agricultural Lease which allows for up to two additional one-year extensions. Their initial lease period expires November 30, 2009. AMAFCA is not yet ready to use this property for flood control, but expects to have the need to use the parcel in the next couple of years. Mr. and Mrs. Maestas had indicated they would like to extend the lease for an additional year. The memo requested the Board's authorization for the Executive Engineer to execute a Lease Option Extension Agreement.

16. New Mexico State University Urban Agricultural Entrepreneur Incubator Project – Consideration of Encroachment License Agreement at AMAFCA Los Padillas Gravity Outlet Project

The memo from Mr. Hines stated that a 50-year encroachment license agreement had been drafted pursuant to the Board's consensus at the October 22, 2009 Board meeting. The agreement is revocable with 60 days notice by AMAFCA. All uses by NMSU under the license are subservient to AMAFCA's flood control operations, maintenance, and inspections. All proposed and approved construction, grading, and other improvements by NMSU will be at the sole expense of NMSU. If any are determined to endanger the flood control function of the licensed area, NMSU will correct such conditions at their sole expense.

The memo requested the Board authorize the Executive Engineer to finalize negotiations and execute the Encroachment License Agreement with New Mexico State University, substantially as attached to the memo.



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17. Consideration of Agreement with MRCOG for 2010 Regional Digital Orthophotography Project

The memo from Kevin Troutman, AMAFCA GIS Technician, stated that, as in years past, AMAFCA will be participating with the Mid-Region Council of Governments and other agencies to acquire 6" resolution digital orthophotos of all of Bernalillo County and parts of adjacent counties. AMAFCA is requesting new topography for the area near Paseo del Norte and Fourth Street. AMAFCA has budgeted \$20,000 for the orthophoto and LIDAR acquisition in the operating budget. The memo requested the Board approve the proposed agreement, which has been reviewed by legal counsel for both AMAFCA and MRCOG.

There being no further items on the Consent Agenda, and there being no questions, Director Lyon made a motion that the Board take the following actions on agenda items 12 and 14-17:

- Approve the Second Extension with Robles, Rael and Anaya, P.C., to provide general counsel services for an additional year at the same rates;
- Authorize the Executive Engineer to execute a Lease Option Extension Agreement with Ron and Patsy Maestas;
- Authorize the Executive Engineer to negotiate and execute an Encroachment License Agreement with New Mexico State University, substantially the same as that attached to the Board memo; and
- Approve the proposed Agreement for Participation in the Mid Region Council of Governments' 2010 Regional Digital Orthophotography Project.

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

Regular Agenda:

13. Consideration of Second Extension of Agricultural Lease with Johnny Trujillo – Rutherford Property

Mr. Hines stated that Johnny Trujillo is currently leasing the "Rutherford" property on an Agricultural Lease which allows for up to three one-year extensions. Mr. Trujillo's first extension of the lease expires December 31, 2009. AMAFCA is not yet ready to use this property for flood control, but expects to have the need to use the parcel in the next couple of years. Mr. Trujillo had indicated that he would like to extend the lease for an additional year. Mr. Hines requested the Board's authorization for the Executive Engineer to execute a Lease Option Extension Agreement.



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In response to a question from Director Saiers about the lease amount, Mr. Hines stated that two years ago, there was a request for lease bids on several parcels and this was the best bid received for this parcel. Chairman Brown noted that it is basically a land maintenance contract, where AMAFCA is being paid to have Mr. Trujillo maintain the land and grow alfalfa on it. The land maintenance is part of the lease consideration. The land is being well-maintained.

Director Hernandez made a motion that the Board authorize the Executive Engineer to execute a Lease Option Extension Agreement with Johnny Trujillo. Director Saiers seconded the motion, which passed unanimously (5-0).

15. West I-40 Landscape Maintenance – Consideration of Third and Final Extension of Contract with Black Forest Tree Service

Kurt Wagener, AMAFCA Field Engineer, stated that the Board approved a contract with Black Forest Tree Service for Landscape Maintenance of the West I-40 Diversion Channel Phase III Project on October 26, 2006. The contract provides for three one-year extensions, subject to mutual agreement by the parties. He requested the contract be extended for the third and final time with the same fees.

Responding to a question from Director Saiers, Mr. Wagener stated that the City will take over the landscape maintenance one year from now.

Director Hernandez made a motion that the Board authorize the Executive Engineer to extend the Contract with Black Forest Tree Service for an additional one-year term per the provisions of the contract dated October 26, 2006. Director Saiers seconded the motion, which passed unanimously (5-0).

19. University of New Mexico Bureau of Business and Economic Research FEMA Floodplain Economic Impacts Study

a. Consideration of Cost Sharing Agreement by and among AMAFCA, City of Albuquerque, and County of Bernalillo

Mr. Kelly introduced Ms. Lee Reynis, of the University of New Mexico.

Mr. Kelly stated that he had approached the Middle Rio Grande Conservancy District Board about participating in the study, but they deferred action on the agreement at this time. As a result, the agreement had been drafted with a provision to address other funds that may come in during the course of the study (paragraph 5.1). All agencies will share equally in the costs of the study, estimated at \$84,000, with AMAFCA serving as fiscal agent and project manager. If the study costs are less than \$84,000, the remainder will be refunded equally. If the study costs are



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greater than \$84,000, AMAFCA will pick up the excess. The agreement has been through full legal review by all parties.

Director Hernandez made a motion that the Board approve the Agreement for FEMA Floodplain Economic and Fiscal Impacts Study with the City and Bernalillo County, and authorize the Chair to execute it on behalf of AMAFCA. Director Saiers seconded the motion.

In response to a question from Director Saiers, Ms. Reynis stated that her goal is to get the first task completed before UNM shuts down for the holidays.

The motion passed unanimously (5-0).

b. Consideration of Agreement with UNM to Conduct Study

The memo from Mr. Kelly stated that the Agreement with UNM to conduct the above study is structured the same as the ongoing agreement with the UNM Civil Engineering Department for the Hydraulic Laboratory. AMAFCA needed to accept the proposal from UNM and inform the UNM Contract Administrator of that acceptance. The fee will be time and materials, not to exceed \$84,000. The memo asked that the Board approve the proposal.

Director Hernandez made a motion that the Board approve the UNM BBER proposal for the FEMA Floodplain Impacts Study, not to exceed \$84,000, and that the Chair be authorized to execute the necessary proposal acceptance forms from UNM. Director Lyon seconded the motion, which passed unanimously (5-0).

26. Ditch and Water Safety Task Force – Annual Report by Coordinator

Mr. Kelly introduced Joan Griffin of Griffin and Associates, the Ditch Safety Coordinator. She briefed the Board on the activities of the Ditch and Water Safety Task Force in the past year.

Ms. Griffin stated 100,000 swim passes had been handed out this year, and 76 Ditch Safety presentations had been given so far this year. She reviewed the media coverage arranged by the Task Force, and stated that the figures did not include additional coverage of the storm incidents this past summer. A PSA with Tom Joles played almost 1200 times on KOB-TV. The website "DitchesAreDeadly.com" was updated this year, and social media are increasingly being used to reach kids and teens. There was one drowning this year, and several near-drownings. All were adults, with the exception of one teen.

Ms. Griffin stated that she will make similar presentations to the Boards of other the other agencies involved in the Ditch and Water Safety Task Force.



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18. Middle Rio Grande Levee Task Force Update

Mr. Kelly gave the Board an update on the Middle Rio Grande Levee Task Force meetings on October 27 and November 17, 2009. The Task Force is creating a list of action items that they would like the Legislature to address. Items discussed at the Task Force include additional legislative memorials and possible legislation to allow the State to fund levee reconstruction, as addressed later in the meeting at agenda item 25b.

He stated the Task Force's report to the legislature will be done before the end of the year.

20. Hahn Arroyo Rehab and Integrated Multi-Use Drainage Corridor Demonstration Project

a. Status Report on Public Meeting and Discussions with the City of Albuquerque and the Corps of Engineers / Status Report on Jurisdictional Determination and the Corps of Engineers

Kevin Daggett, AMAFCA Storm Water Quality Engineer, reported on the public meeting held November 3, 2009, to discuss the proposed Hahn Arroyo Rehab project. The meeting was well-attended by about 60-70 people, and the project was greeted with very positive feedback from the attendees. There were no negative comments. Ongoing discussions with the City are also positive, with the City supporting the project.

He added that the Corps of Engineers provided a checklist for the project, but were unable to attend the public meeting. One of the steps on the checklist is a jurisdictional determination.

On a related note and as a late mail out, Jerry Lovato, AMAFCA Drainage Engineer, had provided a copy of a letter from the Corps of Engineers agreeing with Metric Corporation's stance that infrequent, irregular flows from Raymac Dam were not waters of the U.S. by definition, but that they flowed into a tributary of the waters of the U.S., the Isleta Drain. Given this definition and the irregularity of the flows, the Corps of Engineers agreed that they do not have jurisdiction over those flows.

Attorney Rael opined that the Corps will probably agree that they have no jurisdiction over the Hahn Arroyo, as well.

b. Authorization to Issue Request for Proposals for Engineering Design Services

The memo from Mr. Daggett stated that, following the public meeting, staff prepared a scope of services and RFP for the Hahn Arroyo Project, Phase I. Staff planned that proposals will be due



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December 11, 2009, with a Selection Advisory Committee recommendation being made to the Board at the December 17, 2009 Board meeting.

Director Hernandez made a motion that the Board approve the advertisement of the RFP for the Hahn Arroyo Project, Phase I. Director Saiers seconded the motion, which passed (4-0), Director Eichenberg being absent for the vote. He returned shortly thereafter.

21. Sunset Gardens / Atrisco Project – Briefing on Project by Michael Riordan, Acting Director, Municipal Development Department, City of Albuquerque

Chairman Brown introduced Melissa Lozoya, of the City's Department of Municipal Development. Ms. Lozoya briefed the Board on the City's Sunset Gardens/Atrisco Project. She stated that Phase I has been completed, and the City's 2009 General Obligation Bond includes funding for a portion of Phase II and Phase III, which includes two drainage outfalls. The City is also contributing to the County's Sunset Gardens Project discussed in agenda item 22.

22. Sunset Gardens / 5 Points Project – Briefing on Project by Roger Paul, Technical Services Director, Bernalillo County

Chairman Brown introduced Roger Paul, Technical Services Director for Bernalillo County, who briefed the Board on the County's Sunset Gardens/5 Points Project. He stated state funding had been received over several years. The County is ready to move forward on this project. They have asked the City to allow them to take over the outfall portion of the City's Sunset Gardens/Atrisco Project Phase II. The City is contributing to the cost.

Mr. Lovato's memo stated that AMAFCA had budgeted a total of \$850,000 in the FY 2010 Project Schedule for the two projects discussed in agenda items 21 and 22. The County is asking for \$750,000 for the projects.

The consensus of the Board was to proceed with the necessary cost-sharing agreements for the projects.

23. FY-09 Audit – Acceptance of Audit

Ms. Jeffries introduced Herman Chavez and Sandy Ricci of Ricci and Company, LLC, AMAFCA's auditor.

Mr. Chavez thanked staff for their assistance, and stated that AMAFCA's FY09 Audit was one of the cleanest, yet most complex, audits they have done.

Mr. Chavez reviewed the FY-09 Audit with the Board, answering several questions.



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Ms. Jeffries' memo stated that, upon the Board's acceptance of the audit, it will be sent to each of the bond rating agencies as well as to each Nationally Recognized Municipal Securities Information Repository (NRMSIR) as required under the Continuing Disclosure Undertaking related to AMAFCA's bonds.

Director Hernandez made a motion that the Board accept the FY-2009 Audit. Director Saiers seconded the motion, which passed unanimously (5-0).

Chairman Brown called a recess at 11:57 a.m. The meeting resumed at 12:18 p.m.

24. Field Highlights

a. Construction Report

Mr. Wagener's memo contained a summary of current construction projects. There were no questions.

b. Field Report

Mr. Wagener presented a slide show of current projects, answering several questions from the Board.

25. Legislative Liaison Services

a. Consideration of Third and Final Extension of Agreement with New Mexico Outsourcing Inc.

Mr. Kelly introduced Maurice and Mary Hobson of New Mexico Outsourcing, AMAFCA's legislative liaison.

Mr. Kelly stated that New Mexico Outsourcing was chosen via RFP in September, 2006. The agreement provides for up to three one-year extensions. This will be the third and final extension of the agreement. The lump sum fee of \$18,000 is the same for 2010's 30-day session as for 2008's 30-day session, and includes briefings at the January 28 and February 25, 2010 Board meetings. The hourly rates for interim committee work are the same as the last several years, with a \$5,000 limit. Staff recommends approval of the agreement.

Director Hernandez made a motion that the Board approve the Agreement with New Mexico Outsourcing for legislative liaison services for the 2010 Legislative session and authorize the Chair to execute the agreement. Director Saiers seconded the motion, which passed unanimously (5-0).



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b. Discussion on 2010 Legislature

Mr. Hobson reported on the state's general fund revenue update, and gave a review of the special session and interim committees. He also commented on the outlook for the 2010 Legislative Session. The state's revenues are down 20% over the last two years, and capital outlay funds are unlikely this year.

Mr. Hobson then referred to Mr. Kelly's memo, which listed several items the Board might wish to have the Legislative Liaison pursue with the legislature during the 2010 session. The Board and the Hobsons discussed those items extensively.

Consensus of the Board was to have the Hobsons support raising the ½ mill cap on AMAFCA's Operating Fund mill levy to 1 mill, to match other similar agencies (i.e., SSCAFCA). AMAFCA will support the Middle Rio Grande Levee Task Force's memorials as a Task Force member, but the Hobsons will focus their efforts on raising the mill levy cap. Converting the bond authorization debt limit to a percentage of assessed value will be pursued in a few years, perhaps in conjunction with other flood control agencies.

27. AMAFCA FY-10 Project Schedule – Adoption of Project Schedule

Mr. Lovato stated only minor changes had been made to the Project Schedule since last month. Upon adoption of the Project Schedule, copies will be distributed to local elected officials, the AMAFCA Bond Committee, and other interested parties. It will also be posted on the AMAFCA website.

Director Hernandez made a motion that the Board adopt the FY-2010 Project Schedule. Director Saiers seconded the motion, which passed (4-0). Director Lyon abstained from the vote.

28. Unfinished Business

None.

29. New Business

c. AMAFCA Holiday Schedule

The memo noted that AMAFCA will be closed on Friday, December 25, 2009, and Friday, January 1, 2010, for the holidays. Director Saiers suggested that the Board direct the Executive Engineer to officially close the office at 1:00 p.m. on Thursday, December 24, 2009, and on



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Thursday, December 31, 2009. The consensus of the Board was to support AMAFCA closing early on those two dates.

- a. Middle Rio Grande Flood Control Association Breakfast, Wednesday, December 2, 2009, 7:00 a.m. at Four Hills Country Club**

Mr. Kelly reminded the Board that the Middle Rio Grande Flood Control Association Breakfast will be Wednesday, December 2, 2009, at the Four Hills Country Club.

- b. Don Felipe Dam and Raymac Dam Watershed DMP's Public Meeting**

The memo from Lynn Mazur, AMAFCA Development Review Engineer, stated that a public meeting will be held to present the Don Felipe Dam and Raymac Dam Watershed Drainage Management Plans. This is being coordinated with Bernalillo County. Mr. Lovato stated a date had not been confirmed as of yet, but it will probably be in January.

Chairman Brown reminded the Board of a ribbon cutting at the Albuquerque West Levee on November 23, 2009 at 11:00 a.m. He noted that he had been invited to speak.

30. Adjourn

There being no further business to come before the Board, Chairman Brown adjourned the meeting at 1:31 p.m.

Danny Hernandez, Secretary-Treasurer 12/17/09

Recorded by Pam Woodruff, Secretary to the Executive Engineer