



**Albuquerque Metropolitan  
Arroyo Flood Control Authority  
Special Meeting Minutes  
February 1, 2013**

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**1. Call to Order and Roll Call**

Chairman Eichenberg called the Special Board Meeting to order at 8:32 a.m. Friday, February 1, 2013. Roll was noted as follows:

Directors present:	Chairman Tim Eichenberg Director Danny Hernandez (arrived at 9:03 a.m.) Director Bruce M. Thomson (arrived at 8:33 a.m.) Director Ronald D. Brown Director Daniel F. Lyon
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Directors excused:	None
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Others present:	Jerry M. Lovato, P.E., Executive Engineer Marcus Rael, Jr., Attorney Staff Other attendees on file at AMAFCA
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A quorum was present.

**2. Approval of Agenda**

Director Brown made a motion to approve the agenda, with item 5 to be heard before item 4. Director Lyon seconded the motion. Director Thomson arrived at 8:33 a.m. The motion passed (4-0), Director Hernandez not being present.

**3. Items from the Floor/Public Comments**

Roger Paul, of Bernalillo County Public Works, stated that the tentative date and time for the Eubank Boulevard Phase 2 Project Ribbon Cutting was 9:00 a.m. on Saturday, April 6, 2013. The AMAFCA Board will be invited to participate. The County is coordinating the ribbon cutting with other events in the area on the same day. Director Brown noted that this is also opening day for the Altamont Little League, with a lot of activities planned, so would it be a busy day.

Chairman Eichenberg recognized Larry and Sue Elliot, South Valley residents, who were in attendance.

Mr. Elliot addressed the Board, stating that he and his wife live adjacent to the Los Padillas Extension. They represent not only themselves, but also their neighborhood. They have been concerned over the standing water in the Los Padillas Extension for the past two years. They acknowledged that AMAFCA lowered a high spot in the drain in November and December,



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which has helped a little, but there is still substantial standing water in the Los Padillas Extension behind their homes. This is an environmental hazard.

Chairman Eichenberg thanked Mr. Elliott for his comments, and stated that the portion of the meeting dealing with the Los Padillas Extension deals with potential litigation, so it will be closed to the public.

**5. Unfinished Business**

**a. Boca Negra Dam Update**

Attorney Rael reported that Blake Whitcomb, of the City of Albuquerque's Attorney's Office, had sent a final demand notice letter to KB Home's attorney, Jack Campbell. If AMAFCA does not have the funds in hand on or before February 15, 2013, the City will call KB Home's bonds.

**4. Corps of Engineers Southwest Valley Flood Reduction Project**

Chairman Eichenberg stated that this agenda item would be heard 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. Director Lyon seconded the motion.

Chairman Eichenberg stated that the closed session would be for purposes of discussion only, regarding potential litigation. The motion passed (4-0), on a roll call vote. Director Hernandez was not present during the vote.

Chairman Eichenberg closed the meeting at 8:37 a.m. Representatives of Bernalillo County and the Corps of Engineers remained in the closed meeting.

Director Hernandez joined the closed meeting in progress at 9:03 a.m.

At 10:01 a.m., Chairman Eichenberg stated that the Board was ready to come out of closed session.

Director Brown made a motion that the meeting be re-opened, stating that potential litigation had been discussed but that no decisions had been made in the closed session. Director Hernandez seconded the motion, which passed unanimously (5-0), on a roll call vote.

Chairman Eichenberg reopened the meeting at 10:01 a.m.



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Chairman Eichenberg thanked Mr. and Mrs. Elliot for attending the meeting, as well as Roger Paul, of Bernalillo County Public Works, the representatives of the Corps of Engineers, and staff.

Chairman Eichenberg stated that he would accept a motion regarding the Corps of Engineers' request that AMAFCA accept this project in its current condition.

Director Hernandez made a motion that the Board accept this Army Corps of Engineers project. Director Brown seconded the motion.

Director Hernandez stated that he made the motion reluctantly, because the project was not built correctly. He stated that it should have been built right to begin with. The contractor did not build it right and the Corps of Engineers did not make them do it right, however there is a March 1, 2013 deadline to get it corrected. Otherwise, there would be a standing water problem in the Los Padillas Extension for another year.

Director Brown stated he supported joining with Bernalillo County in accepting the project, but he did not like accepting a project with known deficiencies. He noted the local sponsors had two risks: the known deficiencies, and the fact that the number of unknown, latent deficiencies may be even greater than the list of known deficiencies, because the contractor was not doing a proper job on this contract.

Chairman Eichenberg stated that he would not support the motion for that reason – the number of hidden and latent deficiencies is probably great. Due to the Corps of Engineers' contracting procedures, where the contractor does his own testing and daily reporting, and the Corps of Engineers signs off on it without checking any of it, the contractor probably cut a lot of corners. He stated that he was concerned about AMAFCA's obligations to the Corps of Engineers and the partnership with the Corp of Engineers as the agencies move forward with the remaining phases of the project.

Director Thomson stated he resented being placed in the position of having to make this decision due to the improper work that was done, but the Board is in a difficult position because there is a quality of life issue in this area, so he planned to vote for the motion. He requested that the record reflect that he was very uncomfortable with having to make this decision.

Director Lyon stated that he would be voting against the motion. He expressed distaste that the federal government, via the Corps of Engineers, had a contract but were not enforcing it. The parties know that the work was sub-standard and didn't meet the terms of the contract. The Corps was forcing an improperly built project upon the local sponsors, AMAFCA and Bernalillo County, whether they wanted to accept it or not. As soon as AMAFCA and Bernalillo County accept the project, they will be forced to spend money to bring it up to



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standard. He stated it was not right that the local sponsors be forced to accept a substandard project.

The motion passed (3-2), with Chairman Eichenberg and Director Lyon voting against it.

Mr. Paul stated that AMAFCA and Bernalillo County crews would start working to fix the Los Padillas Extension Project on Monday, February 4, 2013.

**5. Unfinished Business**

None.

**6. New Business**

Chairman Eichenberg stated that he and Mr. Lovato had been working on a legislative memorial to acknowledge AMAFCA's 50<sup>th</sup> Anniversary. The Joint Memorial will be heard on March 5, 2013, in Santa Fe.

**7. Adjourn**

There being no further business to come before the Board, Chairman Eichenberg adjourned the meeting at 10:08 a.m.

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Bruce M. Thomson, Secretary-Treasurer, 1/24/13

Recorded by Pamela Woodruff, Executive Administrative Assistant