



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 14, 2010**

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1. Call to Order and Roll Call

Chair Saiers called the Special Board Meeting to order at 9:30 a.m. Tuesday, September 14, 2010. Roll was noted as follows:

Directors present:	Chair Janet Saiers Director Ronald D. Brown Director Danny Hernandez Director Daniel Lyon
Director excused:	Director Tim Eichenberg
Others present:	Jerry Lovato, Executive Engineer Attorney Marcus Rael, Jr. Staff Other attendees on file at AMAFCA

A quorum was present.

2. Approval of Agenda

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

3. Meetings Scheduled

- a. **Thursday, September 30, 2010, 10:00 a.m. – Regular Meeting**
- b. **Thursday, October 28, 2010, 10:00 a.m. – Regular Meeting**
- c. **Thursday, November 18, 2010, 10:00 a.m. – Regular Meeting**

There were no changes to the meeting schedule.

4. Approval of Resolution 2010-12, *Ad Valorem Tax Levy for Tax Year 2010, Applicable to General Operating Fund*

Mr. Lovato stated that Resolution 2010-12, *Ad Valorem Tax Levy for Tax Year 2010, Applicable to General Operating Fund*, supersedes Resolution 2010-10 and sets new mill levies for the Operating Fund. He noted that the State's Department of Finance and Administration (DFA) would not accept the rates set in Resolution 2010-10, as last year's rates were not proportional to the rates set by the Yield Control Act for this year. DFA recommended setting the mill levies at \$0.165 residential and \$0.477 non-residential if the Board did not want to increase the mill levy



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rates over last year's rates. The proposed rates would result in a revenue deficit of \$103,578. Mr. Lovato provided a list of potential budget savings that could offset the shortfall in revenue.

Directors Brown and Hernandez expressed appreciation for the suggested budget cuts. Director Hernandez added that he would not have supported the reductions if they had lead to furloughs or layoffs, as AMAFCA is already a lean organization.

Kevin Powers, of RBC Capital Markets, AMAFCA's Financial Advisor, stated that the rate pairs they had originally calculated were proportional to the rates set by the Yield Control Act, 0.173 and 0.564. However, AMAFCA's legislation sets a 0.500 cap. DFA subsequently said that the rates had to be proportional to 0.173 and 0.500. As a result of the cap, the greater burden of taxation is gradually shifted to the residential side, changing the proportion between the two over time. Mr. Powers stated that the pressure of the non-residential rate being capped at 0.500 will likely result in a gradual lowering of Operating tax revenues, unless something is done about the mill levy cap. He predicted that it will get more and more difficult to get enough tax revenues to operate without raising the mill levy.

In response to a question from Director Hernandez, Mr. Powers stated that there were two things that could be done to alleviate this situation: (1) change or remove the 0.500 cap on the mill levy, which would allow the calculation of the Yield Control Formula to work properly, keeping the rates in proportion over time; and (2) seek legal clarification on why AMAFCA cannot keep the same tax rates year to year, if the Board so desires.

Director Lyon stated that he would abstain from the vote, as AMAFCA had not received sufficient explanation from DFA for why the rate needed to be changed. He noted he had voted against the Operating Fund mill levy resolution in 2009 because the yield control formula, combined with the 0.500 cap, necessitated an increase in the non-residential mill levy.

Director Brown commented that about 8 or 9 years previously, AMAFCA had discussions with DFA regarding setting its mill levy rates. The Board has been prudent in setting the mill levy to collect only what is needed to support the budget, and DFA questioned why AMAFCA wished to lower its rates. He stated his support of tweaking the budget to keep it balanced, and of approving the slightly lower mill levy rate stated in Resolution 2010-12.

Director Hernandez suggested that AMAFCA seek to do something about the situation in the future, as AMAFCA is a taxing authority and should have the ability to set its own mill levies.

Responding to a question from Director Lyon, Attorney Rael stated that this issue has come up with other municipalities as well. According to the legislation and the legislative intent behind it, DFA has the power and authority to adjust tax mill levy rates to conform to the yield control formula.



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Director Brown made a motion that the Board adopt Resolution 2010-12, *Ad Valorem Tax Levy for Tax Year 2010, Applicable to General Operating Fund*, setting the mill levy at \$0.165 Residential and \$0.477 Non-Residential. Chair Saiers seconded the motion, which passed (2-1) on a roll-call vote. Director Brown and Chair Saiers voted yes, Director Hernandez voted no, and Director Lyon abstained from voting.

5. Real Estate

a. Black Mesa Phase I Pipe Easement

Mr. Lovato introduced George Meeks, a land owner whose property has an easement for the Black Mesa Phase I pipe, LTC Jason Williams, the new commander of the Corps of Engineers Albuquerque District Office, and Pete Doles, an engineer with the Corps of Engineers, who was the project manager on the project.

Mr. Lovato stated that the Black Mesa Phase I Pipe Project was constructed under the Project Cooperation Agreement (PCA) with the Corps of Engineers, which requires a local match of 25%, and that the local sponsors provide all easements and rights of way needed to construct the project. In addition, AMAFCA has an easement agreement with Mr. Meeks which was needed for the installation of the pipe line to the Rio Grande.

Mr. Lovato used a photo of the site and a plat map to illustrate the issues arising from this project. The pipe was not placed in the center of the permanent drainage easement, the laser leveling for the entire property was not done properly (resulting in ponding water on the field), alfalfa will not grow well where construction equipment compacted the soil, and Mr. Meeks lost planting time. Mr. Lovato proposed to correct this by moving the easement so it is centered on the installed pipe, provide Mr. Meeks some consideration for the loss of the alfalfa he was unable to grow, and install the turnout that was not installed during construction. He stated that one of the turnouts was damaged, and would also need to be repaired.

Mr. Meeks addressed the Board, showing them pictures of ponding water (which illustrated that the laser leveling was improperly done), and the debris left behind in his field following construction. He stated that during negotiations for the easement, he had been promised a vehicle bridge over the Los Padillas Acequia and a gravel road out to the far corner of his property, although those elements were not included in the final Easement Agreement. He preferred enlarging the easement rather than moving it, and requested additional consideration for the land that would be required to do so.



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Mr. Lovato noted that AMAFCA had been unable to get permission from the Middle Rio Grande Conservancy District to put in a bridge over the Los Padillas Acequia. MRGCD had cited a lack of a public use for the bridge.

Upon Mr. Lovato clarifying that the existing easement is along the southern property line of Mr. Meeks' property, Director Brown stated he supported widening the easement rather than shifting it north, since shifting the easement would give Mr. Meeks a nearly-useless strip of land along the property line. He also supported re-leveling the land so as to eliminate the ponding at the west end of the property.

Mr. Lovato stated that at the beginning of construction, he had requested Mr. Meeks' choice of subcontractor for the leveling, Marvin Hunter, who is experienced in leveling property in the South Valley, to the Corps of Engineers Construction Representative. However, the Corps of Engineers' contractor on the project, Meridian Engineering, from Tucson Arizona, used another company for the leveling.

Mr. Meeks also reported that the contractor drove heavy equipment on his field, severely compacting the soil. He stated that something had been put in the soil which harmed it. There is now a 40-50 foot wide strip of his farmland where nothing is growing. He stated that the soil would have to be loosened with a 36" chisel, plowed deep, and something put back into the soil before it was re-leveled, in order to fix these problems. Mr. Lovato noted that there was an agreement between Meridian Engineering and Mr. Meeks to use his property, but that did not change the fact that the Corps' contract with Meridian required them to laser level the entire property (outside of the temporary construction easement).

Mr. Meeks stated that he was also concerned about water pumped from the construction site; however, Mr. Lovato stated that this water was properly permitted by the MRGCD.

Responding to a question from Chair Saiers, Mr. Lovato stated that AMAFCA would use the bridge over the acequia to access the pipe for maintenance, and to access the outfall to the river.

Director Brown opined that AMAFCA needs to get the MRGCD to agree to the bridge, as it is a business requirement for AMAFCA to track the pipe. He stated that there are other bridges over the Acequia. Director Hernandez agreed, noting that maintaining the pipe is a public use.

Responding to a question from Director Lyon, Mr. Lovato stated an existing gravel road was replaced. Mr. Meeks stated that the agreement was that the road would be extended to the back corner of the property. Mr. Lovato agreed that this still needed to be done.



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LTC Jason Williams, Commander of the Corps of Engineers Albuquerque District, noted that he had only been in command for seven weeks. He offered his sincere apology to Mr. Meeks, stating that he had only learned of this issue in a briefing the first week of August.

LTC Williams noted that there were a number of problems with the project, including a lack of communication regarding changes that needed to be incorporated into the contract, and a lack of quality oversight by the construction management team.

He stated that the Corps of Engineers could go back to the original contractor to correct the problems but that would take time. The Corps will work with AMAFCA to correct this problem as quickly as possible. He stated that redoing the laser leveling is an absolute must.

Mr. Meeks stated he had a normal crop in 2008, but almost nothing is coming up this year. He noted that rocks and debris left in the field had severely damaged a bailer, which had to be repaired. He requested assistance in paying for those repairs. A sinkhole left on the property at one end of the project was never filled. His sister's house, adjacent to the project, had cracked. He also stated that there had been no final walkthrough on the project, which would have shown that there were problems with the project.

Director Brown left the meeting at 10:25 a.m. due to a prior commitment.

Mr. Lovato commented that AMAFCA has not accepted the project yet, and has not held a final walk-through because there are still outstanding items on the punch list. He stated that AMAFCA could finish up the work required under AMAFCA's agreement with Mr. Meeks. Those expenses would be creditable to the PCA match under the "lands and easements" category.

In response to a question from Director Lyon, Mr. Lovato stated that the MRGCD is involved in the portion of the project where it crosses the Acequia, and Bernalillo County is involved in the portion of the project in Raymac Road, but only AMAFCA is involved in the portion of the project that crosses the Meeks property.

Chair Sainers told Mr. Meeks that the Board's goal was to restore the field to its state in 2008, before the project began. Mr. Meeks explained that he had lost about 700 bales of alfalfa this year, and will lose two cuttings next summer because field repairs will take place too late to plant the field this fall.

Mr. Lovato stated that, because of Isleta Pueblo's water rights, work on the bridge over the Acequia could not commence until after November. The bridge will be wide enough for vehicles and maintenance equipment to cross the Acequia. He also noted that, although chemicals were not used on the portion of the project that crossed the field, they may have been used on Raymac Road and some of that material may have been stockpiled on the field. He noted that topsoil



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testing is currently underway and should be complete within two weeks. Topsoil could be removed from a field at the Isleta project, and could be placed on Mr. Meeks' field if the results of testing indicate it is necessary.

Director Lyon agreed with Chair Saiers that Mr. Meeks deserved to be treated fairly, and have his land restored to the condition it was in before the project began. He stated the Board should give direction to Mr. Lovato to work out the details of how this should be accomplished.

Responding to a question from Director Hernandez, Mr. Lovato confirmed that any funds expended to solve these issues are creditable towards the PCA local match.

LTC Williams confirmed that the Corps will work with AMAFCA to address these issues.

Chair Saiers apologized to Mr. Meeks on behalf of the AMAFCA Board. She stated the Board was committed to take the steps necessary to restore his field to the condition it was in prior to the start of the project, so that he could return to growing crops.

Director Hernandez left the meeting at 10:42 a.m. due to a prior commitment.

6. Unfinished Business

None.

7. New Business

None.

8. Adjourn

There being no further business to come before the Board, and there no longer being a quorum, Chair Saiers adjourned the meeting at 10:42 a.m.

Ronald D. Brown, Secretary-Treasurer 9/30/10

Recorded by Pam Woodruff, Secretary to the Executive Engineer