



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Regular Meeting Minutes
February 28, 2013**

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1. Call to Order and Roll Call

Chairman Eichenberg called the Regular Board Meeting to order at 10:01 a.m. Thursday, February 28, 2013. Roll was noted as follows:

Directors present: Chairman Tim Eichenberg
Director Danny Hernandez
Director Bruce M. Thomson (arrived at 11:20 a.m.)
Director Ronald D. Brown
Director Daniel F. Lyon (arrived at 10:12 a.m.)

Directors excused: None

Others present: Jerry M. Lovato, P.E., Executive Engineer
Marcus Rael, Jr., Attorney
Staff
Other attendees on file at AMAFCA

A quorum was present.

2. Approval of Agenda

Chairman Eichenberg stated that the City of Albuquerque had sent AMAFCA a letter requesting that agenda item 14 on today's agenda be deferred to a later meeting. Director Brown made a motion to approve the agenda, with agenda item 14 removed. Director Hernandez seconded the motion. Mr. Lovato stated that items from the floor would include the introduction of a new AMAFCA employee, Nathan Barela. The motion passed (3-0).

Chairman Eichenberg introduced new AMAFCA maintenance crew member, Nathan Barela. Mr. Barela addressed the Board, giving information on his background and experience. Chairman Eichenberg and the Board welcomed him to AMAFCA. Mr. Barela stated he was happy to be a part of the AMAFCA team.

3. Meetings Scheduled

- a. **Thursday, March 28, 2013, 10:00 a.m. – Regular Meeting**
- b. **Thursday, April 25, 2013, 10:00 a.m. – Regular Meeting**
- c. **Thursday, May 23, 2013, 10:00 a.m. – Regular Meeting**
- d. **Thursday, June 27, 2013, 10:00 a.m. – Regular Meeting**

There were no changes to the meeting schedule as presented.



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- 4. Appointments to Boards and Committees**
 - a. Personnel and Salary Committee**
 - b. Real Estate Committee**
 - c. Mid Region Council of Governments (MRCOG)**
 - a. MRCOG Executive Board**
 - b. MRCOG Board of Directors**
 - c. MRCOG Water Resources Board**
 - d. MRCOG Metropolitan Transportation Board**

Chairman Eichenberg made the following appointments to Boards and Committees:

Personnel and Salary Committee:	Directors Hernandez and Thomson
Real Estate Committee:	Board as a Committee of the Whole
MRCOG Executive Board:	Chairman Eichenberg
Alternate:	Any available Board member
MRCOG Board of Directors:	Chairman Eichenberg
Alternate:	Any available Board member
MRCOG Water Resources Board:	Director Thomson
Alternate:	Director Hernandez
MRCOG Metropolitan Transportation Board:	Director Brown
Alternate:	Any available Board member

All so appointed had previously agreed to serve. AMAFCA alternates fiscal years on the Executive Board with the Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA). AMAFCA's term on the Executive Board runs through June 30, 2013. Beginning July 1, 2013, a SSCAFCA representative will hold the seat for fiscal year 2014.

5. Items from the Floor/Public Comments

Chairman Eichenberg noted that former AMAFCA Executive Engineer Richard Leonard was in the audience.

There were no items from the floor or public comments.

6. Approval of Minutes

a. January 24, 2013 Regular Meeting

Director Hernandez made a motion to approve the minutes of the January 24, 2013 Regular Board Meeting. Director Brown seconded the motion, which passed (3-0).



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b. February 1, 2013 Special Meeting

Director Hernandez made a motion to approve the minutes of the February 1, 2013 Special Board Meeting. Director Brown seconded the motion, which passed (3-0).

7. Financial Matters

Mr. Lovato stated that Irene Jeffries, AMAFCA Finance and Administration Manager, would present agenda items 7a through 7f, including two resolutions.

a. Approval of January 2013 Expenditures

Ms. Jeffries presented the January 2013 Expenditure Report. There were no questions from the Board. Chairman Eichenberg requested that she continue to track credit card use to be certain that all are appropriate charges.

Director Brown made a motion to approve the January 2013 Expenditure Report. Director Hernandez seconded the motion, which passed (3-0).

b. Investment Report for January 2013

Ms. Jeffries presented the investment report for January 2013. She pointed out that in the Contingency Fund and the Building and Yard Improvement Fund, the budgeted transfers from the Operating Fund were invested in the Local Government Investment Pool (LGIP).

There were no questions, and no Board action was required.

c. Financial Recap January 16, 2013, through February 15, 2013

Ms. Jeffries presented the Financial Recap for January 16, 2013, through February 15, 2013. She noted that in the Debt Service Fund, interest payments had been made on the bonds.

There were no questions, and no Board action was required.

d. Financial Forecast February 16, 2013, through March 15, 2013

Ms. Jeffries presented the Financial Forecast for the period February 16, 2013, through March 15, 2013. She noted that the Operating Fund forecast includes payroll for two pay periods. The Construction Fund forecast includes payments to the contractors on two construction projects.

Director Hernandez made a motion that the Board approve the Financial Forecast. Director Brown seconded the motion, which passed (3-0).



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e. Consideration of Approval of Resolution 2013-02, *Transfer from Contingency Fund to Operation Budget*

Ms. Jeffries stated that at the time the FY 2013 budget was being developed and approved, it was not known that the Maintenance Superintendent would be retiring in December 2012. Therefore, the FY 2013 Operating Fund Budget did not include additional monies to cover accrued vacation and sick leave payout for the retiring employee.

She stated that the payout amount to the retired Maintenance Superintendent was \$68,201. She noted that the Contingency Fund budget for FY 2013 included a line item for Compensated Absences, and proposed that the Board adopt a resolution approving transfer of these funds from the Contingency Fund to the Operating Fund to cover the additional expense.

Director Brown made a motion that the Board pass and adopt Resolution 2013-02, *Transfer from Contingency*, and authorize the Chair and Secretary to sign. Director Hernandez seconded the motion.

In response to a question from Chairman Eichenberg, Mr. Lovato stated that if the motion did not pass, there would be insufficient funds in the Salaries line item of the Fiscal Year 2013 Operating Fund budget to cover the payment of the retired Maintenance Superintendent's compensated absences.

The motion passed (3-0), on a roll-call vote.

f. Consideration of Approval of Resolution 2013-03, *FY 2013 Budget Adjustments*

Ms. Jeffries stated that Resolution 2013-03 addresses the refund from Adobe for the returned compact track loader, and increases the "Equipment and Tools" line item to accommodate the purchase of a replacement compact track loader. The purchase of a replacement compact track loader was the subject of a later agenda item.

Director Lyon arrived at 10:12 a.m.

In response to a question from Director Brown, Mr. Lovato confirmed that this adjustment to the budget is necessary because the previous compact track loader had been purchased in the previous fiscal year.

Director Brown made a motion that the Board pass and adopt Resolution 2013-03, *FY-2013 Budget Adjustments*, and authorize the Chair and Secretary to sign. Director Hernandez seconded the motion, which passed (4-0), on a roll-call vote.



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8. Legal

a. Status Report

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

b. Closed Session – Pending Litigation

Chairman Eichenberg stated that discussion of pending litigation 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 pending litigation. Director Hernandez seconded the motion.

Chairman Eichenberg stated that the closed session would be for purposes of discussion only, regarding pending litigation. The motion passed (4-0), on a roll call vote.

Chairman Eichenberg closed the meeting at 10:14 a.m.

At 10:54 a.m., Chairman Eichenberg stated he would hear a motion to come out of closed session.

Director Brown made a motion that the meeting be re-opened, stating that the Board had taken no action and made no decisions during the closed meeting, but had discussed pending litigation. Director Hernandez seconded the motion, which passed (4-0), on a roll call vote.

Chairman Eichenberg reopened the meeting at 10:55 a.m.

9. Executive Engineer's Report

a. Notification of Past Month's Activities

Mr. Lovato's Executive Engineer's Report highlighted significant activities of the past month.

Between the memo and further information given in the meeting, Mr. Lovato covered the following:

- **Corps of Engineers (COE)** – *Southwest Valley Flood Reduction Project Phase I*. The COE turned over the operations, maintenance, repair, replacement and rehabilitation of Phase I to AMAFCA and Bernalillo County on February 1, 2013. AMAFCA and



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Bernalillo County field staff began work on February 4, 2013 to bring the project into compliance with the approved construction documents. This work was completed on February 21, 2013. Field staff brought in just under 10,000 cubic yards of material to address low areas in the Los Padillas Extension. This is also covered as agenda item 17b. In response to a letter from Chairman Eichenberg to Colonel Gant requesting corrective actions be taken to ensure better cooperation on future projects, Mr. Lovato reported that he had met with Colonel Gant and John D'Antonio on February 20, 2013, to start the dialog.

Director Lyon commended Chairman Eichenberg on a well-written letter, which got the desired results.

Southwest Valley Flood Reduction Project Phase I – Operations Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) manual. Bernalillo County is taking the lead in this. A meeting was held with Middle Rio Grande Conservancy District (MRGCD), Bernalillo County, and AMAFCA staff on the project site to discuss the stalled OMRR&R document. Subhas Shah of the MRGCD continues to require that the entire MRGCD system be maintained by AMAFCA or Bernalillo County, even though the entire project is not constructed and/or functional. Bernalillo County is working on a schedule that would indicate when various portions are taken over for maintenance, stretching out over the next ten to fifteen years, which would address the MRGCD's concerns. The COE and Bureau of Reclamation have given Bernalillo County comments on the draft document and those comments are being incorporated.

Southwest Valley Flood Reduction Project Phase II. AMAFCA and Bernalillo County continue to advocate that the remaining work be designed and constructed by the local sponsors. The Albuquerque District has submitted Amendment II to the PCA agreement to Division for approval. The amendment addresses the construction of new roadway crossing structures along the Los Padillas Drain.

- **US Environmental Protection Agency (EPA) – Administrative Order CWA-06-2012-1848.** AMAFCA received a letter on February 5th from EPA Region 6 acknowledging that the Administrative Order was closed. No other action is anticipated.

Jurisdiction issues concerning MS4. The Supreme Court of the United States unanimously overturned a decision in the Ninth Circuit Court concerning the definition of "waters of the U.S." EPA Region 6 and AMAFCA staff met in Albuquerque on February 26, 2013, to discuss the conflicting determinations that have been issued by the Albuquerque District Corps of Engineers for the North Diversion Channel and the Calabacillas Arroyo.



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Mr. Lovato stated that the MS4 jurisdictional issues and the new MS4 general permit will be further discussed under Unfinished Business.

- **Office of the State Engineer (OSE) – Dam Safety Bureau – Probable Maximum Precipitation Analysis.** The OSE met with Easterling and Associates to discuss issues and concerns with modifying the probable maximum precipitation as determined by HMR 55a and the use of the Extreme Precipitation Assessment Tool (EPAT). Easterling and Associates have conducted an extensive data reduction effort as part of the work needed to draft the white paper, which has been completed and is currently being reviewed. Mr. Lovato anticipated that a presentation to the Board could be made at the March 28, 2013 Board meeting.
- **Public Outreach – Corps of Engineers South West Valley Flood Damage Reduction Project Phase I.** The independent newspaper South Valley Ink interviewed Mr. Lovato on February 4, 2013 regarding the work being done along the Los Padillas Extension. An article about the project appeared in the February 16, 2013 issue of the paper, and had been provided to the Board.

New Mexico Society of Professional Engineers – New Mexico Professional Engineer of the Year – Public Sector. Director Thomson was honored as an engineer in the public sector during the Engineering Week Engineer Luncheon held on Friday, February 22, 2013, and awarded the New Mexico Professional Engineer of the Year Award for 2013.

New Mexico Society of Professional Engineers – New Mexico Small Project of the Year – Hahn Arroyo Project. AMAFCA was honored during the Engineering Week Engineer Luncheon held on Friday, February 22, 2013, and awarded the New Mexico Small Project of the Year for 2013.

The Board offered their congratulations on the awards.

- **New Mexico Land Office – Drainage Outfall from Valle de Oro.** AMAFCA continues to strive to obtain an outlet in the Bosque through land owned by the New Mexico Land Office. Tetra Tech has started work on the preliminary design of the outfall located within the Bosque. AMAFCA staff has been diligently following up on long-term maintenance of the project, funding from the Bureau of Reclamation and amending the biological opinion from the U.S. Fish and Wildlife Service for work in the Bosque identified by the State Land Office. The agreement has been drafted and is currently in review by the State of New Mexico Land Office staff and Bureau of Reclamation staff. It is hoped that a draft agreement will be ready for Board review at the March Board meeting.



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- **AMAFCA – Storm Water Quality Engineer.** Kevin Daggett has resigned his position at AMAFCA and has started work with the City of Albuquerque. The Storm Water Quality Engineer position is now being advertised.

Chairman Eichenberg thanked Mr. Lovato and Attorney Rael for their assistance in composing the letter to the Corps of Engineers.

b. Notification of On-Call Services Task Orders

Mr. Lovato stated that two on-call task orders had been issued since the last Board meeting, as listed in his memo. He gave further details on each. There were no questions, and no Board action was required.

Consent Agenda:

Chairman Eichenberg noted that agenda items 10 through 13 were on the consent agenda, reading the title of each.

10. Consideration of First Extension of *General Counsel Services Agreement* with Robles, Rael & Anaya, P.C.

The memo from Mr. Lovato stated that the *General Counsel Services Agreement* with Robles, Rael & Anaya, P.C., expired on February 24, 2013. The agreement was a standard one-year agreement with three one-year extensions possible upon mutual agreement of the parties. Mr. Rael agreed to extend the agreement at the same hourly rates, and had provided the required AMAFCA Campaign Contribution Disclosure Form. The memo requested that the Board approve the extension for an additional year at the same rate.

11. Upper Piedras Marcadas Drainage and Water Quality Management Plan – Consideration of Selection Advisory Committee Recommendation

The memo from Brad Bingham, P.E., AMAFCA Drainage Engineer, stated that seven proposals were received for the Upper Piedras Marcadas Drainage and Water Quality Management Plan. Each included the AMAFCA Campaign Contribution Disclosure Form, and all were responsive. The Selection Advisory Committee (SAC) met to score and rank the proposals, and recommended Wilson and Company, Inc. The memo requested that the Board accept the SAC recommendation and authorize the Executive Engineer to commence contract negotiations with Wilson and Company, Inc.

12. Authorization to Advertise for Bids for a Compact Track Loader with Bucket

The memo from Kurt Wagener, P.E., AMAFCA Field Engineer, stated that the Case TV 380 compact track loader was returned to Adobe Equipment and the refund had been received by



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AMAFCA. The need for a compact track loader still exists, therefore he requested authorization to purchase a new compact track loader which is capable of reliably operating the Fecon 74 SS mulcher and other AMAFCA-owned implements. Staff will advertise for bids and recommend award at the March 28, 2013 Board meeting. The memo requested authorization to advertise for bids for a Compact Track Loader with bucket.

13. Chamisa Storm Drain Project – Authorization to Advertise for Construction Bids

The memo from Mr. Wagener stated that plans and specifications were being developed for the Chamisa Storm Drain, which includes approximately 1300 lineal feet of 60" Reinforced Concrete Pipe (RCP) Storm Sewer. AMAFCA entered into a funding and reimbursement agreement with Boulevard Limited Partnership for the construction of this project. The current Engineer's Estimate of the construction is \$575,000 plus New Mexico Gross Receipts Tax, and the current schedule, which may be adjusted to allow for final approval of the contract documents by the City of Albuquerque, calls for advertisement to begin in March, 2013, with the award of the contract at the April 25, 2013 Board meeting. The memo requested that the Board authorize the Executive Engineer to advertise for construction bids for the Chamisa Storm Drain Project.

There being no further items on the Consent Agenda, and there being no questions, Director Lyon made a motion that the Board take action on consent agenda items 10-13, as follows:

- Approve the first extension with Robles, Rael & Anaya, P.C., to provide general legal counsel services for an additional year at the same rates;
- Accept the recommendation of the Selection Advisory Committee for the Upper Piedras Marcadas Drainage and Water Quality Management Plan, and authorize the Executive Engineer to commence negotiations with Wilson and Company, Inc.;
- Authorize the Executive Engineer to advertise for bids for a Compact Track Loader with bucket; and
- Authorize the Executive Engineer to advertise for construction bids for the Chamisa Storm Drain Project.

Director Brown seconded the motion, which passed (3-0), Director Hernandez being absent at the time of the vote.

Attorney Rael thanked the Board for extending his contract, stating that he enjoyed working for AMAFCA and appreciated the opportunity to continue to do so.



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Noting that Kevin Daggett was in the audience representing the City of Albuquerque, Chairman Eichenberg and Directors Lyon and Brown thanked Mr. Daggett for his service to AMAFCA. Director Lyon stated, "The City's gain is AMAFCA's loss."

Regular Agenda:

14. Not Used

This agenda item had been removed from the agenda at the start of the meeting.

15. Consideration of Approval of Turnkey Agreement for Tijeras Arroyo Improvements as Related to Juan Tabo Hills Unit 3b Subdivision

Lynn Mazur, P.E., AMAFCA Development Review Engineer, stated that the draft turnkey agreement was favorably received at last month's Board meeting, and staff had been directed to proceed with the turnkey agreement. This project is a 7 inch thick concrete lining along the south bank of the Tijeras Arroyo to protect a proposed subdivision to the east of Juan Tabo Boulevard. A sliver of easement, which will no longer be required once the FEMA Letter of Map Revision (LOMR) has been received, will be quitclaimed.

Ms. Mazur stated that the agreement contained the following elements:

- Construction of Tijeras Arroyo Improvements. The scour wall will be reinforced shotcrete along the southern slope of the arroyo and will extend one foot above the 100-year water surface and from seven to ten feet below the arroyo flowline. The remainder of the arroyo will be left natural. The house pads will be at or above the 500-year water surface elevation on the Tijeras Arroyo, as adopted by AMAFCA Resolution 2012-08, *Adoption of the Investigation of Lower Tijeras Arroyo Flow Capacities*.
- Quitclaim Deed, and Letter of Map Revision. The agreement includes a paragraph of issuance of a quitclaim deed for a sliver of an AMAFCA Floodplain Easement that is in the proposed subdivision boundary. The easement will not be required after the scour wall has been constructed since the subdivision will be out of the floodplain. Once the approved LOMR has been received, the quitclaim deed will be recorded.

She requested that the Board authorize the Chairman to execute the turnkey agreement and quitclaim deed, noting that the agreement had been reviewed by the AMAFCA attorney. Staff had reviewed and approved the construction plans and recommended approval of the agreement.



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Ms. Mazur confirmed Director Lyon's statement that, after completion of construction of the improvements at the subdivision's cost, the only cost to AMAFCA will be subsequent maintenance of the scour wall.

Director Lyon made a motion that the Board authorize the Chairman to execute the *Turnkey Agreement for Tijeras Arroyo Improvements as Related to Juan Tabo Hills Unit 3b Subdivision* with JTH LLC and *Quitclaim Deed/Partial Release of Easement*. Director Brown seconded the motion.

In response to a question from Chairman Eichenberg, Attorney Rael confirmed that he had reviewed the agreement, had made a few minor changes, and approved the agreement as it now stood.

The motion passed (4-0).

16. Legislative Update – Briefing by Alarid Consulting

Chairman Eichenberg noted that Alarid Consulting was not yet present, and stated that this agenda item would be moved to later in the meeting. He stated that agenda item 18 would be heard next, so that the Field Highlights could be shown after the recess.

18. Real Estate

a. Notice of Issuance of Licenses/Permits

Jeffrey Willis, AMAFCA Real Estate Manager, stated that the Executive Engineer had recently issued a Film Production License for a scene in the television show "Breaking Bad," shot at the John Robert Dam. The standard fees were collected.

No Board action was required, although the Board briefly discussed the television show. Mr. Willis reported he inspected the site before and after the shoot, and Mr. Lovato reported that he watched a portion of the shoot. Mr. Lovato stated that the crew was very attentive to AMAFCA's needs at the location, as laid out to them by Mr. Willis.

b. Authorization to Advertise for Lease – Miranda Property

Mr. Willis stated that the Miranda Property, approximately 14.85 acres south of Metzgar Road between the Los Padillas Drain and Isleta Road, was purchased for part of the Southwest Valley Flood Reduction Project and construction of the flood control facility is complete. Approximately seven acres of the property has had irrigation installed, will be laser leveled soon, and is nearly ready for planting with alfalfa this spring. He proposed that the low area of the property, this seven acre parcel, be leased for agricultural uses to fulfill best management practices requirements from the biological assessment.



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His memo noted that similar leases in this area lease for around \$100 per net useable acre per year. The proposed lease allows for an initial term of one year with up to three one year extensions. Since the flood control facilities have been completed, the property is not anticipated to be needed in the near future. However, the lease allows for early termination and rent rebate in the event the property is needed for additional flood control facilities. A clause has been added to the lease notifying the lessee of the potential for flooding and loss of crops, as it is still a flood control facility.

Mr. Willis had provided the Board with the proposed Notice of Request for Bids, Request for Bids, Bid Form, and Lease, stating that they had also been provided to Attorney Rael for his review. They were prepared in accordance with the requirements contained in AMAFCA Resolution 2006-12, *Real Property Lease Policy*. He estimated an annual lease rate of approximately \$700 per year, and requested authorization to advertise the property for lease.

Director Hernandez made a motion that the Board authorize the Executive Engineer to advertise the Miranda Property for lease. Director Lyon seconded the motion.

In response to a question from Chairman Eichenberg about the potential for this parcel to be declared potentially surplus, Mr. Willis stated that it is still a flood control facility, and there is the potential for flooding which may cause the lessee to lose their crop of alfalfa. Responding to a follow-up question from the Chairman regarding selling the parcel and retaining an easement, as was done at the Ladera Dam 15/Ladera Golf Course, Mr. Willis stated that this might be possible.

Responding to a series of questions from Director Lyon regarding the cost-effectiveness of laser leveling and reseeded, Mr. Lovato stated that the work of laser leveling and replanting alfalfa was required as a part of the Corps of Engineers (COE) project. The contractor did not do this work, so AMAFCA is handling it. The costs will be reimbursed through an in-kind contribution to the COE on the Southwest Valley Phase I Project.

The motion passed (4-0).

c. Grandma's Point – Lease Potential

Mr. Willis stated that AMAFCA had recently allowed hot-air balloonists to use Grandma's Pond for takeoffs for their splash and dash rides, on a trial basis. Based upon the number of requests he had received, there appeared to be continued interest from balloonists for use of the property for this purpose due to its proximity to the Rio Grande and easy access. The lease potential is being discussed due to the balloonists' ability to charge fees to riders. The pond is not included in the 2013 license agreement with the Albuquerque Balloon Fiesta for use of landing areas on AMAFCA properties.



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He noted that the property would not need any improvements for access for this particular use. The pond has been built to specs and only needs periodic maintenance by AMAFCA staff. He suggested the lease be limited to balloon take offs and temporary parking, with terms allowing the termination of the lease at AMAFCA's discretion, no storage of environmentally sensitive materials, and addressing maintenance and appearance of the property. He suggested an initial one year term with up to three one-year renewal options, and a minimum bid of \$3,000 as an annual lease rate.

Discussion followed.

Director Lyon noted that this pond was at the intersection of Coors Boulevard and Paseo del Norte, a heavily trafficked location. He opined that while take offs might be safe enough, landings could be dangerous if a wind gust took a balloonist into traffic. He was also concerned about just any ballooning company bidding on a lease, stating he would prefer that management of the site go to someone proven, with a good safety record and good insurance. He also suggested that he would like to see someone like the Balloon Fiesta manage the property. He supported the general idea of someone leasing and maintaining the pond, but was concerned about liability.

Director Hernandez also expressed his concern regarding liability, and that an advertised lease would go to the highest bidder based on price, which wouldn't necessarily be the one best qualified to manage the facility.

Attorney Rael stated that a potential lease could be structured so that AMAFCA had no liability. Terms of the lease could include take offs only, no landings, and the requirement for sufficient insurance. The requirements in the RFP could be crafted so that only responsible companies are considered responsive.

Director Eichenberg stated that trying to prevent a landing is a waste of paper, because when a balloon needs to land, it will land when and where the pilot needs to land. A gust of wind can cause an unexpected change of plans and direction, even during takeoff.

Director Thomson arrived at 11:20 a.m., during discussion of this item.

In response to a question from Chairman Eichenberg, Mr. Willis stated that currently, most of the balloons take off north of this location, or in Rio Rancho. Director Brown added that any available piece of land is currently used for balloon takeoffs.

Mr. Willis stated that this piece of property is not included in the list of licensed landing locations in the annual Balloon Fiesta license.

Mr. Lovato noted that if AMAFCA had a contract with someone to use this site, the company with the contract would handle the surface maintenance, such as trash removal. Only the



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company with the contract and AMAFCA would have access to the pond. He stated that the Balloon Fiesta has expressed interest in a master lease, but the issue is the surface maintenance. They might have to charge a fee to balloonists who use the site, in order to pay for the trash pickup maintenance of the area within the fence.

Director Brown stated that he was in favor of accommodating use of the facility, with the appropriate protective terms.

In response to a comment from Chairman Eichenberg regarding Frisbee golf, Director Brown stated that this location was flat, in the valley, and close to the river, which made it ideal for balloonists, more so than for Frisbee golf.

Director Hernandez stated AMAFCA should identify other locations for additional Frisbee golf courses, and send the list to the City for their evaluation.

The consensus of the Board was to proceed with pursuing the idea of using Grandma's Pond as a balloon launching site.

In response to a query from Mr. Lovato regarding whether AMAFCA should seek to come to terms with the Balloon Fiesta for management of the site, or to advertise a lease to the highest bidder, the consensus of the Board was to seek an agreement with the Balloon Fiesta. The Balloon Fiesta could sublet the right to use it on a case by case basis to those balloon companies that are responsible and have sufficient insurance.

Responding to a comment from Director Lyon, Mr. Lovato stated that Paul Smith, of the Balloon Fiesta, had asked AMAFCA to re-evaluate the list of balloon landing sites with an eye towards possibly increasing the number of landing sites available.

19. Consideration of Approval of *Private License Agreement for Storm Drain Connection to the Vineyard Channel as Related to Cheddar's Café*

Mr. Lovato stated that this agenda item concerned approval of a private license agreement for a storm drain connection to the Vineyard Channel in the vicinity of the Century Rio 24 movie theater.

Ms. Mazur stated staff had been coordinating a site development plan for a new Cheddar's Café on the south side of the Vineyard Channel near the Century Rio Theater. Cheddar's Café is a national chain. AMAFCA owns the fee right-of-way interest on the channel. The site will drain to the northwest corner to a water quality inlet. The inlet will connect to the Vineyard Channel with a new 24-inch reinforced concrete pipe. The fully-developed 100-year discharge rate will be 24 cfs off a mostly impervious site. She added that the water quality inlet is an important element of the private facilities.



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Her memo also noted that staff had reviewed and approved the planned pipe connection to the channel. Since the pipe will not convey any public water, the owners will be responsible for maintaining the site, including the drainage facilities and pipe connection.

She requested that the Board authorize the Executive Engineer to issue the *Private License Agreement for Storm Drain Connection to the Vineyard Channel as Related to Cheddar's Café*.

Director Hernandez made a motion that the Board authorize the Executive Engineer to issue the *Private License Agreement for Storm Drain Connection to the Vineyard Channel as Related to Cheddar's Café*. Director Brown seconded the motion.

In response to a question from Director Brown, Mr. Lovato noted that this was near the location of a sanitary sewer collapse in the past month. He reported that the spill, which reached the North Diversion Channel, had been reported to the EPA and that all necessary precautions to disinfect that flow had been made. The Albuquerque Bernalillo County Water Utility Authority and their contractor, TLC, were still working on the permanent repair of the break. The break was located 35 feet below the surface, with a fiber optic cable above it which complicated the excavation. This was the construction activity visible in the area.

The motion passed unanimously (5-0).

20. Unfinished Business

a. Update on AMAFCA 50th Anniversary Memorial

Mr. Lovato stated that it was currently expected that the announcement of "AMAFCA Day" at the state legislature in conjunction with the 50th Anniversary Memorial would be on March 5, 2013. A van had been reserved for the day.

Chairman Eichenberg cautioned that any Board members who attended could find themselves sitting on the rostrum on the Senate side for four hours. He stated the van should arrive in Santa Fe well before the scheduled start time of 10:30, but that Board members might not expect the session to begin until 11:15 or so. There could be thirty minutes of action before the Memorial was read, and they would be expected to stay on the rostrum for a couple of hours afterward.

Directors Brown and Lyon stated they would be unable to attend due to prior commitments. Chairman Eichenberg stated that he might not be able to attend. Directors Thomson and Hernandez stated they could be available to attend.

Mr. Lovato stated he would keep the Board informed as the memorial progressed.



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b. Update on MS4 Permit

Mr. Lovato noted that Director Thomson had been able to attend a meeting held at the AMAFCA offices with EPA Region 6 regarding the upcoming new MS4 permit.

Mr. Lovato gave the Board a briefing on the new permit. He stated that the new permit is a general permit; it is not an individual permit. He stated that the 17 separate entities can choose to participate in the general permit by signing a notice of intent to follow that permit, or they can choose to get their own permit. Director Thomson noted that the 17 entities are down from the initial 20-23 entities.

Mr. Lovato reminded the Board of the unanimous U.S. Supreme Court decision on January 6, 2013, concerning the definition of "waters of the U.S." If the permit states that "waters of the U.S." are in a certain location, then that location cannot be used for compliance purposes. AMAFCA participated in this court case by filing an Amicus Curiae brief in support of the position of the Los Angeles County Flood Control District. AMAFCA attorney Marcus Rael was the principal author of the brief.

Mr. Lovato noted that this decision is very important for AMAFCA as AMAFCA currently has a jurisdictional determination that shows that portions of the Calabacillas Arroyo are waters of the U.S., as well as a portion of the North Diversion Channel. There is a very strong possibility that the Tijeras Arroyo, the South Diversion Channel, and even the San Antonio Arroyo might be considered "waters of the U.S." as well.

He stated that this would mean that AMAFCA would not be required to monitor these channels where they enter the Rio Grande anymore. Instead, monitoring will be done where other sources enter the AMAFCA channels, and will frequently be done by some party other than AMAFCA, such as the City of Albuquerque or Bernalillo County.

Responding to a question from Director Lyon, Mr. Lovato stated that the new permit arbitrarily changes the monitoring locations due to the change in the definition of "waters of the U.S."

He stated that, under the new permit, if AMAFCA elects to sign the notice of intent, AMAFCA will have to drastically change the monitoring program, and how it complies with the new permit conditions. AMAFCA will still pick up trash and will maintain water quality structures, but the monitoring costs might be slightly reduced. AMAFCA is responsible for what happens under its jurisdiction – its easements and right of way. Much of what AMAFCA has been doing to improve water quality will continue, but testing the water may become someone else's responsibility under the new permit. The permit allows a separation of responsibilities.

In response to a question from Director Hernandez, Mr. Lovato stated that AMAFCA will still need to "jump through hoops" to maintain the AMAFCA channels. However, AMAFCA's costs for reporting to EPA, through a cost sharing agreement with the City of Albuquerque and



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Bernalillo County, the University of New Mexico, and New Mexico Department of Transportation, may be reduced.

Mr. Lovato stated that within the last few weeks, the definition of MS4 has drastically changed. AMAFCA can still have the partnerships it has had in the past, but they will have to be altered. Each individual government agency will have to decide whether to sign the notice of intent for the general permit, or request an individual permit.

In response to a question from Director Brown, asking if AMAFCA could have the Corps of Engineers and EPA solve their jurisdictional turf war before AMAFCA makes a decision on the permit, Mr. Lovato stated that AMAFCA is still caught in the middle between those agencies. The Corps of Engineers is not coordinating their decision-making with EPA, and vice versa.

Director Thomson noted that not only are the two agencies not coordinating their decisions, EPA was unaware of some of the complexities and they had not really thought through the implications of their decisions.

Mr. Lovato noted that when the Calabacillas Arroyo was deemed jurisdictional, AMAFCA disagreed and appealed that decision. The appeal had merit and was heard, but the original decision was upheld. That portion of the Calabacillas is jurisdictional, which means AMAFCA does not have to test there anymore, but if the City of Rio Rancho discharges into it, the City of Rio Rancho will have monitor their water.

He stated that he had tried to talk to the EPA and the Corps of Engineers about this issue. He has suggested forgetting about what the jurisdiction is and just state that whatever happens within AMAFCA's boundaries is AMAFCA's responsibility, and this could be put in the permit, rather than having a fight with the Corps of Engineers saying it is jurisdictional. As waters of the U.S., it would just be part of the MS4 permit. He stated that AMAFCA has been advocating for a general permit for the last two years, and EPA is now in favor of that approach. However, the Corps of Engineers is not.

He noted that there is a possibility that EPA Region 6 is willing to participate in discussions with the Corps of Engineers to make this area a "special management area" in regards to responsibility for water management. The Corps of Engineers has not been talking to EPA, and EPA has not been talking to the Corps of Engineers, and it will be left to AMAFCA to make a decision as to which side to follow.

He stated that the new general permit is due to be released for general review and comment in the next 30 to 45 days. A 60 day public input period will follow. EPA Region 6 wanted to have one public meeting, but AMAFCA has requested at least three public meetings over a two day period.



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Director Thomson stated that if the Corps of Engineers prevails, and the determinations of waters of the U.S. stand, that will relieve AMAFCA of a considerable amount of responsibility as to water quality. However, AMAFCA also loses control of flexibility in the future. He opined that Mr. Lovato's suggestion for a meeting between the Corps of Engineers, EPA, and AMAFCA to discuss this issue was a very good idea. Mr. Lovato confirmed that the meeting would happen within the next ten days.

Director Thomson noted that the EPA is concerned about water quality, yet the Corps of Engineers is concerned about construction, 404 and 402 permits, and they are not talking to each other. They don't see the issues.

In response to a comment from Director Hernandez, who stated that EPA wants AMAFCA to capture water upstream and treat it, but the Corps of Engineers does not want to give AMAFCA any allowance or credit for that water volume, Mr. Lovato stated that a portion of the new permit talks about reducing the discharge to historic levels. The new permit allows AMAFCA to keep doing what it does very well, and gives it some flexibility, but a major issue is where to test the water – at the river or at the point where the water enters the AMAFCA system.

Chairman Eichenberg called a five minute recess at 11:48 a.m., stating that the next agenda items to be heard would be the Field Highlights, followed by the Legislative Update.

Due to a prior commitment, Director Hernandez left the meeting during the recess. The meeting resumed at 11:53 a.m.

17. Field Highlights

a. Construction Report

The memo from Kurt Wagener, AMAFCA Field Engineer, contained a summary of current construction projects. There were no questions.

b. Corps of Engineers Southwest Valley Flood Reduction Phase I Project Update

Mr. Wagener stated that AMAFCA and Bernalillo County field personnel had performed rehabilitation on the Los Padillas Extension portion of Phase I of the Southwest Valley Flood Damage Reduction Project between February 4 and February 21, 2013. A newsletter regarding the rehabilitation was provided to the Board in their meeting packets.

Mr. Wagener showed extensive before and after photos, with a number of photos showing the rehabilitation work that was completed by the AMAFCA and Bernalillo County field personnel. Nearly 10,000 CY of dirt was added to the low sections to re-grade them to the



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proper elevation. Standing pools of water have been eliminated. The remaining water now flows.

c. Field Report

Mr. Wagener gave a report of various projects and events over the past month, answering several questions from the Board during his presentation. Pictures of the new dump truck with rock bed were included, along with updates on AMAFCA's Boca Negra Dam, Agency and Area Wide, and Ecosystem Preservation projects.

Chairman Eichenberg noted that the Legislative Liaison had still not arrived.

Director Brown commented that he gets several email updates a day on what is happening in the legislature, and did not recall anything important to AMAFCA happening in the recent past. He stated he did not think that the Board needed to wait for the Legislative Liaison to arrive. Chairman Eichenberg and Director Lyon agreed.

21. New Business

None.

22. Adjourn

There being no further business to come before the Board, Chairman Eichenberg adjourned the meeting at 12:08 p.m.

Bruce M. Thomson, Secretary-Treasurer, 3/28/13

Recorded by Pamela Woodruff, Executive Administrative Assistant