

**SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
(SSCAFCA)
MINUTES OF JULY 18, 2014
BOARD OF DIRECTORS REGULAR MEETING**

CALL TO ORDER.

The regular meeting of the SSCAFCA Board of Directors was called to order by Donald Rudy, Chairman, at 9:00 a.m.

ROLL CALL OF DIRECTORS.

Directors in attendance were John Chaney, Mark Conkling and Donald Rudy. Jim Fahey and Steve House were noted as absent. Charles Thomas, Executive Engineer, Bernard Metzgar, SSCAFCA's attorney, and members of the public were also present.

ANNOUNCEMENTS.

Announcements were made by Donald Rudy that all electronic devices needed to be turned off during the meeting and that the microphones are voice activated.

PLEDGE OF ALLEGIANCE.

The Board was led in the Pledge of Allegiance by Donald Rudy.

APPROVAL OF AGENDA.

A motion was made by John Chaney to approve the Agenda as presented. It was seconded by Mark Conkling and passed unanimously.

ACTION/APPROVAL OF THE MINUTES OF JUNE 30, 2014.

A motion was made by John Chaney to approve the Minutes of June 30, 2014 as presented. It was seconded by Mark Conkling and passed unanimously.

PUBLIC FORUM. None.

STAFF REPORTS:

Executive Engineer:

1. Presentation on Lomitas Negras Ribbon Cutting.

Mr. Charles Thomas stated that on July 9, 2014 the ribbon cutting for the Lomitas Negras Water Quality Facility was held. He showed the Board several pictures

of the final project. The project now has the proper capacity and is a sedimentation collection facility as well. There was a small crowd for the ribbon cutting. It was very successful and most of the news articles showed very positive feedback on the project. The project was also completed ahead of schedule and under budget. Smith Engineering was the engineer of record for this project.

2. Presentation on proposed Rule to change the definition of "Waters of the U.S.".

Mr. Charles Thomas stated that there have been some changes to the definition of "Waters of the U.S." This presentation was requested by the Chairman. The waters of the U.S. is currently defined in the Clean Water Act and is being used for SSCAFCA's purposes when work is done in the arroyos. The term "navigable waters of the U.S." was derived from the Rivers and Harbors Act of 1899, which creates a lot of problematic issues. With that definition, you start dealing with several issues within the Clean Water Act, the 404 Permit for any construction activity in the arroyos, the 402 Permit, which is the MS4 Storm Water Permit, and Section 303 Water Quality Standards. Some of the other confusion is that the definition currently includes a catch all clause for the "all other waters" that might possibly be included as waters of the U.S. It is expansive and vague at the same time.

Mr. Conkling stated that there is an argument that "all other waters such as interstate lakes, rivers, streams..." where interstate modifies all of those words, so unless they are interstate, the mudflats, sandflats, etc. are not in the definition. Mr. Metzgar stated that the agencies probably would not say that "interstate" modifies those areas.

Mr. Thomas stated that the definition was poorly crafted to begin with. The other confusion is that the Clean Water Act itself is enforced by two separate agencies, the EPA and the U.S. Army Corps of Engineers. By the natural course of action, they both interpreted "Waters of the U.S." separately. They have interpreted the Supreme Court rulings to apply to waters that are not traditionally navigable, and they have also looked at rulings that the Act should cover waters with a significant nexus to navigable waters, although there was no definition of nexus term provided in the ruling. With SSCAFCA's situation, EPA has determined that the Rio Grande is waters of the U.S. and the arroyos are not, thus making SSCAFCA a partner with the MS4 permit because the arroyos discharge to waters of the U.S. The Corps has required SSCAFCA to get 404 permits within the arroyos because they have defined the arroyos as waters of the U.S. This confusion has resulted in a number of lawsuits in other jurisdictions.

Mr. Thomas stated that in response, both federal agencies have jointly proposed a new rule to clarify the concept of what waters of the U.S. is for both agencies. The new proposed changes don't adequately remove a lot of the confusion within the concepts. They have included "adjacent", "bordering", "contiguous" and "neighboring". They define neighboring as "waters located within a riparian area or waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection." This gets into the gray area of what is a subsurface hydrologic connection. You can make the argument in the Rio Grande Basin that all of that water is ultimately connected in a storm water connection to the Rio Grande. Riparian area is defined as "an area bordering a water where surface or subsurface hydrology influences the plant and animal community structure." This is a reasonably vague definition that doesn't give a good handle of the intent of that definition. Tributary has been added to the rule; prior to this, tributary was not included in the definition. It's a "water characterized by the presence of a bed and banks and an ordinary high water mark which contributes flow directly or indirectly to a waters of the U.S." It identifies that a tributary can be man-made. It also indicates that it can have man-made or natural breaks, as long as it meets the definition above those breaks. Because of the concept of neighboring and adjacent, everything could be considered waters of the U.S. It all comes down to how much reach each particular agency enforcing the definition wants to take. This is a federal definition, so it would include the tribal entities as well. The other new definition is significant nexus, which is a "water, either alone or in combination with other similar waters in the region, i.e., a watershed that significantly affects the chemical, physical, or biological integrity of a waters of the U.S."

Mr. Thomas stated that this is proposed language and the comment period on the proposed language has been extended. There were significant initial comments when the rule was first issued and EPA has extended the comment period to October 20, 2014. He stated that staff could certainly put together a proposed comment letter to EPA. These are elements that do affect SSCAFCA as a flood control authority. There are additional definitions and other portions of the rule which specifically address the farming community and the agricultural interests and they list out some of the exemptions. Most of those do not apply to SSCAFCA. Waste water elements such as septic tanks are specifically excluded on certain levels.

Mr. Thomas stated that there is a real significant impact with this proposed change. It supports more closely the reach that the Corps had been doing, but it does expand the reach of both agencies significantly with the increased language in the definition. Right now, it's unknown how it will impact SSCAFCA. Common sense would dictate that if they take the extreme definition that SSCAFCA is "waters of the U.S.", by definition, SSCAFCA is not discharging into itself, so they should be excluded

from the MS4 permit. That was the approach taken by EPA with regard to the MRGCD. They defined the MRGCD ditches as waters of the U.S. and they were exempt from complying with the permit. In one perspective it could reduce SSCAFCA's permitting burden, but whether the Corps would support that and exempt SSCAFCA, is not known at this time. Within the region, it would drastically increase the regulatory burden. Many entities have weighed in on the rule. AMAFCA has not drafted a response to this yet.

He has had discussions with AMAFCA's Executive Engineer regarding the proposed comments and the possible opportunity to partner with other flood control agencies in the region and submit joint comments.

Fiscal Services Director:

1. Action/Acceptance of Resolution 2014-11 Approving Continuing Disclosure Compliance Procedures for Bonds of the Authority.

Ms. Deborah Casaus stated that Resolution 2014-11 approves SSCAFCA's continuing disclosure compliance procedures for the bonds of SSCAFCA. Eric Harrigan, of RBC Capital Markets, stated that the Resolution sets in stone the procedures that SSCAFCA already follows when it issues bonds. The annual disclosures include filing audited financials, certain information related to tax base, tax rates, collection rates, etc. Rating changes, whether upgrades or downgrades, as well as other features that don't apply to SSCAFCA, such as a reserve fund, is mandatory disclosure information. It also sets out that a compliance officer be appointed by SSCAFCA, which is the fiscal services director, and she works with other responsible professionals to assist SSCAFCA with its requirements. He went through all disclosures required and suggested for SSCAFCA. There is also a provision for disclosure training, which is one of the mandates from the MSRP.

A motion was made by Mark Conkling to approve Resolution 2014-11 as presented. It was seconded by John Chaney. Roll call vote: John Chaney, yes; Mark Conkling, yes; Donald Rudy, yes. The motion passed 3-0.

Mr. Harrigan stated that the bond market continues to remain very steady and is improving a bit. They plan to price the bonds on August 6 and come back on August 8 for the refunding and new money transactions. On August 8, they will also come back with another procedural resolution regarding the post issuance compliance with IRS of spending the money.

2. Recognition/Acknowledgment of the Fiscal Services Report for June 30, 2014.

Deborah Casaus presented the Fiscal Services Report for June 30, 2014 in the Board's packets. This is the final report for fiscal year 2014. She stated that property tax operating revenues finished about .2% higher than last fiscal year and debt service was about .6% higher. There were some higher collections in the general fund of \$120,00 in the property tax mil levy. That is the result of some delinquent collections being collected. General fund expenditures through the year ending June 30, 2014 amount to 68% of SSCAFCA's total budget, which is about \$2.6 million. The cleanup costs incurred due to the storm events, the portion allocated to the general fund amounts to about \$800,000. SSCAFCA has received all of its agreements from FEMA at this point, but there may be some fluctuation because they haven't received all of the agreements from the state yet. The City of Rio Rancho has issued 38 single family residential permits for the month of June. This is a total of 291 permits this year. That is about the same number as last year. Interest earned on the State Treasurer's funds was at a rate of .112% for the month of June.

The Fiscal Services Report for June 30, 2014 was recognized and acknowledged by the Board.

3. Action/Approval of Resolution 2014-12 Budget for Fiscal Year Ending June 30, 2015.

Ms. Deborah Casaus stated Resolution 2014-12 is the final budget for 2015. There weren't a lot of changes from the preliminary budget. The one main change was \$120,000 that was collected in the additional revenues in the general operating fund. That was allocated mostly to the large storm clean out. The construction fund contains the big projects, and the FEMA reimbursement of about \$2 million is in this fund. The state is going through the documents now and they are coming in slowly.

A motion was made by John Chaney to approve Resolution 2014-12 as presented. It was seconded by Mark Conkling. Roll call vote: John Chaney, yes; Mark Conkling, yes; Donald Rudy, yes. The motion passed 3-0.

4. Action/Approval of Resolution 2014-13 Ad Valorem Tax Levy for Tax Year 2014 (Fiscal Year 2015) Applicable to General Operating Fund.

Ms. Deborah Casaus stated Resolution 2014-13 proposes no change to the general fund tax levy and it will be kept at .828 and the budget reflects that. There are adjustments that the state may make for yield control, but at this point none are foreseen.

A motion was made by John Chaney to approve Resolution 2014-13 as presented. It was seconded by Mark Conkling. Roll call vote: John Chaney, yes; Mark Conkling, yes; Donald Rudy, yes. The motion passed 3-0.

5. Action/Approval of Resolution 2014-14 Ad Valorem Tax Levy for Tax Year 2014 (Fiscal Year 2015) Applicable to Debt Operating Fund.

Ms. Deborah Casaus stated that Resolution 2014-14 proposes no change to the tax rate of 1.248 dollars per thousand of assessed value for both residential and non-residential property. This takes into account SSCAFCA's new bond sale coming up, as well as closing on the clean water loan, which will also come onto the debt service.

A motion was made by John Chaney to approve Resolution 2014-14 as presented. It was seconded by Mark Conkling. Roll call vote: John Chaney, yes; Mark Conkling, yes; Donald Rudy, yes. The motion passed 3-0.

6. Action/Acceptance of Selection/Award for Fencing and Fence Repair with American Fence Company for On-Call Services.

Ms. Deborah Casaus stated that an IFB was issued for fencing, as the current contract was up. There were three bids received and the first bid had to be rejected as non-responsive because it did not meet the mandatory requirements. The second lowest bid was American Fence Company and staff asks for approval. In answer to a question, Ms. Casaus stated that the first bid was rejected because there were three mandatory requirements, the first being submittal of the bid, second was submittal of certification of insurance, and third was the continuing disclosure requirement. The insurance requirement was not met. American Fence is the company that SSCAFCA did have on call before.

A motion was made by John Chaney to approve the award for fencing and fence repair to American Fence Company as presented. It was seconded by Mark Conkling and passed unanimously.

Environmental Services Director:

1. Action/Acceptance of task-order with Wilson & Company for Design of Lower Montoyas Water Quality Feature.

Mr. Dave Gatterman stated that SSCAFCA recently received approval of the environmental information document for the Lower Montoyas Water Quality feature. This is a document required by NMED as part of the clean water funding to be completed prior to initiating any type of action on the design. Staff then started working with Wilson & Company on developing a scope and fee proposal for this project. The draft is completed, but staff has not received comments from the NMED as of this time. He stated that this is an amendment to the contract that was signed with Wilson & Company last year on this project. Staff is requesting permission to sign this particular amendment in the event that there are no significant comments from NMED in their review. The existing amendment is to conduct engineering design, including topographic survey, boundary survey, geomorphology, hydraulic modeling, FEMA coordination, landscape design, and utility coordination. The amendment will also include bidding services. The amount of the proposed amendment is \$160,469.17. The request is that the Board authorize staff to proceed with signature approval of the amendment to the contract barring any significant comment by NMED. The entirety of these expenses will be covered by the Clean Water SRF loan.

A motion was made by Mark Conkling to accept the task order as presented. It was seconded by John Chaney and passed unanimously.

Donny Dunneman, of Wilson & Company, thanked the Board and SSCAFCA for the opportunity to work on this project.

In response to a question regarding the MS4 Permit, Mr. Gatterman stated that if SSCAFCA winds up outside the MS4 Permit, it would remove SSCAFCA from the EPA's responsibility as far as a regulated agency, however, SSCAFCA requirements would potentially increase to the Corps, as SSCAFCA would then be defined by the waters of the U.S. Currently, SSCAFCA's working relationship with both agencies is very good. SSCAFCA is currently regulated by both entities, and there will continue to be a regulatory agency overseeing SSCAFCA.

OTHER COMMITTEE REPORTS.

In response to a question from the Board regarding the questions from the auditors, Ms. Casaus stated that last year was the first time that SSCAFCA had the auditor's questionnaire to the Board members. The auditor is asking that they respond

to the best of their knowledge at this point. Every month staff presents the expenditures to the Board to give them a summary of what is happening with the financials. Based on these, the Board merely signs that it is to the best of their knowledge. The audit is scheduled to start the first week of September, so the sooner the better.

Mr. Thomas stated that, as he understands it regarding the Preliminary Official Statement (POS), one of the goals of the federal regulation that ties into the audit questionnaire is that it basically addresses problems that have cropped up in other parts of the country where the Board has not been involved in those elements and decisions. This rule is intended to ensure that the authorizing entity is aware of what is going on within the agency and is playing an active role.

Mr. Conkling stated that, with regard to the new proposed rule, he asked if SSCAFCA could take a stand as to which agency SSCAFCA wishes to be regulated by. Mr. Thomas stated that it could probably be done, but part of the distinction is going to be the nature of those particular rules within the Clean Water Act. The 402 is specific to the NMPDES MS4 Permit, so that is wholly under the authority of the EPA. SSCAFCA works well with both agencies right now, but SSCAFCA could certainly indicate from a flood control agency its preference as to which entity is more closely aligned.

Mr. Thomas stated that over the past couple of weeks there have been some reasonably significant storm events which have resulted in flow in the Harvey Jones Channel. There is no official presentation, but staff did complete the removal of the sill in the Harvey Jones Channel before these two storms hit. There has been a significant improvements in characteristics of flow in the channel. The remainder of the project needs to be completed, but with the removal of the sill, the initial flow did not result in sediment building up in the traditional area beneath the bridge and it did allow for the flow to begin infiltrating back into the ground outside of the channel, as well as the continual movement of water through that area. The sill has been pushed back to where the syphon crosses underneath, so they haven't removed the ponding nature of that structure, but they have moved the collection of the majority of the sediment out of the area.

Mr. Ron Reeder, a member of the public, stated that he was walking by the larger pond at the outflow of Harvey Jones today and he observed the water penetrating into the soil much more than it used to. The water does extend up underneath the Corrales Road Bridge and to the west of the bridge, back to where it was before. He did not observe the water under flow conditions. He asked about the likelihood that as the storm water comes down and encounters the standing water to the west of the bridge that it will deposit silt there as it did before.

Mr. Thomas stated that this is correct. The concept of the ultimate solution by improving the hydraulics of the channel itself, removal of the sill is one piece of the equation. Ultimately, the large portion of that sediment will not reach the bridge in the first place. With the Lomitas Water Quality feature one portion of that is taken care of; and in the fall they will move forward with the Lower Montoyas project. With these two features, the sediment should not get in there in the first place. They are also looking at ways to improve the hydraulics at the syphon down to the river. The deposit of sediment at the bridge is significantly lessened. The water returns to that area because of how flat the area is.

CHAIRMAN'S REPORT.

Mr. Rudy stated that SSCAFCA is working with the Council of Governments, AMAFCA and the remaining entities to put together a position which protects the entities with regard to the definition of the waters of the U.S. He stated that the state engineer is beginning to revise the State Water Plan. This addresses primarily water source; SSCAFCA is not a big player in that. He has been part of the COG steering committee to direct this operation. Both AMAFCA and SSCAFCA have avoided being members of the steering committee. The last water plan was put together by the Water Assembly. Bruce Thompson, a speaker at that assembly, is an engineering professor at the university and a Board member of AMAFCA. His presentation noted that the amount of sources of water that are involved in municipal and industrial comprises 9% or less of the water in the area. This means that the amount of impact is relatively small. One of the effects of that is noting that when ground water is infiltrated it is larger than had been considered in the distant past. SSCAFCA may be a contributor to water source in the area as well as flood control and may be involved in a wider range of water issues than in the past.

ATTORNEY'S REPORT.

None.

BOARD OF DIRECTOR'S COMMENTS.

None.

PROPERTY MATTERS.

None.

FOR YOUR INFORMATION:

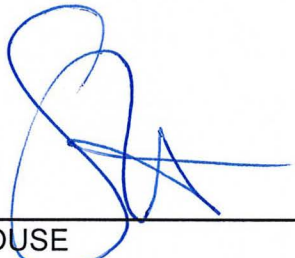
1. Rio Rancho Observer article, "City, SSCAFCA partnership paved way for "Gateway' art", (6/22/2014).
2. Rio Rancho Observer article, "Flood agency preps for monsoon season", (6/25/2014).
3. Rio Rancho Observer article, "SSCAFCA board election; Obrey challenges Rudy", (7/9/2014).
4. Corrales Comment article, "July 9 Dedication for Lomitas Negras Silt Control", (7/5/2014).

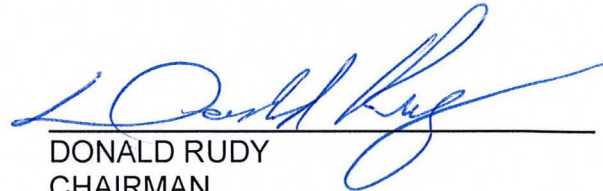
OTHER BUSINESS.

- Next Regular Board Meeting is on Friday, August 8, 2014 at 9:00 a.m.

ADJOURNMENT.

A motion was made by John Chaney and seconded by Mark Conkling to adjourn the meeting. It was carried unanimously. Meeting adjourned at 9:00 a.m.



STEVE HOUSE
Secretary

DONALD RUDY
CHAIRMAN

DATE APPROVED: 8/8/14