

**SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
(SSCAFCA)
MINUTES OF MAY 4, 2007
BOARD OF DIRECTORS SPECIAL MEETING**

CALL TO ORDER.

The special meeting of the SSCAFCA Board of Directors was called to order by John Chaney, Chairman, at 9:00 a.m.

ROLL CALL OF DIRECTORS.

Directors in attendance were John Chaney, Mark Conkling, Donald Rudy and Dub Yarbrough. Steve House was noted as absent. David Stoliker, Executive Director, Bernard Metzgar, SSCAFCA's attorney, and members of the public were also present.

PLEDGE OF ALLEGIANCE.

The Board was led in the Pledge of Allegiance by John Chaney.

APPROVAL OF AGENDA.

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

ANNOUNCEMENTS.

An announcement was made by John Chaney that all electronic devices needed to be turned off during the meeting.

EXECUTIVE DIRECTOR'S REPORT.

Canvass Bids for Sediment Removal-2006 Phase Three and Award Contract.

Mr. Stoliker stated that the budget has to be reviewed and funds available before the Board can approve the projects. Staff has done a final summary on the budget. He stated that staff is asking for an accelerated action request to help with endangered species. He went over the projects that the Board has approved. The Board has not approved the Harvey Jones project. The budget is about \$3.43 million that SSCAFCA expects to have for expenditures. Perry Baird has identified the remaining costs for the Sportsplex Dam project and the budget shows that SSCAFCA's revenue is about \$4.4 million. This shows that the Board has the money to approve this contract.

Mr. Dodge stated that Phase 3 of the sediment removal, which is the Harvey Jones removal, was bid on Wednesday, May 2, 2007. They received three bids and the project was bid in three alternates - A, X and Y. Alternate A was the original plan to place the material in the La Barrancas as engineered fill as the first step in the restoration of the La Barrancas back to more historic configuration. Alternate X was to excavate the material and haul it to the landfill. Alternate Y was to do emergency repairs at the La Barrancas in accordance with FEMA approvals that the City received from the disaster declaration.

Mr. Dodge stated that Alternate A had the question of whether the sediment was contaminated or not. Following a lot of tests, the conclusion was that it is polluted, but at less than contamination levels. In the meantime, the Corps of Engineers would not proceed with the 404 permit because SSCAFCA didn't have the technical data to back up the pollutant issues. It is just now starting to get processed. Alternate A cannot be started for 60 to 90 days because of the hold up of the 404 permit. Mr. Dodge stated that Alternate X is to take the material to the landfill, which was a response to not being able to put it in the La Barrancas. Alternate Y was to do repair in the La Barrancas.

The low bidder on Alternate A was Quick Brothers Excavating; the low bidder on Alternate X was also Quick Brothers Excavating, and the low bidder on Alternate Y was Rio West Sprinkler. There is quite a spread between the bids for Alternate X, with \$384,338.00 being the low bid and \$1,421,992.50 being the high, with the engineer's estimate at \$560,815.00. The spread on Alternate Y was not as great, with the low bid being \$108,140.00, the high being \$173,100.00, and with the engineer's estimate at \$108,550.00. In the bid evaluation, they discovered several errors in the bids which, because of the complication of the different alternates, are not surprising. The errors have been corrected in the final numbers.

Mr. Dodge stated that they can't really start construction with regard to Alternate A because of the 404 permit and they are not recommending award of this alternate because it will be past the rainy season. Alternate X does require NMED authorization to place the material in the landfill, and this authorization is being pursued by the landfill operator.

Mr. Dodge stated that Alternate Y is to place a 15 foot cutoff wall at the bottom of the soil cement structure where it is undermined, and to do something similar at the storm drain outfalls where there is a similar problem. This would protect those structures. Another failure that happened on the La Barrancas last year is that there was a big slough where the slope collapsed downstream from the grade control structure. These kinds of failures will happen regardless because the slope is so steep. The grade control structure will be protected for the 100 year runoff event. If the quick fix is done, SSCAFCA's facilities will be protected, but just not as well as if Alternate A was to be done. Mr. Stoliker stated that the difference between the revenue and expenditures in the budget was going to be placed into the La Barrancas to fix the problem. The \$1 million savings can be placed into other projects that are more important. To place the sediment from the Harvey Jones into the La Barrancas will save SSCAFCA money in the long run, but he can't get it approved before this year's monsoon season, which opens SSCAFCA up to liability because of the safety issues.

Mr. Dodge stated that the soil cement is not reinforced and it is amazing that it hasn't broken off yet. Using Alternate A would bring it up to grade and get rid of the vertical bank. The grade control structures would be further down in the channel and a new structure could be put in to protect the arroyo. If you do Alternate X, you don't need Alternate Y at all. In either alternate, there is a bid item to fill in the undercut.

Mr. Conkling stated that the dirt is not contaminated and, therefore, SSCAFCA should do what it intended to do in the first place and find a way to hurry the process. Mr. Stoliker stated that the only way is to have a meeting with the Corps to try and get an emergency action.

Mr. Dodge stated that, based on the concept of not being able to get the 404 permit for 60 to 90 days and that this will be past the monsoon season, they recommend Alternate X and Alternate Y. Alternate X is to move the material to Waste Management. The bid amount, with tax, is \$410,000.00, and an additional \$130,000.00 to \$150,000.00 for the landfill fee. Alternate Y is to do the drop structure protection for the 100 year event. Mr. Stoliker stated that there is a maintenance

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exemption for existing structures and he stated that the Corps is recognizing FEMA's project worksheet that allows the material to be placed.

Mr. Dodge stated that there are two endangered species that live in the area and SSCAFCA is addressing that by requiring silt control to prevent construction debris getting in there. The other issue is that there is habitat for the Willow Fly Catcher and yellow billed cuckoo. The problem is that, due to the proximity of the work, the idea is to get as far away from the habitat as SSCAFCA can, so the accelerated action request is to go in as an emergency action, and take the material out to the La Barrancas as part of construction of Alternate Y maintenance. Mr. Stoliker stated that this meets the FEMA project worksheet. He stated that it is our understanding that if this is started before May 15th, then the operation can be continued, but if the operation is not started, SSCAFCA may not be able to get back in there.

Mr. Stoliker stated that the idea of using Alternates X and Y and the accelerated action request was to get SSCAFCA's general contractor, Danny Quick, to go ahead and start that operation next Monday, have him continue through the 15th. On the 15th, they proposed to utilize Alternate X and have it in place and have Danny Quick start on the 15th so there is no interruption in service. He does not believe that SSCAFCA will be able to get Alternate A going by the 15th. Mr. Conkling stated that what if SSCAFCA moved the material, packed the soil cement in there and did all that starting on Monday, and then the Board pass an emergency request to get a permit in the meantime and have a meeting to get it done and hold the decision until SSCAFCA actually gets a determination.

Mr. Metzgar stated that the Board can pass an emergency resolution to ask them to go forward with it, but the biggest problem is that there are statutory requirements that they must follow. Fish & Wildlife will have to advertise, have hearings, and it will not get done that quickly; 60 days would be very fast to get something done. Mr. Yarbrough stated that there was a study done back on the Venada about the Willow Fly Catchers, and the report showed that there were none in the area. Mr. Stoliker stated that they were told that it had been decades since any Willow Fly Catchers had been seen, but the rules that Fish & Wildlife adhere to are guidelines that also protect the habitat, which then triggers going through the process. It has been recommended by the Corps of Engineers to SSCAFCA that SSCAFCA lease or purchase acreage on which to store the dirt. Mr. Dodge stated that it would take about eight acres to hold the dirt, seven feet deep. Mr. Stoliker stated that with that much land, you must do a study on endangered species and other environmental issues.

Mr. Conkling stated that he has been assured that SSCAFCA can take care of the health, welfare and safety issue by pumping concrete in there and moving enough soil quickly enough to not get into habitat. He asked what the consequences would be if SSCAFCA is caught by the rains. Mr. Stoliker stated that if the Board approves the accelerated action item, and Alternate Y, SSCAFCA will clean out the south side of the Harvey Jones outlet by taking out as much material as they can and then bulldozing the remaining material on top of the material on the north side, which would open up about 60% of the channel. This will most likely get SSCAFCA through this season. If it gets too high in the outlet, it's going to go in the Rio Grande and into the Bosque. This will do two important things for the public; one it will take care of the problem and, once it is cleaned out, it will give SSCAFCA time to go back in and work on the contamination issue. The Corps has told them that it is the FEMA project worksheet that defines how much is removed. Mr. Dodge stated

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that FEMA only puts things back the way they were. The FEMA work was to fill it in to the grade that it was prior to the big storms and then to put rip rap on it. The problem is that if it undercuts, the rip rap is going to fall in. Mr. Yarbrough stated that the inlet is of concern because of the potential lawsuit, but it is outside of the channel proper so there is no blockage of the channel.

A motion was made by Mark Conkling to proceed with the accelerated action request to the extent that it takes the material out and makes the repairs to the La Barrancas. Mr. Dodge stated that this is the dirt part of Alternate Y and the concrete part of Alternate A. There was no second.

A motion was then made by Mark Conkling to pump the concrete into the problem and haul enough material from Alternate Y to address the habitat and other issues and to satisfy FEMA under the auspices of maintenance; and that SSCAFCA proceed as rapidly as possible on Alternate A. It was seconded by Donald Rudy.

Mr. Chaney stated that the problem is if the Barrancas Arroyo drop structure fails, SSCAFCA has to come in and spend the \$1 million when it fails. Mr. Dodge stated there are subdivisions on both sides of it and it could be catastrophic if the structure fails. Mr. Rudy stated that the sides of the channel are also vulnerable to washing away. Councilor Fahey, of Corrales, stated that if SSCAFCA goes ahead with its accelerated plan, work can start on Friday, so something will be done. He suggested having two plans – one emergency approach to deal with the problem and then have a long-term definitive treatment plan.

Mr. Stoliker stated that the La Barrancas is a huge issue and will not be solved in the next ten years. If the design goes forward and Mr. Dodge can build a structure to capture sediment as it goes in, SSCAFCA could use the natural forces of the arroyo to fill in the arroyo. Staff wants to fix this problem at the lowest cost, but the situation is such that SSCAFCA must clean out the Harvey Jones Channel. He stated that this is all predicated on Waste Management giving its okay. Mr. Chaney stated that the Board could rule that the material be transported to Waste Management, but that the fee not be paid. He stated that Waste Management wants the dirt, but are trying to squeeze money out of SSCAFCA. This would solve the problem of getting all the material out of the Harvey Jones at a minimal cost to the public. Mr. Stoliker stated that one of the things SSCAFCA might be able to do is build up the Corrales levy, but it has to be permitted. It was always thought that the Barrancas could be a final disposal area, but SSCAFCA just can't get to it.

Mr. Conkling stated that the Board wants to get started on Monday so as not to get caught on the habitat issues, and move as much material as it can out of the Harvey Jones and putting material in there, and pumping concrete in there, and not upsetting the plan for building that structure. Mr. Stoliker stated that he is recommending Alternate Y because, in the long term, it gives SSCAFCA everything it needs. It accomplishes the environmental issues, starting work in Corrales, pushing earth up out of the way to make sure the channel flows, the political and public safety issues.

Mr. Conkling withdrew his previous motion with the consent of Mr. Rudy.

A motion was made by Mark Conkling to approve Alternate Y. It was seconded by Donald Rudy.

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Mr. Dodge stated that Alternate Y alone is an emergency removal, and the accelerated action is in the maintenance agreement. Both must be done.

Mr. Conkling amended his motion to approve Alternate Y with the accelerated action. It was seconded by Donald Rudy and passed unanimously.

A motion was made by Mark Conkling to approve Alternate X with the condition that SSCAFCA not pay Waste Management to receive the material, but SSCAFCA will pay for the delivery of the material. It was seconded by Donald Rudy and passed unanimously.

Mr. Stoliker stated that if Waste Management does not want to take the material without payment, it is possible that the County will want it and he will pursue that with them. He also asked that the Chairman accompany him to the Corps with regard to setting up a meeting and if there is a possibility to continue doing the maintenance until the other contracts are started, the Corps might approve it.

Mr. Stoliker stated that when he first came on board, the outlet was all grown in with willows and it was the perfect habitat for the Willow Fly Catcher. Sediment was being retained in the Harvey Jones and it flooded many times. SSCAFCA went in and, through a series of negotiations with the Corps and NMED and EPA, they recognized that SSCAFCA has a maintenance responsibility for that outlet and that the willows had to be cut down. SSCAFCA can take the material out and does not need a permit for that; SSCAFCA needs a permit to dispose of it.

Mr. Conkling stated that after long discussions with the Corps of Engineers, there is extreme opposition to putting in a hard lined channel in the area of the hospital. There are also some engineering problems with the high flows coming off the watershed. Mr. Stoliker stated that Bo Johnson, representative for the developer, is upset that the developer was not invited to the Executive Committee meeting on Monday. Mr. Metzgar stated that at every instance that SSCAFCA had talked on this project, Bo Johnson always represents the developer, and does not represent the hospital. The Executive Committee felt that it wanted to meet with the hospital without the developer to see exactly what it was that the hospital wanted. It was the consensus of the Board that the Executive Committee handled the matter appropriately.

Mr. Stoliker stated that staff has prepared a Joint Powers Agreement where the City would provide funding for the Barrancas Arroyo project. The City has \$100,000.00 from past legislative funds that it must use in the Barrancas. The City has indicated that the fix that Clint Dodge has is perfect for that amount, plus the City has FEMA money of about \$76,000.00. This money may be sufficient to pay for the entire fix. Mr. Metzgar stated that this JPA is required by the DFA when one governmental entity is going to use funds from another governmental entity. He stated that he does not believe that it can be passed since this wasn't on the agenda. The Board can, however, say that this issue can go to the Executive Committee for resolution. It was the consensus of the Board that the Executive Committee handle this matter.

Mr. Stoliker stated that AMREP and the City have asked to have a meeting on the Barrancas arroyo sewer.

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Mr. Stoliker stated that staff got a call from the Board of Finance and the City of Rio Rancho about funding that they have that was supposed to be assigned to SSCAFCA. The Board of Finance believes that, statutorily, the money cannot go to SSCAFCA directly. Staff is pursuing this issue through its lobbyists. Mr. Metzgar stated that no flood control agency has ever received legislative money in the past. Therefore, DFA says that a flood control agency can't receive it. DFA did not know if it was a statutory thing or if it was a DFA regulation. DFA is saying that only the municipalities involved can receive it. It would be possible to do a Joint Powers Agreement with the municipalities that do receive the money. DFA's other reason was that they don't have SSCAFCA's budget, which is totally untrue because SSCAFCA has submitted a yearly budget to DFA since it was formed.

ATTORNEY'S REPORT.

Discussion of Water Quality Facility for Santiago's.

Mr. Metzgar stated that he and George Perez, the attorney for the Village, are both stuck with dealing with the developer's attorney. They can't go to the developer himself. The attorney has been stonewalling both of them.

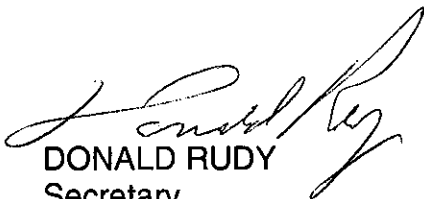
A motion was made by Donald Rudy to bring legal action to enforce the contract if SSCAFCA does not hear back from the developer in a week. It was seconded by Dub Yarbrough and passed unanimously.

PUBLIC FORUM.

Discussed above.

ADJOURNMENT.

A motion was made by Donald Rudy and seconded by Mark Conkling to adjourn the meeting. It was carried unanimously. Meeting adjourned at 10:48 a.m.


DONALD RUDY
Secretary

JOHN CHANEY
Chairman

DATE APPROVED: