

SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY  
(SSCAFCA)

MINUTES OF SEPTEMBER 23, 2016  
BOARD OF DIRECTORS REGULAR MEETING

CALL TO ORDER.

The regular meeting of the SSSCAFCA Board of Directors was called to order by James Fahey, Chairman, at 9:00 a.m.

ROLL CALL OF DIRECTORS.

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

ANNOUNCEMENTS.

An announcement was made by James Fahey 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 James Fahey.

APPROVAL OF AGENDA.

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

ACTION/APPROVAL OF THE MINUTES OF AUGUST 19, 2016.

A motion was made by Mark Conkling to approve the minutes of August 19, 2016 as presented. It was seconded by Michael Obrey and passed unanimously.

PUBLIC FORUM.

Donald Rudy, a member of the public, and former board member of SSSCAFCA, stated that he is here today representing Ciudad and wanted to talk about a possible joint interaction, but because SSSCAFCA is a regulatory agency, it can't really work out. Ciudad and SSSCAFCA have had a number

of other interactions, most of which involve getting young people involved in environmental activities. He thanked SSCAFCA for its contribution to the community.

## STAFF REPORTS.

### *Executive Engineer:*

#### 1. Presentation on Public Partnership Award - MS4 Permit.

Mr. Charles Thomas stated that SSCAFCA received a Public Partnership Award from the Mid-Region Council of Governments. SSCAFCA submitted an application to the COG based on the MS4 Permit activities. The twelve agencies that came together did so voluntarily, even though their jurisdictions overlapped. There were three area pilot projects for the permit, and the other two areas had existing structure organizations such as a storm water utility or other mechanism that had a basis of authority. Both of the other pilot projects failed and did not achieve completion of a watershed based permit. SSCAFCA's was the only one of the three projects that worked, and had the longest odds for success. Mr. Fahey stated that SSCAFCA was not given any direction from the EPA on how to do the project, so it is a nice honor for SSCAFCA to receive this award.

#### 2. Presentation on Bosque de Bernalillo Project.

Mr. Charles Thomas stated that SSCAFCA has been moving forward with a design of a first flush water quality treatment concept along the Coronado Arroyo. The arroyo drains from the commercial industrial area at 528/550. This would be the first facility to provide treatment in that area. The concept was to capture the first flush as it leaves the culvert crossing at Sheriff's Posse Road and divert it into a meander, essentially lengthening the arroyo, which makes the grade flatter and reduces the velocity to allow the sediment and floatables to drop out of the water before it goes back into the arroyo. SSCAFCA has also incorporated multi-use elements into the project, such as a parking area, and an access trail which can double as a maintenance road. In addition, there is a bermed area that will provide some containment should there be an excessive amount of flow. This plan was presented to the Town of Bernalillo and everybody was in favor of it. In order to do the drainage portion of the project, SSCAFCA is not required to go to Planning & Zoning. However, if SSCAFCA adds in other elements, such as the open space elements, it requires a zoning change. At the Planning and Zoning meeting, there were several residents from a subdivision just south of the project area that abuts the property line, who stated that they were happy to have the drainage improvements, but did not want any of the open space elements. There was also a public meeting held on-site a week later. There were about 30 people who attended that meeting who were against the open space concepts. The project can still be done, but the multi-use aspects cannot be incorporated into the project.



SSCAFCA can appeal the ruling and push the project forward, but it is staff's recommendation that SSSCAFCA not appeal the ruling and move forward with the drainage portion only at this time.

Mr. Fahey stated that he feels that SSSCAFCA should do the flood control project without the amenities. Mr. Conkling stated that the maintenance road that goes along the wall will still be needed. Mr. Thomas stated that this will solely be for access for the oxbow itself. He also stated that as part of the re-evaluation of the berm, SSSCAFCA is verifying the volume that needs to be contained and the berm will only be moved in order to maintain the safe volume of containment of a 100 year storm event. Mr. Thomas stated that the design engineer is out of town so he can't answer questions regarding the basis for design for the project. SSSCAFCA will ensure that it provides a sufficient safety factor for the runoff that would be warranted for the project. The project has been delayed because the elements of open space must be removed. There is a second phase of the project starting on the upstream side of Sheriff's Posse Road. Phase I is funded partially from capital outlay funds.

***Fiscal Services Director:***

1. Recognition/Acknowledgment of the Fiscal Services report for August 31, 2016.

Ms. Deborah Casaus stated that the Fiscal Services Report for August 31, 2016 is in the Board's packets. SSSCAFCA is currently collecting the remnants of the last tax year, and it is about .4% less because new revenues won't be seen until about December. General fund expenditures through August 31 are at about 8.42%, and SSSCAFCA is currently 16% through fiscal year 2017. The City of Rio Rancho had 54 single family residential permits issued for August which puts it at 415 permits for the calendar year 2016. This is about 36% above last calendar year. Interest earned on the State Treasurer's funds was at a rate of .395% for the month of August. The U.S. Treasury bill is at .284%.

Ms. Casaus stated that SSSCAFCA had an audit entrance conference last week, so the audit for fiscal year 2016 has begun. There are no issues to report at this time and it should be done within a couple of weeks.

The Fiscal Services Report for August 31, 2016 was recognized and acknowledged by the Board.

2. Certification of SSSCAFCA's Inventory of Capital Assets.

Ms. Deborah Casaus stated that as part of SSCAFCA’s annual audit, staff is required to bring to the Board an inventory of SSCAFCA’s capital assets. This has also been reviewed by the Executive Engineer and he has signed off on it. Included in the increases for this year, are various SSCAFCA properties that were purchased. There is also an intangible asset that was added. Several projects have been completed as well, and SSCAFCA has added around \$4.9 million in constructed infrastructure.

A motion was made by Mark Conkling to certify SSCAFCA’s inventory of capital assets as presented. It was seconded by Michael Obrey and passed unanimously.

- 3. Action/Acceptance of contract renewal for Right of Way Acquisition Support Services with no requested revisions.
  - a. Select ROW
  - b. Tierra Right of Way
  - c. Cobb Fendley

Ms. Deborah Casaus stated that the first group of renewals is for right of way acquisition support services. Staff would like the Board to approve these contracts effective on September 18, 2016 which was the renewal date because the Board meeting was moved. Select ROW, Tierra Right of Way, and Cobb Fendley are seeking contract renewals. Cobb Fendley is requesting a decrease in its contract of 3.44%. Staff recommends approval of the contract renewals.

A motion was made by Michael Obrey to approve the contract renewals for right of way acquisition support services, effective September 18, 2016 as presented. It was seconded by Mark Conkling and passed unanimously.

- 4. Action/Approval of contract renewal for On-Call Professional Engineering Services - Federal & State Funded with no requested revisions with the following firms.
  - a. Wilson & Co.
  - b. Smith Engineering Company
  - c. Daniel B. Stephens & Assoc.
  - d. JE Fuller Hydrology & Geomorphology, Inc.
  - e. Bohannon Huston, Inc.  
(Added Additional Positions to rate sheet)
  - f. CDM Smith, Inc.
- Requesting increase on renewal:



- g. CH2M
- h. HDR, Inc.
- I. OccamIEC Consulting Engineers, Inc.

Ms. Deborah Casaus stated that this group of renewals is for on-call professional engineering services for both federal and state funded contracts. Wilson & Co, Smith Engineering Company, Daniel B. Stephens & Assoc., JE Fuller Hydrology & Geomorphology, Inc., and CDM Smith, Inc. have requested renewal with no revisions. Bohannon-Huston is not requesting any rate changes to its contract, but they have added additional positions to its rate sheet upon SSCAFCA's suggestion.

CH2M, HDR, Inc., and OccamIEC Consulting Engineers, Inc. are requesting increases to their contracts. CH2M is requesting about 3.41% increase, and HDR, Inc. and OccamIEC Consulting Engineers, Inc. are both requesting a 5% increase. Staff would like the Board to approve these contracts effective on September 18, 2016 which was the renewal date because the Board meeting was moved. Staff has discussed the increases requested and does not recommend them since last year was a zero inflation year. Mr. Thomas stated that if the Board approves renewal of the contracts, without increases, that it would be up to each firm to decide if they wish to continue the contracts with no increase.

A motion was made by Michael Obrey to approve the contract renewals for on-call professional engineering services, with no increase for any company, effective on September 18, 2016 as presented. It was seconded by Mark Conkling and passed unanimously.

***Environmental Services Director:***

1. Notice that SSCAFCA will be releasing the Stormwater Management Plan (SWMP) and Annual Report for public review beginning approximately October 7, 2016. SSCAFCA will receive public comments on the SWMP and Annual report for 45 days.

Mr. Dave Gatterman stated that SSCAFCA will be releasing the draft Stormwater Management Plan (SWMP) and Annual Report for public review beginning approximately October 7, 2016. SSCAFCA will receive public comments on the SWMP and Annual report for 45 days. SSCAFCA has typically released public notice via Board meetings for issuing documents for public review. The 45 day time period is required by the permit. They must be back to the EPA by December 1st.

In response to a question from the Board, Mr. Gatterman stated that SSCAFCA has performed three sampling events, and must perform a total of seven in the next three years. Staff is going to try to get a dry season sample sometime between November 1 and June 30th. The costs are coming in a bit lower than anticipated.

2. Action/Acceptance of Selection/Agreement for the Alberta Watershed Improvements Phase II Construction to the lowest bidder once review by funding agencies has been completed.

Mr. Dave Gatterman stated that on September 20, a bid opening was held for the Alberta Watershed Improvements Phase II Construction project. SSCAFCA received eight bids and six of them were deemed responsive. The low bid on this project was received from Franklin's Earth Moving, Inc. for \$1,400,777. The high bid was submitted by RMCI of \$1.9 million. The low bid is approximately \$36,000 below the engineer's estimate without contingency, so it is right on target. The second lowest responsive bid was submitted by NM Underground Utilities at \$1.495 million. Staff's recommendation is Franklin's Earth Moving at \$1.4 million, but the bids still need to be reviewed by the proper state departments and funding agencies. Salls Brothers Construction was the number 3 bidder at \$1,523,000. Staff recommends that the Board authorize staff to proceed with a construction contract up to the number three lowest bidder. That way, if the funding agencies have an issue with numbers 1 and 2 the project can still be completed without going back out to bid.

A motion was made by Mark Conkling to accept the Selection Agreement for the Alberta Watershed Improvements Phase II Construction to the lowest bidder reviewed and approved by the funding agencies. It was seconded by Michael Obrey and passed unanimously.

3. Action/Acceptance of task-order with Bohannon Huston for Alberta Phase II Construction Oversight.

Mr. Dave Gatterman stated that SSCAFCA has asked Bohannon Huston to supply a cost estimate to perform both the construction observation and to do the materials testing. The task order amount, including tax is \$110,312.72. Staff requests authorization to proceed with this task order.

A motion was made by Michael Obrey to approve the task order as presented. It was seconded by Mark Conkling and passed unanimously.

**OTHER COMMITTEE REPORTS.**



None.

**ATTORNEY'S REPORT.**

Mr. Thomas stated that it has recently come to staff's attention in discussion with the Department of Homeland Security and Emergency Management that it has a problem with approvals. It is the primary agency for the FEMA funds that go through the State of New Mexico. The Alberta Phase II Project is being constructed in large part with a grant of federal funds from the hazard mitigation grant program. In the process of evaluating eligibility of SCAFCA's services and contracts with federal requirements, DHSEM has made an initial determination that the current contracts in place for on-call engineering services are not valid since they were renewed by the Board today instead of last week within the original expiration date of the contracts and, therefore, would be ineligible for federal reimbursement. They have indicated that this is something that can be appealed and staff is working with Mr. Metzgar on a response to that determination on the basis of both the procurement code and contract law justifying that the renewal is valid.

Mr. Metzgar stated that they are saying that the contract expired and the Board doesn't have authority, in their opinion, to renew the contract because there is no contract. It must be re-awarded. In order to re-award, you must go out for a bid under the procurement code. He stated that after he reviewed two statutes, it is his conclusion that SCAFCA can renew retroactively, especially if it was not the fault of the contractor who asked for renewal within the proper time to get the renewal. SCAFCA would have had the same item on the Agenda if the meeting had been held last week and it would have been in time. SCAFCA's statute says that the Board has the administrative powers to provide a method for letting on contracts on a fair and competitive basis. The procurement code says that it shall be liberally construed to promote its purposes and policies, to provide for the fair and equitable treatment for all persons involved in public procurement.

Mr. Fahey asked if it made any difference whether or not the issue was discussed in the Executive Committee last week. The Executive Committee approves items to bring before the Board in any event. Mr. Metzgar stated that he will have to include the entire SCAFCA approval process in any letter that he sends. The procurement code does not require Board approval for renewal of these contracts. As Chief Procurement Officer, Ms. Casaus' approval is all that is needed. Staff wants the Board to be informed about all contracts, and that approval requirement was added by SCAFCA. If the letter "convinces" the local office, they will forward the contract to the regional office in Texas for approval. If the regional office approves it, the local office will approve it.

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Mr. Thomas stated that it is unknown how long this will delay the project. He stated that he does not believe there is any work going on by any companies. He believes at this point that they will wait until there is a notice to proceed issued. He does not believe that this issue will materially affect the completion of the project whether they weigh in one way or another. The engineer on record for design is Huitt Zollars, which was a contract that was previously approved and will be producing the drawings. However, the decision will have an impact moving forward on other FEMA funded projects. If SSCAFCA has to start from the beginning of the process, it would involve re-advertising for contracts and going through the request for proposals process. This means three weeks for the advertisement, requiring new proposals, going through that evaluation and bringing recommendations to the Board. The process is likely a two month delay. At this time, he is curious to hear what FEMA will determine. If they determine in favor of this appeal, that will allow all of SSCAFCA's projects to move forward immediately.

**CHAIRMAN'S REPORT.**

Mr. Fahey stated that he has been out talking with the public about the bond election.

**BOARD OF DIRECTOR'S COMMENTS.**

None.

**PROPERTY MATTERS.**

None.

**FOR YOUR INFORMATION.**

1. Corrales Comment article, "Corrales Okays River Water Sampling," (7/12/2016).
2. Corrales Comment article, "New SSCAFCA Flood Control Projects if Voters Approve," (8/24/2016).
3. Albuquerque Journal article, "Proposed \$21M bond issue aims to protect areas from flooding," (9/17/2016).

**OTHER BUSINESS.**

- Next Regular Board Meeting is on Friday, October 21, 2016 at 9:00 a.m.

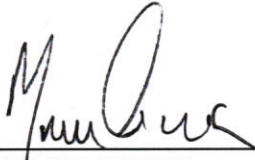


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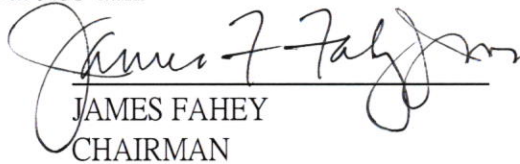
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**ADJOURNMENT.**

A motion was made by Mark Conkling and seconded by Michael Obrey to adjourn the meeting. It was carried unanimously. Meeting adjourned at 9:55 a.m.



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MARK CONKLING  
Secretary



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JAMES FAHEY  
CHAIRMAN

DATE APPROVED: 9/23/16