



# Flood Control District of Maricopa County

## Flood Control Advisory Board

**Meeting Minutes for March 23, 2016**

**Board Members Present:** Richard Schaner, Acting Chairman; Gregg Monger, Secretary; Bob Larchick; Hemant Patel; DeWayne Justice; Hasan Mushtaq for Ray Dovalina

**Board Members Absent:** Melvin Martin, Chairman

**Staff Members Present:** William Wiley; Wayne Peck, General Counsel; Patti Thoemke; Kelli Sertich; Eric Hiser; Stephanie Gerlach; Gregory Jones

### 1) **CALL TO ORDER**

Acting Chairman Schaner called the meeting of the Flood Control Advisory Board (FCAB) to order at 2:04 p.m. on Wednesday, March 23, 2016.

### 2) **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

### 3) **APPROVE THE MINUTES OF FEBRUARY 24, 2016**

**ACTION:** It was moved by Mr. Larchick and seconded by Mr. Monger to approve the minutes as submitted. The motion carried unanimously.

### 4) **PROPOSED BOARD OF HEARING REVIEW PROCEDURES**

Presented by Kelli Sertich, FMS Manager and Eric Hiser, Counsel to the Board of Hearing Review

**STAFF RECOMMENDS THE FOLLOWING ACTION:** It is moved that the Flood Control Advisory Board approve initiating the process for a regulatory change in accordance with the Enhanced Regulatory Outreach Program to adopt a text amendment to the Board of Hearing Review Procedures.

Ms. Sertich stated that state law requires there be an appeals process in place for any time there may be violations from the floodplain regulations and if there arose issues with work being done on district owned property. State statute calls for a Board of Hearing

Review whose role is to review orders of the Chief Engineer regarding the violations. It is required by state statute to go through the same process with the Board of Hearing Review Procedures as would be required for any change to floodplain regulations.

The Enhanced Regulatory Outreach Process was reviewed along with an overview of the website ([www.maricopa.gov/regulations/fc](http://www.maricopa.gov/regulations/fc)). There are ten steps in the process. Step one - Mr. Wiley worked with the chiefs and the Board of Directors and notified Mr. Manos for permission to move forward with the change. The Board recommended to update the procedures. Next a stakeholder meeting was held on March 9<sup>th</sup> with the notice posted on the website. Today we are at the next step, to come before the Flood Control Advisory Board to request initiating the change. There will be additional stakeholder meetings and then if there are changes, the procedures would come back to this Board for approval before moving on to the Board of Supervisors for adoption.

On March 9, a stakeholder workshop was held. Three people attended from the public. There was a walkthrough of the changes and the Enhanced Regulatory Outreach Procedures. There was a discussion and comments offered for potential changes to flesh out the procedures. Another stakeholder workshop will be scheduled in the next few weeks, and the information will be available online. No written comments have yet been received through the EROP process or sent directly. Comments are always welcome during the process.

Mr. Hiser stated that a number of the changes to the text were grammatical where words were moved to express the intent of the procedures more clearly. Substantive changes included expanding the record of review for the Board of Hearing Review to include any prior decisions of the Board of Hearing Review. In Section E, it provides that the Chairperson of the Board can designate another Board member to serve as the presiding officer and, when appropriate, the Chairperson could issue a prehearing order to provide guidance to the parties on the conduct of the hearing. In Section F, the time to present arguments was increased from five minutes to ten minutes and it could also be extended by the Chairperson or the Board. In Section G, it was clarified that each member of the Board and the Board counsel may question all parties appearing before them. Section H was modified to conform to state law, ARS 48-3615.01(5). Previously, there was only authority to approve or deny the Chief Engineer's decision. This was changed in the statute and this section gives the BOHR board the ability to modify the decision. The Board will decide whether the order of the Chief Engineer would be denied, approved, modified, or returned for further consideration. Section I states that the record starts with the hearing officer decision through the Chief Engineer's order. A written decision will then be issued including findings of fact and conclusions of law within 30 days of completion of the hearing. Section J states that the decision continues to be one that is made by the majority of the members of the Board of Hearing Review. It also ensures that copies are served on all parties of record.

General Counsel Peck asked for clarification on the burden on the findings of facts and

conclusions of law and the penalties involved. Mr. Hiser referred to the text which states, "As to any penalty imposed by the Chief Engineer, the Chief Engineer bears the burden of persuasion that the penalty is just and equitable under the circumstances," and once that initial burden is met then burden switches. He stated that a slightly different standard for the penalty provision was adopted was because this was the first time they (the BOHR) will have seen the penalty. The hearing officer doesn't impose a penalty.

Mr. Hiser reviewed the Appendix in depth which set forth the typical order, procedures, and processes of the argument before the Board.

Board Member Patel asked if the new language was retroactive to cases already in the pipeline. Mr. Hiser responded that the general rule on a procedural matter was to go ahead and move into the procedure; however, they would never compromise the rights of a person. If there was a shortening of a time frame, a party would still be entitled to the longer preexisting time frame.

**ACTION:** It was moved by Mr. Patel and seconded by Mr. Justice to approve the item as submitted. The motion carried unanimously.

**5) FLOOD CONTROL ADVISORY BOARD ORIENTATION AND PROCEDURES MANUAL**

Presented by William Wiley, Chief Engineer and General Manager

**PURPOSE:** Information and discussion item only. No formal action is required.

Mr. Wiley reviewed the Flood Control Advisory Board Orientation and Procedures Manual. The Board serves in three roles: the Flood Control Advisory Board; the Floodplain Review Board - if someone appeals an agency decision; and the Board of Hearing Review - if someone appeals an order of the Chief Engineer. In the Flood Control Advisory Board section, Tab 2 lists the members, terms, and committee memberships. Tab 3 lists the overall meeting schedule which may be updated by electronic notice. Tab 4 lists the schedule of topics being covered and possible additional presentations. Tab 5 is the standard required notice. Tab 6 lists the bylaws. Tab 7 is the enabling statute which is the state statute establishing the Flood Control Advisory Board. Tab 8 is an organization chart and a county organization chart. The manual will be updated on a regular basis.

**6) FCDMC'S EMERGENCY ACTION PLANS**

Presented by Stephanie Gerlach, Civil Engineer

PURPOSE: Information and discussion item only. No formal action is required.

Ms. Gerlach stated emergency action plans are required by the Arizona Administrative Code and also required by many of the agreements with federal partners that build the dams, such as the Army Corps of Engineers. It is also required by the National Flood Insurance Program Community Rating System. More importantly, emergency action plans save lives and minimize the destruction of property.

The structure and terminology of dams was reviewed. All of the dams, except for one, are earthen embankments. There are three ways the water from the reservoir can get through a dam. The principle outlet can discharge 100 to 200 cfs and this is the preferred way for most of the water to discharge through the dam. The emergency spillway prevents water from overtopping the dams and could discharge up to 10,000 cfs or more. The last and least preferred method that water could go through a dam is through a dam failure such as overtopping. The county manages 23 different dams, some quite tall and some quite long. The county manages over 64 miles of dams. There are four dams not located in Maricopa County. An overview of the dams and protected areas was presented. There are a number of critical facilities located downstream of the dams, and when Emergency Actions Plans (EAP) are updated, one of the major concerns is finding these critical facilities. These facilities are contacted if there is an event at the dam. The EAP is triggered by 24/7 monitoring not only at the dams but at other numerous gauges around the county and outside the county. It requires notification of Maricopa County Department of Emergency Management (MCDEM) of events occurring at the dam, (thresholds are listed in the EAP), and MCDEM, in turn, notifies all the affected agencies during the event. EAPs are reviewed each year and updated if necessary if critical facilities or other conditions have changed. The FCD also coordinates exercises with MCDEM and many other agencies and prepares after action reports from exercises, as well as after any actual events. MCDEM has monthly training exercises and FDMC also holds several training exercises each year.

Acting Chairman Schaner asked what level of storm are the emergency spillways designed for. Ms. Gerlach responded it was a minimum of a 100-year event.

Board Member Patel asked if the emergency plans would go into effect if there was any kind of a security event at the dams. Mr. Wiley responded that these are flood retarding structures, and they are not intended to store water, but if the security event occurred when there was water, then the plans would be activated. If the dam was empty and was breached, FCD would repair it before it collects water.

**7) CONSTRUCTION UPDATE: BUCKEYE FRS NO. 1 REHABILITATION PROJECT**

Presented by Gregory Jones, Project Manager

PURPOSE: Information and discussion item only. No formal action is required.

Mr. Jones stated that Buckeye FRS No. 1 is one of three in a series of dams north of I-10 in the West Valley. One of the primary reasons for its construction was the protection of I-10. The rehabilitation has been split into three phases: Phase 1, Phase 2A, and Phase 2B. The first phase was located on the west end of the dam where a central filter was installed. Phase 2A has a central filter being installed in the remaining five miles, and also includes building up the east end of the dam. Phase 2B is constructing a dam closure and culverts with flap gates and upgrading the spillway. Without upgrading, the principle spillway could erode in an event. Buckeye FRS # 1 is an earth fill dam that has dried out over time and has some desecrating cracking over its approximate 7 mile length. Storage is equivalent to 1 square mile 10 feet deep. The cracks are an issue, because they could open and could cause dam failure.

The eastern side of the dam will be raised 2 to 3 feet for about a mile. A central filter will be installed, and the embankment will be overbuilt at Sun Valley Parkway to accommodate the roadway.

Board Member Monger asked at what point, based on development below the dam, would the dam's rating get raised. Mr. Jones responded that the ADWR ratings are low hazard, medium hazard, and high hazard. Low hazard means there is nothing downstream. High hazard means there are things downstream and possible loss of property and life. Pretty much all of the dams in the valley were now rated high hazard. Homogeneous material was a common design back in the 70s. Since that time homogenous or uniform earthen embankments are almost never built, unless they are a really small structure.

Mr. Wiley stated that the Buckeye FRS # 1 structure also protects the Buckeye Airport. The Sun Valley Parkway road where the dam needed to be widened is the major access on the west of the White Tank Mountains.

Acting Chairman Schaner asked what the flow from the Buckeye dams would do to the floodplain in the Hassayampa River. Mr. Wiley responded it could increase the floodplain. However, in the flooding in Wickenburg this last year, there was 40,000 cfs by Grand Avenue, but only 340 cfs further south, so it depends on the size of the flow, but also the characteristics of that watershed and the rainfall.

## **8) COMMENTS FROM THE CHIEF ENGINEER AND GENERAL MANAGER**

Presented by William Wiley, Chief Engineer and General Manager

PURPOSE: Information and discussion item only. No formal action is required.

Mr. Wiley gave an overview of the FCD home page, [www.fcd.maricopa.gov](http://www.fcd.maricopa.gov) and asked for suggestions or additions to the website.

There was an item approved by the Board of Directors earlier that day that continues the FCD focus on using flood control structures for multipurpose activities. As an example, FCD is working with the City of Goodyear on transferring the ADOT basins at Litchfield Road and I-10 over to Goodyear. These basins were originally built to protect the freeway and were turned over to FCD for maintenance. Part of those basins would be used for recreational or wellness uses of some kind, perhaps with the hospitals there. In the Board meeting that day, the Board approved an agreement with the City of Peoria to use some of the flood pool area behind New River Dam for ballfields. In the last couple of months, a similar proposed basin in Gilbert (Chandler Heights basin) will become the largest park in the City of Gilbert. The idea of using flood control structures for multiuse is a great thing, and FCD will continue to try to do that with their property where it makes sense to do so. The Goodyear, Peoria, and Gilbert agreements also decrease the FCD maintenance costs in addition to providing a community amenity.

Regarding El Rio, the expansion of the floodplain due to salt cedar growth between the Agua Fria River and Highway 85 is a concern. Senator McCain will be having a meeting with stakeholders on Monday, March 28<sup>th</sup> on what could be done to reduce the size of the floodplain. The growth of the salt cedars have expanded the floodplain by 7-1/2 square miles.

Tempe Town Lake has been drained and new downstream gates are being installed. While it is drained, FCD will complete repair work on some of the upstream levees and the grade control structures and work with Tempe on other components. An event is planned for when the lake is refilled and reopened in May.

Wickenburg has had repeated flooding in certain areas. Powder House Wash contains a road that people built along in the past. Residents have had flooding there two years in a row, as well as in previous years. FCD is working with Wickenburg to purchase and demolish some of the properties.

Acting Chairman Schaner asked if the parcels were lot or acreage size. Mr. Wiley responded that the parcels were smaller. They were built in the bottom of the wash and were odd-shaped in many cases.

**9) SUMMARY OF RECENT ACTIONS BY THE BOARD OF DIRECTORS**

Presented by William Wiley, Chief Engineer and General Manager

PURPOSE: Information and discussion item only. No formal action is required.

Mr. Wiley stated that one of the flood prone properties in Wickenburg, was on the March 9<sup>th</sup> agenda. This included a purchase agreement and a transfer of a deed.

**10) OTHER BUSINESS AND COMMENTS FROM THE PUBLIC**

PURPOSE: Information and discussion item only. No formal action is required.

There were no comments from the public.

The meeting adjourned at 3:15 p.m.