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ESCAFCA BOARD REACTS TO ELECTION BY VOTING TO CHANGE THE RULES

—Orin Safier

On November 2, the voters in the East Sandoval County Arroyo and Flood Control Authority (ESCAFCA) area, which includes Algodones, Placitas, and the part of Bernalillo east of the river, elected JoAnn English and Doris Faust to the ESCAFCA board of directors. English and Faust, who are both residents of Placitas, will replace Debbie Kilfoy from Bernalillo, who was defeated in her re-election bid, and Bob Gorrell from Placitas, who chose not to run. Starting in January of next year, the board will consist of Sal Reyes from Algodones, Mayor Jack Torres from Bernalillo, and Wayne Sandoval, JoAnn English, and Doris Faust from Placitas.

At the ESCAFCA board meeting on November 16, the present board passed by a three to one vote a resolution to implement districting for ESCAFCA board elections. Outgoing director Kilfoy introduced the resolution, and directors Reyes, Sandoval, and Kilfoy voted in favor of it. Gorrell voted against the resolution. Director Torres was absent from the meeting.

Michael Sharp from Research & Polling, Inc. explained in a presentation that districting would involve dividing the ESCAFCA area into five districts, each with approximately 3,000 residents, such that each voter would only be able to vote for one candidate representing his or her district. The state legislation that established ESCAFCA in 2007 (HB 939) made it clear that elections for ESCAFCA directors were to be "at-large," though that term does not explicitly appear in the legislation. This means that each board member represents the full ESCAFCA area, and each voter can elect candidates for multiple director seats, regardless of where the candidates live in the area, as has been the case in the last two elections.

ESCAFCA's legal counsel, Michael Cadigan, stated that the legislation is unclear as to whether elections should be at-large or by district, though he admitted that some language in the legislation makes sense only if the elections are at-large. But if ESCAFCA's rules were changed to districted elections, then this would clearly contradict some provisions of the legislation. Yet, the ESCAFCA board chose not to first send this matter to the legislature for possible amendment of the legislation. Instead, the chairman instructed legal counsel to begin work establishing the districting policy.

Reyes said that districting was needed to preserve the present composition of the board, with two members from Bernalillo, two members from Placitas, and one member from Algodones. He said that it was the intent of the legislation to have that exact distribution.

Changing to districting, he claimed, would help preserve that intent. Cadigan, however, correctly pointed out that nothing of the sort was written into the legislation, nor even implied by the legislation. The composition of the board was instead due to how Governor Richardson appointed the original members. Furthermore, Mr. Sharp explained in his presentation that districting would require that each district have the same population, yet Algodones has approximately one third the population required for a full district. So a district including Algodones would have to be combined with part of Bernalillo, part of Placitas, or parts of both. Algodones could end up with no member on the board. So neither at-large nor districted elections will guarantee that the original distribution of the board is preserved.

Cadigan advised the board that they not only should, but quite possibly must, make this change to election policy. The present at-large method of elections, he said, could be viewed as a violation of the federal Voting Rights Act, Section 2, since it discriminates against the Hispanic population of Bernalillo. Bernalillo, he said, has approximately a 75 percent Hispanic population, while Placitas has approximately an 80 percent non-Hispanic population. According to Cadigan, there could be a lawsuit against ESCAFCA due to the white voters being able to elect candidates to dominate the board, with the result that Hispanic residents of the ESCAFCA area would have their interests inadequately represented. Such a lawsuit would be expensive to fight and would drain ESCAFCA's limited resources. Furthermore, the courts at present favor districted over at-large elections.

Both of the two other flood control agencies in Bernalillo and Sandoval Counties (AMAFCA in Albuquerque and SSCAFCA in Rio Rancho and Corrales) were originally established as at-large. SSCAFCA has remained at-large. In 1998, a suit was brought against AMAFCA some months prior to its coming election, and its board chose to change to districted elections. When the state legislature established ESCAFCA in 2007, it would have been fully aware of the AMAFCA districting example, yet it chose to establish ESCAFCA as at-large.

In providing grounds for his recommendation, Cadigan stated that while the voters in Bernalillo had voted handily for the 2008 ESCAFCA bond, Placitas voters had voted against it by a large margin. This, he said, indicates a bias of the predominantly white portion of the ESCAFCA area against the interests of the predominantly Hispanic portion. Yet research on the official records shows that approximately 46 percent of Placitas voted for the ESCAFCA bond and 54 percent against. That is by no means a large margin.

Gorrell characterized Cadigan's grounds for recommending districting as "outrageous." As an indication that the population in Placitas is not biased against Bernalillo's interests, Gorrell cited the support that Placitas voters have given to Bernalillo school district bond issues. To the extent that voters are showing a lack of support for the present ESCAFCA board, it is due to their paying high property taxes for ESCAFCA, which they were misled to believe would be significantly less. This had nothing to do with racial divisions.

Public comments on the districting resolution criticized the reasons given by Cadigan and board members in support of it. Michael Lucero, Sandoval County planning and zoning commissioner and a resident of Placitas, said that Cadigan presented only one side of the issue. There is a fairly concentrated Hispanic population in Placitas of significant size. Would they have to be given a separate district? Lucero pointed out that there could be multiple lawsuits in a number of different directions over any attempts to draw districts. Mr. Sharp estimated that the cost of the districting effort would be between \$10,000 and \$30,000. But if there were prolonged, complicated legal battles, then the total costs could be far more.

In other ESCAFCA news, Michael Neas, a builder and Placitas resident, has informed the attorney general and secretary of state, as well as the press, that ESCAFCA has engaged in deceptive and possibly fraudulent activity as regards the 2008 elections for directors and the \$6 million bonds. ESCAFCA resolved in 2008 that it would publish notification inviting nominations to the board of directors in the *Albuquerque Journal*, yet those notifications never appeared. Thus, the public had no adequate notification that they could be nominated for the board, and consequently, the five original directors were the only ones to appear on the ballot, guaranteeing their election. Prior to the bond election, the board authorized a \$4,500 incentive payment to the public relations firm Griffin and Associates, to be paid only if the bond issue passed. Griffin publicized and promoted the misleading figures, which gave the impression that the property tax cost for ESCAFCA would be \$66 per \$100,000 valuation, while it turned out instead to be \$115 per \$100,000. The ESCAFCA board had set the tax mil levies for the bond issue and operating expenses well in advance of the election, so they and their contractors were fully able to recognize that the \$66 figure they publicized was far too low. Were the voters informed of the actual cost, the bond issue, which passed only narrowly, might well have been defeated, and the \$4,500 would never have been paid. In fact, had that issue been voted down, then the legislation establishing ESCAFCA would have forced it to dissolve.

Neas has identified a number of other irregularities and deceptions on the part of ESCAFCA. In order to gather this information, he needed to submit a number of Requests for Public Records, most, but not all, of which he has received. Chairman Reyes has repeatedly emphasized at public meetings how costly these requests have been, and in one meeting, characterized this as harassment.

In the two years since the bond issue was passed, not a single shovel of dirt has been turned by ESCAFCA to divert drainage water or prevent flooding, which is ESCAFCA's primary reason to exist.
