

AMO

Law Offices
MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.
500 Fourth Street N.W.
NationsBank Tower, Suite 1000
Post Office Box 2168
Albuquerque, New Mexico 87103-2168
Roswell, New Mexico

Las Cruces, New Mexico

Santa Fe, New Mexico

William C. Scott

Telephone: (505)848-1824
Fax: (505)848-1889 (9th Floor)
Internet Address: wcs@modrall.com

October 24, 1997

VIA HAND DELIVERY

Hon. Robert J. DeGiacomo
United States Magistrate Judge
United States District Court
500 Gold Avenue, SW -- P.O. Box 67
Albuquerque, New Mexico 87103

Re: *The City of Albuquerque & The Bernalillo County Commissioners v. Sparton Technology, Inc.*; U.S.D.C.D.N.M. Civil Action No. CIV 97 0206-LH

Dear Judge DeGiacomo:

Thank you for allowing me to address the Court on behalf of my client, the Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), at the recent settlement conference in this case.

Pursuant to your instructions, I am forwarding this letter which sets forth the following information: (1) AMAFCA's genesis and governing structure, (2) AMAFCA's statutory duties, and (3) information concerning other individuals or entities who have interests in the Calabacillas Arroyo.

I. GENESIS AND STRUCTURE OF AMAFCA:

In 1963, the New Mexico legislature passed the Albuquerque Metropolitan Arroyo Flood Control Act. See N.M. Stat. Ann. § 72-16-1 through -103. That Act established AMAFCA as a "body corporate and politic, and quasi-municipal corporation, and a political subdivision of the State." *Id.* § 72-16-2C. AMAFCA's governing body is a board of directors consisting of five directors. *Id.* § 72-16-8. By statute, "all powers, rights, privileges and duties vested in or imposed upon the Authority are exercised and performed by and through the Board of Directors; provided, that the exercise of any and all executive, administrative and ministerial powers may be, by the Board, delegated and re-delegated to officers and employees of the Authority." *Id.* The initial board of AMAFCA was appointed by the governor. See § 72-16-9. The successors to those board members positions have been elected at a general election. Each board member serves a 6 year term.

II. AMAFCA'S STATUTORY AUTHORITY:

AMAFCA has authority within an area that is identified as "a portion of Bernalillo County bounded on the north by the Sandoval County line and the Sandia Pueblo grant boundary, on the east by the Cibola National Forest Boundary, on the south by the Isleta Indian Pueblo grant and land boundary, and on the west by the approximate location of the drainage divide between the Rio Grande and the Rio Puerco Watersheds..." Id. § 72-16-6. Section 72-16-22 defines the duties, privileges, immunities, rights, and liabilities AMAFCA may exercise "as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare" Those powers include, among other things, the following:

- the power to levy and cause to be collected general (ad valorem) taxes on all properties subject to property taxation within the area of AMAFCA's authority;
- the right to acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, storm sewer facilities, project and appurtenant works, or any interest therein.
- the power to prescribe and enforce reasonable rules and regulations for the prevention of further encroachment upon existing defined waterways, whether by enlargement or other modification, for additional waterway facilities to prevent flooding;
- the right to require any person desiring to make a connection to any storm water drain or flood control facility of the Authority or to cause storm waters to be emptied into any ditch, drain, canal, flood way, or other appurtenant structure of the Authority firstly to make application to Board to make the connection, to require the connection to be made in such manner as the board may direct;
- the right to refuse, if reasonably justified by the circumstances, permission to make any connection designated above.

A copy of § 72-16-22 which defines the powers of AMAFCA is attached to this letter for your review.

III. OTHER ENTITIES WITH AN INTEREST IN THE CALABACILLAS ARROYO:

Based upon title information currently available to AMAFCA, the following individuals or entities have an interest in the segment of the Calabacillas Arroyo that Sparton Technology, Inc. has proposed as an outfall for treated groundwater:

October 24, 1997

Page 3

- **Brown/NZ (Investment) Joint Venture, a New Mexico general partnership owns the fee simple estate;**
- **AMAFCA holds an easement for flood control purposes;**
- **Southern Union Gas Company holds a right-of-way easement impacting a portion of the Arroyo;**
- **The Mountain States Telephone and Telegraph Company holds a right-of-way easement;**
- **Public Service Company of New Mexico holds an easement;**
- **Paradise Community Services, Inc. holds an easement; and**
- **New Mexico Utilities, Inc. holds an easement.**

In order to get this letter to you as quickly as possible, I have not undertaken to review the specifics of each of the easements or rights-of-way identified above or to map out the precise location of each right-of-way or easement within the Arroyo. If the Court would like to have that information, I would be happy to compile a map depicting that information for submission to the Court.

If you should have any questions or should require any additional information, please call me at 848-1824. Thank you once again for allowing me to address the Court on behalf of AMAFCA.

Sincerely,

William C. Scott

WCS:war/431425

cc: (w/o encl)

Michael T. Donnellan, Esq.
Charles DeSaillan, Esq.
James B. Harris, Esq.
Gary A. O'Dea, Esq.
Anna Marie Ortiz, Esq.
Patrick F. Trujillo, Esq.
John W. Zavitz, Esq.