

Minutes
Brine Well Remediation Advisory Authority Meeting
City of Carlsbad Municipal Annex
January 10, 2018

Chairman John Heaton called the meeting to order at 1:30 pm.

Authority Attendance:

City of Carlsbad Chairman Designee John Heaton and Mayor Dale Janway
Eddy County Commissioners Stella Davis and Susan Crockett
Energy Minerals & Natural Resources Secretary Ken McQueen, Deputy Secretary Matthias Sayer
New Mexico Environment Department Secretary Butch Tongate, via telephone
Carlsbad Irrigation District Director Dale Ballard
New Mexico Department of Transportation designee Tim Parker
NM State Engineer Designee Andy Morley via telephone (Joined 2:10 p.m.)
Attorney General Designee P. Cholla Khoury

Agenda Item 1: Call meeting to order – Mayor Janway thanked everybody for joining at a meeting prior to the legislative session. He said the efforts of John Heaton, in particular financial suggestions, were very helpful. Carlsbad City Council passed a resolution asking the legislative body to make resolving the brine well issue the highest priority. The Carlsbad Irrigation District has passed a similar resolution.

Chairman Heaton said this meeting was going to be very important for a number of reasons, including the RFP status and financing.

Agenda Item 2: Status of Open Meetings Act Announcement of Meeting – Chairman Heaton established that the meeting met all Open Meetings Act policies outlined.

Agenda Item 3: Roll Call to Establish a Quorum – Kyle Marksteiner read the roll call and established that a quorum was present. Voting in attendance were John Heaton, Stella Davis, Ken McQueen, Butch Tongate (via telephone), P. Cholla Khoury, Tim Parker and Dale Ballard. Andy Morley later joined the meeting (via telephone).

Agenda Item 4: Introduction of Authority Members or Designees: Chairman Heaton asked for Authority members present and other guests calling in to introduce themselves. Mr. Grantham with the Attorney General's Office introduced himself as now serving as legal counsel to the authority. Ms. Khoury is now serving as the Attorney General designee to the Authority. Ms. Khoury said her division takes care of environmental and consumer matters.

Agenda Item 5: Approval of the Agenda – Chairman Heaton asked members to review and approve the agenda.

Action Item Passed: Motion: Mr. Parker, **Second:** Commissioner Davis. **Agenda item passed with no opposition.**

Agenda Item 6: Approval of the Minutes – Chairman Heaton asked members to review and approve the minutes from the previous meeting.

Action Item Passed: Motion: Sec. McQueen **Second:** Mr. Ballard. **Agenda item passed with no opposition**

Agenda Item 7: Review of Brine Well Status Change

Jim Griswold (OCD) said the organization has completed system upgrades at the site and replaced two of the four tiltmeters and everything is up and functioning. There have been no subsequent pressure drops at the cavern. The contractor reviewed the surface expression seen on the surface and there does not appear to be any significant change.

Agenda Item 8: Review of Public Information Provided

Mr. Marksteiner said the Roswell Daily Record and Carlsbad Current Argus were both present, and other media had been notified. He said Chairman Heaton had directed him to work on a brochure to assist with communication efforts.

Chairman Heaton said we will need people to go up and speak to our legislators. It is important to have people from Carlsbad up there so they know how important this issue is to our community. We have to have people out there to support legislative efforts in committees. We're also asking for a special through the House Appropriations Committee. We also met with Keith Gardner, the governor's chief of staff, and went over ways we felt we could fund the project, and numerous legislators.

Agenda Item 9: Committee Reports

- A. **Technical Work Group:** Dr. George Veni said essentially their group is done with its original mission. Their question is what more can they do? Is there something during the process that we may be able to make some sort of contribution? Chairman Heaton said the RFP contractor may have some request for input. Don Purvis said as soon as the contract is awarded it would be a great opportunity for our committee to have some input. He said if they could have some dates of important meetings during the upcoming legislative session, they will encourage technical subcommittee members to attend. Representative Brown said the Speaker in the House will assign the bills to various committees. She will work with the speaker to try to consolidate them.
- B. **RFP Work Group:** Deputy Secretary Sayer said his department reached out to the general services division and solicited assistance with developing the RFP. The RFP at this point is in its final stages. We had two finalists and we are working with the finalist who has been identified to craft a mutually agreeable language to address liability concerns. The decision was made on Dec. 21 and now they are in

negotiations with the contract. Chairman Heaton said the whole RFP exercise is remarkable. He was impressed with how quickly and smoothly it went.

- C. **Financing Work Group:** Commissioner Davis deferred to Chairman Heaton on discussing the financing options. Chairman Heaton said a recent meeting with FEMA occurred, and he is skeptical about the possibility of FEMA funding. The brine well effort could receive up to \$4 million, but the program has to fund across the country. FEMA can not come to any sort of conclusion based on not having a notice of intent, which the Energy and Minerals department would have to file. Another issue is that we have to come up with a 25% match from private funding. Additionally, the balance of project funds must be identified at the time of application.

Chairman Heaton said the spreadsheet on funding has been changed a bit. The total is now higher because we don't really know what will happen. At the end of the day, we don't know what that design may encompass, and we won't know until June. Since we don't know, he thought it would be best to seek more than \$25 million.

Potential sources of funding include

- Looking for a general fund special at the back of the appropriations bills for special considerations.
- The Oil Reclamation Fund generates \$2.7 million. We are seeking money from that fund. If oil gets over \$70 a barrel, that triggers the reclamation fund doubling.
- There is a corrective action fund that is used for underground service station tanks that have leaked. The funds there have been diverted to support the departments that have them. Secretary Tongate noted that these funds have been diverted from the NMED for other purposes. The EPA is required to maintain financial assurance for underground owners and operators. The diversion of those funds puts the primacy of the Environment Department (through the EPA) at risk.
- Another bill is asking for \$1 million from the State Road Fund. Chairman Heaton and Mr. Parker observed that the entire fund is at risk due to cars getting better gas mileage.
- Another Bill is Senate Bill 65, which is related to a conservation fund generating \$27 to \$30 million a year. The bill will double the amount going into the fund, with the second half going into the Brine Well Remediation Fund. It is important to note that this money was originally going to the general fund.
- There is a Water Project Fund with some additional money in it. If the brine well collapses thousands of acres of farmland are at risk due to the CID collapsing.
- The recommendation includes Eddy County and the City of Carlsbad each finding \$500,000.

- Our five area legislators can hopefully each give \$200,000 in capital outlay. There are also some sympathetic legislators in the region who may assist, but the community really needs to help.

A member of the audience asked what the alternatives are if these bills don't pass. Mayor Janway said the money has to be found somewhere. Mr. Parker said the DOT has detour opportunities as the project approaches.

Mayor Pro Tem Dick Doss asked several questions related to Sec Tongate's comments, Chairman Heaton's questions to the AG's office and whether the alternate routes had been decided in advance. Mr. Ballard said several streets would serve as alternative routes, but the traffic would be a nightmare. Commissioner Davis said the county has continued to look at expanding routes, but the money has not been there. Chairman Heaton said Highway 285 is already the most dangerous road in the state.

- D. **Liability Work Group (Part 2):** Chairman Heaton called on Mr. Grantham to answer several questions given to him. Mr. Grantham said he provided the responses in writing when there appeared to be a need for attorney-client confidentiality, but he would summarize at the meeting.

The first question was related to when I&W can be dissolved and what happens to the property. Mr. Grantham noted that the fact that a corporation has not paid its dues does not lead to the dissolution of the corporation. Dissolution would take action, either voluntarily or through the Attorney General's Office. There is no point at which by default a defunct corporation's ownership of property transfers. Grantham said if we are concerned about clarifying the status of the property, we consider a purchase instead of dissolution.

Mr. Doss asked if there is a way to pierce the corporate veil of a defunct LLC. Mr. Grantham said there were additional questions about access to the property and the existing access agreement. (What happens if I&W refuses access?) Mr. Grantham said the first course of action would be to re-negotiate.

Mr. Grantham noted that a non-payment of taxes would not result in a transfer of property to the state, but rather a tax sale, and Gemma Ferguson, with Eddy County, said the county would have to put the property back on the tax roll, but it is unlikely that anyone would ultimately bid on it. Mr. Grantham said another option is what's called an equitable lien.

Mr. Grantham also said there were questions about the ownership of the salt that might be extracted from the well. Rep. Brown said her understanding is that the contractor would be authorized to sell materials removed.

Dr. Veni asked about imminent domain. He also said the elephant in the room is that everyone seems to want to avoid liability, but the liability already exists. Why not just accept the liability to bypass the issue? Mr. Grantham said he agreed that ownership is not the only basis on liability.

Agenda Item 10: General Strategy Path Forward: Chairman Heaton said the strategy going forward is to help with the state bills by being there. The government is run by those who show up. It's a fast session, but we're going to have to figure out how to be there. Mayor Janway said this is the most important legislative session we'll ever attend.

Agenda Item 11: Public Comment: Mr. Purvis asked how people will know what the communication mechanism is? How do we effectively communicate that to the community? Several options, including the City of Carlsbad Facebook page, an email chain, the Department of Development and the Carlsbad Chamber of Commerce, were all suggested. Denton McCollough said we should remind legislators in Santa Fe not to kill the goose that laid the golden egg.

Agenda Item 12: Determination of Upcoming Meeting. The board did not discuss a time for an upcoming meeting, though Chairman Heaton said the focus should be on the upcoming legislative session. 568

Agenda Item 13: Adjournment. Mr. Heaton adjourned the meeting at approximately 3:30 p.m.

Ken McQueen, Chair