

Final Brine Well Remediation Advisory Authority Meeting Minutes

1:30 p.m. 11-28-17- City of Carlsbad Municipal Annex

Authority Attendance:

City of Carlsbad Commissioner John Heaton and Mayor Dale Janway

Eddy County Commissioner Stella Davis

Energy Minerals & Natural Resources Deputy Secretary Matthias Sayer via telephone (Joined during meeting)

New Mexico Environment Department Secretary Butch Tongate, via telephone

Carlsbad Irrigation District Board Member Charlie Jurva

New Mexico Department of Transportation designee Tim Parker

NM State Engineer designee Andy Morley via telephone

Attorney General designee Bill Grantham via telephone

Agenda Item 1: Call meeting to order – Chairman John Heaton called the meeting to order.

Introduction: Mayor Janway said he knows this is a difficult time of the year, so he appreciates everyone who made it. He noted that the committee has been doing an excellent job of advising the state. All elected entities are on the same page in terms of making this the most important issue. The State has been moving very quickly in developing the RFP.

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, Butch Tongate, Bill Grantham, Andy Morley, Tim Parker and Charlie Jurva. Matthias Sayer joined the meeting after the roll call.

Agenda Item 4: Introduction of Authority Members or Designees: Mr. Heaton asked for Authority members present and other guests calling in to introduce themselves. Charlie Jurva introduced himself as a farmer on the CID board who was filling in for Mr. Ballard. Rep. Cathrynn Brown was present at the meeting and Senator Carroll Leavell and Senator Ron Griggs both called in to the meeting.

Agenda Item 5: Approval of the Agenda – Mr. 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 – Mr. Heaton asked members to review and approve the minutes from the previous meeting.

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

Agenda Item 7: Review of Brine Well Status Change

Jim Griswold (OCD) said he had four items to report. Several small holes have been detected close to the adjacent property owner (the feed store) on the brine well property, ranging from 2 inches to one foot. This information could indicate a possible sheer zone associated with the cavern. They are developing a work plan to begin a heightened level of monitoring and come up with technical techniques.

Second: On Nov. 22, the OCD observed a small pressure drop in the cavern. This is the fourth event we've seen dating back to when we started monitoring pressure in the cavern. On other three events, they have been able to triangulate and the rock breakage occurred in the northern part of the cavern. This latest event was of lesser magnitude in the pressure drop and they were not able to find a locatable event.

Third: One of the borehole tiltmeters went offline and is in the process of being replaced.

Fourth: The OCD has seen some high frequency response on two of the four tiltmeters over the past four weeks.

Mr. Griswold then fielded questions from members of the technical committee and other participants. The OCD is going to request its contractor, AMEC, to monitor more frequently and start posting the results from the monthly status report online.

Agenda Item 8: Review of Public Information Provided

Mr. Marksteiner said that the brine well was addressed in local media on a few recent occasions. Mayor Janway wrote a response to a letter to the editor saying not enough was done about the brine well. Mayor Janway also talked about the Carlsbad Fire Department's plan in his recent progress report. Additionally, there was a traffic accident at the South Y at the same time the fire department's warning system issued its weekly test. This caused some confusion that was resolved over social media. Mr. Heaton thanked the Current-Argus for notifications to the public and their involvement.

Agenda Item 9: Committee Reports

- A. **RFP/Liability Work Group:** Mr. Sayer said he has been looking into liability issues while Mr. Griswold has been steering the RFP. The state is moving forward with a design-build requisition. Four proposals were submitted, but one was disqualified by state purchasing. The selection committee reviewed three proposals and selected two firms. They are providing technical proposals with estimated cost for design and potentially backfill by Dec. 14. The selection committee will hold interviews on Dec. 21 and decide on a winning proposal. The draft proposal is on the state purchasing website. The first deliverable will be the design document and is due June 2018.

The OCD will not be provided with the \$250,000 until they receive money from the City of Carlsbad and Eddy County. The OCD will send a bill right away.

Mr. Heaton asked Mr. Gratham for an update on the status of the property from the AG's position. Mr. Grantham said dissolution isn't relevant- it is either the purchase of the land or a combination action proceeded by a good-faith attempt to purchase the land. A lengthy discussion took place about the ownership of the property. Rep. Brown noted that it is a very complicated property ownership issue, since there are multiple parcels of land. Chairman Heaton had sent a number of questions regarding the status of the property to Mr. Grantham, and he requested that Mr. Grantham be prepared to answer those questions as well as others that have arisen in this discussion at our next meeting in January.

- B. **Technical Work Group:** George Veni said the technical group has been in a holding pattern since the RFP was completed. They will be ready to advise as needed. Don Purvis said there were many conference calls to develop the Phase 2 document. The RFP process is on track and the majority of the work has been done. The two objectives that the contract is held to is to eliminate the potential collapse of the cavern and to address the issue of surface subsidence. There is a third part to Phase 2 in that there will be a two-year monitoring period.
- C. **Financing Work Group:** Commissioner Davis said she would defer to Chairman Heaton, who had done a great deal of the work in putting together a potential funding plan. She said the issue boils down to ownership of the property.

Chairman Heaton reviewed a list of potential points of potential financing solutions to get the \$25 million needed to cover the costs. He stressed that the size and complexity of the cavity makes the cost estimate a difficult issue to resolve in terms of not knowing the fill material and techniques required. The document is attached with the minutes.

1. of Congressional Brine Well Remediation Fund: We have spoken with our congressional delegation and they are interested in helping. It is difficult to put together an isolated legislative package. Questions that come up are how many of these things exist and we believe it is potentially a lot. They have offered the FEMA fund, which has a maximum of \$4 million.
2. Possibility of using the brine well cavity for disposal: The issues with that get to be the communication between the cavity and the Rustler Formation above it, and whether or not hydrocarbons would be appropriate. That has become a moot question.
3. Salt from the WIPP project: There is a large pile out there and new materials could also be used. The salt could be designated as surplus and given away. The

two big issues are that the salt has now consolidated and would have to be broken up and you would have to transport the salt to Carlsbad. Commissioner Davis has been in contact with the railroad to see if they could provide some support with this process.

4. State and federal road mitigation funding for pre-disaster problems: Are all typically post disaster.
5. Consideration of a bond using the mitigation fund for oil and gas: The legislative finance committee does not typically like to issue bonds of this variety.
6. NMOGA: The organization may be able to provide support. Mr. Heaton has reached out to Ryan Flynn to speak with him.
7. Mr. Heaton presented a spread sheet with suggested funding sources over the next four years, including a general fund special category and the oil reclamation fund, which generates about \$2.7 million. A great deal of that money is going toward salaries and administrative costs. What would need to happen here is we would have legislation that would direct \$2 million to the brine well remediation fund. We would need to replace the money spent on salaries in some fashion and use the money for the brine well.
8. FEMA: \$4 million in for next year. We were unable to apply this year. Hopefully, we will be by 2019.
9. Water Project Fund: \$1.5 million out of that because of the canal and some other issues related to water problems. That will also need legislation that will move that amount of money over to the brine well remediation fund.
10. Severance Tax Bond Money (Capital outlay): Our five area legislators are supportive of focusing their capital outlay projects on this issue. We think that they may be willing to each provide \$100,000 a piece in support of this. There are questions as to whether capital outlay can be used for this kind of remediation fund. DFA generally feels like the concerns would not be a problem and believes the funding could be preserved over a period of time.
11. City and County Funding: Commissioner Heaton said there are legislators who believe that the City and County need to be a part of the expenses, so the City and County may need to provide support. The City has put between 1.2 and 1.5 million dollars already.

Chairman Heaton said we have to start some place and this is a beginning. He spoke with the legislative council about drafting a few related bills. We need to meet with the governor very quickly to go over the proposed financing directions.

Senator Griggs said he looks forward to working with everyone and felt there was a lot of good work done. Dr. Veni said a number of the potential funding sources require instances where something is already happening and pointed

out that the disaster is already happening. I think we have a solid argument to say that things are already happening.

Mr. Parker agreed and said under FEMA notes proof of subsidence is required. He said that the Authority has a sound argument to move forward. Beverly Allen (Senator Tom Udall's Office) said Senator Udall's office has tried to get some language changes made to fall more in line with the original intent of the FEMA bill. There is still the issue of whether the owner has to be a state entity or not. FEMA felt that the letter from the Attorney General's Office was a good step in the right direction, but it is still not enough. FEMA still has more questions and would like a letter of dissolution, as well as the hydrology report. Mr. Heaton observed that there has been building damage already. Heaton said, there are two components to the Pre-Disaster Mitigation funds - relocating businesses and homes and then fixing the brine well.

Mr. Jurva pointed out that the Carlsbad Irrigation District owns land under the main canal. Could the CID be the recipient? Mr. Heaton said that is a possibility, as well as the transportation department because of the state owning highway 285. Several individuals present said that the abandoned property should be picked up by the state.

Mr. Parker made a motion that the Authority encourage pursuit of the various avenues of funding as well as anything and everything else that might come up. Mr. Heaton said this will help people feel like they have some authority to move forward.

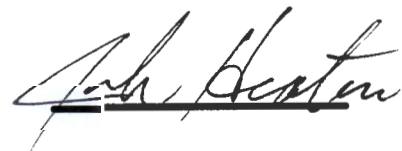
Action Item Passed: Motion: Mr. Parker, Second: Mr. Jurva Agenda item passed with no opposition.

Agenda Item 10: General Strategy Path Forward: Mr. Heaton said he felt this topic was addressed previously.

Agenda Item 11: Public Comment: Dr. Veni said the state set a series of deadlines with the RFP. Would it be possible to do so with the outline for the finance package? Mr. Heaton said a given date should be the last date of the legislative session. Dick Doss (City Council) said he believes that the city should consider declaring what they are willing to contribute prior to the upcoming legislative session. Don Purvis asked if there is a way for the state to take ownership without assuming liability. Mr. Parker said there is a similar process with storage tanks. Mr. Sayer and Mr. Griswold said the current access agreement being utilized works well.

Agenda Item 12: Determination of Upcoming Meeting. The board consented to give Mr. Heaton the authority to set the next meeting. No action was taken on this item.

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

A handwritten signature in black ink, appearing to read "John Heaton", is written over a horizontal line.