

Brine Well Advisory Authority Meeting Minutes

1 p.m. 7-12-17- City of Carlsbad Municipal Annex

Authority Attendance:

City of Carlsbad (Carlsbad Mayor Dale Janway- designated John Heaton at 1:10 p.m.)

Eddy County (Commissioner Stella Davis)

Energy Minerals & Natural Resources (Secretary Ken McQueen)

New Mexico Environment Department (Secretary Butch Tongate – participated via telephone)

New Mexico Department of Transportation (Secretary Tom Church via telephone, designated Tim Parker in advance and at 1:08 p.m.)

Carlsbad Irrigation District (Manager Dale Ballard)

NM State Engineer (Andy Morley, arrived at 1:10 p.m. Designated in advance)

Absences: Hector Balderas, New Mexico Attorney General

Agenda Item 1: Call meeting to order - Carlsbad Mayor Dale Janway called the meeting to order at 1:05 p.m. Mayor Janway thanked everyone for attending and said resolving this issue needed to be the highest priority for all of the agencies involved. Mayor Janway said there was no time for finger pointing or different groups blaming each other. Mayor Janway said that the City of Carlsbad Mayor or a designee will serve as the chair of the Brine Well Advisory Authority, as designated by legislative act.

Agenda Item 2: Status of Open Meetings Act Announcement of Meeting – City of Carlsbad contractor Kyle Marksteiner said the City purchased an advertisement more than 72 hours in advance to announce the meeting, in accordance with the NM Open Meetings Act. Additionally, the agenda and meeting announcement were posted on the Energy Minerals & Natural Resources Web page during the same interval. (FILES ATTACHED)

Agenda Item 3: Roll Call to Establish a Quorum – Mr. Marksteiner read the roll call and established that a quorum was present. Voting affirmative were Dale Janway, Stella Davis, Ken McQueen, Butch Tongate, Tom Church and Dale Ballard. Andy Morley, designee for the office of the State Engineer, arrived shortly after the roll call vote was called.

Agenda Item 4: Introduction of Authority Members or Designees – Mayor Janway asked the members of the Authority, as designated by state law, to introduce themselves or their proxies. Mayor Janway state that John Heaton would serve as his designee on the committee. Commissioner Davis said Commissioner Susan Crockett (also participating via telephone) would represent her at times in which she was not able to attend. Sec. Church, via telephone, introduced Mr. Tim Parker, who was present at the meeting, as his designee. Andy Morley introduced himself as the designee for the NM State Engineer. Sec. McQueen introduced

himself and his Deputy, Matthias Sayer. Sec. Tongate introduced himself and several staff members over the telephone. Dale Ballard introduced himself and explained the CID's role.

Additionally, Sen. Gay Kernan, Sen Carroll Leavell, Rep. Cathrynn Brown introduced themselves to the Authority. Mr. Heaton said that Mayor Janway would remain very involved in the Authority's process.

Agenda Item 5: Approval of the Agenda – Mr. Heaton asked members to review the agenda.

Action Item Passed: Motion: Sec. McQueen, **Second:** Mrs. Davis

In Favor: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Ballard, Mr. Morley

Opposed: None

Absent: Mr. Balderas

Agenda Item 6: Adoption of "Robert's Rules of Order" – Mr. Heaton said we needed a protocol for how we operate. He suggested Robert's Rules of Order to conduct the meetings.

Action Item Passed: Motion: Mrs. Davis **Second:** Sec. McQueen

In Favor: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Ballard, Mr. Morley

Opposed: None

Absent: Mr. Balderas

Agenda Item 7: Adoption of Open Meetings Act Procedure AND

Agenda Item 8: Explanation of voting and approval of remote participation – Mr. Heaton reviewed a resolution provided by Energy Minerals & Natural Resources. He stated that Item 11 establishes a policy allowing members to vote over the telephone. The Authority will hold at least 4 meetings a year and can call special or emergency meetings. Protocol for announcements of meetings and the posting of the agenda are established. A preliminary agenda will be posted at least a week prior to the meeting and follow the OMA. Limitations on when closed meetings would be appropriate are also established. (personnel or contracts). Mr. Heaton stated that the document incorporated both Item 7 and Item 8, so they could be voted on as one agenda item.

(Signed Document is included)

Action Item(s) Passed: Motion (For Approval of Item 7 and 8): Mr. Ballard **Second:** Mr. Morley

In Favor: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Ballard, Mr. Morley

Opposed: None

Absent: Mr. Balderas

Agenda Item 9: Review of Legislation Creating Advisory Authority and Process for deposit of funds: Mr. Heaton reviewed 2017 legislation creating the Brine Well Advisory Heaton stressed the Authority's role as an advisory authority to the OCD.

The County and the City have both adopted resolutions to pay, but they do not know who to pay. Kenney Rayroux (Eddy County) confirmed that was still the case. Sec. McQueen said he spoke with DFA, who indicated that a fund would have to be set up to hold this appropriation and he would need to provide DFA with documentation that the match has been approved. He would need a letter from the City and County indicating that action to approve those expenditures was taken that account could be set up.

Agenda Item 10: Review of Appropriations Legislation: Mr. Heaton reviewed the appropriations that set aside \$250,000 on the condition of the City of Carlsbad and Eddy County each contributing \$125,000. They have both passed resolutions approving that. Mr. Ballard asked Sen. Leavell if the fund stays until remediation is done. Sen. Leavell said that was his understanding- that the funds will be there until 2029 (when the sunset clause takes effect). Matthias Sayer, Deputy Secretary with the Energy Minerals & Natural Resources Department said the \$250,000 state appropriation might revert to the general fund if it is not spent due to language within House Bill 2. Mr. Heaton asked why the legislation would not be the priority. Mr. Sayer said the nuance is that the appropriation goes to the Energy Minerals & Natural Resources Department, but not the fund. Mr. Heaton and Mrs. Davis said this is a very significant concern that should be addressed during the next legislative session. Mrs. Davis said there have been multiple sweeps of funds this year and the city and county should look into this. Sec. McQueen was asked to speak with DFA to get more information. Sec. McQueen said money encumbered would likely remain intact.

Agenda Item 11: Review and Adoption of Mission Statement: Mr. Heaton suggested that the Authority adopt a mission statement to cover its activities and provided a suggested draft. Sec. McQueen questioned the need to adopt a mission statement when the bill outlines what the responsibility of the authority. Mr. Heaton said it might be helpful to have something to lean back on. McQueen said we should not expand or decrease the authority and simply abide by the guidelines of the bill. Sen. Leavell said he agreed that the legislation provides the mission statement. Mrs. Davis made the motion to adopt the mission statement.

Action Item Failed: Motion: Mrs. Davis **Second:** Mr. Heaton

In Favor: None

Opposed: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Morley

Abstain: Mr. Ballard

Absent: Mr. Balderas

Agenda Item 12: Review of Brine Well Status: Mr. Jim Griswold, Environmental Bureau Chief with the Oil Conservation Division was asked to provide an update. Mr. Heaton said Griswold has been engaged in the process since the beginning. Griswold stated that the OCD completed 2017 contract with Amec Foster Wheeler to continue monitoring is still in effect. Issuing a purchase order for new FY- monitoring continues. We are having to replace some broken items. The data is consistent with what we've seen over the past several years with no significant micro-seismic events. Some equipment needs to be replaced. Pulling weeds right now to keep the site from looking too ragged. Mr. Griswold outlined the different detection and monitoring devices that are utilized, noting that data is gathered every five minutes.

Agenda Item 13: RFP Status Approach and Recommendation. Mr. Heaton said there has been some work to get an RFP organized but there are a lot of issues in state procurement. It takes a lot of time to get an RFP in place. We have had technical discussions about what the RFP would look like. The Appropriation bill talks about a design-build. He asked for comments about whether we should do a design-build approach (a whole RFP that deals with engineering and construction) or if we do just an engineering study by itself as the first phase.

Don Purvis: Said over the past few years we have come up with 3-4 firms capable of doing the work. There are lots of firms who would do the engineering work but not have the capability to do the field work. Said you could develop a design and have the plans and then bid the process and get it done. In the case of this project, however, these are not done every day. Design-build would mean you would pick a group that could handle the entire process. There are pros and cons on both, but with two different groups you could get into a finger pointing game. His thinking on this is you really want to do as a design-build so you have one entity responsible from the beginning through the end.

Mr. Heaton asked Mr. Purvis what some of the technical questions would be. Mr. Purvis said ultimately the issue is that you have a hole in the ground that needs to be filled, but issues such as the angle of repose and entry points needed to be looked at. Mr. Ballard said there is no model where this has been done, so how do you do a design build? Mr. Purvis said there are a number of similar examples, but agreed that nothing exactly the same has been carried out. Mr. Griswold noted that the state is concerned they may not get any responses to the RFP because it isn't fashioned properly due to this uncertainty. Mr. Parker said the DOT handles large design-build projects quite a bit. From a legislative perspective standpoint- they were previously not allowed to do design-build projects without legislative permission. Recent legislation (HB 206) can allow the state to move forward on a design-build procurement with quick time turnaround. Additional question as to whether design-builds come with change

order provisions that could drive the cost up or down. Mr. Purvis said he believes if you have one entity it will take change-orders and uncertainty out of it.

Ned Elkins: Mr. Elkins said he wanted to focus on the difference of this project from a normal highway job, which is a completely different context. Failure here is ½ a billion dollars. Said he will be shocked if any company is willing to accept all liability. Said he thinks having a good engineering basis that other entities can look at it, but that first step of getting an engineering basis is time well spent. Said he and Mr. Purvis are pretty close, but the Authority should make a recommendation to do a part of it and then possibly be allowed to continue. Nobody is going to have all the answers. We've had issues with getting people to get involved in any way due to the enormous liability.

Norbert Rempe: Mr. Rempe said there has been a lot of talk and not much action. He attended a meeting of the Solution Mining Research Institute and asked for suggestions. The only response he received was references to two similar situations in France where a collapse was induced. Nobody knows of any case where such a hole was backfilled without an induced collapse. People think there is not any question that we can backfill, but that remains to be seen. We need to be open to the possibility that backfilling may not be possible in this instance. Mr. Griswold said we need to be sure not to exclude qualified individuals because of a procurement fluke.

Mr. Heaton said the motion would be tabled following recommendations by the technical groups to be appointed later in the meeting. There are also a couple considerations about fill materials that should be discussed. **Voting on Action Item 13 was postponed to a future meeting to await input from the working groups that would be appointed later in the meeting.**

Agenda Item 14: Potential Financing Options for proposed \$25 Million: Mr. Heaton said the remediation fund does not have much money due to oil prices being low. We are exploring federal funds with Congress. We've had discussions with BLM and we do not think there is anything there. Congressional appropriation may be possible, but earmarks are no longer available. We did hear some news from FEMA.

Steve McCutcheon said there are some FEMA programs available prior to a catastrophe happening. He said he heard from Senator Heinrich's office. We've researched and there are some problems in that they talk about a natural disaster, but oil well drilling has been included in the past, so there may be a potential. Wendy Blackwell, point of contact, said a notice of interest should be submitted by the state as well as the city and county. Mr. Heaton asked Mr. McCutcheon to work with Mr. McQueen and Eddy County to get an application started.

Beverly Allen with Sen. Udall's office said New Mexico has a full-time staffer who looks for funds at the federal level (Steven Yokum) who has been working on this. Both FEMA grants require someone to own the property and there is no clear owner here. Superfund and Brownfield don't qualify in this case and EPA funds are going to be cut in half.

Diane Ventura said the Army corps has the authority to do contracting that might be needed for the bid remediation if other funds can be identified.

Mr. Heaton said ownership of the brine well location is still disputed. Mr. McCutcheon said the issue of ownership should consider the fact that there are a number of other owners in the area. Rep. Brown said a letter from the Attorney General's office said the title of the property is in the defunct corporation. Mr. Heaton said we have tried to get the AG's office to assign a designee to the Authority and we have received no response.

Mr. Heaton said we have also discussed the idea of becoming a disposal operation at the brine well. The filling of the project could potentially be a money-making project. We have discussed the issue with some private companies. Another possibility is that there is a huge salt pile at the WIPP site which has to be removed. There is also the issue that this is a WIPP route, so there is some concern from WIPP's point of view that we should fix the cavity. Beverly Allen said she wanted to speak as a private citizen to say that kids on a bus don't have casing.

Agenda Item 15: Work Group Appointments: Mr. Heaton appointed three work groups to begin focusing on specific components of the issue. Several changes were made to the work groups. Mr. McQueen asked if we have specific intents and is it possible to appoint at least one authority member to each working group. Mr. Heaton directed the working groups to try to meet in the next ten days to formulate goals and, objectives and processes and begin their work. He said anyone is welcome to participate in the work groups.

The RFP/Liability Work Group will be:

Matthias Sayer – Chairman (Energy Minerals & Natural Resources)

Jim Griswold (OCD)

Steve McCutcheon (City of Carlsbad)

Kenney Rayroux (Eddy County)

Bruce Yurdin (New Mexico Environment Department)

Attorney General's Office Designee

Tim Parker (DOT)

The Technical Work Group will be:

Don Purvis and George Veni- Co Chairmen

Jim Griswold (OCD)

Andy Morley (Office of the Engineer)

Ned Elkins

Norbert Rempe

Kin Slaughter

Dale Ballard (CID)

Robert Defer (Carlsbad Chamber of Commerce)

Tim Parker (DOT)

The Financing Work Group will be:

Commissioner Susan Crockett- Chairwoman

John Heaton

Commissioner Stella Davis

Jack Volpato

Sen. Carroll Leavell

Rep. Jim Townsend

Agenda Item 16: Public attendee and invitee list of those directly impacted - A sign-in sheet was provided to attendees of the July 12 meeting.

Agenda Item 17: Handout Materials - Additional handouts included notes from an informal meeting prior to the authority, legislative and appropriations language, maps of the brine well location and dimensions of the cavity, a prior presentation by Mr. Griswold, a draft of the proposed Mission Statement and a draft of the proposed OMA resolution.

Agenda Item 18: Determination of Upcoming Meeting – Mr. Heaton proposed 1 p.m. Aug. 16 at the City of Carlsbad Municipal Annex for the next meeting date. The meeting date may be reassigned.

Action Item Passed: Motion: Mr. Ballard **Second:** Mrs. Davis

In Favor: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Ballard, Mr. Morley

Opposed: None

Absent: Mr. Balderas

Agenda Item 19: Public Comment:

Norbert Rempe said he has seen attitudes of people refusing to take responsibility. The Authority should make it clear that the state has the primary responsibility for the brine well.

Omar Visairo asked several questions about where information came from. Mr. Griswold directed Mr. Visairo to the OCD's web page and said the data came from several years. He said he would like to be a part of the technical discussion and thought maybe we could pump cement into the cavity.

Agenda Item 20: Adjournment – Mr. Heaton asked for a motion to adjourn.

Action Item Passed: Motion: Mrs. Davis **Second:** Sec. McQueen

In Favor: Mr. Heaton, Mrs. Davis, Sec. McQueen, Sec. Tongate, Mr. Parker, Mr. Ballard, Mr. Morley

Opposed: None

Absent: Mr. Balderas

A handwritten signature in black ink, appearing to read "J. A. Heaton", is written above a solid horizontal line.