

Brine Well Remediation Advisory Authority Meeting Minutes

1 p.m. 8-30-17- City of Carlsbad Municipal Annex

Authority Attendance:

City of Carlsbad (John Heaton) and Mayor Dale Janway
Eddy County (Commissioner Stella Davis)
Energy Minerals & Natural Resources (Secretary Ken McQueen)
New Mexico Environment Department Secretary (Secretary Butch Tongate)
Carlsbad Irrigation District (Manager Dale Ballard)
New Mexico Department of Transportation designee (Tim Parker via telephone)
NM State Engineer designee (Andy Morley via telephone)
Attorney General designee (Bill Grantham via telephone)

Agenda Item 1: Call meeting to order - Carlsbad Mayor Dale Janway called the meeting to order. Mayor Janway thanked Chairman John Heaton for keeping the momentum going. He said one purpose of the 8-30-17 meeting would be to answer a number of questions that came up last time.

Agenda Item 2: Status of Open Meetings Act Announcement of Meeting – Chairman Heaton called on Kyle Marksteiner, who established that the meeting met approved Open Meetings Act policies outlined.

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 John Heaton, Stella Davis, Ken McQueen, Andy Morley, Butch Tongate, Bill Grantham, Tim Parker and Dale Ballard.

Agenda Item 4: Introduction of Authority Members or Designees: Mr. Heaton asked for Authority members present and other guests calling in to introduce themselves. Several representatives of the NMED, EMNRD and state procurement office participated via telephone.

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

Action Item Passed: Motion: Sec. Tongate, **Second:** Sec. McQueen

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

Opposed: None

Agenda Item 6: Approval of the Minutes – Mr. Heaton asked members to review and approve the minutes from the previous meeting. The minutes were approved with the caveat that a few typos would be corrected.

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

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

Opposed: None

Agenda Item 7: Review of Brine Well Status Change

Jim Griswold said there has been no change in the status of the brine well. They are in the process of upgrading and replacing some of the older equipment. We go back through a thought process to identify any gaps in the alarm infrastructure. There was a brine well alarm test that goes to the contractor, OCD staff and Eddy County folks. The contractor and OCD had a 100% response. Mr. Heaton said there is a geophysical company in Kansas that does passive microseismic studies and it may be something worth looking into.

Agenda Item 8: Review of Public Information Provided

Mr. Marksteiner stated that EMNRD has a web page with extensive information. The Carlsbad Current-Argus and Artesia Daily Press have been covering the brine well issue, and local radio stations have also been informed. The Current-Argus printed an editorial summarizing the previous meeting.

Agenda Item 9: Presentation by Kansas sinkhole owner

Mr. Heaton said the presenters of a sinkhole in Kansas were unable to make the 8-30-17 meeting. He has proposed Sept. 25 or Sept. 28 as a time to make his presentation. Heaton thanked Mosaic's management staff (Paul Gill) for being in constant contact with Mosaic corporate to organize the presentation.

Agenda Item 10: Committee Reports

- A. **Financing Work Group:** Commissioner Susan Crockett said the finance committee has had no meeting since the last major meeting. There has been a lot of talk between legislators in DC. There was briefly a disconnect between state and federal DC folks, but we are back on board. We are waiting on a clarification as to whether the brine well is a natural or man-made hazard. We have a group going to DC in September, so hopefully we can have some answers from that trip.

Sec. McQueen said his department met with New Mexico Homeland Security to discuss the grant proposed through FEMA. Dep. Sayer has sent a letter summarizing the discussion. There are requirements to qualify for the NOI grant, prior to applying, which we have not met, including the requirement for a detailed project

description. They also require a cost estimate for the total project remediation cost. This is a competitive grant, so there is no guarantee, and the maximum amount provided is around \$4 million. The applicant does not need to be the owner of the property in order to apply. Homeland Security recommended that the City of Carlsbad or Eddy County make the application when we reach that point. FEMA would not grant the full \$4 million unless they've identified the remaining source of the funds. Due to the requirements, we would not be able to meet this year's (November) grant requirement – it would be an application for the following year. Mr. Ballard asked for clarification as to when the money would be available and who would handle the grant. He wants to make sure we have the boxes checked when the time comes. Mr. Heaton said we did receive a report that identifies sinkholes as eligible for consideration through the pre-disaster mitigation program.

- B. **Technical Work Group:** Dr. George Veni said he would also like to thank Mosaic for all of its assistance. Mosaic will be stripping out the name of the company involved in the actual work. They will have a firm date on when they can mention the presentation by next Tuesday. Dr. Veni said it should be noted that Hurricane Harvey has depleted FEMA's bank account.

The technical committee came up with a draft request outlining the information that would be provided to potential vendors telling them about the history of the site. The RFI meeting has been scheduled for Sept. 13. Dr. Veni said he is happy to see progress with sinkholes being recognized as major issues around the country. Mr. Heaton said there are a number of questions locally about whether the cavity is connected with the Rustler Formation. Dr. Veni said he would like to review a report from a few years ago in order to answer Mr. Heaton's questions.

- C. **RFP/Liability Work Group:** Dep. Matthias Sayer said Marty Perrins-Dallman with the State Purchasing Division of GSD has been doing a lot of work putting together the RFI. Jim Griswold said the invitation of the RFI was published the day before. Ms. Perrins-Dallman outlined the schedule. She said there is some key information that is going to require a lot of work, and if the liability issues and performance measures are resolved the scheduled can be met. It's a very fast process, and we need to start on the next phase as we are working through this one. The RFP is a two-part process. We really need input from the liability workgroup. We will have to compensate the bidders (the finalists) in a small way using some of the \$500,000. Mr. Ballard asked what happens if the person picked can't complete the contract. He was told the second choice would then be selected. Ms. Perrins-Dallman said a design build will work in this case because if you separate the engineer you will get

into finger pointing. However, the problem is how much engineering information will be required to come up with a cost. Advisory members asked for some clarification on the selection committee – there should be no conflicts of interest, there should be an odd number of people, etc. The committee will score based on points and come up with a numerical score. She would like to see a lot of discussion on the RFI regarding what is feasible. Mr. Griswold said the brine well information page has been reviewed and there is a lot more information up there and it is in a better form. EMNRD will put together the selection committee.

Dep. Sayer asked for a discussion on the item on the agenda related to the AG's opinion on bankrupt company ownership. Mr. Grantham said he looked back at the ownership issue. There has not been a change since the original determination that I&W still owns the property. At the end of the bankruptcy hearing, the trustees abandoned the property and it reverts to the owner. Mr. Heaton asked what happens to the property if the corporation is dissolved and what is the process to go through the dissolution of a bankrupt corporation? The AG's office could bring an action to force the involuntary dissolution. Some grants may require property ownership, even though the FEMA grant does not.

Agenda Item 11: General Strategy Path Forward: There was no additional discussion.

Agenda Item 12: Public Comment

Dr. Veni said he felt it would probably worthwhile to look into dissolving I&W, or at least look into potential downsides.

Mr. Charles Cable- asked if when we are talking about property we are talking about property rights above ground or mineral rights. I&W has the mineral stake. Mr. Heaton asked Mr. Grantham to look into the issue of mineral rights ownership. Steve McCutcheon said he would first check with Santo to see if they had any additional information.

Agenda Item 13: Determination of Upcoming Meeting. The board voted to give Mr. Heaton the authority to set the next meeting based on the availability of the Kansas company.

Action Item Passed: Motion: Mr. Tongate **Second:** Mr. Ballard

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

Opposed: None

Agenda Item 14: Adjournment

Mr. Heaton adjourned the meeting at approximately 2:30 p.m.

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