

**LINKED MINUTES OF SPECIAL MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL ANNEX
BUILDING ON APRIL 5, 2017 AT 4:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Leo B. Estrada	Councilor
	J. R. Doporto	Councilor
	Wesley A. Carter	Councilor
	Jason Shirley	Councilor
	Richard Doss	Councilor (arrived at 4:03 p.m.)

Absent:	Ward 4	Vacancy
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Also Present:	Steve McCutcheon	City Administrator
	Annette Barrick	City Clerk
	Patsy Jackson-Christopher	Director of Arts & Culture
	Luis Camero	Director of Engineering Services
	Steve Hendley	Director of Parks & Recreation
	Michael Hernandez	Director of Utilities
	Wendy Hammett	Finance Director
	Richard Lopez	Fire Chief
	Jeff Patterson	Planning Director
	Kent D. Waller	Police Chief
	Patrick Cass	Public Works Director

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 **Call Meeting to Order**

0:00:01 Invocation - Pledge of Allegiance

0:00:28 **1. APPROVAL OF AGENDA**

0:00:31 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Carter to approve the Agenda

0:00:34 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Carter, Anaya Flores, Doportio; No - None; Absent- Doss; The motion carried.

0:00:49 **2. BRINE WELL LEGISLATIVE UPDATE BY REPRESENTATIVE CATHRYNN BROWN AND SENATOR CARROLL LEAVELL**

0:01:06 **Senator Leavell** said he has never had a piece of legislation that he has worked harder for or that he is more concerned about. He said there is good reason to be concerned with this legislation because they have made very little progress in getting the brine well corrected. He said if the brine well were to fall, there is no telling the amount of damage and human lives that could be taken. He explained he has worked with Representative Brown in the House and he carried two bills in the Senate, Senate Bills 3 and 4. He explained one of the bills set up the money and the other set up the oversight committee. He explained Representative Brown's bills were very similar to the Bills he himself carried. He said Senate Bill 3 made an appropriation for \$500,000 to the general fund for purposes of engineering the Carlsbad brine well cavern. He explained Senate Bill 4 set up the oversight committee to work with the State to oversee the construction and engineering. He said Representative Brown carried House Bill 29 through the House, the Senate, and to the Governor's office, where the bill was assigned. He explained House Bill 29 set up an 8 person oversight committee. He said the problem is that there is no funding in House Bill 29. He said he is hopeful that the Governor will sign the other 2 bills. He explained House Bill 2 has \$250,000 for a design, build, and request for proposals for remediation of the Carlsbad Brine Well contingent on receiving matching funds of \$125,000 from the City and \$125,000 from Eddy County for a total of \$500,000. He said he has heard from many of his constituents in Carlsbad who are upset that the City had to match the funding. **Senator Leavell** said he regrets that the City has to match but Senator John Smith insisted on the match. He thanked the Mayor for the opportunity to explain the work that he has put into the issue and he is hopeful to work through this.

Mayor Janway thanked Senator Leavell for all of his hard work.

0:08:22 **Representative Brown** passed out a memo dated February 28, 2017, which discusses scenarios for funding the RFP process for the brine well. She said Chairman Lunsford made it very clear that there wasn't money in the budget for \$500,000. She said Chairman Lunsford indicated that other options should be used for finding funding. She explained Chairman Lunsford directed the Legislative Finance Committee to put out scenarios for funding. She reviewed the 4 scenarios:

- appropriation of \$500 thousand from a combination of state funds, which she did not think was feasible
- appropriation of \$400 thousand from a combination of other state funds contingent on a \$100 thousand local match, she explained this is the option the two governing bodies of Carlsbad and Eddy County authorized

- Use the public project revolving fund to support the request
- Include funding in the capital outlay bill

Representative Brown explained the match by the two governing bodies was more than a goodwill gesture. She added the request was not reasonable because neither of the two governing bodies own the property. She explained the property is legally owned by I&W, which she added has declared bankruptcy. She said when they go back into special session she would like to try to strip the contingency language out of House Bill 2, which would mean the state, city and county appropriation would still be there and she would like to get funding from other sources. She explained she would like to get funding from the WIPP settlement that has been dedicated for road work. She added that she spoke with Secretary Church about estimates of costs to rebuild the segments of the highways that intersect in the case of a sinkhole. She said Secretary Church said the costs have gone up and the cost would be about \$100 million dollars, which is more than the cost of filling the cavity and averting a collapse. She said Secretary Church understands the consequences and will be open to suggestions, especially with WIPP shipments on that highway. **Representative Brown** said House Bill 29 creates the authority and a receptacle for funding.

0:18:05 **Representative Brown** explained that going into session, she and Senator Leavell talked a lot about the strategy for dealing with the brine well. She explained they decided to run two different bills, House Bill 29 and the mirror bill was Senator Leavell's Senate Bill 4. She calls Senate Bill 4 the main bill which creates the authority and the receptacle for funding. She said they felt this was the best way because the appropriation may not be there at all. She said the authority is an advisory authority that will be advising the Oil Conservation Division (OCD) under the Energy Minerals and Natural Resources Department about the brine well and how to proceed. She explained there have been many studies and constant monitoring of the brine well by the OCD. She explained OCD does not own the site, so they have the same argument the City and County are making. **Representative Brown** explained this is a tough situation that no one owns. She said the bottom line is that we all have to move on as quickly as possible to begin the process of filling up the cavern. She said the authority will consist of Mayor Janway who will chair the authority or designate, the Secretary of Transportation, the Secretary of Energy and Minerals, the Secretary of the Environment Department, the Attorney General or designate, and a County Commissioner. She said her hope is that this group will map out a solution. She thanked the Mayor, Councilors, and everyone who came to the capital and sat through public hearings and gave testimonies.

0:22:28 **Councilor Rodriguez** asked if there is any other term or description that could be used to attack this from another funding source, other than capital outlay. **Representative Brown** said that is something that has been discussed because we are not actually building anything. She said there is something in the capital outlay rules that allows the use of the funding for planning purposes, which is what the RFP process

will involve. She explained the county has looked at FEMA for funding, although FEMA only steps in when there is a collapse or catastrophe. She said she is continuing to search for funding. She said finding money in a bad budget year is not an easy problem to solve. She added this will be the job of the authority to map out where we can go for funding.

Councilor Rodriguez asked if the Army Core of Engineers who is more proactive than reactive could be looked at for funding. **Representative Brown** said that is a good suggestion, which has not been looked into.

0:35:08 **Councilor Doss** said he is irate at the state for permitting the well, monitoring the well, collecting royalties for the well, and chose to shut it down because they deemed the well unsafe but refuse to own the well. He said all of this tells him that the state owns the well. He said if the city puts money into the well, is the city acknowledging responsibility for the well and will the city have liability when and if the well collapses. He said \$25 million to fix it versus \$100 million if the well was to collapse. He said \$25,000 from the state is 1% of the problem. He said the whole thing is just a mess and if the well was in the middle of Albuquerque or Santa Fe, the well would have been repaired 5 years ago.

Senator Leavell and Representative Brown said they agree. **Representative Brown** said she tries not to point fingers but is looking for funding solutions. She said the city needs to call the authority over to explain what they are going to do with the well.

Councilor Doss added that the OCD should be involved. **Representative Brown** said OCD has been using the fund to monitor the well and to pay some salaries. She said oil companies pay into the oil fund but has not been helpful because of the current oil price.

0:36:27 **Councilor Doss** said if the city is required to pay \$125,000 we have made a budget adjustment. He said he is hearing the county is not agreeing to pay the \$125,000 so we will not have the money. He said he is not sure the governor understands the cost if the well collapses. **Representative Brown** said they will continue with the discussions. **Councilor Doss** said he is willing to attend any meetings necessary. **Representative Brown** said she does not know how to express the need any clearer.

0:39:57 **Mr. McCutcheon** said no one worked harder than Senator Leavell and Representative Brown. He asked if the governor vetoes the budget will the veto cover both of the bills, the authority and the funding. **Representative Brown** said House Bill 29 has been signed and chaptered so the authority is law. **Mr. McCutcheon** added without the money the authority is useless. **Representative Brown** said the members of the authority would be allowed to meet. **Mr. McCutcheon** thanked them both for all of their hard work.

0:45:22 **Councilor Doporto** said Senate Bill 3 states that \$500,000 will be appropriated to the general fund for the oil conservation and energy department. He asked what the \$500,000 will be used for. **Senator Leavell** said right now there is no money. He said \$500,000 is what he was trying to appropriate. **Mr. McCutcheon** explained during early discussion the thought was if an authority could be created and funded the city could hire subject matter experts to start moving the process forward.

0:49:29 **Councilor Rodriguez** said the current administration is looking to trim back EPA, how will that affect how we will address this. **Representative Brown** said we would want to meet with EPA and implore them to keep funding healthy for this purpose. She said we can make a very strong case because the brine well needs to be addressed. She said the well is something that has to be addressed the consequences of not addressing the issue far exceed the cost and every other way. She said karst formations are everywhere and EPA is familiar with the issue but she said the consequences here are over a billion dollars. She added Norbert Rempe pointed out OCD was not monitoring as required, which is another reason that OCD should help with the remediation. **Councilor Doss** said at this point a solution is primary and fingers can be pointed later.

0:50:50 **Representative Brown** said there is a Solution Mining Conference in Albuquerque this month. She said some of the scientists attending the conference have agreed to drive to Carlsbad and view the situation and give their suggestions.

0:51:40 **Mayor Janway** asked if anyone present would like to address the issue. **Mr. Norbert Rempe** said he is a local retired geologist who has been interested in the issue. He said he has been studying and doing his own research, which he has presented in Spain. He said to his knowledge no one in the world has backfilled a cavity like this with an unstable roof. He said in previous years there were discussions on backfilling; he said we have no idea whether this can be done. He is urging a serious note of caution to backfill the cavity.

0:56:28 **Mrs. Kaye Kurkowi** asked if any planning or provision have been done to address the problems that will arise. She asked how much damage will a collapse affect utilities, how thick is the crust, and will the citizens be given any warning. **Chief Lopez** said the well is being monitored. He said staff is hoping for 6 to 8 hours of notice for citizens. He said staff will evacuate, shut down roads, and turn off utilities.

Mr. McCutcheon said the city has limited utilities in the area. He added the county is working with the utilities department to isolate the utilities, if the need arises. He said the impact to city utilities is minimal and plans are in place to isolate the lines and to deal with the fall out, if required. **Chief Lopez** said there is a plan in place from worse case to best case scenario.

Councilor Doporto asked at what point should the city or county issue a drive at your own risk in the area. He said this is a potential loss of life area.

Mr. McCutcheon said this is a state highway and the pieces are in place to address a catastrophe. He said the early warning system is very sensitive and there should be some time. **Chief Lopez** said the plan has been revised to three scenarios and the data from the experts said there will be approximately 6 to 8 hours to evacuate the area.

Councilor Shirley asked if someone could speak to the monitoring system and how staff will be warned by the monitoring in place at this time. **Chief Lopez** said the other brine wells that have collapsed in the area are determining the time. He said as soon as he is alarmed the plan will be put into motion.

1:09:14 **Ms. Susan Crockett**, Eddy County Commissioner District 5, said there is mitigation money available through FEMA but the state would have to take ownership. She added the \$150,000 commitment from the county has not been placed on the agenda and therefore has not been discussed.

Ms. Kurkowski asked how thick the crust on the brine well is. **Representative Brown** said the depth to the top of the cavern is 456 feet, the depth to the bottom of the cavern is 660 feet, and the main cavern footprint is 800 feet by 400 feet.

1:12:18 **Mr. James Waltersheid**, Eddy County Commissioner District 1, said the brine well is in his district and he is very interested in the brine well project. He thanked Representative Brown and Senator Leavell for all of their hard work. He said he wants to address the Oil and Gas Reclamation Fund. He said he is wondering why the legislature has not changed how much the oil and gas industry pays into the fund. He said he thinks the oil and gas industry needs to pay into the fund regardless of the price of oil.

1:15:10 **3. ADJOURN**

1:15:16 **Motion**

The motion was made by Councilor Anaya Flores and seconded by Councilor Rodriguez to Adjourn

1:15:22 **Vote**

The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores, Doporto; No - None; Absent- None; The motion carried.

1:15:38 **Adjourn**

There being no further business, the meeting was adjourned at 5:20 p.m.

/s/Dale Janway
Mayor

ATTEST:

/s/Annette Barrick
City Clerk