

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF WATER AND SEWER
COMMISSIONERS HELD ON JULY 19, 2018, AT 8:30 A.M., IN THE MEETING
ROOM AT THE MUNICIPAL BUILDING, 101 N. HALAGUENO STREET,
CARLSBAD, NM**

VOTING MEMBERS PRESENT:	Craig Stephens Fred Beard Gary Perkowski Larry Henderson Russell Hardy	Chairman Member Member Member Member
VOTING MEMBERS ABSENT:	None	
EX-OFFICIO MEMBERS PRESENT:	Michael A. Hernandez Eddie Rodriguez	Ex-Officio/City Administrator/ Secretary Ex-Officio/City Councilor/Member
EX-OFFICIO MEMBERS ABSENT:	Mayor Dale Janway	Ex-Officio/Member
OTHERS PRESENT:	John Lowe Eileen Riordan Wendy Hammett Ron Myers Richard Aguilar Olga Ramirez Dave Romero Robert Baldrige Steve McCutcheon Dick Doss Jon Tully Cutter Rogers Jason Burns Wes Carter Scott Goodale Paul Gill Jim Johnson Mark Walterscheid Will Gray Jennifer Elrod George Roth Beau Sullivan Brad Grandstaff Tyler Lane Matthew Magill Larry Gregory	Deputy City Administrator City Attorney Director of Finance & Investments Utilities Director Environmental Superintendent Assistant to City Administrator Balleau Groundwater Intrepid Potash Citizen Citizen Citizen Citizen Mosaic City Councilor Mosaic Mosaic Mosaic City Councilor Remnant Oil Chisholm Energy Chisholm Energy Chisholm Energy Chisholm Energy Chisholm Energy AMEC Gregory Rockhouse

0:00:00 1. Call to Order

Craig Stephens called the meeting to order.

0:00:10 2. Roll Call and Determination of Quorum

Craig Stephens called roll and it was determined that there was a quorum of voting members.

0:00:28 3. Approval of Agenda

The motion was made by Larry Henderson and seconded by Fred Beard to approve the Agenda. The vote was as follows, Yes: Craig Stephens, Gary Perkowski, Fred Beard, Larry Henderson, Russell Hardy No: None Absent: None. The Motion Passed

0:00:42 4. Approval of Minutes of the Board of Water and Sewer Commissioners Regular Meeting held June 21, 2018

The motion was made by Gary Perkowski and seconded by Larry Henderson to Approve the Minutes of the Board of Water and Sewer Commissioners Regular Meeting held on June 21, 2018. The vote was as follows, Yes: Craig Stephens, Gary Perkowski, Fred Beard, Larry Henderson No: None, Absent: None. Abstain: Russell Hardy. The Motion passed

0:01:02 5. Discuss and Consider Approval of Request from Chisholm Energy for Permits to Drill within our Sheep's Draw Well Head Protection

Brad Grandstaff, Engineer of Operations stated Chisholm Energy would like to apologize for being no shows at the last Water Board Meeting. They are trying to get accustomed to the city's policy and they did not realize they were supposed to be present, but they are here today to answer any questions the board may have. Tyler Lane Senior Engineering introduced himself.

Craig Stephens said they need to have a general discussion of the work Chisholm Energy has already done in the wellfield and an explanation of why they have already started. Craig stated there is a well pad and all kinds of stuff already out there.

Brad said there is a well pad in the area in the location of where they were going to put their drilling rig until they found out about the process. They have done a little research about being within the city limits and the process or ordinance that went with being inside the city limits as well as being inside the Wellhead protection area. The pad had been constructed and they had set out the conductor casing. He stated they have the first set of casing set to about 80 feet it has been cemented ready for the rig to move on location.

Craig Stephens asked if there was any way they could get to the oil without getting onto the Wellhead protection area. Brad said they have done some offset studies in the area Chisholm has acreage in Section 6 and Section 31 directly to the north. They had planned to drill in two mile laterals in the Wolfcamp formation. They do not have any acreage to the north of Section 31 or to the south of Section 6 to try to get outside of the Wellhead protection area so an off-sight penetration doesn't look to be feasible and right now it was going to take a whole lot of engineering to put a location on the north side so the south end of Section 6 was the most feasible option to put a location. So at this time they do not feel like there is any other location outside of the Wellhead protection area to access the oil.

Larry Henderson stated they have a lot of information of what Chisholm is proposing to do which was presented to the board this morning. We have the information but the board hasn't had a chance to review it. He asked at what depth they expect to encounter oil.

Tyler stated the plan they submitted with the permit to the state shows Ocotillo 2H is going to be drilled to a vertical depth of 8700 feet. That's below any localized groundwater. There is also fresh water that is used by the City of Carlsbad that is taken out of the Capitan Reef which is encountered about 4000 feet extra down to about 4700. So the horizontal depth will be almost a full mile deeper than any local groundwater. With four strings of casings encompassing the fresh water behind four strings of casings.

Fred Beard asked which direction would the lateral run. Tyler said it's on the south side of Section 6 and drills north two miles through Section 6 and 31. Fred asked so the lateral won't be under the protected area. Chisholm responded "No, sir", Tyler said it will fully encompass the well head area.

Craig Stephens introduced Dave Romero from Balleau Groundwater. Dave said he has reviewed the work AMEC has done and there are three wells they are talking about 2H, 3H and 4H and he mentioned that the city has an Ordinance that requires three casing strings in addition to the production. He said in 2H and 3H that is clearly happening with the four casing strings. Dave stated in 4H there is a question about the fourth string.

Tyler Lane said in the 2H and 3H that Dave is referring to, both of those wells are drilled into the Wolfcamp formation. The City Ordinance states that any well that is drilled into a Wolfcamp Formation that penetrates the Wolfcamp Formation has to have a pressure protection string which is the fourth string, which is what Dave is referring to. The 4H well is going to be drilled into the Third Bone Spring formation which lies above the Wolfcamp Formation due to the City Ordinance and what they reviewed and what AMEC reviewed the Third Bone Spring not penetrating the Wolfcamp Formation would not need the fourth pressure protection string. That is the reason the 4H does not have that string.

Dave explained since depth to water is about the 400-450 range in the Sheep Draw Wellfield that could be interpreted as the top of the freshwater area and in that context that would be the first casing string. Tyler said their surface stream will be well past that. He said in the three permits submitted the surface casing is set at 420 to protect that groundwater zone. He explained that groundwater will have a surface screen set across it with cement all the way to surface; their intermediate will be set through the Capitan Reef and have cement all the way behind it to surface.

Dave said there's a question about whether or not there should be a third casing. He said you could just drop the first two strings deeper. Dave explained the conductor casing goes down to about 80 feet. George Roth, Geologist for Chisholm, said they could drop the casing strings a little deeper and make sure they have multiple strings across that threshold or add a third intermediate string to make sure they have two strings of casings. Dave Romeo said if Chisholm did that, there wouldn't be any issue. He said if the surface casing that is going to 80 could go to 420.

Councilor Rodriguez asked what was the thought process to go to 80 feet. Chisholm responded the conductor screen is generally set between 40 and 80 feet, it's not necessarily a protected screen. It's a standard practice. It helps get you started.

Dave stated if Chisholm would make an adjustment of well 4H to have one more casing string just because it's right next to the Capitan, you can interpret the top at 420 and the bottom of fresh water at 1650 then it would meet that third string. George Roth said that can easily be done. They will set it up the 4H similar to the 2H & 3H.

Matthew McGill from AMEC Foster Wheeler was introduced. Matthew said he did the review and signed off on the permits. He made some recommendations to Chisholm. He said he has a checklist to follow. He looks at the drilling permit that is turned into OCD that allows him to see the formation of interest, what their anticipated depth to fresh water is and also allows him to see their completion and cementation program for the well. Most of his recommendation for this well was based on the completion and cementation of the well in terms of number of casings, what depth they were set at and ensuring that all the cement was taken all the way to the surface to prevent any type of communication between the fresh water bearing strata and production well. He said after his initial recommendations, Chisholm responded. Matthew said after he and Dave reviewed where they were setting the casings on the 4H well, they were doing it in the Third Bone Springs which is not in the Wolfcamp Formation they didn't use the pressure protective casing but in the event they still had their three casings with the revised completion report. We just wanted to see them set below the 1650 to ensure that they were in bedrock.

Dave Romero recommended adding another string that runs though there. Craig asked if another application needed to be submitted. Brad Grandstaff said they could revise the permit for the 4H well to OCD by the end of today.

Matthew McGill said he would supply the final approval letter after the revised permit is received for 4H.

Fred Beard asked what the life of the well and the life of the casing is. Chisholm responded they hope the well is a long producer for many years hopefully decades.

Russell Hardy said what contingency plan you have in place if something goes wrong. How will you deal with any intrusion? How would the issue be resolved? Chisholm responded saying the four casing going through are the protective layer. They will have a trip tank on location to monitor all volumes going in and out of the well as they are drilling so any losses or gains in fluid will trigger their trip tank that they either see gains or losses. The drilling mud they use is expensive and they don't want an intrusion into their well either. They only use fresh water to drill they will not use salt, brine, oil base, mud. They will not introduce anything other than fresh water.

Larry Henderson asked when they are going horizontally what direction they will be drilling. Chisholm said due north.

Gary Perkowski stated everyone has a good sense of what is going on now, he said he was a little upset last month when they didn't show up. He said understands why they didn't come. He explained that it's the board's job to protect the city's water. He said if something happens to the city's water, they will be in real bad shape. Gary said he's just a little concerned that this could damage the water which could damage the community.

Brad explained to the Board that he and Tyler are both from ranching families and they are very aware of how critical water is. We've given as much of a guarantee as we can give.

Gary asked Mike Hernandez what the city's position was on this. Mike Hernandez said as long as the ordinance is met, and the city has the assurance from AMEC and Mr. Romero from Balleau Groundwater the city feels comfortable with the onward movement of this project with the resubmission for the extended casings. Gary asked if AMEC and Balleau Groundwater were good with the changes. Both responded yes.

Steve McCutcheon suggested that verification needs to be made by AMEC or whoever is hired that the casing the cementing has meet the standards. Chisholm responded by saying that can be done they give notification to the state and BLM that they are getting ready to do casing and cementing. They usually have representative from the State or BLM on location to watch. Chisholm said they could notify the city also, so they could have a representative there as well.

Gary Perkowski made a motion after the resubmission of the permits with the extended casings on well 4H to approve the permits. Councilor Rodriguez seconded the motion. The vote was as follows: Yes: Craig Stephens, Gary Perkowski, Russell Hardy, Larry Henderson, Fred Beard No: None Absent: None.

0:43:25 **6. Presentation by Remnant Oil** Mike Hernandez explained to the board that Mr. Will Gray contacted the city a while back. He first spoke to Ron Myers then himself regarding some Water Rights up in the Tatum area north of our existing Tatum Wells. Mike said he would follow up with what Ms. O'Brien recommended. Will Gray introduced himself as one of the owners of Remnant Oil they operate out of Texas but have been operating in New Mexico since 2007. In May of 2017 Commissioner Aubrey Dunn issued the decree about using Ogallala Aquifer Water for Oil and Gas usage. They have meet with Commissioner Dunn a number of times to better understand the ramifications of that ruling. If you look at our existing water rights (License 3776) they currently own 481.86 acre feet. There are eight existing wells. He said they retained Modrall Sperling in April of 2017. He said they have been doing a lot of research along with Commissioner Dunn trying to figure out what to do with these Water Rights. They are currently rated for secondary usage for water flooding. They have not utilized those. Commissioner Dunn requested that they reach out to the different municipalities, Carlsbad, Lovington, Hobbs and Tatum to better understand the need for water in this area. Transferring those water rights into the city's basin is not allowed per OCD guidelines so they are looking at many opportunities to try to utilize these rights. Will Gray explained what they are looking at doing, he stated he sent Mr. Hernandez a map showing where their existing wells are located they are extremely close in proximity to the Tatum well that the City has permitted recently. They are trying to work with the city in a number of different ways; we are open to either selling our water rights or leasing our water rights. He asked what size line was recently installed at Double Eagle. Mike Hernandez said it's a 24. Modrall suggested they use Dave Romero but it was obviously a conflict of interest so they are using John Shoemaker and Company out of Albuquerque to better understand what their water saturation is. He said they are looking at approximately 40 years of water usage based upon our rated guidelines per the OCD. He said they are open to anything and everything that makes sense to the City of Carlsbad, selling it, leasing it, Another idea was utilizing the pipeline to ship our water to Carlsbad and potentially paying the city a tariff on that, take off some diversion off the Double Eagle Water system. He said Mr. Hernandez told him the city has state and federal guidelines of where the water comes from and what happens with that. Basically if they operate those wells obviously the city would oversight on that. The city would be able to have any oversight over those eight wells.

Larry Henderson asked where the wells were located in relation to the City's Water Rights. Will Gray said they are just north of Maljamar and about 20 miles north of that. He said the wells that were

recently permitted for the Tatum Basin are less than 7 miles away. He said they proposed to do a lay line basically install their own infrastructure and tie in to the Double Eagle line. He explained even if the city doesn't want to buy or lease them, the city could still make some money with the Double Eagle line on a shipping basis.

Russell Hardy asked if they would be doing a surface line. Will Gray, said yes they would do a flat lay line. Russell asked if the wells have already been drilled. Will Gray responded yes they have already been put to beneficial use. Craig Stephens asked Mike Hernandez how far these wells are from the Tatum Wells. Mike said the closest is about six miles away. Councilor Rodriguez asked what the proximity of the wells was basically how old are the Water Rights, Will Gray said they have had them for a while the exact number is in the packet he submitted.

Craig asked Michael what the city's stand was on this. Mike said it is significantly further from our Tatum well field from which we still don't have tied into the Double Eagle wellfield so it is remote. We have an excess amount of Water Rights in the Tatum area right now that he doesn't know when the city will put to beneficial use. Mike spoke to Maria O'Brien and her recommendation is, she understands these water rights are on state land and the company entered into a water easement and granted the state land office an interest in these rights as co-owner and once the easement is terminated the water rights remain with the state land office and on state lands. So basically they are unmarketable in a way, she believes with the city's current rights in the Tatum area the city would probably never be able to put them to use.

Will Gray said in regards to the easement, that is part of an agreement they made with Commissioner Dunn, they are going to remove the rights from the OCD as well as reissue the easement and obviously Maria's counterpart negotiated that. Right now they will not renew that easement until they have identified the municipality from which they intend to work with. Upon doing so they will reissue the easement along with remove their name from the title. Will Gray said all that can be confirmed from Maria. He asked what the city's contingent would be on allowing them to utilize the Double Eagle water system as a carrier and paying a tariff on that on a per barrel basis. Mike said that is something that would have to be discussed with the board and staff and be considered and brought back at a later date after they do a little more homework on it.

Fred Beard said he mentioned a flat lay line even if the city did the tariff or any part of it, he doesn't believe the line will qualify for potable water. It won't meet our water quality standard. He said they might need to give more thought to their infrastructure to meet the guidelines.

Mike stated to the board the city has some concerns of a line that the city may not own or have full control over, whether there are taps off of it that the city isn't aware of. There are a lot of factors that are to be considered. Mr. Myers has also expressed concern with similar thoughts, so there is definitely concern with the line. That is the most important thing to the city is to keep it safe and clean.

Craig Stephens said the board would take this into consideration and study the possibilities. Will Gray thanked the board for their time.

0:56:18 7. Presentation by Jon Tully on Mosaic Potash Water Lease Agreements and Consider Recommended action by the Board Jon Tully thanked the board for the opportunity to speak. He stated he made a timely request to be put on the Agenda, the Agenda is published, and my request was not on the Agenda so I inquired to Mr. Hernandez, I received a curious email response back if I could read it. The response I got back said the city was waiting on Council opinion

before putting your request on the Agenda; we just received an opinion this morning. This was on Monday, and an amended Agenda would be posted today. I'm curious having held Mr. Hernandez' position before for some 15 years and worked with this board for longer than that. What this issue which involves public records, previous actions that have been taken in public. What the issue was that prompted a council opinion and who the council was that you sought the opinion from?

Mr. Hernandez addressed Mr. Tully and the board stating the City received a request from Mr. Tully and thought it be best and due diligence and we did speak with some of the board members regarding getting legal counsel we believe on a subject important as this, involving water rights anything like that we should seek it. That was a joint decision that was made by the city. Jon Tully asked was this same council sought an opinion of on June 15, 2017 when the same issue came before. Mike Hernandez asked if that was the date of the last Water Board meeting. Jon Tully said the water board meeting they are going to talk about today was on June 15, 2017 a little over a year ago. Mike Hernandez said he would imagine it was. Jon Tully said he would imagine it was not. He said he really doesn't know what to make of that. But nothing he is going to talk about today is based on a public record or public actions of the board and my knowledge which in some aspects probably supersedes everyone's knowledge here because I happened to have participated in the negotiations of the contacts that we're talking about of the underlying contracts. As Ms. Riordan, she was a part of that in those days as well as Maria O'Brien. I would like to make a couple of disclaimers. I do not represent anyone here but myself, I don't own water rights, I wasn't encouraged by anyone to be here and I simply stumbled on this issue. I was looking for another issue when I stumbled on this issue in the minutes that were published online from the June 15, 2017 meeting. The Mosaic Water Rights what we call the underlying agreement; the '99 agreement was ended by IMC Kalium, IMC who is now Mosaic. The underlining agreement was one of a trio of very complex agreements that were negotiated in 1998 & 1999 between the City of Carlsbad and the Interstate Stream Commission, Interstate Stream Commission and IMC, and IMC and the City of Carlsbad. The point of all the agreements was to protect each of the entities against a water call which in 98-99 was thought to be imminent. As a result, you will remember you were Mayor Mr. Perkowski we ultimately sold the Harroun Water Rights about 8,888 acre feet with the oldest 1883 rights on the river to the Interstate Stream Commission. We took those 1883 rights and switched them with the junior rights in the City's wellfield C76 to protect the wellfield against a water call. IMC sold some of their water rights, you remember Willow Lake, they sold some of their water rights and we had some old priority dates leftover and we entered into an agreement, I'm going to call the underlying agreement today with IMC, the terms of which the city acquired at no cost 2300 acre feet of their warded Capitan Rights, to which we attached the 1883 rights. The agreement goes further than acquisition of water rights it actually involved a number of other things. That agreement was negotiated in good faith and has worked to the benefit of both parties ever since.

I have provided you with some documents, I'd like to kind of go through those. Talk about them as we go. The first is the meeting Agenda, all of the documents I'm providing today came from the official City's website archives or records request from the City Clerk. Number one is the Agenda of June 15, 2017, number 2 is a water lease agreement that was provided in the Agenda Packet that was provided to you, I received that Agenda Packet from Public Records request from the city clerk. Item number three is a copy of the minutes of that particular meeting. the applicable paragraph is on page six. You'll notice item number six talks about, Consider Approval of the Water Rights Lease Agreement in the singular between the City of Carlsbad and Mosaic Potash, Carlsbad, Inc. The heading is Approval of Water Rights Agreement singular with Mosaic. It's referring assumedly to the one agreement that was in the packet to the board. The curious thing, in the minutes if you recall, you were all there, one agreement was presented and there were other agreements that were

discussed. I don't know whether you saw those agreements or not, it's not clear from the minutes that you ever saw them. There are now five agreements. Item number four is the underlying agreement, that's the May 1, 1999 agreement that was approved by the City Council and if you'll notice on the last page, Mayor Perkowski signed it. That is the basis for most of the discussion today. My thesis to you today is that all of these agreements are invalid, because they were improperly approved. I would ask the board, three of you have been on the council, one of you Mr. Rodriguez is a current City Council member is to take notice that New Mexico Statutes provide that the municipality is a corporate body, it is a body politic and corporate and the representative of that body is the governing body, the elected officials the council and the Mayor. The powers to contract, to adopt ordinances and to encumber the city financially are regulated solely to the governing body. I want you to take notice of that fact it's important, if you don't want to take notice.

The reasons why I have this thesis to these agreements are invalid. While this board had every right and the duty to review this request, in this function it was a modification of an agreement, you acted solely or should have acted solely in an advisory capacity to tell the Council yes or no. I think you should have told the council no but you didn't. What I find curious, as well, was that the precedence involving the underlying agreements that these matters never went to council. If you look at number five there are two documents there, these are agreements one in 2012 and one in 2011, where the City of Carlsbad borrowed 500 acre feet of these 2300 acre feet of the city owned rights back from Mosaic. Because in 2010 if you recall, the city over pumped it rights, I thought it did, maybe it did maybe it didn't I don't know. We renewed that agreement in 2012 on the off chance that we might over pump the rights, but we didn't. The point is that these agreements which bore on the underlying agreement with IMC went to the council. I can't remember, I wasn't here for the 2011 but I think in 2012 we brought the agreement to the board. It was the governing body that had the authority to approve that agreement. Then on document number 6 this is a water lease agreement, lease becomes a particularly important term, in this particularly agreement if you will note was signed by Mr. McCutcheon, and I'm assuming that's his signature, because if it's not his signature than it brings up an entirely different set of issues that you will have to look at. We will assume it's his signature dated 8-17 of 16, that's a full 10 months before the June 15, 2017 meeting. This particular agreement involves 600 acre feet per annum of water rights for a term of five years renewal for an additional five years. The effective date is January 1, 2016. What's also curious about this agreement is the City is not a party to it. If you look at the heading the city is not listed as a party, later on the city's water rights are listed. Clerical error, I don't know. But, how the City Administrator would sign an agreement which the city was not a party, I'm unclear. I'm also unclear, I spent 15 years looking for statutory authority to find a way around the council which I found at times, no offense, annoying and I never could find that statutory authority to not take things to council. I don't know what authority Mr. McCutcheon signed this agreement and why it was not taken to the board for board approval. At which time I would have hoped someone would of read it and said wait a minute the city is not even a party to this agreement.

Number seven is Water Rights Lease Agreement which the city is noted as a party, this is the agreement that was included in the packet that went to this board on June 15 of 2017. Number 8 is another agreement. If you've seen these agreements, I'd like you to tell me because in the minutes there is no mention and these were not submitted in the packet. Again this was signed by the City Administrator in August of 17. Number nine was another Water Rights Agreement signed again in August of 17 the final agreement was signed August 22 of 2017. Both statutorily as previously determined the governing body approval is required to validate an agreement and these are modifications of an underlying agreement, which we will look at more specifically in a minute. But you also have in your packet a letter from the clerk reflecting that after the fact of a search there are no

council minutes that reference the governing body having considered these agreements. Each of these agreements contains a provision. I think primarily they are all under Section 7; they might be under different subsections under 7.

But they refer to Exhibit A which in some of the contracts also which in addition to the payment rates set out the points of diversion. You have in your packet a letter from the clerk that Exhibit A is not in the possession of the City of Carlsbad. Let me say at this point, we're all good people here; I'm not trying to pick a fight with anyone or Mosaic. I might be the bad guy here but nobody else is. But if I was Mosaic I wouldn't want you to see Exhibit A either, I wouldn't want you to see how much money I'm getting for the water. Those attachments, and there is another one in reference to the pumping agreement those also do not exist in city records. Because these agreements were not properly approved they are invalid. How much water has been pumped on them, I don't know. At least a couple of these have been protested. There have been two protested, I don't know who protested. I don't know the Water Rights; I was unable to acquire those records. Maria O'Brian filed the transferred documents, but at least a couple are sitting out there with a protest. I don't know if there has been an emergency pumping order entered by the State Engineer. The city has no pumping records.

I would like to talk about the underlying agreement. This particular matter that came before you on June 15, 2017, may be the most significant water issue that came before this board since 1999. Because it involves 2300 acre feet of city owned drinking water. The terms under the underlying agreement are clear and strict. It doesn't take a lot of interpretation to understand this document. This document was negotiated in good faith with Mr. Jim Wilcox, Ms. Riordan participated in that, Ms. O'Brien participated. As a matter of fact looking at this document which I haven't looked at in quite a while and I think Ms. Riordan might have even typed it. She always did a great job typing the agreements and this looks like one she actually did.

What you have before you in 2017 was essentially a request to change the purpose of use for 300 acre feet and change the points of diversion. The underlying agreement addresses how that's to be done. First is the purpose of use of the 300 acre feet was. Document number 4 section 6b which reads, "The City/LaHuerta Water Rights shall be used solely for the mining and production of potash by IMC at its Eddy and Lea mining locations and for any reclamation of those mines required by the state or federal government". Water under this agreement was not a saleable marketable commodity than of itself. It was a component of the process, to process potash. Probably when we negotiated this agreement we never contemplated that at some point of time that these 2300 acre feet would become a marketable commodity. Until such time as the city had full rights, to begin to pump and sell them.

What's the big deal about 2300 acre feet is that this constitutes about 20% of the total permissible consumptive use out of C76 so about 1/5. If you look at it in terms of diversion right it's about 18%. If you put a value of this water with the city selling 2300 acre feet of water in industrial rates. I asked Ms. Hammett to come up with some calculations on that. Ms. Hammett said it comes to about \$600,000. Jon responded, I think it might be a little more than that. I came out with a different figure, but that's a lot of money.

As you know water is a very marketable commodity in this basin. You as a water board are facing one of the biggest challenges a water board has ever faced. You have to protect the city's water against a lot of water that is going to be depleted out of this basin. It a lot of water but the sole use was for potash nothing else. Section C prohibited IMC from sublease, or transferring to any other

corporation, etc. etc. except from the written consent of the city. Which consent may be granted at the City's sole discretion but shall not be unreasonably withheld.

Now that means if you have a good reason than you can withhold that. You have a very good reason; you weren't presented at the meeting of June 15, 2017 with this underlying document so far as I can tell. There was no reference by staff. You had options to say no, there were no recommendations. This document also says how it's amended and that's by council, the parties in writing and it's fairly standard. It could be amended; it just had to be by the parties.

When IMC, Mosaic made the decision, I presume the city did not go to them. I'm sure the board or the City Administrator didn't go to Mosaic and say "hey, let's start selling these," Mosaic came to the city with these agreements, now we want to sell this water. At that point in time, I firmly believe that Mosaic invoked the provisions under section E4 of the agreement. Section E4 says IMC right to use the city's rights or a portion there of, shall terminate upon the earliest of any of the following events. Then you get to number 4 that reads, IMC, in its sole discretion, no longer requires the City/La Huerta Water Rights, or any portion thereof, for the uses permitted.

My thesis says that these agreements are not only invalid but that IMC/Mosaic by its actions has terminated its rights to use the water. The city now has full unrestricted, unconditional use of those waters. In addition to the fact, that the governing body has not approved these contracts and thus invalid. That actually puts an unfair burden on Mosaic. They could get caught up in this at some point in time, I suppose in a protest. They have contracts that are invalid because they weren't properly approved by the governing body. It's also not fair to the city that these were not referred to the governing body.

According to the time stamp it only took about 14 minutes to approved, whatever they approved. I think it's unclear according to the minutes what was actually approved other than the one agreement that was actually presented. I think you need to clean it up, and I have some recommendations to clean it up.

The first thing you will have to do to take action is, enter a motion to reconsider to rescind these agreements than make a motion to refer these to City Council with a do not pass recommendation. That would direct the city's outside water council to immediately withdraw the applications. Then move to declare your rights under section E4 that Mosaic has given up the rights.

I'll explain why you or the council needs to make this decision to approve the use of this water is the wrong decision. The city in 2012 and early 2013 largely on the insistence of Mayor Janway, the industrial rates were redefined for both Double Eagle and the City Municipal water. Those rates were substantially increased for two reasons. One which wasn't relevant that was to not unfairly compete with the private sector. The compelling reason to do it and is contained in Ordinance 2013-01 and Resolution 2012-67 which involved the Double Eagle.

When that Ordinance and Resolution was passed the city was in a serious drought position, that drought position has not gotten better. There was a need for the city to aggressively conserve water. By raising those rates, the purpose of which was to decrease the use of city owned water for industrial purposes is made clear in the preamble is a de facto public policy. I think you should have leaned on that public policy to say no we don't want to give our drinking water supplies away for industrial use. At the same time we're telling the citizens they can only water their yards three times a

week by Ordinance. That is the basis of why you should refer this to the council to say no. It's inconsistent with the Public Policy we created to give water away.

Water Rights in New Mexico are real property. They are transferred by deeds, they are property rights, and they are considered real property. The lease of real property triggers a review of Section 3-54-1. If the values of the property assets are greater than \$25,000 then you have to go by a series of Ordinances. Then the Ordinance doesn't become effective until a certain period of time, it's subject to a negative referendum. It requires an appraisal of the value of the real property, in this case the Water Rights. I think you can take notice that these agreements combined, but even individually that the value in excess of \$25,000. So should the city have considered section 3-54-1? In my opinion, Yes. I'm not your legal counsel, but I've dealt with 3-54-1 on any number of occasions and I don't think that was considered.

Another issue is there an anti-donation violation here. You're approving a massive change in the purpose of use of water from a component used to potash to now a marketable commodity that has significant value in this environment. I haven't come to a full resolution in my mind if I were sitting in Mr. Hernandez's place today. I would raise the issue; I would say it needs to look at further. Is there a violation of the anti-donation clause involved in the changing of the use of this water? Making it a marketable commodity and not getting anything of fair market value in return. It's an issue I would look at it, legal counsel could look at it. I appreciate your time; I think you need to do something. I gave you some ideas on how to resolve this. The fact is clear, certainly in my mind I hope in yours. That the process needs to be corrected to conform to contractual obligations of the underlying agreement as well as the statutory requirement is the council is the final arbitrator of any changes in a contract. I appreciate the opportunity to talk.

Fred Beard commented he was appointed to this council. I'm the lone member that represents the county. He has a soft place in his heart for potash. He spent 21 years in those mines himself. I worked up into the 1980 when people were laid off and moved around. IMC better known as Mosaic, something about this doesn't seem right to me. Potash built this town, Mosaic is trying to hold on through downturn in the market. Back to the contract under number 6A in which he sites 4E there's a clause in there under beneficial use as part of this contract. He mentioned C it says to change the purpose upon the written consent of the city. We did that in July of last year. We gave approval for that I was here all of those votes were unanimous vote. Consent may be granted at the city's sole discretion but may not be reasonably withheld. I would make the argument that Mosaic was looking for two things, was to maintain beneficial use and keep their cash flow to keep their operation going.

Fred said he doesn't see this going much farther, to take these five steps, he's basically asking us to go back and undo all of these contracts. Mosaic/IMC most of the mines have been a pretty good neighbor to the city. I don't see, no pun intended, to sell them down the river for 500 acre feet water right. One last point, not being a lawyer, Mr. Romero, Texas vs New Mexico where do we stand in regards to water at the state line. In 1999 we were making regular gains right now I don't know what it is now. I don't ever see there's going to ever be a call on that Pecos River for 500 acre feet of water.

Dave Romero stated he does not have the answer to that.

Fred stated Jon mentioned this is drinking water, he said it's not drinking water.

Jon Tully said yes they are drinking water supply. There's two points of diversion, He stated C76 is the city's drinking water supply. Under this contract the 2300 acre feet, the city was watching all the

dominoes fall; they were just waiting for things to fall into place. Once things fell into place, they applied to the state engineer to change those 2300 acre feet to an alternate point of diversion alternate purpose of use for municipal use. Those are drinking water supplies. They are part of the asset of drinking water supply the city owns. It's interesting to know after that application to transfer to an alternate point of diversion, purpose of use, it got protested by IMC. I immediately called Mr. Wilcox, why are they protesting what is allowed in the agreement. Mr. Wilcox said I don't know. He talked to Maria and that protest was gone. C76 contains the 2300 acre feet city owned water, that is drinking water.

Russell Hardy said in a conversation with Maria O'Brien she was not aware that the 600 acre feet that was mentioned in the letter signed in 16 was ever acted upon. She had a matrix of applications she had filed versus letters of agreement that were provided. She could not find those 600 acre feet. I don't believe since then we have answered that question. I'm not sure that the agreement was ever acted upon through her office or the state engineer. My point is I appreciate all this information Mr. Tully has provided and the detective work he has gone through. I don't think we have enough information to act upon the recommendations he asked at this time. Until we get all the facts and figures through Maria O'Brien I move that we table this discussion until we can meet with Maria. Find out what the legal ramifications are on the legal and then get an opposing view from our legal counsel with the city to get a recommendation going forward.

Councilor Rodriguez wanted to state for the record the business I work for has done business in the past with entities listed in these documents. I don't work for them I have worked with them. I just wanted to make known. Eileen Riordan, also as a point of clarification neither Mr. Hernandez nor Mr. Rodriguez can vote, they're non-voting members. So they would not be voting on this motion.

The motion was made by Russell Hardy to table this recommendation until further information from Maria O'Brien is obtained. What has been sent to state engineer and review Tully's request. and seconded by Fred Beard seconded the motion Clarification from legal counsel.

Craig Stephens clarified the motion was to look at all the documents Mr. Tully presented, to see if we can identify these water rights. Russell Hardy said and what has been submitted to the State Engineer's Office and what hasn't, what is our level of exposure, what have we done at this point.

Craig Stephens said the motion is to table the recommendation and look at all the issues, get some clarification from our legal counsel. Gary Perkowski asked who our legal counsel was. Craig said, Maria O'Brien. So that's the motion and a second. Gary asked who made the motion, Russ. Russell said the reason for the motion was when I requested some information from Maria O'Brien she wasn't sure that the 600 acre feet contract that was signed on August 16, 2017 had ever been in acted. She had not made applications to the State Engineer but than in her records there was another 250 acre feet that she had submitted an application to the State Engineer that we didn't have an agreement that matched up. So, until we get all those parts and pieces to match up, what's been done and what hasn't been done. I think we're kind of at a standstill.

The vote was as follows: Yes: Craig Stephens, Gary Perkowski, Russell Hardy, Fred Beard, Larry Henderson No: None Absent: None. The motion passed.

Paul Gill from Mosaic thanked the Board, Mayor Pro-tem, and City Staff for allowing them to make their statement. Paul Gill introduced himself as the General Manager of Mosaic Potash Mine, along with his leadership team at the site. Jim Johnson, Senior Manager of Operations; Scotty Goodalel,

Lead Engineer Managing Utilities and Water Rights. Mosaic and IMC have been part of the Carlsbad Community for close to 80 years. We have a strong history of being responsible citizens of this community. We share the communities' concerns, opportunities and challenges together. The agreement signed by IMC and the City in 1999 is a mutual beneficial agreement for both parties. The City has conveyed senior priority dates to IMC in exchange for 2300 acre feet per annum of IMC's La Huerta Water Rights. Mosaic is surprised by the concerns raised, as we believe we have followed this agreement. In regard to the Water Lease Agreements, we have been transparent with both the Water Board and the City. All these agreement applications were brought to and were approved by the Water Board and reviewed by legal counsel. I also want to make a point that as part of this agreement Mosaic has actually helped the city to put beneficial use which has resulted in permanent licensing of these water rights. We are surprised by these concerns and would like to understand and respond to these concerns. We do request a record of the summary of these concerns from the Water Board.

One thing, I want to share that Mosaic's long-term plan is to use full allocation of the 2300 acre feet per annum of this water under the contract with the City for potash, mining and production. We are willing to come back to the City and the Water Board and share our plans. We are a responsible cooperate citizen, we have many initiatives going on in our operations to reduce water usage and sustainability is also on top of our list. So, again thank you for allowing Mosaic this opportunity to comment.

Jon Tully responded Mosaic deserves to have a legally approved binding contract. If it is the pleasure of the council, do what you want, but it needs to be done properly, legally consistent with statue and consistent with any applicable City Ordinances. Mosaic deserves to go out and market their product, which they are allowed to do, with full knowledge they can. They need to be assured that there is no legal flaw in the process. This needs to be resolved; tabling this issue is how the city handles these issues. I would recommend you sit down with Mosaic and discuss the issues.

Craig Stephens said he agreed and he thinks everyone on the board and the City of Carlsbad, all want it done correctly. We want it done mutually beneficial and we will be looking at the questions raised.

Fred Beard said he agreed 90% with what Mr. Tully just said. To go back and fix some of this is good. What gives me heartburn is "effectuate the termination of its right to use such water rights pursuant to the provisions of paragraph 4 of this contract." .

Craig thanked everyone present. Mr. Hernandez added that Councilor Rodriguez is ex-officio and is not a voting member. He placed a vote, he actually seconded an item. He seconded the motion on tem #5 with Chisholm Energy so we need a revote.

The motion was made by Gary Perkowski and seconded by Larry Henderson to approve the extra string and on site monitoring by AMEC or another City representative to be on site and have access during the cementing was done. Russell asked and this is to approve to be taken to the Council. The vote was as follows: Yes: Craig Stephens, Russell Hardy, Gary Perkowski, Larry Henderson, Fred Beard No: None Absent: None. The motion passed.

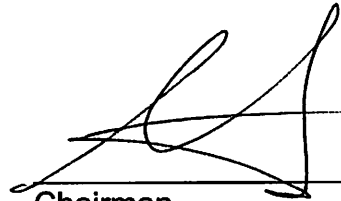
2:00:27 8. Utilities Department Monthly Reports and Project Updates presented by Ron Myers Russell Hardy made a motion to suspend the reports. Larry Henderson commented he wished they would utilize the water going into the river, maybe get it into the parks. Is there any way we can look at water funds, we need to look at ways to use that water. Craig Stephens said yes, we can look into that.

Craig said we have a motion to suspend the reports due to the time. Gary Perkowski seconded the motion. The vote was as follows: Yes: Gary Perkowski, Russell Hardy, Larry Henderson, Fred Beard, Craig Stephens No: None Absent: None. The motion passed.

9 Financial Reports for May 2018 presented by Wendy Hammett

2:01:39 10. Adjourn

The motion was made by Craig Stephens and seconded by Gary Perkowski to Adjourn. The vote was as follows, Yes: Craig Stephens, Gary Perkowski, Fred Beard, Larry Henderson, Russell Hardy No: None, Absent: None. The Motion passed.



Chairman