

MINUTES OF THE REGULAR MEETING OF THE BOARD OF WATER AND SEWER COMMISSIONERS SEPTEMBER 20, 2018, AT 8:30 A.M., IN THE PLANNING ROOM AT THE MUNICIPAL BUILDING, 101 N. HALAGUENO STREET, CARLSBAD, NM

VOTING MEMBERS PRESENT:	Craig Stephens Fred Beard Russell Hardy Larry Henderson Gary Perkowski	Chairman Member Member Member Member
VOTING MEMBERS ABSENT:		
EX-OFFICIO MEMBERS PRESENT:	Michael A. Hernandez Eddie Rodriguez	Ex-Officio/City Administrator/ Secretary Ex-Officio/Mayor Pro-Tem/ Member
EX-OFFICIO MEMBERS ABSENT:	Mayor Dale Janway	Ex-Officio/Member
OTHERS PRESENT:	John Lowe Eileen Riordan Ron Myers Wes Nichols Lavelta Jenkins Richard Aguilar Olga Ramirez Coby Crouch Lynn Stafford Jerry Stafford George Blakely Jon Tully Tony Burton Jim Johnson Dennis Williams Rick Salness Kurt Hood Ray Westfall John Brazeal Scott Goodale	Deputy City Administrator City Attorney Utilities Director Deputy Director of Utilities Assistant City Treasurer Environmental Superintendent Assistant to City Administrator Citizen Citizen Citizen Citizen Citizen Citizen Mosaic Citizen WIPP Citizen Citizen Citizen Mosaic

0:00:01 1. Call to Order

Craig Stephens called the meeting to order.

0:00:03 2. Roll Call and Determination of Quorum

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

0:00:26 3. Statement regarding Closed Session held on August 16, 2018, pursuant to Section 10-15-1 (7) and (8) NMSA 1978, Threatened or Pending Litigation and the Purchase, Disposal or Acquisition of Water Rights

Craig Stephens read the statement: Pursuant to Section 10-15-1 (7) and (8) NMSA 1978 of the Open Meetings Act, the closed session was to discuss threatened or pending litigation and the purchase, disposal or acquisition of Water Rights no action was taken. The motion was made by Larry Henderson and seconded by Fred Beard to reconvene into open session. The vote was as follows, Yes: C. Stephens, R. Hardy, F. Beard, L. Henderson No: None Absent None Abstain: G. Perkowski. The Motion Passed

0:01:18 4. Approval of Agenda

The motion was made by Gary Perkowski and seconded by Larry Henderson to Approve the Agenda. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, G. Perkowski No: None Absent: None. The Motion passed

0:01:49 5. Approval of Minutes of the Board of Water and Sewer Commissioners Regular Meeting held August 16, 2018

The motion was made by Larry Henderson and seconded by Fred Beard to Approve the Minutes of the Regular Board of Water and Sewer Commissioners Meeting held on August 16, 2018. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, No: None, Absent: None Abstain: G. Perkowski. The Motion passed

0:02:10 6. Consider Approval of Request from Coby Crouch for Water Service Outside City Limits for property located at 603 Sandstone

Coby Crouch said he and Trey Hughes purchased two lots and want to build a house on each of those lots. He said his address is the 605 and Trey's is the 603 address. He is representing both himself and Trey.

Gary Perkowski stated this is outside the city limits. Gary commented that the board is going to have to look more closely at these requests, the city is in need of housing and they want to build houses instead of man camps. Russell Hardy asked Ron to indicate where the city water ends. Russell asked how much trouble it would be to annex this area. Mike Hernandez said there are some property owners in that area that own a lot of land that are not interested in annexing.

Fred Beard asked where the La Huerta property begins and ends. Russell Hardy asked Coby if they were also asking for sewer, Coby Crouch responded no they will have a septic.

Mike Hernandez stated to the Board that in that area there are about three or four meters already in place those people have come before the board and they were granted permission to receive city water.

Eileen Riordan stated they do have some agreements, but they did come to the Water Board under the policy the Water Board adopted about water service or residential service outside the city limits. Those policies are attached to the packet. She reminded the board that the water source is not transferrable if the property is sold, whomever purchases the property will have to come back before the Water Board to get those services approved.

Jon Tully told the board that policy goes back into the 90's. Russell Hardy said so this request is similar to what's in the policy. Eileen Riordan stated yes it's pursuant to the Resolutions that were

adopted and for residential use outside the city limits. Gary Perkowski asked so they need to come to Water Board first. Ron Myers said yes they are supposed to.

Craig Stephens asked Coby Crouch if he was familiar with the terms and agreed to the terms, Coby Crouch stated he was. Eileen Riordan mentioned that if there were a water shortage the City could cut the service off to those outside the city limits and it is limited to residential or domestic purposes.

Fred Beard mentioned that at one point this is going to end up on BLM property. He state at one point they are going to want to add sewer and then they are going to have to figure a way to annex into the City.

Gary Perkowski asked if Trey Hughes would be living there, Coby Crouch said he would not be living there, he would be renting it. Russell Hardy said it would still be a single resident property.

The motion was made by Fred Beard to approve the water service outside City limits for the properties located at 603 and 605 Sandstone and seconded by Larry Henderson. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, G. Perkowski No: None Absent: None. The Motion passed

7. Consider Approval of Request from Trey Hughes for Water Service Outside City Limits for property located at 605 Sandstone

This item was a joint discussion with item number 6.

0:16:05 8. Consider Approval of Request from Dennis Williams for Water Service Outside City Limits for property located at 1517 Standpipe Road

Dennis Williams stated he is wanting to build an RV Park at 1517 Standpipe Road, has about three acres of land set aside for that project. There will be about 30 RV spaces; he said the property is located between Colfax and Union off of Standpipe. Currently he does not have city water he has a well but there is a city line where they are rebuilding the street. There are city water taps there. Craig Stephens asked if he would be connecting his house to city water, Dennis Williams stated at the present time he does not intend to..

Gary Perkowski asked how long he has been in his resident. Dennis Williams said about 30 years. Gary Perkowski asked why he hasn't requested to be annexed into the City, Dennis Williams responded his neighbors do not want to annex in and when he purchased the property he liked the rural area.

Craig Stephens asked if this qualifies as a residential. Eileen Riordan read the policy to the board. Gary Perkowski asked if there was a charge for connecting, since all those residents had to pay to install the line. Eileen Riordan said they do charge \$2500 an acre. Ron Myers verified he would have to pay for the tap; it is a one-inch tap.

Gary Perkowski spoke about the Colonias Grant that paid to have that line put in, and people had to pay their portion. Those people who choose not to do it at that time were supposed to pay if they wanted to do it later.

Jon Tully said Gary Perkowski was correct. He said the Colonias Grant was for low to moderate income. In the end not that many people qualified, it did pay for the assessment. He told the board there were people who paid for the assessment but did not want a tap.

Russell Hardy asked about the RV Park outside the City limits that were approved a few months, what were the terms of that one. He asked if anyone remembered the specifics. Eileen Riordan stated they never came back with a contract.

Gary Perkowski asked the type of RV Park he would be putting in. Dennis Williams responded it's similar to the one already built on Standpipe. He has already minimized the distant between them. He wants to put grass and some trees. He has already gone to the County for all the paperwork.

Mike Hernandez asked if he has already gotten approval from the County. Dennis Williams said yes, tentatively the paperwork is all in place.

Craig Stephens asked what the plan is when the Oil & Gas boom leaves. Dennis Williams stated he has an exit plan; eventually the housing situation will catch up. That land can be replotted and build maybe two or three homes. Craig Stephens asked so you don't plan on keeping it an RV park. Dennis Williams said he quite possible could, turn it into something like the one at Brantley damn and reach out to the "snow birds". Craig Stephens asked if he has gone to the EID, Dennis Williams said yes he has. Gary Perkowski asked if this could be annexed. Ron Myers said he has property owners between them.

Craig Stephens stated to the board when this Ordinance was adopted to furnish water outside the city limits there wasn't any indication that they would be doing RV Parks outside the city limits.

Mike Hernandez told the board there is a 30-33 inch transmission line, it's been there for many years but the city won't let anyone tap off of that. It's for transmission only. Ron Myers said with the Standpipe construction they installed a 10 inch water line, so water is available to this property.

Craig Stephens asked if he wanted anything larger than a one-inch meter. Dennis Williams stated not at this current time. Mike Hernandez asked if he had a layout. Dennis Williams said only a preliminary drawing.

Councilor Rodriguez asked if Ron Myers if he could point out the annexation further south. Councilor Rodriguez explained the county is there in the middle and all city property is below and above.

Larry Henderson said it's premature to make a decision on this RV Park. The motion was made by Larry Henderson to table the request.

Fred Beard asked if he has spoken to the neighbors about Annexing into the City. Dennis Williams said he has lived there for 30 years; the idea was it would be a rural area. He intended to have a mini farm, mini ranch and buy more acreage. But now there are RV Parks and man camps. All he wants to do is do things right. He doesn't think his neighbors are willing to annex. He's just trying to provide a solution to the growth of Carlsbad. He stated it's estimated that Carlsbad will have close to a population of 200,000 by the end of 2019. He's just trying to do the right thing, and help the situation.

Craig Stephens asked him if he plans on selling the RV Park when he sells his house. Dennis Williams said no, these will stay separate.

Gary Perkowski said the problem with the tap being tapped into the water line is that people paid for it years ago. Mike Hernandez responded it's a new line, it's not the same one.

Due to lack of a second the motion failed. Russell Hardy stated with the new information about it being a new line, a one-inch tap and meeting all the requirements. Russell motioned to approve the Water Service outside the City Limits for the property located at 1517 Standpipe Road Gary Perkowski seconded the motion. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, G. Perkowski No: None Absent: None. The Motion Passed.

0:45:31 9. Consider Approval of Request from George Blakely for Water Service Outside City Limits for property located at 2007 Connie Road

George Blakely stated he has a 1.75 acre property; he wants to put 17 RV spaces and build him a Residence in the future. Russell Hardy asked how far out Connie Road was. George Blakely said it is off 62/180 east of town. Mike Hernandez mentioned to the Board that part of Connie Road is in City limits.

Mr. Stafford stated he and his brother have property on Connie Road. He told the board his fiancé came in front of the board some years ago to request Water for outside the City limits. They annexed one acre, Mr. Stafford stated and another neighbor annexed one acre in and there property was grandfathered in. He stated that neighbors have come before the board to get annexed into the city and were told the fire hydrants were not up to code. He told the board people are building more houses, man camps, RV camps the properties aren't even legal to be able to get insurance, because there aren't enough fire hydrants.

Ms. Stafford showed the board members on the map the location of the properties they were discussing. She showed the board which houses were tapped into city water. Mr. Stafford said that location she is talking about sits outside the city limits and there are about five houses on one acre that are tapped into city water. She stated the property she purchased had one acre annexed into the City and the property next to it, her parents' annexed one acre. There is also a business there, all three trailers are in that acre and they are getting city water. Mike Hernandez stated that property wasn't annexed in. She stated there are several properties that are getting city water off of somebody else.

Craig Stephens asked if so they are getting it off a city meter that's not on their property. Ms. Stafford stated they are getting water from a neighbor that has been living there a while; he could probably explain it better. Ron Myers said the city is in the process of doing an audit in that area. Russell Hardy said so the assumption is, he is getting city water and selling it? Eileen Riordan stated and if that is pursuant to one of these agreements he is in violation and that is grounds for immediate shut off.

Mike Hernandez stated there are four meters in that area. The Water board approved one a few years back for the Gas Company to run an office. Mr. Stafford said they have four offices buildings hooked up in that one acre lot.

Gary Perkowski asked how much acres each of them had. Mr. Stafford described each property owner and how much acreage they each had. Gary Perkowski stated you have more acreage you can annex.

Mr. Stafford said his property is the last property and he is concerned how is he going to get city water, no one in front of his property wants to annex in.

Gary Perkowski asked if they knew how many people were on one line. Ron Myers said that is what they are trying to determine. Mr. Stafford said on one meter he knows there are three. Craig Stephens asked how much they were paying for their water. Mr. Stafford stated they aren't, he just lets them have it.

Fred Beard said if you have 15 acres and they have 10 acres you can force your neighbors to annex. So, that leaves the question who will pay for the water line.

Gary Perkowski said the board needs to wait until the City Audit is complete. Mike Hernandez said they could bring that information back to the next board meeting.

The motion was made by Fred Beard seconded by Russell Hardy to table this item until the next Board Meeting with the City Audit to be finalized and sent to the Board Members for review prior to the meeting and to not cut off anybody. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, G. Perkowski No: None Absent: None. The Motion passed.

Craig Stephens asked if Eileen Riordan could take a look at the Ordinance/Resolution, it probably needs to be changed; it's not up to date. Eileen Riordan said she could sit down with the board to get some guidance on what they want updated.

1:16:57 10. Discussion and Consider Approval of Board Recommendations regarding Water Rights with Mosaic including Current and Future Contracts

Russell Hardy stated at the July 19, 2018 Water Board meeting this discussion was tabled until further information was received. The motion was made by Russell Hardy to bring it back to the table for discussion and seconded by Larry Henderson. The vote was as follows, Yes: C. Stephens, F. Beard, L. Henderson, R. Hardy, G. Perkowski No: None Absent: None. The Motion passed.

Russell Hardy said out of the seven agreements only one of those are still in effect. The others have either expired and one was never acted upon. The board can't do anything with those that have expired, just with the one that is still in existence.

Mike Hernandez said there is one for 75 acre feet that expires at the end of this year. Mosaic representatives have reported that it is done, it's fully consumed. He said so it expires at the end of this year but they have consumed everything so it's basically done.

Craig Stephens asked so the other one expires at the end of 2019. Mike Hernandez said that is correct and that's for 200 acre feet. Jim Johnson from Mosaic stated that is correct. The agreement that expires at the end of this year is fully consumed. There is another agreement for 200 acre feet that will expire in 2019.

Larry Henderson asked how much of that has been consumed. Scott Goodale responded it's a three year agreement with 200 acre feet per year. The first 400 are consumed.

Jon Tully stated when looking at both what is active and expired you have to look at both the contracts and the applications or permits. He stated the records he has show there are five that are still active. One will expire by contract in 21' and one will expired at the end of last year. But there

are applications that run through 22' and 21'. The water might have been expended out of there but the authorizations the city allowed may have extended past.

Craig Stephens said so contracts have expired and the board would have to renegotiate a new contract. Whether the permits have expired or not? Jon Tully stated you have one contract that never came before this board that was for five years that was signed by the previous city administrator in 2016.

Russell Hardy asked is that the one that was not sent to the state engineer's office. Jon Tully said it was and it wasn't, that contract was never brought to the board. However, on August 24, just this last month, Mosaic filed two applications to which were attached to that 2016 agreement. He stated he brought that up to Ms. O'Briens' attention, because the applications clearly indicate its city water they were talking about, except the City was not an applicant. The city is required to be an applicant on the application.

Scott Goodale wanted to clarify to the board there is a lease which is a contractual obligation between two parties and then there is the permit or the application to the OSC, it's called a lease act. The terms of the lease act are documented and have been discussed. So unless it's documented with the OSC no one is allowed to pump, so you can have a 10 year lease but the transfer can only be held and in a separate well or point of diversion of what's documented on the permit.

Russell Hardy replied so once that water is pumped that's it, it's done no matter what the end date of that contract is. Scott Goodale stated that was correct. Jim Johnson said unless you go back to the OSC and file a new permit. Jim Johnson stated in clarification the contract Mr. Tully is referring to, they are cleaning that up; they will actually be terminating it. It's the lease agreement that is between the two parties, not the permit applications. The permit applications that were inadvertently tied to that lease agreement were the Mosaic Water leases.

Jon Tully spoke about the invalidity of the contracts not having been approved by the City Council. Which puts the city in violation through act 3-54-1, he would be doing a record request on the appraisals for those leases, and he said he suspects they don't exist. He stated in his opinion, a significant anti-donation violation has occurred.

Scott Goodale mentioned one of the things that did come up between the lease versus the contract was they were obligated to prove beneficial use so that the water rights were permanently owned by the city. He stated you can transfer water but you have to go back and over the course of 40 years you have to develop them and prove that they can be put to beneficial use. He said that was their obligation to the city as part of this 2300 acre feet transition. He stated Mosaic did perform that, it was done in 2017 to prove that those water rights are being put to beneficial use. OSC has licensed them to the City and now they cannot be retracted in any way.

Jon Tully agreed that under that 98-99 agreement Mosaic is required to put those Water Rights to beneficial use. However, subsequently they filed a change in ownership in 2000 and that was acknowledged by the State Engineer. He said the 2300 acre feet has been transferred to city wellfield at least as an alternative for a point of diversion, place of use and purpose of use. However that 2300 acre feet is wrapped up in the cities 40-year plan. He said he doesn't know when that plan was last updated, but it needs to be updated on an annual basis. He said what he has seen in the files of the State of Engineers is there is no question that the 2300 acre feet are truly owned by the City of Carlsbad.

Craig Stephens said there is a question of whether the city has to put it to beneficial use if there is a 40 water plan. Scott Goodale said yes, but you have four years to do that. You can use it or lose it. Craig Stephens asked when the last time the 40-year plan was updated. Mike Hernandez said he would have to take a look at it.

Russell Hardy said due to the possibility of an anti-donation issue, he recommends the board send this issue to City Council to look at this remaining agreement that has 200 acre feet. To study that issue and see what they come up with. Craig Stephens asked if he wanted to include the legality of the contracts that have expired. Gary Perkowski said he believes the contracts are not valid. Russell Hardy said he didn't think they can go back and renegotiate an expired contract. Gary Perkowski said if there's an anti-donation issue we may have to.

Craig Stephens asked if they wanted the City Council to look at if they want to do 2300 acre feet from now on or do 1300 acre feet or put 1000 into the wellfield. Maybe, look at the applicability of 2300 acre feet. Fred Beard thinks legal council is going to have to decide.

Russell Hardy made the motion to forward this to the City Council with a recommendation to review the information of what has occurred what is still currently in existence and if an anti-donation exist and how they choose to resolve it and whether or not the contracts are valid. L. Henderson seconded the motion. The vote was as follows; Yes: C. Stephens, R. Hardy, G. Perkowski, F. Beard, L. Henderson No: None Absent: None. The motion passed.

1:33:35 11. Utilities Department Monthly Reports and Project Updates presented by Ron Myers

Ron Myers reported there was a correction on the reports for Double Eagle. On the report it states pumped 10.94 it should actually read 43.72. Those reports have been corrected. Ron Myers reported Waste Water Treatment Plant continues to do very well for the septic revenue. It's up \$11,000 last month, which helps the Water & Sewer fund.

Larry Henderson stated to the board he had a concern from Larry Sells. Larry Sells had an understanding that water being sold from Septic would directly go back to trying to get water under the river to the parks. The city did review that, and it was not specifically identified in the contract. Mr. Myers said that's for the effluent sales.

Russell Hardy asked if Ron had an update on the electrical on Well 9. Ron Myers reported they are hoping to have it back on line in late October or early November. They are still waiting on the delivery of all the electrical components. Mike Hernandez mentioned that is the only well with a generator. Ron Myers said they didn't have one power outage this summer. He said they may want to consider for the long term is to equip some of the other wells with a generator.

Mike Hernandez asked how this year's pumping through August versus 2011 when we went over, we are in good standing. Ron Myers said we are a couple thousand acre feet below where we were. He said we are well within our Water Rights this year.

1:38:34 12. Financial Reports for July 2018 presented by Wendy Hammett

Lavelta Jenkins reported on the financials. Ms. Jenkins reported everything is favorable to budget going one month into the New Year. The Revenues are favorable to the Budget. Labor is favorable to the budget, Operations and Capital are both favorable to the budget. The rate increases will be in October, the increase will be about 3.73%.

Ron Myers reminded the board the Double Eagle Phase III is probably going to be around or than 10 million. Mike Hernandez said Double Eagle Phase III will be going to Council for approval to get sealed bids. Hopefully construction will begin in February.

Larry Henderson asked how many Double Eagle Wells are down. Ron Myers reported right now there is one, hoping to have it back on line with in the next month. Gary Perkowski asked if the Tatem Wells have been pumped for a long period of time to see if they are going to work. Ron Myers stated no. Mike Hernandez said we do have the budget to equip them this year.

1:45:58 13. Adjourn

The motion was made by G.Perkowski and seconded by R.Hardy to adjourn. The vote was as follows, Yes: C.Stephens, R.Hardy, F.Beard, L.Henderson, G.Perkowski No: None, Absent: None
The Motion passed.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Chairman