



BUCKLEY CITY COUNCIL MEETING AGENDA
October 27, 2009
Multi-Purpose Center, 811 Main Street
City Council Meeting
Opening 7:00 P.M.

Call to Order
Pledge of Allegiance
Roll Call of Council Members

Next Ordinance #12-09
Next Resolution #09-18
Next Agenda Bill #AB09-95

Special Presentations to Council

Spiketown Ditch Concerns

Committee Reports

1. Admin & Finance
2. Public Safety
3. Building & Zoning
4. Utilities
5. Streets, Sidewalks & Storm Drains
6. Parks & Rec & Cemetery
7. Community Services
8. Mayor's Report:
9. Staff Reports:

Ramsey
Barrett
Twardoski
McNally
Patson
Montgomery
Reed
Johnson

Citizen Participation

Time Limit of Five Minutes (Must sign up at City Hall by Wednesday prior to the Council Meeting)

10. Wheels to Meals: Ride through Buckley June 6, 2010

Main Agenda

11. City to PSE Quit Claim Deeds for BLA Properties
12. Easements to PSE for Utilities
13. **Executive Session: Potential Litigation – Spiketown Ditch**

Consent Agenda

14. A. Approve Minutes of October 13, 2009
- B. Claims

Council may add and take action on other items not listed on this agenda

City Council
October 27, 2009

Mayor Johnson called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Boyle Barrett, McNally, Montgomery, Patson, Ramsey, Reed and Twardoski. Also in attendance was City Administrator David Schmidt.

Mayor Johnson stated there are two changes to the agenda tonight. Chad McCorkle is here to give a report from the Planning Commission which will be right after Community Services and Agenda Item #11, and the City to PSE Quit Claim Deeds will be pulled from tonight's Agenda because this has to be a Resolution.

Special Presentation to Council regarding Spiketon Ditch Concerns:

Ron & Diana Froemke, 724 Klink Street, Buckley. They are here again about their concerns with Spiketon Ditch. Their main concern is that water should not be running through it. The City was supposed to be metering the water; if that were happening there would be no flow. The reason they have concerns about the flow through their property is because there is no easement which means the water is trespassing their property. This is showing the City does not have a lot of concerns for the citizens. They were not told about it in a timely manner; they were not told at all by the City themselves personally. One thing they are concerned about is if the water is flowing there has been talk about it being called a fish bearing stream if the water is going through it and that does affect all the property owners on Spiketon Ditch because that makes the land less valuable. Flooding is also a concern; anytime water is running through your property flooding can happen and does. One thing they have a question about is who has forced the hand of the City to have this come back through the ditch after it has been turned off for two years. Was it the Tribe? Was it the Department of Ecology? They haven't been able to find those answers. They are concerned about the salmon population as well. They are not here to say that is not important, but the citizens' rights are also important.

Angela Toman, 834 Sheets Road, Buckley. She is also a part of the lawsuit against the City for trespassing the water onto their property. They also don't have an easement going through their property for this. They have done a lot of research requesting documents to try and find out how we got to this point. Historically there was water that went through the property and then it stopped. There was a SEPA done in 2005 to convert the water; they would like to have some history from DOE that said the City was taking too much water. She believes there was litigation for violation of taking too much water which in itself would be affecting the Tribe. Even though it came back through what is known as Spiketon Ditch, it was still being polluted and the water temperature was changing; there were a lot of issues with that going through which she believes the Tribes and DOE and the City have been working on for several years. It has been a

problem with the residents, some that do have easements and some that don't, and they get a lot of flooding, a lot of silt and a lot of damage done to the properties because of it. As far as their two properties, because they don't have an easement they have been fighting this through "Friends of Spiketon" and the City Council and the City in several different ways as far as the damage and the problems it is causing to their property for doing this. They are here to say they understand the City's position, DOE's position and Fish and Wildlife to the fact that the fish need the water, the water doesn't need to be drafted and the City needs the drinking water. They know there are other ways of doing it. They don't understand how it got to this point without any notification. They had about a 48-hour notification that the City would be diverting water; according to a 2005 SEPA that would no longer go through anyone's property, back through and within 15 minutes of getting that she went to City Administrator and let him know that they don't have an easement, they can't do it and it is not prepared and will cause damage to the properties. They were ignored and told that they understood the property owners had a problem with this but the water would be turned on at 5:00 on Monday. Three weeks before this they had personally requested a permit they received two years before to maintain ditches on their property. This was done with no regard to the City residents. They are really disappointed in how the City took care of this. They would love to have some history and know why and if they had a choice what were the options. They would love to be part of the solution in this but this is not the solution. You cannot trespass water onto private properties, you don't own it and it is damaging their properties. They have been told that 300-400 gallons per minute will come through their property and it is more than double that. She received an e-mail from the Mayor saying they understand the situation and if the water turns back on there could be buffers, you will lose land. They are not okay with that. They want the water to stay in So. Prairie Creek, that belongs in So. Prairie Creek, and they want the City to take responsibility for the amount of water they are supposed to be taking per DOE. They need to meter the water, take what they need and if there is a flush situation for the operation of the water for the City, then it needs to be flushed down Levesque which the City has a SEPA that is authorized to do.

Jeff Marti, Department of Ecology Water Resources Program, 300 Desmond Drive, Lacey WA 98503. He knows this is an important issue to the folks that live along the Spiketon Ditch and to the Puyallup Tribe and is also very important to them. He understands the Council would like an explanation of why Ecology thinks it is important to have the over flow water discharged to Spiketon Ditch. The best way to put it is they are not as interested in having water in Spiketon Ditch as they are in having it in So. Prairie Creek. Spiketon Ditch happens to be the most practical way of getting water to the creek for the time being. In the long term they think the best way of getting water to So. Prairie Creek is to leave it there to begin with. There is progress being made on that front by the City with more work to do. In 2004 the City and DOE entered into a legal settlement arising out of an appeal by the City of a DOE water right decision. As part of that agreement Ecology and the City agreed that Ecology would expedite the process provided the City undertook certain actions to reduce the amount of water it diverted

from So. Prairie Creek. As mentioned, the City has made significant progress on that front. They have made significant investments in terms of measuring the water, reducing leaks and improving the efficiency and liability of the system. Where they think work remains to be done is with the City's ability to control the amount of water it diverts from So. Prairie Creek. The City takes more water than it needs to supply its customers. This is because the diversion works are not built to modern standards. As contemplated by the settlement agreement, the City installed a flow control valve on the pipeline just before the water enters the filtration plant. The goal was to reduce the quantity of water to that volume that the City needed for beneficial purposes. Unfortunately, initial testing of the valve resulted in pressure spikes, leaks and significant repair costs by the City. It is Ecology's view however that the City must continue to explore engineering options for reducing the need to discharge overflow water. In past years the City had been discharging overflow water to the Levesque Road ditch in order to eliminate any contribution of flooding along Spiketon Ditch. In the summer of 2008, Ecology was contacted by the Puyallup Tribe, which expressed strong concern that water was no longer being discharged to Spiketon. The Tribe has treaty rights to resources in the Puyallup Basin which are affected by the removal of water from So. Prairie Creek. The DOE takes those rights very seriously. Even if those rights did not exist, the City should understand this practice needs to be corrected. The waste of water is not something which is favored under the water code and doing so exposes the City to the risk of compliance action. The City should understand under the State Water Code that it is the duty of all water right holders to maintain diversion works that allow for the control and regulation of the amount of water diverted. It is the policy of the State to retain sufficient water in our rivers and streams to provide for the protection of preservation of values like fish and wildlife habitat, recreation, aesthetics and water quality. Last spring we brought the Tribe, the City and the Department of Fish and Wildlife together to explore options for restoring the overflow water back to Spiketon Ditch. Out of those discussions, the following areas of agreement emerged. The City would switch the discharged overflow water back to Spiketon Ditch by June 15, 2009 and keep doing so until November 15, 2009. Also, the City and the Department of Fish and Wildlife need to work through permitting to allow the City to perform ditch maintenance. All parties need to participate in discussions to reach a permanent understanding with respect to the management and classification of Spiketon Ditch. Also, the City would undertake an evaluation to see whether less water could be diverted while maintaining system reliability. Potentially the City might take an evaluation of whether we could have an additional pressure relief valve where the pipeline crosses Page Creek. First we want to get a report from the City as to how effective the reduction of the intake amount has been. It is his understanding that the City has received notice from attorneys representing certain property owners alleging trespass by the City as a result of overflow water flowing through their property. One of the options under consideration if he has heard correctly is to permanently switch the discharge of overflow water back to Levesque Road Ditch in order to avoid the expense associated with defending itself against these legal claims. He appreciates the difficult situation the City finds itself in but ultimately much of the solution resides with the City itself. By failing to operate and maintain a diversion system that allows the City

to manage the quantity of water it diverts, the water overflow at the filtration plant has to occur which leads to the unhappy outcomes in either ditch. They urge the City to take responsibility to mitigate the impacts of its excess diversion on all affected parties while it pursues long term solutions. By all affected properties, he includes the property owners; anything that can be done to reduce the impact on them while they are working towards the longer goal, he thinks this is something the City has the responsibility to take the leadership on. The Department of Ecology looks forward to working with the City to address these challenges.

Bill Sullivan, Director of Natural Resources and Environmental Programs for the Puyallup Tribe, 2009 Portland Ave., Tacoma WA 98404. He feels Jeff did a good job in discussing the history of the project. From the Tribe's perspective, when they received the SEPA document for the reconstruction of the pressure valve and the associated work, the assumption in that SEPA document was this was a very quick turn around of a fix. The Tribe became more involved as things began to linger. The Tribe's real concern is that we have an adult return of five species of salmon that find their way through So. Prairie Creek. On top of which they are expecting a return of pink salmon in the neighborhood of about 900,000 fish. As of last week, their stream survey showed there are approximately one million pinks in So. Prairie Creek. The Tribe's concern is due to the hot weather and the So. Prairie Creek is on the 303D list for Ecology for impaired waters, and a grave concern to the Tribe was temperature. Once the temperature reaches a certain height, it becomes a migration barrier and the fish will not move. Their interpretation of the history of Spiketon Ditch isn't as clear, but it seems like it has been used for numerous years as an overflow for the water treatment plant and because of that the lower section of Spiketon Creek is fish-bearing. In order to get a permit, you need to get a hydraulic permit from WDFW (Washington Department of Fish and Wildlife), who was also at that meeting with us, and that establishes what mitigation or what would have to happen in order to do anything else with the water. Another concern of the Tribe is if you take water from So. Prairie Creek and put it to Levesque to the White River that is an interbasin transfer in which you are now compromising the flow in So. Prairie Creek, although you are augmenting flow to the White River which in this case doesn't need it. The long and the short of the discussion with everyone was how can we at least in this temporary period allow the City to get through it's construction and evaluation and figure out how to operate their water treatment plant. At the same time they had concern for the neighbors because of the flooding issue. The compromise at that time was in order to maintain the integrity of the temperature and flows from Spiketon into So. Prairie to aid the adult return of salmon, the Tribe was willing to not pursue any legal action. But, in the interim between June 15th and November 15th to allow the flow to go down Spiketon and then stop it after November 15th until the end of March, which is the high water flooding time. They were trying to alleviate the concern of those people who are impacted by the potential of flooding in Spiketon during that period. As Jeff pointed out, we know this is temporary. Where the Tribe is coming from is for the protection of salmon habitat and the improvement of water quality to So. Prairie Creek, and in the meantime still trying to resolve the City's issue of how to make this water system work.

Council member McNally asked Mr. Marti if the Council was informed that DOE came to the Council in February or to the City that in February the Puyallup Tribe had a concern about fish. He found a letter dated January 7, 2009 from the City Administrator to DOE and it stated “addressed the concerns brought to Ecology’s attention regarding the fate of overflow from the water treatment plant.” He is under the impression that this has been going on longer than just in February, and Mr. Marti stated that it started in the summer of 2008. Mr. Marti stated his recollection is when the Tribe first contacted them about the overflow going down Levesque Road Ditch instead of Spiketon was late in the summer of 2008, so it was certainly before February. The gears of government can move slowly. It did lead to Ecology talking about the issue, talking with the City Administrator, and ultimately they had a meeting last May which is where they came to the agreement to have flows going down Spiketon Ditch the June through November period, and also the City would pursue other actions to reduce the amount of water that it takes to begin with. Council member McNally stated he also has a letter dated June 18, 2009 by DOE and it states “the Department of Ecology supports the City of Buckley’s actions.” Could this be explained as to whether it is the Tribe or the City that is responsible, or Fish and Wildlife? Mr. Marti stated basically when they were moving towards putting water back down Spiketon Ditch they were aware there may be some concerns expressed by the public and offered to Administrator Schmidt that if he needed a letter of support from Ecology that they would be glad to put one together for him and that is the letter in support of putting water back into Spiketon Ditch.

Council member Montgomery asked the Department of Ecology as well as the Tribe what their positions are on Spiketon Ditch classification. Is it a ditch or a fish bearing stream? This has been the source of frustration for a lot of people. Mr. Marti stated Ecology is not the agency that classifies ditches, that would be the Department of Fish and Wildlife, and they did agree last spring that is something that all parties need to resolve. Mr. Sullivan stated over the years the Tribe surveys every square inch from the Puyallup River all the way up to Mt. Rainier. The history of the over flow of Spiketon, at least from Page Creek down, and according to Don Nauer from WDFW, is that there has been spawning in lower Spiketon Ditch based on the flow and based on it’s proximity to So. Prairie Creek. In order to do work in Spiketon Ditch it requires a hydraulic permit that allows you do to certain work. The Tribe has no authority to designate, but because of the presence of salmon and reds, it is a salmon-bearing stream. As part of the settlement that was talked about, he has received in the last month the hydraulics permit to allow work in Spiketon Ditch to do some removal of obstructions and some trunks of trees or stumps. Under the HPA that has been issued, it allows this type of work and in his mind he thought that it could be started immediately. This may also help at least in this interim time to move water at the moments where you need it the most.

Council member Patson asked the representative from the Tribe what exactly are reds. Mr. Sullivan stated reds are where the adult salmon come in and make a spot in the gravel and that is where they deposit their eggs. Council member Patson asked has a document been issued that supports this? Mr. Sullivan stated whatever the State has as far as

classification of streams and stream types, and based on the presence of salmon and the history of Spiketon Ditch, he believes Don Nauer is the person that would be best to inform you because it is State water not Tribal water.

Council member Ramsey asked homeowner Froemke if they said they did not agree with how much water is going through the ditch right now. Mrs. Froemke stated right now there is more than there has been even in the wetter times of the year. There is more flow coming through now that there was even last month. Council member Ramsey asked even with the turning of the valve. Mrs. Froemke stated yes. Mr. Marti stated the agreement was that over the summer the City and its engineer would pursue this test where they would experiment with the valve by gradually turning the valve back two times a week. This apparently has been happening; he spoke with Administrator Schmidt several weeks ago. There are some initial observations back where the amount of overflow was down to 200 gallons per minute. Administrator Schmidt stated it has actually been between 225-250 gallons per minute reduction.

Council member Reed asked if it is his understanding that based on the current feeling between themselves and WDWF that you would be open to a redesign of the Spiketon Ditch or cleaning it efficiently. Hopefully the redesign would address some of the water temperature issues. He understands from Ecology's stand point that leaving the water in So. Prairie Creek is best, but realistically we have a water problem in that area whether or not we take the overflow. He is still looking at that drainage that has to happen in some form. One of the problems we have had is the battle of who permits what. He is getting the feeling that everyone wants to resolve the problem; if everyone sits down and looks at the design we can address everyone's issues. Mr. Sullivan stated with having the opportunity to go up to the head works and see what the City fathers created for us here for a water supply, we are trying to fix something or put a bandage on something that is 100+ years old. The ultimate deal is to get the flow to a point where you have no discharge, So Prairie Creek is whole and you don't have to worry about Levesque. The Tribe's real interest in this is you can't take water and sacrifice So Prairie Creek that has about 90% of all the reproduction of all salmon in the Puyallup system. You have three listed species under the endangered species act that could be considered a take under the federal act, and you also under water law can't take water out of one basin and give it somewhere else. At this point the ball is with the engineer and the City to see what you can do to see whether or not this can be fixed and for how much.

Council member Boyle Barrett asked for clarification from Mr. Sullivan when he referred to the reds coming back to the lower portion. Is he referring to the lower portion of Spiketon Ditch? Mr. Sullivan stated yes and those are Coho salmon he believes are in the ditch. Council member Boyle Barrett said it is her understanding that the ditch drains to So Prairie Creek, but that is roughly a six foot drop to that area so she is questioning how you get salmon in the lower portion with that big of drop. Mr. Sullivan stated Coho salmon are pretty athletic. They have their annual reports from the last 15 years and Spiketon Ditch has been a spawning site, the lower portion of it, for Coho salmon so that

is why the State probably makes the assumption that it is fish-bearing. The biggest issue is that So Prairie creek is 303D listed for fecal coli form and it is D listed for temperature. Their interest is during the summer months any water that we are diverting from So Prairie Creek increases the possibility of temperatures being higher and fecal becomes more concentrated, and so what water comes out of So Prairie Creek and through our system should be going back to the system from which it was taken.

Mayor Johnson thanked everyone for participating this evening. Council member Montgomery asked if we could do this again because there are some of us that do have more questions.

Angela Toman asked Mr. Sullivan when referring to Spiketon Ditch can you classify the start and end point of what he understands Spiketon Ditch to be, and the start and end point of his understanding of what Spiketon Creek is. Mr. Sullivan stated his understanding is the fish bearing portion of it is the portion where spawning has been observed and he believes that is the lower portion of Spiketon Ditch and as it moves up to Spiketon Creek. He believes the delineation is right where Page Creek comes in. That is his interpretation.

Council member Montgomery stated he is sure that there are more questions that we would like to ask these gentlemen, is it permissible to e-mail them. Mayor Johnson stated why don't we compile all them and send them off to Ecology and the Tribes. Administrator Schmidt stated we could also forward them to Fish and Wildlife. Council member McNally asked if we could have a round table with everyone including the property owners where we could ask questions and get answers so everyone is on the same page. Administrator Schmidt stated the City Attorney has recommended that not happen. Mayor Johnson stated we need to take it one step at a time. Council member Reed stated he is hearing that everyone is working on this but do we have a goal of when we want this completely resolved.

Mayor Johnson stated we need to make a commitment as to how we are going to replace the line or look for an alternative source of water. If we are going to replace it lets figure out how we are going to do it and move forward. Administrator Schmidt stated the City Engineer is recommending that we don't drop below the 700 gallons per minute because he believes that is the velocity we need to maintain to keep the pipe cleaned. If that is the case from an engineering standpoint we really can't reduce it anymore, so when the City is only using 400-500 gallons per minute we are going to have an overflow of water. Council member McNally stated in dealing with water and hydraulics for 20 some years he doesn't necessarily agree with that. As long as you have a gravity system that is flowing 450 gallons per minute, the sediment is going to build up and it would be easy to put in a clean out in the one area of concern and then a couple times a year you could open the valve all the way up and flow the 950 gallons per minute and clean everything out.

Admin & Finance:

Council member Ramsey stated they had a final budget meeting last night. The next regular meeting will be November 2, 2009 at 6:30 PM at City Hall.

Public Safety:

Council member Boyle Barrett stated they had a meeting on October 15, 2009 to discuss the Police Department budget. Their next meeting will be November 18, 2009 at 5:00 PM at City Hall.

Building & Zoning:

Council member Twardoski stated their next meeting will be November 2, 2009 at 6:00 PM but she was wondering if that would be enough time to get something done with the wall signs for the coffee shop. Council member Reed stated the solution is we need to revise the sign code, adding a category for historical wall signage. Council member Twardoski stated she is concerned about time because they are running out of weather. Council member Ramsey stated she would like to suggest one thing to discuss at the next meeting and that is implementing a fee to the owners of the store or whoever wants it up to do an estimate of the cost for removing the sign if the business leaves. Come up with some type of removal fee. Council member Reed stated we should do this for all signage.

Utilities:

Council member McNally stated they had a meeting on October 20, 2009. They discussed the PSE transfer of property that has been postponed. The fuel card reader for the fuel pumps at the City Shops has been fixed; it cost less than \$1,000 and we had budgeted \$3,000. The welding garage door still hasn't been ordered. The rest of the meeting was regarding the budget. The sewer revenue is down 12% for this year and this is partially because of not being able to hook up to the state school. The gas revenue is off by 30% of the projected revenue; the reason is not clear as to whether it is from people not paying their bills or just reduced consumption. The committee won't have accurate numbers until the end of November. The next meeting will be a regular utility meeting on November 5, 2009 at 6:00 PM at City Hall.

Streets, Sidewalks and Storm Drain:

Council member Patson stated they had a meeting this morning. They continued their discussion on the budget. They also discussed the Person and Dorn frontage improvements. The Committee consensus was in favor of both waiver requests, stipulating improvements and recommended conditions of approval in the staff reports. They also reviewed another issue regarding the Spiketon right-of-way; the Committee was in favor of the City Administrator taking further action. They continued their discussion of waivers in general and the frequency of requests coming to the Committee, and recommended revising the present waiver policy to establish more definitive criteria and give City staff approval authority like was done with the Buckley Hall Board a few years ago. Their next meeting will be November 17, 2009 at 7:00 PM.

Parks& Rec & Cemetery:

Council member Montgomery stated their next meeting will be November 4, 2009 at 6:30 PM.

Community Services:

Council member Reed stated their next meeting will be November 2, 2009 at 7:30 PM. Council member Reed updated the Council on the complete count for the census. He has been told that the partner program is temporarily out of funds but they are holding our proposal and hope to get additional funding. Council member Reed asked if we have our insurance claim filed yet. Administrator Schmidt stated no and the reason we held up is because Mac cleaned out the interior. Now that it's clean, Mac is going to take pictures of the damage and then we will file the claim.

Planning Commission updates:

Chad McCorkle representing the Planning Commission would like to give the Council updates on what the Planning Commission has been doing. They had two meetings during the month of October. The first meeting they spent a lot of time with Administrator Schmidt and the Mayor figuring out where the Planning Commission will be going in the next few months. The four items they need to put their attention to the most are: expanding the role of the Hearings Examiner; concentrating on the FLUM map; discussion on the new Park Plan; and the bond extension on subdivisions. At the last meeting they did discuss the Hearing Examiner roles and recommended approval to the Council. Administrator Schmidt has made corrections to Title 19 to reflect the changes to the Hearings Examiner roles so this will be coming before the Council. They have scheduled a public hearing for the proposed FLUM map for November 16, 2009. At the next meeting on November 2, 2009 the Commission will be discussing the Park Plan. The majority of the Committee is opposed to the proposed level of service within the Park Plan and the associated impact fees. Council member Montgomery stated the Park Plan was one of things identified as a Comprehensive Plan amendment that needed to be adopted by the end of this calendar year, so is it the intent to change the Park Plan, have the public hearing on it and give it to the Council by the first meeting in December. Mr. McCorkle stated that would be the best case scenario but there is a lot in the Plan the Commission doesn't agree with so it will take some time; it may have to wait until next year's updates. Council member Reed stated some members of the Council aren't all that concerned about the impact fees in the Park Plan. They have talked about this when there are fees and impact fees and charges for development; if we don't put it on new development then we are putting it on the current City residents. Over the years the human cry has been to make development pay for itself, so keep that in mind when you discuss the impact fees and level of service.

Mayor's Report:

Mayor Johnson stated they had a meeting at Rainier School yesterday to discuss possibly opening the dental clinic to DSHS children and DSHS developmentally disabled people

who live in the community. Lingquist Dental Clinic will come out to Rainier School once a week and start seeing DSHS children. Keeping Rainier School open is going to be a battle and will take everyone going to Olympia to talk to all the legislators.

Staff Reports:

Administrator Schmidt stated he had nothing to report.

Council member Boyle Barrett reminded everyone of the fundraiser for the Youth Center on November 14, 2009.

Citizen Participation

Kevin Glackin-Coley, 710 So. 13th Street, Tacoma WA is here representing Wheels to Meals. They operate the largest food bank in Pierce County. They are asking permission to have their annual Wheels to Meals ride through Buckley on June 6, 2010 including a rest stop at Thunderbird Park. Mayor Johnson reminded them that there will no longer be a sanican at this location. **Council member Boyle Barrett moved to approve the Wheels to Meals to hold their annual ride through Buckley on June 6, 2010 and using the Thunderbird Park as their rest stop. Council member Montgomery seconded the motion and the motion carried.**

MAIN AGENDA

Easements to PSE for Utilities

Council member McNally moved to grant easements to PSE and authorize the Mayor to sign and execute the utility easement documents. Council member Boyle Barrett seconded the motion. This is one of the items that was discussed in the Utility Committee meeting and the Committee approved this. **The motion then carried.**

Council member Reed moved to approve the Consent Agenda. Council member Montgomery seconded the motion and the motion carried.

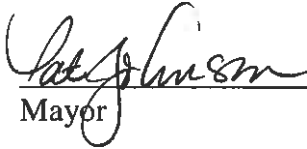
Approve the minutes of the October 13, 2009 City Council meeting.

Council convened into Executive Session at 8:48 PM to discuss potential litigation on Spiketon Ditch for approximately 15 minutes with a possible announcement.

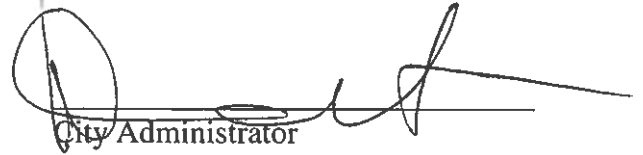
Council reconvened into its regular session at 9:22 PM.

Council member Reed moved to authorize the City Attorney to negotiate a stand still agreement with Toman/Froemke due in two weeks that would commit the City to resolve the hydraulic permit situation with Fish and Wildlife to the point of litigation if necessary, in exchange the property owners Toman/Froemke will allow the City continued use of the ditch for overflow during these negotiations and/or court litigations. Council member Montgomery seconded the motion carried with Council member McNally abstaining.

With nothing further the meeting was adjourned at 9:24 PM.



Mayor



City Administrator