

**City of Rigby  
City Council Meeting  
March 16, 2010  
7:00 p.m.**

Mayor Smith welcomed everyone to the meeting and turned the time over to Garrett Peterson who invited everyone to join him in the pledge of allegiance. Mayor Smith then turned the time over to Councilman Zimmermann who gave the prayer.

Dave Swager, City Clerk/Treasurer, performed roll call. Those present were: Mayor Smith, Councilman Blackburn, Councilwoman Hinckley, Councilman Zimmermann, Councilman Maloney and Councilman Day. Those absent: Councilman Simonson.

**Burgess Canal-Application to Convert Surface Water to Ground Water-**

Mayor Smith stated the next item on the agenda was the discussion regarding water rights and the Burgess Canal and turned the time over to Lloyd Hicks for his presentation.

Lloyd Hicks, President of the Burgess Canal, stated the question that was proposed to him was revisiting the possibility of surface to ground water on behalf of the City of Rigby. Mr. Hicks stated that back in 2007 the Mayor had asked him, Blair Grover and Richard Jacobson about water issues and explained that at that time there was a water call from the lower valley that included the city's pumps. Mr. Hicks stated the Mayor didn't understand that and so after a review of the files it was determined there was missing files and after some time additional records were located. Mr. Hicks stated the water rights for the city were recreated at that time. Mr. Hicks stated they had obtained the filings for the adjudication from the water district and tried to match them up with the wells the city has. Mr. Hicks stated that the adjudication went well and distributed copies of the findings to the council. Mr. Hicks stated the next thing that had been addressed was the capacity and demand of the water system in the city. Mr. Hicks stated there had been a water study completed with the engineers and Jim Andersen, Water Supervisor. Mr. Hicks stated the best finding was the city was only using 40-45 percent of the permitted water amount. Mr. Hicks stated that he had brought Roger Warner with him to help explain the surface to ground transfer as it is a very long and difficult process. Mr. Hicks gave a brief explanation of the issues District 251 had when trying to transfer from surface to ground water and explained some of the similar issues the City of Rigby would have to go through. Mr. Hicks referred to state statute 40-0288 and stated this allowed for the recovery process. Mr. Hicks then turned the time over to Roger Warner for his presentation.

Roger Warner, representing Rocky Mountain Environmental, stated the statute is actually 42-228 and explained this is a seepage loss and recovery statute that is used by canal companies other entities to recover losses that exist through current irrigation. Mr. Warner stated that Mr. Hicks gave a good presentation of one way to obtain water otherwise not available from a well system. Mr. Warner referred to the efforts the City of Shelley had gone through to convert surface water to ground water and to have it sent to Jensen's Gove in Blackfoot and explained they had accomplished it but not without some difficulties. Mr. Warner explained this had been protested by some of the lower valley canals and it went to hearing and several orders were issued afterwards. Mr. Warner stated the only reason this worked was in the analysis of the mitigation in Jensen's

Grove and the extraction of water in Shelley using the aquifer alone showed no negative effects. Mr. Warner explained they had done several analysis in the area with particular attention to the City of Rexburg and don't show any encouraging results in which to do the same thing. Mr. Warner explained there had been meetings where there are recharge efforts which attempt to put excess water into the ground for the purposes of helping the aquifer and making water available to other entities. Mr. Warner stated one of those would be the Egin Lakes Project over by the St. Anthony Sand Dunes and explained the past two years the Fremont-Madison Irrigation District has put excess storage water into those lake areas and sunk water there to assist with recharging the aquifer. Mr. Warner stated that the City of Rexburg was in a similar situation as Rigby due to all their growth and they want to be able to take the water rights they hold and put them to good use. Mr. Warner stated there had been an aquifer analysis for them and found the bottom line to be for every five acre feet that is put in only one acre foot is actually available to the city. Mr. Warner gave a brief explanation of the recharge process and explained the importance of where you put the water in and where you are able to take it from. Mr. Warner stated they have seen several cities from here to St. Anthony that require additional water for their municipal supplies and explained they are hopeful in finding a central location to place recharge water in a way that can be used by cities in a compromised fashion. Mr. Warner stated that if the city was contemplating what to do with the surface rights they hold for now and the future the best bet would be to irrigate the large spaces that exist within the city. Mr. Warner stated he felt the recharge ideas are good things and stated they would see innovation and changes in the processes.

Mayor Smith referred to the pump at 5<sup>th</sup> West and Hwy 48 that is used to pump sub water and asked whose water that would be and Mr. Warner stated that would be under seepage loss and recovery and goes to the benefit of the Burgess Canal. There was a brief discussion regarding the sub water issue. Mr. Warner stated it was his belief the city put that pump in originally to relieve the high water table that was causing flooding in basements and then it was expanded to take more water. Mr. Warner gave a brief explanation of the water usage in the canal as it relates to the high sub water pumped by the city. Mayor Smith explained that during the winter the treatment plant receives about 500,000 gallons per day but during the late summer and early fall they receive 2,500,000 due to the sub water. Mayor Smith stated that as the city's collection system gets repaired this will cause more basements to be flooded unless the city can pump a larger volume of water out of the pit. Mayor Smith stated the end question would be whether the city gets credit for that water or not and Mr. Warner stated they do not. Councilman Blackburn stated that he had talked to someone in Boise about this issue some time ago and expressed his opinion that this water is very valuable in recharging the aquifer. Councilman Blackburn stated that he wondered if a valid argument could be made on that behalf because over the years there has been a substantial expense to the city for the operation of those pumps. Mr. Warner stated they needed to consider that this water was coming from the aquifer and then being taken further down in order to be placed back in that aquifer. Mr. Warner stated that as a professional he disagreed with the city getting any credit for that water although the good citizens of Rigby would surely thank the city for keeping it out of their basements. There was a brief discussion regarding the various aquifers and sub ponds and how they varied from place to place. There was a brief discussion regarding sub-pumps and the area they are able to treat and whether this benefited the city or not. There was a brief discussion regarding how subdivisions actually help the water levels in the canals because the usage on those properties has lowered. There was a brief discussion on how rain and snowfall have very small contributions to the aquifer because they don't actually penetrate the ground but merely run-off to a drain, river or ditch. Mr. Hicks stated the Burgess Canal is a flood irrigation

canal and explained they have strict statutes they are required to follow regarding the delivery of the water, fairness, accountability and most importantly distribution and control. Mr. Hicks stated the water is held in the canal for the use of those properties within the boundaries of the canal. Mr. Hicks stated there was another statute that has caused them some grief but they have complied anyway and explained this is statute is 67-6537 which states for the purpose of water rights if a piece of land is changed to a new use such as houses they must use the canal water for irrigation. Mr. Warner referred to this statute and explained that it is a land use planning statute. Mr. Hicks stated they have always maintained that the water share stays with the land. Mr. Hicks stated there was a question on whether the city should maintain ownership of the shares and explained the reason for this was because of other statutes and to save water quality. Robin Dunn, City Attorney, asked what would happen if the city was unable to use those surface rights and didn't use them were they forfeited and Mr. Warner stated as long as the city continues to pay their assessments then they couldn't lose the water rights. There was a brief discussion regarding using surface water rights, the importance of assessments and ownerships of water rights.

Mr. Hicks stated that Blair Grover, who was called out of town and unable to attend tonight's meeting, had talked to him a few days ago and wanted to make sure certain items were relayed to the city. Mr. Hicks stated the first was fire suppression systems are discussed separately as a special condition in the water management statutes. Mr. Hicks stated the under-usage of existing license promise for the City of Rigby is significant and explained that in 2007 the city only used 41% of the allowable and distributed copies of that report to the council and discussed increasing the city's volume. Mr. Warner stated this report shows the department's study of the city's peak ability to pump water and explained what this meant in relation to the water rights. Councilman Day asked if there was anything that would prevent the city from building storage tanks and Mr. Warner stated the Department of Water Resources looks at a reasonable amount of storage and stated there hasn't been a capacity issue with building a storage tank. Mr. Warner explained the only time they would have an issue is if the city was to try and build a reservoir or pond to pump and hold water for use in the system. Councilman Blackburn referred to the alternate watering days and being at 41% capacity and asked if the city went up to 91% but didn't exceed their maximum would they be able to apply and obtain approval for another well. Mr. Warner stated that if the city was on alternate days because they couldn't service everyday then he would have to say the city's probably at peak delivery capacity now. There was a brief discussion regarding water capacity problems. Mr. Warner stated the city could put in more wells but explained those wells collectively could not exceed the licensed or decreed rates that pertain to the city's water rights currently. Mr. Hicks stated he did not believe the pumps were pumping the CFSs approved for the well. Mr. Warner stated that if Rick Lamoreaux, Park/Street/Sanitation Supervisor, was getting woke up in the middle of the night with alarms then the pumps were not keeping up with the storage. Councilman Day asked if the capacity problem was with the pumps and well or with the size of the lines and Mr. Warner stated he could not answer that question for certain but would guess it's the overall capacity of the well.

**Special Event Permit-**

Mayor Smith stated the next item on the agenda was the Special Event Permit and turned the time over to Dave Swager, City Clerk/Treasurer, for his presentation.

Mr. Swager referred to the last council meeting where this item was discussed and reminded the council of their request to have a department head meeting in order to discuss the rates of this

permit. Mr. Swager stated the outcome of that meeting was a general consensus of a one hundred dollar (\$100) permit for the special event and then a one hundred dollar (\$100) clean-up deposit. Mr. Swager stated there would be a checklist for other items but not necessarily a payment associated. Mr. Swager stated that since the department head meeting he had received a phone call from a Jefferson Star reporter who asked more questions than he was able to answer. Mr. Swager stated that due to this he had gone to Boise and found some more documentation and explained there was a copy of the Boise supplement number forty-three (#43) which gave the definition of a special permit included in the council packet. Mr. Swager stated the criteria for a special even came down to certain things with those being if it's open to the public and if the number of participants is over a certain number of people. Mr. Swager stated the council needed to decide the amount of the fee and also when a special event permit would be required. Councilman Blackburn stated that as he read the definition of special permit it refers to baseball, football, soccer and other sporting events and asked if this meant these events would have to apply for a permit and Mr. Swager stated that was correct but explained that one permit would cover their entire season. Mr. Swager went on to say they could always waive the application fee but not the need for the liability insurance coverage. Councilman Blackburn stated he felt those types of events should be exempt from a permit. Councilman Blackburn stated these were not-for-profit organizations with limited funds as it was. Councilman Maloney stated they had discussed this a little bit at the last meeting but asked what events would be covered by this permit and Mayor Smith stated the Car Show, Stampede Days, Rotary Breakfast and Lions Breakfast and the Bed Race. Councilman Blackburn referred to the Baby Wearing Conference that will be held in Rigby this summer and stated that was something that would need one of these permits. There was a brief discussion regarding the date of Stampede Days. Councilman Maloney read on the permit where it states nothing says the applicant cannot ask for a waiver of fees but will need to maintain the liability insurance and stated that if it was waived for one group then it needed to be waived again and asked where that would stop. Mr. Swager stated consideration would need to be given to drop the fee from \$100 down to something less but expressed the importance of covering the city with the insurance. Councilman Maloney asked if the main purpose of this permit was to ensure the insurance coverage and Mr. Dunn stated that in addition to proper police protection that was correct. There was a brief discussion regarding the sporting events and how they use the parks and not the streets and how they use parents and volunteers to set up and do the work. Councilman Zimmermann asked if they applied for their own insurance and Jana Berry stated that each organization like AYSO, Cricket and baseball has their own insurance policy. There was a brief discussion regarding possible changes or approval of this application. Councilwoman Hinckley brought up an event the Chamber of Commerce is holding soon and stated they would like to know whether or not they will need a permit because of the timing requirement and Mayor Smith stated that if this was approved and they were under the timing then an exception would be made for them. Councilman Day stated he would like to review this a little further. Councilman Zimmermann stated he would agree with that. Mr. Dunn stated there would need to be a motion to table or continue in two weeks or next meeting. Councilman Blackburn moved to table this item until the next meeting. Councilman Maloney seconded. All were in favor.

**Other Council Business-**

**Beer Sales on Sunday**

Mayor Smith stated the next item on the agenda was other council business and referred to the beer sales on Sunday that was addressed at the last meeting and turned the time over to Mr. Swager for his presentation.

Mr. Swager referred to a document in the council packet from Kathy Jarvis and stated this was an outline of her request as well as Ashton, St. Anthony and Ririe ordinances. Councilman Blackburn referred to Ms. Jarvis's proposal and asked if this meant to strike Sundays altogether because the state statute says no alcohol on Christmas and wondered how this would work if it landed on a Sunday. Mr. Dunn stated that Christmas and Thanksgiving would be out regardless of what day of the week they fell on. Mayor Smith stated this was new information this evening and stated there would be no vote this evening. Mayor Smith stated his main objection for restricting this would be the telling businesses when they can operate their business. Mayor Smith stated he agreed with what the state was doing but didn't want to see the city adding to it. Councilman Day asked Mr. Dunn his opinion on liquor versus beer sales on Sunday and Mr. Dunn stated the state statute prohibited the sale of all alcohol on Sundays but can be altered per city decision. There was a brief discussion regarding alcohol sales and rational based decisions. Councilwoman Hinckley asked if Ms. Jarvis had discussed other options to bring in other revenue other than being allowed to be open on Sunday and Mayor Smith stated she did not. There was a brief discussion regarding similar businesses in other cities offering the same service as well as other businesses that choose to be closed on Sundays. Councilman Blackburn stated he would like some additional time to review other information before making a decision. Mr. Dunn stated there are other areas like Roberts, Menan, Lewisville and Mud Lake all have different ordinances and that makes it hard for prosecutors but agrees with not regulating businesses. Mayor Smith suggested looking over this information, to research it and make an informed decision. Councilman Day stated that he would also like to have the city decide whether it was only beer or liquor as well.

Mayor Smith asked if there was any other council business. Councilman Maloney stated this coming Saturday from 10 a.m. to 3 p.m. the museum is holding its annual Apprais-a-thon. Councilman Maloney explained this was where people could bring items and have them appraised by professionals. Councilman Maloney stated they would also like to see if the library could add that to their reader board and asked if he needed to talk to Marilyn Kamoe, Library Director, about this and Mayor Smith stated that was correct.

Councilwoman Hinckley stated she had been given an assignment by Mayor Smith to organize a list of seniors that have concerns when it snows and the snowplow comes by and buries in their driveway. Councilwoman Hinckley stated she has received some names and would like to ask the council to think of anyone or if they receive calls these people can be added and by next season it can be organized. Mr. McCowin stated he had talked to Mr. Lamoreaux and feels that he would know more about those people that need assistance and would be willing to give names.

Councilwoman Hinckley stated she also needed to relay the information regarding this year's parade. Councilwoman Hinckley stated the theme of this year's parade is Western Spirit. Councilwoman Hinckley stated she would like to see the council have a float in this parade and stated she had some ideas if they chose to pursue that. Councilwoman Hinckley stated there were several things over at the Rec Center that could help with a float.

Councilman Day asked if the city had received prices for the cost of the water and sewer line installation out to Hailey Creek and Mr. Dunn stated he had received an email from Mr. Homer and explained he had not received that information. Mr. Dunn stated there needed to be a checklist put together so they could make sure that everything has been done prior to final approval.

Mr. Dunn referred to a memo on the desk and stated there would be a solicitation of votes for its approval. Mr. Dunn stated it was regarding the approval and acceptance of the additional grant money from DEQ. Mr. Dunn stated there was going to be special meeting to discuss this and wanted to make sure everyone was able to make their vote known. Councilman Blackburn asked if the letter of intent had been sent to DEQ yet and Mr. Dunn stated he had sent an email, talked on the phone and even met with DEQ representatives to make sure they were aware of the city's intent. Mr. Dunn stated there needed to be a decision made about what time would be best for the meeting on Thursday. There was a brief discussion on times and other obligations that might interfere or affect this meeting. The decision was made to hold the special meeting at 12:00 noon on Thursday to discuss this loan approval from DEQ.

Mayor Smith asked if there was any other council business. No further council business given.

**Approval of Bills-**

Mayor Smith stated the next item on the agenda was the approval of bills and asked if there were any questions or concerns.

Councilwoman Hinckley referred to the charge for the copier at City Hall and asked whether it would be more cost effective to purchase rather than rent. Mr. Swager stated the copier was a lease to own type agreement that was started when the Rec Center obtained the machine and then was moved to City Hall. Councilman Blackburn referred to page 4 on the charge for Thatcher Company and asked what that \$990 was for. Mr. Swager stated it was for chemicals out at the treatment plant. Scott Berry, Wastewater Operator, stated it was for the polymer that helps coagulate the sludge. Councilman Zimmermann referred to that same page and stated there is a line item for sewer line revenue from Digline for \$29 and asked if that was a free item. Mr. Swager stated that was free to the customers but not to the city. Councilman Maloney moved to pay the bills. Councilman Zimmermann seconded. All were in favor.

**Approval of Minutes-**

Mayor Smith stated the next item on the agenda was the approval of the minutes and asked if there were any changes or corrections.

Councilman Zimmermann referred to page three under the special event permit where it states Mayor Brown and stated that needed to be changed to Mayor Smith. Councilman Zimmermann moved to approve the March 2, 2010 minutes as corrected. Councilwoman Hinckley seconded. All were in favor.

**Public Comment-**

Mayor Smith stated the next item on the agenda was public comment and turned the time over to the audience.

Lisa Sutton stated she was a member of Muscle Car Club and explained that in the past the city has allowed them to put on their drag races within the city in conjunction with the Car Show. Ms. Sutton stated that she was present this evening to ask permission to once again hold their drag races in front of the courthouse on the same day as the car show. Mayor Smith asked if that road was being chip sealed this year and Mr. Lamoraux stated that was a matter of debate and asked if

Mr. Price was going to be paying for it. Mr. McCowin stated that he was as per the agreement they had reached. Mr. Lamoreaux stated that he would need to know when that was being done and Mr. McCowin stated that he had agreed to the month of July 2010. Mayor Smith stated that was the only concern and explained that if it was being chip sealed then the race would need to be moved somewhere else. Mr. Dunn stated the best thing was to apply and then they could have a more definite date. Ms. Sutton asked where she would need to go to apply and Mr. Dunn stated they have not approved it yet and suggested she check back after the next council meeting. Ms. Sutton asked if there may be another location if the chip sealing became an issue and no one could think of one. Mayor Smith suggested maybe looking at school parking lots and there was a brief discussion regarding that issue.

Mayor Smith asked if there was any other public comment. No further public comment was given.

**Executive Session Pursuant to Idaho Code 67-2345 (1)(c)-**

Mayor Smith stated the next item was executive session and asked for a motion. Councilman Blackburn moved to enter executive session pursuant to Idaho Code 67-2345 subsection 1-c regarding the sale of real property, personal property and purchase of property. Councilman Maloney seconded. On a roll call vote:

Councilman Blackburn	--	aye
Councilman Day	--	aye
Councilwoman Hinckley	--	aye
Councilman Maloney	--	aye
Councilman Zimmermann	--	aye

Regular council meeting was recessed and the council entered executive session.

Executive session ended and regular council meeting was reconvened at 9:45 p.m.

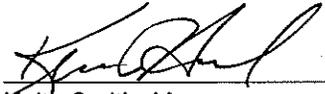
Mayor Smith explained there had been a discussion of three different things during executive session. Mayor Smith stated the first was the sale of the Rec Center and explained there had been an appraisal done. Mayor Smith stated that he would like to see it put up for auction at the appraisal value and asked for any recommendations. Mr. Dunn stated he would also like to see the personal property by itemization if the council chooses to proceed with the sale. There was a brief discussion regarding the real and personal property differences and how they relate to the building. Councilman Day moved to advertise the building sale of \$275,000 and to include the personal property itemization. Mayor Smith asked if this also included having legal counsel draw up the necessary documents and Mr. Dunn stated that would be done with the advertising. Mayor Smith stated the motion was ok as mentioned. Councilman Maloney seconded. On a roll call vote:

Councilman Day	--	aye
Councilwoman Hinckley	--	aye
Councilman Maloney	--	aye
Councilman Zimmermann	--	aye
Councilman Blackburn	--	aye

Mayor Smith stated the second item was the purchase of some property. Mayor Smith stated that at this time he would like to have the city attorney contact Superintendent Ron Tolman to see if the school wanted to purchase the entire piece and then the city purchase it from the school. Mr. Dunn stated he was being asked to find the best purchase price through whatever means and Mayor Smith stated that was correct. Councilman Blackburn moved to authorize the city attorney to explore the purchase with Superintendent Ron Tolman. Councilman Day seconded. On a roll call vote:

Councilwoman Hinckley	--	aye
Councilman Maloney	--	aye
Councilman Zimmermann	--	aye
Councilman Blackburn	--	aye
Councilman Day	--	aye

Councilman Zimmermann moved to adjourn the meeting. Councilwoman Hinckley seconded. All were in favor. The meeting was adjourned at 9:50 p.m.

  
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Keith Smith, Mayor

Attest:   
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David Swager, City Clerk