

**COLFAX CITY COUNCIL**  
**January 17, 2023**

**CALL TO ORDER:**

Mayor Retzer called the meeting to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

Golden, McRae, Schaefer, Mackleit, Guentner, Kackman and Huntwork: Present.

**APPROVAL OF MINUTES:**

A motion was entered by Golden, seconded by Guentner to approve the minutes from the January 3, 2023 Council meeting. Roll Call: All Yes.

**GOOD OF THE CITY:**

Street sweeping has been continuing throughout the city streets.

Drive thru coffee shop is going in at the Taco Time building.

**BILLS AND CLAIMS:**

A motion was entered by Schaefer, seconded by Guentner to approve all bills and claims as presented. Roll Call: All Yes.

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<b>CLAIMS</b>	<b>PAYROLL</b>
EFT & Ck # 8371-8385 for	#8335-8370 & EFT
13 <sup>th</sup> month	
\$27,553.56	\$64,032.03

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**GRAND TOTAL: \$91,585.59**

**CITIZENS REQUEST:**

**PUBLIC HEARING:**

**PRESENTATION/WORK STUDY:**

**UNFINISHED BUSINESS:**

City Administrator Chris Mathis distributed a copy of the Water Supply Service Agreement that included Kackman and Public Works Director Matt Hammer's comments/suggestions. Kackman has reviewed this agreement and added what he would suggest. Kackman went on to say he is only one council member so he would like the other members to review.

1. JK1) Ask DOH if we can later exclude the POWBAC from our water service area if this agreement for some reason doesn't work out.

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Hammer stated the same applies for Red Tail Ridge, we have to include them in our water service area but do not necessarily give them water. At some point we can discontinue and remove the service area out there.

2. JK2) The purpose of this agreement is actually to allow the Port to pay for and utilize City-owned water rights to withdraw more water for their users than their existing water rights allow.

Kackman stated the Port drilled a well out there which is typically utilized by Washington State Law for residents. Residents can drill a well and draw 5,000 gallons a day and serve their residents. The Port is limited by drawing 5,000 a day, this agreement allows them to lease our water rights but not at the expense of our risk and our liability. Kackman would like to see them kept to leasing our water rights and the city not taking on risk and liability we can see if we can make it work out. Kackman would like to see them read their meter daily and/or require them to have a data logger, any day that goes to 4,999 we don't get paid anything. He is concerned they will want to do an aggregate of the entire month and would not pay the city anything for years if allowed to meter this way.

3. JK3) This is a 40 year agreement/commitment if all goes as planned.
4. JK4) The Port probably needs to have a certified operator of this water system. I think they have one, but if they need one of our employees with the credentials then that is something we should be compensated for and it would be an added responsibility and liability.

Hammer and Mathis informed the Port the City would not be in charge of maintenance.

Hammer stated the City should not incur any cost for this agreement.

Our preference we don't operate their water system, they are merely leasing our water rights for them to supply their expansion of the park for economic development, which could benefit us.

5. JK5) How many private wells exist at the POWBAC? Will those well owners be allowed to continue using them or will they be compelled to use the Port's water system?

This could offset our agreement. As far as Mathis and Hammer know there is only one well out there.

6. JK6) I wouldn't think that we would need to do this work on the Port's system?

Hammer and Mathis stated the city will not be doing maintenance.

7. JK8) Will this be an "island" or does the service area have to be contiguous with the rest of the City's water service area?

Hammer stated it does not have to be contiguous.

8. JK9) If the Port is simply "leasing" our water rights, I'm not sure why we need to sign up for being the water purveyor at the POWBAC. Perhaps the Port could do the testing and comply with its own responsibilities as a water purveyor? That seems like a huge liability for us to take on.

This would be the Port's responsibility.

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9. JK12) Have the Port provide the last 5 years of water meter readings so we can see how much water they are using now. Then we can determine if they need our water or not. Mathis stated the need for this agreement is to allow for expansion at their park.

There are numerous provisions about “maintenance” in this agreement. Again went over the city will not be doing repairs and maintenance, the Port would do their own. To calculate the daily us we discussed again the importance of the Port having daily meter readings.

10. JK 16 & 18) Billing surcharge for outside city limits and water rates increase. The outside city limit rate is 1 ½ times regular rate and the water rate increases are completed yearly during the budgeting process. Hammer stated we could figure out a rate less than what we charge residents. We will not be treating, pumping or storing this water. Mathis stated that would need to be done through an ordinance.

Payment will come from the Port, the individual tenants will not pay for the water usage.

11. JK19) This dual indemnification seems like a good justification to not ever have our staff actually do anything at the POWBAC water system other than read the meter. As written, whatever our staff does, if they mess up or contaminate something, it is on us to pay to make it right. The Port is indemnified and held harmless.

This is something our Attorney John Kragt can weigh in on.

12. JK20) This extra insurance is an additional cost the city would incur that we should be reimbursed for under this agreement. I could see us have coverage for water right violations—whatever that is (seems like very low risk to me once DOE approves)—but the City should never look at being responsible for the water quality of the Port’s well (they own it and they retain ownership of it). Contamination could be a risk, but I don’t want our staff doing anything out there that would contaminate the system and we shouldn’t sign up for that. Disruption of service would be the same thing. We don’t want any liability for disruption of service out there.

Mathis will look into the City’s existing liability policy.

13. JK21) If there is a breach of this agreement, then termination is the obvious resolution. Dispute resolution is simply a way for the Port to make the city do something we probably don’t want to do. If this agreement doesn’t work out for some reason we provide a notice of termination. It will take 3 years to get out of this agreement, which I don’t like, but at least we can get out.

14. JK22) I can’t see an instance where the City would initiate litigation to enforce this agreement. We would just terminate it. I could see the Port initiate litigation against us because they have so much more at stake than we do. In addition, they have the financial resources to make our lives difficult. They could keep us in this agreement under threat of litigation or actually prevailing against us in litigation. I’d hate to see that.

With this agreement their limit would be from 1.8 million to 16 million gallons per year.

A secondary benefit would be if the DOE comes after City stating we either need to use or lose our water rights, we can say these are being used.

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Hammer stated the total of our water rights, with this 16 million used by the Port, would leave us with an excess of 195 million not being used. We are currently using 45 to 50% of our water rights.

Hammer went on to say our infrastructure is aging and at its life expectancy pretty much all over town. The Glenwood line is old but there is no pressure to that line so chance of something happening is not likely, unlike the infrastructure in town which is under pressure. This is why public works has been working on the high amount of water leaks around the city.

This agreement was drawn up by the Port's consultant and likely reviewed by their attorney.

Mathis has sent this to Kragt for his review but has not heard back.

Currently this agreement is pretty one sided, we just need to push back and even the field out a bit.

Kackman suggested we look at what the actual value of what it would be if we were to sell the water rights. There is a water conservancy board and they can transfer water rights. This could mean a community center, a new pool or replace water lines through town. It is sound judgement to not sell water rights but may be worth looking into the value of that.

Hammer stated at this point we hold all the cards we can make it a win win for us because we have nothing to lose.

Kackman stated the best case scenario would be for the Port to construct a water main out to the airport and get easements through private property and the county road, the city can feed that system. That water main could become a development corridor for the city this could create potential for Colfax to grow.

Hammer stated the Water Master Plan has to be updated every 6-10 years. This would be the time to look at possibly selling water rights. A population projection for the next 30 years has to be done, that would give another idea of what amount of water the city really needs for the future.

The supply of water rights is so limited there may not be a price to put on them.

Some parts of the state can no longer give out water rights, if that was to happen in Whitman County they could look at Colfax and see the excess then allow entities to purchase those water rights.

We will need to continue to monitor the water rights what the DOE is doing with water rights, it will need to be continuously monitored and our position needs to be protected.

If we can limit our liability and lease our water rights we can proceed with ironing out this agreement. There may need to have another meeting with the Port.

A motion was entered by McRae, seconded by Schaefer to continue to pursue the Water Supply Agreement with the Port of Whitman. Roll call: All Yes

### **NEW BUSINESS:**

### **DEPARTMENT REPORTS:**

Public Works:

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Public Works Director Matt Hammer stated January 25<sup>th</sup> he will meet with the public works committee to go over rough draft of the Water Master Agreement. Then be ready to bring before council for approval the following meeting.

Also, on the 25<sup>th</sup> Hammer plans on starting up the Clay Street well. They will be running water to clear all the murky water out and make sure everything is operating correctly.

**Administration:**

Mathis reported she is busy completing year end.

Mathis sent out the Shoreline Master Plan to the council for review, it is to the open comment period until February 14<sup>th</sup> and the 15<sup>th</sup> there will be another meeting.

McRae asked about the roof on the Fire Department.

Mathis is working on getting someone to come inspect, possibly an engineer to give us an idea of what we have going on up there. The contractor we used is now in financial trouble so the bank is now handling the process. Once we get the inspection done we will know what our next move is.

### **COMMITTEE/BOARD/COMMISSION REPORTS:**

#### **OTHER BUSINESS:**

#### **CITY ATTORNEY'S REPORT:**

#### **MAYORS REPORT:**

Retzer reported there was a high speed chase through town today. The occupants of the vehicle were suspected of the burglaries around the county. They were caught up north by the WSP and are now in jail.

#### **WSDOT Bridge Discussion Update:**

Retzer had a meeting with the Port Commissioners and the County Commissioners today they had some of the same questions and concerns we have about the proposed intersection.

The DOT has completed the safety analysis and the traffic analysis for the roundabout and will now be doing the same on the t-intersection with the light. When this process is done they will come present the results to us. From their discussion box at the Center the opinions were about split, with maybe a little more leaning more towards the roundabout.

The port and the county commissioners are asking Retzer to meet with them once a month to keep them updated on this process. This project is set to start 2025 with a completion in 2027.

Golden asked if anyone has talked to the Chevron owner.

Retzer stated Jody Qualley, DOT Project Engineer is unsure if they have contacted them yet. Last Retzer heard the Chevron owenre are willing to work with the DOT on this project.

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Kackman suggested the City have a representative present to listen and discern what is really being said at the meeting between the DOT and the Chevron owners.

Qualley confirmed with Retzer one of the analyses was taken on a high traffic flow day which is good, Retzer had concerns that the DOT conducted their analysis on a low volume day.


We want this intersection to work for us and not have people want to bypass Colfax all together.

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

Mayor Retzer adjourned the meeting at 8:06 p.m.

  
Jim Retzer, Mayor

  
Lynda Kramlich, City Clerk