

Jackson City Council Minutes

Special Meeting of September 28, 2005

COUNCIL MEMBERS PRESENT:

Al Nunes
RosaLee Pryor Escamilla, Mayor
Andrew Rodriguez, Vice-Mayor
Marilyn Lewis
Drew Stidger

CITY STAFF PRESENT:

Michael Daly, City Manager
Ann Siprelle, City Attorney

Mayor Pryor Escamilla called the meeting to order at 6:32 p.m.

APPROVAL OF AGENDA.

Mayor Escamilla requested a motion to approve the agenda. Councilmember Lewis objected to going into closed session since the City had already decided not to litigate. Mayor Escamilla noted that the City had not voted to litigate yet, but that the closed session was to determine whether or not to move forward with litigation. Councilmember Rodriguez agreed that no decision on litigation had been made. Councilmember Lewis asked what would be discussed in closed session. Mayor Escamilla suggested that the Council adjourn to closed session to review the City's litigation option. She asked City Attorney Siprelle if the litigation could be discussed in open session. Ms. Siprelle indicated that the Council could discuss it in open session, but recommended that the Council discuss the item in closed session. No action was taken on approval of the agenda.

Mayor Escamilla polled the Council to determine if there was a preference for an open or closed session discussion of the matter. The poll resulted in a 4-1 vote in favor of a closed session, with Councilmember Lewis voting in favor of an open session.

At 6:45 p.m., the Council adjourned into closed session for a conference with legal counsel to discuss anticipated litigation.

RECONVENE TO OPEN SESSION.

At 7:25 p.m., the Council reconvened into open session and Vice Mayor Rodriguez made the following statement, "At the closed session we agreed not to litigate against the water agency tomorrow morning and to sign an agreement that we would not litigate."

PUBLIC COMMENT.

Mayor Escamilla announced that this section of the agenda was for members of the public to address the City Council on any item described on this agenda.

Shirley Dajnowski asked, "why did you vote that way?" Councilmember Rodriguez responded that on the advice of legal counsel that if we entered into a lawsuit we would most likely lose and even if we won there could still be no water in the creek and it could cost up to \$430,000. Ms. Dajnowski stated that the Council should stand up for its rights and if you listened to an attorney for everything you had to do you wouldn't do anything. She said she couldn't understand what the City will gain

out of the agreement. Mayor Escamilla noted that the Intergovernmental Agreement was yet to be discussed. She noted that the decision regarding litigation was what was discussed during closed session, not the Intergovernmental Agreement.

Ken Berry asked for clarification on the attorney estimate of \$430,000. He asked if any actual materials were provided. Mayor Escamilla noted that no materials had been requested. Attorney Siprelle clarified that the \$430,000 was based on the City losing a case and having to pay attorney's fees for the water agency. He stated he saw no purpose for an agreement not to litigate. Councilmember Lewis stated for the record that she thought there was nothing in the non-litigation agreement that shouldn't have been held in open session.

Suzanne Plasse questioned the legitimacy of the meeting due to Brown Act concerns. She stated the Act states the notice for a special meeting must be delivered personally or by mail to the local newspaper, radio or television station and be received at least 24 hours before the time specified. She said she did not find out about the meeting until about 4:00 p.m. yesterday when it came across her e-mail. Her concern was that it was not delivered personally. City Attorney Siprelle noted that electronic mail satisfies the "delivered by mail" requirement. Ms. Plasse stated the only reason half of the people in the audience were at the meeting was because she received notice and called them. Mayor Escamilla noted that it was not the Council's intent to slip in a meeting but that there is a deadline tomorrow and the City notified as many people as it could notice.

Bill Condrashoff stated that there were a couple of things that were really confusing. He asked "why would anybody sign an agreement not to litigate," and secondly in the event that down the road there may be another opportunity to sue, but this agreement does not allow that? He stated it was a bad move. He also reminded the Council what could be lost if the creek goes dry. He said when it comes time to take sewer effluent out of the creek that the environmental document to evaluate the impact on the creek will conclude that the effluent can't be removed since it is the only water in the creek. He stated it would take about three months create \$430,000 worth of costs to mitigate this impact. He also noted JVID's project concept to bring water from Lake Pardee to the Jackson Valley Irrigation District for potable water, which would then relieve the City of wastewater discharge issues. City Manager Daly noted there are other issues related to the California Toxic Rules that still need to be addressed and could require complete removal of the effluent from the creek regardless of the dilution rate in the creek. He then asked how this water could be used on a golf course and stated that he said the City was willing to lay down for \$50,000 because the City needs water for the golf course project and that's why the City will sign this agreement.

Russell Evitt stated that the Council represents the people of Jackson and is the last voice for the citizens. He stated you do not negotiate from a position of weakness because you are going to get beat every time. By entering into a suit which can be withdrawn at any time, you have a position of strength and you are giving away this position by signing the agreement. He stated he was shocked that the Council would so flippantly say it will cost a lot of money to file a lawsuit. The cost is not the critical issue. The canal is much more efficient due to recent repairs and we are at one of the lowest years in the last ten to fifteen in the amount of water pumped into the canal. He noted there are many ways for improving the situation. His main point was to negotiate from a point of strength and the Council does not have any strength if it signs off not to litigate now or in the future. He also reminded Council that the City's opportunity is gone forever if nothing is filed tomorrow. He said he

was extremely disappointed that the Council would give away its rights.

Frank Busi, Sr. stated he was bothered by a total lack of communication. He stated that the creek runs through his property for two or three miles and that he has never received any notification about the possibility that the creek might dry up and he was only present because Suzanne Plasse notified him yesterday. He said it would be an ecological disaster if Jackson Creek dries up and was tired of the secrecy that permeates our governing bodies.

Ken Berry asked what defined the emergency that allowed this meeting to occur without 72 hours notice. City Attorney Siprelle clarified that this is not an emergency meeting, it is a special meeting that only requires 24 hours notice. Councilmember Lewis stated the agreement was approved on Monday night. Mayor Escamilla commented that the Council agreed to draft an agreement for consideration at this meeting. Mr. Berry also asked how it is figured that an agreement not to litigate is a discussion of anticipated litigation. Ms. Siprelle clarified the Council can meet in closed session to discuss whether or not to initiate litigation. The agreement not to litigate is a memorialization of the latter. He asked why the agreement was not available. Ms. Siprelle commented that the agreement would be available tomorrow after the agreement was signed. Mr. Berry stated that the closed session demonstrates incredibly bad judgment on the part of four Councilmembers.

Earlene Thornhill addressed the Council, stating that she did not think the City needed an attorney but a conflict resolution specialist. She felt the Council behavior was embarrassing.

DISCUSSION CALENDAR

Intergovernmental Collaborative Agreement Between Amador Water Agency and City of Jackson Respecting Water Supply, Wastewater Treatment and Disposal and Other Related Resource Issues.

Mayor Escamilla asked the City Manager to introduce this item. He stated that the agreement was drafted jointly by the City and the water agency to address several issues that are of mutual concern, primarily water delivery and wastewater treatment, and also some language on working together on creek restoration projects. It is an agreement to collaborate on the issues and in addition to agreement to collaborate, the agency will contribute \$50,000 to the City on all items listed in the agreement.

The Mayor then opened the floor for discussion from the City Council.

Councilmember Rodriguez stated that in an issue of experts fighting it out that the court will find for the lead agency. He said that the agency made a good reply to the City's concern and our strength was not taking them to court, but the threat of litigation. The committee that met with the agency came up with this agreement. He stated he does not think the water agency is the enemy and the agreement is an opportunity to establish a cooperative, rather than combative, agreement. He noted that we started with nothing and now have something. He stated the agreement provides more than we would get if we went to court and created an antagonistic relationship.

Councilmember Lewis stated that the litigation is for keeping water in the creeks and keeping our sewer flowing. She asked, if the City was considering litigation in the closed session, where was a

copy of the lawsuit we're filing? She said if we are not challenging the water agency in court, what is the rush to sell the City short and sign the AWA's agreement. She noted the California Appeals court said mitigate the creek (i.e., do it right) and the water agency hired consultants to get around it. She stated that holes have been blown in their assumptions. She noted that keeping water in the creeks won't be signed by AWA because developers might sue the Water Agency. She asked what would be the cost if the citizens sue the City of Jackson for not taking action and we can't afford not to litigate. She said the Water Agency is drying our creeks up and this Council is selling out for \$50,000 and the agreement ties the hands of future City Councils to do the right thing, that is keeping water in our creeks and our sewer flowing. She asked what type of grants will be get to beautify our waterless creeks? She noted the cost to the City is unknown.

Councilmember Lewis asked how many would have come to this meeting if it was made public? She stated that this Council was criticized by the Grand Jury for the same conduct. She said she thought the Council violated the Brown Act on Monday night and tonight and was disappointed in the Council and to be a part of the Council

Councilmember Stidger said he is catching up on the whole issue being new to Council. He said he was offended by the statement that Council was "laying down" by taking the proposed action. He noted there is a tremendous amount of information available and he does not like being pressured to make a big decision issue but there is a deadline. At no time did he think about the City receiving \$50,000 for future projects and it was not a lot of money for something like this. He was concerned about the cost of fighting this for nothing in return. He said the creeks were very important for the City of Jackson and the environment, but the cost must be weighed for something that the courts might not agree with. He noted that you can't please everyone all the time and he was concerned about the creeks but wondered should the City spend money on something that could be throwing it away.

Councilmember Nunes felt that Councilmember Rodriguez made a good summation and he basically agreed with what he had to say. He respected Councilmember Lewis' position as well as Councilmember Stidger. He said that a lot of work went into the agreement and everyone might not agree, but he felt he was making the best decision for the City of Jackson. Further, he said he was concerned about the creeks.

Mayor Escamilla said that she thinks everything has been said. She said it has not been an easy decision or process. She noted the City has had concerns since she has been on the Council about this project and its impact on the creeks in Jackson. She said they have been outspoken with the water agency, but it is the opinion of the majority of the Council that the potential risk to the City is greater than the potential gain if we pursue litigation. She reminded everyone that the Council has made a decision that has been announced. The Mayor stated the agreement is part of the City's strategy for moving forward and memorializes an agreement to collaborate with the water agency on regional issues that face both agencies. She noted that the money at stake is the money of all taxpayers of Jackson and the final decision she made tonight not to litigate was based input from many members of the community. She then opened the floor for comments from the public regarding the collaborative agreement.

Ken Berry indicated that one of the steps in a CEQA suit is a settlement conference and that does not

cost very much. He also stated that Councilmember Nunes had favored the project from the beginning. He clarified that the collaborative agreement was the payoff for not suing the water agency. He said that the agreement was a foolish deal. He thought the City would have a better opportunity to get a better deal in a CEQA settlement conference.

Councilmember Lewis inquired if the water agency had approved the agreement earlier today. City Attorney Siprelle noted that they did approve it. She stated that she was told in closed session that the water agency would only approve the agreements if the City did. City Manager Daly stated the approval was contingent upon the City also approving the agreements. Councilmember Lewis stated this was blackmail and the City was selling out by accepting the \$50,000. The Mayor stated this was a matter of perception.

Mr. Berry stated he felt the City shortsighted itself. He also asked when the negotiations on the agreement started. Mayor Escamilla said it has been in the works for years. Councilmember Lewis said the first she had heard of it was last Monday night. City Manager Daly noted that the Council appointed a subcommittee to begin discussions with the water agency nearly two years ago and that is what started the agreement and the subcommittee was Mayor Escamilla and Councilmember Nunes. Councilmember Lewis stated she was originally on the subcommittee but water agency attorney Steve Kronick said if she showed up they wouldn't hold the meeting. Mayor Escamilla also said that it was about two years ago that she attended a water agency meeting to express the City's concerns about keeping water in the creeks.

Marie-Louise Solaja said the thing that concerned her the most was that the creeks will be drying up and why would the City get \$50,000 to beautify dry creeks. Secondly, the City will need a plan and will need to maintain any project in the years to come. She said it would be better if the water agency could pour a little bit of water in the creeks.

Bill Condrashoff asked for clarification about whether the City agreed not to sue based on what is in the cooperative agreement. Mayor Escamilla stated it was contingent upon approval of the cooperative agreement. Mr. Condrashoff then asked if the City could approve the non-litigation agreement but not the cooperative agreement. Councilmember Rodriguez stated the vote not to litigate was contingent upon approval of the collaborative agreement. Mr. Condrashoff questioned whether the Councilmember stated that the gains weren't worth the losses as a reason for approving these agreements. Mayor Escamilla clarified that the Council had been advised that even if the City wins a CEQA lawsuit that it may only result in the agency re-doing their EIR then issuing a statement of overriding consideration and moving forward with their project. Mr. Condrashoff felt there was no overriding consideration and putting water in the creek was not impossible to mitigate. He then urged the Council to take a chance on something much better than what could be lost up front, similar to Bill Gates' chance with Microsoft. He suggested that \$430,000 would be worth keeping water in the creeks for an indefinite period, including the property tax appreciation that would be realized with water in the creeks. Mayor Escamilla stated that the Council did not think expending the \$430,000 would keep water in the creeks. Mr. Condrashoff agreed that the \$430,000 was not the City's to give away, but it wasn't the Council's right to give away the City's water in the creek either. He also stated that the \$430,000 was only \$110 per resident in the City of Jackson.

Russell Evitt requested clarification of a couple of points. He asked if the City's position not to

litigate was in writing or by default. Mayor Escamilla said the Council voted not to litigate and sign an agreement stating it will not litigate. Mr. Evitt thought the collaborative agreement was a lot of fluff. He noted there was nothing in the collaborative agreement that said the City won't sue. City Attorney Siprelle clarified that there are two agreements and the one approved in closed session had the agreement not to sue in it and it will be released to the public tomorrow after it is signed. He reiterated that it would be idiotic to approve the not to sue agreement.

Councilmember Lewis then stated, "Russell let me read it to you even though it was in closed session and you're supposed to have it tomorrow. What it says is the City agrees not to file litigation challenging the agency's certification of the RFEIR approval of the project or any findings or determinations made by the agency in connection with the project litigation or to participate in any way in any project litigation filed by any other party. To me that's open ended for years to come." She stated she was told by the Council that it's not, that it's specific to this.

Mr. Evitt continued that there was a wonderful deal on water implied in the agreement. He asked if the Council was aware of the water agreement provisions for the other cities and if the City of Jackson was getting anything special out of this agreement. He said he agreed with earlier comments that the \$50,000 payment would be considered a bribe and it should be taken out. He followed that there are no other binding issues in the agreement, he didn't think the City was getting much out of the agreement and it was not worth giving the water agency a letter saying the City won't sue. He suggested at least dropping out the \$50,000 to eliminate the appearance of a bribe.

Jeannie Plasse asked if there were other cases where water questions have arisen where you have an old leaky canal that is being piped and the effects on the environment and possible resolutions. She asked the Mayor if the water agency made it absolutely clear that they were unwilling to release any water just for the sake of the creeks for the period of time that the creeks were dry. Mayor Escamilla said they made it clear that they would not put this in writing. She said there are concerns about the legality of putting anything back in the creek. She said the agency has also maintained there are issues with their PG&E water supply agreement. Ms. Plasse thought that the concern might be that they couldn't charge someone for water releases into the creeks. She also stated she thought the Council had the cart before the horse by approving the non-litigation agreement first. Mayor Escamilla stated she had the same concern but that staff informed her that if the collaborative agreement did not get approved that the Council could convene back to closed session. Ms. Plasse asked about the precedence in court law about this type of situation. City Attorney Siprelle stated there are many cases on water and how it impacts the City. She said that the City has the right to challenge this but has made a considered decision not to litigate.

Marie-Louise Solaja commented again that the water agency said at the two public hearings for the EIR that they would not put additional water in the creeks.

Suzanne Plasse referred to page 5, item g of the collaborative agreement. She noted she was at the wastewater presentation of three options a few years ago. She said that the Jackson Valley Irrigation District water supply was an incredibly inexpensive option. She felt this would provide the answer to the City's wastewater problem. Councilmember Rodriguez said the dilution ratio does not matter because the state wants the City to remove its discharge completely from Jackson Creek. City Manager Daly stated this was one of the premises the City was assuming and that the City does not

have a draft discharge permit that says what the City will have to do. He noted that the City's consultants have advised that it is in the City's best interest to find an alternative water source for the JVID area, but that would not guarantee that the City could continue discharging in the creek, so land discharge options need to be pursued as well. He noted that the water agency may have water rights that could help bring Mokelumne River water to the JVID area. She also said that riparian rights had not been considered yet and a lawsuit costing more than \$400,000 could result from this issue. She also noted that the mosquito issue was another reason to be concerned about future litigation.

Shirley Dajnowski asked about the water supply threat from the water agency earlier this year regarding the update to the water delivery agreement. She asked what this would mean to the City in terms of more water in the future. Mayor Escamilla noted that a new water delivery agreement was being discussed that would provide more water. Mrs. Dajnowski asked if they would have agreed to a new delivery agreement if the City did not agree to the collaborative agreement. Mayor Escamilla said this would be difficult to ascertain but it was one of the issues that was discussed in connection with the collaboration agreement and they probably were linked. Mrs. Dajnowski also asked about the future maintenance of the creeks if they are improved. Mayor Escamilla noted that the \$50,000 was not linked directly to the creek restoration. She also stated that the City has had a creek enhancement project for a number of years and the \$50,000 would not fund everything envisioned or future maintenance. Mrs. Dajnowski then asked why an agreement was needed at all. Mayor Escamilla agreed that that was one of the options.

Bill Condrashoff noted that Mr. Evitt brought up item "f" in the agreement and asked for a greater explanation of some of the items in the collaborative agreement. Mayor Escamilla described the nature of the City's one-of-a-kind relationship since the City is a wholesale customer and we have to request an annual increase in water supply. She noted that the City was working towards being on a more even basis with the other jurisdictions served by the water agency. Mr. Condrashoff stated the City should not sign something that is so vague without a guarantee on what the City might get and the City would be very vulnerable.

Councilmember Rodriguez stated that the Council could have made a decision on Monday night and it was ludicrous to state that the City Council had already made its decision or this meeting would not have been necessary. He stated that he lives near the creek and has a great interest in its well being, but feels that filing a lawsuit against the water agency would be throwing the City's money away. He did say that the water agency is governed by an elected board and they have the right to make decisions about the water, just as those who voted for them have the right to remove them. Mrs. Dajnowski stated she didn't think that the Council was listening to the people. Councilmember Rodriguez said he understood how she felt, but the opponents to the pipeline project have not succeeded in electing one person to the board who objected to the project.

John Plasse said if you go over the facts that deciding to hold the meeting on Wednesday by Monday, you could announce it in the newspaper and radio on Tuesday. He also asked why the meeting was held in closed session prior to public input since it did not allow for public input. Then he questioned why the City would operate its own water department if the water delivery agreement was substantially similar to Sutter Creek and Ione and whether the City's water system was profitable.

Ken Berry suggested signing the collaborative agreement and not signing the agreement not to sue. Mayor Escamilla said that this was discussed and the Council has considered this but the final decision is still up in the air. Mr. Berry stated that each Councilmember has every bit of experience as the water agency board members to make water decisions and that he is just as capable to make a decision about water issues as the board.

Gordon Miller stated he's been going to Mokelumne River Association meetings for several years and he mentioned to the Council that Jim Abercrombie stated at one of those meetings that if Jackson wants water, Jackson pays for water. Mr. Miller stated that Mr. Abercrombie has that organization at his heels and he has the Jackson City Council in the same position. He also thought the collaborative agreement was written completely in the water agency's favor. He noted that a group of citizens sued the water agency and they won. He said the costs would have been much lower if the City had been involved. He urged the City not to sign the collaborative agreement since it would lead to endless future litigation. He also questioned the City's change in legal counsel on advising them on this subject.

Russell Evitt asked for clarification regarding the water agency's agenda and stated there wasn't anything on their agenda regarding the agreement not to litigate. He concluded that they had not approved the non-litigation agreement and there was no reason to sign the non-litigation agreement and re-iterated that nothing was in the collaborative agreement stating the agreement not to litigate. He did not understand why the City would agree not to litigate in writing. He said that if the City doesn't file litigation by Friday, it won't have a chance to anyway and that would be a better option than signing a non-litigation agreement. City Attorney Siprelle noted that the agreement also binds the City from participating in any other party's litigation. Mr. Evitt stated that was his whole point, that the City did not keep any option open.

Bill Condrashoff asked what the City gets out of the first agreement not to sue. City Attorney Siprelle stated it included language for agreement to a cooperative or positive relationship with the agency. He stated he did not understand why the City would sign the non-litigation agreement if the water agency signed the cooperative agreement. Mayor Escamilla clarified that the contingency was on both agencies signing both agreements. He then inquired how the meeting was noticed to the public. City Manager Daly stated the agenda was posted at City Hall and delivered at the library yesterday afternoon at about 3:00 p.m. and e-mailed out to the agenda e-mail distribution list, posted on the TSPN web site and included in a newspaper article about the water agency deliberation.

Ken Berry had a problem with the secrecy of the meeting. He stated Councilmember Stidger stated that in closed session the Council was discussing the collaborative agreement in conjunction with the non-litigation agreement and this violates the Brown Act and the public trust. Mr. Berry said there is a much simpler explanation, "the reason is your staff isn't good" and I can say that with complete justification. He noted that the critical issue is that the City cannot assist anybody else suing the water agency in the future. He noted the agency will say that it doesn't matter if the creeks dry up because Jackson agreed to all of this, so it seems that is the policy of Jackson to dry up all the creeks to get water for these developments that have nothing but endless, severe, unmitigatable impacts. Councilmember Stidger clarified that in closed session he asked what would happen if the City didn't sign the collaborative agreement and was told then the water agency wouldn't agree to the other document. Mr. Berry stated that referring to it as he just described was a violation of the Brown Act

and he has advised the City Council several times not to have these closed sessions. He said in his litigation with the City that he would pay his own attorney's fees if the Council never went into closed session.

Shirley Dajnowski asked what difference it makes if the City doesn't sign the collaborative agreement. She asked the City Manager if it was essential that the City had an agreement to work with the water agency. City Manager Daly responded that he didn't think it was essential but it implies more cooperativeness than the adversarial nature of bringing a lawsuit against somebody. She then asked why the City thought this would make them be a good neighbor when they haven't in the past.

Suzanne Plasse stated that every Councilmember has said that they are stuck with decisions of past boards and this decision will do the same. She stated she was appalled that the City Council would give away the creeks forever.

Frank Busi Sr. stated he would be heavily impacted if the creek dries up and anything of this importance should be notified better – a letter from the City was recommended. In response to Councilmember Rodriguez's comment about electing water agency board members, he stated that the problem with most elections was that he only has choices of who will do the least damage.

Bill Condrashoff stated that nobody ran against Heinz Hamann in the last election. Mayor Escamilla asked if he lived in the same district and asked if he ran. Mr. Condrashoff said if that's the way we're going to change politics that he might run next time. He then stated that the Council said they wanted to hear public input and wanted to know how to change the Council's decision that was made in closed session. Mayor Escamilla noted she stated earlier she was concerned about the order of the agenda and the Council could reconvene into closed session to reconsider the other agreement. Mr. Condrashoff then said the Council had its public comment and asked if anyone thought the Council did the right thing after listening to the public. He said that he hoped the Council would go back and review it again and not agree to the collaborative agreement either.

Mayor Escamilla said that with no other public comments, she would ask for Council comments but briefly consulted confidentially with the City Attorney first.

Councilmember Nunes stated that he had thought of a possible alternative. He stated, "although I stand by our collective decision, under existing conditions and time constraints, if we are uncomfortable not notifying our constituents, and I am, if we need more time for public hearings maybe we should tomorrow, get time to hold public hearings, and perhaps we should file the suit tomorrow to give ourselves time so that we can hold a public hearing or more and if we decide to sue after that than it's sue away, or not."

Councilmember Lewis voiced agreement with the approach suggested by Councilmember Nunes.

Mayor Escamilla stated that she had concerns about the sequencing of the agenda, and the Council does listen to public input, and it is unfortunate that even if the issue was noticed for a week that the Council would essentially have the same group at the meeting and not get a better sense of every voter in the community. She said her proposal was going to be that the Council reconvene to closed

session to reconsider the Council's earlier decision.

Councilmember Rodriguez said he disagreed with going into closed session. He stated he lived in a different world where people aren't always relying on legalities and suing each other and calling each other names all the time. He said he believes that it has not been proven to him that the pipeline project will dry up the creek and it is a matter of dueling experts at this point. He said he thought the collaborative agreement was a good agreement, partly because of its vagueness, and it was a good way to start a new relationship with the water agency. He suggested that the City approve the draft, sign the agreement, but take out letter "i" on page 5 to show the City's good faith. He said he is tired of the litigation and tonight's meeting convinced him that the City needs to back away from a simply legalistic approach to things.

Councilmember Stidger indicated that he didn't like the time constraints and the short notice. He said when the Council discussed the agreement in closed session that the goal was to work out something in the future and take the entire City of Jackson's considerations into account. He said there were some valid points brought up tonight that he had not thought of in the closed session. He said he wasn't aware of the settlement conference process in CEQA and hadn't taken that into consideration. He agreed that taking the \$50,000 seemed like it was a payoff or bribe, but also didn't see kicking a gift horse in the mouth for helping out the creeks, but due the perception issue raised tonight, he would agree with the idea to eliminate the \$50,000 from the agreement since that would be a drop in the bucket for all considered in the agreement. He asked, if cooperation from other entities identified in the agreement such as JVID and East Bay MUD did not happen, whether the City had a right to go back if other things in the agreement don't transpire and rescind the entire agreement. Mayor Escamilla stated that the agreement does not bind the City, it's just an agreement to work together. Councilmember Lewis pointed out that the agreement could only be terminated by mutual agreement of both parties. City Attorney Siprelle noted that the termination section could likely be amended for a termination within 30 days notice by either party. Councilmember Nunes stated that 30 days might not be enough. Councilmember Stidger asked one more question about Councilmember Lewis' suggestion to modify section 2 of the closed session agreement regarding the City's ability to join other parties' lawsuits. Councilmember Lewis stated that that section covered every base for the water agency and it tied the future Council's hands and indicated that she had said enough.

Councilmember Rodriguez suggested that the Council at least vote to eliminate section "i" from page 5 since the water agency likely wouldn't object to that removal. City Attorney then asked if it was Councilmember Rodriguez's motion to approve the collaborative agreement with the deletion of item "i" from page 5. She stated that could be a motion but there was no need to delete item "i" if the Council was not going to approve the agreement. It was noted that Mayor Escamilla had a motion on the floor to reconvene into closed session. Mayor Escamilla then asked if at this stage of the game if it was important to adjourn into closed session in order to reconsider an decision that was approved in closed session. City Attorney Siprelle stated that it was not necessary since everything has been aired publicly at this point.

Mayor Escamilla then withdrew her motion to reconvene into closed session. She proposed that the Council discuss both agreements in tandem and have a re-vote. Councilmember Rodriguez seconded Mayor Escamilla's motion to reconsider both agreements. A call for vote was made and

Councilmember Nunes stated that he was more in favor of re-scheduling the item to conduct a public hearing to get more input from the community. He stated without any different people that are currently in the audience, the input would not be any different.

The Mayor then called for a vote on the motion to reconsider both agreements. The motion was unanimously approved.

Councilmember Lewis then suggested that the Council make a motion to capture the final filing date tomorrow, that it could be dismissed at any time but that gives the City the leeway as a community to understand where the Council is going in regards to this decision. Mayor Escamilla stated she was going to suggest that the Council consider deleting section "i" from the collaborative agreement, or not, adopting the collaboration agreement and not the earlier agreement. Councilmember Lewis stated that there was a motion on the floor. Councilmember Rodriguez requested Councilmember Lewis repeat the motion. She stated the Council should do what Councilmember Nunes suggested, that the Council secure the filing date by filing litigation tomorrow, that the City has the option to go back and dismiss it, but that gives the City time as a community to have a public meeting on this specific issue and then go over all of the agreement proposals and put everything in abeyance until a public meeting can be conducted on all issues.

City Attorney Siprelle clarified that what she heard was that the motion is that the City file a lawsuit tomorrow. Councilmember Lewis concurred, that the City must meet the deadline tomorrow to protect the City's right to litigate. Councilmember Nunes seconded the motion to file a lawsuit tomorrow. Councilmember Rodriguez stated he was in favor of the agreement not to sue and for removing letter "i" from the draft agreement. He stated that the City should go the extra mile and he was willing to do that. Mayor Escamilla stated her question for the City Attorney was that if the City was not to sign the non-litigation agreement and with or without changes adopted the collaborative agreement, the City's opportunity to file litigation within the 30 day window for CEQA would be over but the City would still have the opportunity to join in on other litigation. City Attorney concurred with this statement by the Mayor. She noted the City could join in as an intervener or file an amicus brief on behalf of other litigants.

The Mayor then asked City Attorney Siprelle to describe the CEQA settlement process. She responded that after a CEQA suit is filed, after a certain period of time the parties are required to get together and hold a settlement meeting. The time period for the settlement conference was believed to be within 60 days.

Mayor Escamilla asked if Councilmember Stidger had any comments on the motion. He stated during the closed session the Council discussed the options available, including not signing the non-litigation agreement and allowing it to go by the wayside and he thought that allowed the City the opportunity to pursue a lawsuit in the future. He stated he liked that option but understood the time constraints as well. He stated he was still undecided for which option the City should take. He stated he was against the non-litigation agreement which signs away future options for the Council.

Mayor Escamilla stated she would try to summarize Councilmember Lewis' motion. She stated the motion was that the City file a legal action tomorrow within the time frame and that the City postpone any decision on either of these agreements until after some further period of public

comment, at which point the City can either withdraw the litigation or if it continues, then continue with the litigation in which the City would eventually find itself in a settlement discussion. Councilmember Lewis concurred that that was the motion and Councilmember Nunes confirmed that was the motion he seconded.

The motion was approved by a vote of 3-2 vote with Mayor Escamilla and Councilmember Rodriguez dissenting. A question was asked from the audience regarding the Mayor's vote. She clarified that she opened the floor for reconsideration for a reason but was not one-hundred percent convinced that the lawsuit was the City's best alternative action.

Mayor Escamilla adjourned the meeting at 10:15 p.m.

ATTEST:

Michael Daly, City Manager

Date Approved: March 27, 2006