



Staff Report

May 1, 2023 Council Regular Meeting

PFAS Litigation Services Agreement

Presenter: Steve Wall, Public Works Director

Time Estimate: 10 minutes

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BACKGROUND: As previously discussed with Council at various Workshops, the City entered into a voluntary program with the Department of Health in 2021 to sample and monitor for per- and polyfluoroalkyl (PFAS) substances in the City's drinking water sources. After sampling all sources multiple times, it was determined that one of the City's 10 well sources identified PFAS at levels higher than the State Action Level (SAL) of 15 ppt, prompting the requirement for the City to notify water users. As an additional precautionary measure, the City also shut down the well that tested above the SAL, Well 13, since the Well won't likely be needed until the peak demands in the summer and while we look at potential treatment or other options.

Subsequently, the Environmental Protection Agency (EPA) published a DRAFT Regulation that limits two PFAS substances to a Maximum Contaminant Level (MCL) of 4 ppt and four other PFAS substances to a combined "Hazard Index". EPA has established a goal of adopting the regulation by the end of 2023. The attached PFAS FAQ from the EPA provides additional technical information in this regard.

Implementation of the Draft EPA Regulation could mean additional sampling and monitoring of the City's water system, and potentially costly treatment to ensure water delivered to the City's customers is below the Maximum Contaminant Level and Hazard Index.

SUMMARY: The City has spoken with attorneys at the firms of Baron & Budd, P.C., Cossich, Sumich, Parsiola & Taylor, LLC and at D'Amore Law Group, P.C., (collectively referred to as the "Attorneys") regarding representation of the City as it pertains to PFAS. The Attorneys will provide legal services with respect to damages, compensation, and other potential relief to which the City may be entitled as a result of an action to be filed by the Attorneys against the manufacturer(s) of firefighting foam products (known as "aqueous film forming foam" or "AFFF") and/or other products containing perfluoroalkyl substances ("PFAS") and any other related compounds.

It is important to note there is nothing requiring the City to be a party to the litigation and/or entering into an agreement with the Attorneys.

BENEFITS TO THE COMMUNITY: The City could potentially benefit financially from the litigation should the Attorneys be successful in the suit. The Attorneys represent multiple clients in this litigation and are working on a "contingency" basis, meaning there is no up-front costs or fees for the City and the Attorneys' only get paid if there are recovery of funds. However, similar to the City's recent involvement in the Washington State Opioid litigation, if successful, the City could receive a smaller share of the total settlement once attorney's fees and costs have been subtracted.

POTENTIAL CHALLENGES: The general topic of PFAS has many layers and there is a potential there could be other PFAS related litigation in the future and acceptance of a settlement or other recovery of money with this suit could potentially limit participation in future litigation. However, as stated in Section 13 of the Agreement, the City will have the right to accept or reject any offers of settlement and can decide at that time, presumably with more information available.

BUDGET IMPACT: As stated above and in the proposed Legal Services Agreement, the Attorneys would operate on a Contingency basis. As such, attorney's fees and costs would only be paid if the litigation was successful as established in the Agreement at 25% of any gross recovery (monetary settlement, award, etc.).

RECOMMENDATION: Staff recommends the City Council consider the Legal Services Agreement and make a motion to approve if desired.