



---

## CITY COUNCIL CONSIDERATION ITEM

### CITY OF FAIR OAKS RANCH, TEXAS

---

AGENDA TOPIC: Consideration and possible action approving a Resolution authorizing participation in the multi-district litigation as a settlement class member in the Aqueous Film-Forming Foam (AFF) Product liability litigation and authorizing the City Manager to execute settlement participation forms.

DATE: December 21, 2023

DEPARTMENT: Finance

PRESENTED BY: Summer Fleming, Director of Finance

---

#### **INTRODUCTION/BACKGROUND:**

Cities nationwide have filed suit against chemical companies Dupont and 3M for designing, manufacturing, marketing, selling, and supplying perfluoroalkyl and polyfluoroalkyl substances (PFAS) – a family of toxic chemicals, including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). PFAS is a key component of firefighting foam and is easily dissolved in water, which allows it to seep into the soil, groundwater, and aquifers.

PFAS is a “forever chemical” that does not naturally break down. The U.S. Environmental Protection Agency (EPA) has linked PFAS exposure to many health issues, including increased cancer risks, liver damage, compromised immune systems, low birth weights, and developmental delays. Comprehensive filtration and remediation efforts are the only way to reduce PFAS levels.

Thousands of lawsuits were consolidated into a Multi-District Litigation (MDL) class action in the United States District Court for the District of South Carolina. In June 2023, the parties announced they had reached settlement agreements that would provide cities, towns, and other public water suppliers with up to \$14 billion over 13 years to test and treat for PFAS contamination. Payouts are likely to begin in mid-2024.

The Settlement Class includes Phase One Qualifying Class Members and Phase Two Qualifying Class Members. A Phase One Qualifying Class Member is an active Public Water System in the United States of America that has one or more Impacted Water Sources as of June 22, 2023. A Phase Two Qualifying Class Member is an Active Public Water System in the United States that does not have one or more Impacted Water Sources as of June 22, 2023, and (i) is required to test for certain PFAS under the Fifth Unregulated Contaminant Monitoring Rule (UCMR-5), or (ii) serves more than 3,300 people, according to the Safe Drinking Water Information System (SDWIS).

The Fair Oaks Ranch Utility (FORU) qualifies as a Phase Two Qualifying Class Member. To participate in the settlement, FORU would be required to perform baseline testing at each of its water sources for PFAS; request from the laboratory that performs the analyses all analytical results, including the actual numeric values of all analytical results; and submit or cause the testing laboratory to submit detailed PFAS test results to the Claims Administrator on a Claims Form within forty-five (45) calendar days after receiving the test results, and no later than July 1, 2026.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

The EPA and TCEQ have not had drinking water regulations for PFAS in the past; however, in March 2023, the US EPA released a proposal for the first National Primary Drinking Water Standards for six PFAS, which would establish maximum contaminant levels for two individual PFAS chemicals, PFOA and PFOS. EPA anticipates finalizing the regulation by the end of 2023.

The Fair Oaks Ranch Utility is currently required by the EPA under UCMR-5 to test for PFAS at its five plants at zero cost to the utility. The US EPA is covering costs for this testing.

Pending the results of this testing, the Utility may determine that additional testing is required at each of the 28 water well sources, which is a requirement of the baseline testing for filing a claim in the settlement.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

If the FORU determines that baseline testing at each of its 28 water well sources is not warranted, there would be no cost to the utility and a claim form would not be submitted in the settlement.

If the FORU determines that baseline testing at each of its 28 water well sources is warranted, the cost would be estimated at \$12,600 and may be reimbursable under terms of the settlement agreements allocation procedures.

**LEGAL ANALYSIS:**

Approved as to form.

**RECOMMENDATION/PROPOSED MOTION:**

I move to approve a Resolution authorizing participation as a settlement class member in the Aqueous Film-Forming Foam Product liability litigation and authorizing the City Manager to execute settlement participation forms.