

CITY COUNCIL REPORT



Meeting Date: September 10, 2024
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal Management*

ACTION

Request: Adopt **Resolution No. 13210** authorizing the City to participate in settlement agreements with defendants Tyco Defendants and BASF Corporation with respect to water resources damages sustained by the City from firefighting foam products (known as "aqueous film forming foam" or "AFFF") and/or other products containing perfluoroalkyl substances ("PFAS") (including perfluorooctanoic acid ("PFOA" or "C8"), perfluorooctane sulfonate ("PFOS"), and any other related compounds).

Background

On May 16, 2023 the City Council adopted Resolution 12827 authorizing the City to retain the law firms of Baron & Budd, P.C., Cossich, Sumich, Parsiola & Taylor LLC, and Law Office of Joseph C. Tann, PLLC in order to pursue damages, compensation, and other relief against the manufacturers of AFFF and/or other products containing PFAS, and any other related compounds. Multiple lawsuits filed around the country have been consolidated in the United States District Court in South Carolina.

The District Court of South Carolina has granted preliminary approval of class settlements with two defendants, Tyco and BASF. (*In Re: Aqueous Film-Forming Foams Product Liability Litigation*, MDL 2:18-mn-2873-RMG). The District Court further established deadlines of September 23, 2024 and October 15, 2024 for opting out of the Tyco and BASF settlements respectively. If the City does not opt out of either or both settlements, the City will remain a class member. As a class member, the City will be required to file damage claims.

The settlements approved \$750 million to settle claims against Tyco and \$316.4 million to settle claims against BASF. The actual amount of monies received by the City is dependent upon the number of public water systems throughout the United States that remain class members. Both the Tyco and the BASF settlements will be paid in two installments.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff from the Water Resources Division has sampled the City's surface water and groundwater to determine the extent of PFAS contamination. Staff from the City Attorney's Office and Water

Resources Division have provided the PFAS sampling results along with the flow rate data for each well and the CAP water Treatment Plant and the Chaparral Water Treatment Plant to the City's outside legal counsel in order for claims to be filed.

Policy Implications

None.

Significant Issues to be Addressed

None.

Community Involvement

No community involvement is necessary regarding this matter.

RESOURCE IMPACTS

Available funding

There is no funding requirement to participate in this matter.

Staffing, Workload Impact

The Water Resources Division has sufficient staff to prepare the necessary claims to receive settlement payments.

Future Budget Implications

The total amount of recovery that the City will be able to collect cannot be calculated with certainty as the amount is ultimately contingent on the level of participation in the settlements by public water systems throughout the United States and the extent of those systems' PFAS contamination relative to the City of Scottsdale.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt **Resolution No. 13210** authorizing the City to participate in settlements with Tyco Defendants and BASF Corporation in the United States District Court of South Carolina, *In Re: Aqueous Film-Forming Foams Product Liability Litigation*, MDL 2:18-mn-2873-RMG.

Proposed Next Steps

The City Attorney's Office will work with the Water Resources Division to file all necessary documents and claims.

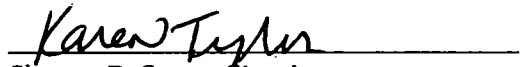
RESPONSIBLE DEPARTMENT(S)

City Attorney's Office
Water Resources Division

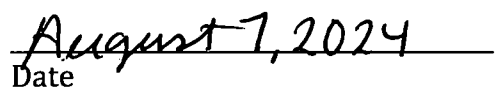
STAFF CONTACTS (S)

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Karen Tyler, Senior Assistant City Attorney, KTyler@ScottsdaleAZ.gov
Suzane Grendahl, Water Quality Director, sgrendahl@scottsdaleaz.gov

APPROVED BY



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Karen Tyler, Senior Assistant City Attorney
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Date

ATTACHMENTS

1. Resolution No. 13210

RESOLUTION NO. 13210

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY'S PARTICIPATION IN PENDING SETTLEMENT AGREEMENTS WITH TWO MANUFACTURER DEFENDANTS RELATED TO DAMAGES SUSTAINED FROM PRODUCTS CONTAINING PERFLUOROALKYL SUBSTANCES ("PFAS").

WHEREAS, the City Council previously adopted Resolution 12827 authorizing the City to pursue damages, compensation, and other relief against the manufacturers 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; and

WHEREAS, on December 7, 2018, litigation involving the contamination of water and soil by Per- and Polyfluoroalkyl Substances manufactured by various entities was consolidated in the United States District Court of South Carolina as *In Re: Aqueous Film-Forming Foams Product Liability Litigation*, MDL 2:18-mn-2873-RMG, before the Honorable Richard M. Gergel; and

WHEREAS, settlements have been filed on behalf of manufacturers Tyco Defendants and BASF Corporation to compensate public water systems for the contamination and remediation of PFAS; and

WHEREAS, the City has until September 23, 2024 to opt out of the Tyco settlement and October 15, 2024 to opt out of the BASF settlement;

WHEREAS, by remaining a class member, the City will be entitled to compensation based on the amounts of PFAS contamination in the City's water system;

WHEREAS, the City Council has determined that it is in the best interest of the City to participate in the Tyco and BASF settlement agreements pending in the United States District Court in South Carolina in order to receive a distribution of funds from these settlements; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby approves the City's participation in the settlements with Tyco Defendants and BASF Corporation in the United States District Court of South Carolina, *In Re: Aqueous Film-Forming Foams Product Liability Litigation*, MDL 2:18-mn-2873-RMG.

Section 2. The City Council hereby authorizes and directs the City Attorney to file all documentation required to participate in the settlements, including claim forms, with the District Court.

Section 3. That the City Manager, the City Treasurer, the City Attorney, and their respective staffs are authorized and directed to execute any such documents and take any such other actions reasonably necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of September, 2024.

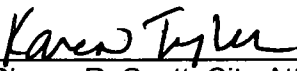
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Karen Tyler, Sr. Assistant City Attorney