



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL

FROM: Thad Renaud, Town Attorney

RE: SETTLEMENTS OF CLASS ACTIONS CONCERNING PFAS

DATE: NOVEMBER 14, 2023

Summary and Background: As you may know, in recent years there has been a rising awareness of the dangers of chemicals referred to as “PFAS” or “forever” chemicals that are contained within many of the products we use for everyday purposes, within the environment generally, and for purposes of this discussion, within the drinking water systems of municipalities across the United States. As you are also likely aware, the Town discovered small amounts of PFAS within one of its water wells in 2020 and, after isolating that well from the system, has been working with the Colorado Department of Public Health and Environment (“CDPHE”) since that discovery as part of a pilot program to study methods for the removal of PFAS from water. The purpose of this memorandum is to advise you that there have been two class action settlements in PFAS litigation on behalf of municipalities (one against 3M and another against Dupont), and that the Town must decide whether to participate or “opt out” of those settlements. For the reasons set forth below, it is my recommendation that the Town participate in the settlements by not “opting out” and by proceeding to submit claims in those proceedings.

Analysis: Because the Town has experienced only a small amount of PFAS within the water of only one of its wells, and because the Town has been working with (and received a grant from) CDPHE to implement and study remedial measures for PFAS, the Town has not incurred substantial monetary damages to date as a result of PFAS. Similarly, because it has tested all of its other wells and has not identified any other PFAS, it is thought to be unlikely that the Town will incur substantial monetary damages from PFAS in the future.

If the Town were to “opt out” of the existing settlements (which requires affirmative action within the next several weeks), it would not be entitled to make claims under the two settlement agreements and would be required to make (and prove) its own legal claims against the 3M and Dupont corporations. It is very unlikely that such legal claims would ever be economically practicable, given the relatively small amount of the Town’s damages and the relatively large cost of litigation against such corporate entities.

Under the class action settlement agreements, a claims process is established under which 3M will ultimately pay between 10.5 and 12.5 billion dollars, and Dupont will ultimately pay up to 1.8

billion dollars. The claims process is administered by a special master who is to allocate funds so as to achieve equity amongst all municipal (and other water system) claimants with the main factors of determination being the volume of water impacted by PFAS, and the level of impact.

At this point, there is little utility in trying to predict what amount the Town or any other water supplier may receive in settlement funds, as it is unknown what the ultimate level of claims against the settlement funds may be. What can be said is that the Town is in an advantageous position under the terms of the settlements in that the Town would qualify as a “Phase I” claimant (because the Town identified PFAS prior to June, 2023). Phase I claimants make their claims first, and are allocated a larger share of settlement funds than “Phase II” claimants.

Financial Impact: Making claims in the settlements will likely result in the Town recouping some of the costs that it has incurred in addressing PFAS.

Staff Recommendation: Staff recommends the Town Council determines that the Town will participate in the respective class action settlements by not “opting out” of those class actions, and by making claims in accordance with the respective settlement agreements for 3M and Dupont.

Approved By:
Thad Renaud, Town Attorney