



Legislation Text

File #: 2020-1088, **Version:** 1

To: Sonoma County Board of Supervisors
Department or Agency Name(s): County Counsel
Staff Name and Phone Number: Robert Pittman -707 565 2421
Vote Requirement: 4/5th
Supervisory District(s): All

Title:

Legal Services Agreement and In-House Support for Aqueous Film-Forming Foams Products Liability Litigation

Recommended Action:

- A) Authorize the County Counsel to execute a legal services agreement with Baron & Budd and Cossich Sumich Parsiola & Taylor to represent the County of Sonoma in pursuing litigation against certain manufacturers and distributors of Aqueous Film-Forming Foams Products ("AFFF") as part of an already pending multi-district products liability case (MDL 2873).
- B) Approve use of Litigation Contingency Funds for County Counsel to oversee and coordinate the legal services with County staff in the amount of \$75,000.

(4/5th Vote Required)

Executive Summary:

The Sonoma County Airport, like most other airports across the United States, stores Aqueous Film Forming Foam ("AFFF") products, a fire suppressant, to combat jet fuel spills. AFFF products include chemicals, called Per- and Polyfluoroalkyl Substances ("PFAS"), that are often referred to as "forever chemicals" due to the fact they can remain in the environment for many years. When AFFF products are used to combat liquid fires and in training exercises, chemicals can leach into underground aquifers and surface water bodies. Due to environmental concerns, a new California law (SB 1044, 2020) bans the use of PFAS chemicals in AFFF foam at airports by 2024. However, the use of AFFF at airports is, and remains, federally mandated.

The Sonoma County Airport no longer uses AFFF products with these "forever" chemicals," but instead uses AFFF foam with shorter chain chemicals that break down in the environment much quicker and that are not bioaccumulative. Moreover, based on current knowledge, new preventative methods are used such as pit liners and other measures for preventing the chemicals from entering the groundwater and soil. Trainings in the past have discharged foam in a less controlled manner, and detectable concentrations of PFAS at the Sonoma County Airport have been found. The full extent of the contamination is not known yet.

This situation is not unique to the Sonoma County Airport, but impacts airports, municipalities, military bases and other locations nationwide, which are faced with mounting costs to treat these contaminants on their own, including substantial investigation and up-front capital costs, as well as ongoing operational and maintenance expenses, making litigation necessary for the benefit of many communities to receive enough funds to properly remediate and abate PFAS contaminations.

To date, approximately 500 products liability cases concerning AFFF contamination have been filed across the United States. Cases are consolidated in a multi-district litigation and are now pending in the United States District Court for the District of South Carolina (In Re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873-RMG). Plaintiffs include states, municipalities, airports and individuals nationwide. Defendants include 3M Company, DuPont, Tyco Fire Products, LP, Chemguard, Inc., Buckeye Fire Equipment Company, National Foam, Inc., Kidde-Fenwal, Inc., Kidde PLC, Inc., Angus International, UTC Fire & Security Americas Corporation, Inc., United Technologies Corporation, BASF Corporation and Chemours.

These lawsuits claim products liability, negligence, public and/or private nuisance, and trespass based on the allegations that these defendants are engaged in the business of designing, manufacturing, testing, distributing, marketing and/or selling PFAS, and/or AFFF containing PFAS. As such, they had a duty to not market a product that is unreasonably dangerous for its intended and foreseeable uses.

On October 6, 2020, the Board provided direction to staff to initiate litigation on behalf of Sonoma County as part of this multi-district products liability case. The litigation is intended to insure that the County receives adequate compensation and funding to remediate past, present, and future environmental impacts at the Sonoma County Airport.

The Board also authorized the retention of the law firms Baron & Budd and Cossich Sumich Parsiola & Taylor to represent the County's interests in this litigation based on these law firms' substantial expertise and qualifications. Baron & Budd's team has been representing the County related to the 2017 Sonoma Complex Fires and the Kincade Fire after being selected by the Board among several qualified law firms following a thorough interview process in 2017. Both firms have extensive knowledge of this products liability litigation and are involved in key leadership roles, including serving as co-chairs of the Committee charged with developing the scientific connection between AFFF and the damages of those contaminated by it. The legal services agreement (Attachment A) provides for compensation to Baron & Budd and Cossich Sumich Parsiola & Taylor on a contingency fee basis at the negotiated rate of twenty five percent (25%) recovery of net proceeds with a requirement that the firms front all costs, including expert witness fees.

As the County retains complete control over the litigation, County Counsel will be responsible for overseeing and coordinating the litigation, facilitating discovery, and supervising outside counsel. The necessary support and oversight will require a significant commitment of County Counsel resources to manage and interface with County departments and agencies. County Counsel is estimating to spend up to 250 hours for related services.

Staff recommends that the Board authorize County Counsel to execute the legal services agreement with Baron & Budd and Cossich Sumich Parsiola & Taylor included as Attachment A. Staff further recommends that the Board approves funding for County Counsel to oversee and coordinate the legal services with County staff in the amount of \$ 75,000.

Discussion:

n/a

Prior Board Actions:

October 6, 2020: Board authorized the initiation of litigation against certain manufacturers and distributors of

Aqueous Film-Forming Foams products as part of a multi-district products liability case (MDL 2873).

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses	75,000		
Additional Appropriation Requested			
Total Expenditures	75,000		
Funding Sources			
General Fund/WA GF	75,000		
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	75,000		

Narrative Explanation of Fiscal Impacts:

County Counsel is estimating to spend up to 250 hours for services related to the oversight and coordination of the litigation. There are sufficient appropriations in the Non-Departmental Litigation Contingency Fund to cover County Counsel costs.

There are sufficient appropriations in the Litigation Contingency Fund to cover the County's share.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

Attachment A: Legal Services Agreement

Related Items "On File" with the Clerk of the Board:

