

Agenda Item No.: 5.2

Agenda Date: 09/04/24

Reviewed By: JSD

RE: Accepting the terms and conditions for settling district claims regarding Tye Well and authorizing a settlement agreement and release with the Port Of Seattle

CATEGORY		FINANCIAL			
<i>Executive</i>	<input type="checkbox"/>	<i>Expenditures?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>	<i>Budgeted?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>	<i>Amount: \$</i>		<i>Not-to Exceed</i> <u>N/A</u>	

ATTACHMENTS:

1. Resolution 24-9-4C
2. Settlement Agreement and Release with the Port of Seattle

COMMENTS:

The District owns and operates the Tye Well and Treatment Plant (Tye) located within easements on Port of Seattle (Port) property near Seattle-Tacoma International Airport (SeaTac).

The District began testing for Per- and Polyfluoroalkyl Substances (PFAS) in response to newly adopted regulations on water purveyors by the Washington State Department of Health and found the presence of Perfluorononanoic Acid (PFNA) exceeding established guidelines. Upon discovery of the PFAS in the source water, the District voluntarily suspended Tye operations and began purchasing supplemental water from Seattle Public Utilities (SPU).

The District believes the source of the PFAS is from the Port's operations at SeaTac and subsequently notified the Port of the District's operational and economic impacts for its inability to use Tye without constructing treatment facilities to remove the PFAS and the District's need to purchase supplemental water from SPU that is more expensive than Tye (the "Claims").

The District and Port desired to enter good faith negotiations to settle the District's Claims.

HIGHLINE WATER DISTRICT KING COUNTY, WASHINGTON

RESOLUTION 24-9-4C

RESOLUTION APPROVING THE TERMS AND CONDITIONS FOR SETTLING DISTRICT CLAIMS CONCERNING THE TYEE WELL AND AUTHORIZING A SETTLEMENT AGREEMENT AND RELEASE WITH THE PORT OF SEATTLE

WHEREAS, the District's owns and operates the Tyee Well and Treatment Plant (Tyee) located within easements on Port of Seattle (Port) property near Seattle-Tacoma International Airport (SeaTac); and,

WHEREAS, the District began testing for Per- and Polyfluoroalkyl Substances (PFAS) in response to newly adopted regulations on water purveyors by the Washington State Department of Health and found the presence of Perfluorononanoic Acid (PFNA) exceeding established guidelines; and,

WHEREAS upon discovery of the PFAS in the source water, the District voluntarily suspended Tyee operations and began purchasing supplemental water from Seattle Public Utilities (SPU); and,

WHEREAS, the District believes the source of the PFAS is from the Port's operations at SeaTac; and,

WHEREAS, the District subsequently notified the Port of the District's operational and economic impacts for its inability to use Tyee without constructing treatment facilities to remove the PFAS and its need to purchase supplemental water from SPU that is more expensive than Tyee water (the "Claims"); and,

WHEREAS, the District and Port entered into good faith negotiations to settle the District's Claims and arrived at a mutually acceptable resolution of the District's Claims.

NOW, THEREFORE, BE IT RESOLVED,

1. The Board of Commissioners approves the terms and conditions as set forth in the Settlement Agreement and Release with the Port of Seattle for Claims regarding the Tyee Well (referenced as Attachment-1 and incorporated herein).
2. The General Manager is authorized to execute the Settlement Agreement on behalf of the District.

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held on the **4th** day of **September 2024**.

BOARD OF COMMISSIONERS

Signed by:

 #BFC A32C4556610...
Kathleen Quong-Vermeire, President

DocuSigned by:

 382D4C99A38F421...
Vince Koester, Secretary

DocuSigned by:

 7800B86D0748D45D...
Polly Daigle, Commissioner

Signed by:

 872BC370F2E428D...
Todd Fultz, Commissioner

Signed by:

 BE704C9708BF4C7...
Daniel Johnson, Commissioner

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) dated _____, 2024 is entered into by and between Highline Water District, a Washington municipal corporation (“District”) and the Port of Seattle, a Washington municipal corporation (“Port”), referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. In 2022, the District began testing for per- and polyfluoroalkyl substances (PFAS) in response to newly adopted regulations on water purveyors by the Washington State Department of Health. Testing performed by the District confirmed that one District groundwater source, the Tyee well, exceeded the State Action Level for the PFAS contaminant perfluorononanoic acid (PFNA). The District operates the Tyee well within an easement on Port property located at the southern end of Seattle-Tacoma International Airport (SeaTac).

B. Upon discovery of the PFAS at the Tyee well, the District voluntarily suspended Tyee well operations in June 2022 and began purchasing supplemental wholesale water from Seattle Public Utilities (SPU) to replace the water supply typically drawn from the Tyee well. The purchase of supplemental water from SPU has resulted in increased costs to the District.

C. In April 2024, the United States Environmental Protection Agency (EPA) finalized a National Primary Drinking Water Regulation (NPDWR) establishing legally enforceable levels for six (6) types of PFAS in drinking water. The Tyee well exceeds the maximum contaminant levels in two of these regulated types: Perfluorooctane Sulfonic Acid (PFOS) and PFNA. The new regulation would now prohibit the District from resuming Tyee operations unless the groundwater is treated to remove the contaminants.

D. The District believes the likely source of the PFAS contamination at the Tyee well is from Port operations at SeaTac. After learning of the PFAS contamination, the District notified the Port of the presence of PFAS at the Tyee well and asserted that the presence of PFAS would have operational and economic impacts on the District since the District would not be able to use water from the Tyee well without constructing a treatment facility to remove the PFAS and the supplemental water purchased from SPU was more expensive than water supplied from the Tyee well (the “Claims”). The District and the Port have been engaged in reviews and discussions relating to the discovery of PFAS at the Tyee well and the best way to address this matter and resolve the Claims.

E. Based on discussions and good faith negotiations between the District and the Port, the Parties desire to compromise and settle the Claims in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions set forth below, the Parties agree as follows:

1. Payment. The Port agrees to pay the District the sum of Six Million Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$6,765,000.00) in one lump sum payment (“Settlement Payment”). The Settlement Payment shall be paid by the Port to the District via ACH electronic transfer within thirty (30) days of the full execution of this Agreement.

2. Decommissioning of Tyee Well and Retention of Easement. The District agrees to decommission the Tyee well at its sole cost and expense in accordance with Washington Administrative Code Chapter 173-160-381. The District represents and warrants that it will not withdraw any water from the Tyee well and will not use the Tyee well to provide water for any District use, including the sale of water to any retail or wholesale customers. Notwithstanding the District’s agreement to abandon and decommission the Tyee well for water supply purposes, the District shall retain its existing easement rights as it relates to the District’s right to use the Tyee well site on the Port property for other uses that do not involve the withdrawal and use of water from the Tyee well. The District agrees to allow the Port to access and take water samples from the District’s monitoring well located proximate to the Tyee well site pursuant to the terms of a mutually acceptable Right of Entry Agreement. The District’s agreement to abandon and decommission the Tyee well should not be considered a voluntary non-use or relinquishment of the water rights held by the District relating to the beneficial use of water from the Tyee well. The District reserves the right to seek a change or transfer of the District’s water right in accordance with applicable state law and Department of Ecology (DOE) regulations.

3. Future Wells. The District agrees that it will not construct any new wells in the future within a 1-mile radius of the existing Tyee well that draw from the same aquifer(s) as the Tyee well (the “Future Wells”), except as otherwise provided herein. This restriction on constructing Future Wells shall not prevent the District from rehabilitating other existing wells or drilling new wells within a 1-mile radius of the Tyee well as replacements for the District’s other wells even if located within the same aquifer(s) as the Tyee well. However, if the District drills a new well as a replacement for an existing well that uses the same aquifer(s) as the Tyee well, the Port shall not be liable for any additional damages, costs and expenses, including the cost of any treatment facilities necessary to comply with applicable federal or state laws or regulations or water quality standards.

4. Release. Except with respect to performance required under this Agreement, the District hereby releases the Port and the Port’s officials, officers, employees and agents from any and all causes of action, claims, charges, suits and/or demands for damages, expenses, costs, obligations, relating to the Claims, including but not limited to the need to decommission the Tyee well, the loss of the Tyee well as an additional source of water available to the District, the need for the District to purchase supplemental water from SPU, and requests by the District to be compensated by the Port for any additional costs associated with the construction or maintenance of water treatment facilities to treat water from the Tyee well. Nothing in this Agreement shall be deemed to be a waiver of any claims or causes of action not expressly governed by this Agreement and the District shall not be prohibited from pursuing or receiving additional compensation from third parties including but not limited to PFAS manufacturers, insurers, or governmental agencies other than the Port for additional damages incurred by the District. Further, this release shall not be interpreted to be a release or waiver of any claims that may arise from or be related to: (a) claims relating to PFAS contamination currently detected in other District wells and/or aquifers from which the District draws water or which may occur or be discovered in the future, (b) the future loss of use of other District wells due to PFAS

contamination, and (c) claims asserted by customers or other third parties against the District relating to the fact that water supplied by the District to its customers from the Tyee well contained PFAS. The District specifically reserves all claims, causes of action, and defenses that are not related to the Claims.

5. Indemnification. The Port agrees to indemnify, defend and hold harmless the District and the District's officials, officers, employees and agents, from and against any and all claims that may be asserted by the District's customers or other third parties including, but not limited to government agencies, tribal governments, environmental advocacy groups and property owners, that the District provided water from the Tyee well that contained PFAS resulting in personal injury or property damage to District customers or other third parties including, but not limited to government agencies, tribal governments, environmental advocacy groups and property owners. For purposes of this indemnification, the Port specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, the Port's obligation to defend, indemnify and hold harmless the District, its elected officials, officers, employees and agents shall be limited to the extent of the Port's negligence. The indemnity described in this paragraph shall not apply to any claims based on the District's use or provision of water from the Tyee well at any date after July 1, 2022. The indemnity described in this paragraph shall also not apply to any claims resulting from the District's use or provision of water from any of its wells other than the Tyee well, including any Future Well as defined in Paragraph 3 above.

6. Miscellaneous.

6.1 Governing Law; Severability. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. If any court of competent jurisdiction shall determine that any portion of this Agreement is unenforceable, then, to the extent possible, the remaining portions hereof shall be unaffected thereby.

6.2 No Admission. The purpose of this Agreement is to settle disputed claims. Neither the execution of this Agreement, nor the performance contemplated hereunder shall be construed or considered as an admission by either Party as to the merit or validity of the Claims or arguments or defenses of the other Party hereto or of either Party's fault or liability for the Claims.

6.3 Interpretation. Each of the Parties was represented by counsel with respect to this Agreement, or was given a reasonable opportunity to consult with their own legal counsel, and have had ample opportunity to review this Agreement. This Agreement shall not be interpreted in favor of or against either Party by reason of whose attorney originally drafted it.

6.4 Disputes. Venue for any action that may be brought as a result of any dispute between the Parties hereto in any way arising out of this Agreement shall be in the King County Superior Court. In the event of any such dispute, the Party substantially prevailing in the resolution thereof shall be entitled to receive from the other Party, in addition to any substantive relief, said prevailing party's reasonable attorneys' fees incurred in the enforcement of the terms of this Agreement.

6.5 Integration. This Agreement constitutes the full and complete expression of the agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous offers, negotiations or agreements between the Parties. Any amendment or modification to any of the terms hereof shall be in writing, signed by the Parties hereto.

Highline Water District

Port of Seattle

By _____
Jeremy DelMar, P.E.
General Manager

By _____
Stephen P. Metruck
Executive Director

Date _____

Date _____