

**TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION**

Date: December 13, 2012

SUBJECT: Authorizing Notice to Escrow Agent Re Extension Time WPI Option Payments

SUBMITTING DEPARTMENT: Management

PREPARED BY: Larry Tarkowski, Town Manager

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Joint Notice of Compliance Time Extension

SUMMARY/BACKGROUND: On October 12, 2006, the Town Council adopted Resolution No. 1463 authorizing the Town Manager and the Mayor to conduct an auction allocating 2,724 acre feet of the Town's "effluent" identified by ADWR as part of a Physical Availability Demonstration. Because this was a new concept, the original bid scheduled for November 1-3, 2006 was ultimately postponed and staffed worked with the sole bidder who had qualified for that first auction (Aqua Capital Management, LP) to develop a "price floor agreement". On August 23, 2007, the Town entered into such an agreement with Aqua Capital which set a price floor of \$19,500.00 per acre-foot. That agreement included a potential "break-up fee" that would be paid to Aqua (over time as the Town received payment) if Aqua did not ultimately acquire the water (either through the Price Floor Agreement or at auction). This then established a minimum bid price of \$22,500.00 per acre foot. Based on further Town Council authorization in Resolution No. 1530, the auction was held on October 29 and 30, 2007. At the auction, another group (Water Property Investors, LLC) was the actual high bidder at \$24,650.00 per acre foot. That resulted in the Town entering into a final purchase agreement with WPI (and an agreement with an escrow agent) on November 19, 2007.

Among the provisions in the purchase agreement was a requirement that WPI make a down-payment to the Town equal to 25% of the final bid price times 1,103 acre-feet (the amount recognized by ADWR as being available then as an assured water supply). Subsequent payments would be made when Certificates of Assured Water Supply were issued by ADWR and when building permits were issued. WPI could also enter into assignments and sub-agreements, with any payments being shared between WPI and the Town (with the tracking help of the escrow agent). Finally, ADWR had agreed to recognize up to 1,621 additional acre feet of effluent interests as the Town built and permitted additional recharge facilities. Therefore, WPI (or an assignee) had an option to purchase those additional interests as they were recognized. A down-payment of 25% would be required, followed by the balance upon issuance of CAWSs and building permits (the same as for the first effluent). WPI (or the assignee) would have 5 years from the date ADWR recognized each increment of additional effluent to exercise its option. Under the escrow agreement (Subsection 4.3.1), the Town and WPI could mutually agree to extend the option period by providing joint notice to the escrow agent.

On December 15, 2008, WPI received notice that ADWR had recognized an additional 56.50 acre feet of effluent (setting an option deadline of December 15, 2013). On February 18, 2010, WPI received notice that ADWR had recognized an additional 124 acre feet of effluent (setting an option deadline of February 18, 2015). Unfortunately, the world-wide economic downturn had arrived by that time. And, the Town had run into delays for the construction and permitting of what would eventually be the North Plains effluent recharge facility. Therefore, on September 4, 2012 WPI requested that the Town agree to extend

both option periods by two years (December 15, 2015 for the 56.50 acre feet and February 18, 2017 for the 124 acre feet).

As of November 9, 2012, Town staff has obtained permission from Aqua Capital (the holder of the break-up fee interest) to make such an extension of the two option periods. Therefore, in hopes that the extension will assist WPI in its on-going efforts to market the effluent for new development, staff is proposing that the Town Council authorize the Mayor to sign a joint notice with WPI to the escrow agent indicating that these extensions have been approved.

OPTIONS ANALYSIS: The Council may authorize the Mayor to sign the joint notice of the option extensions to the escrow agent, OR decline to authorize signature of the joint notice.

ACTION OPTION: Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign a Joint Notice of Compliance Time Extension to the escrow agent with regard to WPI options to purchase newly-recognized effluent, OR Motion not to authorize signature of the Joint Notice. **VOTE.**

RECOMMENDATION: Town staff recommends authorizing signature of the Notice of Compliance time Extension to the escrow agent.

FISCAL ANALYSIS: The Town has used the down-payment made in 2007 towards financing of the new recharge facility and payment towards the Town's portion of the Big Chino Water project with the City of Prescott. Subsequent payments for the auctioned effluent are an important part of the Town's ultimate water portfolio financing. It is hoped that this action will help assure successful marketing of the Town effluent in the near future.

REVIEWED BY:

Management Services Director _____

Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to _____