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Prescott prepares to hire attorney to defend JWK

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PRESOTT – Even as they expressed frustration over the cost, Prescott City Council members appeared resigned this week to the need for an outside attorney to handle a pending lawsuit over purchase of the JWK Ranch.

The council took no vote on the matter at its Tuesday study session, but voiced support for retaining the Phoenix-based Fennemore Craig law firm to handle the lawsuit that the city faces over its decision to buy the Paulden-area JWK Ranch.

In December – just one day after the council officially approved the purchase – Prescott and its partner in the project, Prescott Valley, received a notice of intent to sue from an environmental organization, the Center for Biological Diversity.

The notice maintained that Prescott and Prescott Valley's plans to pump thousands of acre-feet of water out of the Big Chino basin each year would result in a "predictable and inevitable Upper Verde River dewatering." That, in turn, would harm the endangered species that currently live in the river, the notice claimed.

At Tuesday's meeting, City Attorney John Moffitt told the council that the city's legal department does not have the "expertise or the time" to take on the environmental lawsuit.

The city earlier solicited proposals from law firms that specialize in

environmental law, and received four responses. Moffitt said a committee that comprises officials from Prescott and Prescott Valley had reviewed the proposals.

Of the four, Moffitt said, Fennemore Craig had the most experience in dealing with lawsuits similar to the one that the Center for Biological Diversity could file.

In a memo for the council, Moffitt estimated that the cost of defending against the lawsuit could run to as much as \$500,000 per year.

Council members made it clear they were unhappy with such a prospect. "It just amazes me that, just in the purchase, we have to defend ourselves," Councilwoman Mary Ann Suttles said.

Councilman Bob Roecker added: "I would like the citizens of Prescott to understand that we're doing this because the Center for Biological Diversity sent a letter to us and spent 37 cents (for a stamp)."

Roecker maintained that "it is a sad state of affairs that we have to spend this kind of money," when he said the Center for Biological Diversity had made "no cooperative efforts" in the discussions leading up to the purchase.

Councilman Bob Bell expressed some reservations over the cost of the legal services, noting that the lead attorney for Fennemore Craig (Norman James) would earn \$340 an hour.

After the meeting, Moffitt said the

hourly rates from the four firms ranged from about \$300 to \$550. While the lead attorney for Fennemore Craig would earn \$340, Moffitt added, other attorneys working on the case with him would earn between \$145 and \$320 an hour.

The city has until about Feb. 8 to file a response to the Center for Biological Diversity's notice to sue. Moffitt said he likely would consult with Fennemore Craig about the response.

The ultimate total cost of the city's defense against the suit will depend largely on how the case progresses through the courts, Moffitt said. In his memo to the council, he stated: "Of course, the (\$500,000 per year) sum would be reduced dramatically if a lawsuit were not filed, or if we were successful in having it dismissed fairly early in the litigation."

The council placed the matter on its Jan. 25 consent agenda – a move that usually indicates that all council members support an action.

The money for the legal services would come from the city's alternate water fund, officials said. Prescott Valley will share in the cost, based on its 46-percent portion of the JWK project.