

ITEM: 11

SUBJECT: *Settlements between the City of Lodi and Other Parties for cleanup of the Northern, Southern, and Western Groundwater Pollution Plumes, San Joaquin County*

BOARD ACTION: Consideration of a Resolution authorizing the Executive Officer to 1) enter into agreements with the City of Lodi wherein the City of Lodi assumes responsibility for the cleanup of the Northern, Western and Southern groundwater pollution plumes and 2) to enter into agreements granting covenants not to sue to the settling parties that are potentially responsible for those pollution plumes and are settling legal actions initiated by the City for the cleanup of groundwater pollution in the City's Northern, Western and Southern Plume Areas.

BACKGROUND: Past operations of dry cleaning facilities and other industries in the City of Lodi resulted in discharges of solvents (PCE and TCE) to the soils and groundwater. Investigations of the groundwater pollution indicate that there are five large groundwater plumes in the City. The City of Lodi initiated legal action against a number of parties thought to be potentially responsible for the groundwater pollution. Cleanup of this pollution is necessary to protect municipal supply wells and prevent further migration into groundwater that is currently unpolluted.

Of the five groundwater pollution plumes, the most severely polluted area is the Central Plume Area. The Board issued a Cleanup and Abatement Order (CAO) to the City of Lodi, et.al. at its April 22, 2004 meeting for cleanup of the Central Plume Area. The Central Plume parties subsequently settled with the City, creating a fund of \$9,575,000 for the investigation and remediation of the Central Plume Area.

To effectuate the City's settlements with the Central Plume Area responsible parties, the Central Valley Water Board provided those settling parties with covenants not to sue, releasing them from their obligations under the CAO. In a separate agreement with the Water Board, the City of Lodi agreed to assume responsibility for the investigation and cleanup of the groundwater pollution in the Central Plume Area.

Another plume area, known as the Busy Bee Plume Area, was also settled between the City and Busy Bee's insurers and is being cleaned up under Central Valley Water Board oversight.

The City has since reached Settlement Agreements with the other litigants for the Northern, Western, and Southern Plume Areas. Similar to the Central Plume Area, implementation of these settlement agreements is contingent upon the Board granting

Buff Sheet: Lodi Settlements for
Cleanup of Groundwater Pollution Plumes

covenants not to sue to several of the settling parties. The City of Lodi will assume responsibility for the cleanup of the plume areas.

ISSUES:

- 1) In granting covenants not to sue to the settling parties, the Board is waiving all enforcement authority over those parties, thereby foregoing the ability to require those parties to fund the cleanup of the plumes.
- 2) The settlement amounts for the Northern, Western, and Southern Plume Areas are, in the City's opinion, based on the maximum contributions available to the City from the parties based on the facts relevant to each party's involvement in the case. Staff has not reviewed or obtained information from the settling parties regarding their ability to pay cleanup costs. These settlement amounts may be insufficient to cover the entire estimated costs of completing cleanup of those plumes. This concern is offset by the City of Lodi's agreement to pay for completing the cleanup, even if those costs exceed the settlement amounts. The City of Lodi has created a funding mechanism by passing an ordinance that raises water rates. Water Board staff believes that supporting the City's settlements results in less uncertainty regarding the adequacy of funding for the remedial actions.
- 3) The actual remedial methods to be implemented are not known at this time. The remedial actions for each of the sites will be selected through a process involving public input and environmental impact analysis resulting in a formal Remedial Action Plan or "RAP". Until the RAPs are prepared the remedies to be implemented and their associated costs are unknown.

Mgmt. Review

Legal Review LLO

February 3, 2011
11020 Suncenter Drive, Suite 200
Rancho Cordova, California, 95670