

# **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION**

## **STAFF REPORT ON PROPOSED SETTLEMENTS BETWEEN LODI AND OTHER PARTIES FOR THE NORTHERN, WESTERN AND SOUTHERN GROUNDWATER PLUMES LODI, SAN JOAQUIN COUNTY**

### **SUMMARY**

The City of Lodi (City) relies on groundwater as its sole source of drinking water. In the late 1980's, the chlorinated solvents perchloroethylene (PCE) and trichloroethene (TCE) were discovered in two drinking water supply wells. These constituents, used in dry cleaning and other industrial operations within the city, were released to the soils and migrated to the groundwater. Groundwater investigations have revealed that the solvent pollution in Lodi's groundwater can be grouped into five separate plume areas. Cleanup of this groundwater pollution is necessary to restore the groundwater to its beneficial use of drinking water supply, prevent the further loss of municipal supply wells and to prevent the further contamination of groundwater which is currently unpolluted.

The City engaged a complex legal strategy whereby a City ordinance was enacted authorizing the City to conduct cleanup actions and recover its costs. Using funds borrowed from Lehman Brothers, Inc., the City began performing investigations and initiated a lawsuit against a number of parties that used, and may have discharged, wastes containing solvents that could have impacted the groundwater. (*City of Lodi v. M&P Investments, et al.*, E.D. Cal. Case No. CIV S-00-2441).

Although the legal strategy did not produce the intended results, it did result in settlements for two of the five groundwater plume areas. For the Central Plume, which has the most severe pollution, the Central Plume parties settled by creating a fund of \$9,575,000 for investigation and remediation. The Central Plume parties and the City of Lodi had been named in a Cleanup and Abatement Order issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) (CAO R5-2004-0043). In order to effectuate the Central Plume settlement, the Central Valley Water Board provided the Central Plume parties with covenants not to sue, releasing them from their obligations under the CAO. In a separate agreement with the Central Valley Water Board, the City of Lodi agreed to complete all investigation and cleanup of the pollution at the Central Plume Area. These actions were authorized by the Central Valley Water Board in Resolution R5-2005-0105.

Following the Central Plume settlement, the City of Lodi enacted an ordinance that raises its water service rates to help fund the cleanup of the City's groundwater pollution, thus ensuring that the City will have enough funds to complete cleanup of the Central Plume as well as the other Plume Areas.

The Busy Bee plume area was settled when Busy Bee's insurers obtained a pay-for-performance contract from an environmental consulting firm that guarantees cleanup of the site under the oversight of the Central Valley Water Board.

The City has now reached settlement agreements with the other litigants for the Northern, Western, and Southern Plume Areas. The settlements will make \$6,307,650 available for the cleanup of the Northern, Western, and Southern Plume Areas and conclude years of very costly litigation between the parties. As was the case in the Central Plume Area, implementation of these Settlement Agreements is conditional upon the Central Valley Water Board granting covenants not to sue to the settling parties. As before, the City is willing to agree to accept responsibility for the cleanup of the groundwater plumes.

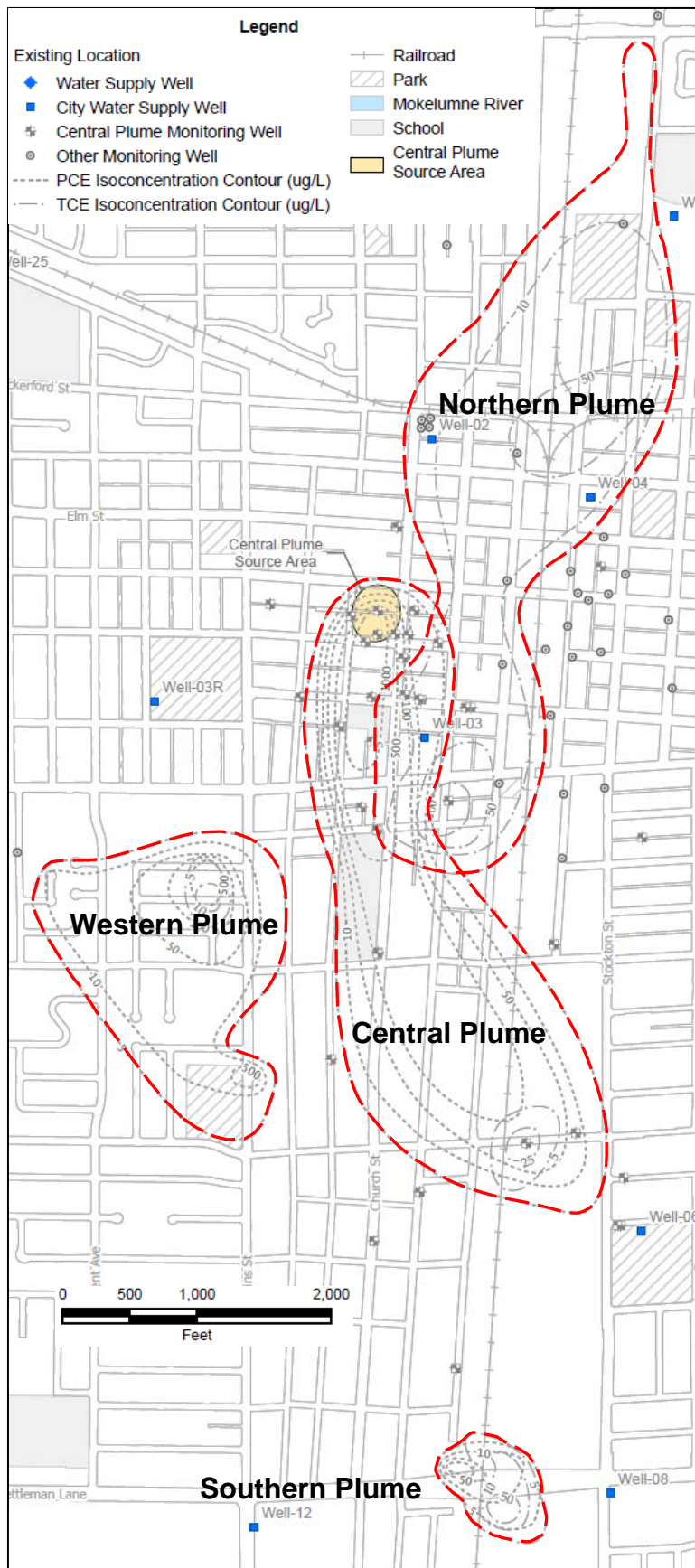
Thus, staff is recommending that the Central Valley Water Board adopt the proposed Resolution to authorize the Executive Officer to perform the following actions:

- Enter into an agreement with the City of Lodi whereby the City agrees to complete all investigation and cleanup of the contamination at the Northern, Western, and Southern Plumes at the direction, and in accordance with the requirements, of the Central Valley Regional Water Quality Control Board, and
- Grant covenants not to sue to the settling parties.

## **INTRODUCTION**

In the late 1980's, the volatile organic compounds (VOCs) perchloroethylene (PCE) and trichloroethene (TCE) were discovered in two of the City of Lodi's drinking water supply wells. Further investigations in the early 1990's, conducted by the Central Valley Water Board under the Well Investigation Program, revealed several areas where VOCs from dry cleaning and other operations had impacted groundwater. Central Valley Water Board staff, at that time, concluded that some of the VOCs impacting groundwater had likely been leaked from the City's sewer system.

Further investigations have resulted in the identification of five, somewhat separate groundwater contaminant plumes. Thus, the contamination in the City's groundwater has been divided into five separate areas or zones. The following figure shows the extent of 4 of the 5 plumes, the Central, Northern, Western, and Southern Plume groundwater pollution plumes in the intermediate groundwater zones between 100 and 125 feet below ground surface:



### NORTHERN, WESTERN, AND SOUTHERN PLUME AREA SETTLEMENTS

The City has recently reached settlement agreements with the parties potentially responsible for the Northern, Western, and Southern plumes. As with the Central Plume Area, the settlements for the Northern, Western, and Southern Plume Areas involve the City's assumption of all regulatory obligations to cleanup the groundwater pollution in each of the three areas in exchange for a cash payment from the settling parties.

The amounts that the settling parties have agreed to contribute to fund the investigation and remediation of the groundwater pollution plumes are as follows:

#### Northern Plume

Ackel Parties	\$ 250,000	
Belden		
Melvin Duane Roush	}	
Robert L. Griffin		
Geraldine Griffin		
Janet Griffin Yarbrough		
Linda Griffin Hernandez		
Beth Griffin Latta		
David E. Worfolk		
Stefan I. Sekula	}	
Cain Electrical Parties		\$ 35,000
Ehlers Parties		\$ 400,000
Benson Trust		\$ 300,000
Lodi Chrome		\$ 375,000
Larssons		\$ 75,000
Weil Parties		\$ 400,000
Preszler Parties	\$ 100,000	
Gundershaug Parties	\$ 410,000	
Wright Motors	\$ 150,000	
Kayser-Roth	\$ 10,000	
San Joaquin Sulphur Parties	\$ 100,000	
Lodi Printing Parties	<u>\$ 225,000</u>	
Total	\$3,630,000	

#### Western Plume

Norge Parties	\$ 100,000
Bollinger Parties	\$ 180,000
Harman Managers	\$ 30,000
Bader Parties	\$ 100,000
Service Laundry Parties	\$ 150,000
DeWalt Scott	\$ 15,000
United Dry Cleaners Parties	\$ 50,000

American Stores Properties +	
Lucky Stores, Inc.	\$ 431,400*
The Lewises	\$ 100,000*
First Class Lodi Parties	<u>\$ 10,000*</u>
Total	\$1,166,400
Southern Plume	
Randtron, Inc.	\$ 686,250
Van der Lans & Sons	\$ 675,000*
Holz Rubber Company, Inc.	<u>\$ 150,000</u>
Total	\$1,511,250

The settlements reached between the City of Lodi and the various defendants provide that the City will obtain, or in some cases support, the request for, covenants not to sue from the Central Valley Water Board. The settlements that are contingent upon the receipt of covenants not to sue from the Central Valley Water Board and the Department of Toxic Substances Control are highlighted in the above list with an asterisk. (DTSC was a signatory to the previous Central Plume covenants not to sue.)

Attachment A is copy of the previously approved agreement between the City and the Central Valley Water Board for the Central Plume Area. The agreements for the Northern, Western and Southern Plumes will be similar to the Central Plume Area Agreement. The agreement indicates that the City will assume liability for the cleanup of these plume. Attachment B is a copy of the covenant not to sue for one of the parties in the Central Plume Area. Again, the covenant not to sue for the Northern, Western and Southern Plumes will be similar to the Central Plume Area covenant not to sue. Water Board counsel has not yet reviewed any documents related to the new proposed settlements. Modifications may be necessary following such review. Staff is providing Attachments A and B for reference only.

Staff has not reviewed or obtained information from the settling parties regarding their ability to pay cleanup costs.

Because the discharges which caused the pollution took place many years ago, essentially all of the discharged waste has reached the groundwater. One exception is in the Northern Plume, where Lustre Cal, Inc. will retain responsibility for the remaining soil pollution, and will continue to operate a soil vapor extraction system.

Unlike the Central Plume, the Central Valley Water Board has not issued cleanup and abatement orders or other enforcement orders for the Northern, Western or Southern Plume Areas. Although the City is committed to addressing those plumes, as evidenced by dedicating the settlement funds to that purpose, the Water Board may wish to formalize this commitment through cleanup and abatement orders. In addition, the draft agreements between the Central Valley Water Board and the City will specifically reserve the Board's rights to take actions against the City if necessary to compel cleanup of the plumes in an acceptable manner.

## **CONCLUSION**

Central Valley Water Board staff recommends that the Board adopt the proposed Resolution. The Resolution authorizes the Executive Officer to enter into agreements with the City of Lodi wherein the City assumes responsibility for cleanup of the Northern, Western and Southern Plumes.

The Resolution also authorizes the Executive Officer to grant covenants not to sue to the settling parties, which will effectuate the settlement reached between some of the parties. The settlements will make \$6,307,650 available for the cleanup of the Northern, Western, and Southern Plume Areas and concludes years of very costly litigation between the parties.