

EPA OVERSIGHT AND SUPERFUND LISTING ANTICIPATED FOR NORTH BASIN REGIONAL GROUNDWATER CONTAMINATION IN ORANGE COUNTY

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The Orange County Water District (“OCWD”) manages and replenishes the Orange County Groundwater Basin. The basin stores Orange County’s largest source of drinking water covering 270 square miles and provides 70% of daily water needs of 2.4 million people. The principal aquifer in the basin is located up to 1500 feet below ground. The deep aquifer in the basin, where water recharges, is up to 3000 feet below ground.

The OCWD has identified an alleged plume of VOC contaminants (including TCE and PCE) approximately 4 miles long, and allegedly impacting approximately 100,000 acre-feet of groundwater. The contaminants are known to be in the shallow aquifer, which extends to approximately 200 feet deep. However, according to the OCWD, three drinking water wells and one private well has become impacted or closed because of the plume. Also according to the OCWD, approximately 20 industrial manufacturing sites, with operations dating back to the 1950s and 1960s have been identified as potentially responsible for releases contributing to the plume.

OCWD has been negotiating with the United States Environmental Protection Agency (“EPA”) to enter into a National Contingency Plan (“NCP”) Oversight Agreement for investigating and remediating the North Basin Groundwater contamination in Fullerton area. The NCP process creates an open and collaborative environment. It includes several key steps: investigating contamination, conducting a feasibility study of cleanup options, identifying specific cleanup options, soliciting public and government agency review and comment, selecting a final remedy plan, and implementing that plan. The NCP process includes significant community involvement. This includes preparing a Community Involvement Plan, providing fact sheets and public notices, establishing an information repository where the public has easy access to site-related documents, soliciting public review of the proposed remediation plan, and holding public meetings.

EPA has decided to act as the oversight agency and require Remedial Investigation/Feasibility Study (“RI/FS”). Thus far, the state and regional agencies, including the Department of Toxic Substances Control (“DTSC”), the Regional Water Quality Control Board (“RWQCB”) and the Orange County Health Care Agency have shared the oversight role at the various industrial sites located in the North Basin.

DTSC requested that EPA list the North Basin on the NPL. EPA is conducting site investigations to evaluate whether or not to do so. If EPA lists the North Basin as a Superfund site on the NPL, there may be a tug-of-war between EPA and the state and regional agencies over which agency has enforcement powers. For example, DTSC would like to be able to pursue individual property owners for offsite investigation.

Under an Oversight Agreement with OCWD, EPA would oversee the work that OCWD (through its consultants such as Kennedy/Jenks) does in the RI/FS process. EPA would review, comment, and approve the Remedial Investigation Report and the Feasibility Study Report. And, after a public comment period, EPA would decide upon the interim remedy to contain the groundwater contamination in North Basin.

In addition to seeking funds from private parties for groundwater contamination remediation, OCWD plans to request \$20 million for North Basin from Proposition 1 funds, according to minutes from its February 2015 meeting.

The Orange County Water District was formed in 1933 by the California State Legislature enactment of the OCWD Act to protect Orange County's rights to water in the Santa Ana River. OCWD is responsible for managing the groundwater resources in that supplies water to 20 cities and 2.3 million residents. The groundwater in the basin recharges with water from the Santa Ana River to the Prado Dam.

The regional groundwater contamination could be designated by EPA within two years as a Superfund site. Piecemeal cleanup efforts have been ongoing, with roughly 50 sites potentially contributing to the regional contamination.

EPA is finalizing a preliminary study to determine if a Superfund designation is appropriate. If it determines to go forward with such a designation, the next steps would be: (1) obtain governor's opinion, (2) submit an initial rule for public comment (3) public comment period and (4) finalization of a rule designating the site. If it's placed on the Superfund list, the North Basin site would be eligible for federal funds to be accessed to fund orphan shares.

The North Basin resembles other regional groundwater Superfund sites, including the San Fernando Valley Superfund Sites I and II, which have co-mingled historical industrial sources. The North Basin is characterized by a mixture of large and small companies, and some legacy businesses that may no longer exist, further complicating "who pays and how much" for the remediation.

OCWD approached EPA in 2013. In the meantime, site characterization and remediation has been and continues to be coordinated by the DTSC and RWQCB, both of which are also working with EPA.