



- Board of Directors
Legal and Claims Committee

3/8/2011 Board Meeting

7-5

Subject

Report on *In re Tronox Incorporated, et al.*, Chapter 11, Case No. 09-10156 (ALG); and authorize increase in maximum amount payable under contract with Manatt, Phelps and Phillips LLP for legal services by \$100,000 to a maximum of \$430,000

Description

In January 2009, Tronox, the successor in interest to Kerr-McGee (the long-term operator of an industrial facility near Henderson, Nevada), filed for bankruptcy in the Southern District of New York. The Kerr-McGee/Tronox facility was constructed by the Defense Department during World War II and was used for production of military supplies and various other products over many years that resulted in significant contamination of the site. In 1997 perchlorate was discovered in the Colorado River and at Metropolitan's Colorado River water intake. The source of the perchlorate was traced back to the Kerr-McGee/Tronox facility. The current process to intercept and treat the perchlorate has reduced the contaminant level by approximately 90 percent. The process costs approximately \$6 million - \$7 million per year to operate and, if the contaminated soil is not remediated, the pump-and-treat operations will need to continue for approximately 100 years.

One of the main reasons Tronox filed bankruptcy was to obtain relief from its environmental obligations nationwide, including the Nevada site. Tronox also sued Kerr-McGee and its successor entity, Anadarko, alleging fraudulent transfer of the nationwide environmental liabilities from Kerr-McGee to Tronox (the Adversary Action). Tronox included the Adversary Action as an asset in the bankruptcy and any recovery from this litigation will be allocated to the various environmental trusts. The Henderson Environmental Trust will receive 22 percent of any recovery in the case after deduction of litigation and other costs.

Out of concern that there would be inadequate funding to remediate the site and continue the pump-and-treat after the bankruptcy, Metropolitan contacted the Southern Nevada Water Authority (SNWA), the Central Arizona Water Conservation District (CAWCD) and the three agencies formed the "Colorado River Authorities" to participate in the bankruptcy action. Metropolitan and CAWCD jointly hired Manatt, Phelps and Phillips LLP ("Manatt") to advise on Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) matters and provide local assistance in the bankruptcy. Manatt worked with SNWA's bankruptcy counsel (Kramer Levin) to assist in negotiations of the various bankruptcy, environmental, real estate and other documents required and to coordinate with the Department of Justice (DOJ) and the State of Nevada to reach agreement on the terms of the various settlement documents. Manatt has worked on a number of matters with the Trustee for the Henderson Environmental Trust and is assisting Metropolitan and CAWCD relative to the Trust. Although Metropolitan and CAWCD have a significant interest in the activities of the Trust and the remediation of the Henderson facility, we are not legal beneficiaries of the Trust.

In addition to Manatt, Metropolitan contracted with Latham and Watkins to provide bankruptcy, corporate and securities advice, as well as expertise relating to potential environmental claims Metropolitan and the other entities may have against other responsible parties for remediation of the Henderson facility. Metropolitan also contracted with technical consultants to provide assistance in the review of various remediation scenarios and settlement offers.

Metropolitan's objective has been to protect its source water in the Colorado River from further contamination and to maximize the cash and other assets that will be made available through the bankruptcy to continue pump-and-treat of the groundwater and to remediate the site.

As previously reported to the Board, as part of the final bankruptcy plan and settlement, the Colorado River Authorities with DOJ and the State of Nevada negotiated a reimbursement of a portion of the funds they expended for legal counsel and consultants. Metropolitan expended approximately \$1.6 million and on February 14, 2011, received \$778,310 in reimbursement.

Remaining work includes working with the Environmental Trust to insure that pump-and-treat continues uninterrupted and that an appropriate site remediation plan is completed and implemented. There are also continuing issues relating to the bankruptcy, including real estate and insurance matters and coordination with the Litigation Trust regarding prosecution and settlement of the pending Adversary Action. Metropolitan and CAWCD want to participate with the Trust to determine the best approach to treatment and remediation in the event of changes in federal law relating to perchlorate and in the event the Trust's funds are depleted prior to the completion of treatment and remediation and the parties are required to seek additional funds from third parties to continue the work.

This letter requests board authorization to increase the authorized payment pursuant to the contract with Manatt by \$100,000 to a maximum of \$430,000. The \$100,000 in additional expenditures would be shared equally with the CAWCD so Metropolitan would not spend more than \$50,000.

Policy

Metropolitan Water District Administrative Code Section 6431: Authority to obtain expert assistance

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize amendment of the contract for legal services with Manatt, Phelps and Phillips LLP for the *In re Tronox Incorporated* matter to increase the maximum amount payable by \$100,000 to \$430,000. The \$100,000 is to be shared equally with CAWCD.

Fiscal Impact: \$50,000

Business Analysis: Approval will provide Metropolitan with legal representation to work with the Environmental Trustee for the Tronox site, NDEP and DOJ to protect the Colorado River from a resumption of contamination from the Tronox facility.

Option #2

Do not amend the subject contract.

Fiscal Impact: Unknown at this time

Business Analysis: Metropolitan would not have outside counsel assistance in working with the Environmental Trustee for the Henderson Facility and addressing the remaining issues relating to the Tronox bankruptcy.

Staff Recommendation

Option #1



Karen L. Tachiki
General Counsel

2/24/2011
Date

Ref# I12604331