



- Board of Directors  
*Legal and Claims Committee*

4/10/2012 Board Meeting

---

7-3

---

## 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 \$60,000 to a maximum of \$440,000

---

## Description

When staff last reported on this matter in March 2011, the parties to the bankruptcy court had entered into a settlement providing \$80 million in funds plus additional assets to an environmental trust to fund continuing remediation of the perchlorate and other contamination at the Tronox facility in Henderson, Nevada. Since then, Metropolitan has coordinated with Colorado River stakeholders to monitor the Nevada Environmental Response Trust (Trust) concerning the Henderson Site remediation, participated in efforts to monetize the Trust's interests in real estate assets awarded by the court, and monitored the ancillary shareholder litigation involving Tronox's successor in interest, Anadarko. Metropolitan share of this work was \$25,000 for the past year. Having almost exhausted this funding, staff is requesting an additional \$60,000, half of which will be paid by the Central Arizona Water Conservation District (CAWCD), to continue this ongoing work.

## Background

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 U.S. Department of Defense 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. One of the main reasons Tronox filed bankruptcy was to obtain relief from its environmental obligations nationwide, including the Henderson, 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 (Adversary Action). Tronox included the Adversary Action as an asset in the bankruptcy.

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) and 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 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 and Nevada Department of Environmental Protection to reach a settlement of the bankruptcy case that was advantageous to the Henderson Environmental Trust.

In February 2011, the bankruptcy court created the Trust to ensure long-term cleanup at the Henderson site and awarded the following assets to assist with long-term remediation efforts:

1. \$80 million in cash
2. 23.75 percent of any recovery in the Adversary Action subject to deductions of certain litigation and other costs
3. 100 percent of certain Nevada real estate assets

The bankruptcy court has retained jurisdiction during the pendency of the Adversary Action. Manatt is assisting Metropolitan and CAWCD on a number of matters with the Trustee regarding conversion of the real estate assets to cash, monitoring of the Adversary Action and the continuing remediation of the site.

Over the past year, significant progress has been made. First, regarding remediation, in February, the Trust held a stakeholder meeting and provided the first annual report. At that time, Environ (the Trust's consultant) reported that the interim soil removal (nearly 1 million tons of impacted soils) was complete, resulting in removal of approximately 240 tons of perchlorate, 20 tons of arsenic and 30 pounds of dioxins. Remaining impacted soils are being addressed through a site management plan and long term monitoring. The current technical focus is on evaluating and optimizing the groundwater extraction and treatment system. The plan for 2012 and 2013 is to better address perchlorate-impacted groundwater through alternative treatment and cost-effective interim measures. Completion of a Feasibility Study prescribing these measures is expected in early 2013. In addition, in an effort to assure continued and full payment to the Trust from the U.S. Department of Defense (under the Navy's Consent Decree), Metropolitan assisted the Nevada Attorney General's office in preparing an Interim Consent Agreement by which the Trust and the NDEP agree that the remediation work is being performed consistent with the National Contingency Plan (Superfund) as required by the Consent Agreement.

Since early 2011, the Trust has been working to monetize the real estate assets left to the Trust. Under the Trust Agreement and the Tronox Bankruptcy Plan and Environmental Settlement, the Trust took over Tronox's interest in certain real property held by Basic Management Inc. (and its partners) (collectively, BMI). The real property is known as Landwell. In addition, under the bankruptcy the Trust gained the estate's partnership share of the BMI holdings. Effectively, under the bankruptcy settlement, if the BMI parties and the Trust could not agree at a "valuation" of those assets, an appraiser would be brought in to assign value and trigger a divestiture of the Trust's interests in BMI/Landwell. These negotiations are ongoing.

Finally, the Adversary Action is the last piece of the Trust's financial puzzle. In this action, Tronox (the estate) and the United States, on behalf of the states and other environmental creditors, have asserted fraud and other claims against Anadarko and Kerr McGee in connection with the sale and spinoff of the Kerr McGee-Tronox assets and liabilities. The basic premise alleged is that Kerr McGee and Anadarko knowingly placed undercapitalized assets and disproportionate liabilities (including environmentally impaired properties) in the new company, Tronox, leaving the "good" assets for acquisition by Anadarko. That proceeding is scheduled for trial in New York before Bankruptcy Judge Gropper on May 15, 2012. The trial is expected to last approximately two months and will focus, among other things, on the environmental conditions of certain Tronox assets, including the Henderson site, at the time of the spinoff. At issue is upwards of several billion dollars of potential recovery. As noted above, of any such recovery for the bankruptcy environmental claimants, the Trust is entitled to 23.75 percent (subject to certain offsets). With assistance of Manatt counsel in New York, Metropolitan is monitoring this litigation and engaged in negotiations with the parties to protect the interests of the Trust and the Colorado River Authorities.

In order to fund Metropolitan's and CAWCD's continued participation in this work, this letter requests board authorization to increase the authorized payment pursuant to the contract with Manatt by \$60,000 to a maximum of \$440,000. The \$60,000 in additional expenditures would be shared equally with the CAWCD so Metropolitan would not spend more than \$25,000.

## 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 \$60,000 to a maximum of \$440,000. The \$60,000 is to be shared equally with CAWCD.

**Fiscal Impact:** \$30,000

**Business:** Analysis: Approval will provide Metropolitan with legal representation to work with the Trust to protect the Colorado River from a resumption of contamination from the Tronox facility.

### Option #2

Do not amend the subject contract.

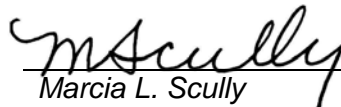
**Fiscal Impact:** Unknown at this time

**Business Analysis:** Metropolitan would not have outside counsel assistance in working with the Trust to address the remaining issues relating to the Tronox bankruptcy.

## Staff Recommendation

---

Option #1

  
\_\_\_\_\_  
Marcia L. Scully  
General Counsel

3/27/2012

Date