



## Metropolitan Cases

### ***Orange County Water District v. Northrop Corporation, et al.; Northrop Grumman Systems Corporation v. Metropolitan (Orange County Superior Court)***

As reported in May 2012, phase 1 of the trial in this matter started on February 10, 2012. Metropolitan is a cross-defendant in this case and is not a party to phase 1. OCWD completed its case in chief on Friday, June 29. So far, with breaks for continued depositions and to accommodate the court's schedule, there have been 31 days of trial. Defendants, starting with Northrop Corporation (Northrop), are anticipated to start their case on July 16. OCWD's witnesses explained Metropolitan's role in delivering untreated Colorado River water to the basin. Northrop informed Metropolitan that it intends to call Metropolitan's Assistant Group Manager of Water System Operations to testify. At this time, the parties anticipate completion of phase 1 of the trial at the beginning of September.

As previously reported, in December 2004, OCWD initiated this action against Northrop and other industrial defendants seeking cleanup costs and damages primarily from volatile organic compound contamination of groundwater within the North Basin of the Orange County Aquifer. Northrop brought a cross-complaint against Metropolitan, alleging that Metropolitan was responsible for any perchlorate cleanup costs that Northrop would incur, due to perchlorate found in water imported from the Colorado River and originating from industrial sites in Henderson, Nevada.

One industrial defendant, EDO Corporation, recently entered into a proposed settlement for \$650,000. This leaves five defendants in phase 1 of the trial. Legal Department staff is continuing to monitor the trial and ongoing depositions.

Phase 1 is a bench trial, before the judge with no jury, between OCWD and defendants. Phase 2 will be a jury trial between the same parties. If there is a finding of liability against defendants, no earlier than 12 months after the conclusion of phase 2, a third phase will commence between defendants and cross-defendants regarding the various parties' contribution to the contamination. If defendants are found liable for perchlorate

contamination, Metropolitan will participate in phase 3 of the trial.

Staff will continue to monitor phase 1 of the trial and update the Board as warranted.

### ***San Gabriel Basin Water Quality Authority v. Aerojet-General Corp., et al. (SEMOU matter) (U.S. District Court for the Central District of California)***

This case involves groundwater contamination in the San Gabriel basin, in the South El Monte area. Metropolitan was brought into the case in 2004 as an alleged source of perchlorate in the basin by virtue of deliveries of untreated Colorado River water to its member agencies. Most parties in this action had settled at the time of the General Counsel's April 2012 report. In April 2012, the final remaining defendants (TDY Industries, et al.) reached agreement with the plaintiffs on a framework for settlement. TDY is still working out the details of its settlement agreement, and the United States has reported to the court that the settlement in principle is in place. In connection with its settlement, TDY brought a lawsuit against its excess liability insurance carrier (Lloyd's of London) for breach of contract and bad faith in refusing to approve and contribute toward TDY's settlement.

After the court approves all remaining consent decrees and pending motions to approve settlement agreements and the settling parties make full payments, all claims in this case will be dismissed and the case will be closed for Metropolitan. (See General Counsel's February and April 2012 Activity Reports.)

### ***Re Tronox Incorporated, et al., Chapter 11, Case No. 09-10156 (ALG) (U.S. Bankruptcy Court, Southern District of New York)***

As reported in April 2012, staff is continuing to monitor the Nevada Environmental Response Trust concerning its remediation of perchlorate at the Henderson, Nevada site, participating in efforts to monetize the Trust's interests in real estate assets awarded by the court, and monitoring the ancillary shareholder litigation involving Tronox's successor in interest, Anadarko Litigation Trust



(Adversary Action). Metropolitan is sharing the costs of this work with the Central Arizona Water Conservation District, represented jointly by counsel in the New York office of Manatt Phelps LLP.

Trial in the ancillary action started in New York on May 15, 2012. The outcome of this action is important to Metropolitan because the Nevada Environmental Response Trust is entitled to 22 percent of any net recovery in the Adversary Action. Any recovery would be used to fund the remediation of the Henderson site and the continued interception of contaminated groundwater before it reaches the Las Vegas wash.

The trial, which began May 15 and is expected to last all summer, features the Anadarko Litigation Trust – Tronox's successor in the case – and the U.S. Department of Justice, which stepped into the case during Tronox's bankruptcy on behalf of the U.S. Environmental Protection Agency as the debtor's largest creditor, suing Kerr-McGee, which is now wholly owned by Anadarko Petroleum Corporation.

The suit focuses on the 2005 and 2006 move that saw Kerr-McGee put its valuable oil and gas exploration and production assets into an entity known as New Kerr-McGee, leaving its pigment business, laden with decades worth of environmental liabilities from Kerr-McGee's chemical operations, to Tronox. The Litigation Trust is trying to prove that Kerr-Gee failed to

investigate and disclose environmental liabilities at certain sites, including the Henderson site, even to its own accountants, and didn't evaluate liabilities until it was required by an agency or complaint to do so. As a result of all this, the Anadarko Litigation Trust argues the legacy liabilities allotted to Tronox at the time of its spinoff were materially understated. After filing for bankruptcy protection in 2009, Tronox filed the suit in an attempt to recover \$15 billion it alleged that Kerr-McGee and Anadarko owed it as a result of the fraudulent transfer. That figure has since grown to \$25 billion with interest.

Staff will continue to monitor the Adversary Action and the remediation of the Henderson site and update the Board as warranted.

#### ***AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)***

AFSCME Local 1902 filed an unfair practice charge with the Public Employment Relations Board (PERB) on May 11, 2012. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by reclassifying Environmental Specialists and moving them into positions outside of the Local 1902 bargaining unit, without notifying Local 1902 or offering to meet and confer over the reclassifications. Metropolitan will respond to the charge by lodging a position statement seeking a dismissal based on factual inaccuracies contained in the charge. The Legal Department will represent Metropolitan in this matter.

## Items of Interest

### ***Los Angeles County Flood Control Dist. v. Natural Resources Defense Fund (Supreme Court Docket No. 11-460)***

The United States Supreme Court recently granted review for next term in the appeal of *Los Angeles County Flood Control District v. Natural Resources Defense Council*. The case concerns whether the Los Angeles County Flood Control District is liable for polluted stormwater discharged by others into the Los Angeles and San Gabriel rivers.

In March 2011, the Ninth Circuit ruled in favor of the Natural Resources Defense Council (NRDC) and Santa Monica Baykeeper in finding that the Flood Control District was responsible for Clean

Water Act violations. (*NRDC, Inc. v. County of Los Angeles*, 673 F.3d 880 (9th Cir. Cal. 2011))

The Flood Control District argues it is not liable because it merely controls sections of the rivers for flood control purposes. Pollutants, originating from other municipalities in the Los Angeles area that drain into the rivers, merely pass through the sections it oversees.

The legal question raised by the Flood Control District is whether there is a "discharge" under the Clean Water Act for what the Flood Control District maintains is a "transfer of water." Previously, the Supreme Court ruled in *South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004) that a transfer does not constitute a discharge.



The Court declined to hear a second issue raised by the Flood Control District that attempted to broaden the case by raising the issue of jurisdiction under the Clean Water Act.

The case is of interest to Metropolitan and its member agencies because of the complex conveyance system that brings water to Southern California. The Flood Control District has threatened to seek contribution from all entities, including Metropolitan and many municipalities, that have discharged water into the storm sewer system. Metropolitan and the Flood Control District have entered into a tolling agreement until the issues of the appeal are resolved. The case will be heard during next year's Supreme Court term.

### **Finance**

Metropolitan priced its \$190,600,000 Water Revenue Refunding Bonds, 2012 Series C, \$39,500,000 Water Revenue Refunding Bonds, 2012 Series D (taxable), and \$89,500,000 Water Revenue Refunding Bonds, 2012 Series E on June 20, 2012 and closed the transactions on June 28, 2012. The 2012 Series C, D and E Bonds were issued to refund various series of Water Revenue Bonds that were originally issued in 2004, 2006, 2008, and 2010. In addition, approximately \$47.2 million of bond proceeds were used to pay swap counterparties to terminate two interest rate swaps and to partially terminate five interest rate swap transactions. The Official Statements describing the 2012 Series C, D and E Bonds are available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access web page at <http://emma.msrb.org/> and on the Finance page of Metropolitan's website, <http://www.mwdh2o.com/mwdh2o/pages/finance/finance01.html>, under "Financial Documents." Legal Department attorneys prepared Appendix A to the Official Statements and assisted outside bond counsel with the bond documents and closing.