



Metropolitan Cases

Tronox, Inc. v. Kerr McGee Corp. (U.S. Bankruptcy Court, Southern District of New York)

Background

Tronox is the current owner and operator of the facility near Henderson, Nevada that was identified as the source of perchlorate detected in the Colorado River in 1997 at Metropolitan's intake. [Note: Metropolitan is currently a cross-defendant in the *Orange County Water District v. Northrop Corporation* filed in December 2004. The defendants in this litigation have alleged that Metropolitan is responsible for contamination of the Orange County groundwater basin due to its delivery of Colorado River water containing perchlorate to the Orange County Water District.]

The facility was built 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, resulting in significant contamination of the site. The site was owned and operated for several years by Kerr-McGee. Kerr-McGee was the owner of many other businesses nationwide that involved the use of hazardous and toxic substances. From 2000 through March 2006, Kerr-McGee engaged in a process of corporate reorganization that resulted in the creation of Tronox as a spin-off successor corporate entity with the responsibility for essentially all of Kerr-McGee's environmental and pension liabilities. "Old Kerr-McGee" was divested of the liabilities and a "New Kerr-McGee" was created that was free from the environmental liabilities ("legacy liabilities"). Shortly after New Kerr-McGee was created it was acquired by Anadarko.

In January 2009, Tronox filed for bankruptcy in the Southern District of New York. One of the main reasons Tronox filed for bankruptcy was to be relieved from its environmental obligations nationwide, including at the Henderson, Nevada site. As part of the bankruptcy proceeding Tronox filed an "Adversary Action" against Anadarko and Kerr-McGee alleging fraudulent conveyance. A fraudulent conveyance in this context is a transfer of highly unequal economic value, often for the purpose to hinder, delay or defraud creditors. In this case, Tronox asserted that Kerr-McGee

transferred environmental liabilities to Tronox that greatly exceeded the value of the businesses and other assets it received or its capacity to generate sufficient income to pay its environmental debts. Tronox included the Adversary Action as an asset in the bankruptcy.

At the time of the bankruptcy, out of concern that there would be inadequate funding to remediate the Henderson site after the bankruptcy, Metropolitan contacted the Southern Nevada Water Authority (SNWA) and Central Arizona Water Conservation District (CAWCD), and the three agencies formed the "Colorado River Authorities" to participate in the bankruptcy action. Metropolitan and the other agencies coordinated with the Department of Justice and the Nevada Division of Environmental Protection and negotiated for a settlement that would provide continuing funds to clean up the Tronox site.

Because, upon conclusion of the bankruptcy, Tronox would no longer have the obligation to remediate the site, the Nevada Environmental Response Trust (NERT) was created by the court. NERT now has full responsibility to remediate the site.

In February 2011, the bankruptcy court confirmed a settlement that provided the following assets to NERT to assist with long-term remediation efforts: (1) approximately \$81 million in cash; (2) 25% of an 88% environmental share of any net recovery in the Adversary Action; and (3) 100% of certain Nevada real estate assets. As of September 2013, NERT projected a 2013 year-end balance of approximately \$46 million.

On December 12, 2013, over a year after trial ended, a New York bankruptcy judge issued a 166-page opinion in the *Tronox, Inc. v. Kerr McGee Corp.* adversary proceeding (finding that Kerr-McGee acted with "intent to hinder" when it spun off Tronox. The court ruled that damages could range from about \$5 billion to more than \$14 billion, plus attorneys' fees and costs.

The judge ordered the parties to submit further briefing over the next two months on the issue of damages, followed by oral argument, after which the court will issue a judgment. There are legal



issues relative to whether the court has the authority to enter a final judgment in the Adversary Action. The court believes it does have such authority, but if an appellate court disagrees, the court has asked that its decision be deemed proposed findings of fact and conclusions of law for final entry by the District Court. Anadarko and Kerr-McGee are expected to appeal the final judgment.

AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal)

On January 7, 2014, Hearing Officer Barry Winograd issued his decision in response to AFSCME Local 1902's appeal of Metropolitan's denial of a grievance challenging the assignment of lead pay at the District's Desert Pumping Plants. The underlying grievance challenged Water System Operations' longstanding practice of limiting lead pay assignments to qualified electrical workers on those rare occasions when a supervisor is not present at a Desert pumping plant. Hearing Officer Winograd agreed with Management's position and he sustained Metropolitan's denial of AFSCME's grievance.

The Legal Department represented Metropolitan in this matter.

The Navajo Nation v. United States Department of the Interior (U.S. District Court, District of Arizona)

On December 20, 2013, Metropolitan filed its reply memorandum in support of its motion to dismiss the Navajo Nation's challenges to various Colorado River management actions. Motions to dismiss the Navajo Nation's claims have been brought by Metropolitan and other Colorado River water users, and have now been fully briefed. We are waiting to see if the federal district court in Arizona will schedule oral argument on the motions. (See General Counsel's September 2013 Activity Report.)

Monterey II Cases: Central Delta Water Agency, et al. v. Department of Water Resources ("Central Delta I"); Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources ("Rosedale"); Central Delta Water Agency, et al. v. Kern County Water Agency ("Central Delta II") (Sacramento County Superior Court)

These lawsuits brought by environmental organizations, two Delta water agencies, and two

Kern County water storage districts challenge the Monterey Amendments to the State Water Project (SWP) contracts. At issue is CEQA compliance for DWR's May 2010 completion of a new Environmental Impact Report (EIR) for the project. The Monterey Amendments themselves were authorized some 17 years ago and the original EIR was invalidated by the Court of Appeal in 2000. This new round of litigation also included a reverse validation challenge to the validity of underlying contracts, but that challenge was dismissed by the court as untimely.

After years of procedural wrangling and disputes over the administrative record, these cases are finally nearing trial. On November 15, the two sets of Petitioners each filed their Opening Briefs with the court. Since then Respondents DWR, the State Water Contractors, Inc. and certain individual contractors, and a group of parties representing the Kern Water Bank participants have been preparing their Responding Briefs, which were filed on December 27. Metropolitan staff participated in drafting the State Water Contractor brief and reviewing DWR's and the Kern Water Bank parties' briefs. Petitioners are scheduled to file their Reply Briefs by January 17. Trial will be held January 31 before Sacramento Superior Court Judge Timothy Frawley. (See General Counsel's June 2013 Activity Report.)

State Water Contractors, et al. v. Delta Stewardship Council (Sacramento County Superior Court Case No. 34-2013-80001530), now coordinated with six other actions in the Delta Stewardship Council Cases (Judicial Council Coordinated Proceeding No. 4758)

On June 14, 2013, the State Water Contractors filed litigation in Sacramento County Superior Court challenging the validity of the Delta Plan under the Delta Reform Act of 2009, and challenging the adequacy of the Final Program EIR for the Delta Plan under CEQA. Metropolitan, along with Santa Clara Valley Water District, Alameda County Flood Control and Water Conservation District, Zone 7, Antelope Valley-East Kern Water Agency, Mojave Water Agency, and San Bernardino Valley Municipal Water District are named parties in the petition. Seven lawsuits with a total of 26 petitioners were filed in Sacramento, San Francisco, and San Joaquin County Superior Courts alleging similar causes of action against the Delta Stewardship Council.



In August, the Office of Administrative Law approved the Stewardship Council's regulations that correspond to the "policies" in the Delta Plan. Various petitioner groups, including the State Water Contractors and Metropolitan, amended their pleadings to add challenges to those regulations that petitioners allege exceed the Stewardship Council's authority, or are otherwise in conflict with the Delta Reform Act or other state laws. For example, the original petition included the allegation that Water Resources Policy 1, Reduced Reliance (WR P1) exceeds the Stewardship Council's authority because it purports to regulate Urban Water Management Plans outside the Delta, and it is inconsistent with the coequal goal of achieving a more reliable water supply because it could frustrate water transfers that would convey water through the Delta. The Council adopted a regulation, codified in Title 23 of the California Code of Regulations as of September 1, 2013, that is identical to WR P1, so the State Water Contractors amended their pleading to challenge that regulation as well.

All seven cases have been coordinated under the new case name, *The Delta Stewardship Council Cases* in Sacramento Superior Court before Judge Michael Kenny. The Stewardship Council has nearly completed an administrative record that should serve as the evidence for adjudicating all causes of action. According to the Stewardship Council, the record will comprise an estimated

280,000 pages, and will cost over \$200,000. The Stewardship Council originally proposed that the cost to prepare the record be split equally among the seven petitioner groups. However, four of the seven petitioner groups have elected to prepare the CEQA record themselves, and have filed a motion seeking an order that would result in an administrative record they are jointly preparing for use in their cases to be used in lieu of, or in addition to, the Stewardship Council's administrative record. The Stewardship Council has filed a motion seeking an order that its record of proceedings be used in adjudicating all seven coordinated cases, with the issue of cost allocation deferred until after final judgment. The State Water Contractor petitioners and San Luis & Delta Mendota Water Authority/Westlands Water District petitioners have filed arguments in support of the Stewardship Council's motion to use the Stewardship Council's administrative record to adjudicate all claims, and have filed oppositions to the electing petitioners' request to use their record, or to use two records, which would only add cost and delay the proceedings.

The cross-motions are scheduled to be heard on February 14, 2014, at which time we anticipate the judge will set a scheduling conference to establish a time frame to resolve any challenges to the adequacy of the administrative record or records, a briefing schedule, and a date for one or more hearings on the merits.

Other Activities

Finance

On December 12, 2013, Metropolitan posted the remarketing statement for \$128,875,000 Water Revenue Refunding Bonds, 2011 Series A-1 and 2011 Series A-3 (Index Mode). Legal Department staff attorneys worked with bond counsel to prepare bond documents.

Annual Information Filing

Legal Department staff posted Metropolitan's annual financial information filings for fiscal year 2012/13, pursuant to continuing disclosure requirements for outstanding bond issues. These filings include the Remarketing Statement for Metropolitan's Water Revenue Refunding Bonds, 2011 Series A-1 and 2011 Series A-3, including Basic Financial Statements And Management's Discussion And Analysis As Of And For The Years

Ended June 30, 2013 And 2012, Annual Financial Information Supplement for Waterworks General Obligation Bonds For Fiscal Year Ended June 30, 2013 and the Comprehensive Annual Financial Report For The Fiscal Years Ended June 30, 2013 and 2012. They are available at <http://emma.msrb.org> (the Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board).