



Metropolitan Cases

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

On May 28, 2014, a New York bankruptcy judge approved the proposed settlement of \$5.15 billion in the *Tronox Inc. v. Kerr McGee Corp.* adversary proceeding (Adversary Action). The public comment period for the settlement closed on May 21, 2014. The deadline to object to the settlement was May 15. Several groups filed objections to the settlement, including the AIG Parties. The AIG Parties comprised of insurance companies, asked that the settlement agreement and any order approving the settlement preserve the AIG Parties' right to seek reimbursement from the settlement proceeds of \$257 million disbursed on behalf of its insureds (including the Nevada Environmental Response Trust (Trust)). Before

the May 28 hearing, AIG agreed to dismiss its objection in exchange for a clarification that the agreement does not affect the rights of the parties.

In response to objections from claimants in Columbus, Mississippi, the judge pointed out that many of the claimants had failed to file a claim in the bankruptcy proceeding and that the settlement would delay cleanup. Accordingly, the judge will recommend that the federal district court approve the settlement. Payment will be made after court approval of the settlement is final and no longer appealable, which is expected to be by fall of 2014. If the settlement is approved, the Trust will receive approximately \$1.1 billion from the settlement, which will be used to clean up the Tronox site in Henderson, Nevada. (See December 2013 Activity Report.)

Matters Involving Metropolitan

Sacramento Regional County Sanitation District v. Regional Water Quality Control Board and State Water Resources Control Board (Sacramento Superior Court)

The Sacramento Regional Sanitation District's ("District") Treatment Plant has long been of significant concern to Metropolitan due to its discharge of nutrients, pathogens, and other constituents into the Delta water supply. In 2010 the Central Valley Regional Board adopted a new discharge permit calling for a dramatic reduction in the Plant's discharge of ammonia and nitrate by requiring full nitrification/denitrification treatment and tertiary filtration for pathogen removal. The Permit was upheld by the State Water Resources Control Board in 2012.

In 2010 the District filed litigation challenging the permit. Metropolitan and the other participating water agencies intervened in the litigation to defend the permit. Last spring, the parties reached a partial settlement of the litigation, whereby the District agreed to dismiss its challenge to the ammonia and nitrate limits. That left a cause of action concerning the pathogen and filtration requirements still to be litigated.

Earlier this year, the District initiated settlement discussions on the remaining litigation.

The discussions have proved fruitful and a settlement has been reached. The settlement still requires filtration, but at a lower hydraulic capacity than originally required (217 million gallons per day instead of 325). This means that during some days during the high flow winter months, a small portion of the plant flow would not be filtered. On an annual basis, the amount of plant flow that would not receive filtration amounts to less than 3 percent. Implementation of the settlement requires issuance of an amended permit.

On May 27 the Regional Board issued a Tentative Order to amend the Permit and noticing a public hearing for consideration of the amendments at its August 7/8 meeting and it is anticipated that the amended permit will be issued.

The settlement secures the most favorable terms of the permit and avoids continued litigation. For the District, the downsizing saves approximately \$150 million in construction, operations and maintenance costs. The settlement represents a major accomplishment and a significant step in



addressing the environmental health of the Delta. (See January 2014 Activity Report.)

Property Reserve, Inc. v. Superior Court (Cal. Dept. of Water Resources), (Third District Court of Appeal)

As previously reported, the court of appeal issued a decision that struck down the Department of Water Resources' (DWR) efforts to obtain entry on real property to perform geological and environmental studies for the Bay Delta Conservation Plan (BDCP). Not only does the decision adversely affect DWR's ability to collect necessary information for the BDCP, it also affects all public agencies that may use the pre-condemnation entry statutes for their projects. In effect, the decision holds that the statutes are facially unconstitutional to the extent that they allow a court to authorize a taking of private property without first following the procedures for bringing an eminent domain action. The court's ruling would require DWR to commence two full

eminent domain proceedings for the BDCP properties -- one to acquire the right to conduct temporary, pre-acquisition investigations, and then a second lawsuit to acquire those properties that are determined to be necessary for the project.

On April 22, DWR filed a petition with the California Supreme Court seeking review of the decision. The Legal Department assisted the State Water Contractors in filing amicus letters in support of the petition for review and also seeking depublication of the decision of the court of appeals. Other agencies that have filed amicus support for DWR's position include Caltrans, Riverside County Transportation Commission, and Orange County Transportation Commission.

The Supreme Court has until June 20 to decide whether to grant the petition for review. (See March 2014 Activity Report.)

Cases to Watch

New Maximum Contaminant Level for Hexavalent Chromium Approved

On May 28, 2014, the Office of Administrative Law approved the proposed Maximum Contaminant Level (MCL) for hexavalent chromium of 10 parts per billion. The new MCL becomes effective on July 1, 2014. On May 29, 2014, the day after the new MCL for hexavalent chromium was approved, the California Manufacturers & Technology Association (CMTA) and the Solano County

Taxpayers Association (SCTA) filed a lawsuit over the new MCL. CMTA and SCTA claim that the MCL is baseless and extremely costly for taxpayers. The lawsuit asks the California Department of Public Health (DPH) to withdraw the MCL and to issue instead a new MCL for hexavalent chromium that is economically feasible. It is too early to tell if the lawsuit will affect implementation of the proposed MCL. (See also General Counsel Activity Report for April 2014.)

Other Activities

Finance

Metropolitan issued its \$79,770,000 Special Variable Rate Water Revenue Refunding Bonds, 2014 Series D on May 29, 2014. Legal Department staff attorneys prepared Appendix A to the Official Statement and assisted outside bond counsel with bond documents.

BDCP

Staff continue review and preparation of comments on BDCP environmental documents. Advise general manager on legal issues relating to BDCP implementation.

Public Records Request

Review documents and respond to public records requests relating to BDCP and Copper Pitting cases.

Colorado River

Coordinate with other agencies regarding drought response on Colorado River.

Training

Staff provided MCLE on Bay-Delta Issues. Staff attended training on ground water law, public records and the Brown Act.



Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>														
Actions in which MWD is a party	1	<i>City of Inglewood as Successor Agency to Inglewood Redevelopment Agency v. Michael Cohen as Director of State of California Department of Finance, et al.</i> , naming MWD as one of the real parties in interest, relating to financial assistance to the former Inglewood Redevelopment Agency for construction of a senior center and senior low income affordable housing units														
Government Code Claims	5	Claim submitted by SDCWA for breach of contract under the 2003 exchange agreement, claim submitted by Shimmick-Obayashi Joint Venture relating to construction of the Diemer Water Treatment Plant Oxidation Retrofit, and three claims relating to accidents involving MWD vehicles														
Subpoenas to MWD	1	Federal court subpoena served on MWD by plaintiff in the litigation <i>Bridgeport Management v. Lake Mathews Mineral Properties</i> , alleging the defendant has failed to arbitrate a dispute concerning payment of plaintiff's fees for real property asset manager services relating to defendant's property located adjacent to Lake Mathews														
Requests Pursuant to the Public Records Act	13	<table border="1"> <thead> <tr> <th><u>Requestor</u></th> <th><u>Documents Requested</u></th> </tr> </thead> <tbody> <tr> <td>Attorney Dennis Rihn</td> <td>Data on delivery of water to Orange County</td> </tr> <tr> <td>California Rural Legal Assistance</td> <td>Documents relating to Palo Verde Valley Community Improvement Fund or Investment Fund</td> </tr> <tr> <td>Fallbrook Public Utilities District</td> <td>MWD historical water quality data for Skinner</td> </tr> <tr> <td>First American Title Insurance Co.</td> <td>Water service provider to property in Riverside County</td> </tr> <tr> <td>Greene & Hall, representing Standard Pacific Corp.</td> <td>MWD water quality data for water delivered to the City of Torrance (This same law firm represents Standard Pacific in a litigation relating to copper pipe pitting/leaks in residences in Orange County.)</td> </tr> <tr> <td>Imperial Irrigation District</td> <td>MWD salary ranges and job descriptions for 13 listed positions</td> </tr> </tbody> </table>	<u>Requestor</u>	<u>Documents Requested</u>	Attorney Dennis Rihn	Data on delivery of water to Orange County	California Rural Legal Assistance	Documents relating to Palo Verde Valley Community Improvement Fund or Investment Fund	Fallbrook Public Utilities District	MWD historical water quality data for Skinner	First American Title Insurance Co.	Water service provider to property in Riverside County	Greene & Hall, representing Standard Pacific Corp.	MWD water quality data for water delivered to the City of Torrance (This same law firm represents Standard Pacific in a litigation relating to copper pipe pitting/leaks in residences in Orange County.)	Imperial Irrigation District	MWD salary ranges and job descriptions for 13 listed positions
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	Law Office of Patrick J. Maloney	SDCWA letter to MWD asserting a breach of contract claim referenced in MWD L&C agenda for May 2014
	Students from Hastings College of Law and Cal Poly Pomona, and UCLA research volunteer	Requests for (1) City of Santa Ana contract for bottled water, (2) MWD's water quality data for raw water for school project to design a water treatment plant, and (3) per capita annual water usage in Los Angeles County
	U-T San Diego	MWD's most recent reimbursement report mandated by Gov. Code § 53065.5
	Valley Sanitation District	MWD system protocol and labeling for water systems
	Wet Design	MWD Aqueduct Magazine dated 12/2001
Other Matters	1	Wage garnishment