



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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City of San Diego Wins Kinder Morgan Appeal *Ninth Circuit Restores Jury Trial for City's Claims over Leaking Fuel Storage Tanks*

The Ninth Circuit Court of Appeals on Thursday reversed a lower court ruling and restored the City of San Diego's claims against Kinder Morgan Energy Partners LLP which owns and operates the Mission Valley Terminal. The lawsuit claims that leaking tanks and pipelines on that fuel distribution facility polluted the soil and ground water in Mission Valley for decades.

The Ninth Circuit ruling reversed those portions of the lower court decision which dismissed without a jury trial all of the City's claims against Kinder Morgan. The Ninth Circuit determined that the City had presented sufficient evidence to move forward to a jury trial on its claims for the costs of restoration of its Qualcomm Stadium property, for real estate and drinking water damages, for nuisance and for trespass.

The lawsuit seeks to have a jury award damages on the City's claims that Kinder Morgan became responsible for the leakage and resulting fuel pollution in 1998, when it acquired Santa Fe Pipeline Partners LP, which owned the Mission Valley Terminal (MVT) near San Diego's Qualcomm Stadium. The City alleges that for decades these tanks released into the ground hundreds of thousands of gallons of dangerous poisons and harmful chemicals – including gasoline, other petroleum hydrocarbons and fuel additives – from the MVT pipelines.

The Court of Appeals decision enables the City to present its case against Kinder Morgan to a jury for damages arising from continuing impacts of the pollution. Underground pollution cases such as this are largely based upon opinions from expert witnesses. The lower court refused to consider the City's expert opinion evidence and, based thereon, dismissed the case without a trial. In reversing that decision, the Ninth Circuit held that "it is up to the [jury] to determine whether and to what extent it may rely on City expert...."

"We had to fight for it, but this decision now ensures that the City will get its day in court," said City Attorney Jan Goldsmith. **"The jury will hear that a substantial amount of pollution was dumped on City property through no fault of its own and that the adjoining property owner—not taxpayers—should bear the costs."**

The City of San Diego is represented by Tatro Tekosky Sadwick LLP and the Office of the City Attorney. Kinder Morgan is represented in this case by three major law firms, including the international firms Cooly LLP (which led on the appeal) and DLA Piper LLP.

The case is *People of the State of California and the City of San Diego v. Kinder Morgan Energy Partners LP et al.*, case number 3:07-cv-01883-MMA-WVG, in the U.S. District Court for the Southern District of California. A trial date has not as yet been scheduled.

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