

Kinder Morgan Strikes \$20M Deal In City's Contamination Suit

By **Christine Powell**

Law360, New York (June 17, 2016, 8:06 PM ET) -- The city of San Diego and Kinder Morgan Inc. announced Friday a \$20 million deal that resolves all of the city's claims in a long-running federal court dispute concerning contamination beneath Qualcomm Stadium, just days after a trial was slated to begin.

In addition to paying \$20 million to the city, Kinder Morgan has agreed to cover additional costs, if any, caused by historical releases from the Mission Valley Terminal — a nearby liquid storage facility owned by the energy company — as San Diego redevelops Qualcomm Stadium, home to the San Diego Chargers, or develops the groundwater beneath the property.

The agreement resolves nine years of litigation between the parties, which had been set to proceed to trial June 15. U.S. District Judge Michael M. Anello had already signed off on the parties' request to dismiss the suit by Friday afternoon.

City Attorney Jan Goldsmith said in a statement that it was "a big day" for both San Diego and Kinder Morgan.

"We particularly appreciate the substantial time and money which Kinder Morgan has put into the cleanup over the years and the company's continuing commitment to cover additional redevelopment costs should there be any due to historical releases," Goldsmith said. "The city recognizes Kinder Morgan as an important past and future corporate partner in the city of San Diego and is pleased to put this behind us."

Kinder Morgan General Counsel David R. DeVeau echoed Goldsmith's thoughts, saying the company was also pleased to resolve the suit and looked forward to "continuing to serve the citizens of San Diego, and the state of California."

The dispute stemmed from releases of petroleum products from the Mission Valley Terminal, which is located just north of Qualcomm Stadium and is the primary fuel distribution hub in San Diego County, according to the joint statement.

San Diego filed suit in August 2007, accusing Kinder Morgan of deliberately and recklessly delaying cleanup of contamination caused by the storage facility in 1998, when it acquired a company that owned the terminal.

Hundreds of thousands of gallons of petroleum products from the property, formerly owned by Santa Fe Pacific Pipeline Partners LP, leaked into the soil beneath Qualcomm Stadium over several decades, according to the city, which claimed Kinder Morgan's attempts to remediate had been sporadic and ineffective, resulting in drinking water sources being rendered unusable and threatening public health.

In January 2013, Judge Anello granted Kinder Morgan summary judgment on all claims in the city's first amended complaint, but the Ninth Circuit revived and remanded the dispute in May 2015. A trial was scheduled to begin on June 15, following a February ruling by Judge Anello that limited damages claims.

The city of San Diego is represented by City Attorney Jan Goldsmith, Assistant City Attorney Daniel F. Bamberg and Chief Deputy City Attorney Jon E. Taylor and by Rene P. Tatro, Steven R. Tekosky and Paul Foust of Tatro Tekosky Sadwick LLP

Kinder Morgan is represented in-house by David R. DeVeau, Alan J. Cooke and Nancy E. Van Burgel and by Steven M. Strauss, M. Ray Hartman III, Summer J. Wynn, Dennis Crovella, Catherine O'Connor, Sebastian Waisman and Alyssa Daniels of Cooley LLP.

The case is California et al. v. Kinder Morgan Energy Partners LP et al., case number 3:07-cv-01883, in the U.S. District Court for the Southern District of California.

--Additional reporting by Brandon Lowrey and Keith Goldberg. Editing by Kelly Duncan.