



NACWA CLEAN WATER LAW SEMINAR

THE LONG AND WINDING ROAD OF CONSENT DECREE NEGOTIATIONS

Ronald M. Hill, General Counsel
Metropolitan Water Reclamation District of Greater Chicago
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MWRD Service Area

- 872 square mile service area
- Serve 125 municipalities with a population equivalent of 10 million people
- Operate 7 water reclamation plants with a maximum treatment capacity in excess of 2.5 billion gpd
- 78 miles of navigable waterways
- Combined & separate sewer areas
- 554 miles of intercepting sewers
- 109 miles of deep tunnels
- 31 flood control reservoirs
- 7 in-stream aeration facilities
- Process 185,000 dry tons of biosolids yearly



Tunnel and Reservoir Plan (TARP)

- 1972: MWRD adopts TARP as its combined sewer overflow (CSO) Long Term Control Plan (LTCP)
- 1972: MWRD initiates work on TARP
- 1995: IEPA formally approves TARP as MWRD's LTCP



What is TARP?

- TARP is a series of tunnels and reservoirs designed to capture and treat CSOs
- TARP is divided into three distinct drainage systems and is being constructed in two phases
- Upon completion, TARP will provide system wide storage of 17.5 billion gallons



TARP progress

- 1998: Majewski Reservoir completed (350 million gallons). Averaging 98% capture from 2005-2012
- 2003: Thornton Transitional Reservoir brought online (3.1 billion gallons)
- 2006: Network of 109 miles of tunnels fully completed with 2.3 billion gallon capacity (Phase 1)



TARP progress

2015: Thornton Reservoir to be completed adding 4.8 billion gallons of storage (7.9 billion gallons total)

Reservoir and tunnels in Calumet drainage system will benefit 550,000 residents

Preliminary modeling results are extremely encouraging



Thornton “Last Blast”





McCook Reservoir

2017: McCook Stage I set to come online and will provide 3.5 billion gallons of storage

2029: McCook Stage II set to come online. Will provide additional 6.5 billion gallons of storage

\$3 billion spent on TARP since its inception

McCook Reservoir





History of Consent Decree Negotiations

1999: Initial meeting with USEPA

2003: Initial 308(a) requests from USEPA

2007: Initial meetings with DOJ and USEPA

2009: State of Illinois enters negotiations

2011: Agreement reached on terms of consent decree

April 21, 2011: MWRD's Board approves consent decree



General Terms of Consent Decree

- Adopts milestones & completion dates for reservoir
- Contingency relief
- Performance criteria
- Floatables control
- Post-construction monitoring
- Termination
- Civil Penalty of \$675,000
- SEP
- Reporting
- Stipulated Penalties



Consent Decree Progress

- Governments reject consent decree
- May 6, 2011: NGOs file Citizen Suit
- MWRD and governments return to negotiating table
- November 17, 2011: MWRD's Board approves revised consent decree



Consent Decree Progress (continued)

- Major revision to prior draft decree is addition of Green Infrastructure (GI) component
 - Develop of GI plan
 - Completion of one GI project within one year of decree effective date
 - Completion of additional GI projects by various milestone dates established in the decree
 - Expanded rain barrel program



Consent Decree Litigation

December 2011: Governments lodge consent decree with court

March 2012:

NGOs file extensive comments in opposition to entry of consent decree

- Decree merely adopts existing LTCP
- Fails to establish performance goals and criteria
- Fails to evaluate alternatives
- Lack of public participation
- Inadequate use of GI

March 2012: NGOs request leave to intervene



Consent Decree Litigation (continued)

August 2012:

- Court issues opinion and order holding that NGOs may intervene as of right (Rule 24(a)(1)). Further holds that permissive intervention also appropriate under Rule 24(b).
- Court expressly refuses to address scope of intervention. Holds that if governments file motion to enter decree, intervenors can file briefs in opposition thereto. Further holds that if they want additional involvement, may seek court's permission.

June 2013:

- Governments file motion to enter decree and extensive responses to intervenors' comments.
- Intervenors file motion to set status and scheduling conference.



Consent Decree Litigation (continued)

June 2013:

- Court grants parties six weeks to conduct discovery and sets briefing schedule to commence upon discovery close
- Intervenors serve approximately 100 requests for admission, interrogatories, requests for production and deposition notices to governments and the MWRD
- Intervenors seek additional discovery after close of discovery

September 2013:

- Intervenors file briefs in opposition to entry of decree
 - TARP's capacity too small
 - Will not be completed fast enough
 - Failure to consider alternatives
 - Inadequate performance criteria



Consent Decree Litigation (continued)

- Governments and the MWRD file replies in support of entry of decree
- Motion to enter decree pending before court. Court must determine whether the decree is fair, reasonable, and consistent with the Clean Water Act.
- If entered...
- If not entered...



Takeaways

- Enter process with eyes wide open.
- Whether or not to negotiate?
- Invite NGOs to the table?



Questions?

Ronald M. Hill

General Counsel

Metropolitan Water Reclamation District of Greater Chicago

100 E. Erie St.

Chicago, IL 60611

Telephone: 312-751-6565

Email: ronald.hill@mwrdd.org