



Contamination & Natural Resource Damages

We tackle the legal and business issues resulting from contamination of soils, ground and surface waters. We help clients put contaminated brownfields back to productive use, manage site remediation and restoration projects, resolve cost allocation and compensation disputes with other responsible parties and recover clean-up costs and damages from insurers.

Our attorneys understand the risks and liabilities associated with contaminated properties and water resources. We have represented potentially liable parties at more than 75 Superfund sites in more than half of the 50 states and have handled numerous other private-party disputes. On the transaction front, we counsel clients on risk transfer and indemnity issues, as well as assisting in evaluating site costs in the context of purchase price negotiations.

We have extensive experience in multi-party response action and cost allocation disputes and have served as common counsel on litigation and site response actions. We defend and manage restoration and compensation claims asserted by trustee agencies for liability for natural resource damages (NRD). We have substantial experience in spill contingency planning and response. We have hands-on experience with all aspects of the response and reporting obligations arising from spills, releases and other operational incidents. We also have an excellent track record in assisting public and private entities in dealing with groundwater and well field contamination. We help clients avoid legal, financial and operational problems resulting from impaired drinking water supplies.

We also are well-versed in the unique issues related to insurance coverage for environmental issues. To date, we have recovered well into the hundreds of millions of dollars in insurance coverage for our policyholder clients. We have assisted clients in obtaining third party insurance coverage and as well as in tapping clients' own insurance to defray all or a portion of the costs of site liability or litigation efforts.

Our clients benefit from the professional relationships we have forged with senior management and staff attorneys at the U.S. EPA, DOJ, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, Interior, and other federal and state agencies. Because several of our attorneys developed

their skills working at environmental agencies, we understand the objectives, mindsets and authority constraints that regulatory and enforcement agencies bring to their matters. We work in concert with them to resolve, when appropriate, the terms of administrative complaints, investigations and clean up orders.

The following examples show the breadth and depth of our experience:

CONTAMINATION & NATURAL RESOURCE DAMAGES LITIGATION

- **U.S. v. Atlantic Research, 551 U.S. 128 (2007).** We successfully represented numerous public water agencies and private water purveyors before the U.S. Supreme Court as amicus curiae involving the ability of parties to recover cleanup costs from other potentially responsible parties under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CECLA, known as Superfund).
- **Asarco LLC v. Atlantic Richfield Company, 2017 WL 3427708 (Ninth Circuit Aug. 10, 2017).** Acting as appellate counsel, we successfully overturned dismissal of CERCLA contribution suit, allowing client to pursue contribution for over \$90 million in response costs at a site in East Helena, Montana. Addressing three issues of first impression for the circuit, the Ninth Circuit held that a non-CERCLA settlement agreement can serve as the basis for a CERCLA contribution claim if the settlor incurs response costs and the settlement agreement determines the settlor's compliance obligations with certainty and finality.
- **ASARCO LLC.** A Nossaman attorney acted as lead counsel to ASARCO LLC, a former mining smelting and refining company, in the first evidentiary estimation hearing in connection with the largest environmental bankruptcy case in United States history. The estimation hearing in the U.S. Bankruptcy Court in the Southern District of Texas involved a \$406 million claim for response costs brought by the United States Environmental Protection Agency and the State of Nebraska.
- **Valero Energy Corporation.** We are providing strategic advice on a multi-faceted remediation and cost allocation dispute with respect to former refinery operations. We are advising the client team on a variety of issues involving (1) defense of a State of Illinois suit for an abatement injunction, (2) indemnity and bankruptcy claims involving the client's site predecessor, (3) dealings with the state environmental agency on required site clean up work, and (4) cost recovery and contribution actions against site predecessors and other actors.
- **Bristol-Myers Squibb (BMS).** We represent BMS in government and private party claims under CERCLA and the New Jersey Spill Act with respect to site remediation actions and costs and NRD restoration actions and damages arising from historical discharges into a 17-mile stretch of the Passaic River in New Jersey and adjacent waterways. We helped resolve a series of State damages claims and related contribution claims, and are working to resolve claims of EPA, other PRPs and site owner/operator interests stemming from incurred and anticipated final site remedy costs, forecasted to exceed 1.5 billion in total. We currently are conducting advocacy efforts to formulate an internal private-party allocation to secure a de minimis buy-out to shield against EPA and private party claims and to resolve underlying indemnification obligations.
- **Cypress Street Investment.** We defended an Oakland, California property owner from an EPA demand for \$31 million of clean up expenditures associated with chlorinated chemicals found on client's property. Based on a unique set of facts, we successfully asserted an innocent landowner defense in a Region 9 EPA administrative appeal hearing, clearing client of all CERCLA property owner liability.
- **Castaic Lake Water Agency.** We successfully prosecuted a lawsuit by the Castaic Lake Water Agency and three other water entities seeking funds for environmental clean up costs and damages related to perchlorate groundwater contamination, which is an issue to be addressed by proposed remediation projects for some of Pasadena's groundwater supply. We secured a settlement providing the water agencies with \$100 million for contamination clean up. In addition to representing the plaintiffs with respect to claims arising under CERCLA, HSAA and the common law, we handled insurance coverage issues related to the counter-claims filed by the defendants and recovered over \$6 million in attorneys' fees. We also handled administrative and political issues relating to the clean up and obtained summary judgment against defendants establishing their liability for clean up costs in a decision reported at 272 F. Supp. 2d 1053 (C.D. Cal. 2003). We also successfully represented this client in connection with storm water NPDES permitting issues before the Regional Water Quality Control Board.

- **Coty Inc.** We represent Coty's Clairol unit with respect to private claims for cost recovery and contribution in companion cases in USDC/EDNY pertaining to ground water plume impacting several adjoining parcels, with current remedy damages cost estimates of >\$50 million. We worked to re-position the client from a putative large-share financial contributor to essentially a de micromis participation, likely saving the client in the upwards of \$2 million. We served as common counsel to the third-party defendant group in an earlier trial phase, and now is leading efforts to secure resolution through state agency settlement mediation.
- **Casmalia Resources v. Industrial Indemnity.** We represented Casmalia Resources, the prior owner of California's second largest Class I toxic waste disposal site near Santa Maria, California, in an insurance coverage suit. We obtained summary adjudication establishing the insurance carriers' duty to defend despite pollution exclusions. Some policies were identified as a result of insurance archaeology work through an outside consultant assisting our efforts. Our success in establishing a duty to defend ultimately led to significant contributions by the insurers allowing the underlying environmental claims against the client to be settled and necessary cleanups to be funded. The majority of the confidential settlement amount was funded by insurance proceeds.

BROWNFIELDS REMEDIATION

- **International Aluminum Manufacturer.** We represent an international aluminum manufacturer in the remediation of contaminated sediments and associated uplands at the site of a World War II era former smelter on the Columbia River. We are negotiating the first consent decree with the Washington Department of Ecology under the state Model Toxics Control Act that incorporates federal RCRA requirements. By avoiding a post-closure permit under RCRA, the company will save millions of dollars in future costs. The clean up, while not technically complex, has been controversial and closely scrutinized because of a tenant's proposal to build a coal export facility on the remediated site.
- **Legacy Mining and Smelting Operations.** We represented ASARCO in negotiating EPA and state consent decrees, defending natural resource damage claims and litigating cost recovery claims for former smelter sites and former mine sites in Washington, Idaho, Montana, Nebraska, Illinois, Ohio, Utah, Colorado, and Oklahoma. These matters included participating in one of the largest NRD claims ever taken to trial, regarding the legacy of mining operations in the Coeur d'Alene basin.
- **American Infrastructure.** We advised the client on the acquisition of a contaminated parcel of land for a bridge replacement project. The parcel of land was part of a Superfund site and company sought to avoid CERCLA liability associated with its construction activities.
- **Aluminum Smelter and Rolling Mill Sites.** During bankruptcy proceedings for an international aluminum manufacturer, we negotiated resolution of environmental cleanup obligations with EPA and the State of Washington for aluminum smelter sites that were being closed and for a rolling mill that would continue operating post-bankruptcy. The settlements resolved liabilities under CERCLA and RCRA, as well as natural resource damages. One of the settlements included negotiation of an insurance product to provide a hedge against the possibility of expanded future (post-bankruptcy) cleanup obligations.
- **Chugach Electric Corporation.** We represented Chugach Electric, the largest Alaska electrical utility, in connection with a Superfund site in Anchorage involving multiple private and federal PRPs, as well as other cleanup sites. The matter was resolved through a negotiated settlement in which federal defendants assumed about 60 percent of the cleanup costs.
- **Valero Energy Corporation.** We represent Valero in negotiating clean up liability for various contaminated sites in Hanford, California. We negotiated an equitable apportionment of clean up responsibility with other Potentially Responsible Parties. We also negotiated the use of Risk Based Closure with the Central Valley Regional Water Quality Control Board.
- **ALON USA.** We assisted client with a Central Valley Regional Water Quality Control Board order mandating client to remediate contamination caused by a prior owner of the site in Bakersfield, California.
- **Lockheed Martin Corporation.** We represent Lockheed Martin with respect to EPA and State remediation and NRD claims at CERCLA site in Baltimore with current total remedy and NRD costs estimated to exceed \$60 million. We obtained a highly favorable and dramatically reduced allocation share for client in internal mediation

process, saving the client on the order of \$1.5 million, while making a record supporting EPA's decision not to initiate enforcement against the client. We now are working to document a de minimis cash-out settlement reflecting that reduced share.

COMPLIANCE & SPILL RESPONSE

- **Tesoro Corporation.** We represented the client in the management of a marine terminal pipeline leak. Heavy petroleum from an adjacent oil production facility commingled with the pipeline release and we oversaw negotiations with the adjacent site owner and the Los Angeles Regional Water Quality Control Board to ensure that client's clean up responsibility was limited to the pipeline release.
- **Imperial Irrigation District (IID).** We assisted the client in securing a settlement with the EPA under the Toxic Substances Control Act (TSCA) following clean-up of a site contaminated with polychlorinated biphenyl (PCBs) that included both a supplemental environmental project and an audit of other sites owned by the District that historically housed transformers containing PCBs. We also counseled the client with respect to HSAA compliance.
- **Main San Gabriel Basin Watermaster.** We represent the Watermaster in water quality proceedings involving Porter-Cologne, NPDES regulations, CWA issues, and CERCLA. Our representation includes handling administrative proceedings before the EPA, the Regional Water Quality Control Board (RWQCB), testimony at legislative hearings, and federal litigation under CERCLA. We negotiated a landmark \$350 million multi-party settlement. Under the settlement agreement, eight private companies responsible for contaminating the Basin's groundwater will pay for a series of water treatment facilities that will deliver clean water to 1.5 million residential and commercial water users in southern California.

AREAS OF CONCENTRATION

Air Quality
CEQA & NEPA
Climate Change & Resiliency
Coastal Development
Contamination & Natural Resource Damages
Endangered Species & Wildlife Law
Environmental Litigation
Initiatives & Referenda
Land Use Entitlements & Litigation
Oceans, Marine Life & Maritime Transportation
Telecommunications Facilities
Water Quality
Wetlands & Riparian Permitting