



● **Board of Directors**
Engineering, Operations, and Technology Committee

2/13/2023 Board Meeting

7-2

Subject

Adopt Mitigated Negative Declaration for the Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties and take related CEQA actions; approve Master Reclamation Plan for San Bernardino and Riverside Counties

Executive Summary

In accordance with the California Environmental Quality Act (CEQA), this action proposes adoption of a Mitigated Negative Declaration (MND) for the Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties and approval of the Master Reclamation Plan for San Bernardino and Riverside Counties in compliance with the Surface Mining and Reclamation Act of 1975 (SMARA).

Details

Background

Metropolitan uses borrow sites located along the Colorado River Aqueduct (CRA) in Riverside and San Bernardino counties to acquire aggregate material for critical operations and maintenance activities, for example, replacing road base and pipeline cover after significant rain events. In 1932, Congress granted Metropolitan the right-of-way and use of the aggregate material along it for the construction and operation of the CRA. Metropolitan has used these aggregate materials since that time.

In 2017, the counties of Riverside and San Bernardino notified Metropolitan that use of this aggregate material is subject to SMARA. Enacted in 1975, SMARA provides for the regulation of surface mining operations to encourage mineral production and conservation and to ensure mined lands are reclaimed to a usable condition to prevent environmental effects and ensure public health and safety. The counties requested that Metropolitan prepare reclamation plans to ensure these borrow sites are reclaimed to a usable condition if and when Metropolitan ceases to use them in the future. No county had ever previously claimed SMARA applied to these maintenance and repair activities, or any other Metropolitan activities. To avoid any disputes with the counties, Metropolitan agreed to prepare two SMARA reclamation plans, one for borrow sites in San Bernardino County and the other for borrow sites in Riverside County, along with related environmental documentation.

In 2021, the California State Legislature passed and Governor Gavin Newsom signed into law Assembly Bill (AB) 442 (Mayes) which became effective January 1, 2022. The legislation exempts Metropolitan from certain provisions of SMARA and allows for the continued use of borrow sites to obtain material to respond to emergencies or for Metropolitan's own operations and maintenance of infrastructure. AB 442 also authorizes Metropolitan to prepare a Master Reclamation Plan, which identifies each individual surface mining operation and satisfies all reclamation plan requirements in accordance with SMARA. In addition, AB 442 also requires the State Mining and Geology Board (SMGB) to act as the SMARA lead agency for surface mining operations conducted by the Metropolitan. For this Master Reclamation Plan, the SMGB serves as the lead agency under

SMARA. AB 442 sunsets on January 1, 2026, and Metropolitan will seek an amendment to make the provisions of AB 442 permanent.

Adoption of Mitigated Negative Declaration

To comply with CEQA and the State CEQA Guidelines, Metropolitan as the CEQA Lead Agency, prepared an MND for the proposed Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties (**Attachment 1**). On November 17, 2022, Metropolitan released a draft Initial Study and MND for a 30-day public review period as required by CEQA and the State CEQA Guidelines. Staff filed a Notice of Completion with the State Clearinghouse, and a Notice of Intent was posted to Metropolitan's website and mailed to contiguous property owners, federal, state, and local agencies. The documents were also posted on Metropolitan's website, while hard copies were made available at Metropolitan's Headquarters Building in Los Angeles.

As stated in the State CEQA Guidelines (Section 15074), the Board is required to review and consider the MND, the Initial Study, and comments received during the public review period prior to adoption of the MND. Adoption of the MND is dependent on the finding by the Board that, based on the whole record before it, there is no substantial evidence that with the mitigation measures required by the MND, the proposed project will have a significant impact on the environment and that the MND reflects the CEQA Lead Agency's independent judgment and analysis. The Mitigation Monitoring and Reporting Program (MMRP) is required under CEQA (Section 21081.6 of the California Public Resources Code) and must also be adopted by the Board prior to project approval (**Attachment 2**).

Approval of Master Reclamation Plan

Under AB 442, Metropolitan prepared a Master Reclamation Plan, which identifies and satisfies all reclamation plan requirements for each site, in accordance with SMARA (**Attachment 1**). AB 442 also requires the SMGB to act as the SMARA lead agency for surface mining operations conducted by Metropolitan. Once operations at a borrow site cease, reclamation as outlined in the Master Reclamation Plan would commence.

Proposed Master Reclamation Plan reclamation activities would involve removing deleterious materials and debris, recontouring borrow site slopes and floors, installing stormwater Best Management Practices to control erosion, and revegetating reclaimed areas with a native plant hydroseed mix. A restoration specialist or biologist would then monitor the sites for a period of three years to ensure sites are in compliance with the SMARA performance standards. The final end use of the sites would be revegetated open space consistent with the surrounding environment. The Master Reclamation Plan must be approved by the Metropolitan Board and SMGB prior to implementation.

SMARA also requires that Metropolitan, as a user of the borrow sites, demonstrate its financial ability to ensure reclamation activities occur in accordance with the plan through the approval of a financial assurance mechanism. Once the Master Reclamation Plan is approved by Metropolitan's Board and SMGB, a financial cost estimate will be prepared by Metropolitan in accordance with SMARA requirements. SMGB staff will survey the sites and certify the cost estimate. Staff will return to the Board to formally adopt a resolution to authorize the establishment of financial assurances in the form of a trust account for reclamation activities.

Policy

Metropolitan Water District Administrative Code Section 11100: Environmental Matters

By Minute Item 51983, dated May 12, 2020, the Board authorized Sespe Consulting, Inc. to prepare Surface Mining and Reclamation Act reclamation plans and environmental documentation.

By Minute Item 51763, dated October 8, 2019, the Board authorized the General Manager to seek legislation to amend the Surface Mining and Reclamation Act to provide Metropolitan with lead agency status for its activities.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Review and consider the information in the MND, Initial Study, and MMRP; find that based on the whole record before the Board there is no substantial evidence that the proposed project will have a significant impact on the environment, and the MND reflects the lead agency’s independent judgment and analysis; adopt the MND for the proposed project; adopt the MMRP, and approve the Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the Mitigated Negative Declaration for the Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties and take related CEQA actions and approve the Master Reclamation Plan for San Bernardino and Riverside Counties.

Fiscal Impact: The fiscal impact of proposed reclamation activities is unknown at this time. Reclamation activities covered in the Master Reclamation Plan and associated Mitigated Negative Declaration, will occur when each site is closed, which could occur anywhere up to 100 years in the future.

Business Analysis: Adoption and approval will ensure Metropolitan is in compliance with SMARA.

Option #2

Do not adopt the Mitigated Negative Declaration for the Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties and take related CEQA actions, or approve the Master Reclamation Plan at this time.

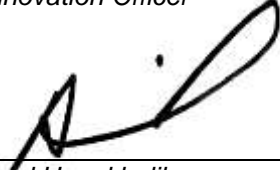
Fiscal Impact: Unknown

Business Analysis: Without adoption of the MND and approval of the Master Reclamation Plan, Metropolitan will not be in compliance with SMARA.

Staff Recommendation

Option #1

	1/23/2023
Elizabeth Crosson Chief Sustainability, Resiliency & Innovation Officer	Date

	1/31/2023
Adel Hagekhalil General Manager	Date

Attachment 1 – Initial Study and Mitigated Negative Declaration

Attachment 2 – Mitigation Monitoring and Reporting Program