



• **Board of Directors**
One Water and Stewardship Committee

12/5/2023 Board Meeting

7-1

Subject

Authorize the General Manager to enter into agreements with the U.S. Bureau of Reclamation, the Quechan Indian Tribe of the Fort Yuma Reservation, Bard Water District, and Palo Verde Irrigation District for system conservation projects under the U.S. Bureau of Reclamation's Lower Colorado River Basin System Conservation and Efficiency Program, and related forbearance and implementing agreements; and adopt CEQA determination that the environmental effects of the conservation efforts in Palo Verde Irrigation District are the subject of proposed actions that were previously addressed in various CEQA documents and related actions, and the General Manager has determined that the other proposed actions are exempt or otherwise not subject to CEQA

Executive Summary

Staff seeks authorization for the General Manager to enter into several agreements to allow the U.S. Bureau of Reclamation (Reclamation) under its Lower Colorado River Basin System Conservation and Efficiency Program (LC Conservation Program), rather than Metropolitan, to pay for conserved water under the following Metropolitan transfer and supply programs and for the water to benefit Lake Mead as system water rather than accrue to Metropolitan.

- Using the Palo Verde Irrigation District (PVID)/Metropolitan Forbearance and Fallowing Program (PVID Program), Reclamation, rather than Metropolitan, would pay for land fallowing for three program years beginning August 1, 2023, generating an estimated 351,000 acre-feet (AF) of system water in Lake Mead.
- Using the Metropolitan/Bard Irrigation District (Bard) Seasonal Land Fallowing Program (Bard Program) from 2024 to 2026, Reclamation, rather than Metropolitan, would pay for land fallowing to generate an estimated 6,000 AF of system water per year in Lake Mead.
- Using Metropolitan's 2005 settlement agreement with the Quechan Indian Tribe of the Fort Yuma Reservation (Quechan Settlement Agreement), Reclamation, rather than Metropolitan, would pay the Quechan Tribe from 2023 through 2025 to forbear diversion of 13,000 AF of water per year to stay in Lake Mead as system water, approximately half of which would come from supplies otherwise available to Metropolitan.

Staff also seeks authorization for the General Manager to enter into any necessary forbearance agreements with the city of Needles, Coachella Valley Water District (CVWD), Imperial Irrigation District, and PVID to ensure that water conserved in California under the LC Conservation Program during 2023-2026 benefits the Colorado River system.

Metropolitan would benefit both from reduced current projected costs expenditures by up to \$60 – \$71 million over four years and from increased revenue from federal funding by approximately \$35 – \$41 million over four years. In total, Metropolitan would reduce expenditures or increase revenue by about \$95 – \$112 million over the four-year period.

Metropolitan and other Colorado River water users would also benefit from increased Lake Mead elevation.

Timing and Urgency

These agreements would help California achieve the goals set out in the Colorado River Board of California's October 5, 2022, letter, which proposed a goal that California agencies conserve 400,000 AF of water per year in Lake Mead between 2023 and 2026.

Details

Background

Metropolitan often collaborates with other agencies to provide system water to Lake Mead. In 2006, Metropolitan entered into an agreement with Reclamation to provide up to 10,000 AF of conserved Colorado River water during 2006 and 2007 to increase Colorado River system storage. The water was conserved through voluntary fallowing under the PVID Program. Metropolitan and other Colorado River users benefitted from the resultant increase in system storage. Reclamation provided about \$1.7 million to cover Metropolitan's expenditures associated with the supplemental fallowing.

In 2014, Reclamation initiated the Pilot System Conservation Program, which was a collective effort of the federal government and major urban water agencies to fund water-saving actions to create conserved system water to protect the elevation of Lake Powell and Lake Mead and thus benefit all Colorado River water users. The Pilot System Conservation Program funded projects that created at least 175,000 AF of conserved system water. Metropolitan provided \$5 million, which represented 15 percent of the total funding.

In 2021, Metropolitan entered into a funding agreement with Reclamation, Central Arizona Water Conservation District, and Southern Nevada Water Authority to fund additional land fallowing to conserve Colorado River system water to improve Lake Mead storage. The funding agreement was terminated during the third year to shift participation to the LC Conservation Program starting August 1, 2023.

The LC Conservation Program

The 2021 Bipartisan Infrastructure Law and the 2022 Inflation Reduction Act funded water management and conservation efforts to relieve drought conditions in the western United States, with a focus on the Colorado River. The Department of the Interior, through Reclamation, created the LC Conservation Program to increase system conservation and efficiency opportunities to address drought impacts in the Lower Colorado River Basin. Similar conservation programs are being developed in the Upper Colorado River Basin. The LC Conservation Program provides funding opportunities for voluntary participation to increase system conservation.

A total of six conservation agreements are currently being developed in California under the LC Conservation Program to help California conserve 400,000 AF of water annually. Staff is seeking Board authorization for three of these agreements.

PVID Program Participation in the LC Conservation Program

In 2004, Metropolitan and PVID entered into a 35-year forbearance and fallowing program in which Metropolitan pays participating landowners to collectively fallow up to 25,947 acres in any year at Metropolitan's call. The water saved by the fallowing accrues to Metropolitan. Participating landowners received an initial payment for enrolling land and continue to receive an annual payment for actual acreage fallowed under each call. Metropolitan makes its fallowing call by August 1 of each year. Metropolitan called for 100 percent fallowing of eligible land for the 2023/24 contract year.

As a part of the LC Conservation Program, Reclamation would fully reimburse Metropolitan for creating Colorado River system water from water conserved with the PVID Program. The system water would be created by participating farmers fallowing acres at the fallowing level of 100 percent of their maximum fallowing commitment, which started August 1, 2023, and includes fallowing of Metropolitan-owned lands based on the terms included in the lease agreements. The conserved water would remain in Lake Mead as system water. Participation in the LC Conservation Program would continue at 100 percent fallowing through July 31, 2026, which will conserve 351,000 AF of Colorado River system water.

The material terms of the agreements are as follows:

- The following level would be 100 percent for the three following years between August 1, 2023, through July 31, 2026.
- Metropolitan would administer the program, and Reclamation would make payments to Metropolitan of \$400 per AF of conserved water left in Lake Mead.
- For the following amount above the minimum call (i.e., 75 percent), Palo Verde farmers and the Palo Verde community would share the \$400 per AF payment. At PVID's discretion, PVID would dedicate up to \$20 per AF from the \$400 per AF for funding community improvement in the Palo Verde Valley. The \$400 per AF payment is not subject to escalation, and for calculating the payments to farmers, an annual yield of 4.51 AF per acre will lead to a maximum payment of \$1,804 per acre.
 - Water conserved during this period from the following amount above the minimum call would remain in Lake Mead as system water.
- For the following amount equal to the minimum call (i.e., 25 percent), Palo Verde farmers would receive the then current following price in the existing PVID-Metropolitan forbearance and following program agreement (i.e., the price for following year 2023/24 is approximately \$220 per AF, and the price is escalated annually). The additional federal funding would be shared between Metropolitan and the Palo Verde community. Metropolitan would dedicate an amount equal to the total amount that PVID decides to dedicate for funding community improvement in the Palo Verde Valley.
 - Metropolitan would have the option of diverting water saved in an amount equal to the minimum call (i.e., 25 percent) into the Colorado River Aqueduct, if needed, or providing it as system conservation to Lake Mead. Metropolitan would receive federal funding for any water left in Lake Mead as system conservation.
- The community funds would be used for local community improvements in the Palo Verde Valley as agreed to by Metropolitan and PVID.
- Metropolitan would follow its land at the same level as the rest of the Palo Verde Valley, and Metropolitan would receive payments from Reclamation as the landowner.
- Maximum following calls during the LC Conservation Program would not count against Metropolitan's limit of ten total maximum following calls during the term of the PVID-Metropolitan forbearance and following agreement, as provided for in the existing PVID-Metropolitan and Metropolitan-landowner agreements.

Bard Program Participation in the LC Conservation Program

In 2019, Metropolitan and Bard entered into a Seasonal Land Following Program in which Metropolitan pays for seasonal following in Bard from 2020 through 2026. Under the Bard Program, Metropolitan makes a following call on October 1 for the following year, and farmers may commit to reduce water use during a four-month window from April 1 – July 31 on up to 3,000 acres. Participating farmers receive an annual payment per irrigable acre split between the beginning and the end of the following season. Metropolitan made a full following call for calendar year 2024. The water saved by following accrues to Metropolitan.

As part of the LC Conservation Program, Reclamation, instead of Metropolitan, would fund the creation of up to an estimated 6,000 AF per year of Colorado River system water from seasonal following activities in Bard in 2024, 2025, and 2026, which would be left in Lake Mead.

The material terms of the agreement are as follows:

- Metropolitan would administer the program, and Reclamation would make payments to Metropolitan in the amount of \$400 per AF of conserved water left in Lake Mead.
- Program rules regarding eligible land would be identical to the existing Bard Seasonal Following Program.
- Metropolitan would retain \$20 per AF for administration costs.
- Metropolitan would provide \$380 per AF to farmers in Bard and Bard Water District.

Quechan Forbearance Program Participation in the LC Conservation Program

In 2005, the Quechan Tribe, Metropolitan, Reclamation, the state of California, and CVWD signed a settlement agreement that resolved litigation between the parties in *Arizona v. California* concerning the Quechan Tribe's water rights for the Fort Yuma Indian Reservation in California. Under the Quechan Settlement Agreement, the Quechan Tribe is allowed to forbear the diversion of up to 13,000 AF of water per year for Metropolitan's use, and Metropolitan pays the Quechan Tribe for this forbearance. Because the Quechan Settlement Agreement measures Metropolitan's payment to the Quechan Tribe in reduced diversions rather than reduced consumptive use, only about half of the reduced diversions (e.g., 6,500 AF instead of 13,000 AF) accrue to Metropolitan's benefit each year.

As part of the LC Conservation Program, Reclamation would pay the Quechan Tribe \$400 per AF of water, rather than Metropolitan paying the Quechan Tribe (\$190 per AF in 2023, escalated annually) under the Quechan Settlement Agreement, to forbear the diversion of 13,000 AF of Colorado River water per year from 2023 through 2025. However, because only half of the water accrues to Lake Mead, Metropolitan would make up the difference from its supplies; instead of paying Metropolitan for this water, Reclamation would pay the Quechan Tribe.

The material terms of the agreement are as follows:

- Metropolitan would temporarily waive its rights under the 2005 Quechan Settlement Agreement to receive and use the 13,000 AF per year from 2023 through 2025 from the Quechan Tribe.
- Reclamation's LC Conservation Program would pay for the water from January 1, 2023, through December 31, 2025, unless extended by the parties in writing, at a rate of \$400 per AF, paid directly to the Quechan Tribe.
- Metropolitan could call back up to half of the water in 2024 and 2025 and reduce its take of Intentionally Created Surplus, if needed. Metropolitan would compensate the Quechan Tribe at the rate in the Quechan Settlement Agreement for any water called back, and Reclamation would not pay the Quechan Tribe for such water.

California Forbearance

Forbearance is necessary for these actions because, under the California priority system, Colorado River water conserved by a higher-priority user is available to the next lower-priority user. Thus, as part of a program to fund the conservation of Colorado River water, contractors need to agree to forbear exercising their rights to ensure that the conserved water remains in the Colorado River system rather than become available to the next lower-priority user. Before entering into any forbearance agreements, Metropolitan staff will review the underlying agreements between Reclamation and the contractors to ensure that Metropolitan's rights as the junior priority in California are protected.

Summary

In a continuing effort to conserve Colorado River system water, Metropolitan is expanding opportunities to conserve system water through 2026. This action would reduce the risk of Lake Mead falling to elevations that trigger shortages and Drought Contingency Plan (DCP) contributions. It would help implement the proposed goals in the Colorado River Board of California's October 5, 2022 letter. The LC Conservation Program would provide federal funding for fallowing in PVID and Bard, as well as for water forborne by the Quechan Tribe for the creation of up to 408,000 AF of system water in Lake Mead. This federal funding would reduce Metropolitan's current project cost expenditures by up to \$60 – \$71 million over four years, as well as increase revenue from federal funding by approximately \$35 – \$41 million over four years. In total, Metropolitan would reduce expenditures or increase revenue by about \$95 – \$112 million over the four-year period. All Lower Basin water users would benefit from delaying the timing and depth of shortages and DCP contributions and preserving hydroelectric capacity at Hoover Dam.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 53051 in December 2022, Metropolitan's Board adopted legislative priorities and principles to support the funding of conservation projects to enhance the resiliency of the Colorado River System to reduce the risk of Lake Mead and Lake Powell falling below critical elevations.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The following programs that are subject to this action were previously evaluated by the Board, and the Board made CEQA determinations for each.

On October 22, 2002, the Board acted as a responsible agency and certified that it reviewed and considered the information in the Palo Verde Irrigation District's 2002 Final Environmental Impact Report and adopted the Lead Agency's findings, and authorized entering into agreements for the Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program.

On December 10, 2019, the Board determined that entering into a program agreement with Bard Water District and seasonal fallowing agreements with farmers within the Bard Unit was exempt from CEQA in accordance with Sections 15301 and 15304, and also not subject to CEQA in accordance with Section 15061(b)(3), of the State CEQA Guidelines.

The proposed action to enter into an agreement and provide funding for the following programs represents a minor modification that relates solely to the fiscal and administrative aspects of these programs. Thus, the previous environmental documentation acted on by the Board in conjunction with these following programs fully complies with CEQA and the State CEQA Guidelines, and no further CEQA review is required for the proposed action.

With respect to the Board action to enter into an agreement with the Quechan Tribe, the proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt CEQA determination that the proposed actions related to the following programs were previously addressed in various CEQA documents and related actions, and authorize the General Manager to enter into agreements for Reclamation to fund the generation of up to 408,000 AF of conserved Colorado River system water through 2026 and to enter into agreements with other Colorado River contractors to forbear rights to water generated in California under Reclamation's LC Conservation Program.

Fiscal Impact: Metropolitan would avoid paying for these three programs during the terms of the agreement, thereby reducing current projected cost expenditures by up to \$60 – \$71 million over four years. Metropolitan would also receive approximately \$5 – \$10 million in revenue for creating system water from the PVID minimum fallowing call and Bard administrative fees through 2026. Additionally, as a landowner participating in the LC Conservation Program in PVID, Metropolitan would receive \$30 – \$31 million from Reclamation for fallowing its lands in PVID through 2026. In total, Metropolitan would reduce expenditures or increase revenue by about \$95 – \$112 million over the four-year period.

Business Analysis: The agreement would fund land fallowing to increase Colorado River system water at no additional cost to Metropolitan.

Option #2

Do not enter into the agreements under the proposed terms.

Fiscal Impact: Metropolitan would make existing contractual payments for and keep the water generated from the PVID Fallowing Program, the Bard Seasonal Fallowing Program, and the Quechan Forbearance Agreement, resulting in expenditures of approximately \$60 – \$71 million over four years.

Business Analysis: Metropolitan would forego an opportunity to increase Colorado River system water to reduce the risk of future curtailment.

Staff Recommendation

Option #1



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11/29/2023

Date



Adel Hagekhalil
General Manager

11/29/2023

Date

Ref# eo12698831