



● **Board of Directors**

***Finance, Audit, Insurance, and Real Property Committee***

11/14/2023 Board Meeting

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**7-13**

**Subject**

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Adopt a resolution providing financial assurance for the Colorado River Aqueduct Master Reclamation Plan, establish the Metropolitan Reclamation Plan Trust Fund, and amend Sections 5200 and 5201 of the Metropolitan Water District Administrative Code to establish the Metropolitan Reclamation Plan Trust Fund; the General Manager has determined that this action is exempt or otherwise not subject to CEQA

**Executive Summary**

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This action proposes the adoption of a resolution to authorize the establishment of financial assurances in the form of a trust account for reclamation activities in the initial amount of \$900,000. Under the proposed resolution, the Board authorizes the General Manager to deposit into the Metropolitan Reclamation Plan Trust Fund up to \$2.5 million in total, as needed, to meet the requirements of the Surface Mining and Reclamation Act (SMARA). If the Financial Assurance Cost Estimate (FACE) pursuant to SMARA is higher than \$2.5 million, the Board shall consider a separate action to authorize such amount or an alternative financial assurance mechanism.

**Details**

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**Background**

Metropolitan uses borrow pits located along the Colorado River Aqueduct to acquire aggregate material for critical operations and maintenance activities, which 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.

Under Assembly Bill (AB) 442 (Mayes), effective January 1, 2022, Metropolitan prepared a Colorado River Aqueduct Master Reclamation Plan (Master Reclamation Plan), which identifies and satisfies all reclamation plan requirements for each borrow pit site, in accordance with SMARA. AB 442 also requires the State Mining and Geology Board (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. The Master Reclamation Plan was approved by the Metropolitan Board in February 2023 and by the SMGB in March 2023.

**Financial Assurance**

SMARA requires that Metropolitan, as a user of the borrow pits, demonstrate its financial ability to ensure reclamation activities occur in accordance with the reclamation plan through the approval of a financial assurance mechanism. To meet this requirement, Metropolitan prepared a FACE, in accordance with Public Resources Code Section 2773.1, which is the amount of money necessary to conduct and complete reclamation in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses that could be incurred by the SMGB. The FACE, which is subject to review and approval by the SMGB, is adjusted annually following an inspection by the SMGB. The financial assurance is to remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

The proposed board resolution meeting such requirements is shown in **Attachment 1** to this letter. The proposed resolution authorizes the General Manager, or their designee, to establish and maintain a separate fund to be

known as the Metropolitan Reclamation Plan Trust Fund, to be used only to pay for reclamation activities related to the Master Reclamation Plan. The initial financial assurance amount may decrease if reclamation activities are completed or may increase if mining operations expand or if reclamation costs increase, including labor rates and equipment costs. Hourly costs used for annual FACE calculations are required to be consistent with the Department of Industrial Relations prevailing wage requirements, and equipment costs must be supported by the Caltrans Labor and Equipment Rental Rates handbook or verifiable local third-party rental rates.

Under the proposed resolution, the Board further authorizes the General Manager to deposit into the Reclamation Plan Fund up to \$2.5 million in total, as needed, to meet the requirements of SMARA. If the FACE pursuant to SMARA is higher than \$2.5 million, the Board shall consider a separate action to authorize such amount or an alternative financial assurance mechanism. Additionally, the proposed resolution provides the flexibility to withdraw excess amounts, if any, from the Metropolitan Reclamation Plan Trust Fund, provided that the requirements of SMARA are met after such withdrawal, with the written concurrence of SMGB.

Lastly, the adoption of the proposed board resolution requires an amendment of Sections 5200 and 5201 of the Administrative Code. **Attachment 2** to this letter shows the recommended new language.

## Policy

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Metropolitan Water District Administrative Code Section 5200: Funds Established

Metropolitan Water District Administrative Code Section 5201: Restricted Funds

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

## California Environmental Quality Act (CEQA)

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### CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State of CEQA Guidelines). Additionally, the proposed action is not subject to CEQA because it 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

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### Option #1

- a. Adopt a resolution providing financial assurance for the Colorado River Aqueduct Master Reclamation Plan and establish the Metropolitan Reclamation Plan Trust Fund; and
- b. Amend Sections 5200 and 5201 of the Metropolitan Water District Administrative Code to establish the Metropolitan Reclamation Plan Trust Fund.

**Fiscal Impact:** Deposit \$900,000 into the Metropolitan Reclamation Plan Trust Fund which can only be used to pay for reclamation activities related to the Master Reclamation Plan.

**Business Analysis:** Self-funding a trust fund is a cost-effective method, when compared to alternative sources, to meet SMARA regulatory compliance. Moneys in the Metropolitan Reclamation Plan Trust Fund may be invested by the Treasurer in accordance with Metropolitan's Statement of Investment Policy.

### Option #2


Do not authorize the adoption of the resolution.

**Fiscal Impact:** Metropolitan will be required to expend additional funds to secure an alternative source of financial assurance as required under the regulations. Noncompliance with regulations may also lead to additional administrative costs and enforcement actions by SMGB.

**Staff Recommendation**


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Option #1

  
\_\_\_\_\_  
Katano Kasaine  
Assistant General Manager/  
Chief Financial Officer

11/6/2023

Date

  
\_\_\_\_\_  
Adel Hagekhalil  
General Manager

11/7/2023

Date

**Attachment 1 – Resolution Of The Board of Directors of The Metropolitan Water District of Southern California Providing For Financial Assurance for the Metropolitan Reclamation Plan**

**Attachment 2 – Sections 5200 and 5201 of the Metropolitan Water District Administrative Code (redline version)**

Ref# cfo12688171

**RESOLUTION \_\_\_\_\_****RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
PROVIDING FOR FINANCIAL ASSURANCE FOR THE  
METROPOLITAN RECLAMATION PLAN**

WHEREAS, The Metropolitan Water District of Southern California (“Metropolitan” or the “District”) currently operates borrow pits located along the Colorado River Aqueduct (“CRA”) in Riverside and San Bernardino counties to acquire aggregate material for critical operations and maintenance activities (Ref CA mine I.D. 91-70-00001);

WHEREAS, the Surface Mining and Reclamation Act of 1975, Public Resources Code (PRC) section 2770 et al. (the “Act”) requires mining operators with a reclamation plan to demonstrate the availability of financial assurances to conduct reclamation of mined lands;

WHEREAS, Section 2773.1 of the Act specifies acceptable mechanisms to demonstrate financial responsibility for financing the reclamation of mined lands;

WHEREAS, such financial assurances may take the form of a trust fund established in accordance with California Code of Regulations (the “Regulations”), Title 14, Division 2, Chapter 8, §3803.3;

WHEREAS, pursuant to Section 2715.6 of the Act, the California State Mining and Geology Board (SMGB) approved Metropolitan’s Colorado River Aqueduct Master Reclamation Plan on March 23, 2023 (the “Metropolitan Reclamation Plan”);

WHEREAS, to address the law and comply with the Act and the Regulations, the Board of Directors of Metropolitan hereby establishes the Metropolitan Reclamation Plan Trust Fund to provide for funding of reclamation of mined lands under the Metropolitan Reclamation Plan;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of The Metropolitan Water District of Southern California that:

1. The General Manager of the District, or their designee, is authorized and directed to establish and maintain a separate fund to be known as the Metropolitan Reclamation Plan Trust Fund (“Reclamation Plan Fund”), to be used only to pay for reclamation activities related to the Metropolitan Reclamation Plan.
2. The General Manager, or their designee, is further directed to deposit into the Reclamation Plan Fund an amount at least equal to the current SMGB-approved Financial Assurance Cost estimate and up to \$2.5 million in total to meet the requirements of the Act and Regulations. If the Financial Assurance Cost Estimate pursuant to the Act is higher than \$2.5 million, the Metropolitan Board shall authorize such amount on a timeframe consistent with PRC section 2773.4(e).

3. The amounts referred to in Section 2 above shall be deposited with and retained by a federally insured depository institution authorized to do business in the State of California and shall be used to pay only for reclamation activities related to the Metropolitan Reclamation Plan. Financial assurances shall no longer be required of a surface mining operation, and shall be released upon the written concurrence of the SMGB and the Supervisor of the Department of Conservation's Division of Mine Reclamation ("Supervisor"), which shall be forwarded to Metropolitan, that reclamation has been completed in accordance with Metropolitan's Reclamation Plan.
4. To the extent permitted by law, the Reclamation Plan Fund shall be and remain inviolate against all other claims, including claims of the District or its Board of Directors, or the creditors thereof, it being the intent of this Resolution that the mechanism established hereby will provide protection equivalent to that of a trust fund by ensuring:
  - (a) that the assured amounts of funds will be available for reclamation activities related to the Metropolitan Reclamation Plan; and
  - (b) that payments from the Reclamation Plan Fund shall be made by the Treasurer, as directed by the SMGB, as lead agency, or the Department of Conservation, or its successor, in writing, for the payment of the costs of reclamation activities related to the Metropolitan Reclamation Plan covered by this Resolution as prescribed in Section 8(b) below.
5. Disbursement of funds for reclamation activities related to the Metropolitan Reclamation Plan shall be in accordance with Section 2773.1 of the Act and as prescribed in Section 4(b) above.
6. The Reclamation Plan Fund shall be invested in the manner provided by law, and in accordance with the Treasurer's Statement of Investment Policy.
7. The District, with the written concurrence of SMGB, as lead agency, or the Department of Conservation, which concurrence shall not be unreasonably withheld or delayed, may withdraw excess amounts, if any, from the Reclamation Plan Fund, provided that the requirements of the Act and the Regulations, including Section 2773.1 thereof, shall remain satisfied after such withdrawal.
8. (a) If the SMGB, acting as a lead agency, has evidence that Metropolitan may be financially incapable of completing reclamation in accordance with Metropolitan's Reclamation Plan or that Metropolitan may have abandoned the surface mining operation without completing reclamation, the SMGB, acting as a lead agency, shall conduct a public hearing to determine whether Metropolitan is financially capable of completing reclamation in accordance with Metropolitan's Reclamation

Plan or has abandoned the surface mining operation. The hearing shall be noticed to Metropolitan and the Supervisor at least 30 days prior to the hearing.

(b) If the SMGB, following the public hearing conducted pursuant to paragraph (a) of this section, determines that Metropolitan is financially incapable of performing reclamation in accordance with Metropolitan's Reclamation Plan or has abandoned its surface mining operation without completing reclamation, either the SMGB or the Supervisor shall do all of the following:

(1) Notify Metropolitan by personal service or certified mail that the SMGB or the Supervisor intends to take appropriate action to withdraw funds from the Reclamation Plan Fund and specify the reasons for so doing.

(2) Proceed to take appropriate action to require the use of moneys in the Reclamation Plan Fund.

(c) Use the proceeds from the Reclamation Plan Fund to conduct and complete reclamation in accordance with Metropolitan's Reclamation Plan. If the surface mining operation cannot be reclaimed in accordance with Metropolitan's Reclamation Plan, or the financial assurance mechanisms are inadequate to reclaim in accordance with Metropolitan's Reclamation Plan, SMGB or Supervisor may use proceeds from the Reclamation Plan Fund to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the SMGB and the Supervisor. The proceeds from the Reclamation Plan Fund shall not be used for any other purpose. Metropolitan is responsible for the costs of conducting and completing reclamation in accordance with Metropolitan's Reclamation Plan or a remediation plan developed pursuant to PRC section 2773.1(b)(2)(C) as determined appropriate by both the SMGB and the Supervisor that are in excess of the proceeds in the Reclamation Plan Fund.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on November 14, 2023.

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Secretary of the Board of Directors  
of The Metropolitan Water District  
of Southern California

## **Chapter 2**

### **FINANCIAL POLICIES**

#### **§ 5200. Funds Established.**

To provide for accountability of public moneys in accordance with applicable federal and state law and regulations and Board policies, the following funds active or prospectively active have been established in the Treasury of the District:

(a) General Fund (Fund No. 1001, established 1929). Moneys not specifically allocated or appropriated may be placed in this fund and used for general purposes of the District. Expenditures for reimbursable work and water conservation capital and indirect costs under the contract with Imperial Irrigation District are paid from this fund.

(b) Replacement and Refurbishment Fund (Fund No. 5001, established 1988). Used to finance certain capital program expenditures from current revenues in accordance with Section 5109, subject to the conditions contained in Section 5202(b).

(c) State Contract Fund (Fund No. 5701, established 1960). Used for the payment of capital charges under the State Water Contract, including the capital charges for off-aqueduct power facilities, subject to the conditions contained in Section 5201(d).

(d) Special Tax Fund (Fund No. 5702, established 1951). Annexation fees (cash payments and special tax collections) are deposited in this fund and transferred to the State Contract Fund to pay a portion of State Water Contract capital charges.

(e) Water Revenue Fund (Fund No. 1002, established 1975). Receipts from water transactions, including, but not limited to, sales, exchanges, and wheeling are deposited in this fund and are transferred to various other funds in accordance with revenue bond covenants and Board resolutions to pay in order of priority:

(1) Operation and maintenance expenditures;

(2) The interest on and bond obligation of Water Revenue Bonds and Parity Obligations issued pursuant to Master Resolution 8329 (the Master Resolution or Senior Debt Resolution) adopted by the Board on July 9, 1991 and any Supplemental Resolutions thereto, and any other obligations on a parity with the Water Revenue Bonds;

(3) All other payments required for compliance with the Master Resolution, and any Supplemental Resolutions;

(4) The interest on and bond obligation of Subordinate Water Revenue Bonds and Parity Obligations issued pursuant to Master Subordinate Resolution 9199 (the Master Subordinate Resolution) adopted by the Board on March 8, 2016 and any Supplemental Resolutions thereto, and any other obligations on a parity with the Subordinate Water Revenue Bonds;

(5) All other payments required for compliance with the Master Subordinate Resolution, and any Supplemental Resolutions;

(6) Principal of and interest on Commercial Paper Notes and other amounts due a provider of a liquidity facility;

(7) Deposits into the Water Standby Charge Fund in accordance with resolutions imposing such charges; and

(8) Any other obligations which are charges, liens, or encumbrances upon or payable from net operating revenues.

Moneys remaining at the end of each month, after the foregoing transfers, are transferred to the Revenue Remainder Fund.

(f) Operation and Maintenance Fund (Fund No. 1003, established 1975). Used to pay all operation and maintenance expenditures, including State Water Contract operation, maintenance, power and replacement charges, subject to the conditions contained in Section 5201(f).

(g) Revenue Remainder Fund (Fund No. 1004, established 1975). Used to maintain working capital and may be used for any lawful purpose by the District, subject to the conditions contained in Section 5202.

(h) Water Rate Stabilization Fund (Fund No. 5501, established 1987). Used to reduce future water revenue requirements or, as directed by the Board, for other lawful purposes, in accordance with Section 5202.

(i) Water Treatment Surcharge Stabilization Fund (Fund No. 5502, established 1988). Used to mitigate required increases in the surcharge for water treatment or, as directed by the Board, for other lawful purposes, in accordance with Section 5202.

(j) Revolving Construction Fund (Fund No. 5003, established 1988). Capital expenditures made from this fund are to be reimbursed from proceeds of security sales to the extent such expenditures are authorized uses of debt proceeds under the Act, subject to the conditions and restrictions contained in Section 5201(g).



(k) Iron Mountain Landfill Postclosure Maintenance and Corrective Action Trust Fund (Fund No. 6005, established 1990). Used as a trust fund to maintain moneys sufficient to cover the costs of postclosure maintenance and/or corrective action of the District's solid waste landfill facility at Iron Mountain, in accordance with regulations of the California Department of Resources Recycling and Recovery, and subject to the conditions contained in Section 5201(m).

(l) Water Standby Charge Fund (Fund No. 1005, established 1992). Used to separately hold revenues attributable to water standby charges; amounts deposited in this fund are used exclusively for the purpose for which the water standby charge was authorized.

(m) Water Transfer Fund (Fund No. 1007, established 1995). Used for moneys set aside for the purchase of water through transfers or similar arrangements, and for the costs of filling the Eastside Reservoir Project.

(n) Self-Insured Retention fund (Fund No. 1008, established 1999). Used to separately hold amounts set aside for emergency repairs and claims against the District as provided in Section 5201(o).

(o) Lake Mathews Multi Species Reserve Trust fund (Fund 6101, established 1997.) Used as set forth in agreement between Metropolitan and the Riverside County Habitat Conservation Agency for the Multi Species Reserve.

(p) There shall be established in the Treasury of the District such funds and accounts as are required pursuant to bond covenants, tax and non-arbitrage certificates, bond counsel letters of instruction and related documents, to provide for accountability of District funds and compliance with applicable federal and state law and regulations. Such funds and accounts shall be established for each issue of bonds, notes or other obligations of the district as required in the respective bond or note resolution and closing documents.

(q) Water Stewardship Fund (Fund No. 1009 established 2005). Used to collect revenue from the Water Stewardship Rate and to pay costs associated with water recycling, seawater desalination, conservation, brackish water desalination, or other demand management programs. These funds can also be used to fund administrative costs associated with these programs. Funds may be used as directed by the Board, for other lawful purposes, in accordance with Section 5201(p) and Section 5202(d).

(r) Reclamation Plan Trust Fund (Fund No. \_\_\_\_\_, established 2023). Used as a trust fund to maintain moneys sufficient to cover the costs of reclamation activities related to the Metropolitan Reclamation Plan, in accordance with the Surface Mining and Reclamation Act of 1975, Public Resources Code section 2770 et al. and California Code of Regulations, Title 14, Division 2, Chapter 8, §3803.3.

**§ 5201. Restricted Funds.**

Cash and securities to be held in the various ledger funds shall be as follows:

- (a) General Obligation Bond Interest and Principal Funds and the Waterworks General Obligation Refunding Bonds Interest and Principal Funds, the cash and securities in each as of June 30, shall be at least equal to the debt service for the ensuing 18 months, less revenues anticipated to be derived from the next succeeding tax levy specifically for such debt service.
- (b) For the Water Revenue Bonds Interest and Principal Funds, the Water Revenue Bonds Reserve Funds, the Water Revenue Refunding Bonds Interest and Principal Funds and the Water Revenue Refunding Reserve Bonds, the cash and securities in each shall be at least equal to the minimums required by the resolutions of issuance for such bonds.
- (c) For the Subordinate Bonds Interest and Principal Funds, the Subordinate Water Revenue Bonds Reserve Funds, the Subordinate Water Revenue Refunding Bonds Interest and Principal Funds and the Subordinate Water Revenue Refunding Reserve Funds, the cash and securities in each shall be at least equal to the minimums required by the resolutions of issuance for such bonds.
- (d) For the Bond Construction Funds there shall be no minimum requirements; provided that any cash and securities in such funds shall be restricted to use for the purposes such finances were required.
- (e) For the State Contract Fund, cash and securities on hand June 30 and December 31 shall equal the capital payments to the State Department of Water Resources that are due on July 1 of the same year and January 1 of the following year, respectively.
- (f) (f) For the Special Tax Fund, there shall be no minimum requirement.
- (g) For the Operation and Maintenance Fund, cash and securities shall be at least equal to the minimum required by the resolutions of issuance for revenue bonds.
- (h) For the Revolving Construction Fund, there shall be no minimum requirement. Cash and securities in this fund, unless restricted as to use by resolution of the Board, shall be available for transfer to the Water Rate Stabilization Fund and the Water Treatment Surcharge Stabilization Fund at the discretion of the Board.
- (i) (i) For the Commercial Paper, Series A, Note Payment Fund, and the Commercial Paper, Series B, Note Payment Fund, the District shall deposit amounts sufficient to pay principal of, and interest on, such Commercial Paper Notes in an amount at least equal to one-half of the projected interest payments due on such notes in the subsequent fiscal year.

(j) For the Water Standby Charge Fund, there shall be no minimum requirement; provided that any cash and securities in such fund shall be restricted to use for the purposes such moneys were authorized.

(k) For the General Obligation Bond Excess Earnings Funds, the Waterworks General Obligation Refunding Bond Excess Earnings funds, the Water Revenue Bond Excess Earnings Funds and the Water Revenue Refunding Bond Excess Earnings Funds, the minimum requirement shall be the amounts deposited into this fund in accordance with the provisions of the Tax and Nonarbitrage Certificates and Resolutions for the Bonds.

(l) For the Waterworks General Obligation Refunding Bonds, 1993 Series A1 and A2, Escrow Account Fund, the minimum requirement shall be the amounts necessary to pay the principal, if any, and the interest on the Series A1 and A2 Bonds to the crossover date, and to defease certain maturities of outstanding prior general obligation bonds.

(m) For the Iron Mountain Landfill Postclosure Maintenance and Corrective Action Trust Fund, cash and securities as of June 30, shall be at least equal to the General Manager's latest estimates of postclosure maintenance and/or corrective action costs.

(n) For the Optional General Obligation Bond Redemption Fund and the Optional Revenue Bond Redemption Fund, the minimum requirement shall be the amount necessary to redeem such untendered, refunded bonds which have been called for redemption.

(o) For the Water Transfer Fund, all amounts budgeted or pledged for purchase of water through transfers or similar arrangements, and for the costs of filling the Eastside Reservoir Project, shall be set aside in such fund and used solely for such purpose.

(p) For the Self-Insured Retention fund, all amounts in such fund shall be set aside and used solely for emergency repairs and claims against the District. The minimum cash and securities to be held in such fund as of June 30 of each year shall be \$25 million.

(q) For the Water Stewardship Fund, there shall be no minimum requirement; all amounts in such fund shall be used to fund the Conservation Credit Program, Local Resources Program, seawater desalination, brackish water desalination, and similar demand management programs, including the departmental operations and maintenance costs for administering these programs.

(r) For the Reclamation Plan Trust Fund, cash and securities as of June 30, shall be at least equal to the General Manager's latest financial assurance cost estimates of reclamation activities in accordance with the Metropolitan Reclamation Plan.