



● **Board of Directors**
Legislation, Regulatory Affairs, and Communications Committee

11/14/2023 Board Meeting

7-15

Subject

Authorize the General Manager to sponsor legislation to amend the Surface Mining and Reclamation Act to eliminate the sunset date to allow Metropolitan to continue operating under its existing master reclamation plan; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Authorization is requested to seek legislation to remove the January 1, 2026 “sunset date” as provided in Assembly Bill (AB) 442 (Mayes; Chapter 166, Statutes of 2021) that allowed Metropolitan to prepare a master reclamation plan under the Surface Mining and Reclamation Act of 1975 (SMARA). Removing the sunset date will allow Metropolitan to continue coordinating directly with the State Mining and Geology Board instead of individual counties for SMARA-related activities, including the development of reclamation plans and associated CEQA documents, regulatory and mining permitting, and annual inspections.

Timing and Urgency

The timing is urgent as existing law is set to sunset on January 1, 2026.

Details

Background

In 1932, Congress granted Metropolitan the right to acquire lands for the construction and operations of the Colorado River Aqueduct (CRA) and to use all stone, gravel, and sand (collectively, aggregate) on the lands to construct and to operate the project. Metropolitan acquired these lands over time beginning in 1932. When Metropolitan completed construction of the CRA and began operation in 1941, it retained ownership of the land beneath and adjacent to the CRA, including the aggregate. Metropolitan uses those materials on an ongoing basis to restore, repair, protect, and maintain berms, access roads, and pipelines.

Metropolitan currently utilizes approximately 20 sites on its land to obtain aggregate materials for repairs and maintenance of the CRA and other infrastructure. Most of the materials at these sites are spoils from the construction of the CRA. In 2017, San Bernardino and Riverside counties informed Metropolitan they believed the district must comply with SMARA because some sites involved the removal of native materials, which it alleged constituted mining activity under SMARA and, thus, required a reclamation plan. Metropolitan agreed to voluntarily adopt reclamation plans to avoid any disputes with the counties. In response, Metropolitan worked with both counties to identify sites that are subject to SMARA, and in 2020, Metropolitan began preparation of reclamation plans for the sites in each county. Metropolitan realized that working with multiple counties on its reclamation plans could lead to conflicting directions, unnecessary duplication, delays in operational repairs, and extra costs and ratepayer resources. At the recommendation of San Bernardino County staff, Metropolitan pursued legislation to address these concerns.

In 2021, Metropolitan sponsored AB 442 that contained the following key provisions:

- Exempted Metropolitan from the requirements of SMARA for emergency excavations or grading conducted by Metropolitan for its own operations and infrastructure for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies; this is similar to an exemption for emergency operations for the California Department of Water Resources.
- Authorized until January 1, 2026:
 - Metropolitan to prepare a master reclamation plan for its operations within the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. This provision specified that, unless otherwise provided, all SMARA laws and rules apply, as well as all related reporting and fees. Metropolitan is not required to secure approval of a reclamation plan from any city or county or to obtain a use permit from any city or county under SMARA to conduct the operations under the approved master reclamation plan.
 - Designated the State Mining and Geology Board as the lead agency overseeing Metropolitan's activities under SMARA and Metropolitan as the lead CEQA agency.
 - Authorized the State Mining and Geology Board to conduct inspections once every two calendar years and collect reasonable inspection and administration fees.

AB 442 passed through both Assembly and Senate committees unopposed and was signed into law.

Proposed Legislation

Since the 2021 passage of AB 442, Metropolitan has worked diligently with the State Mining and Geology Board to prepare and complete its master reclamation plan in compliance with the new law. In February 2023, this Board approved Metropolitan's master reclamation plan and supporting mitigation negative declaration. In March 2023, the State Mining Board approved Metropolitan's master reclamation plan. Metropolitan has no intention to cease use of its aggregate sites or close them for at least the next 100 years. Under SMARA, the obligation to reclaim mines only arises when the site is closed. Metropolitan expects its current master reclamation plan will stay in place for at least the next 100 years, and Metropolitan will not need to reclaim any sites until that occurs. In the interim, the State Mining and Geology Board will do biannual inspections to ensure the sites comply with the plan.

Metropolitan staff proposes to seek legislation to remove the January 1, 2026 sunset date to allow continued operation under the approved master reclamation plan. No other changes are proposed. Metropolitan has demonstrated that it can operate properly under existing law. Repealing it would disrupt its operations and possibly the reliable delivery of drinking water supplies. Amending SMARA to eliminate that sunset date would allow Metropolitan to continue coordinating directly with the State Mining and Geology Board instead of specified individual counties for financial assurances, reclamation plans, implementation, monitoring, and reporting activities subject to SMARA.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 51763, the Board authorized the General Manager to seek legislation to amend SMARA to provide Metropolitan with lead agency status as set forth in Agenda Item 8-5 board letter (October 8, 2019).

By Minute Item 53051, the Board approved 2023 Metropolitan Legislative Priorities and Principles, Section V.D.1.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378(b)(1)) because it involves legislative proposals which do not involve any commitment to any specific project which may have a potentially significant physical impact on the environment.

CEQA determination for Option #2 :

None required

Board Options

Option #1

Authorize the General Manager to sponsor legislation to amend the Surface Mining and Reclamation Act to eliminate the sunset date to allow Metropolitan to continue operating under its existing master reclamation plan.

Fiscal Impact: The costs associated with sponsoring this bill in the state legislature will be absorbed within existing staffing and program budgets. If the proposed legislation is enacted into law, the preparation of one reclamation plan and one CEQA document will reduce administrative fees, staff time, and consulting costs.

Business Analysis: If successful, legislation authorizing the revision of SMARA would allow for consistent management and enforcement of SMARA regulations across Metropolitan's service area.

Option #2

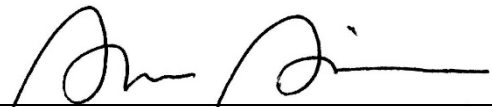
Do not authorize the General Manager to sponsor legislation to amend the Surface Mining and Reclamation Act to eliminate the sunset date to allow Metropolitan to continue operating under its existing master reclamation plan at this time.

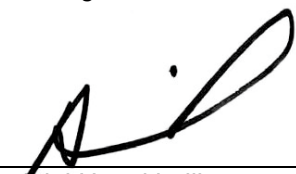
Fiscal Impact: Unknown. Costs could include staff time, consultant costs, and fees associated with the preparation of multiple reclamation plans and CEQA documents for each county, as well as potential administrative and permitting fees for each county.

Business Analysis: Absent legislation, Metropolitan would revert to the requirements of multiple county jurisdictions where Metropolitan owns and operates its facilities, which is likely to disrupt operations.

Staff Recommendation

Option #1


 _____ 10/19/2023
 Susan Sims Date
 Manager, External Affairs


 _____ 10/25/2023
 Adel Hagekhalil Date
 General Manager