



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

10/12/2021 Board Meeting

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**7-5**

**Subject**

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Authorize the General Manager to enter into an agreement with the Arizona Department of Water Resources and the Central Arizona Water Conservation District to support the development of the Regional Recycled Water Program; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

**Executive Summary**

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Staff recommends executing an agreement with the Arizona Department of Water Resources (ADWR) and the Central Arizona Water Conservation District (CAWCD) to accept up to \$6 million in financial support for the development of the Regional Recycled Water Program. These agencies (ADWR and the CAWCD) are collectively called the “Arizona Parties” for this document.

**Details**

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**Background**

In December 2020, Metropolitan entered into an agreement with the Southern Nevada Water Authority (SNWA) to fund up to \$6 million of the environmental phase work for the Regional Recycled Water Program. The Arizona Parties have expressed interest in developing a similar agreement.

The Arizona Parties, SNWA, and Metropolitan have a long history of working collaboratively to improve water supply reliability from the Colorado River. Over the last two decades, as Lake Mead levels declined and flows on the Lower Colorado River have been impacted, the Arizona Parties, SNWA, and Metropolitan have worked together to develop programs that benefitted all parties and the Colorado River as a whole. For example, Metropolitan, SNWA, and CAWCD funded a new regulating reservoir near the All-American Canal, funded conservation programs for the benefit of the Colorado River system, and developed conservation projects in Mexico. Additionally, ADWR and SNWA entered into an Intentionally Created Surplus (ICS) capacity sharing agreement with Metropolitan to more effectively use the available ICS storage capacity provided in the Lower Basin Drought Contingency Plan.

The Arizona Parties expressed interest in furthering their partnership with Metropolitan by developing an agreement similar to the SNWA funding agreement. In August of 2020, the Arizona Parties provided a non-binding letter of interest (LOI) to explore a potential partnership to jointly fund the Regional Recycled Water Program (Program) and receive water supply benefits from it. However, the LOI did not contain any firm commitments, nor did it specify any details. Accordingly, during the upcoming negotiations to develop new guidelines for the Colorado River, the agencies would like to facilitate interstate participation in the Program. To help advance this partnership, the Arizona Parties want to fund a portion of the Program’s environmental costs.

**Framework for Potential Exchanges in Support of the Program**

Similar to the agreement with SNWA, staff sees an opportunity for potential exchanges with agencies that wish to partner in the Program. Board members have noted that while the Program provides significant regional benefits, it also comes at a higher unit cost (\$ per acre-foot) than Metropolitan’s previous investments. These exchange partnerships could significantly reduce Metropolitan’s net cost exposure while enhancing dry-year reliability and resilience to catastrophic events.

A set of general guidelines can be helpful for considering potential future Program exchanges. These general guidelines form the basis for any Program exchange proposals that would be brought for board discussion or consideration. While the guidelines can help bound the discussions on potential Program exchanges, substantive development of agreements and board discussions on specific exchanges are premature at this time. Significant analysis will be done through the environmental planning phase of the Program to help inform these discussions over the next couple of years.

### **Enhanced Reliability**

Recent history, previous modeling analysis, and work currently underway through the Integrated Resources Plan (IRP) Update indicates that Metropolitan does not face water reliability issues in normal or wet year conditions. In fact, Metropolitan is likely to have surplus water available for storage in these year-types. As a result, any supply reliability issues appear to be confined to significant multiple dry-year sequences and catastrophic event scenarios. This circumstance has been shown through analysis done in the 2010 and 2015 IRP Updates and is likely to be emphasized again in the 2020/21 IRP Update. As such, Metropolitan will only consider Program exchanges that enhance dry-year reliability or resilience under catastrophic events after the Program is complete. Exchanges that negatively impact these factors will not be considered.

This guideline would likely focus on arrangements that allow Program water to be exchanged in normal or wet years while maintaining full access to imported supplies in dry conditions or catastrophic events, in addition to the water produced by the Program. This approach ensures net reliability improvements for the region.

### **Regional Provider**

Metropolitan is developing the Program for the benefit of all member agencies. Funding provided by outside participants can reduce the net cost burden on Metropolitan's member agencies. As such, staff will focus on potential Program exchanges with agencies outside of Metropolitan's service area.

Metropolitan would consider Program exchange concepts with agencies on both the Colorado River or State Water Project (SWP) systems. Any potential Program exchanges on the SWP system would have a further requirement of preserving or enhancing the reliability of the SWP-constrained regions in Metropolitan's system. Program exchanges that reduce the availability of SWP supplies to these constrained areas in times of need would not be considered.

### **Full Cost Recovery**

Any potential exchanges should achieve full cost recovery on a per acre-foot basis. Metropolitan does not intend to consider partnerships that seek exchanges at a subsidized rate.

### **Proposed Agreement with Arizona Parties**

As discussed above, it is not time to consider a specific Program exchange agreement. However, the Arizona Parties are interested in assisting Metropolitan with completing the due diligence necessary to understand the Program parameters and costs. This information would inform decisions by the parties about a potential future Program exchange. The Arizona Parties propose to financially support the environmental planning phase activities for the Regional Recycled Water Program through a funding agreement. CAWCD's board of directors approved its participation on June 10, 2021.

A term sheet for the proposed Regional Recycled Water Program agreement with the Arizona Parties is provided in **Attachment 1**. The Arizona Parties would provide direct cost contribution in the lesser amount of either \$6 million or 24 percent of Metropolitan's costs. The combined funding from both SNWA and the Arizona Parties would be up to \$12 million or 48 percent of Metropolitan's costs for the environmental phase. Metropolitan would be responsible for 52 percent of the costs associated with the environmental phase. Under the proposed agreement with the Arizona Parties, Metropolitan would bill CAWCD for the Arizona Parties' contributions. Pursuant to a separate agreement between CAWCD and ADWR, CAWCD would contribute up to \$5 million while ADWR would provide up to \$1 million; however, in the event ADWR is unable to provide funding, CAWCD would provide up to \$6 million. The contribution from the Arizona Parties would reimburse Metropolitan to directly offset the environmental planning phase costs by the same amount.

In addition to the benefits described in the guidelines above, partnering with the Arizona Parties also presents an important opportunity for coordination on the Colorado River. The Arizona Parties and Metropolitan would have a mutual interest in seeking a framework on the Colorado River that recognizes this opportunity for supply augmentation. This feeds into discussions of the Operating Guidelines for the Lower Basin of the Colorado River, which are set to expire at the end of 2026. Cementing a partnership for coordination on the environmental planning phase activities of the Program at this time will also reinforce the commitment to work together in these important upcoming negotiations on the Colorado River. Importantly, this agreement would also help show collaboration among the three states in the Lower Basin of the Colorado River, which could help with future federal funding opportunities for the RRWP

The proposed agreement does not obligate Metropolitan or the Arizona Parties to an exchange in the future. Metropolitan will carefully consider all factors before surrendering any portion of its Colorado River supply. Climate change and deepening drought may mean Southern California will need all its available water resources in the future to meet our long-term demands. Staff recommends proceeding with this partnership without any obligations related to a long-term exchange. Under the proposed agreement, either the Arizona Parties or Metropolitan can decide not to proceed in the future. In this circumstance, Metropolitan would return the Arizona Parties' contribution with no interest charged. As information is developed through the environmental planning phase of the Program, staff would return to the Board with a full analysis of the benefits and risks of any Program exchange.

### **Additional Interest**

In addition to the Arizona Parties and SNWA, some other agencies have indicated an interest in discussing similar arrangements. These discussions are preliminary and would be informed by feedback the Board may provide on this action item. Agencies that have expressed interest so far include Coachella Valley Water District (Colorado River and State Water Contractor), Desert Water Agency (State Water Contractor), and San Gabriel Valley Municipal Water District (State Water Contractor).

### **Summary**

This action authorizes a funding agreement with the Arizona Parties that provides no risk to the parties. This agreement only deals with funding for the environmental planning phase of the Program and does not commit Metropolitan to complete the Program, nor does it commit any of the agencies to a future Program exchange. If Metropolitan, ADWR or CAWCD chooses not to proceed, Metropolitan will return the funds the Arizona Parties provided to Metropolitan without any interest. The CAWCD board has voted to authorize proceeding with the agreement.

### **Policy**

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Metropolitan Water District Administrative Code Section 8121: General Authority of the General Manager to enter Contracts

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 (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 or maintenance activities (Section 15378(b)(2) of the State CEQA Guidelines). The proposed action also is not defined as a project under CEQA because it involves other 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 CEQA Guidelines). Additionally, the proposed action is exempt from the provisions of CEQA and the State CEQA Guidelines because it consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded (Section 15306 of the

State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the proposed activity is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

**CEQA determination for Option #2:**

None required

**Board Options**

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**Option #1**

Authorize an agreement with the Arizona Parties to support the development of the Regional Recycled Water Program.

**Fiscal Impact:** Up to \$6 million will be reimbursed to Metropolitan by the Arizona Parties for expenditures on planning phase activities to develop the Regional Recycled Water Program.

**Business Analysis:** This option would provide substantial financial support to advance the development of significant water reuse in Southern California and would augment regional supplies for Metropolitan's entire service area to deal with droughts, climate change, and seismic risks.

**Option #2**

Do not authorize an agreement with the Arizona Parties to support the development of the Regional Recycled Water Program.

**Fiscal Impact:** Up to \$6 million of Metropolitan funding would be required without reimbursement from the Arizona Parties.

**Business Analysis:** Under this option, Metropolitan would receive no financial contribution from the Arizona Parties to advance the Regional Recycled Water Program.


**Staff Recommendation**

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Option #1

  
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 Brad Coffey  
 Water Resource Management Manager

10/6/2021  
 Date

  
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 Adel Hagekhalil  
 General Manager

10/6/2021  
 Date

**Attachment 1: Term Sheet for Potential Regional Recycled Water Program Agreement with Arizona Parties**

Ref# wrm12679337

**TERM SHEET FOR POTENTIAL REGIONAL RECYCLED WATER PROGRAM  
AGREEMENT WITH ARIZONA PARTIES**

**TERMS**

1. The Central Arizona Water Conservation District and Arizona Department of Water Resources (collectively referred to as Arizona Parties) will provide to Metropolitan the lesser of either \$6 million or 24 percent of Metropolitan's costs for conducting analyses, investigations, evaluations, studies, and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively "Environmental Planning Phase Services"). These Environmental Planning Phase Services include environmental evaluation, engineering and other technical support, and public outreach, and will conform to and comply with the requirements of the California Environmental Quality Act and any other applicable environmental requirements, permitting processes and laws.
2. Metropolitan shall provide an accounting and invoice Arizona Parties on a quarterly basis for 24 percent of the costs incurred by Metropolitan for Environmental Planning Phase Services, up to a maximum cumulative amount of \$6 million. Arizona Parties shall have the right to review and confirm that the invoice conforms to the terms of this Agreement, and if so approved, Arizona Parties shall pay the invoice within 30 days of receipt.
3. This Agreement does not: obligate Metropolitan to approve or develop the Program; obligate Metropolitan to make water available to Arizona Parties through exchange or other mechanism; obligate Arizona Parties to agree to such exchange; allocate any Program water to Arizona Parties; or set any precedent for the terms of any such allocation. Such terms may be provided for in a separate Development Agreement between the Parties.
4. If Metropolitan does not approve or develop the Program or if Metropolitan or Arizona Parties determines to not enter into a separate Development Agreement to allocate Program water to Arizona Parties, then Metropolitan will return the funds that Arizona Parties provided to Metropolitan under this Agreement, without any interest.
5. If the Parties enter into a separate Development Agreement which allocates Program water to Arizona Parties, the Development Agreement will credit Arizona Parties with the funds provided by Arizona Parties under this Agreement.
6. Metropolitan and Arizona Parties will also explore whether certain in-kind services could be provided by Arizona Parties in support of the Environmental Planning Phase Services.
7. This Agreement is effective as of the date the last Party executes the Agreement and will terminate on December 31, 2035, provided that the Parties may agree to extend the term of this Agreement.
8. This Agreement is not intended by the Parties to create any right in or benefit to Parties other than Arizona Parties and Metropolitan. This Agreement does not create any third-party beneficiary rights or causes of action.
9. The failure of either Party to enforce at any time, or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or of the rights of such Party to enforce each and every such provision.