



- Board of Directors
Water Planning and Stewardship Committee

11/5/2012 Board Meeting

8-4

Subject

Authorize execution of agreements related to interim international cooperative measures in the Colorado River Basin; and authorize payment of up to \$5 million for purchase of supplies from international pilot project

Executive summary

Authority is requested for Metropolitan to enter into multiple agreements in support of a five-year program to augment Metropolitan's Colorado River supply through the funding of an international pilot project in Mexico. Metropolitan's share of funding would be \$5 million for 47,500 acre-feet of project supplies. Delivery of the Colorado River water conserved by the project would be deferred by Mexico and converted to storage in Lake Mead for later delivery to Metropolitan.

Details

Background

The United States and Mexico have completed negotiations for a draft International Boundary and Water Commission Minute No. 319, which would address issues related to Mexico's Colorado River deliveries and storage for a five-year period from 2013 through 2017. The 1944 Water Treaty allocates 1.5 million acre-feet per year to Mexico, with an additional 200,000 acre-feet in surplus conditions. The treaty does not specifically define when Mexico is entitled to surplus or when it is subject to shortage. In 2001, the Secretary of the Interior adopted guidelines governing the delivery of surplus in the Lower Basin, and in 2007 adopted similar guidelines establishing shortage operations. The Basin states sought to have the terms for shortages to Mexico clarified and wide-ranging international discussions were begun.

In 2010, a major earthquake in the Mexicali Valley resulted in the two countries agreeing to emergency storage of Mexican water supplies in United States reservoirs. That minute also laid the groundwork for further discussions over storage, shortage, surplus, and conservation programs in Mexico. Proposed Minute No. 319 would address these issues for an interim five-year period under which Mexico agrees to share the risks and benefits of potential shortage and surplus on the Colorado River.

During this interim period, Mexico would be allowed to defer delivery of up to 250,000 acre-feet per year (TAFY) in the United States Colorado River system. This storage benefits the United States by ensuring additional supply in the system. Such deferred deliveries would be accounted for as Intentionally Created Mexican Allocation (ICMA). During this time frame, Mexico would also agree to incur reduced deliveries and to quantify these reductions when shortages are imposed on Arizona and Nevada under the 2007 Interim Guidelines, which would occur when the elevation of Lake Mead is at elevations of 1,075 feet and below. In exchange for Mexico's voluntary agreement to quantified shortages, a share of surplus, if any is available in the United States, is provided to Mexico when the elevation of Lake Mead is at 1,145 feet or higher. In order to be eligible for surplus, surplus must be available and Mexico must have stored at least 80 TAFY of ICMA in the system.

Additionally, Minute No. 319 considers joint measures, including a pilot program, which would allow both countries to pursue opportunities for water conservation, management, and development over a five-year period.

Under the pilot exchange program, up to 124,000 acre-feet of ICMA would be made available for exchange for use in the United States. Of that amount, 95,000 acre-feet would be made available as Binational Intentionally Created Surplus (Binational ICS) for contractors, including Metropolitan. In anticipation of the United States and Mexico signing Minute No. 319 at the end of November, several implementing agreements need to be considered by Colorado River stakeholders, including Metropolitan.

Implementing Agreements

Several agreements are proposed to accomplish the conversion of deferred delivery by Mexico to Binational ICS for storage in Lake Mead and later diversion by Metropolitan.

Interim Operating Agreement

The draft interim operating agreement among the United States, the Upper Basin states, and Lower Basin states' agencies would set forth the rules under which ICMA would be converted to Binational ICS for storage in and delivery from Lake Mead. The draft agreement provides for certain Lower Basin states' agencies, including Metropolitan, to forbear surplus deliveries to provide Mexico access to additional water under high reservoir conditions. Mexico would not receive additional water under high reservoir conditions if surplus water is not available to contractors in California, Arizona, and Nevada. The likelihood of surplus water being available in the next five years is about 17 percent. If storage in Lake Mead increases to an elevation that allows the Secretary to make surplus water available to Metropolitan, about 500,000 acre-feet of surplus water would be available to Metropolitan in a year through 2016, and 250,000 acre-feet would be available in 2017, absent Mexico increasing its schedule for delivery of water. Depending on the magnitude of the increase in delivery of water to Mexico under high reservoir conditions, Metropolitan would forbear delivery of up to 13,334 acre-feet of surplus water in a year, up to about 5 percent of the surplus water available.

Forbearance Agreement

The draft forbearance agreement would ensure that the Binational ICS made available to a contractor that invests in a project in Mexico would not be claimed by another contractor in another state. It is anticipated that the document would be executed by the state of Arizona, the Colorado River Commission of Nevada and Southern Nevada Water Authority, and California Colorado River water contractors.

Delivery Agreement

A delivery agreement between Metropolitan and Reclamation would secure delivery of the Binational ICS water made available by exchange and specify the manner in which this water would be accounted.

Funding Agreement

The draft funding agreement would provide for the payment of \$10,000,000 by the local funding agencies for the international pilot project, for 95,000 acre-feet of ICS that would be made available as a result of the funding. The remaining 29,000 acre-feet of ICMA would be considered system water, funded by the United States. Metropolitan's share of the funding would be \$5 million for 47,500 acre-feet. The agreement would be among the United States, Metropolitan, Southern Nevada Water Authority, and Central Arizona Water Conservation District. The agreement also provides that Metropolitan and IID would enter into a separate agreement to develop mutually agreeable terms for IID to participate in the pilot project at a future date. That agreement would: limit IID's participation to 20% of California's available supply, restrict use to municipal and industrial use, and require sharing in any reductions of surplus as provided for in the Operating Agreement. A summary of the key terms and conditions of the funding agreement is attached ([Attachment 1](#)).

Recommendation

Execution of the agreements would benefit Metropolitan in the following ways:

- Provide Metropolitan with an additional source of Colorado River water supply and a new partner for water conservation programs,

- Increase the surface elevations of Lakes Powell and Mead to higher levels than would otherwise have occurred in years in which ICMA and/or Binational ICS is in storage, and
- Help delay or avoid shortages in the Lower Basin.

Staff recommends that the Board authorize execution of the agreements related to the international cooperative measures on the terms described in this board letter, with changes approved by the General Manager and General Counsel, and approve payment of \$5 million for purchase of supplies from the international pilot project.

Policy

By Minute Item 41222, dated January 10, 1995, the Board adopted a set of Colorado River Basin Management Policy Principles that include continuing to seek ways to increase the reliability of Metropolitan's Colorado River supplies and collaborate with the other Colorado River Basin states and the Department of the Interior on innovative strategies requiring interstate cooperation.

By Minute Item 42820, dated February 10, 1998, the Board approved a policy principle to protect Metropolitan's interests and increase its dependable entitlements to Colorado River water, while collaborating with other California Colorado River agencies.

By Minute Item 47327, dated December 11, 2007, the Board authorized execution of agreements related to implementation of Reclamation's Interim Guidelines for the coordinated operation of Lake Powell and Lake Mead.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed actions of funding, authorizing, and entering into agreements related to the implementation of interim international cooperative measures established in proposed Minute No. 319 of the International Boundary and Water Commission are statutorily exempt under the provisions of CEQA and the State CEQA Guidelines. In particular, the proposed actions consist of agreements that would allow Mexico to intentionally create a portion of surplus supplies of Colorado River water, without increasing the total amount of available surplus supplies, for retention in the federal Colorado River system and future delivery to potential United States funders, including Metropolitan. As the federal Colorado River system where surplus supplies would be created is located outside California and Reclamation completed an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (refer to the following link: <http://www.usbr.gov/lc/region/programs/strategies/FEIS/index.html>), that addressed the potential impacts of the creation of surplus, including the portion Mexico may receive under Minute No. 319, Metropolitan's proposed actions are exempt from CEQA under a Statutory Exemption (Public Resources Code Section 21080(b)(14) and State CEQA Guidelines Section 15277). In addition, the proposed actions consist of operation of Metropolitan's existing facilities involving no expansion of their use beyond that currently existing. Accordingly, the proposed actions qualify for Class 1 Categorical Exemption (State CEQA Guidelines Section 15301).

The CEQA determination is: Determine that the proposed actions are exempt from CEQA pursuant to Section 21080 (b)(14) of the Public Resources Code and Sections 15277 and 15301 of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and

- a. Authorize Metropolitan to enter into multiple agreements in support of a five-year program to augment Metropolitan’s Colorado River Supply through the funding of an international pilot project in Mexico, on the terms described in this board letter, with changes approved by the General Manager and General Counsel; and
- b. Approve payment of \$5 million for purchase of supplies from the international pilot project.

Fiscal Impact: It is anticipated that Metropolitan’s share of funding for the pilot program may be as high as \$5 million for up to 47,500 acre-feet of Binational ICS, appropriated from the existing Water Supply Program budget.

Business Analysis: Participation in a binational pilot program would provide up to 47,500 acre-feet additional Colorado River supplies in the short term. Participation will provide the opportunity to test the operational and institutional feasibility of binational cooperation in the long term. Binational ICS generated through the pilot program would be recoverable through 2036.

Option #2

Do not authorize Metropolitan to enter into agreements in support of a five-year program to augment Metropolitan’s Colorado River supply through the funding of an international pilot project in Mexico, and do not approve payment of up to \$5 million for purchase of supplies from the international pilot project.

Fiscal Impact: None

Business Analysis: No participation in a pilot program with Mexico would result in a lost opportunity to procure additional Colorado River water supplies and to work with a new partner in water conservation programs.

Staff Recommendation

Option #1


 _____ 11/1/2012
 Deven N. Upadhyay Date
 Manager, Water Resource Management


 _____ 11/1/2012
 Jeffrey Kightlinger Date
 General Manager

Attachment 1 – Terms and Conditions – Funding Agreement for a Pilot Program for Conversion of ICMA to Binational ICS

Terms and Conditions
Funding Agreement for a Pilot Program for Conversion of ICMA to Binational ICS

Purpose

1. Determine monetary contributions that will be provided by Colorado River contractors.
2. Establish responsibilities of the U.S. Bureau of Reclamation (Reclamation) for receipt and management of contributions, implementation of pilot conservation projects within Mexico, and delivery of conserved water as Binational Intentionally Created Surplus (Binational ICS).
3. Establish the quantity of Binational ICS credits that each funding agency receives in exchange for its funding.

Term

4. Binational ICS can be created through 2017 and recovered through 2036.

Financial Obligation

5. Total Pilot Project funding of \$21 million (federal and non-federal).
6. Reclamation and/or another federal agency will provide initial funding of \$11 million.
7. Metropolitan funding share would be up to \$5 million, with CAWCD and SNWA funding shares of \$2.5 million each.

Quantity of Binational ICS Credited to Funding Agencies for Capital Contribution

8. Reclamation establishes a Binational ICS account for each funding agency when contributions are received. The volume of Binational ICS for Metropolitan would be 47,500 acre-feet.

Availability of Binational ICS to Funding Agencies

9. Binational ICS can be recovered through 2036 in any year a shortage has not been declared on the Colorado River. Binational ICS not subject to evaporation losses.