



- Board of Directors  
*Communications and Legislation Committee*

10/8/2019 Board Meeting

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**8-5**

## **Subject**

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Authorize the General Manager to seek legislation to amend the Surface Mining and Reclamation Act to provide Metropolitan with lead agency status for its activities; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

## **Executive Summary**

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Authorization is requested to seek legislation to amend the state's Surface Mining and Reclamation Act of 1975 (SMARA) to allow Metropolitan to act as its own lead agency for actions subject to SMARA. Metropolitan is in the process of preparing reclamation plans for work along its Colorado River Aqueduct in the Counties of Riverside and San Bernardino. Lead agency status would streamline the administrative and compliance processes for Metropolitan.

## **Details**

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### **Background**

The Metropolitan Water District of Southern California (Metropolitan) was established as a special district in 1928 under an act of the California Legislature to build and operate the 242-mile Colorado River Aqueduct (CRA) that would bring water to its service area. Metropolitan owns and operates the CRA and its ancillary facilities, located primarily in the counties of San Bernardino and Riverside. Metropolitan acquired fee title to the CRA lands to construct and operate the CRA from Congress via the Act of June 18, 1932, also known as the 1932 Act. Along with granting Metropolitan fee interests in the lands underlying and adjacent to the CRA, the 1932 Act granted Metropolitan the right to use "earth, stone, sand, gravel, and other materials of like character" on those lands for the construction and long-term operation of the CRA.

Following passage of the 1932 Act, Metropolitan constructed the CRA and has operated it since 1941, using the earth, stone, sand, gravel, and other materials on the lands granted by Congress for the initial construction and on-going operation and maintenance (O&M) activities. Metropolitan continues to use the earth, stone, sand, gravel, and other materials to restore, repair, protect, and maintain highly essential berms, access roads, and pipeline cover after storm events and for myriad other critical O&M activities.

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 adverse environmental impacts, protect public health and address safety hazards. The State Mining and Geology Board provides technical expertise to oversee the implementation of SMARA. Each county in California has been delegated the authority for enforcement and administration of SMARA for activities within its jurisdiction. Under SMARA, parties conducting mining activities must obtain mining permits; develop reclamation plans and associated California Environmental Quality Act (CEQA) documentation to ensure restoration of the mined land to a usable condition when the mining is completed; and provide financial assurance to ensure reclamation is performed in accordance with the approved reclamation plan.

In 2017, the County of San Bernardino provided notice to Metropolitan that it was applying SMARA to Metropolitan's earth-moving activities on its property in San Bernardino County. Riverside County has taken the same position regarding similar earth-moving activities occurring on Metropolitan property along the CRA in Riverside County. Metropolitan does not agree that SMARA applies to its activities along the CRA, but chose to

voluntarily comply with the provisions of SMARA and prepare reclamation plans for its active sites rather than challenge the counties' interpretation of the law.

SMARA compliance can be time-consuming and complicated, requiring the preparation of reclamation plans and associated CEQA documents, regulatory and mining permitting, and annual inspections. Metropolitan's conveyance and distribution system crosses multiple counties with potentially differing regulations and processes, which could impede Metropolitan's ability to comply with SMARA in an effective and efficient manner and require the expenditure of significant resources. Compliance with the varying requirements of multiple jurisdictions could significantly hinder Metropolitan's ability to make timely O&M repairs to the CRA and other facilities, potentially threatening Metropolitan's ability to reliably deliver drinking water to Southern California.

### **Proposed Legislation**

Metropolitan staff proposes to seek legislation to enable Metropolitan to act as lead agency for purposes of SMARA compliance. This designation would allow for consistent management and enforcement of SMARA regulations across Metropolitan's distribution system. It would avoid any duplicative or conflicting work amongst the counties. The proposal seeks a lead agency designation under SMARA similar to that which has been granted to the Department of Water Resources (DWR). Operation of Metropolitan's water storage, conveyance, and distribution system is similar in nature to that of DWR, which is responsible for, among other things, managing water supply reliability for large-scale water infrastructure facilities in California. Like Metropolitan, DWR operates across multiple counties. Acting as lead agency allows DWR the flexibility to respond to emergencies, as well as maintain their considerable infrastructure consistently through many jurisdictions.

Providing Metropolitan with lead agency status is consistent with Metropolitan's legislative policies because it would streamline compliance with SMARA, and provide consistent administration of SMARA activities, regulatory permitting and CEQA compliance while maintaining Metropolitan's ability to restore, repair, and protect its facilities in an effective and efficient manner

### **Policy**

By Minute Item 51418, dated December 11, 2018, the Board adopted the State Legislative Priorities and Principles for 2019

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 a project subject to CEQA because it involves legislative proposals which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (CEQA Section 21065 and Sections 15378(b)(1) of the State CEQA Guidelines).

### **CEQA determination for Option #2:**

None required

## **Board Options**

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### **Option #1**

Authorize the General Manager to seek legislation to amend the Surface Mining and Reclamation Act to provide Metropolitan with lead agency status for its activities

**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, a full assessment of costs (or benefits) to implement and conduct the activities will be determined and provided to the CFO's office. In addition, preparation of one reclamation plan and one CEQA document will reduce county 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 seek legislation to amend the Surface Mining and Reclamation Act to provide Metropolitan with lead agency status for its activities

**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 be subject to the requirements of multiple county jurisdictions where Metropolitan owns and operates its facilities.

**Staff Recommendation**

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Option #1

  
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Susan Sims  
Manager, External Affairs  
9/30/2019  
Date

  
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Jeffrey Kightlinger  
General Manager  
10/1/2019  
Date

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