



● **Board of Directors**
Real Property and Asset Management Committee

10/13/2020 Board Meeting

7-5

Subject

Authorize the General Manager to enter into a Contributed Funds Agreement with the U.S. Department of the Interior, Bureau of Land Management, funded in an amount not-to-exceed \$400,000, in support of Metropolitan's Colorado River Aqueduct Federal Reversionary Interest Release Program; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Pursuant to recent federal legislation known as the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act), Metropolitan is working with the U.S. Department of the Interior's Bureau of Land Management (BLM), to effectuate the release of the federal government's reversionary interest in lands granted to Metropolitan for Colorado River Aqueduct (CRA) purposes. This process further bolsters records of Metropolitan's clear legal title to lands granted to it by Congressional action and used by Metropolitan for decades for vital water supply and conveyance purposes and helps prevent the unlawful use of these lands by third parties. The Dingell Act conditions the Secretary of the Interior's release of the federal reversionary interests upon Metropolitan's payment or reimbursement of fees and costs necessary to review and process quitclaim deeds and other documents. The BLM has provided a detailed cost estimate of \$275,000, broken into three installments, to complete its reversionary interest release work over approximately five years. Staff seeks authority to enter into the Contributed Funds Agreement funded in an amount not-to-exceed \$400,000, including labor cost adjustments and contingency. No appropriation is necessary as the funding for the first two installments has been included in the approved biennial FY 2020/21 and FY 2021/22 budget, and the third installment will be included in future biennial budgets, as an operations and maintenance item.

Details

Background

As part of the Act of June 18, 1932 (1932 Act), the federal government granted Metropolitan certain lands totaling approximately 72,000 acres for the construction and operation of the CRA (1932 Act Lands). The 1932 Act was pivotal in allowing Metropolitan to bring a reliable water supply to Southern California and gave Metropolitan legal title to such lands. However, when granting the 1932 Act Lands, the federal government reserved for itself a reversionary interest such that if the lands ceased to be used for Metropolitan's purposes, the ownership reverts to the federal government. Additionally, the way in which the federal government granted the 1932 Act Lands to Metropolitan did not provide for deeds or patents that could be easily recorded in the county public records. As such, the county public records do not always show Metropolitan as the owner of the 1932 Act Lands in an easily accessible database or index, despite the clear Congressional grant of land ownership to Metropolitan. These shortcomings in the 1932 Act negatively impact Metropolitan by confusing the general public, private companies, and other public agencies as to Metropolitan's authority to defend the land against trespass, encroachment, and development, which have all increased over the years in Riverside and San Bernardino Counties and are now occurring in proximity to the CRA.

Staff has worked with federal legislators for over 15 years on how to best protect Metropolitan's 1932 Act Land and CRA infrastructure. Metropolitan prepared proposed legislative language based on analogous laws and worked with California's Congressional delegation to get the language into a bill. On March 12, 2019, the Dingell Act was signed into law. This new legislation provides that the federal government, upon formal request

by Metropolitan, “shall release, convey, or otherwise quitclaim to [Metropolitan], in a form recordable in local county records, all right, title, and remaining interest of the United States in and to” the 1932 Act Lands; it further provides that Metropolitan “shall cover, or reimburse the Secretary [of the Interior] for, the costs incurred by the Secretary to make the [quitclaim] conveyance, including title searches, surveys, deed preparation, attorneys’ fees, and similar expenses” (§1455(b) and (c)).

Process and Timing

Staff has developed a program (Colorado River Aqueduct Federal Reversionary Interest Release Program) to request and memorialize the release of the federal government’s remaining interests under the 1932 Act, leaving Metropolitan with full, unconditioned title to the 1932 Act Lands, and in the process adding documents to local county recorder’s offices that give further record notice of Metropolitan’s decades-long ownership of 1932 Act Lands in easily accessible property indices. Under this program, Metropolitan will draft and submit to the BLM an application for each portion of land to be released. Staff estimates approximately 150 applications will be submitted. Each application will include a quitclaim deed to be reviewed and executed by the BLM and recorded with the appropriate county.

The BLM’s review and execution of the quitclaim deeds, with legal descriptions of the affected Metropolitan land, is necessary to effectuate the release of the reversionary interest and to further bolster record notice of Metropolitan’s ownership interests in local county public record indices. Due to the vast quantity of acreage involved, it is estimated to take approximately five years to complete the work. As such, the BLM must commit significant time and resources into this program, in turn, warranting Metropolitan’s contribution of funds for reimbursement.

The final phase of the program may involve working with other agencies under the U.S. Department of Interior, such as the Bureau of Indian Affairs, and National Park Service, but on a much smaller scale. If any board authority is required during this phase, staff will bring forth the action item for consideration at a future date.

No Appropriation Needed

The BLM has provided a detailed cost estimate of \$275,000 to complete its reversionary interest release work over approximately five years. This estimate was based on BLM’s current labor rates and does not include labor cost adjustments. Therefore, an estimated 3.5 percent annual labor cost adjustment over the expected life of the program will be included in the total not-to-exceed amount. Metropolitan and the BLM have negotiated the terms of the Contributed Funds Agreement, under which Metropolitan would fund the \$275,000 to the BLM in three installments and receive quarterly progress reports from the BLM. Funding for the first two installments has been included in the approved biennial FY 2020/21 and FY 2021/22 budget, and the third installment will be included in future biennial budgets, as an operations and maintenance item.

Staff seeks authority to enter into the Contributed Funds Agreement funded in an amount not-to-exceed \$400,000. This includes the \$275,000 estimated cost of the agreement, an estimated 3.5 percent annual labor cost adjustment over the expected life of the program, and a 20 percent contingency for unexpected issues.

Policy

Metropolitan Water District Administrative Code Section 4201: Mission Statement

Metropolitan Water District Administrative Code Section 8201: Authorization to General Manager

Metropolitan Water District Administrative Code Section 8232: Terms and Conditions of Management Documents

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

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) 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 activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves the creation of government funding mechanisms or 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). Finally, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize the General Manager to enter into a Contributed Funds Agreement funded in an amount not-to-exceed \$400,000 to the U.S. Department of the Interior, Bureau of Land Management.

Fiscal Impact: Up to \$400,000 of appropriated funds

Business Analysis: Allows Metropolitan to remove conditions on Metropolitan's existing fee simple title to 1932 Act Lands, thereby strengthening Metropolitan's ability to protect its land and infrastructure

Option #2

Do not authorize the General Manager to enter into a Contributed Funds Agreement.

Fiscal Impact: None

Business Analysis: Prevents Metropolitan from removing remaining federal interests in Metropolitan's 1932 Act Lands and to improve record notice of Metropolitan's existing ownership status, thereby risking potential reversion of the land to the federal government and making defense against trespass and encroachment more difficult.

Staff Recommendation

Option # 1


 _____ 9/21/2020
 Lilly L. Shalbat Date
 Group Manager
 Real Property Group


 _____ 9/25/2020
 Jeffrey Nightlinger Date
 General Manager