



● **Board of Directors**

~~Water Planning and Stewardship Committee~~

12/8/2020 Board Meeting

(Revised Agenda Item #) 8-1 ~~7-7~~

Subject

Authorize General Manager to enter into an agreement with Southern Nevada Water Authority 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

Staff recommends executing an agreement with the Southern Nevada Water Authority (SNWA) to accept up to \$6 million in financial support for these activities.

Details

Background

Southern Nevada Water Authority 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, the two agencies worked together to develop programs that benefitted both agencies and the Colorado River as a whole, including building a new regulating reservoir near the All-American Canal, funding conservation programs for the benefit of the Colorado River system, and developing conservation projects in Mexico. SNWA assisted Metropolitan in the development of the Colorado River Drought Contingency Plan by committing up to 300,000 acre-feet of the potential contributions to Lake Mead that could be required of Metropolitan. Finally, during the peak of the historic California drought in 2015, Nevada provided 150,000 acre-feet of water to Metropolitan to help keep the Colorado River Aqueduct full when Metropolitan's instate supplies were at all-time low amounts. That water will be returned to Nevada when needed in a future year.

SNWA has expressed an interest in exploring options to further its partnership with Metropolitan. In March of 2020, as was reported to the Board, SNWA and Metropolitan signed a non-binding letter of intent (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 lay out the details about how such a partnership would work and what it would entail. Accordingly, during the upcoming negotiations to develop new guidelines for the Colorado River, both agencies would like to develop a path forward to facilitate a potential interstate participation in the Program. To help advance this proposed partnership in the Program, SNWA is interested in funding a portion of the environmental costs of the Program.

Framework for Potential Exchanges in Support of the Program

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 unit-cost (\$ per acre-foot cost) that is significantly higher than Metropolitan's previous investments. The environmental phase planning effort is also being done at a time in which Metropolitan is experiencing low demands and has record high water storage levels. These exchange partnerships could serve to significantly reduce the net cost exposure Metropolitan would face in carrying out the Program, while enhancing Metropolitan's dry-year reliability and resilience to catastrophic events.

A set of general guidelines can be helpful for considering potential future Program exchanges. Staff offers the following guidelines for Board feedback.

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-exclusive regions in Metropolitan's system. Program exchanges that reduce the availability of SWP supplies to these exclusive 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.

These general guidelines would be used by staff as a basis for any future Program exchange proposals that would be brought for Board discussion or consideration. While the guidelines listed above 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.

Proposed SNWA Agreement

While it is not time to consider a specific Program exchange agreement, SNWA is interested in assisting Metropolitan with completing the due diligence necessary to understand the Program parameters and costs. This information would inform decisions by both parties about a potential future Program exchange. SNWA proposes to financially support the environmental planning phase activities for the Program through a funding agreement. The agreement was mutually drafted by both parties and approved by SNWA's Board of Directors on November 19 (**Attachment 1**). During the environmental planning phase of the Program, SNWA would provide direct cost contribution in the lesser amount of either \$6 million or 24 percent of Metropolitan's costs. The contribution from SNWA 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 SNWA also presents an important opportunity for coordination on the Colorado River. SNWA 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.

The proposed agreement does not obligate Metropolitan or SNWA 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 SNWA or Metropolitan can decide not to proceed in the future. In this circumstance, Metropolitan would return SNWA's 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 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: Central Arizona Project/Arizona Department of Water Resources (Colorado River), 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 Southern Nevada Water Authority that provides no risk to both 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 either agency to a future Program exchange. If Metropolitan or SNWA choose not to proceed, Metropolitan will return the funds SNWA provided to Metropolitan without any interest. The SNWA Board has voted to authorize proceeding with the agreement.

Policy

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)

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 and #3:

None required

Board Options

Option #1

Authorize an agreement with Southern Nevada Water Authority to support the development of the Regional Recycled Water Program.

Fiscal Impact: Up to \$6 million will be reimbursed to Metropolitan by Southern Nevada Water Authority 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

Defer consideration of agreement until completion of the 2020 Integrated Resources Plan.

Fiscal Impact: Up to \$6 million of Metropolitan funding would be required without reimbursement from Southern Nevada Water Authority.

Business Analysis: Deferring agreement execution would hinder Metropolitan's efforts to develop working partnerships on the Colorado River and do reputational harm to Metropolitan as a desirable partner on water projects.

Option #3

Do not authorize an agreement with Southern Nevada Water Authority 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 Southern Nevada Water Authority.

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

Staff Recommendation

Option #1


 Brad Coffey
 Water Resource Management Group
 Manager

12/3/2020
 Date


 Jeffrey Kightlinger
 General Manager

12/3/2020
 Date

Attachment 1 – Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program

**AGREEMENT TO CONTRIBUTE FUNDS FOR ENVIRONMENTAL PLANNING PHASE SERVICES
RELATED TO THE REGIONAL RECYCLED WATER PROGRAM**

This FUNDING AGREEMENT (“Agreement”) is made by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”) and the SOUTHERN NEVADA WATER AUTHORITY (“SNWA”), who may be referred to individually as “Party” or collectively as “Parties.”

BACKGROUND

- A. SNWA is a Nevada joint powers authority and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to Nevada Revised Statutes § 277.180, inclusive. Metropolitan is a water district established under the California Metropolitan Water District Act, codified in Section 109-1 et seq., of the Appendix to the West’s Annotated California Water Code, for the purpose of serving water to southern California. SNWA currently operates a water recycling program in Southern Nevada and is recognized as a global leader in water recycling technology. The Parties have collaborated on previous projects and agreements involving water supplies and continue to seek new strategies to help maximize the availability of limited water supplies.
- B. Metropolitan and the County Sanitation District No. 2 of Los Angeles County (“Sanitation District”) are working together to develop a Regional Recycled Water Program (“Program”). As currently envisioned, the Program will produce and is planned to deliver up to 150 million gallons per day, or approximately 168,000 acre-feet per year, of purified water from a new advanced water treatment facility located at the Sanitation District’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). The Program also includes a new conveyance system that would deliver water to groundwater basins within Metropolitan’s service area for indirect potable reuse and potentially to two Metropolitan treatment plants for direct potable reuse. It is anticipated that the Program will be constructed in a phased approach so that the eventual ultimate capacity of the program can take into account the availability of water at the JWPCP and the anticipated demands of Metropolitan’s member agencies both for the purposes of groundwater replenishment and direct potable reuse through raw water augmentation.
- C. On or about March 12, 2020, the Parties signed a non-binding Letter of Intent which laid the foundation for a cooperative working relationship between the Parties in the development of the Program, including the anticipation that SNWA would provide resources to assist with the planning, design, and construction of the Program in exchange for receiving water made available by the Program in the future. The Parties intend to explore entering into a future Development Agreement to further define the responsibilities of the Parties in the development of Program.
- E. In order to evaluate the Program, Metropolitan intends to conduct an environmental review along with the Sanitation District. Metropolitan’s approved budget for the environmental review is \$30 million. The actual costs to complete the environmental review will be tracked and may differ from the originally budgeted amount. The Parties intend through this Agreement for SNWA to contribute funds to Metropolitan for Metropolitan’s use in conducting the environmental review.

TERMS

1. SNWA 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 SNWA 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. SNWA shall have the right to review and confirm that the invoice conforms to the terms of this Agreement, and if so approved, SNWA 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 SNWA through exchange or other mechanism; obligate SNWA to agree to such exchange; allocate any Program water to SNWA; 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 SNWA determine to not enter into a separate Development Agreement to allocate Program water to SNWA, then Metropolitan will return the funds that SNWA provided to Metropolitan under this Agreement, without any interest.
5. If the Parties enter into a separate Development Agreement which allocates Program water to SNWA, the Development Agreement will credit SNWA with the funds provided by SNWA under this Agreement.
6. Metropolitan and SNWA will also explore whether certain in-kind services could be provided by SNWA 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 SNWA 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.

10. Any notice under this Agreement must be in writing and addressed as follows:

The Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attn: Deven Upadhyay
Assistant General Manager/Chief Operating Officer
With a courtesy copy by email to DUpadhyay@mwdh2o.com

Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, NV 89153
Attn: General Manager
With a courtesy copy by email to greg.walch@lvvwd.com

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Either Party may change the address listed in this section by providing five days' notice to the other Party.

The Parties may sign this Agreement in duplicate originals.

**SOUTHERN NEVADA
WATER AUTHORITY**

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By: _____
John J. Entsminger
General Manager

By: _____
Jeffrey Kightlinger
General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APROVED AS TO FORM:

By: Brent Gunson *for* _____
Gregory J. Walch
General Counsel

By: _____
Marcia L. Scully
General Counsel