

Memorandum of Understanding

Funding SCCWRP for SMC and Bight Regional Monitoring Programs with SEPs

Purpose, Process, and Tracking

1.0 Introduction and Background

1.1 Parties and Purpose

This Memorandum of Understanding (MOU) is between the [San Diego Regional Water Quality Control Board \(San Diego Water Board\)](#)¹ and the [Southern California Coastal Water Research Project \(SCCWRP\)](#).²

The purpose of this MOU is to clearly define the process by which Supplemental Environmental Project (SEP) funds will be administered through the San Diego Water Board to SCCWRP to supplement two existing regional monitoring program (RMP) efforts, the [Bight Regional Monitoring Program \(Bight RMP\)](#)³ and the Southern California Stormwater Monitoring Coalition RMP (SMC RMP), in a manner that conforms to the State Water Resources Control Board (State Water Board) [SEP Policy](#)⁴ and applicable resolutions.

1.2 Background

SCCWRP is a public research and development agency that applies science to improve management of aquatic ecosystems in Southern California and beyond. SCCWRP develops strategies, tools, and technologies that the Southern California water quality management community relies on to more effectively protect and enhance the ecological health of its coastal ocean and watersheds.

SCCWRP was formed in 1969 as a Joint Powers Authority, governed by a Commission, to study the effects of wastewater discharges on the marine environment in the Southern California Bight (Bight) for Southern California's biggest metropolitan wastewater agencies. In 1990, the wastewater agencies invited state and federal regulators, including the Water Boards, to participate in SCCWRP as Commissioners. The SCCWRP Commission is currently comprised of 14 agencies, including wastewater treatment, stormwater management, and water quality regulatory agencies, that pool their knowledge and resources to support SCCWRP's mission. SCCWRP facilitates the Bight RMP and the SMC RMP (collectively, SCCWRP RMPs).

¹ <https://www.waterboards.ca.gov/sandiego/>

² <https://www.sccwrp.org/>

³ <https://www.sccwrp.org/about/research-areas/regional-monitoring/southern-california-bight-regional-monitoring-program/>

⁴ https://www.waterboards.ca.gov/water_issues/programs/enforcement/sep.html

The Bight RMP is an ongoing marine monitoring collaboration that examines how human activities have affected the health of more than 1,500 square miles of Southern California's Pacific Ocean, and coastal waters including lagoons, bays, and estuaries. Monitoring objectives are designed to answer questions like "Is it safe to swim?" and "Are fish and shellfish safe to eat?" As administrator, SCCWRP facilitates Bight RMP planning discussions, drafts monitoring workplans, coordinates monitoring efforts, tracks cost, implements quality assurance and quality controls, and compiles, analyzes, and disseminates data and conclusions.

The SMC RMP assesses the health of Southern California's streams in its 17 coastal watersheds (from Ventura to the Tijuana River). The Stormwater Monitoring Coalition is a separate coalition that consists of SCCWRP researchers, Southern California local government agencies, and their respective Water Boards. The SMC RMP collects data annually on water quality, physical habitat and riparian conditions, and biological communities to answer questions like "What is the extent and magnitude of impact in Southern California's streams?", "How is this changing over time?", and "What are the stressors responsible for the impacts observed?" As administrator, SCCWRP develops the SMC RMP monitoring plan and leads agency coordination, inter-lab calibration, data compilation, analysis, and dissemination. Monitoring is conducted by SCCWRP, its contractor(s), and/or other SMC agencies.

SCCWRP manages separate financial accounts for the Bight RMP and SMC RMP (RMP Accounts), which are individually funded by participating agencies. The SCCWRP RMPs are administered through distinct budgets and all revenues and costs associated with the programs are tracked separately. Core funds cover monitoring that is well beyond what could be required through individual permits; however, core funds are insufficient to cover all projects vetted and included in workplans for the SCCWRP RMPs. SCCWRP RMPs both maintain a workplan of desired activities that will be implemented if funds become available.⁵

⁵ The Bight RMP workplans are currently viewable at <https://www.sccwrp.org/about/research-areas/regional-monitoring/southern-california-bight-regional-monitoring-program/bight-program-documents/> . The current SMC RMP workplan is available at https://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1174_SMCBioassessmentWorkplan.pdf.

Through Resolution Nos. [R9-2012-0069](https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2012/R9-2012-0069.pdf)⁶ and [R9-2013-0153](https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2013/R9-2013-0153.pdf)⁷ the San Diego Water Board has expressed its belief in the need and value of regional monitoring and has directed its staff to further the effort. Subsequently, Resolution No. [R9-2017-0014](https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2017/R9-2017-0014.pdf),⁸ which focused on the process for reviewing and approving SEP Projects, recognized the value of a third-party administrator and directed its staff to search for suitable third-party administrators.

On May 4, 2021 the State Water Board approved [Resolution 2021-0015](https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2021/Resolution_2021-0015.pdf),⁹ which authorizes the San Diego Water Board to oversee a SEP program that funds SCCWRP, as a third-party administrator, to supplement the Bight and SMC RMPs. The resolution further imposed the following conditions:

1. Conformance with the SEP and Enforcement Policies, except where otherwise expressly exempted;
2. Demonstration that the funded SEP work is supplemental, and not otherwise legally required to be performed or funded by the Settling Parties;
3. Demonstration of a nexus between the violations and the SEP work. Specifically, a nexus to the Bight RMP exists if the alleged violation(s) involved a discharge to the Pacific Ocean in the San Diego Region. A nexus to the SMC RMP exists if the alleged violation(s) involved a discharge to inland surface waters in the San Diego Region.
4. Limitations on which penalties may be subject to SCCWRP SEP administration (i.e. mandatory penalties or settlements less than \$100,000);
5. The requirement for SCCWRP to return any SEP funds received and not expended within 36 months of the effective date of any applicable settlement agreement;
6. The requirement to track all SEP funds and contributions separately from its base participant funds and itemize SEP funds and expenditures by each SEP funder (i.e. settlement) in its financial reports; and
7. Annual reporting of all relevant results, in a publicly accessible manner, with disclosures on what was funded with SEP money, coupled with an accounting of SEP fund accrual and expenditures.

⁶ https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2012/R9-2012-0069.pdf

⁷ https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2013/R9-2013-0153.pdf

⁸ https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2017/R9-2017-0014.pdf

⁹

https://www.waterboards.ca.gov/sandiego/water_issues/programs/compliance/docs/swrcb_2021_0015.pdf

Both SCCWRP and the San Diego Water Board have an interest in ensuring the successful implementation of Resolution No. 2021-0015. This MOU is intended to identify the process by which SCCWRP and the San Diego Water Board will ensure conformance with the conditions in Resolution No. 2021-0015.

1.3 Party Contacts

Party Contacts are as follows:

1.3.1 For the San Diego Water Board

Wayne Chiu, Senior Water Resource Control Engineer, Specialist
Wayne.Chiu@waterboards.ca.gov
 2375 Northside Dr., Suite 100, San Diego, CA 92108
 619-521-3354

Chiara Clemente, Senior Environmental Scientist
Chiara.Clemente@waterboards.ca.gov
 2375 Northside Dr., Suite 100, San Diego, CA 92108
 619-521-3371

1.3.2 For SCCWRP

Ken Schiff, Deputy Director
kens@sccwrp.org
 3535 Harbor Blvd, Suite 110
 Costa Mesa, CA 92626
 714-755-3202

Bryan Nece, Administrative Officer
bryann@sccwrp.org
 3535 Harbor Blvd, Suite 110
 Costa Mesa, CA 92626
 714-755-3201

2.0 Process for Receiving Funds

In cases where the San Diego Water Board imposes administrative civil liability through a settlement process, and the penalties in settlement are eligible for SCCWRP SEP funding,¹⁰ the Settling Party may elect to suspend a portion of that liability by providing payment in that same amount to SCCWRP in accordance with the following conditions.

2.1 Maximum SEP Amount

The maximum amount that can be deferred for any specific penalty action is directed by the Enforcement Policy, SEP Policy (Section B), and Resolution No. 2021-0015. For each eligible settlement, the San Diego Water Board shall calculate the maximum

¹⁰ Per 1.d of State Water Board Resolution No. 2021-0015

eligible amount and identify that amount in the settlement agreement.

2.2 Notification to Settling Party

As part of the settlement process and/or associated documents, the San Diego Water Board will notify the Settling Party of its option to submit partial or complete payment to the appropriate SCCWRP RMP SEP account, along with instructions for how payment shall be processed. The notice shall specify:

- 2.2.1 The amount of funds that can be directed to SCCWRP as a third-party administrator
- 2.2.2 The designated RMP SEP account
- 2.2.3 Instructions for where and how to send payment
- 2.2.4 The deadline by which funds must be received
- 2.2.5 That the Settling Party's liability is considered resolved upon full receipt of payment to SCCWRP

2.3 SCCWRP Notification

When a Settling Party notifies the San Diego Water Board that it intends to fund SCCWRP's RMP SEP, and the San Diego Water Board Executive Officer approves the settlement order, the San Diego Water Board Party Contact shall provide the SCCWRP Party Contact with the following information:

- 2.3.1 Settling Party's name
- 2.3.2 Settlement Order number
- 2.3.3 Amount of SEP funds to be paid to SCCWRP
- 2.3.4 Designated RMP SEP account
- 2.3.5 Applicable State Water Board Account for any unused or returned funds (i.e. Cleanup and Abatement or Waste Discharge Permit Fund)
- 2.3.6 Deadline for receipt of SEP funds
- 2.3.7 Deadline for full expenditure of SEP fund

2.4 Payment Details

Payments (e.g., checks or other payment methods) for RMP funds shall be written to Southern California Coastal Water Research Project with the Settlement Order number written in the comments. The payment shall be mailed to:

Southern California Coastal Water Research Project
 3535 Harbor Blvd., Suite 110
 Costa Mesa, CA 92626

The San Diego Water Board shall require the Settling Party to send an electronic copy of the check, or verification of payment, to the San Diego Water Board Party Contact.

The SCCWRP Party Contact shall also notify the San Diego Water Board Party Contact when it has received and accepted the RMP SEP funds.

When the San Diego Water Board receives proof of payment, it shall send written notice to the Settling Party releasing it from liability.

2.5 *Aggregating Funds*

SCCWRP shall track SEP funds separately for each RMP effort. Funds can be aggregated from year to year, but each SEP payment shall be expended within 36 months of the effective date of its Settlement Order or the SEP funds must be returned in accordance with section 3.3 below.

3.0 Process for Selecting, Spending, and Tracking Funds

3.1 *Project Selection*

3.1.1 On an annual basis (by July 31) the SCCWRP and San Diego Water Board Party Contacts shall confirm SEP funds available for each RMP account, resolve any discrepancies, discuss desirable but unfunded work identified in each RMP, and determine the most appropriate way to spend the funds. In some cases, the most appropriate action will be to defer expenditure of available funds (either partially or wholly). Agreement on how the funds shall be spent will be memorialized in writing (email is sufficient) and maintained consistent with the San Diego Water Board's records retention schedule.

3.1.2 For each new funded project, SCCWRP shall develop (or cite from the workplan) a project description that includes a scope of work, schedule, performance standards, and final completion date.

3.2 *Associated Costs*

Work proposed shall be described and calculated in accordance with a task-based budget as described in the RMP workplans. Additions and modifications to the budget must be made in writing prior to funding, approved by the SCCWRP and San Diego Water Board Party Contacts and maintained as part of the San Diego Water Board's records.

3.3 *Unspent Funds*

In many cases, deferred liability amounts may not match exactly with work cost estimates, and there could be some unspent funds from year to year. Any unspent SEP funds can be carried over and aggregated to fund desirable but unfunded monitoring components in the following year, either partially or wholly. However, each SEP payment must be spent within 36 months of the effective date of its Settlement Order or the remaining funds must be returned to the appropriate State Water Resources Control Board account (section 2.3.5) within 30 days of the final expenditure date (section 2.3.7).

To return funds, SCCWRP shall issue a check that includes the appropriate receiving account (section 2.3.5) and the Settlement Order Number (section 2.3.2) in the notes section. SCCWRP shall send a digital copy of the check to the San Diego Water Board Party Contact for the record. A cover letter shall accompany the check and include the

reason(s) the unspent funds are being returned, as required by State Water Board Resolution No. 2021-0015 and this MOU. The check shall be mailed to:

State Water Resources Control Board, Accounting Office,
 Attn: ACL Payment
 P.O. Box 1888
 Sacramento, CA 95812-1888

3.4 Conducting Work

SCCWRP may either conduct the work directly or hire a contractor to conduct such work. In either case the project costs shall be no more than the task based budget identified in advance for such work (section 3.2 and 4.1.2), and SCCWRP shall remain responsible for project execution, completion, and associated reporting.

3.5 Quality Assurance

All work must adhere to the Quality Assurance requirements of the applicable RMP.

3.6 Oversight Costs

Prior to this MOU, SCCWRP and the San Diego Water Board have been using existing resources to remain actively engaged in these RMPs. Therefore, the added burden of overseeing these funds should be minimal. Accordingly, neither SCCWRP nor the San Diego Water Board shall charge administrative costs for their time administering these funds. All SEP funds received are solely for the purposes of implementing the Bight and SMC RMPs.

3.7 Cost Overruns

SCCWRP shall maintain a contingency fund and any cost overruns shall be adsorbed by their overall program budget in order to ensure completion of the specified SEP work.

3.8 Tracking

San Diego Water Board and SCCWRP shall track the following information for each SEP:

- 3.8.1 Settling Party's name
- 3.8.2 Settlement Order number
- 3.8.3 Amount to be paid to SCCWRP
- 3.8.4 Eligible RMP fund (i.e., Bight, SMC)
- 3.8.5 Applicable State Water Board Account for any unused, returned funds (i.e. Cleanup and Abatement or Waste Discharge Permit Fund)
- 3.8.6 Deadline for receipt of funds
- 3.8.7 Date of funds received and accepted
- 3.8.8 Deadline for full expenditure
- 3.8.9 Amount designated to a specific project
- 3.8.10 Description of specific project being funded
- 3.8.11 Date expended for a specific project

- 3.8.12 Date fully expended
- 3.8.13 Date(s) of final report related to specific project
- 3.8.14 Link to final report(s)

4.0 Reporting

The purpose of interim reporting is to demonstrate adequate project tracking. The purpose of final reporting is to demonstrate project completion and share final results with water quality decision makers and the public. The SEP Policy states that “[a]ssessments, studies, monitoring programs, and audits are only acceptable as SEPs when the settling party agrees to provide the Water Boards with a copy of the relevant report and the results are made available to the public.”¹¹ In this case, the responsibility to convey the final results has been transferred to SCCWRP, a third-party administrator. This should not result in additional work because SCCWRP already prepares final reports at the completion of each RMP cycle.

4.1 Interim Reporting

In accordance with Section VIII.D of the SEP Policy, SCCWRP will provide written project status reports to the San Diego Water Board Party Contact **no later than June 30** and **December 31** of each calendar year.

4.1.1 Tracking expenditures

These reports shall include an up to date version of the information identified in section 3.8 above, along with a narrative description of relative work conducted and projected for past and current quarters, respectively. If the timing coincides with the project selection process in 3.1 above, the work proposal can be included with the interim reports. If during the specified quarter no funds have been received, and no work has been expended, a report so indicating is required.

4.1.2 Tracking workplans

SCCWRP shall track all agencies contributing funds to each RMP’s workplans (independent from SEP payments) and shall maintain a list of desirable but unfunded work for each RMP. SCCWRP shall provide updates to the Workplans, task-based budgets, contributors, and work that remains desirable but unfunded to San Diego Water Board Party Contacts within 30 days of any changes. This information will be accessible to the public via the SCCWRP web site.

4.2 Final Reporting

Whenever SEP funds are spent on RMP monitoring, SCCWRP shall provide a final report that includes the results of the funded work via email, downloadable hyperlink, or mail to the San Diego Water Board Party Contacts, as specified in section 4.3. The final report must contain the following information:

¹¹ SEP Policy, p. 6

4.2.1 Statement of Funding Source

Whenever a report was funded in whole or in part with SEP funds the final report must state, in a prominent manner, that the project was undertaken using settlement funds from one or more San Diego Water Board enforcement actions.

4.2.2 Certification Requirements

4.2.2.1 A certification of completion statement addressing how the expected outcome(s) or performance standard(s) for the project were met or were not achievable. Certification documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Water Board to evaluate the completion of the SEP and the costs incurred.

4.2.2.2 Certification of expenditures documenting overall project costs.

4.2.3 SEP Acceptance

Upon receipt of the final completion report and certifications in section 4.2.2, the San Diego Water Board shall determine whether the SEP was completed in accordance with the project description and if so, shall issue a statement indicating that the SEP is complete and satisfies the terms of this MOU. The San Diego Water Board shall note any correctable material deficiencies in the final completion report by comment letter to SCCWRP and request such deficiencies be addressed before issuing the aforementioned statement of completion.

4.3 Reporting Format

Written reports shall be provided in electronic format from SCCWRP to the San Diego Water Board Party Contacts. The San Diego Water Board server limits emails to 50 megabytes. Written reports larger than 50 megabytes may be provided via downloadable hyperlink or on a flash drive mailed to the San Diego Water Board Party Contact. For written reports provided via downloadable hyperlink, SCCWRP shall provide a hyperlink to the written report and any necessary password via email to the San Diego Water Board Party Contacts. San Diego Water Board shall maintain these reports consistent with its records retention schedule.

4.4 Data Uploads

All surface water data collected from the RMPs must be uploaded by SCCWRP and/or its contractor(s) to CEDEN or an equivalent Regional Monitoring Data Portal that is either linked to CEDEN or where data is periodically uploaded to CEDEN. Data collected from the RMP that is incompatible with CEDEN (e.g., continuous monitoring data) shall be publicly available through a Regional Monitoring Data Portal and available in csv and/or Excel format for download. The Regional Monitoring Data Portal shall contain raw sampling and laboratory analysis data, as well as documentation and metadata.

5.0 Additional Provisions

5.1 Financial Audit

The Settling Party may be required to perform an audit to show that the SEP funds have been expended in the amount claimed by the Settling Party. SCCWRP agrees that the State, San Diego Water Board, and Settling Party shall have the right to audit, review, and copy any project financial records and supporting documentation pertaining to the performance of this MOU. SCCWRP agrees to maintain such records for six years after final project payment.

5.2 Dispute Resolution

The San Diego Water Board and SCCWRP Party Contacts shall attempt to resolve any dispute arising from this MOU amicably. If the Party Contacts are unable to resolve the dispute, the aggrieved party shall submit to the other party written notice of the dispute with sufficient detail, including reference to specific provisions of this MOU at issue, to allow the other party to evaluate the dispute and negotiate its resolution. The other party shall respond to the notice of dispute within 10 business days. If the Party Contacts are unable to resolve the dispute within 30 calendar days of the response to the notice of dispute, the aggrieved party may submit a request for resolution to the executive management of the other party (i.e., the Executive Officer of the San Diego Water Board and the Executive Director of SCCWRP). The Executive Officer and Executive Director shall use best efforts to mutually resolve the dispute. If the Executive Officer and Executive Director are unable to resolve the dispute within 60 days of the request for resolution, the Executive Officer of the San Diego Water Board shall have the sole discretion to determine the final resolution of the dispute.

5.3 Amendments

This MOU may only be amended by mutual, written consent of the parties. Requests to amend this MOU shall be sent to the other party's contact. The other party contact shall respond to any requests for amending the MOU within 30 days. Any amendment to this MOU shall be immediately effective upon the consent of the appropriate party contact (section 1.3).

5.4 Effective Date and Term

This MOU shall be effective from the date of full execution by the parties, the last signature to be that of the San Diego Water Board and shall continue in full force and effect until terminated by the parties.

5.5 Termination

SCCWRP and the San Diego Water Board may terminate this MOU for cause by written 30-day notice to the other party's contact. Cause shall include any breach of this MOU reasonably deemed by the terminating party to be material. This MOU shall terminate 30 days after the date of the written termination notice. SCCWRP shall be entitled to reimbursement for all work performed through date of termination. Upon termination of this MOU, the parties agree to engage in the dispute resolution process in

section 5.2 to resolve any remaining RMP SEP funds, or SCCWRP shall return any unused funds to the applicable State Water Board Account.

5.6 Publication, Use of Data and Materials

SCCWRP is granted the right to publish, distribute and use all data, information, reports, designs, plans and any other materials produced under this MOU.

5.7 Signature Authority

The parties signatory to this MOU warrant and represent that they have the power and authority to enter into this MOU.

5.8 Counterparts

This MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument.

IN WITNESS THEREOF, the parties have executed this Memorandum of Understanding on the dates hereafter set forth.

Southern California Coastal Water Research Project:

By: _____
Stephen B. Weisberg, Ph.D.
Executive Director

San Diego Regional Water Quality Control Board:

By: _____
David W. Gibson
Executive Officer