

APPENDIX B
TRI-COUNTY FACc MOU

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**MEMORANDUM OF UNDERSTANDING
FOR INTEGRATED REGIONAL WATER MANAGEMENT PLANNING AND
FUNDING IN THE SAN DIEGO SUB-REGION FUNDING AREA**

PARTIES:

This Memorandum of Understanding (MOU) is entered into this 28th day of April 2009 (Effective Date) among the Parties listed below:

1. San Diego County Regional Water Management Group (RWMG), hereinafter SDRWMG Planning Region Agencies, includes the following members:

CITY OF SAN DIEGO, hereinafter SD CITY; COUNTY OF SAN DIEGO, hereinafter SD COUNTY; and SAN DIEGO COUNTY WATER AUTHORITY, hereinafter SDCWA.

2. Orange County RWMG, hereinafter OCRWMG Planning Region Agencies, includes the following members: COUNTY OF ORANGE, hereinafter ORANGE COUNTY; MUNICIPAL WATER DISTRICT OF ORANGE COUNTY, hereinafter MWDOC; and SOUTH ORANGE COUNTY WASTERWATER AUTHORITY, hereinafter SOCWA.

3. Riverside County Upper Santa Margarita RWMG, hereinafter RCRWMG Planning Region Agencies, includes the following members: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter RCFCWCD; COUNTY OF RIVERSIDE, hereinafter RIVERSIDE COUNTY; and RANCHO CALIFORNIA WATER DISTRICT, hereinafter RCWD.

Agencies acting collectively under this agreement are the TRI-COUNTY FUNDING AREA COORDINATING COMMITTEE, hereinafter called the TRI-COUNTY FACC. The agencies also are sometimes referred to in this MOU collectively as “Parties” and individually as “Party.”

RECITALS:

- A. Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act (Public Resources Code, sections 75020-75029), authorizes the Legislature to appropriate funding for competitive grants for Integrated Regional Water Management (IRWM) projects. Funding is administered by the Department of Water Resources (DWR).
- B. The intent of the Act is to encourage integrated regional strategies for management of water resources and to provide funding through competitive grants, for projects that protect communities from drought, protect and improve water quality, promote environmental stewardship, and improve local water security by reducing dependence on imported water.
- C. The San Diego Sub-Region, also known as the San Diego Funding Area, comprises the three Parties – the SDRWMG, OCRWMG and RCRWMG. The boundaries of the SDRWMG, OCRWMG and RCRWMG are shown in Attachment A, and coordinated through this MOU.
- D.
 1. The San Diego Sub-Region has been allocated \$91 million through Proposition 84.
 2. For the purposes of this agreement, the formula for allocating funds among the Parties will be based on a combination of land area and population as of 2007. The division of funding shall be consistent with Attachment B.
- E. DWR may establish standards to guide the selection of IRWM projects within the funding areas identified in the measure and shall defer to approved local project selection,

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reviewing projects only to ensure they are consistent with Public Resources Code section 75028 (a).

- F. Each Party has prepared an accepted IRWM plan and desires close coordination to enhance the quality of planning, identify opportunities for supporting common goals and projects, and improve the quality and reliability of water in the Funding Area. The Parties will coordinate and work together with their advisory groups to identify projects of value across planning regions, identify funding for highly ranked projects, and support implementation.
- G. The San Diego Funding Area will balance the necessary autonomy of each planning region to plan for itself at the appropriate scale with the need to coordinate among themselves to improve inter-regional cooperation and efficiency. By consensus, the Parties have developed an agreement to improve the IRWM planning process in the Funding Area to coordinate planning across planning region lines and facilitate the appropriation of funding for IRWM projects by DWR.
- H. The Parties will coordinate on grant funding requests to ensure that the sum of the total grant requests does not exceed the amount identified for the funding region.

The RECITALS are incorporated herein and the PARTIES hereby mutually agree as follows:

1. Definitions

The following terms and abbreviations, unless otherwise expressly defined in their context, shall mean:

- A. **Funding Area** – The 11 regions and sub-regions referenced in Public Resources Code section 75027(a) and allocated a specific amount of funding to support IRWM activities. The San Diego Funding Area incorporates lands in the San Diego Regional Water Quality Control Board jurisdiction as of 2004, including portions of San Diego, Orange and Riverside counties.
- B. **RWMG** –An RWMG is comprised of at least three agencies, two of which must have statutory authority over water management. An RWMG is the documented leader of IRWM planning and implementation efforts in a planning region.
- C. **Planning Region** – Planning regions integrate stakeholders, agencies and projects in their regions and coordinate with other planning regions and DWR. The boundaries of the three planning regions in the San Diego Funding Area shown in attachment A.
- D. **Tri-County Funding Area Coordinating Committee (Tri-County FACC)** –Will comprise at least one representative from each recognized RWMG in the Funding Area. The Tri-County FACC will meet periodically to discuss issues pertaining to the Funding Area and make recommendations to the RWMGs.
- E. **Watershed Overlay Areas** – Identified areas within a watershed that cross planning region boundaries. Watershed Overlay Areas will be subject to special coordination and collaboration between the appropriate planning regions to ensure maximum watershed benefits in the IRWM plans of the Funding Area. The Santa Margarita and the San Mateo Watershed Overlays are shown in Attachment A.
- F. **Watershed Overlay Subcommittee** –.The overlay subcommittee will be formed to identify projects that pertain to the watershed overlay areas and recommend them to the Tri-County FACC. The Subcommittee will comprise a representative of each Party in the watershed overlay area as well as other stakeholders agreed upon by the parties. The overlay subcommittee will meet at least twice during the update planning process to coordinate planning and project review; further meetings will occur as necessary. Meetings of the subcommittee will be open to all Tri-County FACC members.
- G. **Watershed Overlay Projects** – Projects identified in an Watershed Overlay Area identified as valuable and benefiting from cross boundary coordination.

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- H. **Common Programs** – Programs eligible for IRWM funding that are identified by the Tri-County FACC as benefiting the entire Funding Area and have participation from at least two Planning Regions.
- I. **Advisory Committee**– The recognized committee of stakeholders advising a planning region’s RWMG and/or governing agencies on key issues related to IRWM planning and grant applications.

2. General Planning Cooperation via Tri-County FACC

All planning regions will meet at least twice per year through the Tri-County FACC. The actual number of meetings will depend on the amount and intensity of planning and coordination efforts of the Planning Regions. The efforts of the Tri-County FACC will be to enhance the quality of planning, identify opportunities for supporting common goals and projects, and to improve the quality and reliability of water in the Funding Area. The planning efforts will support the watershed-based approach through integration and coordination across planning regions in the watershed overlay areas.

3. Mutual Plan Reference and Consistency

Each plan prepared in the funding area will contain references to the entire Funding Area, to the coordination that is occurring among planning regions, and to this MOU. Each planning region will share its description of these matters with other planning regions to promote consistency with the goal of using common language as the IRWM plans are modified. The three RWMGs also will seek to place these common sections in the same location in their plans. Further consistency or cooperative efforts may be added with the agreement of the Parties.

4. Coordination of Submittals and Applications

To facilitate DWR’s review process, all planning regions will coordinate their Region Acceptance Process submittals and IRWM grant applications. To the greatest extent practicable, the planning regions will develop common sections, tables and maps and place them in the same locations in their submittals and applications. The planning regions will preface their submittals and applications with information noting the common material and its location in the documents.

5. Watershed Overlay Areas

Through the Tri-County FACC or the overlay subcommittee, the planning regions will cooperate in identifying Overlay Projects that cross Planning Region boundaries. Overlay Projects that benefit multiple planning regions will be identified and may be jointly funded, administered, or implemented. A watershed overlay subcommittee of the Tri-County FACC will be formed for the Santa Margarita Watershed and the San Mateo Creek Watershed overlay areas as shown in Attachment A. Overlay Projects of importance to the Watershed Overlay Area planning regions would be recommended for coordination and due consideration in those Planning Regions’ project selection processes.

6. Common Programs

The common programs found by the Tri-County FACC to be of high value for all planning regions will be identified and recommended for high priority placement in the planning regions’ ranking of projects for funding. While each planning region will select projects in accordance with its own process, the regions will cooperate on the implementation of common projects programs if these efforts are selected for funding.

7. Advisory Committee Cross Membership

Each planning region with an advisory committee will invite the other advisory committees in the Funding Area to participate as a non-voting member in its committee to promote understanding, communication and coordination.

8. Scope of the Agreement

Nothing contained within this MOU binds the parties beyond the scope or term of this MOU unless specifically documented in subsequent agreements, amendments or contracts. Moreover, this MOU does not require any commitment of funding beyond that which is voluntarily committed by separate board actions, but recognizes in-kind contributions of RWMG agencies and stakeholders. Non-substantive or minor changes to this MOU that have the support of all RWMG agencies may be documented to become part of this MOU.

9. Term of Agreement

The term of this MOU is from its Effective Date shown above to December 31, 2014 unless extended by mutual agreement of the Parties.

10. Modification or Termination

This MOU may be modified or terminated with the concurrence of the RWMG agencies and effective upon execution of the modification or termination by all the RWMG agencies.

11. Withdrawal

Any PARTY may withdraw from the Tri-County FACC after giving a written 60-day notice to the other Parties.

12. Notice

Any notices sent or required to be sent to any party shall be mailed to the following addresses:

SDRWMG Agencies

Ken Weinberg, Director of Water Resources
San Diego County Water Authority
4677 Overland Ave., San Diego CA 92129

Marsi Steirer, Deputy Director of Water Resources and Planning
City of San Diego
600 B Street, Suite 400, San Diego CA 92101

Kathleen Flannery, CAO Project Manager
County of San Diego
1600 Pacific Highway, Room 212, San Diego CA 92101

OCRWMG Agencies

Mary Anne Skorpanich, Director, OC Watersheds
Orange County Public Works
333 W. Santa Ana Blvd., 5th Floor, Santa Ana, CA 92701

Karl Seckel, Assistant General Manager
Municipal Water District of Orange County
18700 Ward Street, Fountain Valley, CA 92708

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Tom Rosales, General Manager
South Orange County Wastewater Authority
34156 Del Obispo Street, Dana Point, CA 92629

RCRWMG Agencies

Perry Louck, Director of Planning
Rancho California Water District
42135 Winchester Road, Temecula, CA 92590

Mike Shetler, Senior Management Analyst
County of Riverside
4080 Lemon Street 4th floor, Riverside, CA 92501

Warren D. Williams
Riverside County Flood Control and Water Conservation District
1995 Market St. Riverside, CA 92501

13. Funding Uncertainties

The RWMG agencies cannot be assured of the results of these coordination efforts and applications for funding. Nothing within this MOU should be construed as creating a promise or guarantee of future funding. No liability or obligation shall accrue to the Parties if DWR does not provide the funding. The Parties are committed to planning and coordinating notwithstanding IRWM funding. The form of such coordination may change based on the sources of funding.

14. Indemnification

To the fullest extent permitted by law, each Party shall defend, indemnify and hold harmless the other Parties, their consultants, and each of their directors, officers, agents, and employees from and against all liability, claims, damages, losses, expenses, and other costs including costs of defense and attorneys' fees, arising out of or resulting from or in connection with work performed pursuant to this MOU. Such obligation shall not apply to any loss, damage, or injury, as may be caused by the sole negligence or willful misconduct of a Party, its directors, officers, employees, agents, and consultants.

15. Other Provisions

The following provisions and terms shall apply to this agreement.

- A. This MOU is to be construed in accordance with the laws of the State of California. Any action at law or in equity brought by any of the Parties shall be brought in a court of competent jurisdiction in Riverside, Orange or San Diego Counties, and the parties hereto waive all provisions of law providing for change of venue in such proceedings to any other county.
- B. If any provision of this MOU is held by a court to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.
- C. This MOU is the result of negotiations between the parties hereto and with the advice and assistance of their respective counsels. No provision contained herein shall be construed against any Party because of its participation in preparing this MOU.
- D. Any waiver by a Party of any breach by the other of any one or more of the terms of this MOU shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of any of the respective Parties to require

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from the others exact, full and complete compliance with any terms of the MOU shall not be construed to change the terms hereof or to prohibit the Party from enforcement hereof.

- E. This MOU may be executed and delivered in any number of counterparts or copies, hereinafter called "Counterpart", by the parties hereto. When each Party has signed and delivered at least one Counterpart to the other parties hereto, each Counterpart shall be deemed an original and, taken together, shall constitute one and the same MOU, which shall be binding and effective as to the Parties hereto.
- F. This MOU is intended by the parties hereto as their final expression with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof. This MOU shall not be changed or modified except by the written consent of all Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown on the attached counterpart signature pages:

San Diego County agencies

/S/ Approved March 26th 2009
Ken Weinberg, Director of Water Resources
San Diego County Water Authority
4677 Overland Ave., San Diego CA 92129

/S/ Approved March 26th 2009
John L. Snyder, Director
Department of Public Works
County of San Diego
5555 Overland Ave, Bldg.2, Mailstop O332 San Diego, CA 92123

/S/ Approved April 7th 2009
J. M. Barrett
Director of Public Utilities
City of San Diego
600 B Street, Suite 400, San Diego CA 92101

Orange County agencies

/S/ Approved April 28th 2009
Chairman Pat Bates
County of Orange Board of Supervisors
Orange County Flood Control District
333 W. Santa Ana Blvd., 5th Floor
Santa Ana, CA 92701

/S/ Approved April 15th 2009
Wayne Clark, President (Maribeth Goldsby, Secretary)
Municipal Water District of Orange County
18700 Ward Street
Fountain Valley, CA 92708

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/S/ Approved April 2nd 2009
Matt Disston, Chairman
South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, CA 92629

Riverside County agencies

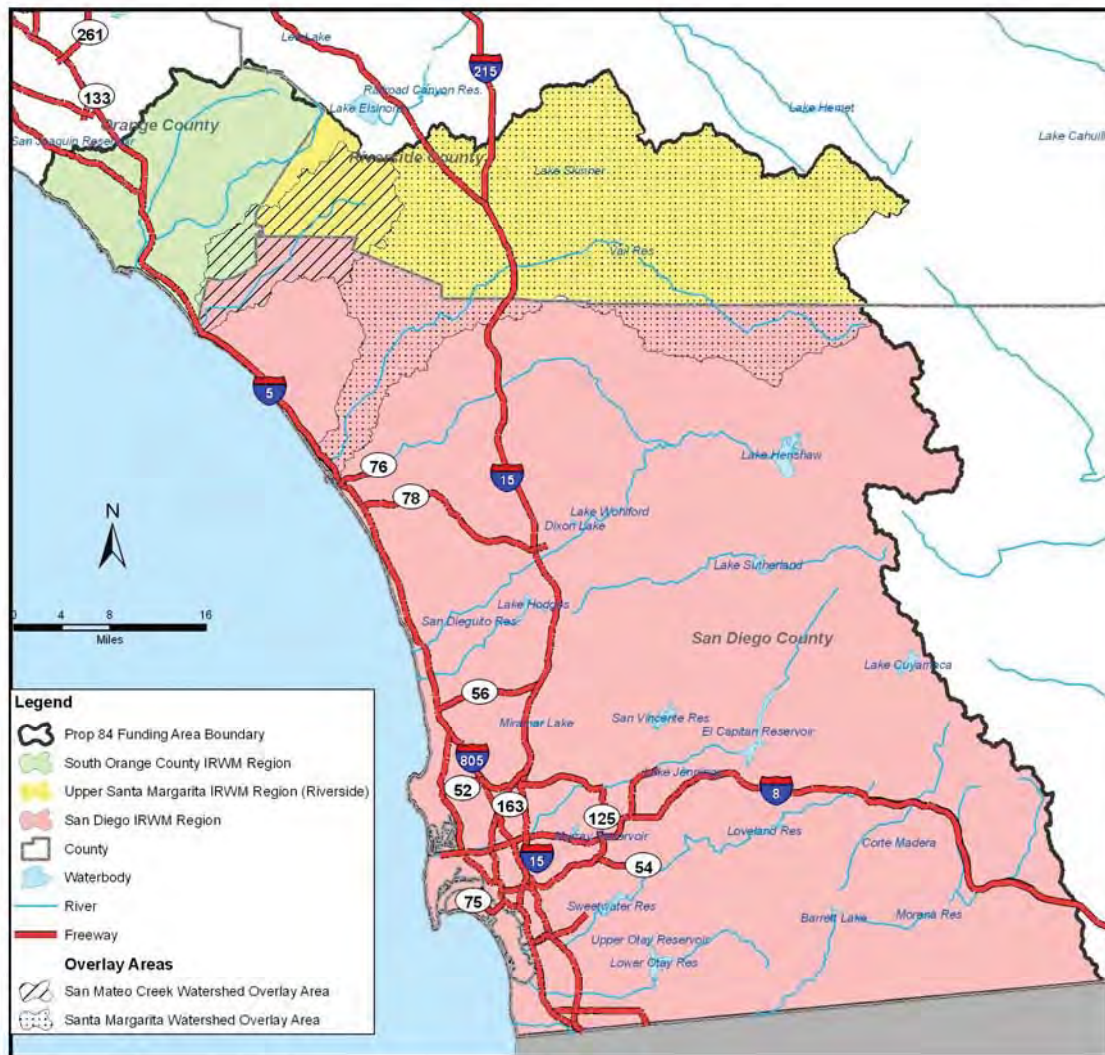
/S/ Approved April 9th 2009
Matt Stone, General Manager
Rancho California Water District
42135 Winchester Road, Temecula, CA 92590

/S/ Approved March 30th 2009
Jeff Stone, Chairman
Supervisor Third District
Riverside County Board of Supervisors
4080 Lemon St.
Riverside, CA 92501

/S/ Approved March 30th 2009
Marion Ashley, Chairman
Supervisor, Fifth District
Riverside County Flood Control & Water Conservation District
1995 Market St
Riverside, CA 92501

Attachment A
Funding Area and Planning Region Boundaries with Watershed Overlay Areas

The San Diego, Orange County and Riverside County Upper Santa Margarita planning regions are of an appropriate scale to allow integrated planning and provide for proper local interaction. The creation of planning regions larger than those outlined in the map below would limit local involvement and reduce the value of the planning to the region, the funding area, and the state.



Attachment B
Allocation of Proposition 84 Funds

Each of the three planning regions has IRWM project and program needs that far exceed the funding allocated to the funding area. Significant local match funding for selected projects is available in each planning region. Funding for planning and timing of implementation may vary among the planning regions. Because of these factors and because not all of the Proposition 84 funding will be made available at the same time, the Tri-County FACC members will cooperate and coordinate on individual funding cycle applications to ensure that the sum of the total grant requests does not exceed the amount identified for the funding region in any given cycle. Total allocations to the parties will be divided according to the schedule below. The allocations are based on a formula that is similar to that used to allocate funding in the Proposition 84 bond language. (Note: Proposition 84 allocates \$91 million to the San Diego Funding Area. DWR has indicated it will spend approximately 5 percent of the funds for program delivery costs. Therefore, the allocations to the three planning regions are indicated in percentages of the total funds that will be available over the life of the program.)

Planning Region	Population	Acres Area	Allocations (in % of \$ totals)		
			\$25 M on Land	\$66 M on Population	Total
Riverside Upper Santa Margarita	253,329	405,233	16.4%	6.4%	9.1%
South Orange County	597,348	168,192	6.8%	15.2%	12.9%
San Diego County	3,092,351	1,901,203	76.9%	78.4%	78%
Total	3,943,028	2,474,628	100%	100%	100%

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