

Responses to Comments on the
Revisions to the Memorandum of Understanding
Between the California Ocean Protection Council,
the State Water Resources Control Board, and the
California State Coastal Conservancy
Regarding the Acceptance and Use of
Interim Mitigation Funds for the
Water Quality Control Policy on the
Use of Coastal and Estuarine Waters for
Power Plant Cooling

State Water Resources Control Board, Ocean Protection Council,
and State Coastal Conservancy

May 19, 2025

Introduction

The State Water Resources Control Board (State Water Board), Ocean Protection Council (OPC), and State Coastal Conservancy (Coastal Conservancy), collectively known as the “Agencies,” received comments associated with the revisions to the *Memorandum of Understanding Between the California Ocean Protection Council, the State Water Resources Control Board, and the California State Coastal Conservancy Regarding the Acceptance and Use of Interim Mitigation Funds for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* (MOU).

This document summarizes comments received from interested parties on the MOU and associated proposed revisions to the MOU. The MOU was originally signed by the Agencies in 2016.

Comments on the MOU were primarily received during the State Water Board’s revisions to the interim mitigation payment calculation for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling’s (Once Through Cooling or OTC Policy). The State Water Board adopted the revised interim mitigation payment calculation on April 17, 2024, through Resolution No. 2024-0014.

The comments are summaries of statements made and are not verbatim.

Summary of Comments Received on the MOU and Proposed Revisions

No.	Summary Comment	Response
1	More interim mitigation funding should be used for projects local to OTC facilities.	<p>The 2016 MOU states that it is the preference of the State Water Board that interim mitigation funds be used for mitigation projects directed towards increases in marine life associated with the state's Marine Protected Areas in the geographic region of OTC facilities, and a portion of interim mitigation funds have been directed towards projects local to OTC power plants. For example, the Coastal Conservancy provided \$952,871 of interim mitigation funding towards the goal of restoring Newland Marsh, a wetland located in Huntington Beach. It has also provided \$250,000 of interim mitigation funds towards the Los Cerritos Wetlands Authority to restore the historical Los Cerritos Wetlands, with the goal of providing up to \$6 million dollars of additional interim mitigation funding to this project in the near term.</p> <p>While a portion of interim mitigation funds to date have been used or set aside for projects local to OTC power plants, the proposed revisions to the MOU define the term "geographic region" to further encourage the expenditure of interim mitigation funds near OTC power plants. The term is defined as an area distinguished by a unique set of natural features such as habitat and climate. However, it also allows each individual agency to employ its own specific definition so long as the use of interim mitigation funds is in accordance with the requirements of the OTC Policy and the MOU. These proposed changes establish a baseline understanding of the concept of a geographic region while also providing flexibility to each agency to maximize the impact of interim mitigation funding.</p>

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		<p>In addition, the proposed revisions to the MOU direct a significant portion of future interim mitigation funds towards projects within the geographic region of Diablo Canyon Nuclear Power Plant. This revision is based in part on the nature of Diablo Canyon Nuclear Power Plant, which accounts for a majority of overall annual OTC water usage by volume in comparison to the rest of the operational OTC fleet. Because the State Water Board's interim mitigation determinations are based in part on the annual OTC water usage associated with each OTC power plant, Diablo Canyon Nuclear Power Plant is projected to account for a majority of future interim mitigation funds for the remainder of the interim mitigation program.</p> <p>Therefore, the proposed revisions to the MOU state that the Coastal Conservancy will seek to fund projects that use at least 50 percent of the cumulative interim mitigation funding it receives through 2030 to restore and/or enhance marine life within the geographic region of the Diablo Canyon Nuclear Power Plant. Further, as it relates to Diablo Canyon Nuclear Power Plant, the proposed revisions to the MOU clarify that the term "geographic region" implies a reasonable relationship to Diablo Canyon Nuclear Power Plant's ecological and marine footprint.</p> <p>Additionally, several OTC power plants previously entered into agreements that direct the expenditure of interim mitigation funds towards local restoration projects. For instance, per request from the Los Angeles Department of Water and Power (LADWP), the OPC agreed to use \$6 million of interim mitigation funding it anticipates receiving from the LADWP's Haynes Generating Station for restoration projects in the greater Los Angeles area. In a similar vein, the Coastal Conservancy agreed to use interim mitigation payments from Ormond Beach Generating Station</p>

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		<p>and Mandalay Bay Generating Station to restore wetlands in Oxnard. As of 2023, the Coastal Conservancy received \$1,632,256 of interim mitigation funding from the owners of these two power plants. The proposed revisions to the MOU reflect the existence of these agreements.</p>
2	<p>The OPC and Coastal Conservancy should more transparently demonstrate how interim mitigation funding is used and its associated impact.</p>	<p>The proposed revisions to the MOU retain language that directs the OPC and Coastal Conservancy to provide annual reports outlining the use of interim mitigation funds for the prior year. These annual reports are provided to the State Water Board and posted on the State Water Board's interim mitigation website.</p> <p>Additionally, the proposed revisions to the MOU specify that the Agencies will develop and maintain a webpage that a) allows the public to identify potential projects to be funded and b) provides information about the status of existing projects receiving interim mitigation funds.</p> <p>Finally, the OPC and Coastal Conservancy have periodically presented informational items on the use of interim mitigation funds at public State Water Board meetings. The revised MOU indicates that the OPC and Coastal Conservancy may continue this practice, subject to State Water Board discretion.</p>
3	<p>The OPC and Coastal Conservancy should provide more opportunities for public input on the use of interim mitigation funds.</p>	<p>The proposed revisions to the MOU specify that the OPC and Coastal Conservancy may publicly release proposed mitigation projects for a public comment period prior to the authorization of funding for projects, consistent with OPC and Coastal Conservancy processes already in place.</p>

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		<p>Additionally, please see the response to summary comment 2 regarding the development of a public-facing interim mitigation webpage where public input may be submitted.</p>
4	<p>The OPC and Coastal Conservancy should maintain current funding for the state marine protected areas (MPA) network.</p>	<p>The proposed revisions to the MOU continue to direct interim mitigation funding to the OPC to support restoring marine life through the implementation and management of the state's Marine Protected Areas network and habitat restoration. The proposed revisions to the MOU increase the amount of annual interim mitigation funds directed towards the OPC from 5.4 million dollars to 6.5 million dollars. This enhancement is based on the increase in programmatic costs associated with Marine Protected Areas network, and it will not detract from the amount of interim mitigation funding allocated towards restoration projects.</p>
5	<p>More or a majority of interim mitigation funding should be used for physical restoration projects, particularly in Southern California where a majority of operational OTC facilities are located.</p>	<p>The proposed revisions to the MOU specify the following distribution of interim mitigation funding:</p> <ul style="list-style-type: none"> • 6.5 million dollars of annual interim mitigation funding shall be provided to the OPC to support the restoration of marine life, including through the implementation and management of Marine Protected Areas, and for habitat restoration, and; • The remainder of annual interim mitigation funds shall be provided to the Coastal Conservancy to be used for wetland and watershed restoration projects that support increases in marine life.

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		<p>A significant portion of previous and future interim mitigation funds have been expended or are slated to be expended in Southern California. However, as noted in the response to comment 1, the proposed revisions to the MOU specify that the Coastal Conservancy will seek to use at least 50 percent of the cumulative interim mitigation funding it receives through 2030 to restore and/or enhance marine life within the geographic region of the Diablo Canyon Nuclear Power Plant, in recognition of the volume of OTC water used in this facility's operations and its associated impact on marine life.</p> <p>Additionally, the recent revisions to the interim mitigation calculations via State Water Board Resolution No. 2024-0014 are projected to increase the amount of interim mitigation funding available on an annual basis, and a majority of future interim mitigation funds are expected to be directed towards restoration projects.</p>
6	<p>The OPC and Coastal Conservancy should work more collaboratively to manage interim mitigation funding, and the State Water Board should provide greater oversight to these agencies on the use of interim mitigation funds.</p>	<p>The existing MOU specifies that the State Water Board shall indicate approval of mitigation projects selected by the OPC and Coastal Conservancy. The proposed revisions to the MOU clarify that the OPC and Coastal Conservancy shall seek concurrence from the State Water Board on the use of interim mitigation funding for proposed mitigation projects. While the State Water Board is involved in the mitigation project selection process, the OPC and Coastal Conservancy are independent state agencies and are responsible for ensuring the disbursement and use of interim mitigation funds are in accordance with their own funding criteria and the requirements of the OTC Policy and the MOU.</p>

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		<p>In addition to this revision, the Agencies work closely to coordinate and share this information with the public. For instance, staff from the Agencies periodically meet to provide updates and share information. Further, as noted in the responses to summary comments 2 and 3, the OPC and Coastal Conservancy periodically provide relevant updates at public State Water Board meetings and may release proposed projects for public comment periods. Additionally, the proposed revisions to the MOU state that the Agencies will develop and maintain a webpage that improves transparency and provides the public with an opportunity to identify priority projects and information about the status of projects funded by interim mitigation.</p>
7	<p>The OPC and Coastal Conservancy should employ a greater percentage of interim mitigation funding on smaller scale projects that are easier to implement.</p>	<p>The proposed revisions to the MOU expand the potential use of OTC funding managed by the Coastal Conservancy to include watershed restoration where a reasonable relationship to direct or indirect beneficial impacts on marine life can be demonstrated. The inclusion of watershed restoration along with wetland restoration may allow for a greater number of smaller scale projects that are easier to plan, permit, and implement.</p>
8	<p>The OPC and Coastal Conservancy should develop implementation plans for at least two of the three wetland restoration projects in which they are involved in Southern California.</p>	<p>Implementation plans exist for the wetland restoration projects in Southern California funded with OTC funds and progress is being made on moving these projects through final design and permitting and into construction, including the restoration of the Los Cerritos Wetlands and Newland Marsh. The planning, design, environmental review, and permitting of coastal wetland restoration projects in Southern California involves many stakeholders, including community groups, tribes, environmental groups,</p>

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		public access advocates, regulatory and resource agencies, local governments, adjacent landowners, and others.
9	The State Water Board, OPC, and Coastal Conservancy should work more closely with systematically excluded communities in the identification of mitigation projects and the use of interim mitigation funds.	The proposed revisions to the MOU include language that encourages the Agencies to seek and consider input from representatives of systematically excluded communities within the reasonable vicinity of OTC power plants on the identification of mitigation projects and authorization of interim mitigation funding.
10	Comments received during tribal consultation.	The Agencies appreciate the comments shared by California Native American tribal representatives. The proposed revisions to the MOU identify the expectation that the OPC and Coastal Conservancy, with support from the State Water Board, will engage with tribes earlier and more frequently in the selection of interim mitigation projects and the use of interim mitigation funds.