

# Draft Governance Structure

For Implementation of the Kern County IRWMP

Offered by the Governance Subcommittee

April 18, 2011

## Considerations

During the Stakeholder meeting on June 3<sup>rd</sup>, members of the Stakeholder Group were asked to consider the governance structure that will be needed to sustain the Kern IRWMP in the years following the completion and approval of the IRWMP. The following summary captures the suggestions from that meeting within the context of the existing governance structure provided for in the Participation Agreement. The Participants and Executive Committee will use this dialogue to continue discussions about whether a more formal structure would be beneficial for implementation of the IRWM Plan over the long term.

## Potential Governance Structure

The Governance Structure most easily can be continued through an amended or new Participation Agreement or Memorandum of Understanding (MOU) for the Subregional Water Management Group (RWMG). That Agreement established the Kern RWMG, and prescribed the preliminary roles and responsibilities for the RWMG. The members of the "Inaugural" RWMG that signed the Agreement in October 2008, are referred to as "Participants". RWMG Participants are involved in the decision-making process during development of the Kern IRWMP by each having one vote, and a vote of approval is required by a majority of Participants.

This type of governance (MOU based) is voluntary on the part of the signatories to the MOU, and relies on the members of the RWMG to choose to collaborate. This approach has worked well during development of the IRWMP.

The same level of effort required to develop the IRWMP will not be required to administer the IRWMP. However, at a minimum, 10 to 12 hours monthly will be required to manage the administrative activities required to sustain the IRWMP. A higher level of activity may require a half-time position. Administrative activities include a wide variety of activities, including administrative services, website management, document production, meeting preparation, etc. Although approximately 1% of each grant is usually available to manage the grant, one cannot rely fully on grant funds to manage the IRWMP. Kern County Water Agency staff has been relied upon during development of the IRWMP to perform these tasks. This governance structure proposes that the Executive Committee assumes the responsibility for administration of the IRWMP, which will require consideration of staffing either in-house, through in-kind services, or through hiring of an out-side consultant.

Using the Participation Agreement as a guide, the following draft terms outline the responsibilities of the Participants, the Executive Committee, and Stakeholders, for implementation of the IRWMP.

## Draft Terms of Participation Agreement (or MOU)

The amended or new Participation Agreement will address the following topics:

- Organization
- Roles
- Representation and Decision Making

## Organization

The recommended Governance Structure for Implementation will include three groups:

1. **Subregional Water Management Group Members** – signatories to the Participation Agreement
2. **Stakeholder Group** – an open group of interested people that participate in public meetings related to the update and implementation of the Kern IRWMP. Anyone may participate as part of the Stakeholder Group if they are willing to abide by the Code of Conduct (Attachment 1).
3. **Executive Committee** – a 10 member subgroup of the Stakeholder Group, and *working group* comprised of one representative from each of the seven (7) subregions and two (2) overarching subregions (hereafter referred to singularly as “subregion” or collectively as “subregions”) that comprise the Kern IRWMP: 1) Greater Bakersfield, 2) Kern Fan, 3) Mountains/Foothills, 4) Kern River Valley, 5) North County, 6) South County, 7) West Side, 8) KCWA, and 9) the County of Kern, in addition to one non-governmental organization or community member (hereafter referred to as “Member-At-Large”).

## Roles

1. The **Subregional Water Management Group (RWMG) Members** will:
  - a. Offer their facilities for stakeholder meetings on an as-available basis
  - b. Appoint one (1) representative and one (1) alternate to the Executive Committee for each respective subregion
    - i. RWMG members may cast one (1) vote for the representative position and one (1) vote for the alternate position within their subregion
    - ii. If a RWMG member is a participant in more than one subregion, the member may only vote in their primary subregion, as defined in current Participation Agreement
  - c. Participate in RWMG meetings of the Kern IRWMP
  - d. Participate in subregion meetings for their primary subregion
  - e. Promote subregional cooperation among their respective agencies or organizations focused on implementing the IRWM Plan
  - f. Provide funding to support cooperative efforts focused on implementing the IRWM Plan
  - g. Provide financial oversight for efforts using shared funds
  - h. Approve (or deny) recommendations for use of shared funds made by the Executive Committee on behalf of the Stakeholder Group
  - i. Provide a decision mechanism (by majority vote where each representative has a single vote) in instances where facilitated broad agreement within the Stakeholder Group cannot be reached

- j. Empower the Executive Committee to fulfill the roles outlined below
2. The **Stakeholder Group** participants may:
- a. Offer their facilities for stakeholder meetings on an as-available basis
  - b. Participate in Stakeholder and RWMG meetings
  - c. Provide information and/or comments
3. The **Executive Committee** will:
- a. Collaborate with the RWMG, Stakeholder Group and other entities
  - b. Call and conduct RWMG, Executive Committee and Stakeholder meetings as necessary.
  - c. The Executive Committee will elect two (2) of its members as co-chairs, one (1) from the agricultural sector and one (1) from the urban sector.
  - d. The co-chairs will conduct and direct meetings of the RWMG.
  - e. The co-chairs, acting as signatories for the RWMG, may execute third-party agreements for integration with other RWMGs with the approval of a simple majority of the Participants.
  - f. Provide quarterly progress reports and updates to the IRWMP
  - g. Initiate actions with the Stakeholder Group to identify, select and apply for appropriate funding opportunities
  - h. Recommend to the Stakeholder Group, hire, and manage consultants as needed
  - i. Gather, compile and manage data as defined in IRWMP and any grant related contracts received to implement the IRWMP
  - j. Identify and obtain needed expertise when appropriate
  - k. Prepare an annual budget each fiscal year (July to June) and present to the RWMG for approval
  - l. Manage operating funds as provided by the approved budget
  - m. Serve as central point of contact for RWMG and IRWMP Implementation. The Executive Committee will select one person to serve as the designated point of contact on behalf of the Implementation Governance Structure. This person may or may not be a member of the Executive Committee.
  - n. Provide facilitation for implementation process
  - o. Identify and coordinate with staff dedicated to supporting the roles of the Executive Committee
  - p. Coordinate with a legal entity willing to act on behalf of the Stakeholder Group to:
    - i. Execute and manage contracts as approved by the RWMG
    - ii. Oversee receipt and processing of financial transactions
    - iii. Provide an annual report of financial transactions according to accepted accounting practices
  - q. Designate a fiscal agent to collect and manage funds

- r. Initiate discussions related to long-term governance preferences
- s. Provide a spokesperson or advocate to represent the Stakeholder Group and RWMG related to implementation of the IRWMP

## **Representation and Decision Making**

### **1. Subregional Water Management Group Members:**

- a. Each signatory of the original RWMG Participation Agreement will continue as a member of the RWMG
- b. New entities may join the RWMG by becoming a signatory to the current Participation Agreement if approved by a simple majority vote of the existing RWMG members
- c. RWMG members may withdraw from the IRWMP by providing a written request to the Executive Committee. Withdrawal from the RWMG shall not reduce the member's responsibility to make payments of the full amount of their financial obligation under the approved budget for the year in which the request to withdraw is made.
- d. Each member of the RWMG will contribute their proportionate share of the adopted budget for the current fiscal year.
- e. Entities that are not members of the RWMG may contribute funding or in-kind services to support the activities of the Executive Committee and/or RWMG without becoming signatories to the Participation Agreement.
- f. Each organization that is a signatory to the Participation Agreement will appoint one representative to serve on the RWMG.
- g. Each member of the RWMG will have one (1) vote.
- h. If broad agreement cannot be reached, actions may be taken by the RWMG based on a simple majority vote.

### **2. Executive Committee:**

- a. Shall consist of ten (10) members selected by the RWMG to represent the Kern Subregion for staggered three year terms<sup>1</sup>:
  - i. Kern County (2012)
  - ii. Kern County Water Agency (2013)
  - iii. West Side (2012)
  - iv. Kern Fan (2013)
  - v. North County (2014)
  - vi. South County (2012)
  - vii. Mountains/Foothills (2013)
  - viii. Greater Bakersfield (2014)
  - ix. Kern River Valley (2012)
  - x. Member-At-Large (2013)

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<sup>1</sup> Members for each category will be reselected in the year shown and every three years following.

- b. Representatives and alternates to the Executive Committee will be elected as follows:
- i. Nominations for each category can be made by any member of the RWMG and will be made during a Stakeholder Meeting
  - ii. If the person nominated is willing to serve on the Executive Committee as described, that person will be considered as a candidate by the RWMG members
  - iii. RWMG members may cast one (1) vote for a representative and one (1) vote for an alternate within their subregion. RWMG members that belong to more than one subregion may only vote in their primary subregion
  - iv. As the County of Kern is the sole RWMG member for the County of Kern subregion, a representative and alternate to the Executive committee shall be nominated and appointed either directly by or following a procedure set forth by the Kern County Board of Supervisors.
  - v. As the Kern County Water Agency is the sole RWMG member for the Kern County Water Agency subregion, a representative and alternate to the Executive committee shall be nominated and appointed either directly by or following a procedure set forth by the Kern County Water Agency Board of Directors.
  - vi. A representative and alternate for the Member-At-Large position shall be elected by a simple majority vote of the Non-Governmental Organizations (NGO) and community members belonging to the Stakeholder Group.
    1. As the Member-At-Large position is representative of the entire Kern IRWMP, and not any one subregion, the election will be conducted by the Executive Committee.
    2. Each NGO and community member may cast one (1) vote for a representative and one (1) voted for an alternate.
  - vii. If an Executive Committee position becomes vacant before the regularly scheduled reselection year, the same selection process described in this section will be used to select a replacement.
  - viii. Representatives or alternates to the Executive Committee cannot designate an alternate.
    1. If the representative and alternate of a subregion are unable to participate in a meeting or vote, the subregion may elect a temporary alternate following the procedure described in this section.
  - ix. If the participants of a subregion are not satisfied with the performance of their Executive Committee representative or alternate, one or more RWMG members from that subregion can request that the RWMG members from that subregion conduct a new nomination and selection cycle, as described in this section, for the position (or positions) not being served satisfactorily. This request must be approved by a simple majority vote of the RWMG members from the subregion.

1. The newly appointed representative or alternate will be subject to the same nomination and selection cycle, as described in this section.
2. The Executive Committee Co-chairs, or their appointed designee, shall be notified within forty-eight (48) hours of the selection of a new representative or alternate.
- c. Members of the Executive Committee will strive to make decisions based on broad agreement. If broad agreement cannot be reached on a particular matter, actions may be taken by a simple majority vote of the Executive Committee members.
- d. Participation at Executive Committee meetings will be limited to one (1) representative per subregion.

### **3. Voting:**

- a. Voting of the RWMG:
  - i. If broad agreement cannot be reached, actions may be taken by the RWMG by a simple majority vote.
  - ii. A simple majority vote is defined as a majority of the total number of RWMG members.
  - iii. Unless otherwise specified, any RWMG member who is unable to cast a vote in person, may submit their vote in writing to the Executive Committee Co-chairs, or their appointed designee, prior to the time of the vote.
  - iv. A vote may be taken on any item if motioned and seconded by members of the RWMG.
- b. Voting of the Executive Committee:
  - i. A simple majority vote of the Executive Committee is required for all decisions and/or actions requiring approval of the Executive Committee.
  - ii. A simple majority vote is defined as a majority of the total number of Executive Committee representatives.
  - iii. A vote may be taken on any item if motioned and seconded by members of the Executive Committee.

### **4. Notification of Meetings and Document Availability:**

- a. RWMG Members shall receive notice of all meetings at least seventy-two (72) hours prior to each meeting. Meeting notices will be published to the IRWMP website, sent via electronic mail (e-mail) to the RWMG member email list and posted at the location of the meeting.
- b. All documents requiring review by or approval of the RWMG, shall be published to the Kern IRWMP website and sent via electronic mail (e-mail) to the RWMG member email list at least forty-eight (48) hours prior to the meeting or vote.

### **5. Changes to Governance**

- a. Changes to the governance structure may be proposed by any member of the Stakeholder Group.

- b. Changes to the governance structure may be made by a simple majority vote of the RWMG members.

## **Funding**

### **1. Preparation of a Budget:**

- a. The Executive Committee shall prepare a budget each fiscal year (July to June).

### **2. Allocation of Costs:**

- a. Costs will be allocated to the RWMG Participants proportionally based on each participant's budget, defined as:
  - x. Water districts, agencies, purveyors or other RWMG Participants that exclusively manage water: The budget will be the total annual budget for the current fiscal year.
  - xi. For cities, agencies or other RWMG Participants that manage or provide goods and/or services other than water management: The budget will be the total operating revenues related to all water management activities, including, but not limited to water supply, wastewater treatment and/or flood management.
  - xii. For RWMG Participants that do not provide goods and/or services related to water management: The budget will be defined on a case-by-case basis and approved by a vote of the RWMG.
- b. RWMG Participants with a cost allocation of less than two hundred dollars (\$200) will not be required to contribute funds. Their cost allocation will be paid by the remaining RWMG Participants in proportion to their cost allocation.
- c. If a RWMG Participant is unable to contribute funds due to financial hardship, said Participant may request a fee waiver from the Executive Committee.
  - i. All fee waivers will be considered on a case-by-case basis.
  - ii. The Executive Committee may require in-kind services to be provided in-lieu of a financial contribution.
  - iii. All fee waivers, including any terms or conditions assigned to the waiver, granted by the Executive Committee must be approved by a simple majority vote of the RWMG.

### **3. Accounting and Reporting**

- a. The Executive Committee, or its designated fiscal agent, will provide an annual report of financial transactions according to accepted accounting practices.
- b. An informal audit of the finances may be requested by a simple majority vote of the Executive Committee or RWMG.
- c. A formal audit of the finances may be requested by a simple majority vote of the Executive Committee or RWMG.
  - i. A request for a formal audit must define a funding mechanism for the audit, if the funds for a formal audit were not included in the approved budget for the fiscal year in which the audit request is made.

Tulare Lake Basin Portion of Kern County  
Integrated Subregional Water Management Plan  
Code of Conduct

**Purpose**

The purpose of the stakeholder group is to provide advice and feedback to assist with the development of an Integrated Subregional Water Management Plan for the Tulare Lake Basin Portion of Kern County River.

**Ground Rules for Participation**

- A. Cooperate with the process, including the scope and intent of our planning effort together and specific agenda topics.
- B. Work toward shared goals, proposing strategies that relate to the goals and may be acceptable to all stakeholders.
- C. Base your opinions, ideas and comments on facts and experience rather than perception.
- D. Wait to be recognized by the facilitator before you speak.
- E. Participate fully in the group discussion.
- F. Keep your comments brief and constructive.
- G. Focus on issues instead of people or personalities.
- H. Reference the past if needed, but look to the future.
- I. Be respectful of differing perspectives and opinions.
- J. Stay with the topic at hand or hold your comment and yield to someone who has a comment on the topic at hand.
- K. Be open to new ideas and be expansive in your thinking.

## Operating Procedures

1. Stakeholders will abide by the agreed upon participation groundrules and operating procedures during this process.
2. We will strive for mutual agreement but note when we have a minority opinion.
3. Stakeholders are encouraged to participate consistently and attend all meetings. If unable to attend, a Stakeholder may send an alternate to ensure the organization's consistent participation.
4. Stakeholders who are participating based on their organizational affiliation represent the organization; their opinions should be consistent with and as authorized by the organization.
5. Meeting summaries will be prepared by the facilitators, and will include major points of discussion, agreements and areas of disagreement.
6. Stakeholders will receive meeting materials 10 days before the meeting to allow for advance review.
7. Stakeholders will provide review and comment during the timeframes requested.