

White Paper - Governance during Imperial IRWMP Implementation

(Imperial Water Forum Working Document, For Discussion Only)

The purpose of this White Paper is to support discussion of California Department of Water Resources governance standards for implementing the Imperial IRWMP and management of Proposition 84 Implementation Grant funds. CDWR governance standard seeks to ensure that each region has a governance structure 1) to manage implementation grant funds; and 2) to support decisions, participation, and funding needed to update and sustain the Imperial IRWMP. These standards and alternatives organization and governance structures are discussed.

CDWR Governance Standards - Imperial IRWMP Planning and Implementation Grant Management

Table 1 describes major differences between IRWM planning and implementation grants. In general, CDWR expectations for the governance structure are higher for Proposition 84 implementation grants than for planning grants. Implementation grant money is distributed to the Imperial Region through a contract between CDWR and a single Imperial Region entity that serves as the fiscal and contracting agent to manage the grant funds and meet CDWR contract requirements. To award implementation grants to the Imperial Region, CDWR will expect binding contractual commitments between the Imperial Regional Water Management Group (RWMG) partners.

Table 1 Differences between Planning and Implementation

Issue	Planning Grant	Implementation Grants
CDWR/ tax payer risk	Limited risk, up to \$1M grant	High risk, up to \$25M grant
CDWR expectations and contract requirements	Limited expectations and contract requirements	High expectations and contract requirements
Commitments and agreements between/ among local participants	<ul style="list-style-type: none"> • Loose, relatively informal • Planning level commitments, non-legally binding agreement between participants • Undefined projects commitments 	<ul style="list-style-type: none"> • Binding, formal • Legally binding commitments and agreements • Clearly defined projects commitments
Funding	<ul style="list-style-type: none"> • Provided by one or a few agencies • Available local resources • Short-term commitment for duration of grant • Less permanent and stable 	<ul style="list-style-type: none"> • Provided by multiple agencies • Firmly defined local revenue sources • Long-term commitment, potential debt service • More permanent and stable
Representation to RWMG	Higher reliance on agency staff; elected officials less engaged	Often more involvement of elected officials
Technical/management support	High reliance on consultants, less on staff	High reliance on staff, less on consultants
Decision models	Individual interest based No loss of control	Mutual interest based More shared control

Alternative Governance Structures for Sustaining the Imperial IRWMP

Many regions use a special group like the Imperial Water Forum or a Memorandum of Understanding while developing their IRWMP then move to a more formalized governance structure and contractual agreements to manage IRWMP implementation. Table 2 presents 7 governance structures. It describes the each alternative, provides examples of where the alternative was used by other regions, and highlights the pros and cons of the alternative.

Table 3 compares IRWM governance structures and terms of agreement used in three regions. Poso Creek and Santa Barbara used MOUs. Upper Kings started with an MOU during planning and, subsequently, developed a joint powers authority to facilitate contracting, strengthen agreements among participants, support grant and project management, and implement their IRWMP.

The Imperial IRWMP Water Forum and Regional Water Management Group Charter (Charter) defines the organizational structure, roles and responsibilities, and decision processes that were adopted to develop and adopt the Imperial IRWMP. The governance structure defined in the Charter is only for a special committee (Table 2) and does not include a formal or binding agreement. Participation in the Water Forum is voluntary. Funding was provided by one entity, the Imperial Irrigation District with the support of a Proposition 84 Planning Grant for which IID was the fiscal and contracting agent.

The RWMG has not been convened. From the perspective of managing and distributing Proposition 84 Implementation Grant funds, the voluntary nature of participation, limited authority; and lack of shared funding and formal financial commitments will be viewed unfavorably by CDWR.

The existing RWMG/Water Forum/Program Management Team (PMT) organizational structure could work for implementing the Imperial IRWMP, and the Charter can provide a basis for developing a more formal governance structure. The formalized governance structure would include legal agreements between parties. It would help the Imperial Region be more competitive for Implementation Grant funds and would demonstrate the Imperial Region's commitment to sustaining the IRWMP process and to implementing the Imperial IRWMP.

A more formalized governance structure is recommended to clearly define financial commitments, roles and responsibilities, liabilities, cost sharing, and contract authority.

Alternatives for the Imperial Region:

- Keep the existing organizational structure. The RWMG would become the governing body and the Water Forum would become the stakeholder involvement and advisory group
- Modify the organizational structure (i.e., redefine roles and reconfigure RWMG, Water Forum, PMT)
- Develop and adopt an MOU and a mix of project-specific contractual agreements
- Develop and adopt a JPA and contractual agreement
- Consider formation of special purpose districts for special functions (e.g., Flood Control)

Table 2 Alternative Approaches to Government Structures for IRWMP Implementation

Organization	Description	Examples	Pros and Cons
Special Committee	<ul style="list-style-type: none"> • Established and led by an existing public agency • Can be a standing or ad hoc group • Single agency funds effort, acts as fiscal and contract agent for grants • No formal or binding agreements between participants • Voluntary participation • Advisory with limited ability to make commitments 	Imperial Water Forum and Charter	<p>Pros: Easy to form to address single purpose or issue, or dissolve if falters. Flexible- can add expertise and leadership as needed. Adequate for planning. No legal standing to sue or be sued. Limited liability for participants</p>
			<p>Cons: Weak governance model with no authority. Can be indecisive if controversial issues are encountered. Active participation may be lacking due to voluntary nature. Not adequate to contract for implementation grants or to support sustained IRWM effort (updates, etc.)</p>
Memorandum of Understanding	<ul style="list-style-type: none"> • Involves multiple agencies and funding sources as defined in MOU • Can be standing or ad hoc • Single fiscal and contract agency for grants • Voluntary participation • No legal standing to sue or be sued • Liability is only to individual participation 	<p>Many regions have used MOU's for planning grant and development of IRWMPs</p> <ul style="list-style-type: none"> • Upper Kings (Agent: Kings River Conservation District) • Poso Creek (Agent: Semi Tropic Water Storage District) 	<p>Pros: More formal than special committee since MOU is adopted and signed by participants. Flexible method to assemble agencies and stakeholders</p>
			<p>Cons: No contractual relationship between participants. Reliant on individual agencies to implement projects. Not an adequate structure for project implementation without firm and binding agreements in MOU, or side agreements and contracts for projects. Single fiscal agent and contracting entity assumes liability for implementation grant</p>
Contractual Agreements	<ul style="list-style-type: none"> • Legally binding agreements among entities for specific purposes or projects • Could include hiring staff, joint funding activities, etc. 	Typically used as adjunct to an MOU for implementation grants or other special purposes	<p>Pros: Very specific and binding. Defines contractual relationships, liabilities, responsibilities, funding, etc.</p>
			<p>Cons: May be complicated to administer for multiple projects with multiple project contracting entities operating with grant funds under CDWR contract.</p>

Table 2 Alternative Approaches to Government Structures for IRWMP Implementation (Continued)

Organization	Description	Examples	Pros and Cons
Joint Powers Authority	<ul style="list-style-type: none"> • Formed by local agreement among government agencies under state law for joint exercise of powers • JPA creates legally binding commitments among entities for specific purposes or projects • Local agreement to define authorities, liabilities, responsibilities, funding, and revenue generation capacities per agreement • Can do business, hire staff, contract for service, enter into agreements • Defined liabilities; can sue and be sued 	<ul style="list-style-type: none"> • Kings River Water Authority • Sacramento Groundwater Authority • North San Joaquin Groundwater Basin Authority 	<p>Pros: Very specific. Integrates existing agency powers, authorities, and funding mechanisms. Defined annual budget. Can be formed locally by participating agencies and customized for local purposes. Can incur debt, sell bonds</p>
			<p>Cons: Cannot include non-governmental organizations in voting or on board. Takes time for formation of new authority and requires legislative action by participating agencies. Could be threatening to existing agencies</p>
Formally Chartered Organization	<ul style="list-style-type: none"> • Formed by state statute • Governance structure can be variable and include multiple government entities and representation • Statutorily defined powers and authorities targeted to specific purposes or projects • Can do business, hire staff, contract for service, enter into agreements • Defined liabilities; can sue and be sued 	<ul style="list-style-type: none"> • Kings River Conservation District • Santa Anna Watershed Projects Authority • County flood control districts • IID 	<p>Pros: Can include non-governmental organizations in voting and on board. Very specific powers and authorities, decision process, funding and revenue generation, etc. Good for special purpose in a defined geography. Incur debt, sell bonds. Empowered to facilitate state and federal coordination</p>
			<p>Cons: Similar to JPA above, but usually takes much longer to form new statutorily defined agency. Typically more politically challenging than a locally formed JPA</p>

Table 2 Alternative Approaches to Government Structures for IRWMP (Continued)

Organization	Description	Examples	Pros and Cons
California Public Benefit Non-profit Corporation or Foundation.	Tax deductible or exempt organizations, IRS section 501(c)(3) or (4). Examples like Southern Low Desert RC&D Council, Silicon Valley Joint Venture, many non-profit environmental and charitable organizations	Typically used in rural areas IRWMPs <ul style="list-style-type: none"> • California Trout acting as fiscal agent for Inyo Mono IRWMP • Sierra Nevada Alliance for Mountain County IRWMP 	<p>Pros: Works when no other authority is able or willing to assume responsibility. Can solicit private donations</p> <p>Cons: Entity does not have local government land use or water authorities or ability to raise local revenue. Fiscal and contract liability on one entity. Requires separate agreements with project implementing parties</p>
California Mutual Benefit Non-Profit Corporation or Association	Trade association or industry group without commercial for profit or political activities, IRS section 501(c)(6)	Chambers of Commerce; IVEDC. Research did not identify IRWMP examples	<p>Pros: Can be influential and active participants in IRWMP and represent groups of stakeholders</p> <p>Cons: Generally does not have government membership and grants are not available to such entities</p>

Table 3 Comparison of Regional Governance Structures and Agreements

Element	Poso Creek	Santa Barbara County	Upper Kings
Governance Structure	Memorandum of Understanding (MOU)	MOU	Joint Powers Authority (JPA)
Agreement Purpose	See Powers (below). Prepare IRWMP	Prepare IRWMP. Commit to participate in, and make a financial and/or service oriented contribution toward, the ongoing participation in the IRWM process. Defines scope of IRWMP, planning principles, roles, and responsibilities	Forms the <i>Upper Kings IRWM Authority</i> (Authority) as a separate entity of public agencies. Establishes a Board of Directors. Engages in integrated regional water management; coordinate, manage, maintain, modify, amend and implement the IRWMP, including assisting the Members in the development of water management projects and/or grant applications; and to participate in water management projects included in or consistent with the IRWMP
Grant Contracting	Semi Tropic Water Storage District	Santa Barbara County Water Agency	Authority
Regional Water Management Group	Water Agencies; Representative from DAC Group and neighboring IRWMP. Representative and alternative appointed from each signatory agency	Signatory Cooperating Partners. Appointed by signatory agency	Authority Board of Directors. One member and alternate appointed by members governing body in writing. Can be director, officer, or employee. Representative and alternative appointed from each signatory agency
Signatories	Same as RWMG	Local government agencies, special districts, and non-governmental organizations (NGOs)	Alta Irrigation District (ID), Fresno ID, Consolidated ID, Kings River Conservation District, Raisin City Water District; Cities of Clovis, Dinuba, Fresno, Parlier, Kerman, Kingsburg, Reedly, Sanger, Selma; Fresno and Tulare Counties; Fresno Metropolitan Flood Control

Table 3 Comparison of Regional Governance Structures and Agreements (Continued)

Element	Poso Creek	Santa Barbara County	Upper Kings
Term of Agreement	Until terminated	Terminated by concurrence of a majority of the Cooperating Partners, or on December 31, 2013	Until terminated by mutual agreement of all parties
Powers	Study, promote and develop water management-related projects and programs and to encourage and facilitate design, financing, acquisition, construction and/or operation of same by members	Not specified	Maintain, modify, amend and implement IRWMP in accordance with the Act. Select projects for grant applications, prepare and submit grant applications, manage grant funding. Develop and participate in water management projects. Create and appoint committees and sub-committees. Make and enter into contracts and agreements. Sue and be sued. Engage or employ agents, consultants and employees. Acquire, construct, manage, maintain, and operate any buildings, works, or improvements. Acquire by eminent domain, hold, or dispose of any property. Issue bonds and other forms of indebtedness. Levy assessments
Limitation on Powers	Not authorized to finance, acquire, construct or operate projects	None specified	Members of the Authority shall at all times retain control and authority, independent of the Authority, over their own internal matters, including water supplies, facilities, and water supply projects
Relationship of RWMG and Parties, Stakeholders	RMG is not a separate public entity. Group of cooperating entities mutually pursuing a common purpose	None specified	Contractual obligation by approval, adoption and signing of Authority. Legal actions between member and authority allow fee recovery
RWMG, Elected Official	Not specified	Not specified	Can be, but need not be elected officials
New Members	Additional parties may join by agreement of RMG	Written request and approval of Cooperating Partners or Steering Committee. Signatory to MOU and providing funding or in-kind of NGO	By supermajority vote of Board. See voting/decision making. Payment of participating percentage and some amount set by the Board

Table 3 Comparison of Regional Governance Structures and Agreements (Continued)

Element	Poso Creek	Santa Barbara County	Upper Kings
Organizational Structure	None specified	Steering Committee with defined members, signatory Cooperating Partners can join by providing written intent. Recommends actions to the body of Cooperating Partners	<i>Upper Kings Water Management Authority Advisory Committee</i> of member representatives and Interested Parties. Majority voted, quorum
Member Term	Two years	Not specified	Until successor appointed
RWMG Non-voting members	Yes. One from other IRWMP region	Yes	No. Can serve on Advisory Committee
Stakeholders	Entity or organization that requested to participate in the plan	Stakeholders are defined as all interested parties that are not participating in the process as Cooperating Partners	<i>Interested Parties</i> are public and private entities that have opted not to become members or legally precluded from becoming members, provided a formal expression of interest in the Authority's activities and been designated by the Board of Directors as Interested Parties
Voting/Decisions	Equal vote on all administrative or financial issues	Consensus of simple majority of Cooperating Partners participating at each meeting	Defines <i>Major, Minor, and Supermajority Decisions</i> . Major decision requires 2/3 vote of Board with quorum. Minor decisions by simple Board majority vote with quorum on actions with no effect on the long-term activities or policies, approve payment less than \$10,000, or are administrative. Supermajority Decision require 2/3 vote of the full Board on initiating litigation, issuing bonds, adopting or amending budget, change any funding percentages, admitting new member or terminating embers
Tie breaker	1) Omit <i>DAC Group</i> vote; 2) omit a specified non-paying water districts	Not specified	Not specified
Quorum	Simple majority	Not defined. Consensus or voting of persons at the meeting	Majority of members
Officers	Chair, Vice Chair, Secretary, Treasurer	Not specified	Chair, Vice Chair, Secretary-Treasurer

Table 3 Comparison of Regional Governance Structures and Agreements (Continued)

Element	Poso Creek	Santa Barbara County	Upper Kings
Terms of Officers	Two years	Not specified	As set by Board
Meetings	Once per year or as needed	Not specified	Not specified
Withdrawal of Parties	Provide 90-day written notice with resolution from governing body. Agree to pay share of costs up to termination date. Withdrawing entity shall be entitled to a refund of any payments	Any signatory may terminate its participation in this MOD after 30 days written notification to all other signatories. Agree to pay share of costs up to termination date	Withdraw from Authority and agreement by giving 60 days written notice, provided, that such withdrawal does not in any way impair any contracts, resolutions, indentures or other obligations of the Authority. Determination of impairment by 75% vote of other members. Members may be terminated for non-payment of annual participation percentage
Project Agreement	Side Agreement among <i>Participating Parties</i> who undertake a Project. Participating Parties includes RWMG members and stakeholder groups	Not specified	Defines <i>Special Activities</i> conducted in the name of the Authority with prior approval of Authority. Members enter into activity agreements consistent with the Authority purpose and IRWMP. Activity agreements hold harmless the Authority. All assets, rights, benefits, debts, liabilities, and obligations attributable to a Special Activity remain with parties to the activity agreement
Liability	Not discussed	Liability per Government Code Section 895.2. Each agency individually liable with hold harmless on others	Shared through on Authority activity. Parties to this Agreement do not intend hereby to be obligated either jointly or severally for the debts, liabilities, or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 Members share liability on Special Activity projects
Dispute Resolution	Through RWMG; defined process	Voting process	Voting process. Legal actions
Amendments to Agreement	2/3 of governing boards approve. RWMG approval not needed to amend	Not specified	Simple majority vote of 75% of all members.
Administrative and Technical Support	Hire staff or consultants through fiscal agent	Hire staff or consultants through fiscal agent	Hire staff or consultants directly through Authority, or through a member agency

Table 3 Comparison of Regional Governance Structures and Agreements (Continued)

Element	Poso Creek	Santa Barbara County	Upper Kings
Funding sources	Signatory agencies	Signatory Cooperating Partners. 20% each from five partners for Plan development	Authority Members
Insurance	No	No	Yes. As needed or required by contracts
Implementation Grant Costs	Not defined	Only projects selected for inclusion in the implementation grant	Shared in Annual Budget
Fiscal Year	Calendar	Not specified	July 1 through June 30
Budget	Can develop as needed. Not specified	Defined for IRWMP development and planning only	Annually adopted by Supermajority decision. Each Participating Party governing body approves annual funding
Contributions	Cost Share- 50% equally split by Water District; 50% by acreage within each District. Cost agreement in MOU	Generally allocate costs by approximate service area population. NGOs provide in-kind	Participating percent is equal based on budget
Fiscal Management	Semi Tropic is fiscal agent for the MOU. North Kern WD is the current fiscal agent for the current planning grant	Identifies anticipated costs for IRWMP. County Water Agency established an IRWM account. County reimbursed for 50% of staff costs. Includes contingency fund	KRCD currently acting as fiscal agent. Member agency can be fiscal agent or third party. Members can't reassign rights; binding on successors
Audit	Not required. Members can call for audit	Not specified	Annual
Reporting	Quarterly	Annual by County Water Agency	Quarterly