

MOU

Memorandum of Understanding for Integrated Regional Water Management in the Madera Region [Initially Adopted January 2, 2010]

1. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to recognize a mutual understanding among entities in the greater Madera County area regarding their joint efforts toward Integrated Regional Water Management (IRWM) governance, development, planning, funding, and implementation. The mutual understanding of the signatories to this MOU (herein collectively referred to as the “Parties”) will facilitate future coordination, collaboration, and communication for comprehensive management of water resources in the greater Madera County area.

2. RECITALS

- 2.1 The State of California desires to foster Integrated Regional Water Management (IRWM) planning and encourages local public, non-profit, and private entities to define planning regions appropriate for managing water resources and to integrate strategies within these planning regions.
- 2.2 A comprehensive group of stakeholders, including the Parties, developed an Integrated Regional Water Management Plan for the greater Madera County area (IRWMP), which also considers broader watershed issues.
- 2.3 The Madera County Board of Supervisors accepted the IRWMP on April 14, 2008. Prior to entering into this MOU, the respective decision-making body of each Party adopted the IRWMP.
- 2.4 The IRWMP defines a water management planning region that takes into consideration jurisdictional limits, powers and responsibilities, and watershed and groundwater basin boundaries. For purposes of this MOU, “Region” refers to the IRWMP water management planning region as it may be amended from time to time through amendments to the IRWMP.
- 2.5 Water resources management authority in the Region is currently distributed among various public agencies with a range of legal powers and regulatory responsibilities. These public agencies have jurisdictional boundaries defined by political considerations rather than hydrologic conditions. Therefore, sensible water resources planning, and management frequently requires coordinated actions by multiple jurisdictions. Private entities within the Region have considerable interests in cooperating with public entities to protect, manage, and enhance water resources within the Region.
- 2.6 By and through this MOU, various public entities and non-profit entities in the Region with responsibility and interests in management of water resources intend to form a regional water management group, pursuant to Water Code section 10539, for the purposes of governing, further developing, implementing, and funding the IRWMP, as well as cooperating with the stakeholders in shared watersheds, either through separate memorandums of understanding, joint powers agreements, and/or eventual inclusion of other adjoining areas into the Region by amendment of the

IRWMP (e.g., the portions of the upper Chowchilla and San Joaquin river watersheds that lie outside of the Madera County boundaries).

- 2.7 The Parties desire to link and integrate efforts to jointly oversee the further development, implementation, funding, and governance of the IRWMP.

3. GOALS

The goals of the collaborative effort undertaken by the Parties pursuant to this MOU are:

- 3.1 To develop and implement a governance structure for the IRWMP for the Region that meets the requirements set forth in the Integrated Regional Water Management Planning Act of 2002, codified at Water Code sections 10530 et seq., the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002, codified at Water Code sections 79500 et seq. (Proposition 50), and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, codified at Public Resources Code section 75001 et seq. (Proposition 84).
- 3.2 To work together to develop updates, changes, amendments, additions and/or other modifications to the IRWMP to ensure that the plan continually utilizes the best science and data available to address the Region's changing conditions, needs and concerns, including but not limited to ecosystem restoration, environmental and habitat protection and improvement, water supply reliability, flood management, groundwater management, recreation and public access, storm water capture and management, water conservation, water quality protection and improvement, water recycling, wetlands enhancement and creation, imported water, land use planning, nonpoint source pollution control, surface storage, watershed planning, water and wastewater treatment, water transfers and water banking.
- 3.3 To improve and maximize cooperation among stakeholders and coordination of public, private, and non-profit agency plans, programs and projects for mutual benefit and optimal gain within the Region.
- 3.4 To help identify, develop, prioritize, and implement collaborative plans, programs, and projects that may be beyond the scope or capability of individual stakeholders, but which would be of mutual benefit if implemented in a cooperative manner.
- 3.5 To facilitate regional water management efforts that provide multiple benefits and include one or more of the following elements: water supply (including without limitation, banking, efficiency, conservation, and reliability), water quality, flood control, and environmental protection and enhancement objectives.
- 3.6 To foster coordination, collaboration, and communication between stakeholders, adjacent IRWM regions and other interested parties, to achieve greater efficiencies, enhance public services, and build public support for vital projects.
- 3.7 To realize regional water management objectives at the least cost possible through mutual cooperation, elimination of redundancy and to enhance regional competitiveness for State and Federal grant funding.

- 3.8 To identify disadvantaged communities in the Region and take the water-related needs of those communities into consideration.

4. DEFINITIONS

- 4.1 Integrated Regional Water Management Plan (IRWMP). Consistent with Water Code section 10534, IRWMP hereinafter refers to the comprehensive plan for the Region as described in the recitals above, including any amendments, revisions, or updates thereto.
- 4.2 Non-Profit Organization. Consistent with Water Code section 79505(g) and Public Resources Code section 75005(k), "Nonprofit Organization" as used herein means any nonprofit corporation qualified to do business in California, including a nonprofit corporation formed pursuant to the Nonprofit Public Benefit Corporation law (Corporations Code section 5000 et seq.) and qualified under Section 501(c)(3) of the United States Internal Revenue Code.
- 4.3 Project. An action or construction project that addresses a need identified within the IRWMP and Water Code section 10537.
- 4.4 Local Agency. Consistent with Water Code section 10535, "Local Agency" herein refers to any city, county, city and county, special district, joint powers authority, or other political subdivision of the state, a public utility as defined in Section 216 of the Public Utilities Code, or a mutual water company as defined in Section 2725 of the Public Utilities Code.
- 4.5 Regional Water Management Group (RWMG). Consistent with Water Code section 10539, RWMG generally refers to a group of three or more Local Agencies in the Region, at least two of which have statutory authority over water supply or water management, as well as those other entities in the Region that may be necessary for the further development and implementation of the IRWMP. As specifically used in this MOU, RWMG shall refer to the Parties to this MOU.
- 4.6 Stakeholder. An interested party, including without limitation a Non-Profit Organization, Local Agency, or private property owner that directly participates in or relies upon water management within the Region or that represents the interests of those (including flora and fauna) who do.

5. MUTUAL UNDERSTANDING

- 5.1 Additional Parties and RWMG Members. Each Party to this MOU must adopt the IRWMP prior to executing this MOU. For a Local Agency, adoption of the IRWMP is by formal resolution of the governing body or its equivalent (e.g., by a board of directors or other management entity). For any other entities, adoption by way of acknowledgement of acceptance of the IRWMP by the individual(s) authorized to bind the entity is required. Additional Local Agencies, Non-Profit Organizations, or other entities in the Region that desire to participate in the adoption, further development, funding, and implementation of the IRWMP may seek to join the RWMG at any time. To join the RWMG, an entity must submit a request to the RWMG. The RWMG shall determine whether the requesting party is a party qualified under Water Code section 10539 and this MOU to participate as a member of the RWMG. If so, the requesting party may join the RWMG by adopting the IRWMP and executing this MOU.
- 5.2 RWMG Governance. The RWMG will determine their governance structure and operating procedures.

- 5.3 Lead Agency. The RWMG shall mutually agree upon a designated signatory Local Agency to facilitate IRWMP implementation and coordinate RWMG activities in furtherance of this MOU (Lead Agency). The Lead Agency will serve at the pleasure of the RWMG. Unless otherwise designated as the Grant Administrator responsible for funding or the Project proponent for an individual Project pursuant to this MOU, the Lead Agency shall not be responsible for any Project, including without limitation completion, funding, or environmental review thereof.
- 5.4 Technical Advisory Committee. The RWMG will organize a committee to advise the RWMG and other Stakeholders concerning implementation, funding, and further development of the IRWMP. The RWMG shall appoint individuals to the Technical Advisory Committee who have technical backgrounds in the fields of water, biology, ecology, geology, engineering, hydrogeology, planning, resource conservation, riparian systems, water conservation, and/or water quality. Appointees to the Technical Advisory Committee shall serve at the pleasure of the RWMG.
- 5.5 Approach to Implementing the IRWMP. Any Stakeholder may propose an implementation project (Project Proposal) to the RWMG at any time. Each Project Proposal shall include a funding component, including application and administration costs, in addition to direct Project costs. Each Project Proposal must meet the standards identified in the IRWMP or they will not qualify for additional consideration by the RWMG. The RWMG will review the Project Proposals for consistency with the IRWMP. The RWMG will hold two public hearings each year to allow Stakeholder comments on any Project Proposals. Notice of each hearing shall be made at least 30 days in advance to allow all Stakeholders ample time to prepare alternatives, or to compile data for presentation at the hearing. Public hearings shall be held at least twice per year, once in April and once in October, and other times as needed.
- 5.6 Prioritization of Projects. At least twice a year, the RWMG will generate and approve a list that prioritizes the Projects to be carried out within the Region. The final prioritized Project list will be approved by majority vote of the RWMG after receiving input from Stakeholders at a public hearing held consistent with section 5.5 above.
- 5.7 Amendment of IRWMP. The IRWMP may be amended from time to time by majority vote of the Parties at a meeting of the RWMG, open to all Stakeholders. Any member of the RWMG may request that the Lead Agency convene a meeting of the RWMG, open to all Stakeholders, to consider amendments to the IRWMP. Except in unusual circumstances, the IRWMP will be amended no more frequently than bi-annually in April and October. Any amendments to the IRWMP must be consistent with Water Code sections 10530 et seq. and any IRWM guidelines of the State Water Resources Control Board and California Department of Water Resources. The RWMG shall consider all public input and input from Stakeholders and shall adopt or reject proposed amendments by majority vote of the RWMG, after compliance with the publication and notice requirements set forth in Water Code section 10543.
- 5.8 Project Implementation. The individual Project proponent(s) will be responsible for completing their respective proposed Projects, complying with all applicable laws related thereto, conducting any necessary environmental review thereon, hiring any appropriate consultants to assist in administering their respective Projects, identifying funding for said Projects, and providing Project reports to the Lead Agency. The Parties will reasonably cooperate with the individual Project proponent(s) to support Projects approved by the RWMG.

- 5.9 Monitoring. The RWMG will be responsible for monitoring the implementation of the IRWMP. The Technical Advisory Committee will regularly report to the RWMG regarding progress on the development and implementation of the IRWMP. The Lead Agency will be responsible for coordinating data collection among the Parties and dissemination to the RWMG. Unless specifically tasked therewith, the Lead Agency is not responsible for data production or collection.
- 5.10 Grant Applications. The RWMG will designate the appropriate Local Agency or Non-Profit Organization within the RWMG, or other appropriate third-party grant administrator, (hereafter referred to as a "Grant Administrator") to apply for grant funds and other potentially available funding. The Grant Administrator for each grant application should have a mission and expertise consistent with the purpose of the subject grant(s). The grant applications shall adhere to the Project prioritization identified by the RWMG. Funding for any grant application shall be provided for by the Local Agency(ies) that will benefit from the grant, as determined by the RWMG.
- 5.11 Grant Awards and Agreement. Unless otherwise designated by the RWMG, the Grant Administrator designated to apply for the identified grant funds pursuant to section 5.10 above will be the grantee and administer the grant on behalf of the RWMG and Stakeholders. The individual Project proponent will be responsible for compiling any and all documentation for the respective Project that may be required by the grantor or requested by the Grant Administrator. The individual Project proponent shall timely provide any such documentation to the Grant Administrator.
- 5.12 Withdrawal. A Party to this MOU may withdraw from participation upon 30 days advance notice to the other Parties. A withdrawing party will remain obligated for its proportionate share of any financial obligation incurred in furtherance of this MOU and/or implementation of the IRWMP prior to the effective date of withdrawal.
- 5.13 Personnel and Financial Resources. The general managers and/or other authorized officials of each Party will periodically meet to ensure that adequate resources are available to the RWMG to implement the MOU. In the event sufficient funding is not available to implement the MOU, the Parties agree to exercise in good faith all reasonable efforts to identify and provide for adequate funding to implement the MOU.
- 5.14 Other On-Going Regional Efforts. The IRWMP is separate from efforts of other organizations to develop water-related plans on a regional basis around Madera County. As the IRWMP is implemented, work products may be shared to provide other entities and groups with current information. The Parties agree to cooperate with the stakeholders in shared watersheds, either through separate memorandums of understanding, joint powers agreements, and/or eventual inclusion of other adjoining areas into the Region by amendment of the IRWMP (e.g., the upper Chowchilla and San Joaquin river watersheds outside of the Madera County boundaries).
- 5.15 Amendment of Memorandum of Understanding. This MOU may be amended only by a subsequent written agreement approved and executed by all of the Parties. If one or more of the Parties propose amendments to the MOU, the Lead Agency will convene a meeting to vote on the proposed amendments. If a majority of the RWMG votes in favor of the proposed amendments, the MOU as proposed for amendment shall be approved by the decision-making bodies of the Parties within 30 days of the affirmative vote. Any Parties not wishing to continue in the MOU due to the amendments or modifications will have no obligation to sign the amended MOU. The amendments will take effect 30 days after the affirmative vote of a majority of the RWMG so long as, by that time, at least three

Local Agencies, at least two of which have authority over water supply or management, have signed the amended MOU.

- 5.16 Counterparts. This MOU may be signed in any number of counterparts by the Parties, each of which will be deemed to be an original, and all of which together will be deemed to be one and the same instrument.
- 5.17 Good Faith. Each Party shall use its best efforts to, in good faith, work towards completion of the objectives of this MOU and the satisfactory performance of its terms. The Parties will reasonably cooperate with each other to carry out the purpose and intent of this MOU.
- 5.18 Dispute Resolution. The Parties shall make reasonable efforts to resolve any disputes that may arise from this MOU in a prompt and timely manner. The Parties must apply the dispute resolution process set forth in this section to all disputes arising under this MOU. In the event of a dispute, the Party claiming a dispute shall give notice of the dispute to the Lead Agency. Such notice shall include a brief description of the matter in dispute and the relief sought. Upon receipt of the dispute notice, the Lead Agency shall immediately notify all Parties of the dispute and timely convene at least two RWMG meetings to resolve the dispute. If the dispute is not resolved in these meetings, the Parties shall consider terminating or amending this MOU. Prior to entering into any legal action arising out of this MOU, the Parties hereby commit to first pursue mediation. In such event, the Parties shall select a neutral mediator by majority vote. If the Parties cannot come to majority agreement, the Lead Agency will select a neutral mediator. Costs of the mediator shall be borne by the Parties in equal shares, with the Parties bearing their own costs of participation. The dispute resolution process called for in this section is binding on Parties to this MOU only to the extent of their mutual understanding herein and in no way affects the method by which Parties can lawfully resolve disputes concerning their legal or regulatory obligations arising under any other law, agreement, or contract.
- 5.19 Mutual Indemnification. This MOU shall not be construed to shift liability from any given Party to another for any actions taken in furtherance of this MOU. Each Party will remain wholly responsible for any actions it takes pursuant to this MOU. Each Party agrees, to the fullest extent permitted by law, to indemnify, defend, and hold all other Parties and any directors, officers, agents, employees, and insurers thereof from and against any and all claims, judgments, damages, penalties, costs, liabilities, and losses arising out of or related in any way to each Party's respective activities in furtherance of this MOU.
- 5.20 Effective Date; Term. This MOU shall take effect upon signature of three or more Local Agencies, at least two of which have statutory authority over water supply or water management, and shall thereafter continue so long as the criteria set forth in this section are met until terminated by mutual written agreement of the Parties.

6. SIGNATORIES TO THE MEMORANDUM OF UNDERSTANDING

We, the duly authorized undersigned representatives of our respective entities, acknowledge the above as our understanding of the intent to oversee the governance, funding, further development, and implementation of the Integrated Regional Water Management Plan for the Region.

REGIONAL WATER MANAGEMENT GROUP

[Signatories Follow on original document; see page _ for list of signatories]

Madera AS Water ASS
Entity

Phil D. Jay
By