

**Interim Project Recovery Operations Plan  
Regarding Kern Water Bank Authority and  
Rosedale-Rio Bravo Water Storage District  
Projects (2014)**



**INTERIM PROJECT RECOVERY  
OPERATIONS PLAN  
REGARDING KERN WATER BANK AUTHORITY (KWB) AND ROSEDALE-RIO  
BRAVO WATER STORAGE DISTRICT (ROSEDALE) PROJECTS**

**Purpose.**

Consistent with the MOUs governing their respective projects, this interim Operations Plan ("Plan") designates measures to be employed to "... *prevent, eliminate or mitigate significant adverse impacts*" resulting from project operations within areas of concern (AOC's).

Projects included within this Plan are the following:

1. Kern Water Bank Project.
2. All Rosedale Projects which are subject to an MOU wherein the KWBA is a signatory as an "adjoining entity."

**Plan Components:**

- A. Establish a separate KWB/Rosedale Operations Plan Implementation Committee ("Joint Operations Committee") for the following purposes.**
1. The Joint Operations Committee will be separate from the Kern Fan Monitoring Committee. Rosedale and the KWBA will jointly participate in the Joint Operations Committee. Each party will have equal representation on the Joint Operations Committee and an equal voice in its determinations. The Parties will agree on an appropriate level of Director participation.
  2. The Committee will not duplicate the water quality and water level monitoring conducted by the Kern Fan Monitoring Committee, but conduct additional monitoring as needed.
  3. The Committee will regularly update and compare the AMEC and Harder Models to actual conditions; and for purposes of making determinations hereunder an average of the output for the two models shall be utilized. The Joint Operations Committee may, based on experience gained, select and regularly update a mutually agreeable groundwater model capable of accurately predicting groundwater impacts resulting from project operations ("Model"). As a matter of practice, the Committee will use the best and latest science and information available in all modeling and technical matters. In case of a dispute concerning a model or its application, the Parties shall consult with a third party to resolve the matter.

4. Provide status of groundwater conditions, pumping rates and volumes, and model projections to each entity to identify any developing problems.
5. Provide a forum for and facilitate discussions within any localized area of concern ("AOC").
6. Fund the actions described below at D, E, F and G in recognition of the joint impact (both positive and possibly negative) on landowners by both the KWB and Rosedale banking projects.

**B. Implement Proactive Measures (in addition to A. above).**

1. KWBA and Rosedale will be obligated to contribute funds to meet mitigation obligations hereunder ("Action Fund"), which shall be \$2.00/AF of recovered water from future project operations (actually pumped, not exchanged), until the Action Fund balance reaches \$1.0 million. If the Action Fund balance drops below \$500,000 contributions shall be resumed until the Action Fund balance again reaches \$1.0 million. In addition, KWBA and Rosedale shall initially provide \$250,000 and \$50,000, respectively. Rosedale shall maintain an accounting of funds obligated by the parties and shall serve as fiscal agent for the Action Fund. As actions are taken by the Joint Operations Committee pursuant to D, E, F and G, the fiscal agent shall invoice to the extent funds are obligated to the Action Fund, and each shall remit the requested funds within 30 days of invoice.
2. KWBA and Rosedale will use the Models as a tool to evaluate groundwater impacts as well as the With Project versus Without Project groundwater levels. For purposes of this Plan, the Parties have agreed the Without Project Condition shall assume no farming on the KWB lands and the KWB shall receive a basin credit of 6,000 acre-feet per year. The Models will be periodically run and updated as the Parties projected recovery plans become known or change and With Project conditions will assume such conditions. Recovery in any calendar year shall not commence until the Models have been run for the projected operations and the Committee has met to review the results.
3. The models have been and will be used to:
  - (a) forecast groundwater levels.
  - (b) forecast when With Project water levels become deeper than Without Project water levels (with both KWB and Rosedale projects). For purposes of this plan a condition shall be considered a negative project impact ("NPI") for which the measures described at D, E, F and G may be

operative where the With Project water level is 45 feet deeper than the Without Project water level, as forecasted by the Model.

- (c) forecast any localized areas for special attention and/or monitoring, i.e., AOC's.
  - (d) identify domestic wells at risk of impacts.
4. KWBA and Rosedale will jointly research potential emergency response for domestic well health and safety issues within Rosedale and Buena Vista and jointly respond as described below at F.
  5. The Joint Operations Committee will:
    - (a) establish a process to respond to and evaluate landowner claims associated with Project operations.
    - (b) determine whether landowner outreach should be proactive, reactive or both.
  6. In the event the Joint Operations Committee cannot agree on the implementation of this agreement or the proper action in response to a landowner claim, such dispute shall be submitted to binding arbitration before a single neutral arbitrator appointed by the Parties, and in absence of such consent, appointed by the presiding judge of the Kern County Superior Court. The arbitration shall be called and conducted in accordance with such rules as the Parties shall agree upon, and if the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure section 1282, et seq. The parties shall attempt to jointly appoint the neutral arbitrator within ten days after a dispute arises, and in the event the parties cannot agree to a neutral arbitrator within said ten-day period, either party may make a request to the presiding judge of the Kern County Superior Court immediately thereafter. Notwithstanding the time periods prescribed by the Code of Civil Procedure section 1282, et seq., all arbitration conducted hereunder shall be commenced within thirty days of the selection of the neutral arbitrator, unless agreed to otherwise by the Joint Operations Committee and the affected landowner, if any. The dispute resolution process selected by the Parties shall be the exclusive remedy for landowners agreeing to participate in and receive the benefits hereunder.
  7. With respect to the interpretation and enforcement of this Plan, and with respect to the resolution of any matter left for future determination or implementation, the Parties agree to carry out such duties and responsibilities in good faith and in cooperation with one another, to the end that the objectives and purposes of this agreement will be achieved and/or carried out to the greatest extent practicable.

**Operations Plan**

**C. Establish Triggers and Actions within any identified AOC.**

As described below at sections D, E, F, and G, these actions will be implemented in consultation with the Parties through the Joint Operations Committee. The triggers and actions below are for wells within any identified AOC, subject to the following:

1. These actions would not occur in years when average water levels (measured at the following wells: 29S/25E-27N1&2, 29S/25E-25M1&2, 29S/26E-31H1&2, and 29S/25E-35G01) are less than 140 feet from the surface as measured on March 31 of a given year because it is expected that water levels will not decline during such year to an extent resulting in an NPI.
2. It is the intent of the Parties to mitigate and/or compensate for legitimate Project impacts; it is not the intent of the Parties or the Plan to generate a windfall for landowners. Accordingly, reasonable adjustments in the form or level of mitigation and/or compensation will be made where it can be demonstrated that the affected well requires remediation for reasons other than temporary groundwater level declines resulting from Project operations (i.e., general overdraft conditions, lack of well maintenance, normal wear and tear, failure of well equipment, etc.).
3. For agricultural wells to be eligible for mitigation as provided below, the affected landowner shall provide information concerning the condition of the well and casing and pumping equipment, as determined appropriate by the Joint Operations Committee.

**D. Action for Ag Wells – Well Adjustment Needed and Available**

1. Trigger: When the Model predicts NPI for an operational ag well outside the current operating range of the pump but within the potential operating range of the well.
2. Actions:
  - (a) Jointly field verify static depth to groundwater levels within the well and compare to Model values.
  - (b) Compare pump setting information with Model projected pumping water levels throughout the year to determine pump submergence levels and evaluate the necessity and feasibility of lowering the well pump to meet the landowner's needs.
  - (c) Secure an estimate to complete the necessary work.

- (d) Using the Action Fund, pay all costs associated with the landowner claim, including the cost to complete the necessary work (less negotiated offsets), upon the landowner executing a release.

**E. Action for Ag Wells – Well Adjustment Unavailable**

- 1. Trigger: When the Model predicts NPI for an operational ag well outside the current and potential operating range of the well.
- 2. Actions:
  - (a) Jointly field verify static depth to groundwater levels within the well and compare to Model values.
  - (b) Supply equivalent water supply to the affected landowner from an alternate source at no greater cost to the affected landowner; or
  - (c) With the consent of the affected landowner, provide other acceptable mitigation; or
  - (d) Reduce or adjust pumping as necessary to prevent, avoid or eliminate the NPI. Use the Model(s) to identify the well or wells that may require reduction or adjustment in pumping. The Parties agree to share available Project water supplies in a manner such that the burden of reduced pumping shall be borne by the Parties in proportion to the Model(s) projection of their respective impacts.

**F. Action for Domestic Wells.**

- 1. Trigger: Emergency health and safety concerns exist because a domestic submersible pump production ceases or is likely to cease as a result of pumping by either or both of the Parties' Projects.
- 2. Actions:
  - (a) Jointly field verify if flow stoppage is due to groundwater level decline.
  - (b) Obtain joint right-of-entry permit and well data release from well owner.
  - (c) Collect pump manufacture data, the in-situ pump setting and the casing depth information.

- (d) If flow stoppage is due to causes unrelated to groundwater level decline (i.e., pump failure, casing degradation, etc.) repairs are the responsibility of the landowner.
- (e) If flow stoppage is due to groundwater level decline in the aquifer proximate to the impacted well, regardless of cause, offer to fund from the Action Fund one of the following, as determined by the Joint Operations Committee, if possible, in order to provide the least cost short and long term solution:
  - (1) Lower the domestic submersible pump bowl setting sufficient to restore and maintain service.
  - (2) Provide a one-time permanent connection to the nearest water service provider.
  - (3) Drill and equip a new domestic well. Joint Operating Committee to decide if the landowner should contribute based on betterment.
  - (4) If necessary, provide interim in-home water supplies until action (1), (2) or (3) above is completed.
- (f) Using the Action Fund, pay all costs associated with the landowner claim, including the cost to complete the necessary work (less negotiated offsets), upon the landowner executing a release.

**G. Action for Other Landowner Claims.**

- 1. Trigger: A landowner makes a claim of impact on his groundwater use (which could be due to the projects, adjacent landowners, or a combination)
- 2. Actions:
  - (a) Refer claim to the Joint Operations Committee to evaluate and respond to landowner claim.
  - (b) Process claim according to agreed upon dispute resolution process (see B.6., above) in the event the Joint Operations Committee does not agree on an appropriate response.



## H. Additional Actions and Miscellaneous.

1. Subject to H.3, this interim operations Plan will become effective on September 5, 2014.
2. The Joint Operations Committee will evaluate and, if appropriate, mitigate 2010 landowner claims according to the process set forth in this Plan, provided the claims have not been dismissed or are intended to be dismissed in the pending Pioneer Litigation.
3. Petitioners Rosedale and Buena Vista Water Storage District shall support and not object to this Plan in any and all of its filings and argument for the remedies hearing(s) in *Rosedale v. DWR* and *CDWA v. DWR*, currently set for September 5, 2014. The effectiveness of this Plan is conditioned on issuance of a remedy order by the Court pursuant to CEQA and Public Resources Code section 21168.9 that does not restrict KWB operations, while DWR is conducting further CEQA review of same, provided the operations are conducted subject to the Plan. This Plan shall be in effect until DWR's certification of its environmental document prepared in response to the Court's order in *Rosedale v. DWR* and *CDWA v. DWR*, and filing of its Return to Writ in such proceeding. The parties have negotiated a remedy order in the form of a peremptory writ which incorporates this Operations Plan and which will be jointly presented to the Court for signature. If the Court accepts the negotiated peremptory writ in the form presented and issues a judgment consistent with the same in both cases, then the Kern Water Bank Authority and its member entities waive any right to appeal or challenge both (i) the peremptory writ and (ii) the order on which it is based (i.e., March 5, 2014 decision in *Rosedale-Rio Bravo Water Storage District, et al. vs. Department of Water Resources, et al.*).
4. This interim Plan is not intended to and shall not establish any precedent for the supplemental environmental document DWR is required to prepare in *Rosedale v. DWR* and *CDWA v. DWR*, or its compliance with CEQA, including, but not limited to, with respect to the appropriate baseline(s), significance threshold(s), and what appropriate mitigation measure(s), if any, should apply following the term of this interim Plan. Nothing in this Plan is intended to act or be construed as a waiver of the parties respective rights to challenge any increase in facilities or operations of the other parties, either in the *Rosedale v. DWR* action (pursuant to the continuing jurisdiction of the Court), or in other legal proceedings, as appropriate.

5. While this Plan is in effect, KWBA may repair or replace existing facilities but shall not take any action that would increase or augment their ability to recover water beyond their existing capacity, as of the date of this Plan, to and including not increasing the horsepower of any well beyond that currently in place. KWBA shall provide Rosedale and Buena Vista a copy of energy statements demonstrating the horsepower of each well operational on the KWBA and provide access to Buena Vista and Rosedale to physically inspect each well. Additionally, the three new wells to be constructed by the KWBA as part of the IRWMP grant program shall be replacement wells with the KWBA to eliminate production from at least one well located within 1.5 miles of Stockdale Highway. Further, the three replacement wells shall be not be constructed within 1.5 miles of Stockdale Highway, and shall not be subject to the horsepower limitations provided above.
  
6. This agreement will not prejudice petitioners' (Rosedale and/or Buena Vista's) right to claim costs and reasonable attorneys' fees incurred in connection with the *Rosedale v. DWR* litigation. Nothing herein shall be construed as a waiver of any party's right to appeal from any order regarding the recovery of attorneys' fees.

APPROVED this \_\_\_ day of \_\_\_\_\_, 2014

KERN WATER BANK AUTHORITY

By \_\_\_\_\_

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT

By \_\_\_\_\_

BUENA VISTA WATER STORAGE DISTRICT

By \_\_\_\_\_