

**California Department of Fish and Game
Approval of Natural Community
Conservation Plan and Take Authorization
(1997)(CDFG Take Authorization)**

CALIFORNIA ENDANGERED SPECIES ACT
MANAGEMENT AUTHORIZATION

FOR IMPLEMENTATION OF
KERN WATER BANK
**HABITAT CONSERVATION PLAN/
NATURAL COMMUNITY CONSERVATION PLAN**
KERN WATER BANK AUTHORITY

SUMMARY

The Kern Water Bank Authority (hereinafter "**KWBA**") has requested a Management Authorization ("**MA**") pursuant to California Fish and Game Code Sections 2835 and 2081 for species covered under the KWBA's Kern Water Bank Habitat Conservation Plan/Natural Communities Conservation Plan, including the Kern Water Bank Conservation Bank Agreement ("**KWB HCP/NCCP**").

The Kern Water Bank ("**KWB**") project area is located in central Kern County, and encompasses approximately 19,900 acres. The primary objectives of the KWB HCP/NCCP are the storage of water in aquifers during times of surplus for later recovery during times of shortage, and to set aside large areas of the Kern Water Bank for threatened and endangered species, with a program to protect and enhance the habitat. Covered activities will include agriculture, water recharge and extraction, habitat management, and third-party actions within a defined area outside of the water bank, subject to California Department of Fish and Game ("**Department**") approval.

Portions of the plan area are known or potential habitat for one hundred and sixty-one (161) species of wildlife (including plants) designated as "**Covered Species**" in the KWB HCP/NCCP (Section III.A). Fourteen (14) of the Covered Species are presently listed as endangered or threatened species pursuant to the California Endangered Species Act, Fish and Game Code, Section 2050, et seq. ("**CESA**"). The "take" of listed species is prohibited unless authorized by the Department pursuant to Fish and Game Code Section 2081 or 2835.

The Department has found and determined that the KWB HCP/NCCP, as implemented by the IA and this MA, meets the requirements for a Natural Community Conservation Plan for purposes of the Natural Community Conservation Planning Act, Fish and Game Code, Section

2800, et seq., and specifically for purposes of Sections 2835. In addition, as specified below, the Department finds and determines that the KWB HCP/NCCP meets the requirements for a "management authorization" under Section 2081 of CESA. Pursuant to Section 2081, this MA authorizes the KWBA to "take" the Covered Species, subject to the terms and conditions of the KWB HCP/NCCP, the Kern Water Bank Natural Community Conservation Plan/Habitat Conservation Plan Implementing Agreement by and among the United States Fish and Wildlife Service, the California Department of Fish and Game and the Kern Water Bank Authority (the "IA"), and this MA. The "take" authorization provided by this MA extends to each of the Covered Species listed as threatened or endangered, and shall automatically extend to any such species listed as threatened or endangered, or accepted as a candidate for such listing, after the effective date of this MA.

PROJECT DESCRIPTION

PROJECT LOCATION

The Kern Water Bank is located in central Kern County, approximately 20 miles west of Bakersfield. Interstate Highway 5 and the Kern River bisect the approximately 19,900-acre property. The Master Permit/CESA MOU Area (see below) includes approximately 39 square miles of land in the San Joaquin Valley, in portions of Kern, Kings and Tulare Counties.

PROJECT DESCRIPTION

The KWB HCP/NCCP is intended to accomplish both water conservation and environmental objectives. The primary water conservation objective is the storage of water in aquifers during times of surplus for later recovery during times of shortage. The primary environmental objective is to set aside large areas of the Kern Water Bank for threatened and endangered species and to implement a program to protect and enhance the habitat. The basic elements of the Kern Water Bank project are planned to: 1) allow the economical development of water recharge and recovery facilities, 2) preserve compatible upland habitat and other sensitive areas of natural habitat and rare plants, 3) conserve species listed as threatened or endangered pursuant to CESA, 4) recreate intermittent wetland/rangeland habitat, 5) provide a conservation bank for third parties, and 6) permit farming within the Kern Water Bank.

Of the 19,900 acres that constitute the Kern Water Bank, 5,900 acres are proposed for basins for routine recharge activities and 481 acres will be used for permanent water banking facilities. Between the basins will be areas that will never be flooded. Some of these areas have existing populations of listed plants. These plants will be preserved in special areas totaling 960 acres. Other areas between basins totaling 5,592 acres will revert to habitat. Additionally, 530 acres will be preserved and managed for mitigation of DWR projects. Of the remaining land, 3,170 acres will be used for farming and 3,267 acres will be used as a conservation bank (to be

used as potential mitigation for activities by third parties within designated areas of the Southern San Joaquin Valley). Of the 3,267 acres in the conservation bank, KWBA may use up to 490 acres for commercial development, subject to additional requirements established in the KWB HCP/NCCP and IA.

A Master Permit/CESA MOU will provide a process to authorize the incidental take of listed species by qualified third persons, and in certain circumstances KWBA, for activities in specified areas of Kern County, the Allensworth area of Tulare County, and the Kettleman Hills area of Kings County, California (the "Master Permit Credit Area"). Third persons will have to enter into an agreement with the U. S. Fish and Wildlife Service ("Service") and the Department which sets out that person's mitigation obligations, including the number of off-site acres the person must acquire in order to obtain incidental take authority. The Service and the Department will have absolute discretion to determine whether a third party may satisfy its off-site mitigation obligations by acquiring Conservation Credits. The purpose of the Master Permit/CESA MOU is to encourage the use of the conservation bank (thereby insuring protection in perpetuity of bank lands) and to streamline the Service's permitting process for projects with minor impacts.

Adaptive management practices will be applied to all Kern Water Bank lands, with the intent of preserving and enhancing wildlife habitat. Recharge basins will be managed to avoid impacts to waterfowl and shorebirds, and will likely benefit these species. Designated sensitive habitat areas will be protected, and Conservation Bank and mitigation easement lands will be additionally managed to the benefit of the target species conserved there. Annual management plans and compliance reports will be reviewed by the Department and Service. Implementation of management measures is secured through several mechanisms; a non-wasting endowment is provided for Conservation Bank lands managed in perpetuity.

HABITAT DESCRIPTION

The Kern Water Bank includes a variety of naturally occurring and manmade biotic communities. These include: saltbush scrub, mesquite savannah, valley sacaton grassland, non-native grassland, agriculture, and freshwater emergent wetlands. The Master Permit Area includes these and related communities, such as alkali sink and cottonwood riparian forest.

EFFECTS ON SPECIES OF CONCERN

The 161 Covered Species will be subject to direct and indirect adverse impacts and take associated with the KWB and other public and private projects and activities covered by the KWB HCP/NCCP. An evaluation of impacts are described in the KWB HCP/NCCP, and the Environmental Assessment prepared by the U.S. Fish and Wildlife Service for issuance of the Section 10(a)(1)(B) Incidental Take Permit.

HABITAT MANAGEMENT LANDS

For the seventy-five (75) duration of the KWB HCP/NCCP the KWBA will protect and manage approximately 5,900 acres of recharge basins with associated wetland habitats, 960 acres of sensitive habitats, and 5,600 acres of compatible upland habitats, primarily non-native grassland and *Atriplex* scrub. The KWBA will protect and manage in perpetuity approximately 1,000 acres of mitigation lands, and up to approximately 3,200 acres of conservation banks lands.

SPECIFIC CONDITIONS REQUIRED

CONSERVATION PROGRAM AND MITIGATION MEASURES

1. All requirements, as detailed in the KWB HCP/NCCP shall be implemented by the KWBA, as specified in the IA.
2. The term of this MA shall commence on the date that the IA is executed and shall terminate 75 years from that date.

DISCLAIMER

Upon timely satisfaction of the conditions of this MA, the KWBA will have adequately mitigated impacts to Covered Species and achieved compliance with CESA with regard to the Kern Water Bank project. This MA does not constitute or imply compliance with, or entitlement to proceed with the project, under laws and regulations beyond the authority and jurisdiction of the Department. The KWBA has independent responsibility for compliance with any and all applicable laws and regulations.

DEPARTMENT FINDINGS

COVERED SPECIES

The Department finds and determines that the KWB HCP/NCCP, as implemented by the IA and this MA, meet the requirements for a take authorization pursuant to Fish and Game Code, Section 2081. In this regard, the Department finds, determines and certifies, as provided in Senate Bill 879, that under the terms and conditions of this MA:

- ◆ this MA authorizes only take that is incidental to otherwise lawful activity;
- ◆ if the KWB HCP/NCCP is fully implemented, the impacts of the take authorized under this MA will be minimized and fully mitigated impacts;

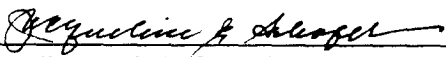
- ◆ the KWB HCP/NCCP and this MA prescribe minimization and mitigation measures that are proportional in extent to the impacts of the take authorized under this MA;
- ◆ the minimization and mitigation measures prescribed in the KWB HCP/NCCP and this MA evidence a clear nexus between the mitigation required and the expected adverse impacts to wildlife;
- ◆ the minimization and mitigation measures prescribed in the KWB HCP/NCCP and this MA maintain the KWBA's objectives to the greatest extent possible;
- ◆ all minimization and mitigation measures prescribed in the KWB HCP/NCCP and this MA are capable of successful implementation;
- ◆ KWBA has ensured adequate funding to implement the minimization and mitigation measures prescribed in the KWB HCP/NCCP and this MA and to monitor compliance with, and effectiveness of, the measures.

The facts in support of these findings are described in the KWB HCP/NCCP and related environmental review documents.

OTHER SPECIES

In the event that a species that is present within the Kern Water Bank and that is not a Covered Species is listed as endangered or threatened pursuant to CESA, or is accepted as a candidate for such listing, the Department shall consider, and if appropriate, expeditiously act to negotiate and execute, an MOU with the KWBA providing for the management of the species in order that the KWB HCP/NCCP may proceed in accordance with CESA.

In determining whether any further mitigation measures are required to amend this MA to include an additional species, the Department shall follow the process described in the KWB HCP/NCCP.



 Jacqueline E. Schafer, Director
 California Department of Fish & Game

Date: 10/2/97

