

Kern Water Bank: Myth and Reality

A recent lawsuit filed by the Center for Biological Diversity claims that the Kern Water Bank was a “ripoff” that benefited a few large farms in the Central Valley, to the detriment of the state of California. Numerous media outlets have reported on this lawsuit, reciting almost word for word from the CBD’s press release, despite the fact that the lawsuit has yet to be heard and none of the claims in the lawsuit have been substantiated by a court.

The following is the response by the Kern Water Bank Authority to the misinformation and erroneous reporting surrounding the Kern Water Bank and the lawsuit filed by CBD.

Myth: The Kern Water Bank was illegally taken from state taxpayers.

Reality: The Department of Water Resource (DWR) purchased the Kern Fan Element (KFE) lands in 1988 on behalf of more than two dozen State Water Project contractors who paid for the lands (not taxpayers). DWR eventually determined it could not feasibly develop a water bank on the lands. The lands were never transformed into a state water banking project – a functioning water bank did not exist until after the Kern Water Bank Authority, among other things, invested millions of dollars to construct necessary infrastructure, obtained the necessary permits and local approvals, etc.

Background: In 1988, the KFE lands were acquired by DWR on behalf of the State Water Project (SWP) contractors, which planned to develop a functioning water bank on the property. The State Water Project contractors paid all the costs of these efforts to develop a water bank on the property but little infrastructure work was ever done. Despite spending tens of millions of dollars and years of studies, testing and other efforts, DWR encountered many legal, institutional and environmental impediments to development of a water bank on the property. DWR ultimately concluded that development of water bank on the property by DWR as part of the SWP was not feasible. There is ample documentation that demonstrates the difficulties DWR encountered and its desire to cease moving forward in its development, as well as the desire of the State Water Contractors to abandon the project.

Myth: The Monterey Agreement was a secret deal where the state gave away the Kern Water Bank.

Reality: The Monterey Agreement was a set of principles agreed to by representatives from the State Water Contractors and DWR officials who were determined to solve some of California’s crucial water issues. The agreement was approved by public agencies in public meetings throughout the State.

Background: The well documented drought of the late 1980s and early 1990s was devastating to San Joaquin Valley farmers and prompted serious, mediated negotiations between the SWP Contractors and DWR. This led to the 1994 Monterey Agreement – Statement of Principles, an agreement that was reported on extensively by media all over California and the U.S. The Monterey Agreement resolved a number of longstanding issues between certain of the SWP Contractors and DWR, and included providing for the transfer of the KFE lands to designated agricultural contractors (e.g., Kern County Water Agency), as DWR was insistent that it no longer wanted involvement in the bank. Kern County water officials believed in the water bank concept, and were willing to take the substantial financial and environmental permitting risk to develop the property into a functioning water-banking facility, which

would become known as the Kern Water Bank project and the Kern Water Bank lands. All agreements to implement the Monterey Agreement, such as the Monterey Amendments, were approved by various public agencies throughout the State at public meetings held in accordance with the Brown Act.

Myth: Kern County received the Kern Water Bank as a gift from the state.

Reality: The KFE lands (not the Kern Water Bank) were transferred to the Kern County Water Agency, in exchange for retirement of State Water Project Table A entitlement – a high-priced commodity.

Background: The Monterey Agreement provided for the transfer of the KFE lands to the Kern County Water Agency (which later transferred the lands to the Kern Water Bank Authority (KWBA), the group formed to construct, manage and fund the water bank). The KWBA participants then transferred 45,000 acre feet of their SWP entitlement to Kern County Water Agency, which in turn transferred it to DWR for retirement in exchange for the property. This retired water presently would be worth approximately \$5000/acre-foot or over \$200 million.

The cost to develop the bank has been substantial and the KWBA participants continue to fund its operation, despite continued shortages of water for banking. Since the transfer, the Kern Water Bank Authority has conducted necessary environmental review under CEQA, obtained the required environmental permits, performed remediation, and invested approximately \$35 million in infrastructure and improvements, including wells, canals, pump stations, and pipelines, in addition to storing water for use in future years when available surface supplies are insufficient.

Myth: The Kern Water Bank was actually purchased by two large agri-business firms that now control the entire banking project.

Reality: The Kern Water Bank Authority owns the KWB lands and operates the Kern Water Bank project. The Authorities' members include two water districts, two water storage districts, a water agency, and a mutual water company. The Kern Water Bank has never been owned, operated or controlled by private entities.

Background: When the Kern Water Bank project was proposed, approximately eighteen agencies were offered the opportunity to participate in the project but only six decided to do so. Many were concerned with the high risk – financial, administrative, and environmental – that the development of the bank posed. Those agencies that decided to participate all became participants of the KWBA – and are located in Kern and Kings Counties. The participants in KWBA paid a high price for their interest in the Kern Water Bank banking program and assumed all risks involved in ownership of lands where a proposed water banking project had, at the time, not shown any success.

The Kern Water Bank is operated by the Kern Water Bank Authority, which is a separate public agency known as a Joint Powers Authority (JPA) which holds regular meetings open to the public. The JPA includes six member entities, including two water districts, two water storage districts, a water agency, and a mutual water company.

JPA Members

Dudley Ridge Water District

Kern County Water Agency on behalf of its Improvement District 4

Tejon-Castac Water District

Westside Mutual Water Company

Semitropic Water Storage District

Wheeler Ridge-Maricopa Water Storage District

The JPA is governed by a board of directors which oversee operation of the Kern Water Bank. A super-majority vote is required on all major decisions such that no two members can “control” the water bank. In reality, since its inception, virtually all actions by the Board of Directors have been approved by a unanimous vote.

Myth: The Kern Water Bank benefits just a few large farms that are using up all the water.

Reality: There are hundreds of farmers who benefit from the Kern Water Bank as well as urban residents of Bakersfield.

Background: The bank is operated for the benefit of more than 400 farmers with holdings in the service territories of the six KWB participating entities. A wide variety of crops are grown on these farms, including almonds, grapes, citrus, alfalfa, and pistachios. Additionally, tens of thousands of residential customers in the City of Bakersfield and County of Kern benefit from the banking program.

Myth: The Kern Water Bank should be used for the benefit of the State.

Reality: The Kern Water Bank does benefit the State of California.

Background: When water supplies are shored up by the banking program at Kern Water Bank, that leaves more flexibility in other water supplies for other state users. Adding an environmentally sound banking program to the mix of water storage facilities in California serves to increase the ability for all state water users to obtain water. The bank stores only excess water so no water is ever “taken” from some other user in the state.

Additionally, the immense wildlife habitat and conservation efforts on the Kern Water Bank benefit the entire state by providing threatened and endangered species a place to populate. Without the Kern Water Bank, valuable habitat would not exist and the many species of birds, mammals, reptiles, and plants present on the lands would not be thriving, for the benefit of all Californians. The Kern Water Bank is a tremendous benefit to the spirit of the state and federal endangered species legislation, and is being financed by the six participating entities.