



APPROVED  
BY THE CITY COUNCIL  
1.13  
JUN 10 1997  
OFFICE OF THE  
CITY CLERK

**CITY OF SACRAMENTO  
CALIFORNIA**

OFFICE OF THE CITY MANAGER  
OFFICE OF SPECIAL PROJECTS

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June 4, 1997

City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT: RESOLUTION SUPPORTING SENATE BILL 879**

**LOCATION AND COUNCIL DISTRICT: North and South Natomas - District 1**

**STAFF RECOMMENDATION:** Staff recommends that the City Council, by Resolution, support enactment of Senate Bill 879.

**CONTACT PERSON:** Terence W. Moore, Special Projects Manager, 264-5530

**FOR COUNCIL MEETING OF:** June 10, 1997

**SUMMARY:**

Senate Bill 879 will restore the Department of Fish and Game's authority to issue incidental take permits. The Department recently lost such authority as a result of a Court of Appeal case. Obtaining incidental take protection for public/private construction projects within the Natomas Basin is vital to minimize legal risks relative to the California Endangered Species Act.

**COMMITTEE/COMMISSION ACTION:** None

**BACKGROUND:**

Since 1989, the Department of Fish and Game has entered into approximately 160 Memorandums of Understanding (permits) allowing for incidental take of threatened and/or endangered species. The Department was about to enter into similar MOU's for the following City projects in North and South Natomas:

- Natomas Basin Habitat Conservation Plan
- Willow Creek Assessment District
- North Natomas Comprehensive Drainage Plan, Mello-Roos

Last month, the Court of Appeal held that the Department lacked authority to issue permits (under Section 2081) that allow incidental take. Under the California Endangered Species Act (CESA), it is a misdemeanor to take a threatened or endangered species. Thus, lack of incidental take protection increases the risk of violation of the CESA.

The Department is asking the California Supreme Court to review the Court of Appeal decision. However, the Court of Appeal, in its decision, indicated that the solution to the issue was in the Legislature, not the courts.

Senate Bill 879, introduced by Pat Johnson, and supported by the Planning and Conservation League and the Farm Bureau, restores the Department's authority under specified conditions. If enacted, this bill will allow the Department to provide incidental take protection to the above listed City projects.

If the Bill is not enacted and if the Supreme Court refuses to review the Court of Appeal decision, staff will report back on the impacts to the above and other City projects.

**FINANCIAL CONSIDERATIONS:** None

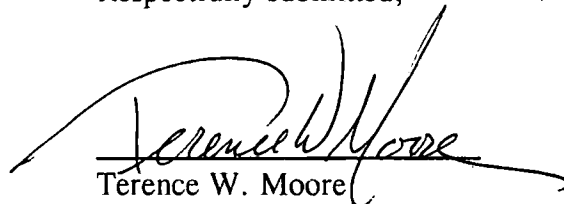
**ENVIRONMENTAL CONSIDERATIONS:** None

**POLICY CONSIDERATIONS:**

Support of SB 879 is consistent with the provisions of Section 7.3 Environmental Protection, of the City Council's Organization and Procedures Manual on Legislative Matters, March 1977.

**MBE/WBE:** Not applicable

Respectfully submitted,



Terence W. Moore  
Special Projects Manager

Recommendation Approved:

*for*   
WILLIAM H. EDGAR  
City Manager

**RESOLUTION NO.**

**97-314**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**APPROVED**  
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**A RESOLUTION SUPPORTING SENATE BILL 879  
AUTHORIZING THE CALIFORNIA DEPARTMENT OF FISH AND GAME  
UNDER SPECIFIED CONDITIONS TO ISSUE INCIDENTAL TAKE PERMITS**

**WHEREAS,**

- A. Under the existing California Endangered Species Act it is a misdemeanor to take any threatened or endangered species as determined by the Fish and Game Commission; and
- B. The Department of Fish and Game and the City of Sacramento assumed the Department had authority to issue an incidental take permit pursuant to Section 2081 of the Fish and Game Code; and
- C. The Court of Appeal decision in "Planning and Conservation League v Department of Fish and Game" stated that the Department does not have such incidental take permit authority; and
- D. The inability to achieve incidental take protection holds the potential that legal risks may stifle long-planned development activities within the Natomas Basin area of the City; and
- E. Senate Bill 879 will authorize the Department to issue an incidental take permit, under special conditions, pursuant to a new Section 2081.4 of said Fish and Game Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
SACRAMENTO AS FOLLOWS:**

- 1. The City supports enactment of Senate Bill 879.
- 2. Authorizes staff to write letters, testify at hearings and perform other actions in support of Senate Bill 879.

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DATE ADOPTED: \_\_\_\_\_

3. The City further supports urgency status for said Bill so that it may become effective upon approval by the Governor.

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MAYOR

ATTEST:

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CITY CLERK

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