

**EXEMPT FROM FILING FEE  
[GOV. CODE § 6103]**

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18 Attorneys for Defendant and Respondent  
19 CITY OF BAKERSFIELD

20  
21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF KERN  
23 METROPOLITAN

24 BRING BACK THE KERN, WATER AUDIT  
25 CALIFORNIA, KERN RIVER PARKWAY  
26 FOUNDATION, KERN AUDUBON SOCIETY,  
27 SIERRA CLUB, and CENTER FOR BIOLOGICAL  
28 DIVERSITY,

Plaintiffs and Petitioners,

v.

CITY OF BAKERSFIELD, and DOES 1 - 500,

Defendants and Respondents,

BUENA VISTA WATER STORAGE DISTRICT,  
KERN DELTA WATER DISTRICT, NORTH  
KERN WATER STORAGE DISTRICT,  
ROSEDALE-RIO BRAVO WATER STORAGE  
DISTRICT, KERN COUNTY WATER AGENCY  
and DOES 501 – 999,

Real Parties in Interest.

Case No. BCV-22-103220-GAP

Assigned For All Purposes To:  
Judge: Honorable Gregory A. Pulskamp  
Dept.: 8

**DECLARATION OF COLIN L.  
PEARCE IN SUPPORT OF CITY OF  
BAKERSFIELD'S RESPONSE TO  
MOTIONS FOR RECONSIDERATION**

Date: December 21, 2023  
Time: 9:00 a.m.  
Dept: 8  
Judge: Hon. Gregory A. Pulskamp

Complaint Filed: November 30, 2022

1 I, Colin L. Pearce, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of  
3 California. I am a partner with the law firm of Duane Morris LLP, counsel of record for Defendant  
4 and Respondent City of Bakersfield (“City” or “Bakersfield”) in this action.

5 2. I have personal knowledge of the matters stated herein, and, if called upon, could  
6 competently testify thereto.

7 3. On October 30, 2023 the Court issued a Ruling (“Ruling”) granting the Motion for  
8 Preliminary Injunction of Plaintiffs and Petitioners Bring Back the Kern, Water Audit California,  
9 Kern River Parkway Foundation, Kern Audubon Society, Sierra Club, and Center for Biological  
10 Diversity (collectively, “Plaintiffs”).

11 4. The Ruling directed the City and Plaintiffs to “engage in good faith consultation to  
12 establish flow rates necessary for compliance with the [Ruling].” (Ruling, p. 18.) The Court also  
13 stated that the Ruling, and the Preliminary Injunction, would “become effective immediately upon  
14 the posting of a bond,” and the Court further noted that Plaintiffs and the City should “quickly  
15 develop flow standards in good faith compliance with the law.” (Ruling, pp. 16, 19.)

16 5. Based on the Court’s Ruling, on behalf of the City, I almost immediately thereafter  
17 contacted Adam Keats, one of the attorneys for the Plaintiffs, to discuss the implementation of the  
18 Ruling on the Motion for Preliminary Injunction. In the course of those discussions, I asked Mr.  
19 Keats if Plaintiffs had any thoughts or a proposal for initial fish flows to implement the Ruling, since  
20 Plaintiffs had retained experts regarding fish flows and submitted evidence and testimony from those  
21 experts in support of their Motion for Preliminary Injunction.

22 6. On Friday, November 3, 2023, William McKinnon, another attorney for Plaintiffs,  
23 sent an email to me “in response to [my] request to Adam Keats for a recommendation of an initial  
24 bypass flow regime.” (A true and correct copy of Mr. McKinnon’s email to me on November 3,  
25 2023 is attached hereto as Exhibit A.) In the email, Mr. McKinnon stated that as “a result of  
26 consultation with members of our advisory committee,” and based on the “declaration of Dr. Ted  
27 Grantham submitted in support of the motion for preliminary injunction,” Plaintiffs maintained that  
28 “40% of the total flow, is our best estimate of a starting place in the absence of site specific data.”

1           7.       Following consultation with representatives of the City, and direction from the  
2 Bakersfield City Council, the City thereafter agreed to Plaintiffs’ proposal for an interim 40% “flow  
3 regime” for fish flows to implement the Preliminary Injunction, provided that the City’s 130,000  
4 acre-feet annual demand for water, converted to a daily need of 180 cubic feet per second (cfs), was  
5 not adversely impacted, as provided in the Ruling.

6           8.       Despite the City’s prior reservations and concerns with a 40% flow allocation for fish  
7 flows, the City recognized the clear direction of the Court to quickly and efficiently reach an  
8 agreement with Plaintiffs on an appropriate initial, temporary “flow regime” to comply with the  
9 Ruling. The immediate application of the Preliminary Injunction and the requirement to quickly  
10 develop and agree on fish flows did not provide any time or opportunity for scientific studies. In the  
11 absence of any other information, the City was therefore willing to agree to Dr. Grantham’s flow rate  
12 as an interim rate, pending further evaluation, adjustment, studies, evidence and consultation, in  
13 order to comply with the Court’s directive.

14           9.       Although the Real Parties in Interest (“RPIs”) have objected to the 40% flow rate in  
15 their Motions for Reconsideration, the RPIs did not and still have not proposed any alternate flow  
16 rate that the City and Plaintiffs could have reasonably considered.

17           10.      During the discussions with the Plaintiffs, it became apparent that the City would  
18 have to take water for its 130,000 acre-foot annual demand in advance of water that the City would  
19 otherwise divert for agricultural uses for the North Kern Water Storage District (“North Kern”)  
20 through the City’s long established appropriative water rights pursuant to a 1952 water supply  
21 agreement, and in advance of water that would be diverted by or on behalf of other RPIs through  
22 their appropriative water rights for agricultural uses.

23           11.      If the City had decided to distribute water remaining after the deduction of water  
24 supplies for fish flows strictly through the regular, historic priority of water rights, the City’s  
25 supplies would be significantly limited and reduced, and the City would not have enough water to  
26 satisfy its domestic demands. That result would be directly contrary to the express language and  
27 intent of the Ruling, which recognized that the City’s supplies, and ability to satisfy its annual  
28 demand for water, should not be limited or reduced by the Preliminary Injunction.

1           12.     It was therefore necessary to prioritize the City’s demands and to allocate water  
2 sufficient to satisfy the City’s demands before distribution of any water to lower priority agricultural  
3 uses and various agricultural water supply agreements. Absent the so called carve-out, most of the  
4 water remaining after allocation of water for fish flows would have otherwise been delivered to the  
5 RPIs for agricultural uses and not to the City for its domestic uses, in direct contravention of the  
6 Ruling.

7           13.     The City did not create a new water right for its domestic needs, but is diverting water  
8 pursuant to the appropriative Kern River water rights it acquired in 1976. The City and the Kern  
9 Delta Water District (“Kern Delta”) own and hold all of the appropriative water rights within the  
10 “First Point service area” of the Kern River. North Kern typically receives quantities of water  
11 through the City’s rights pursuant to the 1952 water supply agreement, but based on the Ruling, the  
12 City has curtailed deliveries of that contractual water supply to North Kern and is instead diverting  
13 water through its own rights for its own domestic needs, instead of delivering the water to North  
14 Kern pursuant to contract, and in advance of Kern Delta’s agricultural diversions.

15           14.     Although the City initially prepared and gave notice of a proposed implementation  
16 order to memorialize the 40% flow regime, the City and Plaintiffs were thereafter able to agree on  
17 the terms and conditions of the initial flow regime, and the City and Plaintiffs signed and submitted a  
18 Joint Stipulation for Implementation of Preliminary Injunction and Proposed Order to the Court.

19           15.     On November 14, 2023 the Court signed the Order for Implementation of the  
20 Preliminary Injunction.

21           16.     On November 15, 2023, I gave notice of the Order by letter to the Kern River  
22 Watermaster, the individual who acts as a representative of all of the “Kern River Interests,” the  
23 entities that divert and use Kern River water, and who acts as a liaison between the Kern River  
24 Interests and the United States Army Corps of Engineers, the owner and operator of Isabella Dam  
25 and Reservoir. I also served the letter to the Watermaster on counsel for all of the RPIs, and I  
26 provided the Watermaster with a copy of the Implementation Order, which included and  
27 incorporated the Ruling on the Motion for Preliminary Injunction. (A true and correct copy of my  
28

1 November 15, 2023 letter to the Watermaster, without the attachment of the Implementation Order,  
2 is attached hereto as Exhibit B.)

3 17. City staff started to impose the “flow regime” memorialized in the Implementation  
4 Order on November 17, 2023, and every day thereafter City staff have calculated and allowed 40%  
5 of the available water at the “First Point” of measurement on the Kern River to remain in the river  
6 for fish flows.

7 18. Following allocation of water for fish flows and to satisfy the City’s domestic needs,  
8 the City has continued to allocate water and fill water orders with any water that is available for  
9 diversion on a daily basis through the daily diversion sheets. The City also separately records and  
10 maintains an accounting of entitlements for the Kern River water rights and agreements that would  
11 have been available, based on historical river allocation practices, but for the Ruling and Orders.

12 19. After the Court signed the Implementation Order, Bakersfield Water Resources  
13 Department staff began to collect and compile detailed flow data for the Kern River, including at  
14 each weir in the river, and related information. City staff also started to take daily aerial  
15 photographs at each weir using drones to show the actual river conditions at each weir.

16 20. On November 29, 2023, I gave notice to counsel for Plaintiffs and the RPIs that the  
17 City was making all of the information it had developed and compiled since implementation of the  
18 new flow regime available to the parties in the litigation and to the public.

19 21. I informed counsel that the publicly available data at the new file share site set up by  
20 the City includes the following information: (a) Interim Flow Regime Distribution, which records  
21 the amount of water available on the Kern River, (b) Daily Kern River Operations, a document that  
22 records daily operations conducted on the Kern River, (c) Flow Data, reflecting daily flow  
23 measurements at each weir collected by City personnel, and (d) Daily Photographs, taken by drone  
24 each day and showing each weir from above, from downstream, and from upstream daily. (A true  
25 and correct copy of my email to all counsel giving notice of the availability of this information is  
26 attached hereto as Exhibit C.)

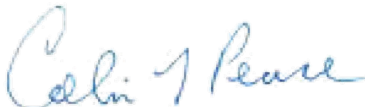
27 22. I provided counsel with a link to the information in the message, although I later sent  
28 a follow up message with an alternate link to the file share site since some attorneys had problems

1 accessing the site through the original link. For the Court's reference, the link to the information is:  
2 <https://repo.bakersfieldcity.us/url/pteveybk2yrqvs5>.

3 23. For the convenience of the Court we also attach hereto as Exhibit D a true and correct  
4 copy of all of the documents and photographs available on the file share site for a representative day  
5 after the imposition of the flow regime, November 25, 2023.

6 24. The file share site contains all of the referenced daily information for each day  
7 starting on November 17, 2023, the first day the City imposed the new flow regime. The City also  
8 updates and adds information to the site on a daily basis.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct. Executed on December 8, 2023, in San Francisco, California.

11 

12 \_\_\_\_\_  
13 Colin L. Pearce

# **EXHIBIT A**

---

**From:** Water Audit California <[general@waterauditca.org](mailto:general@waterauditca.org)>

**Sent:** Friday, November 3, 2023 7:04 PM

**To:** Pearce, Colin L. <[CLPearce@duanemorris.com](mailto:CLPearce@duanemorris.com)>; Ansley, Jolie-Anne S. <[JSAnsley@duanemorris.com](mailto:JSAnsley@duanemorris.com)>; Barton, Ashley <[ABarton@duanemorris.com](mailto:ABarton@duanemorris.com)>; [vgennaro@bakersfieldcity.us](mailto:vgennaro@bakersfieldcity.us)

**Cc:** Adam Keats <[adam@keatslaw.org](mailto:adam@keatslaw.org)>; Valerie Stephan <[vstephan@waterauditca.org](mailto:vstephan@waterauditca.org)>

**Subject:** Initial bypass flow regime

Counsel

I am replying in response to your request to Adam Keats for a recommendation of an initial bypass flow regime. The following is a result of consultation with members of our advisory committee. The declaration of Dr. Ted Grantham submitted in support of the motion for preliminary injunction, i.e. 40% of the total flow, is our best estimate of a starting place in the absence of site specific data.

We direct your attention to the California Environmental Flows Framework, a protocol that is intended for use in this situation. You will note that the first CEFF steps are directed to determination of environmental needs, not calculation of what the divertor considers surplus. Determination of the annual bypass volume is the result of a "sufficiency" inquiry, not the first step.

We would be open to considering a different regime to that initially proposed if the City or Real Parties has monitoring and measuring that would indicate the relationship between the flow rate and the water depth and temperature; historical air and water temperature monitoring; and a survey of the fishes resident in the subject reaches. If such information is available, we request that it be provided immediately. This data is critical to reasoned calculation.

To reiterate the obvious, proper scientific determination of a sufficient bypass regime cannot be made in the absence of sufficient data. The development of a flow/water depth rating curve with associated WQ characteristics for each of the downstream reaches is a step that must be completed as soon as possible. We are open to negotiating the protocol for that inquiry. In the absence of adequate pre-existing data, determination of a reasonable flow regime may require testing, which obviously should not be delayed.

Early next week, as a courtesy, we will identify consultants that are qualified to advise the City during the CEFF process. If the City wishes consideration of an alternative protocol, please identify it as soon as possible to allow review.

Our experts stand ready to assist.

Respectfully

William McKinnon  
General Counsel



Water Audit California

**WATER AUDIT CALIFORNIA** - *A California Public Benefit Corporation*  
952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

# **EXHIBIT B**

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LAKE TAHOE  
MYANMAR

ALLIANCES IN MEXICO

November 15, 2023

**VIA EMAIL** [achianello@krwatermaster.org](mailto:achianello@krwatermaster.org)

Art Chianello  
Kern River Watermaster  
501 Taft Highway  
Bakersfield, CA 93307

**Re: Notice of Implementation of Interim Flow Regime on the Kern River**

Dear Art:

On October 30, 2023, Kern County Superior Court Judge Gregory Pulskamp granted a motion for preliminary injunction in *Bring Back the Kern, et al v. City of Bakersfield* prohibiting the City from operating the Kern River weirs in a manner that reduces Kern River flows below the volume sufficient to keep fish downstream of said weirs in good condition. After engaging in “good faith consultation” with Plaintiffs, as required by the Court’s ruling, an Interim Flow Regime was established (the “IFR”), and memorialized in a subsequent stipulation and order for implementation of the ruling on the motion for preliminary injunction. A copy of the most recent order establishing the IFR, and which attaches the Court’s original ruling and order, is attached hereto.

The City will endeavor to do its best to continue to operate the Kern River facilities, and to keep records on the Kern River, in the same manner as it has done since its 1976 purchase of Kern River water rights and facilities. The Court’s ruling and the preliminary implementation of the preliminary injunction through the IFR will, however, necessitate substantial changes to the City’s operation of the Kern River. We wanted you, as Watermaster, to be aware of these changes so that you, and all other Kern River Interests, can also make appropriate adjustments and changes, as necessary.

At the present time, and subject to later adjustment and refinement, to comply with the injunction, forty percent of the available flow of Kern River water will be allocated to and left in the Kern River for “fish flows.” Pursuant to the Court’s ruling, which states that the grant of the preliminary injunction should not reduce or impact the City’s demand and need for 130,000 acre-

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Art Chianello  
November 15, 2023  
Page 2

feet of water per year, the City will now divert, allocate and utilize Kern River water for its domestic needs in advance of all other Kern River water rights and contractual obligations.

The attached order includes the following example to describe how the City will operate the river pursuant to the current IFR, and the Court's orders:

By way of example, using the average annual Kern River flow as stated in the Ruling on page 14 of 726,000 acre-feet per year, which converts to approximately 1,000 cfs average daily flow, Bakersfield will multiply that amount by 40% to arrive at 400 cfs to be left in the river for interim fish flows. Bakersfield will allocate 180 cfs of the 1000 cfs flow for the City's demands, leaving a balance of 820 cfs. 400 cfs will be left in the river for fish flows, and the remaining 420 cfs of flow (1,000 cfs minus 180 cfs and 400 cfs) would be available for diversion by the Real Parties in Interest.

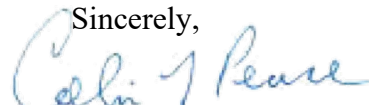
As indicated through this example, the City will continue to allocate water and fill water orders on behalf of the Kern River Interests with any water that is available for diversion on a daily basis through the daily diversions sheets, which includes the Shaw Decree hierarchy and order of rights, after allocation of water for the City's needs and fish flows. The City will also separately record and maintain an accounting of entitlements for the Kern River water rights and agreements that would have been available, based on historical river allocation practice, but for the order on the motion for preliminary injunction.

We point out that the Court imposed the IFR on an interim basis, subject to later adjustment and modification. The Court also granted a "preliminary" injunction, and the injunction is only in place until a final resolution of the *Bring Back the Kern* case, settlement, reversal on appeal, or further order of the Court.

We understand these operational changes are significant, and may result in considerable questions, uncertainties and concerns. The City is doing its best to comply with the Court's orders. We are closely monitoring the river and the new IFR and hope to continue to work with you to protect the Kern River and the Kern River water supplies enjoyed by all residents of Kern County.

If you have any questions regarding these matters, please give me a call.

Sincerely,



Colin L. Pearce

CLP:bah  
Enclosure  
cc: All counsel-See attached service list

**SERVICE LIST**

<p>Adam Keats, Esq.  <b>Law Office of Adam Keats</b>                  303 Sacramento Street, 2<sup>nd</sup> Floor                  San Francisco CA 94111</p>	<p>Attorneys for Plaintiffs                  BRING BACK THE KERN, KERN RIVER                  PARKWAY FOUNDATION, KERN                  AUDUBON SOCIETY, SIERRA CLUB, and                  CENTER FOR BIOLOGICAL DIVERSITY</p> <p>TEL: (415) 964-0070                  EMAIL: adam@keatslaw.org</p>
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<p>Isaac St. Lawrence, Esq.                  James A. Worth, Esq.  <b>McMurtrey, Hartsock, Work &amp; St.                  Lawrence</b>                  2001 22nd Street, Ste. 100                  Bakersfield, CA 93301</p>	<p>Attorneys for Real Party in Interest                  BUENA VISTA WATER STORAGE                  DISTRICT</p> <p>TEL: (661) 322-4417 / FAX: (661) 322-8123                  EMAIL: isaac@mhwslegal.com                  jim@mhwslegal.com</p>
<p>Robert E. Donlan, Esq.                  Craig A. Carnes, Jr., Esq.                  Kevin W. Bursey, Esq.  <b>Ellison, Schneider, Harris &amp; Donlan</b>                  2600 Capitol Avenue, Suite 400                  Sacramento, CA 95816</p>	<p>Attorneys for Real Party in Interest                  KERN DELTA WATER DISTRICT</p> <p>TEL: (916) 447-2166                  EMAIL: red@eslawfirm.com                  cac@eslawfirm.com                  kbursey@eslawfirm.com</p>
<p>Richard Iger, Esq.  <b>General Counsel, Kern Delta Water District</b>                  501 Taft Highway                  Bakersfield, CA 93307</p>	<p>Attorney for Real Party in Interest                  KERN DELTA WATER DISTRICT</p> <p>TEL: (661) 834-4656                  EMAIL: richard@kerndelta.org</p>

Art Chianello  
November 15, 2023  
Page 4

<p>Scott K. Kuney, Esq. Brett A. Stroud, Esq. <b>The Law Office of Young &amp; Wooldridge</b> 1800 30th Street, Fourth Floor Bakersfield CA 93301</p>	<p>Attorneys for Real Party in Interest NORTH KERN WATER STORAGE DISTRICT  TEL: (661) 327-9661 / FAX: (661) 327-0720 EMAIL: skuney@youngwooldridge.com bstroud@youngwooldridge.com <b>cc:</b> kmoen@youngwooldridge.com</p>
<p>Dan N. Raytis, Esq. Daniel M. Root, Esq. <b>Belden Blaine Raytis LLP</b> 5016 California Avenue, Suite 3 Bakersfield CA 93309</p>	<p>Attorneys for Real Party in Interest ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT  TEL: (661) 864-7826 / FAX: (661) 878-9797 EMAIL: dan@bbr.law droot@bbr.law</p>
<p>Amelia T. Minaberrigarai, Esq. General Counsel <b>Kern County Water Agency</b> 3200 Rio Mirada Drive Bakersfield CA 93308</p>	<p>Attorneys for Real Party in Interest KERN COUNTY WATER AGENCY  TEL: (661) 634-1400 EMAIL: ameliam@kcwa.com</p>
<p>Nicholas A. Jacobs, Esq. Michelle E. Chester, Esq. <b>Somach Simmons &amp; Dunn</b> 500 Capitol Mall Suite 1000, Sacramento, CA 95814</p>	<p>Attorneys for Real Party in Interest KERN COUNTY WATER AGENCY  TEL: (916) 446-7979 / FAX: (916) 446-8199 EMAIL: njacobs@somachlaw.com mchester@somachlaw.com</p>

# **EXHIBIT C**

---

**From:** Pearce, Colin L.

**Sent:** Wednesday, November 29, 2023 4:59 PM

**To:** [adam@keatslaw.org](mailto:adam@keatslaw.org); [legal@waterauditca.org](mailto:legal@waterauditca.org); [Linda.asc@sbcglobal.net](mailto:Linda.asc@sbcglobal.net); [vstephan@waterauditca.org](mailto:vstephan@waterauditca.org); Ansley, Jolie-Anne S. <[JSAnsley@duanemorris.com](mailto:JSAnsley@duanemorris.com)>; Barton, Ashley <[ABarton@duanemorris.com](mailto:ABarton@duanemorris.com)>; [vgennaro@bakersfieldcity.us](mailto:vgennaro@bakersfieldcity.us); Herrera, Blanca A <[BAHerrera@duanemorris.com](mailto:BAHerrera@duanemorris.com)>; Dan Raytis <[dan@bbr.law](mailto:dan@bbr.law)>; [droot@bbrlaw.com](mailto:droot@bbrlaw.com); Amelia Thomas Minaberrigarai <[ameliam@kcwa.com](mailto:ameliam@kcwa.com)>; Nick Jacobs <[njacobs@somachlaw.com](mailto:njacobs@somachlaw.com)>; Michelle Chester <[mchester@somachlaw.com](mailto:mchester@somachlaw.com)>; [pmacpherson@somachlaw.com](mailto:pmacpherson@somachlaw.com)

**Cc:** Brett Stroud <[bstroud@youngwooldridge.com](mailto:bstroud@youngwooldridge.com)>; Scott Kuney <[skuney@youngwooldridge.com](mailto:skuney@youngwooldridge.com)>; Alan Doud <[adoud@youngwooldridge.com](mailto:adoud@youngwooldridge.com)>; Conor O'Brien <[cobrien@youngwooldridge.com](mailto:cobrien@youngwooldridge.com)>; Isaac St. Lawrence <[isaac@mhwslegal.com](mailto:isaac@mhwslegal.com)>; [jim@mhwslegal.com](mailto:jim@mhwslegal.com); [lupe@mhwslegal.com](mailto:lupe@mhwslegal.com); Rob Donlan <[red@eslawfirm.com](mailto:red@eslawfirm.com)>; Craig Carnes <[cac@eslawfirm.com](mailto:cac@eslawfirm.com)>; [kbursey@eslawfirm.com](mailto:kbursey@eslawfirm.com); Richard Iger <[richard@kerndelta.org](mailto:richard@kerndelta.org)>; Kristen Moen <[kmoen@youngwooldridge.com](mailto:kmoen@youngwooldridge.com)>; Matthew Collom <[mcollom@bakersfieldcity.us](mailto:mcollom@bakersfieldcity.us)>

**Subject:** Bring Back the Kern, et al. v. City of Bakersfield, et al. - BCV-22-103220: Notice of Shared Information

The City of Bakersfield gives notice to Plaintiffs and Real Parties in Interest in the *Bring Back the Kern* litigation that it is now sharing certain Kern River data.

This data includes:

(1) *Interim Flow Regime Distribution*

This document records the City's calculation as to how much water is available on the Kern River. Most of the Real Parties in Interest are familiar with this document.

(2) *Daily Kern River Operations*

This document records daily operations conducted on the Kern River. Again, most of the Real Parties in Interest will be familiar with this document.

(3) *Flow Data*

Every afternoon, City Water Resources personnel collect certain measurements at each weir.

(4) *Daily Photographs*

Each weir is photographed via drone. Each weir is photographed from above, from downstream, and from upstream daily.

This data is collected over the course of one and half (1 ½) days. As a consequence, the most recent data shared will always be from the day prior. For example, the most recent data available as of today is from November 28, 2023.

The data described above can be accessed by following the below link, and is also available to the public:



<http://repo.bakersfieldcity.us/url/ptevevybk2yrqvs5>

The City intends to host an informal meeting in December/January where Plaintiffs and Real Parties in Interest can ask questions of or provide comments to the City's Water Resources Staff.

However, at this time, any questions regarding the above data should be directed to me, as Bakersfield's outside counsel in this action.

Thanks, Colin.

**Duane Morris**  
www.duanemorris.com

**Colin L. Pearce**  
Partner

Duane Morris LLP  
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# **EXHIBIT D**

**DAILY KERN RIVER OPERATIONS  
INTERIM FLOW REGIME  
Saturday, November 25, 2023**

*Units in CFS*

Pre-project Mean (3-day mean)	635
Accretions	-50
<b>Total Available Water</b>	<b>585</b>
City of Bakersfield Domestic (per Court Order)	180
<b><i>Fish Flow Requirement (40% of Total Available Water)</i></b>	<b>234</b>
Available Water for Diversion	171

**KERN RIVER ENTITLEMENT DISTRIBUTION**

Kern Island	57
Castro	5
KCC&W Co.	15
South Fork	10
Buena Vista	-
James	84
Anderson	0

**TOTAL DISTRIBUTION**

City of Bakersfield Domestic (per Court Order)	180
Fish Flow Requirement (per Court Order)	234
Kern Delta Water District	57
City of Bakersfield	30
North Kern Water Storage District	84

Measured by: Omar Flores

Date of Measurements: Saturday, November 25, 2023

### Interim Flow Regime - Daily Weir Measurements

	Time	Staff Gauge	CFS	Comments
<i>Beardsley River Weir</i>	15:30	5.32 ft	504	
<i>Rocky Point Weir</i>	14:50	3.70 ft	486	
<i>Calloway River Weir</i>	15:20	4.01 ft	356	
<i>River Canal Back up River Weir</i>	15:50	7.87 ft	238	Measurement is not accurate due to structural damage to the weir.
<i>Bellevue Weir</i>	n/a	n/a	n/a	Unable to measure weir.
<i>McClung Weir</i>	16:30	5.75 ft	30	155 cfs was diverted to 2800 Acres for City domestic use.
<i>Diversion Weir (2nd Point)</i>	16:55	n/a	12	Flow passing 2nd Point

CFS (cubic feet per second )

CHANGE IN OUTFLOW

-10 @ 1430

KERN RIVER OPERATIONS

SATURDAY NOVEMBER 25 2023

Inflow to Isabella 590 Isabella Storage 208089

All flows and diversions are preliminary and subject to change

830 ISABELLA OUTFLOW

- 487 Accretions
- + 11 Rio Bravo Well Inflow
- 11 NETP
- = 771 FIRST POINT OF MEASUREMENT (234 FISH FLOW)
- 227 Beardsley Canal
- 1 Station "A"
- + 7 Bidart Wells
- 7 KRC&I
- + 7 OMWD Wells
- 7 Cawelo WD
- 220 North Kern WSD

- + 7 1 Ditch
- + 7 4 Ditch 7 NWTP
- + 7 5 Ditch
- + 7 Bidart Pumps
- + 7 Total

- 11 Computed Losses
- 11 Carrier Headgate
- = 533 ROCKY POINT WEIR
- + 11 River from Waste Gate

- + 59 River from Carrier
- 59 Calloway Canal
- 2 Losses 59 ID4
- 55 HCG TP 59 City
- 2 99 Weir 59 NKWSD
- 20 Calloway Pond Losses
- 89 River to Carrier
- = 365 CALLOWAY RIVER WEIR

- + 40 CVC Turnout #4 to River
- + 40 CVC Turnout #3 to River 40 CVC to Truxtun Lake
- + 40 Friant-Kern Canal to River
- + 40 River from Truxtun Lakes

- 85 Calloway Weir to River Canal Weir Losses
- 85 River to River Canal
- = 280 RIVER CANAL WEIR
- + 40 CVC Turnout #2 to River
- + 40 River from Pioneer Turnout 40 CVC to AERA Park
- 3 AERA Park Turnout
- 3 Rosedale-Rio Bravo WSD Canal
- 3 Pioneer Canal
- 42 Berrenda Mesa Turnout 40 SWP 2 City
- 50 River Canal Weir to Bellevue Weir Losses
- = 225 BELLEVUE WEIR
- 30 Bellevue Weir to 2800 Acres Boundary Losses
- + 225 CVC Turnout #1 to River

2800 ACRE RECHARGE FACILITY

- + 130 2800 Acres from River Canal Turnout
- 130 Basin 1 to Pioneer Central SWP
- 65 Basin 4 to Kern Water Bank SWP
- 70 Basin 9 to Pioneer North SWP
- 10 Basin 10 to Pioneer North SWP
- 155 2800 Acres 155 City 155 KCWA
- = 40 McCLUNG WEIR
- 40 2800 Acres to 2nd Point Losses
- 40 Kern Water Bank Canal
- = 40 BUENA VISTA WSD

CARRIER CANAL & RIVER CANAL

- + 590 CARRIER HEADGATE
- 590 Waste Gate to River
- = 590 RECLAMATION WEIR
- 590 Eastside 590 State Exch.
- 590 Kern Island 590 State Exch. 590 AE Siphon
- = 590 LEVEE NO. 1 WEIR
- 590 Carrier to River

- + 89 Carrier from River
- = 89 CARRIER AT OAK STREET
- 89 Stine Canal 89 State Exch. 89 AE Siphon
- 15 Carrier to Truxtun Lakes
- 15 Truxtun Lakes Loss
- 15 Truxtun Lakes to River

- + 15 Carrier from Truxtun Lakes
- 57 Arvin-Edison Turnout KDWD
- 15 Carrier Canal Losses
- + 2 River Canal from River
- = 2 RIVER CANAL AT STOCKDALE HWY.
- 2 Buena Vista 2 at Ming Ave. 2 State Exch.
- 2 Pioneer Turnout to River
- 2 The Park at River Walk
- + 2 Pioneer Wells
- = 2 RIVER CANAL AT ALTERNATE 2ND POINT

- + 2 Berrenda Mesa Wells
- + 2 Pioneer Wells
- + 2 ID4 Wells
- + 2 River Water Bank Wells

- 2 River Canal Turnout to 2800 Acres
- + 2 2800 Acre Wells 2 No. Operating
- 2 City/Olcese
- 2 Kern County Water Agency
- 2 Buena Vista WSD

- = 2 RIVER CANAL AT END OF LINED SECTION
- 2 Kern Delta WD
- 2 County of Kern
- 2 Kern County Water Agency
- 2 Kern Water Bank Pipeline
- 2 Buena Vista WSD

Provisional Records: Interim Flow Regime

TOTAL 2ND POINT FLOW

Kern River/Aqueduct Intertie Flow











































































**PROOF OF SERVICE**

*Bring Back the Kern, et al. v. City of Bakersfield, et al.*  
Kern County Superior Court, Case No. BCV-22-103220-GAP

I am a citizen of the United States, over the age of 18 years, and not a party to interested in the cause. I am an employee of Duane Morris LLP and my business address is One Market, Spear Tower, Suite 2200, San Francisco, California 94105. I am readily familiar with this firm’s practices for collecting and processing correspondence for mailing with the United States Postal Service and for transmitting documents by FedEx, fax, email, messenger and other modes. On the date stated below, I served the following documents:

**DECLARATION OF COLIN L. PEARCE IN SUPPORT OF CITY OF BAKERSFIELD’S  
RESPONSE TO MOTIONS FOR RECONSIDERATION**

**BY ELECTRONIC SERVICE:** I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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21 I declare under penalty of perjury under the laws of the State of California that the foregoing  
22 is true and correct. Executed on December 8, 2023, at San Francisco, California.

23 

24 \_\_\_\_\_  
25 Blanca A. Herrera