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7
8 *Attorney for Water Audit California*
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF KERN**
13

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

Plaintiffs and Petitioners,

vs.

CITY OF BAKERSFIELD
and DOES 1 through 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

**WATER AUDIT CALIFORNIA'S *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND FOR ORDER TO SHOW CAUSE
RE PRELIMINARY INJUNCTION;
[PROPOSED] ORDER**

Complaint Filed: November 30, 2022
First Amended Complaint Filed: March 6,
2023
Second Amended Complaint Filed: October
4, 2023
Third Amended Complaint Filed: December
1, 2023

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

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1 TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that on December 21, 2023 at 9:00 a.m. in Department 8 of the
4 above-referenced Court, located at 1415 Truxton Ave., Bakersfield, CA 93301, Plaintiff/
5 Petitioner Water Audit California (“Water Audit”) in the above captioned matter, *Bring Back the*
6 *Kern, et al. v. City of Bakersfield*, Kern County Superior Court Case No. BCV-22-103220, will
7 apply for a Temporary Restraining Order and Order to Show Cause that grants Water Audit’s
8 request for priority minimum environmental flows and for such other and further relief as the
9 Court deems just and proper, pursuant to California Rules of Court, Rule 3.1200, et seq.

10 This application is made on an urgency basis and seeks an order relating to the Kern
11 River flows necessary to keep fish in good condition and to preserve the public trust.

12 No party has previously sought the relief requested by this application, and counsel for all
13 parties are identified as:

14 1) William McKinnon, Attorney at Law, 952 School Street, PMB 316, Napa, CA 94559,
15 for Water Audit California.

16
17 2) Adam Keats, Law Office of Adam Keats, PC, 303 Sacramento St., 2nd Fl., San
18 Francisco, CA 94111 for Bring Back the Kern, Kern River Parkway Foundation, Kern
19 Audubon Society, Sierra Club, and Center for Biological Diversity.

20
21 3) Thomas M. Berliner, Colin L. Pearce, and Ashley Barton, Attorneys at Law, Duane
22 Morris LLP, One Market Plaza, Spear Tower, Suite 2200, San Francisco, CA 94105, for
23 City of Bakersfield.

24
25 4) Virginia A. Gennaro, City Attorney’s Office, City of Bakersfield, 1600 Truxtun Ave
26 4th floor, Bakersfield, CA 93301, for City of Bakersfield.

27
28 5) Robert E. Donlan, Craig A. Carnes, Jr., and Kevin W. Bursey, Ellison, Schneider &
29 Harris & Donlan, 2600 Capitol A venue, Suite 400, Sacramento, CA 95816, for Kern
30 Delta Water District.

31
32 6) Richard Iger, General Counsel, 501 Taft Highway, Bakersfield, CA 93307 for Kern
33 Delta Water District.

34
35 7) Scott K. Kuney, Brett A. Stroud, Young Wooldridge, LLP, 1800 30th Street, Fourth
36 Floor, Bakersfield, CA 93301, for North Kern Water Storage District.

37
38 8) Isaac St. Lawrence, James A. Worth, McMurtrey Hartsock Worth & St. Lawrence,
39 2001 22nd Street, Suite 100, Bakersfield, CA 93301 for Buena Vista Water Storage
40 District.

1
2 9) Daniel N. Raytis, Daniel M. Root, Belden Blaine Raytis LLP, 5016 California Avenue,
3 Suite 3, Bakersfield CA, 93309, for Rosedale-Rio Bravo Water Storage District.
4

5 10) Amelia T. Minaberrigarai, Kern County Water Agency, 3200 Rio Mirada Drive,
6 Bakersfield, CA 93308, for Kern County Water Agency.
7

8 11) Nicholas A. Jacobs, Louinda V. Lacey, Michelle E. Chester, Somach Simmons &
9 Dunn APC, 500 Capitol Mall, Suite 1000, Sacramento, CA 95814, for Kern County
10 Water Agency.
11

12 Water Audit requests *ex parte* that the Court issue an Order, pursuant to section 527 of
13 the California Rules of Civil Procedure, and California Rule of Court 3.1203 for the issuance of a
14 Temporary Restraining Order enjoining the City of Bakersfield officers, directors, employees,
15 tenants, and agents, and all persons acting on its behalf, from acting, directly or indirectly
16 (“associates”), from directing flows to beneficial users until the first 200 CFS plus 40% (forty
17 percent) of flows greater than 500 CFS at the First Point of Measure are bypassed for
18 environmental flows. (see Exhibit A, attached hereto.)

19 Water Audit further prays for an Order to Show Cause why a preliminary injunction
20 should not issue requiring the City to not direct flows to beneficial users until the first 200 CFS
21 plus 40% (forty percent) of flows greater than 500 CFS at the First Point of Measure are
22 bypassed for environmental flows until trial or further order of the court. (see Exhibit A, attached
23 hereto.)

24 This application is based on this notice, the attached memorandum of points and
25 authorities, the declarations in support filed concurrently and herein, all pleadings and papers
26 currently on file in this matter, any matter of which the court can properly take judicial notice,
27 and any arguments raised or authority cited at a hearing on this application.

28 Pursuant to California Rules of Court, Rule 3.1203, Plaintiff has filed this Application
29 and has notified all parties more than 24 hours prior to the hearing scheduled on this Application,
30 and more than 24 hours prior to the currently scheduled hearing on Real Parties’ Motion for
31 Reconsideration.

32 Pursuant to California Rules of Court, Rule 3.1204, Plaintiff has given notice of this *Ex*
33 *Parte* Application to the City of Bakersfield, and to Real Parties Buena Vista Water Storage
34 District, Kern Delta Water District, North Kern Water Storage District Rosedale-Rio Bravo
35 Water Storage District, and Kern County Water Agency.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3
4 December 18, 2023
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7 William McKinnon
8 Attorney for Water Audit California
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1 the opinion of Plaintiffs that immediately measuring and reporting was more important than any
2 particular temporary flow regime.

3 Water Audit issued discovery to the City and Real Parties seeking, in summary, all
4 documents relating to data collected of Kern River flow rates, water depth, water temperature, air
5 temperature monitoring, and presence of fish, at any point downstream of the Beardsley Weir,
6 Rocky Point Weir, Calloway Weir, River Canal Weir, Bellevue Weir, and the McClung Weir.

7 In response, *one* Real Party, Kern County Water Agency (“KCWA”), provided historical
8 data of flows by *one* weir, which while useful information, did not provide any indication of the
9 environmental conditions that resulted or existed.

10 The City and the other Real Parties, aside from objections, responded in a nearly identical
11 manner:

12 ... Bakersfield further responds that it has made a diligent search and a reasonable inquiry
13 in an effort to locate any other documents responsive to this request, but is otherwise
14 unable to comply with the request because such documents have never existed or are no
15 longer in the possession, custody or control of Bakersfield;

16
17 ... [Buena Vista Water Storage District] has not identified any documents responsive to
18 this request;

19
20 [Kern County Water Agency] has no responsive documents;

21
22 [Kern Delta Water District] has not identified any documents responsive to this Request;

23
24 [North Kern Water Storage District] is unable to comply with this demand because
25 responsive records never existed. Responding Party notes that records of Kern River
26 flows are maintained by the City of Bakersfield’s hydrographic unit;

27
28 Responding Party’s [Rosedale-Rio Bravo Water Storage District] inability to comply is
29 because the particular item or category has never existed, has been destroyed, has been
30 lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody,
31 or control of Responding Party.

32
33 Absent any useful data in the record, the interim bypass rate was vulnerable to the
34 accusation, predictably raised on reconsideration, that there was insufficient data to support the
35 preliminary injunction. This is a similar argument to a child having committed patricide and
36 matricide arguing for mercy because they are an orphan.

37 The public trust trustee duties imposed on the City included the duty to monitor the
38 sufficiency of flow. The City insisted on a priority diversion as a condition of agreeing to a flow

1 monitoring program, wherein the City would record and report bypass flows on a daily basis and
2 provide associated drone images of the river conditions. In exchange, the Plaintiffs temporarily
3 did not contest (or confirm) the City's claim to 180 CFS priority diversion, without prejudice to
4 later contesting the priority of environmental flows.

5 The data reported in the first few weeks was revelatory, with daily gross flows and
6 environmental bypasses related to drone images of the river taken at each weir. (see
7 <https://repo.bakersfieldcity.us/url/pteveybk2yrqvs5>.) For example, see McKinnon Dec. Ex. 1.

8 This information was adequate for Water Audit's experts to opine that a flow of 200 CFS
9 appears to be sufficient to keep the known existing fish in good condition. (See Declarations of
10 Moyle and Grantham, filed concurrently herewith.) Water Audit again emphasizes that 200 CFS
11 is an interim flow rate, based on limited information acquired over a short period of time, to
12 inform critically needed and urgent relief. The flow rate will need to be adjusted over time to
13 acquire more information and need to be adjusted as more information is acquired.

14 The urgency of this matter arose on December 1, 2023, when Plaintiffs learned by an
15 email from the City that the US Army Corp of Engineers (USACE) planned to reduce discharges
16 from Isabella Dam to 25 CFS. (see McKinnon Dec. Exs. 2, 3, 4.) Given the reported loss of
17 water in the transmission from Isabella dam to the First Point of Measure, (reported by the City
18 to range from 20 to 50 CFS) there is a greater than zero possibility that the subject reaches would
19 have been completely dried, and there was a virtual certainty that the flow of water would be
20 insufficient to keep fish in good condition.

21 The exact condition of any reach under the proposed regime is a matter of speculation.
22 Although Plaintiffs advocated in a November 13 email (See Stroud Declaration, Ex. M, in
23 support of Motion for Reconsideration) that river cross sections be taken that would have
24 allowed for water level calculation at various flows, no effort was made by the City or Real
25 Parties to acquire the information. The Court may take judicial notice of the commonly known
26 fact that the Kern River is wide, flat bottomed and shallow, as is commonly the case with
27 watercourses downstream of dams.

28 The possibilities for injury were incalculable. Just as there has been no study of the
29 watercourse, there has been no recent study of the fish present. Absent sufficient monitoring it is
30 impossible to know with a certainty of the number and nature of fish in the subject reaches that

1 may be injured by diminished flows, or the impact on fish upstream from the First Point of
2 Measure that may or may not have adequate access to refugia pools.

3 There is good cause to believe that substantial injuries could occur. Fifty years ago, the
4 then Department of Fish and Game engaged in a rather remarkable experiment: the Kern River
5 below Isabella Dam was poisoned with rotenone, used in lakes and reservoirs to kill fish that are
6 perceived as pests. For further explanation see Moyle Declaration. The effect of killing around
7 50 tons of fish, mostly suckers, was temporary and native fish numbers quickly bounced back.
8 The results of the experiment were reported in 1975 by then CDFG's Daniel P. Christensen and
9 present Water Audit advisor Dr. Peter Moyle. (see Moyle Dec. Ex. A.) While years of a dry river
10 does not immediately suggest a prolific fish population, the proven resiliency of the watercourse
11 strongly implies that there is substantial life that must be protected.

12 The University of California PISCES database (Feb. 26, 2014)¹ reported the presence of
13 numerous species of fishes below Isabella Dam. They include:

- 14 Coastal Rainbow Trout (*Oncorhynchus mykiss irideus*)
- 15 Hardhead (*Mylopharodon conocephalus*)
- 16 Kern River Rainbow Trout (*Oncorhynchus mykiss gilberti*)²
- 17 Riffle Sculpin (*Cottus gulosus*)
- 18 Sacramento Hitch (*Lavinia exilicauda exilicauda*)
- 19 Sacramento Sucker (*Catostomus occidentalis occidentalis*)

20 Absent an appropriate fish study, the distribution, presence and proliferation of fish
21 species is informed speculation based upon records which may or may not be of certain
22 application to the current conditions. For example, largemouth bass (*Micropterus salmoides*) are
23 not reported in the Pisces database. Nevertheless, one of their number was existing downstream
24 of the weirs, as exhibited in support of the preliminary injunction. It was likely representative of
25 the potential of upstream fishes being washed over the dam spillway in high water conditions.

¹ PISCES is software and data describing the best-known ranges for California's 133 native fish and numerous non-native fish. The data are compiled from multiple sources and are expert verified. (<https://pisces.ucdavis.edu/>)

² "Genetic analyses revealed that trout located in the lower portion of the Kern River are highly introgressed with hatchery or coastal rainbow trout, likely from a long history of stocking this portion of the river. In the upper watershed, they appear to share genes with California golden trout." (<https://wildlife.ca.gov/Conservation/Fishes/Kern-River-Rainbow-Trout>)

1 The USACE has many issues to consider simultaneously in its operation of Isabella Dam,
2 including storing water for deliveries to beneficial users, flood protection in a predicted El Nino
3 year, and dealing with unexpected persistent seepage.³ Providing 200 CFS bypass to keep fish in
4 good condition is a new issue that has raised non-trivial engineering concerns. It was not until
5 Friday, December 1, 2023. that Water Audit learned of the anticipated reduction in flow. The
6 following Monday, December 3, Water Audit was able to make contact with the Bozeman MT
7 counsel for Isabella Partners, and provide him with a copy of the preliminary injunction. Isabella
8 Partners reportedly immediately engaged with the USACE. From the perspective of the people
9 trying to find a solution, this problem is only two weeks old. (see McKinnon Dec)

10 The attorneys worked to close the gap between the 25 CFS bypass anticipated during the
11 Repair Project and 200 CFS that is known to be sufficient. At the request of Isabella Partners on
12 December 7, 2023, Water Audit agreed that the details of the discussions were to be treated as
13 confidential settlement discussions. Suffice it to say, substantial efforts are being made to resolve
14 the problem of sufficient bypass. (see McKinnon Dec.)

15 In an effort to solicit participation in the process by the City and Real Parties in
16 calculating a minimal environmental water demand, Water Audit proposed a testing regime that
17 was found impractical to implement with the USACE. (see McKinnon Dec Ex. 5) The same
18 testing could easily be undertaken by the City and Real Parties, but they have expressed no such
19 intention. As a result of an inability to do low flow testing, the lowest known sufficient flow
20 remains 200 CFS.

21 Water Audit remains hopeful that the USACE and Isabella Partners, in whatever manner
22 they relate and communicate with each other, will be able to provide 200 CFS to the First Point
23 of Measure during the Repair Project, or alternatively that the Repair Project be postponed to a
24 later date.

25 As a consequence of two factors, it is presently unknown to Water Audit what is going to
26 happen and when. First, it is presently unknown and unpredictable how much flow can be
27 supplied, and whether and when the Repair Project will proceed. The engineering issues are
28 complex and technical, and human safety is the primary concern. Second, in a manner that is as

³ <https://sjvwater.org/army-corps-was-unprepared-for-amount-of-seepage-from-isabella-dam-that-is-now-swamping-residents/>

1 yet understood by Water Audit, the City and Real Parties communicate to the USACE their daily
2 water needs. Any delay of the Repair Project *may* be opposed.

3 In Public Resource Code, section 6009.1, the Legislature has enumerated the duties of a
4 trustee of the public trust. The City is clearly negligent in its duties to administer the public trust
5 solely in the interest of the beneficiaries; to take reasonable steps under the circumstances to take
6 and keep control of and to preserve the trust property; to take reasonable steps to defend actions
7 that may result in a loss to the trust and most egregiously, to not use or deal with trust property
8 for the trustee's own profit or for any other purpose unconnected with the trust, and to not take
9 part in a transaction in which the trustee has an interest adverse to the beneficiaries. Both the
10 public trust and Fish and Game Code, section 5937 require 200 CFS

11 See Fish and Game Section 1600: “The Legislature finds and declares that the protection
12 and conservation of the fish and wildlife resources of this state are of the utmost public interest.
13 Fish and wildlife are the property of the people and provide a major contribution to the economy
14 of the state, as well as providing a significant part of the people’s food supply; therefore their
15 conservation is a proper responsibility of the state.”

16 Neither the City nor the Real Parties raised objection to Isabella Partners or the USACE
17 to the reduction in flow, having other sources of water that can carry them for a few weeks.
18 (McKinnon Dec. Ex. 3.) It is only the fish that require an uninterrupted flow of water in the Kern
19 River.

20 Water Audit offered the City a stipulation providing that it would not divert to beneficial
21 use or make claim to the first 200 CFS of flow. The City has not responded. Water Audit has
22 similarly requested one of the Real Parties to stipulate to raise no objections to the environment
23 receiving the first 200 CFS of flow and received a non sequitur that they were waiting for the
24 USACE to act before making a decision. (see McKinnon Dec. Ex. 6)

25 In its current form, the November 13, 2023 implementation stipulation, awards the
26 beneficial users 60% of the Repair Project bypass specifically negotiated for environmental
27 purposes and thereby deprives the river of sufficient flow to keep fishes in good condition.

28 This is inequitable, and not in the public interest. This matter is urgent, in that the
29 USACE may on any given day authorize the Repair Project to proceed, and the flows to be
30 reduced with no or minimum notice. If this court provides a priority to 200 CFS of flow to the
31 public trust, hopefully the living river will survive without injury.

1 **II. Authority.**

2 **A. Cal. Code Civ. Proc., § 527 provides in part:**

3 (c) No temporary restraining order shall be granted without notice to the opposing party,
4 unless both of the following requirements are satisfied:

5
6 (1) It appears from facts shown by affidavit or by the verified complaint that great or
7 irreparable injury will result to the applicant before the matter can be heard on notice.

8
9 (2) The applicant or the applicant's attorney certifies one of the following to the court
10 under oath:

11
12 (A) That within a reasonable time prior to the application the applicant informed the
13 opposing party or the opposing party's attorney at what time and where the application
14 would be made.

15
16 **B. California Rules of Court, Rule 3.1150. provides in relevant part:**

17 **(a) Manner of application and service**

18 A party requesting a preliminary injunction may give notice of the request to the
19 opposing or responding party either by serving a noticed motion under Code of Civil
20 Procedure section 1005 or by obtaining and serving an order to show cause (OSC). An
21 OSC must be used when a temporary restraining order (TRO) is sought, ...

22 **(c) Form of OSC and TRO**

23 The OSC and TRO must be stated separately, with the OSC stated first. The restraining
24 language sought in an OSC and a TRO must be separately stated in the OSC and the TRO
25 and may not be incorporated by reference. The OSC must describe the injunction to be
26 sought at the hearing. The TRO must describe the activities to be enjoined pending the
27 hearing. A proposed OSC must contain blank spaces for the time and manner of service
28 on responding parties, the date on which the proof of service must be delivered to the
29 court hearing the OSC, a briefing schedule, and, if applicable, the expiration date of the
30 TRO.

31
32 **III. Water Audit Has Fully Complied with California Rules of Court, Rules 3.1203 and**
33 **3.1204.**

34 California Rules of Court, Rule 3.1203, subdivision (a) provides as follows:

35 **(a) Time of notice**

36 A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court
37 day before the ex parte appearance, absent a showing of exceptional circumstances that
38 justify a shorter time for notice.

1 California Rules of Court, Rule 3.1204, subdivision (b) provides as follows:

2 An ex parte application must be accompanied by a declaration regarding notice stating:

3
4 (1) The notice given, including the date, time, manner, and name of the party informed,
5 the relief sought, any response, and whether opposition is expected and that, within the
6 applicable time under rule 3.1203, the applicant informed the opposing party where and
7 when the application would be made; ...

8
9 As stated in the Declaration of William McKinnon, filed herewith, counsel has duly
10 complied with the notice requirements of California Rules of Court, Rule 3.1203, subdivision (a)
11 and Rule 3.1204, subdivision (b).

12
13 **IV. Conclusion.**

14
15 For the foregoing reasons, Water Audit respectfully prays that a temporary restraining order
16 issue to the City of Bakersfield prohibiting diversion of flows to beneficial users until the first
17 200 CFS plus 40% (forty percent) of flows greater than 500 CFS at the First Point of Measure
18 are bypassed for environmental flows during the pendency of the Repair Period.

19 Further, on a date and time to the convenience of the court, Water Audit prays that City of
20 Bakersfield shall be ordered to show cause why a prohibitory preliminary injunction should not
21 issue prohibiting the City from directing flows to beneficial users until the first 200 CFS plus
22 40% (forty percent) of flows greater than 500 CFS at the First Point of Measure are bypassed for
23 environmental flows until trial or further order of this court.

24
25 December 18, 2023

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27 _____
28 William McKinnon
Attorney for Water Audit California

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EXHIBIT A

1
2 William McKinnon (SBN 129329)
3 ATTORNEY AT LAW
4 952 School St., PMB 316
5 Napa, CA 94559
6 Tel: 530-575-5335
7 Email: legal@waterauditca.org
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9 *Attorney for Water Audit California*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF KERN**
13

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

Plaintiffs and Petitioners,

vs.

CITY OF BAKERSFIELD
and DOES 1 through 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

<PROPOSED> ORDER GRANTING WATER AUDIT CALIFORNIA'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION;

Complaint Filed: November 30, 2022
First Amended Complaint Filed: March 6, 2023
Second Amended Complaint Filed: October 4, 2023
Third Amended Complaint Filed: December 1, 2023

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

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1 WHEREAS, Plaintiff, having submitted an application to the Court for a temporary restraining
2 order and order to show cause, and

3 WHEREAS, the Court, having reviewed the Application, the Memorandum in Support, and the
4 Declarations on file herein, and

5 WHEREAS, the Court finds that, unless this Order issues, Plaintiff will suffer immediate and
6 irreparable harm due to environmental harm to the Kern River.

7 The Court finds good cause appearing, NOW, THEREFORE, it is hereby ordered that the City
8 of Bakersfield (“City”), and its officers, directors, employees, tenants, and agents, and all persons
9 acting on its behalf (“associates”), as follows:

10
11 **ORDER TO SHOW CAUSE**

- 12
- 13 **1. THE COURT ORDERS** the Defendant City of Bakersfield to appear in this court at
14 _____(DATE) _____(TIME) in Department 8 of the Superior Court of
15 California, County of Kern, to show cause why a preliminary injunction should not issue
16 requiring the City to not direct flows to beneficial users until the first 200 CFS plus 40% (forty
17 percent) of flows greater than 500 CFS at the First Point of Measure are bypassed for
18 environmental flows until trial or further order of the court.

19
20 **TEMPORARY RESTRAINING ORDER**

- 21
- 22 **2. THIS ORDER EXPIRES** at the date and time of the hearing shown above unless extended by
23 the Court.
- 24 **3. DEFENDANT** City of Bakersfield **IS ORDERED:**
- 25 **a.** That subject to further order of the court, the City shall not direct flows to beneficial
26 users until the first 200 CFS plus 40% (forty percent) of flows greater than 500 CFS at
27 the First Point of Measure are bypassed for environmental flows.
- 28 **b.** By _____, 202__ : DEFENDANT CITY OF BAKERSFIELD IS ORDERED
29 to personally serve on each plaintiff or counsel and any other appearing parties, and to
30 file proof of service of, any opposition to these orders.
- 31 **c.** By _____, 202__ : PLAINTIFF WATER AUDIT CALIFORNIA IS
32 ORDERED to personally serve on each defendant or counsel, on each Real Party or

1 counsel, and to file proof of service of, any reply to defendant's opposition to these
2 orders.

3 This Temporary Restraining Order and Order to Show Cause shall become effective of the date
4 and time of the posting of a bond or of cash or a check made out to the Clerk of the Court in the amount
5 of \$500.00 and said date and time of the posting of a bond or of cash or a check in lieu of a bond shall
6 be reflected in a Notice of Posting of Bond or Cash in Lieu of Bond to be filed by Plaintiff Water Audit
7 California and served on Defendant and Real Parties.

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10 Date:

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15 _____
16 Judge of the Superior Court
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
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12 BRING BACK THE KERN, WATER AUDIT CALIFORNIA, KERN RIVER PARKWAY FOUNDATION, KERN AUDUBON SOCIETY, SIERRA CLUB, and CENTER FOR BIOLOGICAL DIVERSITY,

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Real Parties in Interest.

Case No.: BCV-22-103220

**WILLIAM MCKINNON DECLARATION
IN SUPPORT OF PLAINTIFFS' EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND FOR ORDER
TO SHOW CAUSE RE PRELIMINARY
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1 I, WILLIAM MCKINNON, declare as follows:

2 1. I am an active member of the State Bar of California and the attorney of record of Plaintiff and
3 Petitioner Water Audit California herein. I make this declaration of my own personal knowledge, and if
4 called could and would testify competently as follows:

5 2. Following an October 13, 2023, hearing, this Court issued a Ruling on October 30, 2023,
6 (“Ruling”) granting the Motion for Preliminary Injunction filed by Plaintiffs.

7 3. On November 9, 2023, this Court signed an Order Granting Plaintiffs’ Motion for Preliminary
8 Injunction (“Order”) which incorporated the Ruling, and de facto resurrected the Kern River as a
9 living river.

10 4. On November 13, 2023, Plaintiffs and the City of Bakersfield (“City”) entered into a Stipulation
11 for Implementation of the Preliminary Injunction (“implementation stipulation”) that provided for 40%
12 (forty percent) of total flows to be directed to environmental purposes and that certain foundational
13 monitoring be installed. The primary motivation for Water Audit to enter into this stipulation was to
14 have the City acquire data that would allow a reasonable assessment of the river condition at a given
15 flow.

16 5. On November 14, 2023, this Court signed an Implementation Order (“Interim Implementation
17 Order”) which incorporated Plaintiffs’ and the City’s Stipulation.

18 6. Buena Vista Water Storage District, Kern Delta Water District, North Kern Water Storage
19 District, Kern County Water Agency, and by joinder, Rosedale-Rio Bravo Water Storage District
20 (“Real Parties”) have sought reconsideration of the Court orders of November 9 and November 13,
21 2023. A hearing is scheduled for December 21, 2023.

22 7. Pursuant to agreements made pursuant to the implementation stipulation, since mid-November,
23 the City has posted daily flow sheets and associated drone images on a public website hosted at:
24 <https://repo.bakersfieldcity.us/url/pteveybk2yrqvs5>.

25 8. Over the period from November 17 to December 11, 2023, the daily flow sheets have reported
26 that the discharges from the Isabella Dam have ranged from 965 CFS to 750 CFS; the City has
27 allocated from 248 CFS to 237 CFS for environmental flows pursuant to the implementation
28 stipulation.

29 9. Attached hereto as Exhibit 1 is a true and correct copy of representative Kern River flow data
30 and drone pictures of weirs, collected by the City of Bakersfield on December 2, 2023.

1 10. Preliminary monitoring indicates that a minimum flow of 200 CFS will keep the Kern
2 River downstream from the First Point of Measure through the City of Bakersfield nominally watered
3 during a period of low flows. See Exhibit 1 and declarations of Dr. Peter Moyle and Dr. Ted Grantham,
4 filed concurrently herewith.

5 11. Isabella Partners operates the Lake Isabella Hydroelectric Project (“Project”) which consists of
6 Federal Energy Regulatory Commission (“FERC”) regulated facilities located in the downstream toe of
7 the Lake Isabella main dam.

8 12. The United States is the owner of the Lake Isabella Dam, and the U.S. Army Corps of
9 Engineers (“USACE”) has been assigned responsibility for maintenance of the dam and administering
10 flows from Lake Isabella.

11 13. The Project generates energy from dam releases through generating facilities that discharge into
12 the Kern River, in Kern County, California. That water flows through a primary portal, and from there
13 into a secondary portal that flows through the generators with the flows discharged undiminished but
14 for the harvesting of energy.

15 14. The City has reported to Water Audit that Isabella Partners and the USACE have determined it
16 will be necessary to interrupt the usual flow of water from Isabella Dam into the secondary portal for a
17 period to effectuate repairs (“Repair Project”). In order to provide bypass flows, the connection
18 between the main portal and the secondary portal must be blocked in a manner that will withstand the
19 water pressure of the bypass.

20 15. I have been informed that during the autumn of 2023, Isabella Partners and the USACE
21 frequently met with the City and the Real Parties to negotiate the timing, volume and manner of the
22 diminution of flow during the Repair Project. It was agreed between those parties that dam releases
23 would be reduced to 25 CFS.

24 16. However, neither the Court nor the Plaintiffs were told of the Repair Project by either the City
25 or the Real Parties during the hearing on Plaintiffs’ preliminary injunction, nor during negotiations
26 between Plaintiffs and the City, leading to the Interim Implementation Order.

27 17. Attached hereto as Exhibit 2 is a true and correct copy of an email exchange between Water
28 Audit California and counsel for the City of Bakersfield, dated November 30, 2023.

29 18. On Friday, December 1, 2023, Plaintiff Water Audit California (“Water Audit”) first learned of
30 the Repair Project in an email from counsel for the City.

1 19. Attached hereto as Exhibit 3 is a true and correct copy of an email dated December 1, 2023,
2 with a forwarded email dated November 30, 2023 (with an attachment), from counsel for the City of
3 Bakersfield to counsel for Plaintiffs.

4 20. Water Audit subsequently learned that the basic information required to make a reasoned
5 determination of the hydrological and biological consequences of the intended reduced flow – in
6 particular channel cross sections and water elevations at different flows – did not exist, as the
7 information had not been acquired by the City or the Real Parties.

8 21. Attached hereto as Exhibit 4 is a true and correct copy of an email dated December 1, 2023,
9 with a forwarded email dated December 1, 2023, from counsel for the City of Bakersfield to counsel
10 for Plaintiffs. The City directed Water Audit to reach out to the USACE public affairs office regarding
11 the proposed reduction of flows.

12 22. No consideration had been given by the City or the Real Parties to the environmental
13 consequences of the planned flow reduction, and in the absence of even basic information, Water Audit
14 experts are unable to predict with any degree of confidence the potential environmental injuries that
15 may arise from flow reductions as a consequence of the Repair Project.

16 23. I was able to make contact with Isabella Partners on December 3, 2023, and the USACE public
17 affairs representative on December 4, 2023. Subsequently, local counsel for Isabella Partners and the
18 USAC became involved. But for one misstep, all parties have been consistently supportive of
19 collaborative solutions to ensure that the repairs to the Repair Project can be completed responsibly,
20 safely, and in a manner that avoids potential injury to downstream users and environmental resources.

21 24. The misstep occurred while I was attempting to negotiate a ramping down procedure. (see
22 attached hereto as Exhibit 5, a true and correct copy of emails dated December 7, 2023, December 12,
23 2023, and December 13, 2023.) Abrupt changes in flow are harmful to fish populations. By
24 undiplomatically expressing a proposal, I learned that the relationship between Isabella Partners and the
25 USACE is long, complex, productive and largely inexplicable to a third party without deep study. I
26 have not undertaken such study, and therefore do not understand the chain of command. Suffice to say
27 that I have been informed by counsel for Isabella Partners of significant, complex and real work
28 underway in the effort to maintain a living river for the City of Bakersfield. I have been asked to wait
29 for a USACE announcement before public announcement of success, however if the City and Real
30 Parties are restrained from diverting the first 200 CFS of flow, there appears the real possibility that the
31 river will continue to flow without significant interruption, and the crisis will have been fully averted.

1 25. To accommodate these efforts, Isabella Partners has delayed the intended December 18, 2023,
2 start date for the Repair Project. However, the upcoming holidays may constrain immediate access to
3 the courts, if and when the Repair Project is ready to commence. It is my understanding that a final
4 decision on the Repair Project is contingent on an inspection scheduled in the next few days. In
5 anticipation of this inspection, Water Audit has been asked its opine on a brief interruption in bypass
6 on certain parameters. Water Audit experts have concurred that the proposed inspection process is
7 reasonable and unlikely to cause appreciable environmental harm.

8 26. My above comment is in no way intended to anticipate or interfere with the discretion of the
9 USACE to do as it thinks best, whenever it chooses to do it. It was intended to express sincere
10 appreciation to Isabella Partners and the USACE for their continuing collaborative response to this
11 matter. I can only hope others are inspired.

12 27. On December 1, 2023, Water Audit made an offer to stipulate to Real Party North Kern Water
13 Storage District. On December 12, 2023, Water Audit made an offer to stipulate to the City and to all
14 Real Parties. Attached hereto as Exhibit 6 is a true and correct copy of emails sent by Water Audit and
15 responded to by Real Party North Kern Water Storage District. The other Real Parties and the City of
16 Bakersfield did not respond.

17 28. Notice was given at 1:14 p.m., on December 18, 2023, by email to Thomas M. Berliner, Colin
18 L. Pearce, and Ashley Barton, for City of Bakersfield; Virginia A. Gennaro, for City of Bakersfield;
19 Robert E. Donlan, Craig A. Carnes, Jr., and Kevin W. Bursey, for Kern Delta Water District; Richard
20 Iger, for Kern Delta Water District; Scott K. Kuney, Brett A. Stroud, for North Kern Water Storage
21 District; Isaac St. Lawrence, James A. Worth, for Buena Vista Water Storage District; Daniel N.
22 Raytis, Daniel M. Root, for Rosedale-Rio Bravo Water Storage District; Amelia T. Minaberrigarai, for
23 Kern County Water Agency; and, Nicholas A. Jacobs, Louinda V. Lacey, Michelle E. Chester, for Kern
24 County Water Agency. The email requested a read receipt and informed them of the date, time, location
25 and purpose of this application. Attorney Nicolas Jacobs, responded at 5:30 p.m. “Having only received
26 Ms. Stephan’s email this afternoon and without any of the required supporting materials (See Cal.
27 Rules of Court 3.1201.), Kern County Water Agency opposes the ex parte application. Of particular
28 help in assessing whether to oppose the application would be review of any declarations “containing
29 competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other
30 statutory basis for granting relief ex parte,” as well as any briefing and proposed order. (See Cal. Rules
31 of Court 3.1201 and 3.1202(c).)” Attorney Scott Kuney responded at 5:30 p.m. “Our offices agree.”

32 Attorney Craig A. Carnes responded at 5:52 p.m. “Kern Delta agrees with KCWA as well.”

1 29. Attached hereto as Exhibit 7 is a true and correct copy of the email notice, read receipts, and
2 responses.

3

4 I declare the foregoing to be true, subject to the penalty of perjury. Executed at North
5 Vancouver, British Columbia, this 18th day of December 2023.

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William McKinnon

EXHIBIT 1

CHANGE IN OUTFLOW

-25 @ 1500

KERN RIVER OPERATIONS

SATURDAY DECEMBER 2, 2023

Inflow to Isabella 474 Isabella Storage 204246

All flows and diversions are preliminary and subject to change

835 ISABELLA OUTFLOW

- <53> Accretions
- + Rio Bravo Well Inflow
- 11 NETP/COB
- = 771 FIRST POINT OF MEASUREMENT (194 Fish Flow)
- 261 Beardsley Canal

- Station "A"
 - + 1 Ditch
 - + Bidart Wells + 7 4 Ditch 7 NWTP
 - 7 KRC&I + 5 Ditch
 - + OMWD Wells + Bidart Pumps
 - 34 Cawelo WD + Total
 - 220 North Kern WSD

BV/EX

- 11 Computed Losses
- 102 Carrier Headgate
- = 397 ROCKY POINT WEIR
- + River from Waste Gate

- + River from Carrier
- 52 Calloway Canal
 - 2 Losses 52 ID4
 - 48 HCG TP City
 - 2 99 Weir NKWSD

- 20 Calloway Pond Losses
- 32 River to Carrier
- = 293 CALLOWAY RIVER WEIR
- + CVC Turnout #4 to River
- + CVC Turnout #3 to River CVC to Truxtun Lake
- + Friant-Kern Canal to River
- + River from Truxtun Lakes

- 85 Calloway Weir to River Canal Weir Losses
- River to River Canal
- = 208 RIVER CANAL WEIR
- + 40 CVC Turnout #2 to River SWP
- + River from Pioneer Turnout
- 1 AERA Park Turnout CVC to AERA Park
- Rosedale-Rio Bravo WSD Canal
- Pioneer Canal

- 42 Berrenda Mesa Turnout 40 SWP 2 City
- River Canal Weir to Bellevue Weir Losses
- = 155 BELLEVUE WEIR
- 30 Bellevue Weir to 2800 Acres Boundary Losses 28 Fish Flow 2 COB
- + 225 CVC Turnout #1 to River SWP

2800 ACRE RECHARGE FACILITY

- + 2800 Acres from River Canal Turnout
- 130 Basin 1 to Pioneer Central SWP
- 65 Basin 4 to Kern Water Bank SWP
- 20 Basin 9 to Pioneer North SWP
- 10 Basin 10 to Pioneer North SWP
- 125 2800 Acres 125 City KCWA
- = McCLUNG WEIR
- 2800 Acres to 2nd Point Losses
- Kern Water Bank Canal
- = BUENA VISTA WSD

CARRIER CANAL & RIVER CANAL

- + 102 CARRIER HEADGATE
- Waste Gate to River
- = 102 RECLAMATION WEIR
- Eastside State Exch.
- 102 Kern Island State Exch. AE Siphon
- = LEVEE NO. 1 WEIR
- Carrier to River

- + 32 Carrier from River
- = 32 CARRIER AT OAK STREET
- Stine Canal State Exch. AE Siphon
- 15 Carrier to Truxtun Lakes
- 15 Truxtun Lakes Loss
- Truxtun Lakes to River

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

- + Berrenda Mesa Wells
- + Pioneer Wells
- + ID4 Wells
- + River Water Bank Wells
- River Canal Turnout to 2800 Acres
- + 2800 Acre Wells No. Operating

- City/Olcese
- Kern County Water Agency
- Buena Vista WSD

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

Provisional Records: Interim Flow Regime

TOTAL 2ND POINT FLOW

Kern River/Aqueduct Intertie Flow

Drone Pictures of Kern River Weirs
Collected by the City of Bakersfield
December 2, 2023

Beardsley Weir



Downstream



Top of Weir



Upstream

Bellevue Weir



Downstream



Top of Weir



Upstream

Calloway Weir



Downstream



Top of Weir



Upstream

McClung Weir



Downstream



Top of Weir



Upstream

River Canal Weir



Downstream



Top of Weir



Upstream

Rocky Point Weir



Downstream



Top of Weir



Upstream

EXHIBIT 2



Valerie Stephan <vstephan@waterauditca.org>

Fwd: Kern River flows

Water Audit California <general@waterauditca.org>
To: Valerie Stephan <vstephan@waterauditca.org>

Thu, Dec 14, 2023 at 10:14 AM

----- Forwarded message -----

From: **Pearce, Colin L.** <CLPearce@duanemorris.com>

Date: Thu, Nov 30, 2023 at 12:59 PM

Subject: RE: Kern River flows

To: Water Audit California <general@waterauditca.org>, Ansley, Jolie-Anne S. <JSAnsley@duanemorris.com>, Virginia Ginny Gennaro <vgennaro@bakersfieldcity.us>, Barton, Ashley <ABarton@duanemorris.com>

CC: adam@keatslaw.org <adam@keatslaw.org>

Bill,

We are trying to track down information on that issue and will provide everyone with that information in the near future.

Thanks, Colin.



www.duanemorris.com

Colin L. Pearce
Partner

Duane Morris LLP **P:** +1 415 957 3015
Spear Tower **F:** +1 415 704 3098
 C: +1 415 519 4138

One Market Plaza, Suite 2200
San Francisco, CA 94105-1127

E-MAIL | BIO | VCARD

From: Water Audit California <general@waterauditca.org>

Sent: Thursday, November 30, 2023 12:50 PM

To: Pearce, Colin L. <CLPearce@duanemorris.com>; Ansley, Jolie-Anne S. <JAnsley@duanemorris.com>;
Virginia Ginny Gennaro <vgennaro@bakersfieldcity.us>; Barton, Ashley <ABarton@duanemorris.com>

Subject: Kern River flows

Good afternoon

I have heard rumors of a substantial reduction in Kern flows anticipated in the near future. Can you disavow those rumors, or shed any light on causation if true?

Bill

WATER AUDIT CALIFORNIA - *A California Public Benefit Corporation*

952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

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WATER AUDIT CALIFORNIA - *A California Public Benefit Corporation*

952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

EXHIBIT 3



Valerie Stephan <vstephan@waterauditca.org>

Fwd: FW: Isabella Partners Hydroelectric Plant Repair Update

Water Audit California <general@waterauditca.org>
To: Valerie Stephan <vstephan@waterauditca.org>

Thu, Dec 14, 2023 at 10:14 AM

----- Forwarded message -----

From: **Pearce, Colin L.** <CLPearce@duanemorris.com>

Date: Fri, Dec 1, 2023 at 2:16 PM

Subject: FW: Isabella Partners Hydroelectric Plant Repair Update

To: adam@keatslaw.org <adam@keatslaw.org>, Water Audit California <general@waterauditca.org>

CC: achianello@krwatermaster.org <achianello@krwatermaster.org>, Ansley, Jolie-Anne S. <JSAnsley@duanemorris.com>

Adam and Bill,

I am forwarding you two email strings which address and discuss upcoming maintenance work at Lake Isabella which will apparently significantly reduce flows out of Lake Isabella and consequently within the Kern River.

The Kern River Watermaster, Art Chianello, acts as the representative of all of the Kern River interests with regard to Lake Isabella and its operator, the US Army Corps of Engineers (USACE). All of the information the City has on the planned repairs comes from the USACE, through the Watermaster.

The City received the email below yesterday, which announced that the repairs will commence on December 18, 2023.

I will separately forward you the second email string, which contains additional information on this issue.

I am also copying the Watermaster on this message in case you have questions or want to obtain more information on this issue.

Thanks, Colin.



www.duanemorris.com

Colin L. Pearce
Partner

Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127

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F: +1 415 704 3098
C: +1 415 519 4138

E-MAIL | BIO | VCARD

From: Art Chianello <achianello@krwatermaster.org>
Sent: Thursday, November 30, 2023 3:24 PM
To: David Hampton <dhampton@northkernwzd.com>; Steve Teglia <steven@kerndelta.org>; Kristina Budak <kbudak@bakersfieldcity.us>; Tim Ashlock <tim@bv2o.com>; Lauren Bauer <lbauer@kcwa.com>
Cc: Daniel R. Maldonado <drmaldonado@bakersfieldcity.us>; Miguel Chavez <mchavez@bakersfieldcity.us>;

Scott Kuney <skuney@youngwooldridge.com>
Subject: Isabella Partners Hydroelectric Plant Repair Update

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello everyone,

I just completed a meeting with the Corps and Isabella Partners. I wanted to update everyone on the progress of the minor deviation request approval process by the Corps which is required for Isabella Partners repairs.

1) An updated routing (attached) was sent to the Corps today. This routing updates what the anticipated lower storage volume will be at the start of the repair process. The Corps was happy with the outflow (max 1,034 cfs) and time required to get back to 211,000 ac-ft.

- 2) The threshold for a minor deviation is that storage cannot exceed 5% over the carry-over storage of 211,000 ac-ft during the deviation period. Per the routing storage, we will be under this amount.

- 3) We are on schedule and the anticipated start date of repairs is Monday December 18th.

- 4) The Corps public relations will issue a public announcement regarding pending repairs and the decrease in the outflow to 25 cfs from the dam.

- 5) The Corps is almost complete assessing environmental impacts (NEPA, categorical exemption).

- 6) Notification of the deviation request approval from the Corps will be verbal first (possibly on December 15th) which will allow the repairs to begin, with digital copies of the deviation request to be distributed later.

Art

Art Chianello | Kern River Watermaster

1000 Buena Vista Road | Bakersfield | CA 93311

Cell: 661-549-6313

achianello@krwatermaster.org

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111



WSR 211 CARRYOVER SHUTDOWN.pdf

86K

Kern River Watermaster 11-30-2023

ISABELLA DAM & RESERVOIR Snowmelt Operations Forecast August 2023-January 2024

Based on November 30, 2023 CNRFC's Forecast at 90% Exceedance Probability

Date	AUGUST				SEPTEMBER				OCTOBER				NOVEMBER				DECEMBER				JANUARY				Date
	Inflow	Outflow	Loss	Storage	Inflow	Outflow	Loss	Storage	Inflow	Outflow	Loss	Storage	Inflow	Outflow	Loss	Storage	Inflow	Outflow	Loss	Storage	Inflow	Outflow	Loss	Storage	
1	2409	3463	188	540575	1193	3442	127	468209	699	1936	66	362261	572	2085	65	253343	568	778	31	204046	439	25	11	212671	1
2	2325	3336	172	538229	1263	3504	123	463520	772	2006	65	359684	542	2051	58	250235	562	764	32	203582	438	25	13	213464	2
3	2131	3260	164	535664	1274	3479	95	458958	821	1946	76	357302	592	2096	51	247151	557	761	28	203122	434	25	14	214247	3
4	2062	3252	156	532994	1378	3514	103	454517	867	1918	101	355017	570	2170	57	243864	552	754	29	202664	431	25	13	215027	4
5	1948	3191	156	530219	1230	3810	113	449176	701	1851	90	352557	460	2229	60	240083	547	751	21	202218	429	25	13	215803	5
6	1803	3258	163	527010	1202	3868	113	443664	727	1781	89	350290	544	2189	59	236703	542	776	21	201712	426	25	11	216577	6
7	1704	3536	170	523039	1151	3630	131	438487	824	2054	92	347668	597	2106	35	233641	538	775	20	201202	424	25	12	217345	7
8	1770	3640	181	518971	1049	3171	119	434042	677	2354	92	344159	612	2102	41	230604	533	765	18	200706	421	561	15	217038	8
9	1700	3584	158	514921	1017	2762	130	430323	536	2385	92	340309	547	2099	40	227446	529	765	17	200204	422	1021	15	215820	9
10	1564	3453	146	510885	1105	2614	107	427118	511	2313	84	336568	613	2003	46	224598	525	768	16	199690	419	1034	17	214566	10
11	1679	3245	134	507513	1146	2650	106	423925	655	2376	63	333029	546	1857	43	221912	521	686	17	199329	416	1034	13	213314	11
12	1841	2964	134	505020	1087	2523	117	420845	1104	2589	69	329947	579	1826	63	219314	517	655	14	199028	414	1034	15	212054	12
13	1889	2791	134	502965	966	2456	109	417673	267	2701	79	324963	554	1841	48	216666	513	584	14	198859	411	854	14	211148	13
14	1703	2894	170	500265	999	2437	105	414613	538	2746	68	320449	652	1835	39	214242	510	548	15	198754	409	412	16	211110	14
15	1673	2991	148	497357	971	2442	116	411465	788	2789	85	316311	703	1598	42	212383	506	555	13	198631	406	412	18	211062	15
16	1688	2923	118	494673	993	2405	119	408428	642	2841	88	311775	681	894	28	211905	503	264	13	199079	404	412	17	211012	16
17	1805	2785	154	492424	832	2348	108	405207	688	2845	70	307358	706	973	44	211288	498	25	13	199991	405	410	13	210976	17
18	1611	2811	147	489752	885	2361	93	402095	544	2547	80	303226	667	987	25	210604	494	25	13	200895	417	405	16	210968	18
19	1639	2988	102	486874	837	2359	89	398900	197	2393	82	298708	722	932	30	210128	489	25	14	201788	414	405	17	210952	19
20	3212	2749	33	487727	717	2335	85	395522	210	2267	78	294473	735	890	52	209717	485	25	11	202679	424	405	18	210954	20
21	6463	2618	73	495209	812	2271	92	392446	586	2167	81	291176	665	877	63	209172	481	25	13	203558	419	405	13	210956	21
22	4377	2699	107	498325	740	2230	102	389288	767	2200	55	288225	657	855	41	208698	476	25	10	204433	420	405	14	210958	22
23	2922	2735	133	498432	706	2147	98	386235	693	2247	48	285047	590	849	49	208087	472	25	10	205300	416	405	13	210954	23
24	2341	2909	137	497034	756	2146	94	383292	437	2254	61	281322	661	836	30	207680	467	25	14	206149	419	400	18	210956	24
25	1958	2962	133	494779	709	2190	94	380168	270	2276	60	277224	586	825	33	207140	463	25	11	206996	416	400	19	210950	25
26	1807	2924	125	492316	695	2172	90	377060	721	2280	50	274033	626	822	43	206666	458	25	13	207829	414	400	21	210936	26
27	1679	3006	128	489430	629	2151	86	373871	422	2252	47	270310	538	821	57	205992	454	25	11	208658	412	400	22	210916	27
28	1561	3245	142	485808	675	2141	89	370787	786	2233	59	267323	624	812	49	205522	451	25	12	209479	415	400	22	210902	28
29	1407	3468	131	481460	683	2097	86	367812	612	2131	58	264195	564	805	30	204984	446	25	15	210284	413	400	28	210872	29
30	1426	3418	138	477235	561	2006	51	364845	547	2076	76	261012	604	801	35	204524	442	25	15	211081	412	400	21	210854	30
31	1296	3345	126	472921					540	2097	76	257773					434	25	10	211872	421	400	22	210851	31
CFS	65393	96443	4301		28261	79661	3090		19149	70851	2280		18309	43066	1356		15533	11324	504		12980	12989	504		CFS
AcFt	129705	191292	8531		56056	158004	6129		37980	140531	4522		36314	85420	2691		30810	22462	1000		25745	25763	1000		AcFt

EXHIBIT 4



Valerie Stephan <vstephan@waterauditca.org>

Fwd: FW: USACE Isabella Partners repairs

Water Audit California <general@waterauditca.org>
To: Valerie Stephan <vstephan@waterauditca.org>

Thu, Dec 14, 2023 at 10:17 AM

----- Forwarded message -----

From: **Pearce, Colin L.** <CLPearce@duanemorris.com>

Date: Fri, Dec 1, 2023 at 2:42 PM

Subject: FW: USACE Isabella Partners repairs

To: adam@keatslaw.org <adam@keatslaw.org>, Water Audit California <general@waterauditca.org>

CC: Ansley, Jolie-Anne S. <JSAnsley@duanemorris.com>

Adam and Bill,

See below.

Thanks, Colin.

Duane Morris

www.duanemorris.com

Colin L. Pearce
Partner

Duane Morris LLP	P: +1 415 957 3015
Spear Tower	F: +1 415 704 3098
One Market Plaza, Suite 2200	C: +1 415 519 4138
San Francisco, CA 94105-1127	

E-MAIL | BIO | VCARD

From: Scott Kuney <skuney@youngwooldridge.com>

Sent: Friday, December 1, 2023 2:28 PM

To: Pearce, Colin L. <CLPearce@duanemorris.com>

Cc: Art Chianello <achianello@krwatermaster.org>

Subject: USACE Isabella Partners repairs

Colin

The Isabella Partners repair project is a USACE project managed by USACE.

The USACE has the most current information on this and it has requested that all inquiries be directed to their Public Affairs office.

The Kern River Watermaster is referring all inquiries to the USACE. Public Affairs office.

Thank you.

Scott

Sent from my iPhone

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

EXHIBIT 5



Valerie Stephan <vstephan@waterauditca.org>

Fwd: Isabella Partners [SR-ACTIVE.FID4893552]

William McKinnon <mail@williammckinnon.com>
To: Valerie Stephan <vstephan@waterauditca.org>

Mon, Dec 18, 2023 at 12:34 PM

----- Forwarded message -----

From: **Ewens, Elizabeth P.** <elizabeth.ewens@stoel.com>
Date: Thu, Dec 7, 2023 at 6:20 PM
Subject: Isabella Partners [SR-ACTIVE.FID4893552]
To: mail@williammckinnon.com <mail@williammckinnon.com>
Cc: Matt Williams <MatthewW53@aol.com>

Bill:

Thank you for your time this evening. I understand from our conversation that you intend to file a declaration in the existing Kern River lawsuit tomorrow, but that you are mindful of the protected nature of the communications you have had with Isabella Partners' counsel and the fact that the issues that are the subject of those communications are not before the court. I appreciate your assurances, and your offer to provide us with a courtesy copy of your filing. My contact information is below, and I have copied Matt on this communication as well.

Our shared hope is that we will be able to find a mutually satisfactory solution that also will permit the necessary repairs to the hydro facility. To that end, I look forward to our continued discussions.

Regards,

Elizabeth

Elizabeth Ewens | Partner
STOEL RIVES LLP | [500 Capitol Mall, Suite 1600](#) | Sacramento, CA 95814
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William McKinnon
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POB 3161, Grass Valley, CA 95945-3161
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Email: Mail@WilliamMcKinnon.com



Valerie Stephan <vstephan@waterauditca.org>

Isabella Partners / Project Repairs [SR-ACTIVE.FID4893552]

Ewens, Elizabeth P. <elizabeth.ewens@stoel.com>

Wed, Dec 13, 2023 at 11:00 AM

To: Water Audit California <general@waterauditca.org>

Cc: "kmoen@youngwooldridge.com" <kmoen@youngwooldridge.com>, "Linda.asc@sbcglobal.net" <Linda.asc@sbcglobal.net>, "vstephan@waterauditca.org" <vstephan@waterauditca.org>, "clpearce@duanemorris.com" <clpearce@duanemorris.com>, "jsansley@duanemorris.com" <jsansley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, "red@eslawfirm.com" <red@eslawfirm.com>, "cac@eslawfirm.com" <cac@eslawfirm.com>, "kburse@eslawfirm.com" <kburse@eslawfirm.com>, "richard@kerndelta.org" <richard@kerndelta.org>, "isaac@mhwslegal.com" <isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, "lupe@mhwslegal.com" <lupe@mhwslegal.com>, "ameliam@kcwa.com" <ameliam@kcwa.com>, "njacobs@somachlaw.com" <njacobs@somachlaw.com>, "mchester@somachlaw.com" <mchester@somachlaw.com>, "pmapherson@somachlaw.com" <pmapherson@somachlaw.com>, "baherrera@duanemorris.com" <baherrera@duanemorris.com>, "dan@bbr.law" <dan@bbr.law>, "droot@bbr.law" <droot@bbr.law.com>, "adam@keatslaw.org" <adam@keatslaw.org>, "bstroud@youngwooldridge.com" <bstroud@youngwooldridge.com>, "skuney@youngwooldridge.com" <skuney@youngwooldridge.com>, "adoud@youngwooldridge.com" <adoud@youngwooldridge.com>, "cobrien@youngwooldridge.com" <cobrien@youngwooldridge.com>, Matthew Williams <mattheww53@aol.com>, Roger Kirk <roger@hydrodynamics.biz>, "Gaffney, Cherise M." <cherise.gaffney@stoel.com>, "Krattiger, Janelle S.H." <janelle.krattiger@stoel.com>

Mr. McKinnon:

As you are aware, our office represents Isabella Partners in conjunction with Water Audit California's threatened legal action against Isabella Partners associated with the urgent and necessary repair work to the hydroelectric project facilities ("Project"). Contrary to the representations in your email (copied below), no agreement has been reached. Specifically, the representation in your email that "Tentatively Isabella Partners and the USACE are in agreement with the following proposed protocol advanced by Water Audit's experts" is not accurate. Indeed, neither our office nor Isabella Partners has ever even been provided with a copy of the proposal you outlined and circulated in your email. Moreover, while Isabella Partners has acknowledged that a prudent ramp down is not by itself inimical to the repairs it is required to make, Isabella Partners has consistently underscored the need for the U.S. Corps of Engineers ("Corps") to approve any proposed ramp down or release schedule, and Isabella Partners is not aware that this written proposal has been presented to, or approved by, the Corps. In sum, your email substantially misrepresents the current status of dispute resolution efforts with Isabella Partners.

To be clear, and as acknowledged in your email, Isabella Partners has been and continues to be very supportive of collaborative solutions, in coordination with the Corps and Watermaster, to ensure that the repairs to the project can be completed responsibly, safely, and in a manner that avoids potential injury to downstream users and environmental resources. To accommodate these efforts, Isabella Partners is delaying the intended December 18, 2023 start date for Project repairs. Isabella Partners will continue to work in good faith toward a solution, and is sensitive to the environmental concerns raised in your email. However, Isabella Partners does not have the authority to compel the Corps to implement a particular release schedule and, further, what you have proposed goes well beyond Isabella Partners' very limited interests.

Finally, please be advised and reminded that all communications on this matter need to be directed to my office.

Regards,

Elizabeth

Elizabeth Ewens | Partner
STOEL RIVES LLP | 500 Capitol Mall, Suite 1600 | Sacramento, CA 95814
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From: **Water Audit California** <general@waterauditca.org>
Date: Tue, Dec 12, 2023 at 2:55 PM
Subject: Re: Bring Back the Kern. et al. v. City of Bakersfield, et al. (BCV-22-103220-GAP)
To: Kristen Moen <kmoen@youngwooldridge.com>
Cc: legal@waterauditca.org <legal@waterauditca.org>, Linda.asc@sbcglobal.net <Linda.asc@sbcglobal.net>, vstephan@waterauditca.org <vstephan@waterauditca.org>, clpearce@duanemorris.com <clpearce@duanemorris.com>, jsansley@duanemorris.com <jsansley@duanemorris.com>, abarton@duanemorris.com <abarton@duanemorris.com>, vgennaro@bakersfieldcity.us <vgennaro@bakersfieldcity.us>, red@eslawfirm.com <red@eslawfirm.com>, cac@eslawfirm.com <cac@eslawfirm.com>, kburse@eslawfirm.com <kburse@eslawfirm.com>, richard@kerndelta.org <richard@kerndelta.org>, isaac@mhwslegal.com <isaac@mhwslegal.com>, jim@mhwslegal.com <jim@mhwslegal.com>, lupe@mhwslegal.com <lupe@mhwslegal.com>, ameliam@kcwa.com <ameliam@kcwa.com>, njacobs@somachlaw.com <njacobs@somachlaw.com>, mchester@somachlaw.com <mchester@somachlaw.com>, pmacpherson@somachlaw.com <pmacpherson@somachlaw.com>, baherrera@duanemorris.com <baherrera@duanemorris.com>, dan@bbr.law <dan@bbr.law>, droot@bbrlaw.com <droot@bbrlaw.com>, adam@keatslaw.org <adam@keatslaw.org>, Brett Stroud <bstroud@youngwooldridge.com>, Scott Kuney <skuney@youngwooldridge.com>, Alan Doud <adoud@youngwooldridge.com>, Conor O'Brien <cobrien@youngwooldridge.com>

Counsel

As you all know, Isabella Partners operates the Lake Isabella Hydroelectric Project, (Project) which consists of Federal Energy Regulatory Commission [FERC] regulated facilities located in the downstream toe of the Lake Isabella main dam. The United States government is the owner of the Lake Isabella Dam, and the U.S. Army Corps of Engineers (USACE) has been assigned responsibility for maintenance of the dam and maintaining bypass flows from Lake Isabella.

The Project generates energy from dam releases through generating facilities that discharge into the Kern River, in Kern County, California. Water flows through a primary portal, and from there into a secondary portal that flows through the generators with the flows discharged undiminished but for the harvesting of energy.

The court has made a preliminary injunction that *de facto* resurrected the Kern River as a living river. Subsequently the City of Bakersfield and the Plaintiffs entered into a further stipulation that provided for 40% (forty percent) of total flows to be directed to environmental purposes and that certain foundational monitoring be installed. Over the period from November 17 to December 11 discharges from the dam have ranged from 965 CFS to 750 CFS, resulted in flows ranging from 248 CSF to 237 CFS being bypassed by the City for environmental flows. From this information Water Audit has learned that a *minimum* flow of 200 CFS will keep the reach nominally watered. We have also noted that the calculations are inconsistent, but that is another matter.

As part of its calculation of bypass flows the City initially deducted 50 CFS for “accretion,” which has been explained as the volume of water lost in the river’s transit from the dam to the First Point of Measure. Subsequent communications from the City have placed that deduction in question, and present calculations have reduced it to 20 CFS.

In April 2023, Isabella Partners and USACE determined it was going to be necessary to interrupt the usual flow of water for a period of time to effectuate repairs to the generator portal. It has been reported to Water Audit that over the summer and autumn of 2023 that Isabella Partners and the USACE frequently met with the City and Real Parties to negotiate the timing, volume and manner of the diminution of flow. It was agreed between those parties that flows would be reduced to 25 CFS released at the dam for a period of up to three weeks commencing on Monday, December 18, 2023, (the Repair Project). Neither the Court or the Plaintiffs were told of the Repair Project by either the City or Real Parties. It is evident from this agreement that the City and Real Parties were willing and able to accept a complete interruption in their water supply from the Kern River. Apparently, unlike fish, the defendants do not depend on water in the river to live.

On Friday, December 1, 2023, Water Audit learned of the Repair Project in an email from counsel for the City. Water Audit subsequently learned that the basic information required to make a reasoned determination of the hydrological and biological consequences of reduced flow – in particular channel cross sections and water elevations at different flows - did not exist, as the information had not been acquired by the City or the Real Parties. Evidently, no consideration has been given by the City or the Real Parties to the environmental consequences of the planned flow reduction. In the absence of even basic information, Water Audit experts were unable to predict with any degree of confidence the potential environmental injuries that may arise of the Repair Project.

It was in these circumstances that Water Audit has negotiated with Isabella Partners and the USACE to find a process by which the Repair Project can be done, more or less on schedule, without significant harm to the environment. In particular, while esthetic and social considerations are ephemeral, the negotiators are concerned that no fish kill occur. As the health of fish is directly related to a sufficient flow of water, the primary question is what bypass would be minimally acceptable during the Repair Project.

In the total absence of adequate information, Water Audit’s experts have opined that a simple observable metric is stream connectivity, i.e. a continuous connected flow of water across the riverbed. This is not enough alone. Collaterally and simultaneously, it will be essential for detailed field surveys to determine whether fish kills are occurring. The dissolved oxygen levels and temperature must be measured if refugia pools should begin to form. Finally, they opined that it was necessary to minimize to the greatest extent possible the time of the Repair Project

It was agreed between the negotiators that there would be too great a risk of injury to commence the the Repair Project without investigation of the physical consequences of different flow rates. It was also agreed that, given the loss of flow in transit from the dam to the First Point of Measure, represented by the City to be 50 CFS, 25 CFS will deliver virtually no net flows to the subject reach. This logic remains true even with the lower value of loss in later reporting. Environmentally this is clearly unacceptable. Our best inquiries have not been able to determine the source of the minimum flow rate specified in the USACE ops manual. Speculation is that it may have been defined many years ago when the CDFW hatchery was still in operation as that appears to be the

minimum flow that facility required.. Given the historical habitual drying of the downstream reaches, it appears that no one had given the matter any thought in light of the court's order.

As Isabella Partners and the USACE had not been informed of the court's order, and because Water Audit was not informed of the Repair Project, the negotiating parties have had to agree on an expedited process to determine the impact of reduced flows. As all negotiators were of the unanimous opinion that 25 CFS was highly unlikely to be adequate, Isabella Partners has also made extraordinary efforts to increase the available interim flow and to reduce the time of repair.

As a consequence of these efforts the negotiators have agreed that a dress rehearsal is necessary to see (1) what is the maximum interim flow rate possible with the available infrastructure and interim mechanisms, and (2) what will be the environmental consequences of that flow rate. Undertaking this inquiry before deployment and commitment to the Repair Project is critical to avoid the expense and risk of abandoning the Repair Project in progress.

Tentatively Isabella Partners and the USACE are in agreement with the following proposed protocol advanced by Water Audit's experts. This proposal is informational only, and subject to agreement by all necessary parties, including the senior command of the USACE, the City, Real Parties and community plaintiffs.

Tentatively, the proposed December 18, 2023, has been delayed, to allow the following to occur:

- (1) As soon as all parties are in agreement, USACE will reduce releases from the dam to 550 CFS from the current 800 CFS +/- . The City and water master shall record the time of arrival and volume of the diminished flow at the First Point of Measure and report to Isabella Partners, the USACE and Water Audit. At this stage 200 CFS shall be bypassed by the City and water master for environmental flows. Water Audit is agnostic as to the distribution of the surplus flows.
- (2) On receipt of the foregoing information, the USACE will reduce flows with the intent of delivering 200 CFS at the First Point of Measure allowing for transmission timing and losses. The reduced flow should arrive during morning hours. The water master shall ensure that the entirety of the 200 CFS is delivered to environmental flows, and no water diverted to any beneficial user. The subject reach will be overflowed and videoed, and the images examined to determine that isolated pools have not formed. A field fish survey will be conducted to ensure that a fish kill is not occurring.
- (3) Assuming that no injury is present, the USACE will step down to a release that will deliver 150 CFS for environmental flows. Again, the diminished flow should arrive during daylight hours, the reach will be overflowed and videoed, and a field survey conducted. If no unacceptable injury has occurred, the USACE will step down to 100 CFS in the same manner and followed by the same inspection protocol.
- (4) If at any point during the test period demonstrable injury does occur, flows will be immediately restored, and the Repair Project postponed for reconsideration by Isabella Partners and the USACE.
- (5) If no unacceptable injury has occurred at the lowest test flows, normal operations will be restored and may continue until the commencement of the Repair Project. Thereafter, not less than 100 CFS will be maintained during construction, and normal bypass operations will be resumed at the earliest opportunity. In order for this test and for reduced flows during the Repair Project, the Court, City and Real Parties must all agree to the suspension of the interim implementation order. This temporary agreement would be without prejudice to any argument or decision regarding the pending motion for reconsideration.

Would each of you please confirm by close of business on Thursday, December 13, 2023, whether you will agree to a stipulation to the above effect. If agreement is reached, a stipulation will be distributed for your approval on Friday, December 14, 2023, and it is anticipated that the test cycle will begin approximately December 20, 2023. The Repair Project will commence as soon thereafter as resources can be marshaled and deployed. There may be some small delay in the anticipated completion date.

Water Audit wishes to place on record its great appreciation for the extraordinary responsiveness and sensitivity to environmental conditions demonstrated by Isabella Partners and USACE. We sincerely hope that the City and Real Parties will promptly agree to play their roles without judicial

12/18/23, 1:58 PM

Water Audit California Mail - Isabella Partners / Project Repairs [SR-ACTIVE.FID4893552]

intervention.

Respectfully,

William McKinnon



Valerie Stephan <vstephan@waterauditca.org>

Isabella Partners / Project Repairs [SR-ACTIVE.FID4893552]

Water Audit California <general@waterauditca.org>

Wed, Dec 13, 2023 at 3:10 PM

To: "Ewens, Elizabeth P." <elizabeth.ewens@stoel.com>

Cc: "kmoen@youngwooldridge.com" <kmoen@youngwooldridge.com>, "Linda.asc@sbcglobal.net" <Linda.asc@sbcglobal.net>, "vstephan@waterauditca.org" <vstephan@waterauditca.org>, "clpearce@duanemorris.com" <clpearce@duanemorris.com>, "jsansley@duanemorris.com" <jsansley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, "red@eslawfirm.com" <red@eslawfirm.com>, "cac@eslawfirm.com" <cac@eslawfirm.com>, "kbursey@eslawfirm.com" <kbursey@eslawfirm.com>, "richard@kerndelta.org" <richard@kerndelta.org>, "isaac@mhwslegal.com" <isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, "lupe@mhwslegal.com" <lupe@mhwslegal.com>, "ameliam@kcwa.com" <ameliam@kcwa.com>, "njacobs@somachlaw.com" <njacobs@somachlaw.com>, "mchester@somachlaw.com" <mchester@somachlaw.com>, "pmacpherson@somachlaw.com" <pmacpherson@somachlaw.com>, "baherrera@duanemorris.com" <baherrera@duanemorris.com>, "dan@bbr.law" <dan@bbr.law>, "droot@bbr.law" <droot@bbr.law.com>, "adam@keatslaw.org" <adam@keatslaw.org>, "bstroud@youngwooldridge.com" <bstroud@youngwooldridge.com>, "skuney@youngwooldridge.com" <skuney@youngwooldridge.com>, "adoud@youngwooldridge.com" <adoud@youngwooldridge.com>, "cobrien@youngwooldridge.com" <cobrien@youngwooldridge.com>, Matthew Williams <mattheww53@aol.com>, Roger Kirk <roger@hydrodynamics.biz>, "Gaffney, Cherise M." <cherise.gaffney@stoel.com>, "Krattiger, Janelle S.H." <janelle.krattiger@stoel.com>

Ms. Ewens

Respectfully, you are not completely informed.

My email tried valiantly to convey to the City and Irrigation Districts the bounds of an intended rescue package so they may anticipate what would be expected of them. In several locations in my email I attempted to convey the fluidity and uncertainty of the situation and the continuing cooperation of the USACE and Isabella Partners.

In no way did I intend to bind either of those parties, but to wait a week before raising the topic of interim bypass with the City and Real Parties would be unfair to everyone. There is a scheduled proceeding involving reconsideration of the interim bypass order in a week's time, and this issue must be and will be before the court, one way or another.

It is so self-evident that there is no extant proceeding that could in any way bind the USACE it seemed unnecessary to say so. Isabella Partners is not part of this litigation, although that could be arranged if you believe it necessary. If suggesting that Isabella Partners and the USACE participate in a test sequence was inappropriate, a subject that had been discussed at some length without objection, the suggestion is immediately withdrawn. We cannot compel that conduct at this juncture; we understood it would be voluntary. If Isabella Partners and the USACE do not wish to participate in testing, so be it. Individuals already under the jurisdiction and order of the court can be directed to perform the test sequence, and we can convey the information to Isabella Partners and the USACE for their consideration. Surely you do not disagree with the proposition that antecating the extent of injury from diminished flows is in everyone's best interest?

With the greatest of respect, until last Monday, December 3 when Water Audit intervened, Isabella Partners and the USACE intended to inadvertently dewater a newly resurrected living river this coming weekend. It matters not at all at this juncture which party was responsible for which part of the anticipated conduct; the act was going to occur. While we are more than willing to acknowledge the responsiveness of your clients and the USACE to our outreach, we must insist that you recognize that Water Audit has been and remains crucial to the avoidance of an inadvertent catastrophe. Your client's existing relationship with the Watermaster and the Corps had nothing to do with it. They were all on their way over a cliff of unknown height, together.

By separate email I have conveyed to the parties to the litigation a proposed stipulation that addresses what will be required from them, *whatever Isabella Partners*

12/18/23, 1:59 PM

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and USACE may decide to do. As it is not anticipated that Isabella Partners will have any duty in the stipulation, any copy provided to you should not be construed as an invitation to comment, and any comment will be understood to be a request to be part of the litigation.

Respectfully

William McKinnon

[Quoted text hidden]

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

EXHIBIT 6

From: **Water Audit California** <general@waterauditca.org>
Date: Fri, Dec 1, 2023 at 4:26 PM
Subject: Re: Kern River flows
To: Brett Stroud <bstroud@youngwooldridge.com>

Brett

On a related but different topic, would your clients be willing to stipulate *if everyone else does*, to not draw upon the diminished flows during the period of flow reduction being made to facilitate the generation repairs so as to mitigate injury as a result?

Bill

On Fri, Dec 1, 2023 at 4:23 PM Water Audit California <general@waterauditca.org> wrote:

Brett

Pursuant to Evidence Code 1152, now that we have been given some data, we wish to propose a preliminary bypass regime that is substantially less than 40%. We have reason to believe that a whiteboard may alleviate unnecessary anxiety and wasted effort.

Bill

On Fri, Dec 1, 2023 at 4:04 PM Brett Stroud <bstroud@youngwooldridge.com> wrote:
Bill,

Obviously, I can't speak for any of the other parties, and I have no authority to agree to anything on behalf of North Kern at this point. But could you perhaps describe what it is you are proposing? I'm not sure I understand.

Best,
Brett

BRETT A. STROUD
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1800 30th St., Fourth Floor
Bakersfield, CA 93301
Tel. (661) 327-9661 | Fax (661) 327-1087
bstroud@youngwooldridge.com

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From: Water Audit California <general@waterauditca.org>
Sent: Friday, December 1, 2023 8:07 AM
To: Brett Stroud <bstroud@youngwooldridge.com>
Subject: Re: Kern River flows

Good morning

Thank you for the information. I've already made contact with USACE.

Water Audit is considering proposing changes to the preliminary injunction in light of new data. Rather than doing it unilaterally our protocol would usually involve discussion with all concerned.

Without making any commitment, and remembering this is just at a preliminary stage, objectively it would be to your clients' benefit. Is it possible to make this happen?

Bill

On Fri, Dec 1, 2023 at 6:32 AM Brett Stroud <bstroud@youngwooldridge.com> wrote:
Bill,

My understanding is that there will be a period of substantial reductions and that it is a US Army Corps of Engineers project. They would be the best source of details, and I imagine calling the media contact line would work: <https://www.spk.usace.army.mil/Media/>

Best,
Brett

P.S. I will check in later about that transcript.

On Nov 30, 2023, at 12:49 PM, Water Audit California <general@waterauditca.org> wrote:

Good afternoon Brett

I have heard rumors of a substantial reduction in Kern flows anticipated in the near future. Can you disavow those rumors, or shed any light on causation if true?

Bill

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



Valerie Stephan <vstephan@waterauditca.org>

Bring Back the Kern. et al. v. City of Bakersfield, et al. (BCV-22-103220-GAP)

Water Audit California <general@waterauditca.org>

Tue, Dec 12, 2023 at 2:55 PM

To: Kristen Moen <kmoen@youngwooldridge.com>

Cc: "legal@waterauditca.org" <legal@waterauditca.org>, "Linda.asc@sbcglobal.net" <Linda.asc@sbcglobal.net>, "vstephan@waterauditca.org" <vstephan@waterauditca.org>, "clpearce@duanemorris.com" <clpearce@duanemorris.com>, "jsansley@duanemorris.com" <jsansley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, "red@eslawfirm.com" <red@eslawfirm.com>, "cac@eslawfirm.com" <cac@eslawfirm.com>, "kburse@eslawfirm.com" <kburse@eslawfirm.com>, "richard@kerndelta.org" <richard@kerndelta.org>, "isaac@mhwslegal.com" <isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, "lupe@mhwslegal.com" <lupe@mhwslegal.com>, "ameliam@kcwa.com" <ameliam@kcwa.com>, "njacobs@somachlaw.com" <njacobs@somachlaw.com>, "mchester@somachlaw.com" <mchester@somachlaw.com>, "pmacpherson@somachlaw.com" <pmacpherson@somachlaw.com>, "baherrera@duanemorris.com" <baherrera@duanemorris.com>, "dan@bbr.law" <dan@bbr.law>, "droot@bbr.law.com" <droot@bbr.law.com>, "adam@keatslaw.org" <adam@keatslaw.org>, Brett Stroud <bstroud@youngwooldridge.com>, Scott Kuney <skuney@youngwooldridge.com>, Alan Doud <adoud@youngwooldridge.com>, Conor O'Brien <cobrien@youngwooldridge.com>

Counsel

As you all know, Isabella Partners operates the Lake Isabella Hydroelectric Project, (Project) which consists of Federal Energy Regulatory Commission [FERC] regulated facilities located in the downstream toe of the Lake Isabella main dam. The United States government is the owner of the Lake Isabella Dam, and the U.S. Army Corps of Engineers (USACE) has been assigned responsibility for maintenance of the dam and maintaining bypass flows from Lake Isabella.

The Project generates energy from dam releases through generating facilities that discharge into the Kern River, in Kern County, California. Water flows through a primary portal, and from there into a secondary portal that flows through the generators with the flows discharged undiminished but for the harvesting of energy.

The court has made a preliminary injunction that *de facto* resurrected the Kern River as a living river. Subsequently the City of Bakersfield and the Plaintiffs entered into a further stipulation that provided for 40% (forty percent) of total flows to be directed to environmental purposes and that certain foundational monitoring be installed. Over the period from November 17 to December 11 discharges from the dam have ranged from 965 CFS to 750 CFS, resulted in flows ranging from 248 CSF to 237 CFS being bypassed by the City for environmental flows. From this information Water Audit has learned that a *minimum* flow of 200 CFS will keep the reach nominally watered. We have also noted that the calculations are inconsistent, but that is another matter.

As part of its calculation of bypass flows the City initially deducted 50 CFS for "accretion," which has been explained as the volume of water lost in the river's transit from the dam to the First Point of Measure. Subsequent communications from the City have placed that deduction in question, and present calculations have reduced it to 20 CFS.

In April 2023, Isabella Partners and USACE determined it was going to be necessary to interrupt the usual flow of water for a period of time to effectuate repairs to the generator portal. It has been reported to Water Audit that over the summer and autumn of 2023 that Isabella Partners and the USACE frequently met with the City and Real Parties to negotiate the timing, volume and manner of the diminution of flow. It

was agreed between those parties that flows would be reduced to 25 CFS released at the dam for a period of up to three weeks commencing on Monday, December 18, 2023, (the Repair Project). Neither the Court or the Plaintiffs were told of the Repair Project by either the City or Real Parties. It is evident from this agreement that the City and Real Parties were willing and able to accept a complete interruption in their water supply from the Kern River. Apparently, unlike fish, the defendants do not depend on water in the river to live.

On Friday, December 1, 2023, Water Audit learned of the Repair Project in an email from counsel for the City. Water Audit subsequently learned that the basic information required to make a reasoned determination of the hydrological and biological consequences of reduced flow – in particular channel cross sections and water elevations at different flows - did not exist, as the information had not been acquired by the City or the Real Parties. Evidently, no consideration has been given by the City or the Real Parties to the environmental consequences of the planned flow reduction. In the absence of even basic information, Water Audit experts were unable to predict with any degree of confidence the potential environmental injuries that may arise of the Repair Project.

It was in these circumstances that Water Audit has negotiated with Isabella Partners and the USACE to find a process by which the Repair Project can be done, more or less on schedule, without significant harm to the environment. In particular, while esthetic and social considerations are ephemeral, the negotiators are concerned that no fish kill occur. As the health of fish is directly related to a sufficient flow of water, the primary question is what bypass would be minimally acceptable during the Repair Project.

In the total absence of adequate information, Water Audit's experts have opined that a simple observable metric is stream connectivity, i.e. a continuous connected flow of water across the riverbed. This is not enough alone. Collaterally and simultaneously, it will be essential for detailed field surveys to determine whether fish kills are occurring. The dissolved oxygen levels and temperature must be measured if refugia pools should begin to form. Finally, they opined that it was necessary to minimize to the greatest extent possible the time of the Repair Project

It was agreed between the negotiators that there would be too great a risk of injury to commence the the Repair Project without investigation of the physical consequences of different flow rates. It was also agreed that, given the loss of flow in transit from the dam to the First Point of Measure, represented by the City to be 50 CFS, 25 CFS will deliver virtually no net flows to the subject reach. This logic remains true even with the lower value of loss in later reporting. Environmentally this is clearly unacceptable. Our best inquiries have not been able to determine the source of the minimum flow rate specified in the USACE ops manual. Speculation is that it may have been defined many years ago when the CDFW hatchery was still in operation as that appears to be the minimum flow that facility required.. Given the historical habitual drying of the downstream reaches, it appears that no one had given the matter any thought in light of the court's order.

As Isabella Partners and the USACE had not been informed of the court's order, and because Water Audit was not informed of the Repair Project, the negotiating parties have had to agree on an expedited process to determine the impact of reduced flows. As all negotiators were of the unanimous opinion that 25 CFS was highly unlikely to be adequate, Isabella Partners has also made extraordinary efforts to increase the available interim flow and to reduce the time of repair.

As a consequence of these efforts the negotiators have agreed that a dress rehearsal is necessary to see (1) what is the maximum interim flow rate possible with the available infrastructure and interim mechanisms, and (2) what will be the environmental consequences of that flow rate. Undertaking this inquiry before deployment and commitment to the Repair Project is critical to avoid the expense and risk of abandoning the Repair Project in progress.

Tentatively Isabella Partners and the USACE are in agreement with the following proposed protocol advanced by Water Audit's experts. This proposal is informational only, and subject to agreement by all necessary parties, including the senior command of the USACE, the City, Real Parties and community plaintiffs.

Tentatively, the proposed December 18, 2023, has been delayed, to allow the following to occur:

- (1) As soon as all parties are in agreement, USACE will reduce releases from the dam to 550 CFS from the current 800 CFS +/- . The City and water master shall record the time of arrival and volume of the diminished flow at the First Point of Measure and report to Isabella Partners, the USACE and Water Audit. At this stage 200 CFS shall be bypassed by the City and water master for environmental flows. Water Audit is agnostic as to the distribution of the surplus flows.
- (2) On receipt of the foregoing information, the USACE will reduce flows with the intent of delivering 200 CFS at the First Point of Measure allowing for transmission timing and losses. The reduced flow should arrive during morning hours. The water master shall ensure that the entirety of the 200 CFS is delivered to environmental flows, and no water diverted to any beneficial user. The subject reach will be overflowed and videoed, and the images examined to determine that isolated pools have not formed. A field fish survey will be conducted to ensure that a fish kill is not occurring.
- (3) Assuming that no injury is present, the USACE will step down to a release that will deliver 150 CFS for environmental flows. Again, the diminished flow should arrive during daylight hours, the reach will be overflowed and videoed, and a field survey conducted. If no unacceptable injury has occurred, the USACE will step down to 100 CFS in the same manner and followed by the same inspection protocol.
- (4) If at any point during the test period demonstrable injury does occur, flows will be immediately restored, and the Repair Project postponed for reconsideration by Isabella Partners and the USACE.
- (5) If no unacceptable injury has occurred at the lowest test flows, normal operations will be restored and may continue until the commencement of the Repair Project. Thereafter, not less than 100 CFS will be maintained during construction, and normal bypass operations will be resumed at the earliest opportunity. In order for this test and for reduced flows during the Repair Project, the Court, City and Real Parties must all agree to the suspension of the interim implementation order. This temporary agreement would be without prejudice to any argument or decision regarding the pending motion for reconsideration.

Would each of you please confirm by close of business on Thursday, December 13, 2023, whether you will agree to a stipulation to the above effect. If agreement is reached, a stipulation will be distributed for your approval on Friday, December 14, 2023, and it is anticipated that the test cycle will begin approximately December 20, 2023. The Repair Project will commence as soon thereafter as resources can be marshaled and deployed. There may be some small delay in the anticipated completion date.

Water Audit wishes to place on record its great appreciation for the extraordinary responsiveness and sensitivity to environmental conditions demonstrated by Isabella Partners and USACE. We sincerely hope that the City and Real Parties will promptly agree to play their roles without judicial intervention.

Respectfully,

William McKinnon

[Quoted text hidden]

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



Valerie Stephan <vstephan@waterauditca.org>

Bring Back the Kern. et al. v. City of Bakersfield, et al. (BCV-22-103220-GAP)

Brett Stroud <bstroud@youngwooldridge.com>

Wed, Dec 13, 2023 at 5:31 PM

To: Water Audit California <general@waterauditca.org>

Cc: Kristen Moen <kmoen@youngwooldridge.com>, "legal@waterauditca.org" <legal@waterauditca.org>, "linda.asc@sbcglobal.net" <linda.asc@sbcglobal.net>, "vstephan@waterauditca.org" <vstephan@waterauditca.org>, "clpearce@duanemorris.com" <clpearce@duanemorris.com>, "JSAnsley@duanemorris.com" <JSAnsley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, "red@eslawfirm.com" <red@eslawfirm.com>, "cac@eslawfirm.com" <cac@eslawfirm.com>, "kbursey@eslawfirm.com" <kbursey@eslawfirm.com>, "richard@kerndelta.org" <richard@kerndelta.org>, "Isaac@mhwslegal.com" <Isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, "lupe@mhwslegal.com" <lupe@mhwslegal.com>, "ameliam@kcwa.com" <ameliam@kcwa.com>, "njacobs@somachlaw.com" <njacobs@somachlaw.com>, "mchester@somachlaw.com" <mchester@somachlaw.com>, "pmacpherson@somachlaw.com" <pmacpherson@somachlaw.com>, "BAHerrera@duanemorris.com" <BAHerrera@duanemorris.com>, "dan@bbr.law" <dan@bbr.law>, "droot@bbr.law.com" <droot@bbr.law.com>, "adam@keatslaw.org" <adam@keatslaw.org>, Scott Kunej <skunej@youngwooldridge.com>, Alan Doud <adoud@youngwooldridge.com>, Conor O'Brien <cobrien@youngwooldridge.com>

Bill,

I have read your email and the follow-up from Elizabeth Ewens for Isabella Partners regarding its hydroelectric power-plant repair project. As you know, the USACE is in charge of this project for Isabella Partners. We are not aware that the USACE has approved Isabella Partners repair plan. Hearing from the USACE is a prerequisite for us.

Best,
Brett

On Dec 12, 2023, at 2:56 PM, Water Audit California <general@waterauditca.org> wrote:

[Quoted text hidden]

EXHIBIT 7



Valerie Stephan <vstephan@waterauditca.org>

WAC et al v City of Bakersfield - Notice of Ex Parte Application

Valerie Stephan <vstephan@waterauditca.org>

Mon, Dec 18, 2023 at 1:14 PM

To: CLPearce@duanemorris.com, jsansley@duanemorris.com, abarton@duanemorris.com, vgennaro@bakersfieldcity.us, red@eslawfirm.com, cac@eslawfirm.com, kbusey@eslawfirm.com, richard@kerndelta.org, skuney@youngwooldridge.com, bstroud@youngwooldridge.com, Adam Keats <adam@keatslaw.org>, isaac@mhwslegal.com, jim@mhwslegal.com, dan@bbr.law, droot@bbr.law, ameliam@kcwa.com, njacobs@somachlaw.com, llacey@somachlaw.com, mchester@somachlaw.com

Cc: "Herrera, Blanca A" <baherrera@duanemorris.com>, Water Audit California <legal@waterauditca.org>, kmoen@youngwooldridge.com

Bcc: Valerie Stephan <vstephan@waterauditca.org>

Hello,

We are providing notice that we are filing an ex parte application for a TRO/OSC against the City of Bakersfield to establish a priority for environmental flows in response to the pending USACE plan to interrupt flow and dewater the Kern River.

The Ex Parte Application will be heard December 21, 2023 at 9:00 a.m. in Department 8 of the Kern County Superior Court, located at 1415 Truxton Ave., Bakersfield, CA 93301.

Please advise if you intend on opposing this Application.

If you wish to discuss this matter further, please contact William McKinnon at legal@waterauditca.org.

Thank you,

Valerie Stephan
Paralegal/Researcher

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



Valerie Stephan <vstephan@waterauditca.org>

Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Ansley, Jolie-Anne S. <JSAnsley@duanemorris.com>
To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>

Mon, Dec 18, 2023 at 1:15 PM

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

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From: "Ansley, Jolie-Anne S." <JSAnsley@duanemorris.com>
To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>
Cc:
Bcc:
Date: Mon, 18 Dec 2023 21:15:23 +0000
Subject: Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

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Original Message

Message ID	<PH0PR13MB57613BD7185C8F5B290ED5EDBF90A@PH0PR13MB5761.namprd13.prod.outlook.com>
Created at:	Mon, Dec 18, 2023 at 1:15 PM (Delivered after 4 seconds)
From:	Kristen Moen <kmoen@youngwooldridge.com>
To:	"vstephan@waterauditca.org" <vstephan@waterauditca.org>
Subject:	Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application
SPF:	PASS with IP 67.231.154.184 Learn more
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Received: by 2002:a05:6359:2af:b0:170:e648:2977 with SMTP id ek47csp4639745rwb;
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Original Message

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Created at:	Mon, Dec 18, 2023 at 1:15 PM (Delivered after 4 seconds)
From:	Richard Iger <richard@kerndelta.org>
To:	"vstephan@waterauditca.org" <vstephan@waterauditca.org>
Subject:	Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application
SPF:	PASS with IP 2a01:111:f403:2009:0:0:0:600 Learn more
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Received: by 2002:a05:6359:2af:b0:170:e648:2977 with SMTP id ek47csp4640209rwb;
    Mon, 18 Dec 2023 13:15:58 -0800 (PST)
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    Mon, 18 Dec 2023 13:15:58 -0800 (PST)
ARC-Seal: i=2; a=rsa-sha256; t=1702934158; cv=pass;
```



Valerie Stephan <vstephan@waterauditca.org>

Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Craig A. Carnes <cac@eslawfirm.com>

Mon, Dec 18, 2023 at 1:23 PM

To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>

Your message

To: Craig A. Carnes

Subject: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Sent: Monday, December 18, 2023 1:14:15 PM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, December 18, 2023 1:23:12 PM (UTC-08:00) Pacific Time (US & Canada).



Valerie Stephan <vstephan@waterauditca.org>

Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Pearce, Colin L. <CLPearce@duanemorris.com>
To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>

Mon, Dec 18, 2023 at 1:28 PM

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To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>
Cc:
Bcc:
Date: Mon, 18 Dec 2023 21:28:54 +0000
Subject: Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

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Valerie Stephan <vstephan@waterauditca.org>

Read: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Virginia "Ginny" Gennaro <vgennaro@bakersfieldcity.us>
To: "vstephan@waterauditca.org" <vstephan@waterauditca.org>

Mon, Dec 18, 2023 at 1:50 PM

Your message

To: Virginia "Ginny" Gennaro
Subject: WAC et al v City of Bakersfield - Notice of Ex Parte Application
Sent: Monday, December 18, 2023 1:14:15 PM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, December 18, 2023 1:50:25 PM (UTC-08:00) Pacific Time (US & Canada).



Valerie Stephan <vstephan@waterauditca.org>

WAC et al v City of Bakersfield - Notice of Ex Parte Application

Scott Kuney <skuney@youngwooldridge.com>

Mon, Dec 18, 2023 at 5:30 PM

To: Nick Jacobs <njacobs@somachlaw.com>, Valerie Stephan <vstephan@waterauditca.org>, "CLPearce@duanemorris.com" <CLPearce@duanemorris.com>, "Jolie-Anne S. Ansley" <JSAnsley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, "red@eslawfirm.com" <red@eslawfirm.com>, "cac@eslawfirm.com" <cac@eslawfirm.com>, "kburse@eslawfirm.com" <kburse@eslawfirm.com>, Richard Iger <richard@kerndelta.org>, Brett Stroud <bstroud@youngwooldridge.com>, Adam Keats <adam@keatslaw.org>, "isaac@mhwslegal.com" <isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, Dan Raytis <dan@bbr.law>, Daniel Root <droot@bbr.law>, "ameliam@kcwa.com" <ameliam@kcwa.com>, Louinda Lacey <LLacey@somachlaw.com>, Michelle Chester <mchester@somachlaw.com>

Cc: "Herrera, Blanca A" <baherrera@duanemorris.com>, Water Audit California <legal@waterauditca.org>, Kristen Moen <kmoen@youngwooldridge.com>

Our offices agree.

From: Nick Jacobs <njacobs@somachlaw.com>

Sent: Monday, December 18, 2023 5:30 PM

To: Valerie Stephan <vstephan@waterauditca.org>; CLPearce@duanemorris.com; Jolie-Anne S. Ansley <JSAnsley@duanemorris.com>; abarton@duanemorris.com; vgennaro@bakersfieldcity.us; red@eslawfirm.com; cac@eslawfirm.com; kburse@eslawfirm.com; Richard Iger <richard@kerndelta.org>; Scott Kuney <skuney@youngwooldridge.com>; Brett Stroud <bstroud@youngwooldridge.com>; Adam Keats <adam@keatslaw.org>; isaac@mhwslegal.com; jim@mhwslegal.com; Dan Raytis <dan@bbr.law>; Daniel Root <droot@bbr.law>; ameliam@kcwa.com; Louinda Lacey <LLacey@somachlaw.com>; Michelle Chester <mchester@somachlaw.com>

Cc: Herrera, Blanca A <baherrera@duanemorris.com>; Water Audit California <legal@waterauditca.org>; Kristen Moen <kmoen@youngwooldridge.com>

Subject: RE: WAC et al v City of Bakersfield - Notice of Ex Parte Application

Dear Messrs. McKinnon and Keats,

Having only received Ms. Stephan's email this afternoon and without any of the required supporting materials (See Cal. Rules of Court 3.1201.), Kern County Water Agency opposes the ex parte application. Of particular help in assessing whether to oppose the application would be review of any declarations "containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte," as well as any briefing and proposed order. (See Cal. Rules of Court 3.1201 and 3.1202(c).) Thanks, Nick

Nicholas A. Jacobs

Attorney

SOMACH SIMMONS & DUNN | ATTORNEYS AT LAW

500 CAPITOL MALL | SUITE 1000 | SACRAMENTO, CA 95814

(916) 446-7979 | OFFICE

(916) 469-3826 | DIRECT

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From: Valerie Stephan <vstephan@waterauditca.org>

Sent: Monday, December 18, 2023 1:14 PM

To: CLPearce@duanemorris.com; Jolie-Anne S. Ansley <JSAnsley@duanemorris.com>; abarton@duanemorris.com; vgennaro@bakersfieldcity.us; red@eslawfirm.com; cac@eslawfirm.com; kbursey@eslawfirm.com; Richard Iger <richard@kerndelta.org>; skuney@youngwooldridge.com; Brett Stroud <bstroud@youngwooldridge.com>; Adam Keats <adam@keatslaw.org>; isaac@mhwslegal.com; jim@mhwslegal.com; Dan Raytis <dan@bbr.law>; Daniel Root <droot@bbr.law>; ameliam@kcwa.com; Nick Jacobs <njacobs@somachlaw.com>; Louinda Lacey <LLacey@somachlaw.com>; Michelle Chester <mchester@somachlaw.com>

Cc: Herrera, Blanca A <baherrera@duanemorris.com>; Water Audit California <legal@waterauditca.org>; Kristen Moen <kmoen@youngwooldridge.com>

Subject: WAC et al v City of Bakersfield - Notice of Ex Parte Application

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Please advise if you intend on opposing this Application.

If you wish to discuss this matter further, please contact William McKinnon at legal@waterauditca.org.

Thank you,

Valerie Stephan

Paralegal/Researcher

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Valerie Stephan <vstephan@waterauditca.org>

WAC et al v City of Bakersfield - Notice of Ex Parte Application

Craig A. Carnes <cac@eslawfirm.com>

Mon, Dec 18, 2023 at 5:52 PM

To: Scott Kuney <skuney@youngwooldridge.com>

Cc: Nick Jacobs <njacobs@somachlaw.com>, Valerie Stephan <vstephan@waterauditca.org>, "CLPearce@duanemorris.com" <CLPearce@duanemorris.com>, "Jolie-Anne S. Ansley" <JSAnsley@duanemorris.com>, "abarton@duanemorris.com" <abarton@duanemorris.com>, "vgennaro@bakersfieldcity.us" <vgennaro@bakersfieldcity.us>, Robert Donlan <red@eslawfirm.com>, "Kevin W. Burse" <kwb@eslawfirm.com>, Richard Iger <richard@kerndelta.org>, Brett Stroud <bstroud@youngwooldridge.com>, Adam Keats <adam@keatslaw.org>, "isaac@mhwslegal.com" <isaac@mhwslegal.com>, "jim@mhwslegal.com" <jim@mhwslegal.com>, Dan Raytis <dan@bbr.law>, Daniel Root <droot@bbr.law>, "ameliam@kcwa.com" <ameliam@kcwa.com>, Louinda Lacey <LLacey@somachlaw.com>, Michelle Chester <mchester@somachlaw.com>, "Herrera, Blanca A" <BAHerrera@duanemorris.com>, Water Audit California <legal@waterauditca.org>, Kristen Moen <kmoen@youngwooldridge.com>

Kern Delta agrees with KCWA as well.

Thank you

Craig

Craig A. Carnes, Jr.
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Sacramento, CA 95816
(916)447-2166
cac@eslawfirm.com

On Dec 18, 2023, at 6:31 PM, Scott Kuney <skuney@youngwooldridge.com> wrote:

[Quoted text hidden]

1 PROOF OF SERVICE
2
3

4 I, Valerie Stephan, declare:

5 I am a resident of Lincoln County, Oregon. I am over the age of eighteen years and not a
6 party to the within action. My business address is 952 School Street, #316, Napa, California 94559.

7 On December 18, 2023, I served a copy of the within document(s):

8 WATER AUDIT CALIFORNIA’S EX PARTE APPLICATION FOR TEMPORARY
9 RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE PRELIMINARY
10 INJUNCTION

11 X by transmitting via e-mail or electronic transmission the document(s) listed above
12 to the person(s) at the e-mail address(es) set forth below.

13 **City of Bakersfield**

Colin L. Pearce
Jolie-Anne S. Ansley
Ashley L. Barton
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CITY ATTORNEY’S OFFICE
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Kern Delta Water District

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Kern County Water Agency

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I declare the foregoing to be true, subject to the penalty of perjury. Executed on
December 18, 2023 at Lincoln City, Oregon.



Valerie Stephan