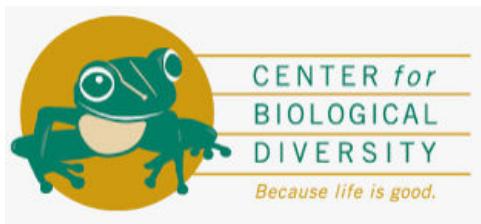




NRDC



January 13th, 2022

Members of the State Water Board and Administrative Hearings Office

Re: Kern River Hearing

Dear Secretary Blumenfeld, Chair Esquivel, Board Member D'Adamo, Board Member Maguire, Board Member Firestone, Board Member Morgan, Director Lily, and Deputy Director Ekdahl,

On behalf of the undersigned organizations, **we urge you to defend the public trust resources of the lower Kern River by placing minimum environmental flow requirements on the river.**

We appreciate that, after more than a decade of court cases leading to the 2007 forfeiture of a portion of Kern River water followed by an additional decade of board inactivity since the 2010 revocation of the Kern's Fully Appropriated Streams status, the Board has at last allocated Administrative Hearing Office resources to resolve these Kern River water rights disputes. We recognize the inherent complexity of the disputed pre-1914 water rights and the other questions at hand.

Throughout the hearing process, **we implore the board to consider every decision in the context of the current state of public trust resources of the Kern River**, including wildlife, fisheries, and recreation. The technicalities of contracts and water rights claims should not detract from this obvious reality – the Kern River has been deprived of the entirety of its flows in all but the wettest of years. This makes it challenging for many sensitive, threatened, and endangered species of plants and animals to survive. It precludes the existence of any fisheries in the lower Kern River, in open defiance of Fish and Game Code 5937. It deprives the half million residents of the greater Bakersfield area of outdoor recreation and of the restorative beauty of a flowing, thriving river.

The lack of this public resource is an environmental injustice that disproportionately impacts the disadvantaged communities of Bakersfield. Approximately half of the population of Kern are people of color, many of whom live in disadvantaged communities. Bakersfield ranks among the lowest cities in the state for educational attainment, has below average health outcomes, and a much higher incidence of poverty than most other parts of the state. People living in Bakersfield's disadvantaged communities have significantly less urban greenery, access to outdoor recreation, and fewer places to recreate and cool off. These communities bear the cost of a dry river while others profit from the abundance of the Kern River's over 700,000 acre-feet of annual water. To ignore the impact of a dry river on these communities would be inconsistent with the board's commitments on racial equity and environmental justice.

The need to protect the public trust and environmental justice compel us to support the City of Bakersfield's petition for the forfeited Kern Delta Water Rights, as the city is the only petitioner who has pledged to flow the water down the river. **This forfeited water supply, however, is wholly inadequate to restore a year-round flowing river.** Furthermore, the City of Bakersfield shouldn't be the only user of Kern River water with an obligation to protect a flowing river.

As the current hearing questions related to forfeited and high flow water rights were largely framed by those who continue to benefit from the total diversion of the river's flows, we are clearly still asking the wrong questions about the Kern River. **We propose the immediate addition of the following questions to the hearing scope:**

- How much water is required to adequately restore the public trust resources (wildlife, fisheries, recreation) that have been harmed by excessive diversions?
- What changes are required to water rights on the Kern River to ensure that public trust resources are protected?
- How should all appropriators of Kern River water fairly share the burden of ensuring the protection of public trust resources and a flowing river?
- Who should have rights to the groundwater that is recharged under the river channel once a flowing river is restored?

- Should the Water Board assist in the creation of a groundwater credit system that aids in SGMA compliance and water districts getting their allocations, while also ensuring a year-round flowing river?

Only by including these questions into the hearing scope can we **address the underlying problem with the Kern River – that no users of Kern River water have any obligation to protect public trust resources on the river.**

Given the decades it took for the Kern to have this opportunity for consideration by the Board, it's critical that the Board use this opportunity to fulfill its obligations and defend the public trust in the case of the Kern River. Any further delay will cause unacceptable harm to the public trust resources of the Kern River and the people who should have access to these resources.

Thank you for your leadership on this issue – we would be happy to meet with you or your staff to discuss this further.

Sincerely,

Kelly Damian, Policy and Outreach
Bring Back the Kern

Harry Love, President
Kern Audubon Society

Rich O'Neil, President
Kern River Parkway Foundation

Carolyn Belli, President
Panorama Vista Preserve

Stephen Montgomery
Kern-Kaweah Chapter, Sierra Club

Redgie Collins, Legal and Policy Director
California Trout

John Buse, Legal Director
Center for Biological Diversity

Jonas Minton, Senior Water Policy Advisor
Planning and Conservation League

Ron Stork, Senior Policy Analyst
Friends of the River

Amy Merrill, Director of Central Valley Restoration
American Rivers

Carolee Krieger, President and Executive Director
California Water Impact Network

Sean Bothwell, Executive Director
California Coastkeeper Alliance

Jaime Neary, Staff Attorney
Russian Riverkeepers

Michael Anderson, Treasurer
Protect the American River Canyons

Gary Ananian, Executive Director
Kern River Conservancy

Kate Poole, Senior Director Water
Natural Resources Defense Council