

City of Bakersfield - Water Resources Department

Kern River Flow and Municipal Water Program

Recirculated Draft Environmental Impact Report

August 2016



Kern River Channel Downstream from First Point, 2009

Calloway Weir

Kern River Channel at Highway 99 Crossing, 2009

Kern River Channel at Highway 99 Crossing, 2011

**Kern River Flow and Municipal Water Program
Recirculated Draft Environmental Impact Report**

SCH# 2011021042

City of Bakersfield
Water Resources Department

1000 Buena Vista Road
Bakersfield, CA 93311

August 2016

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Acronyms and Abbreviations

| | |
|------------------|--|
| AB | Assembly Bill |
| afy | acre-feet per year |
| Basin | Kern County Groundwater Basin |
| Cal Water | California Water Service Company |
| CEQA | California Environmental Quality Act |
| City | City of Bakersfield |
| DEIR | draft environmental impact report |
| DWR | California Department of Water Resources |
| EIR | environmental impact report |
| FAS | fully appropriated status |
| First Point | First Point of Measurement |
| GSA | Groundwater Sustainability Agency |
| GSP | Groundwater Sustainability Plan |
| I-5 | Interstate 5 |
| ID4 | Improvement District No. 4 of the Kern County Water Agency |
| KCLC | Kern County Land Company |
| KDWD | Kern Delta Water District |
| KRGSA | Kern River Groundwater Sustainability Agency |
| North Kern | North Kern Water Storage District |
| Parkway Plan | Kern River Parkway Plan |
| Proposed Program | Kern River Flow and Municipal Water Program |
| SGMA | Sustainable Groundwater Management Act |
| SOI | Sphere of Influence |
| SWP | California State Water Project |
| SWRCB | State Water Resources Control Board |
| TAF | thousand acre-feet |
| Tenneco | Tenneco West, Inc. |
| USACE | U.S. Army Corps of Engineers |
| UWMP | Urban Water Management Plan |

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General Information About This Document

This document is a Recirculated Draft Environmental Impact Report (DEIR) for the Kern River Flow and Municipal Water Program (Program or Proposed Program) (State Clearinghouse #2011021042), prepared by the City of Bakersfield (City), in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15088.5.

The City of Bakersfield, as Lead Agency under CEQA, proposes this Program to increase and restore more water flows to the Kern River channel with the goals of protecting and preserving the local water supply, environment, and quality of life for City residents. To implement City policies, and to provide water for prior and ongoing City projects, the City will attempt to increase and restore stream flows in the Kern River channel more consistently during the year, primarily below the Calloway Weir. The Proposed Program would use existing water supplies and new, additional water supplies obtained through the City's current application to appropriate, submitted to the State Water Resources Control Board (SWRCB). These water sources would be used to increase flows in the Kern River.

This DEIR is a Program CEQA document which addresses the potential environmental effects of the Program. Following any decision or action by the SWRCB that may better define the specific amount of water available to the City to support the Program, the City will then undertake additional analysis under CEQA (project specific tiered level of analysis) to evaluate more specific Program conditions and impacts.

The DEIR was previously prepared and circulated for public review in June 2012, and the Final EIR was completed in September 2012. The final environmental document was decertified by the City of Bakersfield City Council in September 2015, and that document is referred to herein as the prior 2012 DEIR.

The City has prepared this Recirculated DEIR to comply with an Order from the Superior Court for the State of California, County of Tulare. Following a January 30, 2015 hearing in the Tulare County Superior Court, the Honorable Lloyd L. Hicks, Judge of the Tulare County Superior Court, issued a judgment granting petitions for writ of mandate and ordering the City to set aside its certification of the DEIR. The Court found that the City had not complied with CEQA in connection with its preparation of the Project Description chapter of the DEIR. The Court, however, found that the City had otherwise complied with CEQA in every other respect with regard to the DEIR, and the Court did not require the City to revise or change any section or chapter of the DEIR other than the Project Description. This Recirculated DEIR therefore provides a revised Program Description chapter to address the concerns in the Tulare County judgment.

This Recirculated DEIR will be available for public and agency review from August 22, 2016, to October 7, 2016 (a 45-day period). In accordance with CEQA Guidelines Section 15088.5(f)(2), the City requests that reviewers limit their comments to the revised Project Description chapter of the recirculated DEIR. In addition, the City will only respond to those comments that pertain to the revised and recirculated portions of the prior 2012 DEIR, as set forth herein.

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Chapter 1

EXECUTIVE SUMMARY

1.1 Project Background

This Draft Environmental Impact Report (DEIR) is an informational document for decision makers as well as for the general public. The California Environmental Quality Act (CEQA) requires that decision makers review and consider the EIR in their deliberations on the Proposed Program. In compliance with CEQA Guidelines Section 15124(d), the State Water Resources Control Board (SWRCB) is an agency with subsequent review or approval authority over certain components of the Proposed Program, and is the only agency other than the City that is expected to use the DEIR as the environmental basis of its decision making, specifically in connection with its approval the City's water rights application.

This DEIR has been prepared for the City's Proposed Program to enhance the Bakersfield water supply to comply with CEQA.

As described in the recirculated Chapter 2, *Program Description*, the City will allocate a portion of its existing "pre-1914" appropriative rights to the Kern River (allocated Source 1 water), and also direct unappropriated surplus Kern River water (under application with the SWRCB) (Source 2 water) to flow in the Kern River channel as available.

The City will use the analyses presented in this DEIR, and the public response to them, to evaluate the Proposed Program's environmental impacts, in connection with its consideration of additional project level CEQA documents, and to further modify, approve, or deny approval of the Proposed Program based on the analyses provided herein.

The Proposed Program is necessary to increase, protect, and preserve the municipal water supply to meet present and future demands. The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs.

Adoption of the Proposed Program and final approval and certification of the DEIR by the City have been delayed as a result of a legal challenge to the DEIR. After the City initially approved and certified the DEIR on September 26, 2012, several local water districts and other entities filed three separate petitions for writ of mandate challenging the City's compliance with CEQA in connection with the DEIR. Following a January 30, 2015 hearing in the Tulare County Superior Court, the Honorable Lloyd L. Hicks, Judge of the Tulare County Superior Court, issued a judgment granting the petitions for writ of mandate and ordering the City to set aside its certification of the DEIR (provided in **Appendix A** of this Recirculated DEIR). The Court found that the City had not complied with CEQA in connection with its preparation of the Project Description chapter of the DEIR. The Court, however, found that the City had otherwise complied with CEQA in every other respect with

regard to the DEIR, and the Court did not require the City to revise or change any section or chapter of the DEIR other than the Project Description.

As a result of the Judgment and Writ issued in the Tulare County CEQA litigation, the City rescinded its prior certification of the DEIR on September 2, 2015. The City has also complied with the Judgment and Writ by revising Chapter 2, *Program Description*, of the DEIR to bring it into compliance with CEQA requirements and the direction of the Court. The City is not required to revise the remaining chapters or sections of the DEIR, which the Court found to be in compliance with CEQA. The City will and hereby does recirculate the DEIR with the revised Program Description. Pursuant to California Code of Regulations Title 14, Section 15088.5, the City is only required to recirculate the chapters or portions of the EIR that have been modified. Section 15088.5 states: "If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified."

This Recirculated DEIR is intended to provide the public with a meaningful opportunity to comment on the additional information and analysis included in the revised Program Description in response to the Court's ruling. After reviewing and responding to comments on this Recirculated DEIR, the Final EIR will be considered for certification by the City, as having been prepared in compliance with CEQA.

The City will not approve the Proposed Program when it certifies the Final EIR. Instead, the City will consider approving the Proposed Program at a later time, after the SWRCB has made a determination as to the quantity of water available to support the Program, and determined the quantity of water awarded to the City, and after the City has conducted (as necessary) more specific, project-level CEQA review.

1.2 Key Features Included in This Recirculated DEIR

1.2.1 Revisions to Program Description

In its July 5, 2015 Judgment and ruling, the Court held that, on one point only, the Project Description for the Proposed Program was inadequate to meet the requirements of CEQA. The Court stated that the City failed to meet the requirements of Section 15124(d)(2), "which requires a list of all its decisions subject to CEQA, preferably in the order in which they will occur." The Court directed the City to revise the project description as follows:

To make sense of these circumstances, and to conform to the above discussed CEQA requirements, rather than scatter references throughout the documents, the project description should specify that this level is not an action item; that City is not approving any specific activity at this point, and that this stage is just confirming existing City policy in anticipation of specifically described future actions which will be reviewed in detail as part of the tiering process.

Such a project description would clear up confusion (including by the Court, as stated at oral argument) regarding what decision is in fact being informed by this EIR.

In response, the City has prepared this Recirculated DEIR to (1) clarify that the Proposed Program is a policy to pursue acquisition of additional water supplies; (2) to explain that the Proposed Program does not, at this time, involve any new actions related to or uses of Kern River water; and (3) to describe future actions that would be reviewed in detail as part of the tiering process for project-level activities prior to approval of the Proposed Program.

The revisions to Chapter 2, *Program Description*, of the DEIR do not alter the City's conclusions about the significant impacts of the Proposed Program as a whole.

1.2.2 Updates to Program Description

The DEIR for the Program was circulated for public review in June 2012, and the FEIR was certified in September 2012. As a result of the Court's Order, the City rescinded its prior certification of the DEIR on September 2, 2015. This Recirculated DEIR has been prepared in response to the Court's Judgment and decision and in accordance with CEQA (Pub. Res. Code Section 21000 et seq.), the CEQA Guidelines (Pub. Res. Code Section 15000 et seq.), and the direction given by the Court.

As a result of the Judgment and the direction of the Court, in this recirculated DEIR the City has (among other things):

- Clarified and confirmed that the City will not approve the Program at the time it certifies the EIR;
- Added a more detailed description of the SWRCB process involving the City's application to appropriate;
- Described the future steps and approvals that the City intends to undertake in connection with the Proposed Program and the program EIR;
- Discussed and described the program EIR and tiering process in more detail;
- Moved some information regarding the Proposed Program and how the program EIR and subsequent CEQA tiering, which had appeared in the prior 2012 EIR in other sections (including in the response to comments to the EIR), into the Program Description; and
- Included references to and discussion of events and legislative changes that may be relevant to the Proposed Program, including SGMA and recent litigation involving the Kern River.

This is only a brief summary of the additional information including in the revised Program Description. **Appendix B** of this Recirculated DEIR provides a clear record of what the City has added to and deleted from the prior PD.

It is important to note that the purpose, objectives, and benefits of the Proposed Program; intended use of the Program EIR; location and extent of the Kern River Corridor Focus Area; information on historic flow conditions in the Kern River; information on historic water supply and use; estimates of Proposed Program water supplies have not changed as a result of the new information included in this Recirculated DEIR.

1.2.3 No Changes to Prior 2012 DEIR Analysis Conclusions

Based on the results of the analysis (see revisions to Section 2.1.6 in Appendix B), the City has determined that the revisions and updated information provided in this Recirculated DEIR would not alter the conclusions reached in the prior 2012 DEIR about the Proposed Program's effects on the environment.

Chapter 2 PROGRAM DESCRIPTION

2.1 Chapter Organization

This chapter presents a description of the City of Bakersfield's (the City or Bakersfield¹) proposed Kern River Flow and Municipal Water Program (Proposed Program or Program) and is organized as follows:

- 2.1 Chapter Organization
- 2.2 City of Bakersfield and Kern River Background
- 2.3 Program Purpose and Objectives
- 2.4 Intended Use of Program EIR
- 2.5 Program Area
- 2.6 Kern River and Historic Flows
- 2.7 City's Historic Water Supply and Use
- 2.8 Proposed Program Actions
- 2.9 Program Monitoring, Maintenance, and Adaptive Management
- 2.10 References

2.2 City of Bakersfield and Kern River Background

The Kern River runs through the City. Since its founding in the 1850s, the City has relied on the Kern River as its primary water source, either through direct deliveries and diversions from the river, or from Kern River water captured and stored in the groundwater basin beneath the City. The Kern River provides multiple additional benefits to the City and its residents and is the primary physical, ecological, and recreational landscape feature in the City. In 2015, the City had a population of 373,640, making it the ninth largest city in the State of California. The City expects that its population will increase to approximately 500,000 by 2030.

The City holds extensive "pre-1914" appropriative rights to Kern River water (sometimes referred to as "Source 1" water) which historically have yielded an average of 135,000 acre

¹ When using "City" capitalized as an abbreviation, it is the City of Bakersfield as a governmental entity (i.e., departments, agencies, facilities and equipment, materials) that is being referred to, as distinct from the geographical area within the city limits.

feet per year (afy). The City purchased those appropriative Kern River rights and related assets in 1976 from Tenneco West, Inc. (Tenneco). Such rights and assets were previously held by the Kern County Land Company (KCLC).

The residents of Bakersfield receive water for municipal uses through a combination of groundwater, local surface water, and imported water sources. The Kern River serves as the primary source of recharge and replenishment for the Kern County Groundwater Basin (Basin), a subbasin of the Southern San Joaquin Valley Groundwater Basin. Although it is not adjudicated, the City manages the Basin through groundwater recharge projects and monitored extractions of water. The Kern River is therefore the primary water-supply source for the residents of Bakersfield, either directly as a surface water supply or as groundwater after percolation and recharge.

Groundwater, primarily banked and stored Kern River water, supplies the majority of the City's water demand. The treatment and distribution of groundwater for potable consumption is conducted primarily by the City's Water Resources Department and a private company, the California Water Service Company (Cal Water). Surface water supply from the Kern River is also treated at local treatment plants before it is distributed to City residents by the City's Water Resources Department or by Cal Water. The California State Water Project (SWP) supply is treated and sold wholesale by Improvement District No. 4 of the Kern County Water Agency to the City, Cal Water, and others, which comprises the third and smallest source of the Bakersfield's water supply.

The Domestic Water Division of the City's Water Resources Department oversees and administers the City-owned Ashe, Riverlakes, and Fairhaven domestic water systems that provide drinking water to residents and local businesses in Bakersfield. The City also provides water to municipal water companies, primarily Cal Water, to meet the domestic water demands of the remainder of the City's residents.

Water in the Kern River channel infiltrates into the Basin below the river and supports to serve as a municipal and local water supply through private wells, and wells owned by the City and other municipal water purveyors operating within the City. The use of such water historically allows City residents to meet their municipal, industrial, and residential water supply needs.

In modern times, the Kern River has faced many threats to its water supply and viability as a natural water course. Diversions by, and on behalf of, various water districts and agricultural interests through a complex system of canals and diversion facilities have resulted historically in a mostly dry river bed through Bakersfield downstream of the Calloway Weir. The dewatering of reaches of the Kern River, along with increased groundwater pumping in the vicinity of the river by various water districts, has depleted water levels in the Basin. The loss of the river has severely diminished and threatened the City's surface and groundwater supply, and also resulted in damage and threats to the quality of the local water supply, the local environment, including vegetation and fish and wildlife in and around the river, and aesthetic and recreational opportunities in and around the river.

The City therefore took action, beginning in the 1960s, to preserve and protect the Kern River for the benefit of the residents of the City, and to secure the City's long term water

supply. Those actions eventually resulted in the City's acquisition, in 1976, of all of the "first point" Kern River rights and assets held by Tenneco West, Inc., and previously held by KCLC. The City's acquisition of these water rights and assets was reviewed and analyzed in a Final Environmental Impact Report (EIR), re. *Use and Disposition of Property and Water Rights Acquired by the City of Bakersfield from Tenneco West, Inc., In Settlement of Litigation*, prepared on behalf of the City in 1975.

Beginning in the early 1980s, the City undertook several planning studies and projects to formalize and implement its stated goals and policies to utilize, maintain, and protect the Kern River and, consequently, the municipal water supply. "The Kern River Plan Element" of the *City of Bakersfield General Plan* and the *Kern County General Plan* was adopted in 1985 and updated in 1988. This planning element includes specific goals and policies to improve public access to the Kern River, protect and enhance open spaces and natural resources, provide flood protection for the community, maximize groundwater recharge, protect the rights of private landowners, and support the economic use of resources along the Kern River. The City then developed the Kern River Parkway Plan (Parkway Plan), based on guidance established in "The Kern River Plan Element." An environmental impact report for the Parkway Plan was completed in 1988 (Draft EIR June 1988, Final EIR November 1988). The Parkway Plan EIR included a conceptual plan map identifying recreational areas, greenbelts, trails, preserved open spaces, and proposed land-use changes along the river. To date, the City has developed and constructed the majority of the features envisioned in the Parkway Plan, including an extensive bicycle trail system, hiking and running trails, equestrian trails, preserved open spaces, and restored vegetation.

In 1996, the City undertook efforts to obtain additional water supplies to meet its municipal demands by filing with the State Water Resources Control Board (SWRCB) an application to appropriate additional quantities of Kern River water. The City filed the application based on litigation between the City and local water districts arising out of claims that a significant quantity of Kern River water held by the Kern Delta Water District (KDWD) had been forfeited due to non-use, and was therefore surplus, unappropriated water. After the conclusion of that litigation in 2007, the City filed a second application to the SWRCB to appropriate surplus, unappropriated water.

In 2001, the City Council reaffirmed and adopted water policies to protect and preserve Kern River water for use within the city limits, including establishing additional flows in the Kern River channel (Water Board Report No. 2-01) (City of Bakersfield 2001). The City has also continued to use Kern River water to recharge the Basin, which underlies the river and the City's 2,800 Acre Recharge and Groundwater Storage Facility (2,800 Acre Recharge Facility).

2.3 Program Purpose and Objectives

2.3.1 Program Purpose

The Proposed Program represents a continuation of the City's policies and prior efforts to protect and preserve the Kern River, consistent with past planning and implementation

efforts. Previous Kern River-related planning processes focused mostly on land use practices and policies along the river. The Proposed Program instead focuses on providing more streamflow in the river channel through the acquisition of new water supplies to support and enhance the municipal water supply. The Program would continue the City's role as a steward of the Kern River to provide flows that maintain and enhance the river as an important resource for the community and the water supply for the City and region.

In most years, there is little or no flow of water in the Kern River channel below the Calloway Weir. In order to implement the Program, the City would combine unappropriated surplus water obtained by the City through its application to the SWRCB (Source 2 water) with some portion of its current Source 1 water supplies (allocated Source 1 water) to provide a regular and more consistent flow of water in the Kern River channel.

The Proposed Program aims to increase, protect, and preserve the City's municipal water supply to meet present and future demands for water. The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River, while also providing important flood management and water supply needs. The Program also furthers California State water policy by putting Kern River water to multiple reasonable and beneficial uses, with an emphasis on municipal, environmental, recreational, and public trust purposes.

The water that the City intends to utilize through the Program will support projected, planned, and approved growth and development within the City's Sphere of Influence (SOI). Such growth and development has already been reviewed in the City's current General Plan (adopted in 2002), and the impacts from such growth were reviewed and analyzed in the EIR adopted for the General Plan.

The City's efforts to protect and preserve the Kern River have received significant and vocal support from residents of the City and the surrounding areas. Local citizens have recognized and strongly embraced the multiple, far-reaching benefits of a restored and revitalized Kern River. Residents of the City have consequently sent thousands of letters and comments to the SWRCB to support the City's application to appropriate water for use in the Kern River channel, and provided similar letters and comments in support of the Proposed Program. These comments and letters have consistently extolled the benefits of the Proposed Program on the environment, the City's water supply, recreation, aesthetics, the quality of life for City residents, and the economic viability of the City.

The City cannot predict when the SWRCB will formally accept the City's pending application to appropriate, when the SWRCB will determine the quantity of unappropriated water on the Kern River, or when the SWRCB will award rights to any available unappropriated water. The City's application to appropriate, along with other applications submitted to the SWRCB, have been pending for several years and have not yet been formally accepted by the SWRCB. The City therefore does not know, and cannot predict with any certainty, when it will adopt and implement the Program. As described below in Section 2.4, this draft EIR (DEIR) evaluates the general Program. Following any decision or action by the SWRCB that may better define the amount of Source 2 water available to the City to support the Program, the City will undertake additional analysis under the California Environmental Quality Act (CEQA) to evaluate more specific Program conditions and impacts.

The residents of the City, and the public, should therefore be aware that approval and implementation of the Program will likely be delayed for a considerable period of time, in addition to the previous delays. The SWRCB proceedings involving the City's application to appropriate, wherein the SWRCB should determine the quantity of surplus, unappropriated water available for use in the Program, has already been delayed, and will likely be further delayed in the future as a result of various factors and legal and procedural requirements. Legal challenges to the actions of the City and the SWRCB, in connection with the applications to appropriate, may further delay the SWRCB's actions and decisions regarding the quantity of water to be used in the Program, as well as the SWRCB's award of available unappropriated water to the City.

The public will have an additional opportunity to review and comment on the impacts of the Program on the environment in the future after the additional quantity of water available for use in the Program is determined by the SWRCB. At that time, the City will undertake more specific project level CEQA review which tiers off of this program level EIR. The City would only approve and implement the Program once it has prepared and adopted any necessary project level CEQA compliance documentation.

2.3.2 Program Objectives and Benefits

The City has proposed this Program to increase and restore more regular flows of water to the Kern River channel with the goals of protecting and preserving the local water supply, environment, and quality of life for City residents. To implement City policies, and to provide water for prior and ongoing City projects, the City will attempt to increase and restore stream flows in the Kern River channel more consistently during the year, primarily below the Calloway Weir, through the addition of a new supply of Kern River water (Source 2).

The primary objective of the Program is to allow additional quantities of water awarded to the City by the SWRCB to flow in the Kern River channel to protect, increase, and enhance the City's water supply to meet present and future demands for water. Increased flows in the Kern River through the addition of the new Source 2 supply would also increase infiltration and percolation to the Basin, to serve as a long term water supply and source for City residents.

The Program calls for the utilization of an, as of yet, undetermined quantity of a new water supply (Source 2) to create more regular, measured flows and that will increase Kern River flows throughout the year. Up to an average of approximately 160,000 afy of water (as available based on hydrologic conditions) may be provided to the Kern River.

Providing a restored and consistent, flow of water in the Kern River throughout the Bakersfield city limits would produce multiple reasonable and beneficial uses of water associated with a more natural flowing river. Such benefits include purposes and uses associated with environmental, public trust, domestic and municipal and industrial purposes, and more specifically for uses related to streamflow restoration, constructed wetlands, recreation, aesthetics, fish and wildlife restoration and protection, underground aquifer supply, aquifer water quality enhancement and underground water banking for drought and other emergencies.

The Program and the restored and increased flows of water in the river channel would provide these benefits to the City, its residents, and the Basin and environment by, among other things:

1. Increasing river flows, which will increase groundwater levels beneath the river to help address historic overdraft conditions and to help alleviate and reverse the depletion of the Basin.
2. Providing an additional water source, and protecting and preserving the City's present water supply and source for City residents.
3. Restoring, enhancing and preserving the natural riparian environment and habitat in and around the river channel, including restoring plants, vegetation, animals, birds and aquatic species habitats.
4. Ensuring that flows of water in the Kern River will be kept within the river channel so that such water is not diverted and used outside the County. The development, protection and preservation of more natural flows in the Kern River will protect and preserve the river as a water supply for the City for the present and into the future.
5. Enhancing and improving water quality through, among other things, increased recharge and migration of high quality Kern River water into areas of the Basin where the quality of groundwater has been diminished or threatened.
6. Improving the desirability and quality of life in the Bakersfield area by improving and enhancing the aesthetic and recreational benefits and opportunities in and around the river, and by restoring the Kern River as the important, central, and productive natural resource feature of the community. Residents of the City have consistently noted that a restored, flowing Kern River is critically important to the economic success, pride, identity and well-being of the entire community.

The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs. The Program also furthers California water policy by putting Kern River water to multiple reasonable and beneficial uses, with an emphasis on municipal, environmental, recreational, and public trust purposes.

The water that the City intends to utilize and/or acquire through the Proposed Program would support projected, planned, and approved growth and development within the City's SOI. Water from the Proposed Program would also be potentially available, in certain high-flow years, or when the City has a surplus of water, for temporary sale or transfer to local water districts and water purveyors. While a possible outcome of the Program, the future sales or transfers of surplus water are undetermined at this time. If and when surplus water sales or transfers are better defined in terms of specific quantities, locations of use, and timing of the transfer; then further CEQA analysis may be necessary. Such analysis could occur via a tiered CEQA document from this program EIR.

2.3.3 Program Consistency with Sustainable Groundwater Management Act

The 2014 Sustainable Groundwater Management Act (SGMA) represents a significant new approach toward planning, managing, and regulating groundwater in California. SGMA requires that Groundwater Sustainability Agencies (GSAs) be developed in medium- and high-priority basins by June 2017 to oversee and manage the implementation of Groundwater Sustainability Plans (GSPs). For critically overdrafted basins, such as the Kern County Subbasin (within the San Joaquin Basin), GSPs are required to be submitted to the California Department of Water Resources (DWR) for approval by January 2020.

SGMA became law on January 1, 2015, several years after the preceding DEIR for the Program was distributed for public review in June 2012. While the preceding DEIR for the Proposed Program did not consider SGMA, as it had not yet been developed or become law, the goals and objectives of the Program are very consistent with the goals and objectives of SGMA. Implementation of the Proposed Program would provide an effective management action to support the sustainable long-term management and use of groundwater in the Kern County Subbasin. The Program's purpose, objectives, and benefits, described in Sections 2.3.1 and 2.3.2 above, are very consistent with the overall goal of SGMA, which is to manage groundwater sustainably through local agencies. Moreover, SGMA aims for local GSAs to develop GSPs that, when implemented, will protect against the following undesirable results:

1. Chronic lowering of groundwater levels and depletion of supply;
2. Significant and unreasonable reduction of groundwater storage;
3. Significant and unreasonable seawater intrusion;
4. Significant and unreasonable degradation of water quality, including the migration of contaminant plumes that impair water supplies;
5. Significant and unreasonable land subsidence that substantially interferes with surface land uses; and
6. Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

By increasing groundwater recharge through increased flows within the Kern River, the Proposed Program would also help prevent the same undesirable results that SGMA is intended to prevent.

The coincidental timing of the SGMA process was one of the key reasons that this recirculated DEIR required several months to develop since the previous DEIR was decertified by the City following a legal challenge. During 2015 and currently in 2016, the City was tracking SGMA developments and requirements as they became available. The City has been hard at work coordinating with other local agencies and organizations to form the Kern River Groundwater Sustainability Agency (KRGSA) with KDWD and Improvement District No. 4 of the Kern County Water Agency (ID4). The KRGSA submitted its notification materials to DWR on April 12, 2016, and the notification was posted to the DWR website on April 21, 2016. Only

recently, in June 2016, DWR provided final guidance on the contents and requirements for GSPs. The City waited to revise and recirculate this DEIR to gain an understanding of SGMA requirements as they were developed and to explain through this recirculated DEIR how the Proposed Program would be consistent and aligned with SGMA and the direction the KRGSA would be taking to manage groundwater sustainably.

2.4 Intended Use of Program EIR

2.4.1 Purpose and Need for This EIR

This DEIR is an informational document for decision makers as well as for the general public. CEQA requires that decision makers review and consider the EIR in their deliberations on the Proposed Program. In compliance with CEQA Guidelines Section 15124(d), the SWRCB is an agency with subsequent review or approval authority over certain components of the Proposed Program, and is the only agency, other than the City, that is expected to use the DEIR as the environmental basis of its decision making, specifically in connection with its approval the City's water rights application.

In compliance with CEQA, this DEIR has been prepared for the City's Proposed Program to enhance the Bakersfield water supply.

The City will use the analyses presented in this DEIR, and the public response to them, to evaluate the Proposed Program's environmental impacts, and consider if additional project level CEQA evaluation and compliance will be necessary based on a later and more refined understanding of the Program's available water supplies. Based on such subsequent analysis, and the analysis provided herein, the City may later modify, approve, or deny approval of the Proposed Program.

The City has determined that the Proposed Program is necessary to increase, protect, and preserve the municipal water supply to meet present and future demands. The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs.

Adoption of the Proposed Program and final approval and certification of this DEIR by the City has been delayed as a result of a legal challenge to the DEIR. After the City initially approved and certified the DEIR on September 26, 2012, several local water districts and other entities filed three separate petitions for writ of mandate challenging the City's compliance with CEQA in connection with the DEIR. Following a January 30, 2015 hearing in the Tulare County Superior Court, the Honorable Lloyd L. Hicks, Judge of the Tulare County Superior Court, issued a judgment granting the consolidated petitions for writ of mandate and ordering the City to set aside its certification of the DEIR (*Kern Water Bank Authority v. City of Bakersfield*, Tulare County Superior Court, Case Nos. VCU251535, VCU251598, and VCU251748). The Court found that the City had not complied with CEQA in connection with its preparation of the Program Description chapter of the DEIR. The Court, however, found that the City had otherwise complied with CEQA in every other respect with regard to the

prior 2012 DEIR, and the Court did not require the City to revise or change any section or chapter of the 2012 DEIR other than the Program Description.

As a result of the judgments and writs issued in the Tulare County CEQA litigation, the City rescinded its prior certification of the DEIR on September 2, 2015. The City has also complied with the Judgments and Writs by revising the Program Description chapter of the DEIR to bring it into compliance with CEQA requirements and the direction of the Court. The City is not required to revise the remaining chapters or sections of the DEIR, which the Court found to be in compliance with CEQA. The City will and hereby does recirculate the DEIR with the revised Program Description. Pursuant to California Code of Regulations Title 14, Section 15088.5, the City is only required to recirculate the chapters or portions of the EIR that have been modified. Section 15088.5 states: "If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified."

2.4.2 General Use of Program EIRs and Tiered CEQA Evaluations

According to CEQA Guidelines Section 15168, a state or local lead agency may prepare a program EIR when the series of proposed actions can be characterized as one large project and are related to one another. The actions must be related either geographically, as part of a logical chain of contemplated actions, in connection with a specific regulation, or as individual activities carried out under the same authorizing regulatory authority, granted the actions have similar environmental effects.

In developing a program EIR, a complete and comprehensive list of all subsequent activities that may occur as the result of the Proposed Program is not required. However, each subsequent activity must be examined and evaluated (following the program EIR) as to whether the subsequent activity is consistent with the scope of this original program EIR. At that subsequent time, the original program EIR will then be evaluated for how well or completely it describes the subsequent activity and its potential effects. Based on that evaluation, additional CEQA documentation may or may not be needed to describe the subsequent activity within the overall program.

Only those subsequent activities that would have effects not within the scope of the program EIR would require additional CEQA documentation. In the event that the scope of a program EIR would not adequately encompass the specific details of subsequent program activities, then additional CEQA analysis would occur and additional CEQA documentation would be prepared.

A program EIR generally establishes a framework for "tiered" or project-level environmental documents that are prepared for subsequent, focused steps and projects that implement the program (CEQA Guidelines Section 15152). Tiering is a CEQA method that enables a more specific environmental analysis to follow a program-level EIR. A tiered CEQA analysis would address more specific aspects of a program that are not yet defined in the program EIR.

Project level environmental documents incorporate by reference the broader discussions in the program EIR and concentrate on project-specific issues. CEQA Statutes and Guidelines

encourage the use of tiered environmental documents to reduce delays and excessive paperwork in the environmental review process. This is accomplished in tiered documents by eliminating repetitive analyses of issues that were adequately addressed in the original program EIR, and by incorporating those analyses by reference.

The level of CEQA review provided in this DEIR does not involve or constitute an “action item” for the City because the City will not approve the Program at this time in connection with the approval and certification of the DEIR.

2.4.3 City’s Intended Use of This Program EIR

The Program expands on, and further implements, existing City policies and plans to increase flows of water in the Kern River through the acquisition and use of additional water supplies awarded to the City by the SWRCB in connection with the City’s pending application to appropriate undetermined quantities of surplus, unappropriated Kern River water. This DEIR reviews the impacts of increased flows of water within the Program area resulting from the City’s acquisition of new water supplies through the SWRCB application process in support of the City’s current and ongoing efforts to increase flows in the Kern River channel.

Through this DEIR, the City describes and confirms existing City policies and plans to increase water flows in the Kern River in anticipation of future actions by the SWRCB. It is anticipated that future actions by the SWRCB will result in the potential for more flows in the Kern River.

The City has prepared a program EIR because the SWRCB has not yet determined the specific quantity of surplus, unappropriated water on the Kern River that could be utilized by the City to increase flows of water in the Kern River (Source 2 water).

The City expects the SWRCB will determine the quantity of surplus, unappropriated water on the Kern River, and will also determine related issues involving the timing, source, availability, and current uses of such water, in future administrative proceedings involving the City and other entities that have applied for or claimed rights to such surplus, unappropriated water.

When the details for potential increases in river flows are better known, then the potential environmental effects of such actions will be evaluated through a tiered CEQA process, referencing this program EIR, but conducting further evaluation as necessary to address more specific potential environmental effects, based on the future quantity of water involved in the Program. A future CEQA tiering process would build from this program EIR, but then evaluate potential effects more specifically according to the magnitude and extent of projected river flows, following a decision, or interim decision, by the SWRCB.

The Proposed Program is not the City’s application to appropriate. Nor is the Proposed Program the City’s prior, long standing policy to use its existing water supplies to increase flows of water in the Kern River. Instead, the Proposed Program consists of the use of new, additional water supplies (Source 2 water) obtained through the City’s application to appropriate (submitted to the SWRCB) to enable increased flows of water in the Kern River.

This program EIR analyzes the impact of the City's proposed use of the new Source 2 water supplies to increase flows of water in the Kern River channel through the Program Area.

The City has elected to defer review of certain secondary impacts associated with the use of new water supplies in the Program, including water supplies that may currently be used by other entities without authorization or a valid right or permit, until the SWRCB determines the quantity of unappropriated water available for use in the Program, and makes other determinations regarding the extent, timing, and availability of such water.

2.4.4 City's Application to Appropriate and SWRCB Determination Process

After the SWRCB formally accepts the City's application to appropriate, and any other applications that comply with state law, the City expects that the SWRCB will make an interim, preliminary determination as to the quantity of unappropriated water on the Kern River available for appropriation. No further decision or formal action by the City, or subsequent CEQA review by the City, is necessary for this step of the SWRCB process.

The SWRCB has indicated that "[i]t will be up to the applicants to show when and how much available water there is for appropriation" in connection with the SWRCB's processing of various applications to appropriate surplus, unappropriated Kern River water. (Order WR 2010-0010, p. 5.)

The SWRCB has further stated that:

[p]rior to any potential approval or decision to proceed with a proposed project, [applicants] and the State Water Board must fulfill their obligations under the California Environmental Quality Act (CEQA). (Pub. Res. Code, § 21000 et seq.) In addition to meeting statutory responsibilities under CEQA, the State Water Board will comply with its obligation to consider environmental and public interest issues under the Water Code and the public trust doctrine in the context of processing the water right applications submitted by Petitioners. (Order WR 2010-0010, p. 6.)

CEQA requires the SWRCB to consider the environmental effects of a project or program related to the use of unappropriated water before it issues a permit for such water. The SWRCB examines the proposed project's potential environmental impacts and determines whether mitigation measures will be needed.

After the SWRCB determines the quantity of unappropriated water available on the Kern River, the City will undertake further project level CEQA review which examines, among other things, (1) the impact of the Program based on the specific quantity of water available on the Kern River, including any secondary or third party impacts, as required by CEQA, and (2) any changes to the information in the program EIR, and any new CEQA requirements imposed since the certification of the program EIR. After the City adopts, approves, or certifies the subsequent CEQA documents, the City may utilize such subsequent CEQA documents, as well as this program EIR, in continued proceedings before the SWRCB to determine rights and claims to the surplus, unappropriated water.

If the SWRCB awards or grants the City rights to some or all of the unappropriated water, the City will consider the adoption and implementation of the Program, with the quantity of water awarded by the SWRCB (Source 2 water), once it has completed all necessary project level CEQA review.

2.4.5 City's Tiered CEQA Review and Program Adoption Process

After the SWRCB makes its anticipated initial determination of the quantity of unappropriated water on the Kern River, and prior to adoption and implementation of the Program, the City will undertake further tiered and specific CEQA review (project level), as necessary to evaluate potential environmental effects due to the specific range and magnitude of flows available for the Program. That CEQA review will likely focus on the specific impacts of the Program on the environment, as well as related and secondary impacts, based on the City's projected use of the quantity of additional, unappropriated water (Source 2 water) found to be available on the Kern River by the SWRCB.

The City expects to complete such project level CEQA review prior to the SWRCB awarding rights to such water to the City. After the SWRCB awards rights to such water, and after the City completes further, project level CEQA review, the City will consider whether to adopt and implement the Program.

The City emphasizes that it will not approve, adopt or implement the Program as a result of, or in connection with, its approval and certification of this program EIR. Instead, the City will not approve, adopt or implement the Program until it has completed all necessary project level CEQA review, and any additional CEQA review, which tiers off this program EIR.

The City contemplates that the final, certified EIR for the Proposed Program will be used and referred to by the City in connection with its pending application to appropriate, and also used by the SWRCB in its consideration and processing of the City's application to appropriate. The Proposed Program's EIR will provide helpful, detailed and necessary information to the SWRCB, and the public, regarding the City's proposed plan to utilize additional quantities of unappropriated, surplus Kern River water (Source 2 water) to increase flows of water in the Kern River through the Program Area. The City will not take any further action in connection with the Program at this time, as the City will not approve or implement the Program until after it undertakes further, project level CEQA review of the Program, based on the SWRCB's subsequent determination of the quantity of unappropriated Kern River water. Pursuant to CEQA Guidelines Section 15125(d)(2), the City lists below the currently understood decisions which will be subject to CEQA in connection with or related to the Program, in the order in which they will occur. This list includes and describes later "tiers" that are anticipated to utilize and rely on this program EIR.

1. The Program is related to and arises out of prior City actions, policies, plans and projects to increase flows of water in the Kern River, primarily through the use of the City's existing water supplies. Such matters have already been approved or adopted by the City, and some of those matters were subject to prior CEQA review. Such actions, policies, plans and projects, and supporting CEQA documents, include the following:

- a. City's 1983 Draft and Final EIRs for the City's 2800 Acre Groundwater Recharge Facility.
 - b. City's 1985 (July) Kern River Plan Element, as updated August 15, 2007.
 - c. City's 1988 Kern River Parkway Draft and Final EIRs.
 - d. City's December 12, 2001 Statement of Water Resources Policy.
 - e. City's 2002 Metropolitan Bakersfield General Plan.
2. Certification and approval of this program EIR.
 3. After the SWRCB determines the quantity of unappropriated, surplus water available for appropriation on the Kern River, and presumably before the SWRCB determines and awards rights to such water to the City, the City will prepare, certify, and approve subsequent project level CEQA documents which tier off this program EIR, which CEQA documents will primarily review and consider impacts associated with the use of the specific quantity of water in the Program, including any secondary and third party impacts, if necessary.
 4. If the SWRCB approves the City's application to appropriate and awards the City rights to all or some portion of the unappropriated Kern River water, the City will, if necessary, undertake, and certify and approve, additional project level CEQA documents which tier off this program EIR, based on any changes to the Program required by the SWRCB, or as a result of any conditions or requirements imposed by the SWRCB in connection with a new permit or license for the use of such water.
 5. Adoption and authorization to proceed with the Program will follow certification and approval of all necessary project level CEQA documents. Again, the City will not approve, adopt or implement the Program based on this program EIR, but only after it has completed all required project level CEQA review, and after the SWRCB determines the quantity of unappropriated water on the Kern River.

2.5 Program Area

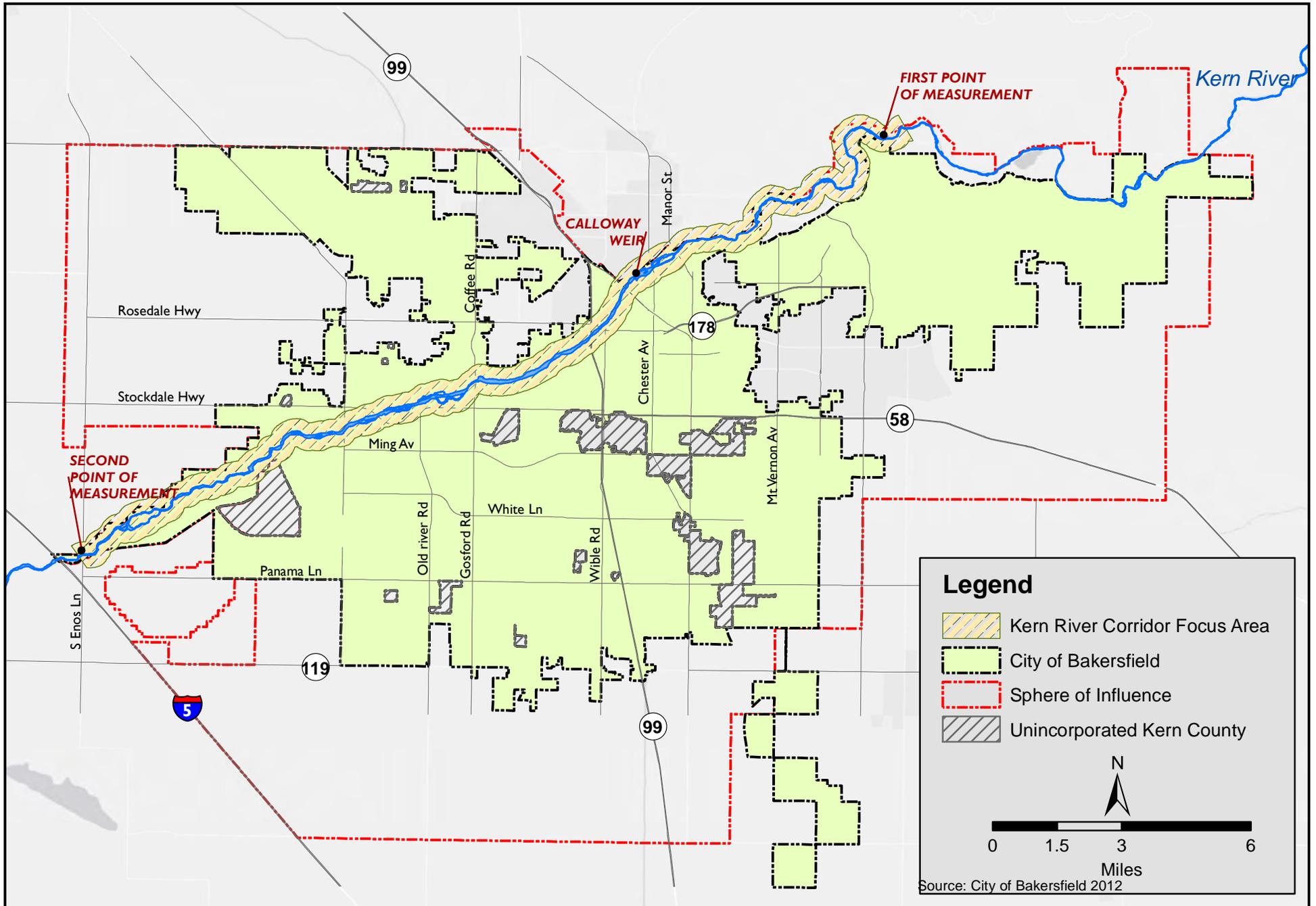
The Program Area is shown in **Figure 2-1**. The Program Area is organized into two overlapping focus areas for the purposes of this EIR, consisting of (1) the Kern River corridor, and (2) the City of Bakersfield (Figure 2-1). The area of focus for impact analyses in this EIR depends on the nature of the resource topic. For example, biological resources and recreation evaluations focus on the immediate Kern River corridor, while other water supply and groundwater evaluations extend to the broader city area.

2.5.1 Kern River Corridor Focus Area

The Kern River passes through the northern portion of the city, generally flowing in a northeast to southwest direction. Key features of the Kern River Corridor Focus Area, are

shown in **Figure 2-2** and include the First Point of Measurement (First Point) identified in the northeast portion of the map. At First Point, the City maintains a monumented river cross-section and gage station. Downstream of First Point, the Beardsley Weir and Canal divert streamflow to areas north of the Kern River. The Rocky Point Weir diverts water south of the Kern River into the Carrier Canal (and further west, into the Kern River Canal), which directs flows southward to the canals operated by the KDWD (Kern Island, East Side, Stine, Buena Vista and Farmers Canals). Downstream of the Calloway Weir, which is west of the Rocky Point Weir, the Kern River remains generally dry through the city. The City also jointly maintains a gage station at the Second Point of Measurement (Second Point), which is located near the western edge of the 2,800 Acre Recharge Facility near the crossing of Enos Lane. The terminus of the Kern River Corridor Focus Area is at the river crossing at Second Point. The 2,800 Acre Recharge Facility and Second Point are shown in the western portion of Figure 2-2. For several of the resource evaluations included in this EIR, including the hydrology, biology, and aesthetics evaluations, the Kern River was further divided into seven reaches, as shown in **Figure 2-3**. These reaches are:

- Reach 1–First Point to Rocky Point Weir
- Reach 2–Rocky Point Weir to Calloway Weir
- Reach 3–Calloway Weir to River Canal Weir
- Reach 4–River Canal Weir to Bellevue Weir
- Reach 5–Bellevue Weir to McClung Weir
- Reach 6–2,800 Acre Recharge Facility
- Reach 7–McClung Weir to Second Point



**Figure 2-1
Program Area**

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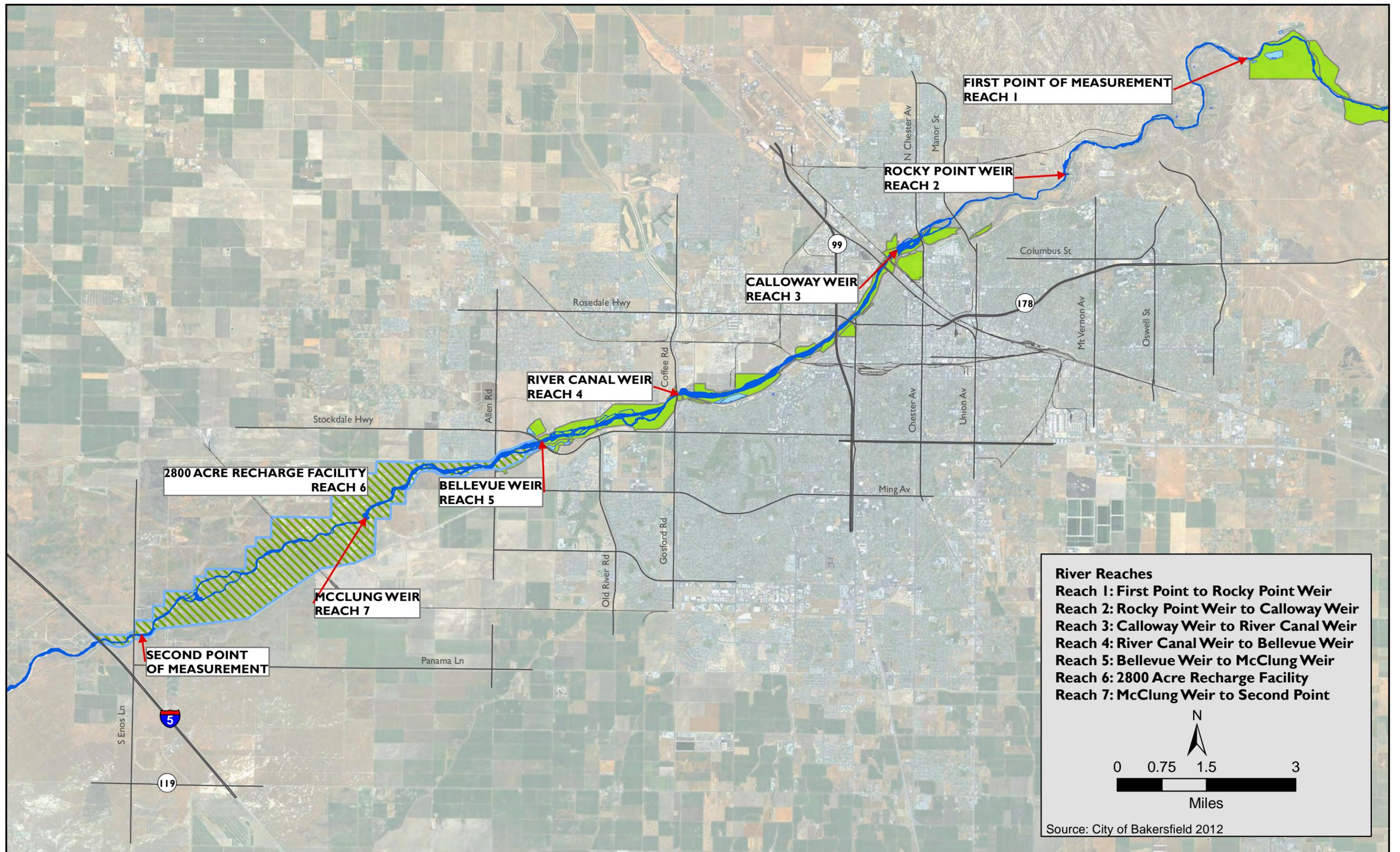


Figure 2-3
River Reaches in the Kern River Corridor Focus Area

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The Kern River Plan Element encompasses the Kern River Corridor Focus Area, from the mouth of the Kern River Canyon (approximately 5 miles upstream of First Point) to Interstate 5 (I-5), and includes the primary and secondary floodway channel areas of the river. The Proposed Program would support implementation of this plan and the Parkway Plan. The Parkway Plan area includes the Kern River channel and adjacent river parkway facilities within metropolitan Bakersfield (see below) from the river crossing at Manor Street, downstream to the river crossing at Stockdale Highway. The Kern River Corridor Focus Area evaluated in this EIR encompasses the Kern River Plan Element and Parkway Plan areas.

2.5.2 City of Bakersfield Area

The City's current General Plan, the *Metropolitan Bakersfield General Plan* (City of Bakersfield 2002), was adopted in 2002. Within this General Plan, the City has established an SOI establishing the maximum extent of growth envisioned for Bakersfield. The General Plan plans for future growth through 2022. The City is currently developing a General Plan Update that will focus on amendments to policies that will incorporate recently adopted legislation. This General Plan Update will plan for future growth within the same SOI boundaries as established in the existing City General Plan. To provide consistency with the forthcoming General Plan Update, the City focus area evaluated in this EIR extends to the SOI boundary. The current city limits and SOI boundaries are shown in Figure 2-1.

City of Bakersfield Water Resources Policies

In 2001, the City enumerated policies designed to preserve, protect, and promote the efficient use of its water resources (City of Bakersfield 2001). The City policies relevant to the Proposed Program include the following:

- Kern River water shall not be utilized outside the boundaries of the San Joaquin Valley Portion of Kern County.
- City water which returns by deep percolation to the underlying groundwater basin through the delivery for, and beneficial uses by, the City and/or its customers or contractors shall remain the property of the City and subject to recapture by the City.
- When irrigated lands now being served by Kern River water become urbanized, the water rights related to these lands shall be protected to insure that such water will continue to be available to satisfy the water requirements of said lands.
- Consistent with existing City "User Pay" policies, costs for water service shall be paid by revenues derived from those who benefit from the water service.
- The City is concerned with potential contamination of its water supplies and will continue monitoring activities to prevent degradation of its water supply sources. Water quality for domestic and agricultural uses shall be maintained to meet all federal, state and local standards.

- The City will continue to preserve its water resources to provide for the future orderly growth of the City, and those benefits derived from the water rights and related properties acquired by the City from Tenneco-West, Inc. on December 22, 1976 shall remain dedicated to the residents and taxpayers within the incorporated boundaries of the City of Bakersfield.
- The City shall continue to encourage conservation, recycling, and reclamation of all water resources to make available for beneficial uses in a safe and efficient manner.
- The City of Bakersfield supports groundwater management, including conjunctive use of surface water and groundwater under local programs that enhance and benefit the Kern County portion of the San Joaquin Valley Groundwater Basin.
- The City shall continue its policy to acquire river flood plain properties deemed essential to carry out and implement the goals of the Kern River Plan; including the City's adopted Kern River Channel Maintenance Program and the Kern River Parkway Plan.
- The City will participate with other Kern River interests in the protection, enhancement and efficient management of all Kern River water.
- All records of Kern River water supplies, including Watermaster records and all spreading and extraction of water, shall continue to be maintained by the City's Water Resources Department.
- Pursuant to the Kern River Plan, it is the policy of the City to establish a minimum annual flow of water in the Kern River channel between Manor Street and Stockdale Highway Bridge as soon as possible.
- The City Manager, City Attorney, City Water Consultant and the Water Resources Manager shall be responsible for monitoring all water related activities concerning the City of Bakersfield and shall report any deviations from the above stated policies to the City Water Board for remedial action.
- In order to preserve and provide the resources necessary to administer the above policies, all revenues received from the operation of the water enterprise, including water sales, water banking, miscellaneous sales and/or cost savings resulting from a reduction in debt service shall continue to be used only for the purposes outlined in the above-stated Water Resources Policies.

Bakersfield Urban Water Management Plan Update

The City is currently operating under its 2010 Urban Water Management Plan (UWMP). The City is in the process of updating its UWMP as of 2015. UWMPs are prepared by urban water suppliers to ensure adequate supplies are available to meet future demands and support long-term resource planning. The City's UWMP update will follow the *Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan* issued by the California Department of Water Resources. The City expects that the 2015 UWMP will be completed by early 2017.

As shown in **Figure 2-4**, the City's municipal water service area does not encompass the entire city limits. The City purchased both Kern River water rights and physical water

distribution systems of the Ashe Water Company service area from Tenneco in 1976. The City subsequently added service areas in the Fairhaven and Riverlakes areas. These service areas encompass approximately 35% of the city limits and are the only areas that directly receive water service from the City. The remainder of the city limits is serviced by other water purveyors, including Cal Water, East Niles Community Services District, Greenfield County Water District, North of the River Municipal Water District, Oildale Mutual Water Company, and Vaughn Mutual Water Company. These water purveyors distribute water from the Kern River, the SWP, and other sources, as well as groundwater, to customers within their service areas. Many of the water purveyors maintain contracts with other water districts, such as ID4, for water supply. Additional information on other water suppliers and purveyors in the Program Area is provided in Section 3.8, “Water Supply and Groundwater Resources.”

Kern River water supplies in the Program Area are also used directly or indirectly for agricultural purposes, such as crop irrigation. While most agricultural practices occur outside the city limits, there are some agricultural water uses within the City’s SOI. According to Kern County’s 2005 crop data, approximately 14,000 acres within the municipal service areas in the city limits are identified for agricultural land use (City of Bakersfield 2009).

2.6 Kern River and Historic Flows

The Kern River is one of the primary river courses in the southern portion of the Central Valley of California. The Kern River in the Bakersfield area is supported by a large watershed (2,407 square miles above the City) that extends high into the Sierra Nevada Mountain Range, including Mt. Whitney (elevation 14,494 feet) at the watershed’s northern end.

The Kern River and its watershed are noted for their range of geographic and topographic conditions. The high elevations of the upper Kern River watershed typically collect a deep snowpack that supports Kern River flows. **Figure 2-5** presents typical monthly flow volumes in the Kern River at First Point. As shown in the graph of Figure 2-5, annual river flows are lowest in the late summer and fall and greatest in the late spring and early summer following melting of the Sierra Nevada snowpack. The climate and hydrology of the Kern River and its watershed are also noted for their high degree of annual and seasonal variability. Figure 2-5 portrays the variability in the flow record by showing maximum monthly flows, “wet” monthly flows (75th percentile of the monthly flow dataset), median, “dry” (25th percentile of the monthly flow dataset), and minimum monthly flow volumes over the 117-year period of record from 1894 to 2010.

The observed hydrologic variability of the Kern River has required river management approaches that address the potential for both severe flooding and drought along the Kern River. Construction of Lake Isabella was completed by the U.S. Army Corps of Engineers (USACE) in 1953 to address flood control and water conservation capacity. Within the City, the Kern River is the central physical landscape feature. The history of management of the Kern River for flood protection and water supply purposes parallels the history of Bakersfield itself.

The hydrology of the Kern River is also characterized historically by severely diminished flows of water below the primary diversion points along the river, particularly below the Calloway Weir. Since the mid-20th century, major improvements, such as canal enlargements and concrete lining, were made to canal systems to increase the flow of water to agriculture. As a result, since that time period, the vast majority of Kern River flow between First Point and the Calloway Weir has been diverted for agricultural use, resulting in a dry river bed downstream of the Calloway Weir throughout most of the year.

Water has flowed in the Kern River channel downstream of the Calloway Weir primarily when the river has experienced very wet, high-flow conditions or when water has been introduced from outside sources, such as the SWP. In recent years, the City has worked to increase the flow of water below the Calloway Weir, and such increased flows are reflected in the baseline flow quantities described in this EIR.

The City's Water Resources Department assumed responsibility for the operation of the Kern River, including flow monitoring and water use recording, following the Tenneco purchase in 1976 (*The Kern River Purchase*, City of Bakersfield 2003). The City maintains and continues to prepare the hydrographic records for the Kern River flows and water use dating to 1893. The City's Water Resources Department currently measures and records flows and diversions at key points along the river system on a daily basis, beginning with outflows from Lake Isabella.

Kern River flows are measured at multiple locations, including at First Point, Beardsley Weir, Rocky Point Weir, Calloway River Weir, River Canal Weir, Bellevue Weir, the 2,800 Acres Recharge Facility, including the McClung Weir, and the river channel at Second Point (see Figure 2-2). Additions or diversions to the river channel are computed and tracked. The Carrier Canal parallels the Kern River channel and diverts water from a headgate above the Rocky Point Weir. Records are also kept of the flow and additions and diversions along the Carrier Canal at key points, including the Carrier Headgate, Reclamation Weir, Eastside Canal Headgate, Kern Island Canal Headgate, Levee No. 1, Carrier at Oak Street, Stine Canal Headgate, River Canal at Stockdale Highway, Buena Vista Canal Headgate, Pioneer Turn-Out, and the River Canal at Alternate Second Point.

The City also operates the Kern River diversion system for the benefit of other Kern River interests. On a daily basis, the City's Water Resources Department acts as the central dispatch and receives orders for Kern River water from dispatchers at various water districts, in addition to the City's own demands for water. The Kern River Watermaster coordinates Lake Isabella reservoir storage and Kern River flow management between participating water districts, USACE, and the City of Bakersfield. The City communicates with USACE on a daily basis to coordinate releases to the river from Isabella Dam. City employees thereafter physically divert water out of the river into various canals, and operate and maintain the headgates, weirs, and other physical facilities that divert water from the Kern River.

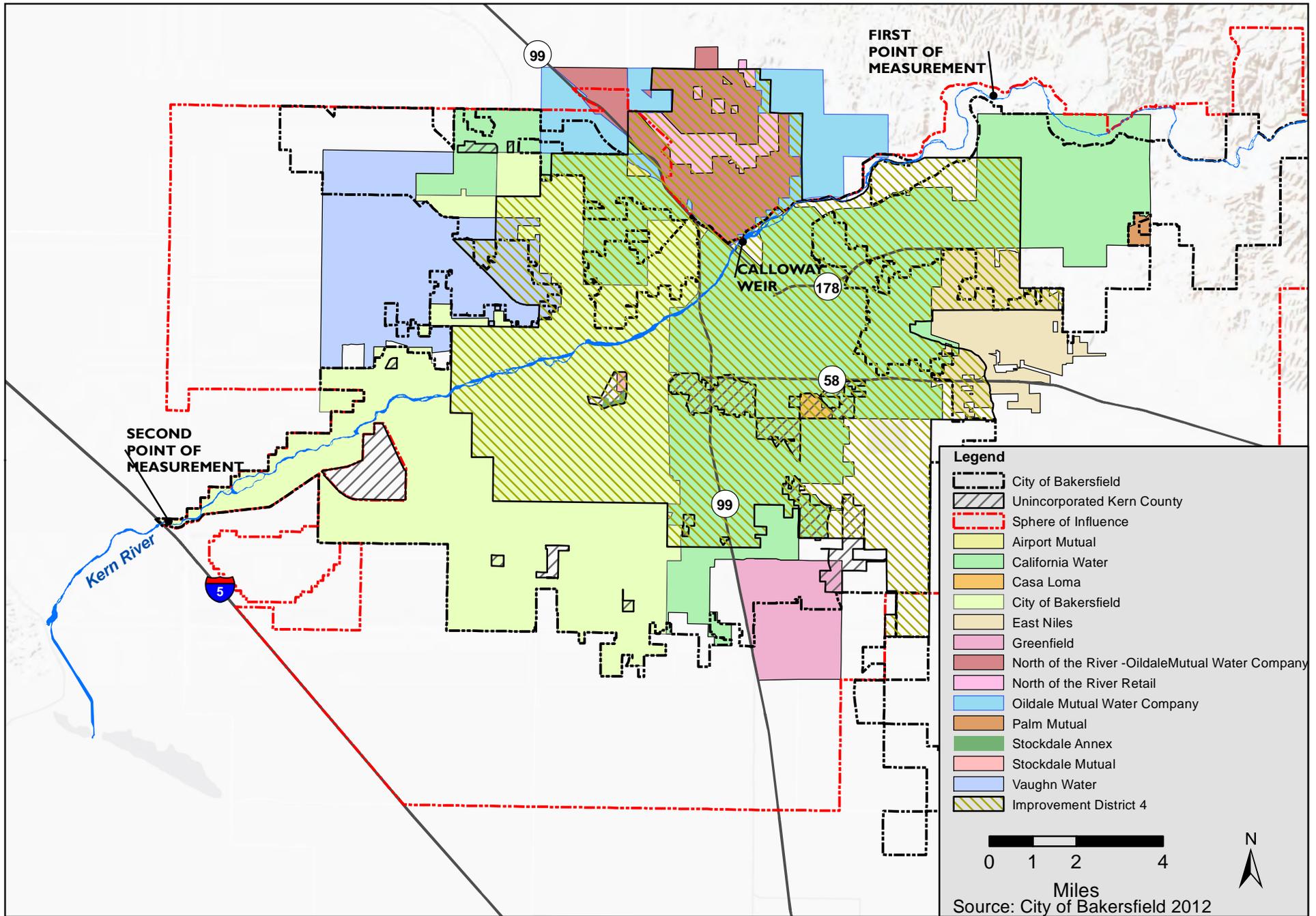
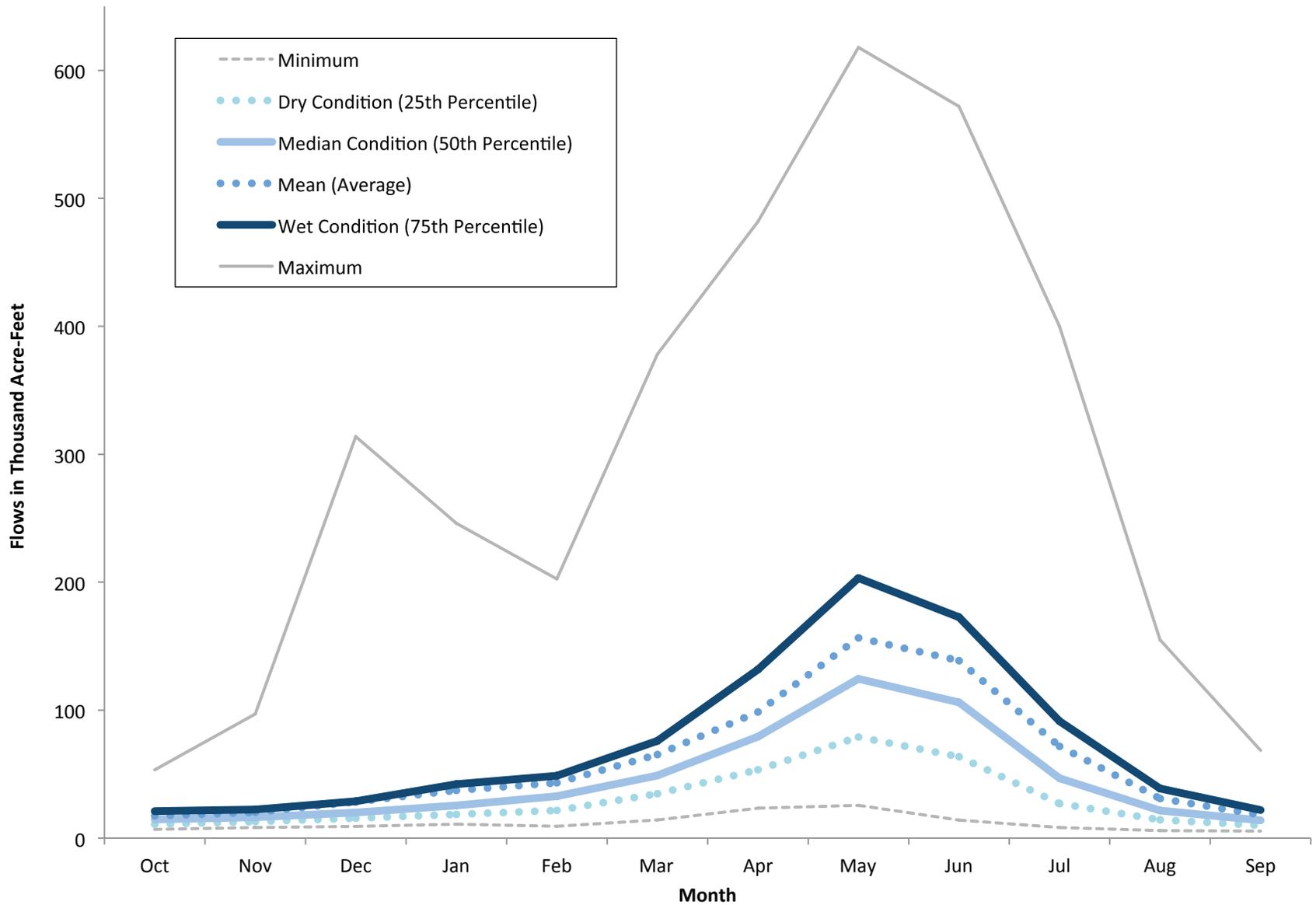


Figure 2-4
Municipal Water Service Areas

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Note: Values are the "natural flow," computed to exclude the effect of storage in Lake Isabella.
 "Wet"--indicates the 75th percentile of monthly flows over the period of record.
 "Dry"--indicates the 25th percentile of monthly flows over the period of record.

Figure 2-5
Range of Monthly Flow Volumes
Kern River at First Point of Measurement (1894-2010)

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Table 2-1 summarizes historic flow conditions for the Kern River at First Point and the Calloway Weir (approximately 9 miles downstream of First Point) between 1893 and 2010. Table 2-1 includes monthly and annual totals for median, average, dry-year, and wet-year flows from the period of record. The total annual median flow at First Point is 550 thousand acre-feet (TAF). This is a computed “natural flow” that accounts for the role of storage in Lake Isabella following the completion of reservoir construction in 1953. River flows from before Lake Isabella was operational can be compared with flows after Lake Isabella by using a “computed natural flow” approach. The wet-year and dry-year flows at First Point show the large annual variation in discharge on the Kern River. The typical wet-year flow is 899 TAF, over 60% greater than the median flow, and the dry-year flow is about 361 TAF, about 35% less than the median flow. The monthly totals for median, average, dry-year, and wet-year flows show a similar pattern, with the highest flows typically occurring from April through June associated with the melting Sierra Nevada snowpack, and the lowest flows in September or October.

Table 2-1 also summarizes flow conditions downstream of Calloway Weir during the period from 1970 to 2010. The values shown illustrate the precipitous drop in the median river flow downstream of Calloway Weir. Whereas long-term median flow at First Point is 550 TAF, it is only 3 TAF downstream of Calloway Weir. This reduction in flow is primarily a result of diversions into the various canals between First Point and the Calloway Weir. Dry years have no measurable flow at Calloway Weir, while wet years result in higher quantities of flow at Calloway Weir. In average and wet years at the Calloway Weir, the peak monthly total occurs in June, while median years have no discernible monthly pattern. It is noted that for several months shown in Table 2-1, the average baseline flow at Calloway Weir (mean monthly flow) is greater than the “wet monthly flow” as determined by the 75th percentile monthly flow. The flow conditions which lead to this situation are described in more detail in Section 3.6.3, *Surface Water Hydrology and Water Quality – Environmental Setting*. [Please note that Section 3.6.3 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

2.7 City’s Historic Water Supply and Use

The City’s water supply from the Kern River is summarized in **Table 2-2**. As shown in Table 2-2, The City’s Kern River water rights have historically yielded an average of 135,000 afy. The City’s Kern River water deliveries include the City’s “pre-1914” appropriative water rights acquired from Tenneco in December 1976, including additional historic water rights identified as the Kern River Canal and Irrigating Company rights (the Laterals), and other “minor rights” listed in the Shaw Decree that belong to the City. The amount of water available to the City pursuant to these rights varies yearly depending on hydrologic conditions and the quantity of water flowing in the Kern River. To represent the annual variation in water available to the City’s rights, values in Table 2-2 are shown for the median, average, dry, and wet months, based on Kern River flows from 1954 to 2010.

In Table 2-2 the quantities of water available through the City’s rights are separated into median, average, dry, and wet months. The City’s base median yield is 90 TAF, and varies from a dry-year average of approximately 52 TAF to a wet-year average of 155 TAF, a range

of over 100 TAF. The amount of water available through the City's rights is lowest from September through February, rises through March, and peaks in May, reflecting the influence of snowmelt on the hydrographic chart of the Kern River.

The Laterals' average yield shown in Table 2-2 follows a pattern similar to the City's primary water rights, with the lowest amounts received from September through February, and the highest amounts received in May. The Laterals' average supply comprises a much smaller portion of the City's water supply than the City's primary water rights, totaling 7 TAF for a median year. The other minor rights constitute less of the City's total supply, ranging from 1.5 TAF in a dry year to 5 TAF in a wet year.

The total quantity of Kern River water available to the City results from a combination of water accruing to the City's primary "pre-1914" appropriative water rights, the Laterals, and other minor rights. The median historic yield of Kern River water from these rights is 99 TAF. During a wet year, the rights may yield as much as 179 TAF, while during a dry year the rights may yield an average of 55 TAF.

Table 2-2 also depicts some of the current minimum annual, short-term obligations and demands on the City's Kern River water rights. These demands include canal seepage and evaporative losses of 20,000 afy (on average); deliveries to water treatment plants operated by Cal Water in the amount of 19,000 afy to provide water for municipal use; the obligation to deliver 10,000 afy of water to the Rosedale-Rio Bravo Water Storage District as the result of a long-term sale; and deliveries of an average of 13,000 afy to satisfy various obligations and agreements, including deliveries to the Kern River Canal and Irrigating Company, Olcese Water District, and various City water amenities.

All of these demands will vary based on climatic and hydrologic conditions and other factors. The amounts listed above and in Table 2-2 only represent historic and current average quantities. The City further expects that the above demands will increase in the future, as anticipated and projected population growth will place increasing demands on the City's water supply.

Some quantities of the City's current water supply may run down the Kern River channel prior to implementation of the Program, but such flows are not expected to be regular or consistent, and would most likely be in lesser amounts than pursuant to the Program.

Various quantities of water accruing to the City's Kern River rights will also be available for use in the Program to create a more regular, consistent flow of water in the Kern River channel throughout the City, including below Calloway Weir. The additional quantities of water used to increase flows of water in the Kern River were previously identified herein as "allocated Source 1 water."

Table 2-1. Historic Kern River Flow Conditions at First Point and Calloway Weir

| | Monthly Supply (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------------|-----|-----|------|------|------|------|------|------|-----|-----|-----|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| Historic Kern River Flow at First Point (1893–2010) | | | | | | | | | | | | | |
| Median Flow at First Point ^(a) | 25 | 33 | 49 | 79 | 124 | 106 | 47 | 22 | 14 | 15 | 16 | 20 | 550 |
| Average Flow at First Point (mean) | 37 | 43 | 65 | 99 | 157 | 139 | 72 | 31 | 18 | 17 | 20 | 28 | 726 |
| Dry Year Flow at First Point (25th percentile) ^(b) | 18 | 22 | 35 | 53 | 79 | 64 | 27 | 14 | 10 | 11 | 13 | 16 | 361 |
| Wet Year Flow at First Point (75th percentile) ^(c) | 42 | 49 | 76 | 132 | 203 | 173 | 91 | 39 | 22 | 21 | 22 | 29 | 899 |
| Historic Kern River Flow at Calloway Weir (1970–2010) ^{(d)(e)} | | | | | | | | | | | | | |
| Median Flow at Calloway | 0.1 | 0 | 0 | 0 | 0 | 0.3 | 1.5 | 0.7 | 0 | 0 | 0.1 | 0 | 3 |
| Average Flow (mean) at Calloway | 3.6 | 6.9 | 8 | 14.2 | 26.1 | 31 | 24 | 13.4 | 5.9 | 5.5 | 5.6 | 4.8 | 149 |
| Dry-Year Flow at Calloway (25th percentile) ^(b) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wet-Year Flow at Calloway (75th percentile) ^(c) | 5 | 2.2 | 1 | 1.2 | 17.4 | 39.8 | 32.1 | 17.6 | 2.6 | 3.7 | 4.5 | 3.4 | 130 |

Notes: TAF = thousand acre-feet

(a) Historic flows at First Point are considered “computed natural flows” from 1954 onward, and account for the role of storage provided by Lake Isabella upstream.

(b) “Dry” Year is defined as the 25th percentile (of median) over the period of record, or about 50% of the mean.

(c) “Wet” Year is defined as the 75th percentile (of median) over the period of record, or about 125% of the mean.

(d) The monthly flow values used generate this table are shown in Appendix D

(e) Flows at the Calloway Weir, as shown in this table, may include water from other sources and rights. Flows in the river below Calloway Weir are not necessarily from the City’s Source 1 water rights.

Source: City of Bakersfield Water Resources Department 2011

Note: This table is reproduced in Chapter 3, Section 3.6 “Surface Water Hydrology and Water Quality” as Table 3.6-1. [Please note that Section 3.6 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

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Table 2-2. City of Bakersfield Current Minimum Obligations and Kern River Yields

| | Quantity (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------|------|------|------|------|------|------|------|------|------|------|------|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| City Water Obligations | | | | | | | | | | | | | |
| Water Treatment Plants | 0.5 | 1.7 | 1.5 | 1.3 | 1.6 | 2 | 2.1 | 2.1 | 2 | 1.6 | 1.4 | 1 | 19 |
| Kern River Canal & Irrigating Company (KRC&I) | 0.05 | 0.15 | 0.45 | 0.8 | 1.05 | 1.10 | 1.10 | 1.10 | 0.73 | 0.30 | 0.15 | 0.03 | 7 |
| Olcese Water District | 0.02 | 0.05 | 0.08 | 0.10 | 0.12 | 0.13 | 0.13 | 0.13 | 0.13 | 0.08 | 0.03 | 0.02 | 1 |
| City Water Feature Amenities ^(c) | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 5 |
| Miller-Haggin Obligations + Isabella Evaporation Losses, and Preexisting Delivery Obligations ^(b) | 0 | 0 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 | 0 | 0 | 0 | 0 | 20 |
| Long-Term Sale to Rosedale-Rio Bravo Water Storage District | 3.4 | 3.3 | 3.3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 |
| <i>Current Minimum Obligations</i> | 4.4 | 5.6 | 9.1 | 5.9 | 6.5 | 7.0 | 7.1 | 7.1 | 3.3 | 2.4 | 2.0 | 1.5 | 62 |
| Kern River Water Yield (1954–2010) | | | | | | | | | | | | | |
| City Historic Rights^(a) | | | | | | | | | | | | | |
| Median Year | 1.1 | 1.1 | 16.1 | 18.4 | 22.5 | 20.1 | 9.9 | 0.7 | 0 | 0 | 0.1 | 0.4 | 90 |
| Average Year (mean) | 1.5 | 1.7 | 17.1 | 19.7 | 28.3 | 25.2 | 14.2 | 5.9 | 0.4 | 0.3 | 0.4 | 1.1 | 116 |
| Dry Year (25th percentile) | 0.3 | 0.8 | 8.0 | 13.6 | 16.3 | 11.3 | 1.8 | 0 | 0 | 0 | 0 | 0 | 52 |
| Wet Year (75th percentile) | 1.4 | 1.3 | 24 | 24.8 | 36.4 | 31.9 | 19.9 | 11.4 | 0.9 | 0.7 | 0.8 | 1.1 | 155 |
| Kern River Canal & Irrigating Company (KRC&I) Laterals | | | | | | | | | | | | | |
| Median Year | 0 | 0 | 0 | 0.8 | 3.5 | 2.5 | 0 | 0 | 0 | 0 | 0 | 0 | 7 |
| Average Year (mean) | 1.2 | 1.3 | 0.5 | 2 | 4.7 | 3.7 | 1.1 | 0.3 | 0.2 | 0 | 0.2 | 1 | 16 |
| Dry Year (25th percentile) | 0 | 0 | 0 | 0.1 | 1.3 | 0.4 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Wet Year (75th percentile) | 0.7 | 0.5 | 0.8 | 3.4 | 7.2 | 5.8 | 1.6 | 0 | 0 | 0 | 0 | 0 | 20 |
| Old South Fork Right | | | | | | | | | | | | | |
| Median Year | 0.5 | 0.5 | 0 | 0.2 | 0.3 | 0.2 | 0.1 | 0 | 0 | 0 | 0.1 | 0.2 | 2 |
| Average Year (mean) | 0.4 | 0.4 | 0.1 | 0.2 | 0.3 | 0.3 | 0.2 | 0.1 | 0.2 | 0.2 | 0.2 | 0.3 | 3 |
| Dry Year (25th percentile) | 0.1 | 0.4 | 0 | 0.1 | 0.2 | 0.1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Wet Year (75th percentile) | 0.6 | 0.6 | 0.1 | 0.3 | 0.3 | 0.3 | 0.2 | 0.1 | 0.5 | 0.3 | 0.4 | 0.6 | 4 |
| Total Historic City Water Yield: Sum of City Base, KRC&I Laterals, and Old South Fork Deliveries | | | | | | | | | | | | | |
| Median Year | 1.6 | 1.6 | 16.2 | 19.4 | 26.4 | 22.8 | 10 | 0.7 | 0.1 | 0 | 0.2 | 0.5 | 99 |
| Average Year (mean) | 3 | 3.5 | 17.7 | 21.9 | 33.3 | 29.2 | 15.5 | 6.4 | 0.8 | 0.5 | 0.8 | 2.4 | 135 |
| Dry Year (25th percentile) | 0.4 | 1.2 | 8 | 13.8 | 17.8 | 11.8 | 1.8 | 0 | 0 | 0 | 0 | 0.1 | 55 |
| Wet Year (75th percentile) | 2.7 | 2.3 | 24.9 | 28.5 | 44 | 38 | 21.7 | 11.6 | 1.4 | 1 | 1.2 | 1.7 | 179 |

Table 2-2. (continued) City of Bakersfield Current Minimum Obligations and Kern River Yields

| | Quantity (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |

Notes: TAF = thousand acre-feet

(a) Water deliveries do not include water released by other rights holders or the City of Bakersfield.

(b) Miller-Haggin Obligations include river channel and canal recharge to make deliveries to first point canals below the Kern Island right and to deliver second point water and lower River water to second point undiminished during the March-August period. Preexisting delivery obligations are from agreements assumed by the City upon the City's purchase of Kern River water rights. These include agreements with Kern County for Isabella Recreation Pool, Lake Ming, and Hart Park. Other year to year miscellaneous water sales are not included in the City Existing Water Obligations.

(c) City Water Feature Amenities = Truxtun Lakes, The Park at RiverWalk, Aera Park Pond, Wilson Ponds, etc.

Note: This table is reproduced in Chapter 3, Section 3.7 "Water Supply and Groundwater Resources" as Table 3.7-1. [Please note that Section 3.7 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

Prior to implementation of the Program, the allocated Source 1 water may be available to satisfy and address multiple additional demands and projects of the City, including restoration and maintenance of reserve water supplies in storage in Lake Isabella and the Basin to protect the City's long-term drinking water supplies; occasional, intermittent instream flows of water in the Kern River pursuant to prior projects and policies of the City, including the 1985 Kern River Plan Element of the City's General Plan (adopted by both the City and the County of Kern), which called for the establishment and maintenance of a minimum annual flow of water in the Kern River channel; and policies of the City and the City's water board adopted and confirmed in 2001, including the policy and directive calling for the establishment of minimum annual flows of water in the Kern River channel, and the Kern River bike path and parkway project. The allocated Source 1 water may also be available, prior to implementation of the Program, for the recharge and storage of water for municipal use in the City's 2800 Acre Recharge Facility, and Groundwater replenishment in other areas of the City. The water may also be available for other projects and policies involving the supply of water to City residents, directly and through Cal Water, including pursuant to the City's 1976 acquisition of its Kern River water rights, from Tenneco West, Inc., and the Metropolitan Bakersfield General Plan, adopted by the City on December 11, 2002.

The quantity of water available for use within the City is uncertain as a result of hydrological conditions, climate considerations, recent statutory and regulatory changes (including SGMA), increased demands and requirements for water in storage, and a recent legal action brought by the North Kern Water Storage District (North Kern). As a result of a final judgment issued in that action (*North Kern Water Storage District v. City of Bakersfield*, Ventura County Superior Court Case No. 56-2011-00408712) in 2014, the City may have an obligation in certain years to transfer up to 20,000 af of surplus water supplies to North Kern.

Legal proceedings between 1996 and 2007 reviewed and considered questions regarding the potential forfeiture of appropriative Kern River water rights held by KDWD. As a result of those proceedings, California courts concluded that KDWD had "forfeited" a large portion of its Kern River water rights owing to non-use. Following the conclusion of those proceedings in 2007, the SWRCB began proceedings to assess whether the Kern River was still fully appropriated. The Kern River was originally designated as a river with fully appropriated status (FAS) by SWRCB in 1964. In February 2010, the SWRCB issued an order revising the status of the Kern River, finding that the river was no longer fully appropriated.

As a result of the court decisions regarding forfeited water on the Kern River and in anticipation of SWRCB's revision of the FAS of the river, the City filed an application with the SWRCB to obtain rights to surplus, unappropriated, and available water in the Kern River. The City's application can be reviewed online at the SWRCB's Division of Water Rights webpage at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/2007_kern/publicnotice113007.pdf

The City's application to appropriate indicates that surplus unappropriated Kern River water awarded to the City, identified herein as Source 2 water, will remain in the Kern River

watercourse to support beneficial uses, including domestic purposes, municipal and industrial uses, protection of the public interest, environmental purposes, streamflow restoration, constructed wetlands, recreational uses, fish and wildlife restoration, underground aquifer supply, aquifer water quality enhancement, and underground water banking for drought and other emergencies.

Although the specific quantity of Source 2 water that will be available for use by the City in the Program is unknown at this time, this DEIR reviews the impact of a range of increased flows of water in the Kern River, up to 160,000 afy, from a combination of new water supplies (Source 2 water) and some portion of the City's current water supply (allocated Source 1 water). The City will undertake further project level CEQA review which will evaluate the impact of the specific quantity of water that will be available for use in the Program after the SWRCB determines the quantity of surplus, unappropriated water available on the Kern River. As described above in Section 2.4 and other locations in this Program Description chapter, such additional CEQA review will take place prior to the City's adoption and implementation of the Program.

The Proposed Program will be implemented by combining the supply of Source 2 water the City receives from the SWRCB with other available City water supplies (allocated Source 1 water). The Program therefore involves the use of up to 160,000 afy of water to create a permanent, consistent, and regular flow of water in the Kern River channel through the City, down to the 2800 Acre Recharge Facility.

The quantities discussed above do not include or take into account additional quantities of water accruing to rights owned and held by the City but diverted by or on behalf of other entities, such as North Kern, in connection with the City's rights, pursuant to various agreements involving the use of water accruing to the City's rights.

The quantities discussed in connection with the City's rights do not include excess, surplus water sometimes diverted by the rights held by the City. These diversions primarily consist of surplus water diverted to satisfy the demands of prior right holders and "released" to the river.

Finally, the quantities discussed above and in Table 2-2 do not reflect or account for Kern River water recharged or otherwise percolated into the Basin through controlled and regulated flows of water in the river channel, or other spreading or recharge projects, which thereafter serves as a significant source of supply for City residents through deliveries by the City and Cal Water.

2.8 Proposed Program Actions

The primary program action would be to allow additional quantities of water obtained by the City through its application to appropriate to flow in the Kern River channel to enhance natural resources and municipal amenities along the Kern River, to protect, increase, and enhance the City's water supply, and to meet existing and newly identified demands. Key elements of the program are conceptually illustrated in **Figure 2-6**. The Proposed Program involves the following processes:

1. The Program will utilize new water supplies which the City is seeking through an application to appropriate previously filed by the City with the SWRCB. Such new water supplies (Source 2 water) include and consist of water lost or forfeited by KDWD, as well as additional quantities of surplus water that has not been previously used under any valid permit or right. The City will still not adopt or implement the Program until after the SWRCB determines the quantity of unappropriated water on the Kern River, and after the City undertakes further project level CEQA review, as necessary, which “tiers off” of this program EIR.
2. Kern River flows will increase below the Calloway Weir (Figure 2-2) and continuing downstream. More description of downstream flow conditions is presented in Section 3.6, “Surface Water Hydrology and Water Quality.” Increased river flows will serve multiple reasonable beneficial uses and demands, including demands for water for domestic, municipal and industrial, environmental, recreational, aesthetic purposes; fish and wildlife restoration; underground aquifer enhancement and storage; water quality; public interest; streamflow restoration; and other purposes.
3. Increased river flows downstream of the Calloway Weir will increase infiltration and percolation to the portion of the Basin below the Kern River.
4. Over time, increased flows in the Kern River and percolation to the Basin will increase subsurface storage in the near-surface portion of the Basin, which, over time, will recharge storage in the deeper underlying portion of the Basin. Increased groundwater levels and quantities that result from the Program will enhance water quality and serve as drought protection.
5. Water will be withdrawn from the Basin for municipal uses or; if there is a surplus, water may be transferred to local water districts.
6. Over the long term, municipal water use or transfers will occur at a sustainable rate (to be consistent with the GSP that is developed by the KRGSA) such that Basin water table levels will be maintained or raised through net Basin replenishment over the long term implementation of the Program.

The Proposed Program would increase river flows to further implement and enhance the goals and policies of the City’s adopted Kern River Plan Element and Parkway Plan, and water supply plans and programs. There would be no construction activities associated with this program. No new facilities would be constructed under the Proposed Program.

The Proposed Program would encourage infiltration of additional water to recharge the Basin. Increased river flows would be percolated into the Basin along the river channel and at the 2,800 Acre Recharge Facility. The Proposed Program would utilize existing well facilities within the city to extract recharged groundwater for municipal use within the city limits to support existing and future water demands.

The Proposed Program would be initiated following a favorable decision by the SWRCB on the City’s application to appropriate. Once initiated, the Proposed Program is envisioned as an ongoing, continuous, and year-round program. However, for program scoping purposes, a planning horizon to 2035 is considered in this DEIR. This projected timeline aligns with the City’s current planning efforts, including updates to the General Plan and UWMP.

The information presented in **Table 2-3** is the expected monthly distribution of water for Program use. However, the specific quantity of water available to the Kern River and the Proposed Program will depend on the quantity of water awarded to the City by the SWRCB, and would further depend on annual and seasonal climatic and hydrologic conditions, as well as available storage capacity in Lake Isabella. In very dry years, all of the quantities described above may not be available for retention in instream flows of the Kern River because of diminished quantities of water accruing to the City's water rights. The quantity of water retained in the Kern River through the Proposed Program may also be constrained in dry years owing to competing municipal water-supply needs, including the City's contracted delivery obligations to water treatment plants operated by Cal Water for the benefit of residents of the city.

2.8.1 Municipal Water Use

Increased municipal water supplies derived from infiltrated Kern River flows is a key component of the Proposed Program. Water flowing in the Kern River channel and infiltrated into the Basin would be available for municipal use through existing wells owned by the City and other municipal water purveyors operating within the city. The use of infiltrated water from the Program would assist the City in meeting its municipal, industrial, and residential water supply needs. The City's ability to pump and distribute such infiltrated river water would depend on a number of factors, including the overall demand for instream flows in the Kern River channel, groundwater levels in the Basin, climatic and hydrologic conditions, and competing demands for water. Existing municipal wells would continue to operate to provide municipal water supplies.

The Proposed Program would provide water to address current and projected municipal groundwater demands. The Proposed Program would also provide increased recharge beneath the Kern River. This increased recharge would enable the City to increase its municipal use as needed, per its long-term demand increases. Increased quantities of recharged water would also replenish the Basin.

The recharged Basin would also provide opportunities for groundwater extraction by other municipal and agricultural water entities for use within the City's SOI and in the region. The City may also make surplus quantities of water, above the demands of the Proposed Program, available to local water and agricultural districts on an occasional basis.

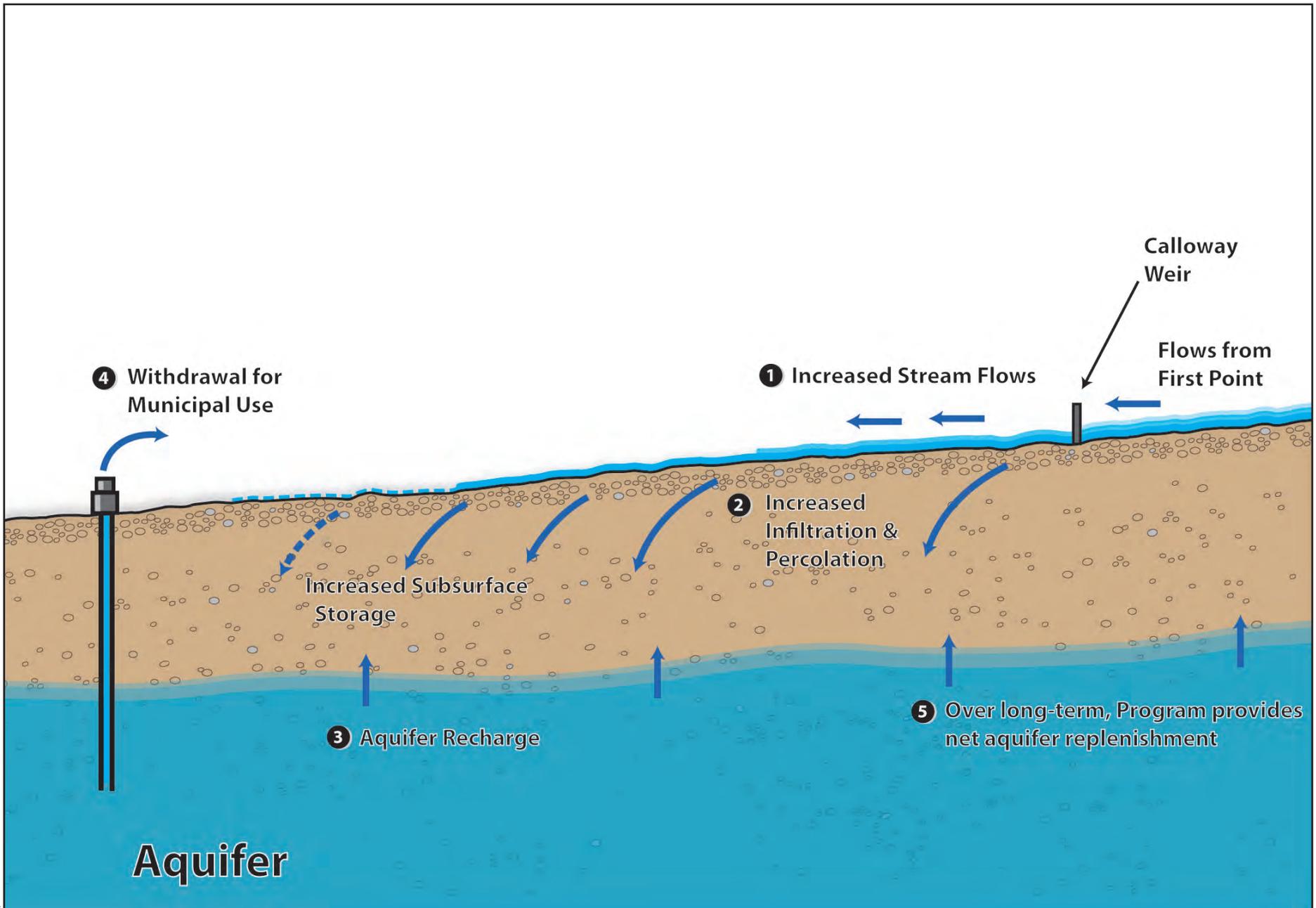


Figure 2-6
Proposed Program Process

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Table 2-3. Proposed Program Water Supplies

| | Monthly Supply (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------------|-----------|----------|-----------|----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| City Allocated Source 1 supply | | | | | | | | | | | | | |
| Annual Allocated Source 1 Supply ^(a) | 0 | 0 | 0 | 10 | 10 | 15 | 15 | 10 | 10 | 0 | 0 | 0 | 70 |
| Dry-Year Allocated Source 1 Supply ^(b) | 0 | 0 | 0 | 0–10 | 4–10 | 4–15 | 4–15 | 4–10 | 4–10 | 0 | 0 | 0 | 20–70 |
| <i>Median Historic Flow^(c) at Calloway + Allocated Source 1</i> | 0.1 | 0 | 0 | 10 | 10 | 15.3 | 16.5 | 10.7 | 10 | 0 | 0.1 | 0 | 73 |
| <i>Dry-Year Historic Flow at Calloway + Allocated Source 1 Dry Year</i> | 0 | 0 | 0 | 0–10 | 4–10 | 4–15 | 4–15 | 4–10 | 4–10 | 0 | 0 | 0 | 20–70 |
| Projected SWRCB water supply (Source 2) | | | | | | | | | | | | | |
| Annual Source 2 Supply ^(d) | 14.5 | 9 | 4.1 | 4.5 | 4.3 | 2.2 | 1.4 | 1.8 | 6.3 | 7.9 | 13.1 | 18.1 | 87 |
| Dry-Year Source 2 Supply ^(e) | 6.5 | 3.5 | 2.5 | 1.5 | 1 | 0 | 0 | 0.5 | 1.5 | 2.5 | 6.5 | 10 | 36 |
| Wet-Year Source 2 Supply ^(f) | 14.5–39.1 | 9–24.3 | 4.1–11.1 | 4.5–12.2 | 4.3–11.5 | 2.2–5.9 | 1.4–3.7 | 1.8–4.8 | 6.3–17 | 7.9–21.3 | 13.1–35.2 | 18.1–48.8 | 87–235 |
| <i>Median Historic Flow at Calloway + Source 2</i> | 14.6 | 9 | 4.1 | 4.5 | 4.3 | 2.5 | 2.8 | 2.5 | 6.3 | 7.9 | 13.1 | 18.1 | 90 |
| <i>Dry-Year Historic Flow at Calloway + Source 2 Dry Year</i> | 6.5 | 3.5 | 2.5 | 1.5 | 1 | 0 | 0 | 0.5 | 1.5 | 2.5 | 6.5 | 10 | 36 |
| <i>Wet-Year Historic Flow at Calloway + Source 2 Wet Year</i> | 19.5–44.1 | 11.2–26.5 | 5.1–12.1 | 5.7–23.4 | 21.7–39 | 42–60.7 | 33.4–50.8 | 19.4–32.4 | 8.9–29.6 | 11.6–25.1 | 17.5–39.7 | 21.5–52.1 | 218–365 |
| Program Total (Historic Flows + Allocated Source 1 and Source 2) | | | | | | | | | | | | | |
| <i>Median Annual Flows (with both sources)</i> | 14.6 | 9 | 4.1 | 14.5 | 14.3 | 17.5 | 17.9 | 12.5 | 16.3 | 7.9 | 13.1 | 18.1 | 160 |
| <i>Dry-Year Flows (with both sources)</i> | 6.5 | 3.5 | 2.5 | 1.5–11.5 | 5–11 | 4–15 | 4–15 | 4.5–10.5 | 5.5–11.5 | 2.5 | 6.5 | 10 | 56–106 |
| <i>Wet-Year Flows (with both sources)</i> | 19.5–44.1 | 11.2–26.5 | 5.1–12.1 | 15.7–23.4 | 31.7–39 | 57–60.7 | 48.5–50.8 | 29.4–32.4 | 18.9–29.6 | 11.6–25.1 | 17.5–39.7 | 21.5–52.1 | 288–435 |

Notes: TAF = thousand acre-feet

- (a) In dry years (when annual discharge is well below mean/median conditions—see Table 2-1), Allocated Source 1 supply may be reduced. A range of values is provided to represent a range of potential reductions in available supply.
- (b) Historic flow is characterized according to a median flow amount because of highly variable annual hydrologic conditions (see Table 2-1).
- (c) Source 2 supplies (as a water supply) are described using average monthly flow values, while historic river-flow conditions are described using median flow values, which are more appropriately used for highly variable natural-discharge conditions of the Kern River (see Table 2-1).
- (d) Dry-year Source 2 supplies are based on a historical assessment of dry-year conditions.
- (e) Wet-year Source 2 supplies are based on a historical assessment of wet-year conditions.

Source: Data compiled by City of Bakersfield, Water Department, 2011

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While the transfer of temporary surplus water is a possible outcome of the Program, the exact details of future sales or transfers of surplus water or future activities of other water suppliers and purveyors are undetermined at this time. The general impacts associated with such potential surplus water transfers are further described in Chapter 4, within the evaluation of potential cumulative effects of the Proposed Program. [Please note that Chapter 4 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.] If and when surplus water sales or transfers are better defined in terms of specific quantities, locations of use, and timing of the transfer, then further CEQA analysis may be necessary. Such analysis could occur via a tiered CEQA document from this program EIR, including in the additional project level CEQA review that will follow the SWRCB's determination of the quantity of surplus, unappropriated water on the Kern River, and prior to the City's adoption and implementation of the Program.

2.8.2 Program Implementation

The Proposed Program would primarily be accomplished through existing infrastructure and facilities on the Kern River. Under the Proposed Program, the City would monitor, control, and regulate increased streamflows in various reaches of the Kern River channel, from the Calloway Weir to the 2,800 Acre Recharge Facility.

Flow rates on the Kern River are managed by the mechanical manipulation of constructed weirs. With the exception of the First Point station, the basic function of the weirs is to raise or maintain water surface elevation in the channel to allow gravity to divert flows to specified destinations. The weirs also regulate water velocity to reduce erosion and scouring of the channel bed and banks, and to also allow the settling of sediment for later removal. For the Proposed Program, six weirs are already in place in the river channel to safely control, divert, and measure water flow. These include the Beardsley Weir, Rocky Point Weir, Calloway Weir, River Canal Weir, Bellevue Weir, and McClung Weir. Each weir is unique to its location. All of the weirs are manually operated and require in-field personnel for any change in flow rates. Several methods of flow control are used. Wooden board controlled bays of certain weirs are set for either over-pour style of flow or below-water surface openings. Some weirs have steel gates that control the flow through the bays, most generally for the submerged opening. The Beardsley and Rocky Point Weirs have "radial gates," which are designed to quickly change flow rates, provide a sluicing effect if sediment needs to be cleared, and offer long life and low maintenance.

The Proposed Program would not be operated to create or generate unsafe, sudden, or dramatic changes in the existing flow rates of the Kern River. The City would continue to closely coordinate with USACE for daily, as well as extraordinary, flow changes in the river from Lake Isabella. The City has extensive experience operating and managing the Kern River during unusual and extreme weather conditions, including where sudden storm events have produced flow rates over 20 times (10,000 cubic feet per second) the maximum flow rates expected under the Proposed Program. The flow rates and volumes projected for the Proposed Program would fall into the normal and routine category of river regulation events performed by the City, and the City does not expect the increased flows to make any difference or have any effect on storm flows or unusual, higher flow events. Changes in flow

conditions within the parameters of the Program would be relatively gradual and not noticeable to the public.

The City's operational policies give highest priority to flood control. If weather or storm events occur that substantially increase the flow of water in the river, the City would first attempt to store as much extra water as possible in Lake Isabella. The City would next spread and store as much water as possible in recharge facilities in and near the river, including the 2,800 Acre Recharge Facility. The Proposed Program would not cause a noticeable change in river flows during storm or flood events.

The water supply produced and utilized by the Proposed Program would not substantially affect river operations during dry years. In dry years, flows from the Program would likely be the only water flowing in the river channel below Calloway Weir, as that portion of the river channel would normally be dry in most years, absent the Program.

Given the increasing demands on and pumping from the Basin, there is little chance that the Basin would become "full" as a result of the Program or otherwise. The Basin encompasses over 450,000 acres and is estimated to have a storage capacity of over 10,000,000 acre-feet. The Basin is deemed to be in a state of overdraft by the California Department of Water Resources (DWR 2003). As a result of projections in population growth, competing demands for water, uncertain SWP and other imported supplies, demands for water and consequently demands on groundwater may increase in the future. The Basin would have capacity for accepting increased quantities of water through recharge and spreading activities into the future. The City would continue to closely monitor Basin conditions, including by monitoring water depth levels and rates of production for wells throughout the Program Area.

2.9 Program Monitoring, Maintenance, and Adaptive Management

To implement the Proposed Program, the City would closely monitor groundwater levels in the vicinity of the Kern River to record and account for increasing groundwater levels and supplies, and to ensure that increased extractions of groundwater for municipal use are attributable to the Program.

The City and Cal Water measure depth to water in each of its wells on a monthly basis. The City prepares hydrographs of the measurements. Records of such measurements are maintained by the City and Cal Water. The information is also supplied to ID4, which uses that information and measurements from additional wells, to prepare maps and annual reports on groundwater conditions in the region. DWR also compiles and prepares groundwater table maps for the area. These combined data resources will provide an accurate and timely account of the effectiveness of the Proposed Program's contribution to and replenishment of the Basin in the region.

The hydrographic section of the City's Water Resources Department, in addition to the Kern River Watermaster, has for decades measured, recorded, verified, and published the complete record of flows on the Kern River. The City measures and will continue to measure

flows of water at multiple locations, including First Point, the Beardsley Weir, the Rocky Point Weir, Calloway River Weir, River Canal Weir, the 2,800 Acre Recharge Facility (including the McClung Weir), and the river channel at Second Point. Additions, diversions, percolation rates, and flows associated with the Proposed Program would be measured by City employees on a 24-hour per day basis by on-site visual gauging while on routine river patrols. In addition, data collected from continuous water flow recording devices installed on all river weirs and diversion structures would be used to assist in verifying flows. Measurements and flow readings would be audited and confirmed by routinely scheduled streamflow measuring techniques based on generally accepted industry water-measuring standards. Groundwater extractions by turbine well pumping would be measured by industry-certified flow meters verified by Overall Pumping Efficiency ratings and meter testing. All flows would be tabulated, reviewed, verified, and recorded through the City's hydrographic section, whose current tasks include the central recordkeeping for all Kern River flows in the San Joaquin Valley. Additionally, the City would continue to conduct monitoring of biological resources, as described in Section 3.4, "Biological Resources." [Please note that Section 3.4 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

2.9.1 Kern River Channel Maintenance Program

The City currently administers its Kern River Channel Maintenance Program (Draft EIR October 1985, Final EIR December 1985, Program adopted January 1986) to ensure that the river channel provides adequate flood protection and conveyance capacity. The purpose of the Channel Maintenance Program is to preserve storm-flow carrying capacity of the Kern River as it passes through the city. The Channel Maintenance Program involves phased removal of river sand, soil, and vegetation within the primary floodway that impedes flood flows. A maximum of 70,000 cubic yards can be removed in a year. However, far less sediment is typically removed on an annual basis (City of Bakersfield 1988a, 1988b). Vegetation is removed from the primary floodway and areas outside the primary floodway to convey flood flows. Mitigation for the loss of vegetation within the primary floodway is provided by riparian restoration planting activities within the secondary floodway. The Channel Maintenance Program also includes maintenance and operation of weir and diversion structures.

Implementation of the Proposed Program may result in increased river maintenance activities owing to the increased flows and subsequent vegetation growth within the river corridor. The City intends to update and amend its Channel Maintenance Program to reflect and account for the Proposed Program and the potential for increased channel-maintenance activities resulting from the Program. CEQA compliance for the Channel Maintenance Program update may be required. This EIR does not include evaluation of impacts of the City's current or updated channel maintenance activities themselves; however, the potential for the Proposed Program to affect existing channel maintenance activities is addressed in this DEIR.

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- Kern River Groundwater Sustainability Agency. 2016 (April 12). Notice of Decision to Become a Groundwater Sustainability Agency. Available at: www.water.ca.gov/groundwater/sgm/gsa_notification/078_Kern_River_GSA_2016-04-12.pdf. Accessed July 28, 2016.
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Appendix A

Notice of Entry of Judgment and Preliminary Writ of Mandate

1 DOWNEY BRAND LLP
Kevin M. O'Brien (Bar No. 122713)
2 Christian L. Marsh (Bar No. 209442)
Amanda M. Pearson (Bar No. 268186)
3 455 Market Street, Suite 1420
San Francisco, California 94105
4 Telephone: (415) 848-4800
Facsimile: (415) 848-4831
5 cmarsh@downeybrand.com
apearson@downeybrand.com

Exempt From Filing Fees
(Cal. Gov. Code § 6103)

6 Attorneys for Petitioner
7 KERN WATER BANK AUTHORITY

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF TULARE**

10 KERN WATER BANK AUTHORITY, a
California public entity,

11 Petitioner,

12 v.

13 CITY OF BAKERSFIELD, a municipal
14 corporation of the State of California, and
BAKERSFIELD CITY COUNCIL, its
15 governing body,

16 Respondents.

Case No. VCU251535 (CEQA)
[Partially Consolidated with Case Nos.
VCU251598 and VCU251748]

**NOTICE OF ENTRY OF JUDGMENT AND
PEREMPTORY WRIT OF MANDATE**

Date: January 30, 2015
Time: 8:30 a.m.
Dept.: 2
Judge: Hon. Lloyd Hicks

17 AND CONSOLIDATED ACTIONS.

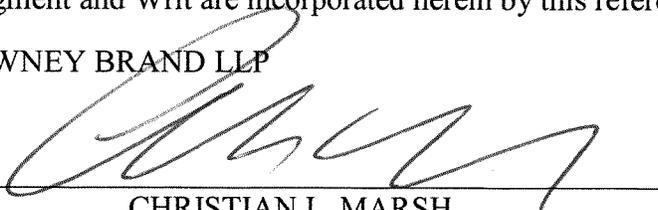
Action Filed: October 26, 2012
Date Transferred: April 16, 2013

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on July 6, 2015, the Honorable Lloyd L. Hicks entered
21 Judgment and a Peremptory Writ of Mandate in the above-captioned case. A true and correct
22 copy of the Judgment is attached hereto as Exhibit A. A true and correct copy of the Peremptory
23 Writ is attached as Exhibit B. The Judgment and Writ are incorporated herein by this reference.

24 DATED: July 14, 2015

DOWNEY BRAND LLP

25
26 By: 

CHRISTIAN L. MARSH

Attorneys for Petitioner
KERN WATER BANK AUTHORITY

EXHIBIT A

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DOWNEY BRAND LLP
Kevin M. O'Brien (Bar No. 122713)
Steven P. Saxton (Bar No. 116943)
Christian L. Marsh (Bar No. 209442)
Amanda M. Pearson (Bar No. 268186)
455 Market Street, Suite 1420
San Francisco, California 94105
Telephone: (415) 848-4800
Facsimile: (415) 848-4831
cmarsh@downeybrand.com
apearson@downeybrand.com

Attorneys for Petitioner
KERN WATER BANK AUTHORITY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

KERN WATER BANK AUTHORITY, a
California public entity,

Petitioner,

v.

CITY OF BAKERSFIELD, a municipal
corporation of the State of California, and
BAKERSFIELD CITY COUNCIL, its
governing body,

Respondents.

AND CONSOLIDATED ACTIONS.

Exempt From Filing Fees
(Cal. Gov. Code § 6103)

FILED
TULARE COUNTY SUPERIOR COURT
VICARIA DIVISION

JUL 06 2015

LARAYNE CLEEK, CLERK

BY: MARCELLA HERNANDEZ

Case No. VCU251535 (CEQA)
[Partially Consolidated with Case Nos.
VCU251598 and VCU251748]

~~PROPOSED~~ JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE

Date: January 30, 2015
Time: 8:30 a.m.
Dept.: 2
Judge: Hon. Lloyd Hicks

Action Filed: October 26, 2012
Date Transferred: April 16, 2013

1 On January 30, 2015, this matter, *Kern Water Bank Authority v. City of Bakersfield*,
2 Case No. VCU251535, which by stipulation and order entered by the Court was consolidated for
3 purposes of trial with Case Nos. VCU251598 and VCU251748, based on a single administrative
4 record and coordinated briefing and hearing, came on for hearing in Department 2 of the Tulare
5 County Superior Court, with the Honorable Lloyd L. Hicks, Judge Presiding.

6 Petitioner Kern Water Bank Authority (“KWBA”) appeared through its attorneys:
7 Christian L. Marsh and Amanda M. Pearson of the law firm of Downey Brand LLP. Respondent
8 City of Bakersfield (“City”) appeared through its attorney Colin L. Pearce of the law firm of
9 Duane Morris LLP.

10 After hearing the arguments of counsel, the Court took the consolidated matters under
11 submission. After further considering the filings of all Parties, the records and files in this case,
12 including the Administrative Record and Supplemental Administrative Record certified by the
13 City of Bakersfield, and further input and objections from the Parties in response to the Court’s
14 Tentative Decision, the Court issued its Statement of Decision (attached hereto as “Exhibit A”
15 and incorporated herein by this reference), which was filed and served on April 28, 2015, along
16 with the Court’s Responses to Objections to Statement of Decision (attached hereto as “Exhibit
17 B” and incorporated herein by this reference).

18 **IT IS THEREFORE ORDERED AND ADJUDGED** that:

19 1. For all the reasons stated in the Statement of Decision, the Court finds that the City of
20 Bakersfield prejudicially abused its discretion in certifying the Final Environmental Impact
21 Report (“EIR”) for the Kern River Flow and Municipal Water Program (the “Project”).

22 2. The KWBA’s Petition for Writ of Mandate is therefore granted. A Peremptory Writ of
23 Mandate shall issue in the form attached hereto as “Exhibit C” mandating that the City Council of
24 the City of Bakersfield set aside and vacate its action of September 26, 2012, adopting Resolution
25 108-12, by which the City Council (a) certified the EIR, (b) adopted a Statement of Facts and
26 Findings, (c) adopted a Statement of Overriding Considerations, and (d) directed the City’s
27 Planning Division to file a Notice of Determination with the County Clerk of Kern County. The
28

1 Peremptory Writ of Mandate shall also direct the City Council to set aside and vacate any
2 subsequent decision(s) based on the September 26, 2012 certification of the EIR.

3 3. This matter is remanded to the City of Bakersfield to take the steps required by law,
4 this Judgment, and the Peremptory Writ of Mandate.

5 4. The City of Bakersfield shall file an initial return to this writ within sixty (60) days of
6 Notice of Entry of Judgment. This initial return shall inform the Court of whether the City of
7 Bakersfield has complied with this Judgment and Peremptory Writ of Mandate by setting aside
8 and vacating Resolution 108-12, by which the City Council certified the Final Program EIR,
9 adopted a Statement of Facts and Findings, adopted a Statement of Overriding Considerations,
10 and directed the City's Planning Division to post a Notice of Determination for the Project with
11 the County Clerk for Kern County; and by setting aside and vacating any subsequent decision(s)
12 based on the September 26, 2012 certification of the EIR.

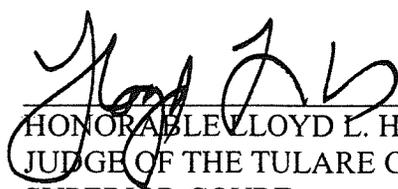
13 5. Pursuant to Public Resources Code section 21168.9, subdivision (b), this Court retains
14 jurisdiction over the City of Bakersfield's proceedings by way of a supplemental return to this
15 Peremptory Writ of Mandate until the Court has determined that, in revising the Program EIR, the
16 City of Bakersfield has complied with the Judgment and CEQA.

17 6. KWBA is a prevailing party for purposes of recovering its costs of suit, and shall
18 recover such costs of suit as determined by the Court after a timely filed and served
19 Memorandum of Costs, subject to any timely and served Motion to Tax Costs.

20 7. The Court reserves jurisdiction to consider a request for an award of reasonable
21 attorneys' fees pursuant to a proper and timely motion filed by KWBA under Code of Civil
22 Procedure section 1021.5.

23 8. Judgment shall be entered in favor of KWBA as provided herein.

24
25 Dated: 7-6, 2015


HONORABLE LLOYD L. HICKS
JUDGE OF THE TULARE COUNTY
SUPERIOR COURT

28

EXHIBIT A

APR 28 2015

LARAYNE CLEEK, CLERK

[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

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North Kern Water Storage District, et, al.,
Petitioners,
vs.
City of Bakersfield,
Respondent.

Case No.: VCU251748
VCU251598
VCU251535

STATEMENT OF DECISION

Kern Delta Water District,
Petitioner,
vs.
City of Bakersfield,
Respondent.

Kern Water Bank Authority,
Petitioner,
vs.
City of Bakersfield,
Respondent.

The above matter came on for argument on January 30, 2015. All parties appeared by counsel. The Court, having considered the administrative record ("AR"), and the briefs and arguments of the parties, finds as follows:

These are three consolidated Petitions for Writ of Mandate and for injunctive relief. Each challenges the decision of Respondent City of Bakersfield ("City") approving and certifying a Final Environmental Impact Report ("EIR") for the "Kern River Flow and Municipal Water Program" ("Project" or "Program") and the Notice of Decision ("NOD") approving the project.

Context of Dispute

1
2 In addition to the general axiom that water is for fighting over, the genesis of this
3 controversy is a Court decision (or decisions) determining that Petitioner Kern Delta
4 Water District ("Kern Delta") has forfeited some of its appropriative water rights from the
5 Kern River ("River"), and that therefore there may be some available for appropriation.
6 The parties refer to this potential as "source 2" water.

7 There is no need to recite the "law of the river", but to grossly simplify, there are
8 pre-1914 appropriative rights, which the parties refer to as "source 1" water. Only Kern
9 Delta and City own such rights.

10 North Kern Water Storage District ("North Kern") claims, and city apparently
11 agrees, that for many years it has diverted and used some of the very water now
12 potentially available for appropriation, to the general benefit of it and the others joining
13 in North Kern's petition.

14 As a secondary issue, City, by contract, has "rented" a portion of its source 1
15 rights to North Kern (generally described as 70,000 acre feet annually ("AF")). The
16 contract term began in 1976, and the original term ended in 2011. The Court will refer
17 to this as "contract water".

18 At the time city prepared its EIR (all documents, Draft and Final EIR, will be
19 referred to as "EIR") it appears to have assumed it would, as of the end of the original
20 contract term, have the use of all 70,000 AF of the contract water.

21 A Superior Court decision since then has rendered that assumption doubtful, to
22 the point it may not have use of any of that water. That decision is on appeal, and thus
23 not final.

24 Numerous entities, most of Petitioners here included, have applied to the State
25 Water Board ("Board") seeking an appropriative permit for the "forfeited" water. The
26 applications are for many times more water than could possibly be available.

27 The Board has not even accepted any of the applications, which have been
28 pending for years (City applied in 1996, and re-applied in 2007). There is no certainty
29 that the Board will even find that there is any water available for appropriation. The
30

1 Board has to first make that determination, and fix an amount available. There is no
2 timetable for that decision, and the parties tell the Court it is probably years away.

3 All parties are above the same ground water basin -- the Kern County sub-basin
4 of the San Joaquin Valley basin.

5 RELATIONSHIP OF THE PARTIES

6 The "North Kern parties" are North Kern, the Shafter-Wasco Irrigation District; the
7 Semi Tropic Water Storage District; The City of Shafter, and the Kern County Farm
8 Bureau. North Kern has been using the contract water and release water which is the
9 subject of the appropriation claims. The rest of the North Kern parties allege that
10 ground water in their territory will be adversely affected if North Kern is no longer able to
11 use the source 2 water. These parties are north of the river.

12 Kern Delta is on the southerly side of the river. It has not applied to the Board for
13 an additional appropriation. It alleges that the growth induced by City obtaining more
14 water will cause City to pump more groundwater, thus reducing groundwater levels in its
15 area, and that City's project conflicts with its proposed Water Allocation Plan.

16 Kern Water Bank Authority ("KWB") is downriver from City, to the west.

17 CLAIMED DEFICIENCIES IN THE EIR

18 Each Petition alleges numerous deficiencies in the EIR. However, the material,
19 substantive alleged deficiencies are all based on a common thread -- a failure to
20 recognize and address the use by North Kern of presently unappropriated water being
21 terminated if City is successful in its application to Board to appropriate that water.

22 This is reflected in their objections to the project description; project area,
23 cumulative effects analysis, and mitigation measures, among others. They contend that
24 all should be based on a change consisting of a change in diversion and use of the
25 source 2 water, and it is not recognized as a project caused effect in the EIR.

26 City contends that the EIR is in proper form as a Program EIR ("PEIR") and, as
27 such, does not require an analysis of those issues at this stage.

28 Both are wrong in some respects, and both are right in others.

29 ANALYSIS

1 A good starting point is to look at the requirements for a PEIR. The Court will
2 use the "Guidelines", Regulations implementing the California Environmental Quality Act
3 ("CEQA") which Courts have long used as reflective of CEQA. The Court will simply
4 use the number of the Guideline. The parties have presented many "sound bites" from
5 among the many cases discussing CEQA issues, but most are derived directly from the
6 Guidelines.

7 15168 defines a PEIR. As applicable here, it may be used on a series of actions
8 that can be characterized as one large project and are related as logical parts in a chain
9 of contemplated actions. If a later activity would have effects not examined in the PEIR,
10 then a new CEQA process – from Initial Study to potential EIR is required for that
11 activity.

12 The degree of specificity required in an EIR must correspond to the degree of
13 specificity involved in the activity described in the EIR (the decision to be made as
14 informed by the EIR) 15146.

15 15152. Tiering is the process of analyzing general issues in a broad EIR, such
16 as for a policy statement, with later EIRs specific to later specific projects.

17 Tiering does not excuse an agency from analyzing reasonably foreseeable
18 significant environmental effects of a project, and does not justify deferring such
19 analysis to a later tier, but the level of detail in the first tier EIR need not be greater than
20 that of the policy being analyzed.

21 Tiering is appropriate for a PEIR. The PEIR differs from a Project EIR (15161) in
22 that the latter requires analysis of the environmental effects of a specific development
23 as a project, and focuses on the changes in the environment that would result from that
24 specific development.

25 Numerous cases recognize the propriety of a PEIR for a concept, plan, or broad
26 policy. See Saltenstall v. City of Sacramento (2-18-2015) 2015 DJDAR 1875. The idea
27 is to focus on issues that are ripe for decision at each level.

28 The requirements for a project description (15124) are thus approached in the
29 context of a PEIR.

30

1 City says it has checked all the 15124 boxes and they have technically done so
2 except as to one – (d) (2) – which requires a list of all its decisions subject to CEQA,
3 preferably in the order in which they will occur.

4 All these requirements are interrelated to the issues here.

5 As an information document users need to know just what the project is and what
6 decisions are necessary to implement them. They are to be written in plain language
7 and are to be easily understandable to lay persons. 15140.

8 The Court asked at oral argument where (d) (2) responses were found in the
9 EIR, and was told that they were in various places in the FEIR in responses to
10 comments. This is not what the legislature intended. We are not just talking about
11 interested entities which are resourced with learned counsel and consultants who can
12 expertly parse each word. We are talking about lay citizens, and citizen decision
13 makers, who are equally entitled to be informed in a straightforward and clear manner
14 about what the City is deciding at this level, and what needs to be analyzed and decided
15 later.

16 Given City's position that it may defer analysis of "secondary effects" to a later
17 tier, it is critical that the later tiers be identified in some detail.

18 The program description differs somewhat throughout the EIR. City ultimately
19 says that it is a "multi objective flow management and water supply program" (AR41 and
20 others). The stated objectives are several, but generally (2.4, at AR 64ff) to "increase
21 and restore more regular flows of water to the Kern River Channel." That really also
22 defines the program. Everything else is a list of benefits derived from that result.

23 City states (AR11941) that the program only proposes to use water it already has
24 – source 1, plus whatever appropriation it receives from the Board, and therefore
25 "...there is no need for the DEIR, in the description of the Program, to describe other
26 local water districts which do not hold any kern River rights... or which do not use, hold,
27 or own any water which will be used in the project."

28 City repeatedly, and correctly, asserts that this is not a project to take water from
29 anyone else. Petitioners persist that the program is just that, and just not correctly
30 identified as such, and then attack that straw man.

1 The EIR goes to great length to point out, repeatedly, that this "program" and its
2 objectives are nothing new – that it has been a long standing City policy – back to the
3 '60s – to do just this (AR24, 85, 88, among others). The staff report for the 9-26-12
4 Council meeting (where the EIR was certified and the NOD passed) states that this is to
5 "implement" City policy (AR 1555).

6 City applied to Board for an appropriation in 1996, and again in 2007, well before
7 the EIR process began. No CEQA review was required just to apply.

8 The real problem here is that this level isn't an EIR at all, because there is no
9 City decision to be informed at this level. It is, in effect, a brief to the Board.

10 See AR1186 – its purpose is to support the Board application. The agenda for
11 the 9-26-12 meeting referred to above states that as part of City's quest to bring
12 additional water into the river we will continue the process to obtain surplus
13 unappropriated water that should remain in the river.

14 An EIR's purpose is to inform a decision of an agency. Despite adopting an NOD
15 on 9-26-12 (AR1431) City now contends that no decision has been made on the project,
16 and cannot be made until the Board determines how much water is available. City
17 states that the program will be "initiated" following a favorable decision by Board on its
18 application to appropriate.

19 In actual effect, City's "decision" here was at most a ratification of a long past and
20 repeatedly thereafter stated objective of restoring regular flows in the river channel.

21 It started (60's was referenced) even before CEQA was enacted (1970).
22 Components have already been through a CEQA process – Ground Water Recharge
23 Facility (1983); Kern River Element of the General Plan (1988); Kern River Parkway
24 Plan; Habitat Conservation Plan (1993) and General Plan Update (2002).

25 Such ratification isn't a "project". "Project" (15278) is an "activity" directly
26 undertaken by an agency. In effect here, the program is to get more water, and the
27 project is what we will do with it if we get it.

28 In fact, City is here criticized for having already committed to the project before a
29 CEQA review (15352). See Saltonstall v. City of Sacramento, above.

30

1 City now decides to do a review using the CEQA process, apparently to "support"
2 its Board application. City certainly may review an existing program (see Californians
3 for Alternatives to Toxics v. Department of Fish and Wildlife ("DFW"), 1-10-2015-2015
4 WL543 704.

5 This is consistent with a "policy statement" (15385), which may be the subject of
6 a PEIR, in the context of starting the analysis of a general policy, with the view that
7 specific program activities will later be reviewed before a decision to implement is made
8 (DFW).

9 As discussed above, there is here no informative identification and discussion of
10 what specific anticipated future actions are required to implement the program.

11 To make sense of these circumstances, and to conform to the above discussed
12 CEQA requirements, rather than scatter references throughout the documents, the
13 project description should specify that this level is not an action item; that City is not
14 approving any specific activity at this point, and that this stage is just confirming existing
15 City policy in anticipation of specifically described future actions which will be reviewed
16 in detail as part of the tiering process.

17 Such a project description would clear up confusion (including by the Court, as
18 stated at oral argument) regarding what decision is in fact being informed by this EIR.

19 Specifically defining the later activities which would be reviewed should alleviate
20 the fear expressed by Petitioners that city would use this EIR to present to the Board as
21 approval of its full range of future activities, without further review, and urge that this
22 was binding on the Board.

23 This description would then carry over to, and determine the specificity required
24 for, analysis of baseline, environmental effects, significance thereof, and other required
25 areas of analysis.

26 Baseline Analysis (15125)

27 In the context of a PEIR, City needs to analyze reasonably foreseeable
28 significant environmental impacts, but the level of detail need not be greater than the
29 policy being reviewed at this tier, including any secondary effects expected to follow
30

1 from adoption of this level of the program (15146). In practical effect, this could be no
2 more than acknowledging in general terms what may have to be reviewed at later tiers.

3 So, what is "reasonably feasible" at this level of uncertainty?

4 The EIR here, at 3.1.3, discusses effects within the project area only, of, as
5 relevant here, water supply to City; groundwater in City; Kern River hydrology, flows,
6 and variability (in detail); flow scenarios hypothetically with all possible water; water
7 quality; flood hazards; surface and groundwater supply and sources, and water demand
8 in City, and found all to be beneficially impacted by the project.

9 City's position, stated in the responses to comments, regarding why it did not
10 include Petitioners' areas and water effects in its baseline and analysis is that it "clearly
11 identified" [the Court, above, has found it did not] issues that may require further
12 analysis and may do so in later tiers.

13 City refers to 4.5.3 (cumulative impacts) as where it did so. At AR391 there is a
14 brief reference to possible transfer of temporary surplus water, with a statement that
15 details are undetermined at this time, and further analysis may be necessary when they
16 are better defined, which could be done with an EIR tiered off of this.

17 In cum.3 (AR 394, 395) – groundwater – it is stated that the project would
18 increase recharge in the sub-basin and would increase levels in and around the City. It
19 states that it may adversely affect groundwater in "certain" water district service areas
20 as a result of increased reliance on groundwater resources, thus requiring deeper wells,
21 which could be a moderate to substantial effect. It further states that City may elect to
22 sell surplus water for ag use so as not to increase groundwater use, but as of now it is
23 too speculative to address. It is stated to be, on the whole, a less than significant effect.

24 There is no other discussion of ag use, which is specifically disclaimed in 3.0.3
25 (AR 91, 92). City alleges that per the Guideline's check-list, there would be no
26 conversion of ag land to non-ag use, and therefore no impact.

27 City states that all source 1 water already belongs to City, and will be available to
28 City even without the program, and whatever they get of source 2 water does not
29 belong to anyone, and therefore would not infringe on any existing "rights". City
30

1 throughout focuses on water rights, and with few exceptions, ignores use. More on this
2 later.

3 City notes that it is not responsible for groundwater levels in ag districts, because
4 those are a function of less S W P water and increased demand, resulting in increased
5 use of groundwater and resulting reduction of groundwater levels.

6 City measured ag impacts only against the checklist, and since they did not meet
7 any of those criteria, determined that there were no impacts to ag. Responses to
8 comments state the same (AR 1196ff). That does not necessarily follow. There may
9 still be an impact per the basic definition (15382).

10 In response to comments City decided to "provide more information" regarding
11 potential impacts of diversion and use by City of source 2 water, and did so (AR 1197-
12 1198).

13 City states that it could cause a short-term decline in ground water levels in the
14 North Kern area based on the fact North Kern historically used some of the
15 unappropriated source 2 water without a right to do so. It notes that if City is awarded
16 and uses this water it could require increased groundwater pumping to replace it and
17 thus decrease groundwater levels, with a need for deeper wells and resulting increased
18 costs. It then adds that North Kern groundwater would eventually improve by the
19 "mounding effect" of City's increased levels. It could also offset loss with future water
20 sales by City, and will discuss this mitigation in future tiered EIRs.

21 North Kern, in its brief, concedes that City acknowledged short and long term
22 secondary effects, but complains that it failed to analyze them.

23 If the project is re-defined to make clear that this is a "no action" level, is the
24 EIR's discussion of environmental changes and effects sufficient?

25 Per the Guidelines, above, the level of specificity required depends on the level
26 of the project at issue. The purpose of CEQA is not just to generate paper.

27 As stated in Atherton v. Board of Supervisors (1983) 146 Cal. App. 3d 346 and
28 other cases, where the specifics of a project are unknown, no purpose is served in
29 requiring on EIR to speculate as to future environmental consequences. See 15145.
30 The concept that there is no need to over detail and over-analyze is repeated

1 throughout the Guidelines. The requirement is to just do what fits your level of project
2 specificity.

3 Here, the "activity" is really no action. This is just a vehicle to put the general
4 concept, consisting of pre-existing policy, before the Board. Board may (and has
5 warned that it will) later request additional more specific project level analysis.

6 City here chose to do a full detailed analysis of direct effects within its project
7 area -- nearly all beneficial -- and based on using all potentially available water (City
8 says 70,000 AF contract water and 87,000 AF from source 2). This despite their
9 position that effects cannot be known until it is known how much water will be available.

10 City basically chose to do a full benefits analysis and defer adverse regional
11 effects analysis. This is consistent with the Court's prior observation that this is really
12 just a brief to the Board, rather than an action oriented EIR. It certainly does not
13 invalidate an EIR if it does more than required.

14 Petitioners contend that even as a first tier PEIR City is required to do a full
15 environmental analysis on the assumption that it will be using the entire potential
16 amount (they say 160,000 AF).

17 There are several problems with this. First, they are mixing contract water
18 (source 1) and what City hopes to get from the Board (source 2), and these are quite
19 different issues.

20 Petitioners say, seemingly contradictorily, that City should assume a use of all
21 160,000 AF, but argue that the correct baseline is during the original contract term, such
22 that City could not use 70,000 AF of that.

23 This issue should disappear on remand. The problem with any assumed use of
24 that source 1 water is that assumptions aren't warranted. A final decision from the
25 Court now determining use rights under the contract may fix this. Even if that decision
26 leaves ambiguities, any discussion of that source 1 contract water must be based on
27 whatever that Court determine.

28 If strictly limited to any adverse effects of North Kern's loss of water from
29 expiration of the contract, that is immaterial so far as adverse effects of that project are
30 concerned. The EIR only reviews what the project would change. The project does not,

1 and cannot, change the contract. No decision of City, informed by the EIR, can change
2 the contract.

3 However, the full impacts of a change of use of source 2 water cannot be known
4 until it is also known whether North Kern will continue to use all or some part of the
5 contract water. The degree of change, and therefore effect of it, depends upon this.

6 Petitioners cite cases to the effect that the EIR must analyze effects based on the
7 assumption that the project as proposed will be implemented (Vineyard Area Citizens
8 for Responsible Growth v. Rancho Cordova (2007) 40 Cal 4th 412. Here, however, we
9 do not know what the whole proposed project even is until Board determines how much,
10 if any, source 2 water is available for appropriation.

11 When Board fixes that amount, then City may (the Court is not ruling on this
12 point) be required to do a full analysis based on the assumption it will get all found
13 available for appropriation.

14 City seems to be saying it knows it will eventually be required to do so. The
15 responses to comments repeatedly refer to doing an analysis of adverse regional
16 effects when it knows the amount of water at issue (see AR 1197).

17 The problem here and now is that no one has any idea what the Board will do –
18 nor when they will do it. The Board may find no water is available -- all Kern Delta's
19 forfeiture water can be absorbed by junior rights holders. It may find that the only water
20 available is "intertie" water -- which, by City's definition would not assist its policy of
21 "regular" flow in the channel.

22 The Court finds that it would be useless to spend a great deal of money -- public
23 money at that -- to do a full analysis of an assumed maximum possible appropriation by
24 City and its effects when there is no sound basis for determining what that assumption
25 should be. That would be pure speculation. The "rule of reason" is supposed to apply.
26 The Court finds it unreasonable in the extreme to require the level of analysis requested
27 by Petitioners at this stage.

28 One thing City does not have to do, now or ever, is to analyze the effect on each
29 applicant to Board of a failure of that applicant to receive an appropriation for new
30 water. This is not the forum for complaints about an existing lack of water.

1 Environmental problems which already exist, and will continue to exist even in the
2 absence of the project, are not project generated and are not "changes" caused by the
3 project. The project cannot change an existing lack of water. The place for a relative
4 benefits and hardship analysis is before the Board.

5 The issue of a requirement to examine the effects of a change in use from North
6 Kern to City of source 2 water is entirely different. That is water now actually being
7 used, and a change of that use will result in effects which must be examined.

8 City repeatedly refers to North Kern use as illegal and without right, but it is
9 actual use. It is true that the cases to the effect that actual conditions, illegal,
10 unpermitted, or otherwise, must be in the baseline are all in the context of the applicants
11 "illegal" use - - unpermitted mines, etc. The cases do state that such use is in the
12 baseline, and the baseline is not back to the time before that use began.

13 The principle, however, is the same. It is an existing condition, and must be
14 considered as such.

15 The Court finds that this EIR adequately discusses in general terms the potential
16 adverse effects on petitioners that the law requires be discussed at this level.

17 The specific effects cannot be determined until the amount of potentially
18 available source 2 water is known, and a full analysis will then be possible.

19 Other areas brought up by Petitioners, including mitigation, cumulative effects,
20 growth inducing effects, and others, are all subject to the same result here. They
21 cannot intelligently be analyzed yet, and will be subject to a lower tier specific project
22 analysis.

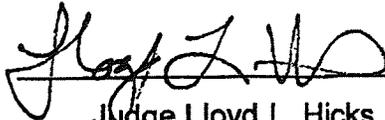
23 For the above reasons, the Court finds that City abused its discretion in certifying
24 the EIR in that it failed to proceed as required by law, in that it failed to define the
25 Project as required by 15124, as discussed above.

26 Each Petition is therefore granted. Writs shall issue mandating City to set aside
27 the certification of the EIR and any subsequent decision based on that certification.
28 This matter is remanded to City to take the steps required by law as above described.
29 The Court reserves jurisdiction to determine whether City has complied.

30 Petitioners shall each prepare a Writ consistent with this Decision.

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Dated: 4-28-2015



Judge Lloyd L. Hicks

EXHIBIT B

APR 28 2015

LARAYNE CLEEK, CLERK

BY: *Suzanne*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

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North Kern Water Storage District, et, al.,)
Petitioners,)

Case No.: VCU251748
VCU251598
VCU251535

vs.)

City of Bakersfield,)
Respondent.)

RESPONSE TO OBJECTIONS TO
STATEMENT OF DECISION

Kern Delta Water District,)
Petitioner,)

vs.)

City of Bakersfield,)
Respondent.)

Kern Water Bank Authority,)
Petitioner,)

vs.)

City of Bakersfield,)
Respondent.)

All parties have filed objections under CRC 3.1590(g), which applies to a
Statement of Decision, and not a Tentative Decision. The Court will thus deem the
Tentative to be the Statement of Decision and respond to the objections.

City:

The Court has made several changes to correct errors on pages 2 and 4, pointed
out by the parties.

1 City states that the Decision fails to make a finding that City violated CEQA. The
2 Court believes it did, but has added language to the finding on page 12 to make it more
3 explicit.

4 City argues that there should not be a finding that the Project Description violates
5 CEQA, and any deficiencies are technical and not substantive; are not prejudicial and it
6 would just unnecessarily cost time and money to change and recirculate.

7 The deficiency is fundamental. Neither the Court nor Petitioners' counsel (per
8 their arguments) could tell what City was now approving with this EIR.

9 It certainly will take time and money to do it correctly, but it is necessary to do so
10 to comply with CEQA.

11 Petitioners:

12 The Court thanks Petitioners for submitting joint objections, and in red-line
13 format.

14 The Court has made a number of the suggested changes, and will briefly
15 comment only on the reasons some were not adopted.

16 Objection # 2 re: definition of "Source 2" water. This term is used by the Court to
17 refer only to that water which the Board may find available for appropriation. The term
18 as used does not include Kern Delta's preserved entitlement, so no change is required.

19 Objection # 4: Judicial notice of the decision of the Ventura County Superior
20 Court is not necessary. It is properly citable for its legal effect on the issues here. It
21 was not used to prove any facts.

22 Objection # 10: Petitioners request that the Decision explicitly bar City from
23 claiming that approval of this EIR is approval of each tier of a Program. This is not
24 necessary. The EIR was not approved, and requires City to specify later "tiers" for
25 which review will be undertaken.

26 The amended Statement of Decision filed and sent herewith shall be the final
27 Statement of Decision.

28
29 Dated: 4-28-2015

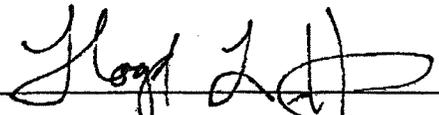
30

Judge Lloyd L. Hicks

EXHIBIT C

1 DOWNEY BRAND LLP
Kevin M. O'Brien (Bar No. 122713)
2 Steven P. Saxton (Bar No. 116943)
Christian L. Marsh (Bar No. 209442)
3 Amanda M. Pearson (Bar No. 268186)
455 Market Street, Suite 1420
4 San Francisco, California 94105
Telephone: (415) 848-4800
5 Facsimile: (415) 848-4831
cmarsh@downeybrand.com
6 apearson@downeybrand.com

Exempt From Filing Fees
(Cal. Gov. Code § 6103)

7 Attorneys for Petitioner
KERN WATER BANK AUTHORITY
8

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF TULARE

11
12 KERN WATER BANK AUTHORITY, a
California public entity,

13 Petitioner,

14 v.

15 CITY OF BAKERSFIELD, a municipal
16 corporation of the State of California, and
BAKERSFIELD CITY COUNCIL, its
17 governing body,

18 Respondents.

19
20 AND CONSOLIDATED ACTIONS.
21
22

Case No. VCU251535 (CEQA)
[Partially consolidated with Case Nos.
VCU251598 and VCU251748]

**[PROPOSED] PEREMPTORY
WRIT OF MANDATE**

Date: January 30, 2015
Time: 8:30 a.m.
Dept.: 2
Judge: Hon. Lloyd Hicks

Action Filed: October 26, 2012
Date Transferred: April 16, 2013

1 Judgment having been entered in this proceeding (Case No. VCU251535) ordering
2 that a Peremptory Writ of Mandate be issued from this Court,

3 Respondent City of Bakersfield ("City"), YOU ARE HEREBY COMMANDED to do
4 the following:

5 1. Within sixty (60) days of Notice of Entry of Judgment, set aside and vacate the
6 September 26, 2012, action of the City Council of the City of Bakersfield adopting Resolution
7 108-12, by which the City Council (a) certified the Final EIR for the Kern River Flow and
8 Municipal Water Program (the "Project"), (b) adopted a Statement of Facts and Findings, (c)
9 adopted a Statement of Overriding Considerations, and (d) directed the City's Planning Division to
10 file a Notice of Determination with the County Clerk of Kern County;

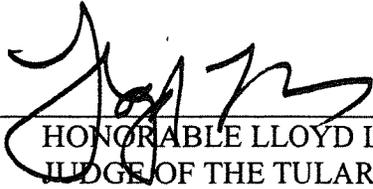
11 2. Within sixty (60) days of Notice of Entry of Judgment, set aside and vacate any
12 subsequent decision(s) or actions implementing or carrying out the Project based on the September
13 26, 2012 certification of the Final EIR; and

14 3. Within sixty (60) days of Notice of Entry of Judgment, the City of Bakersfield shall
15 file an initial return to this writ.

16 Pursuant to Public Resources Code section 21168.9, subdivision (b), the Court retains
17 jurisdiction over the City of Bakersfield's proceedings by way of supplemental return to this
18 Peremptory Writ of Mandate until the Court has determined that, in revising the Program EIR, the
19 City of Bakersfield has complied with the Judgment and CEQA.

20 Let the foregoing Writ issue.

21
22 Dated: 7-6, 2015

23 
24 HONORABLE LLOYD L. HICKS
25 JUDGE OF THE TULARE COUNTY
26 SUPERIOR COURT

27 Dated: _____, 2015

28 _____
CLERK OF THE SUPERIOR COURT

EXHIBIT B

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DOWNEY BRAND LLP
Kevin M. O'Brien (Bar No. 122713)
Steven P. Saxton (Bar No. 116943)
Christian L. Marsh (Bar No. 209442)
Amanda M. Pearson (Bar No. 268186)
455 Market Street, Suite 1420
San Francisco, California 94105
Telephone: (415) 848-4800
Facsimile: (415) 848-4831
cmarsh@downeybrand.com
apearson@downeybrand.com

Exempt From Filing Fees
(Cal. Gov. Code § 6103)

Attorneys for Petitioner
KERN WATER BANK AUTHORITY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

KERN WATER BANK AUTHORITY, a
California public entity,

Petitioner,

v.

CITY OF BAKERSFIELD, a municipal
corporation of the State of California, and
BAKERSFIELD CITY COUNCIL, its
governing body,

Respondents.

Case No. VCU251535 (CEQA)
[Partially consolidated with Case Nos.
VCU251598 and VCU251748]

**~~PROPOSED~~ PEREMPTORY
WRIT OF MANDATE**

Date: January 30, 2015
Time: 8:30 a.m.
Dept.: 2
Judge: Hon. Lloyd Hicks

AND CONSOLIDATED ACTIONS.

Action Filed: October 26, 2012
Date Transferred: April 16, 2013

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7 108-12, by which the City Council (a) certified the Final EIR for the Kern River Flow and
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10 file a Notice of Determination with the County Clerk of Kern County;

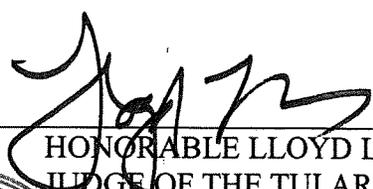
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13 26, 2012 certification of the Final EIR; and

14 3. Within sixty (60) days of Notice of Entry of Judgment, the City of Bakersfield shall
15 file an initial return to this writ.

16 Pursuant to Public Resources Code section 21168.9, subdivision (b), the Court retains
17 jurisdiction over the City of Bakersfield's proceedings by way of supplemental return to this
18 Peremptory Writ of Mandate until the Court has determined that, in revising the Program EIR, the
19 City of Bakersfield has complied with the Judgment and CEQA.

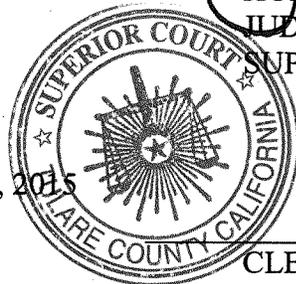
20 Let the foregoing Writ issue.

21
22 Dated: 7-6, 2015

23 
HONORABLE LLOYD L. HICKS
24 JUDGE OF THE TULARE COUNTY
SUPERIOR COURT

25 JUL 06 2015

26 Dated: _____, 2015



LaRayne Cleek

27 
MARCELLA HERNANDEZ
28 CLERK OF THE SUPERIOR COURT

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 455 Market Street, Suite 1420, San Francisco, California 94105. On July 14, 2015, I served the within document(s):

NOTICE OF ENTRY OF JUDGMENT AND PEREMPTORY WRIT OF MANDATE

- BY E-MAIL:** by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

SERVICE LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on July 14, 2015, at San Francisco, California.


Emilie Medalle-Alcantara

3
4 SERVICE LIST

| | |
|--|--|
| 5 Ernest A. Conant 6 Scott K. Kuney 7 Steven M. Torigiani 8 Law Offices of Young Wooldridge, LLP 9 1800 30th Street, 4th Floor 10 Bakersfield, California 93301 11 <u>skuney@youngwooldridge.com</u> 12 <u>storigiani@youngwooldridge.com</u> | 13 Jason Ackerman 14 Fernando Avila 15 Best Best & Krieger LLP 16 P.O. Box 1028 17 Riverside, California 92502 18 <u>jason.ackerman@bbklaw.com</u> 19 <u>fernando.avila@bbklaw.com</u> |
| 20 Colin L. Pearce 21 Jolie-Anne S. Ansley 22 Duane Morris LLP 23 Spear Tower 24 One Market Plaza, Suite 2200 25 San Francisco, California 94105 26 <u>CLPearce@duanemorris.com</u> 27 <u>jsansley@duanemorris.com</u> | 28 Virginia A. Gennaro City Attorney's Office City of Bakersfield 1600 Truxtoun Ave., 4th Floor Bakersfield, California 93301 <u>vgennaro@bakersfieldcity.us</u> |
| Gene R. McMurtrey James A. Worth Isaac L. St. Lawrence McMurtrey, Hartsock & Worth 2001 22nd Street, Suite 100 Bakersfield, California 93301 <u>gene@mcmurtreyhartsock.com</u> <u>jim@mcmurtreyhartsock.com</u> <u>isaac@mcmurtreyhartsock.com</u> | James Moose Remy Moose Manley, LLP 555 Capitol Mall, Suite 800 Sacramento, California 95814 <u>jmoose@rmmenvirolaw.com</u> |

Appendix B

Revisions to
Chapter 2, *Program Description*

Chapter 2 PROGRAM DESCRIPTION

2.1 Chapter Organization

This chapter presents a description of the City of Bakersfield's (the City or Bakersfield¹) proposed Kern River Flow and Municipal Water Program (the "Proposed Program" or "Program") and is organized according to the following topics, as follows:

- 2.1 Chapter Organization
- 2.2 City of Bakersfield and Kern River Background and Program Purpose
- 2.3 Program Area 2.4 Program Purpose and Objectives
- 2.4 Intended Use of Program EIR
- 2.5 Program Area
- 2.6 Kern River and Baseline Historic Flows
- 2.6.7 City's Historic Water Supply and Use
- 2.7.8 Proposed Program Actions
- 2.8.9 Program Monitoring, Maintenance, and Adaptive Management
- 2.9 Intended Uses of this EIR
- 2.10 References

2.2 City of Bakersfield and Kern River Background and Program Purpose

The Kern River runs through the City of Bakersfield. Since its founding in the 1850's~~1850s~~, the City has relied on the Kern River as its primary water source, either through direct deliveries and diversions from the river, or from Kern River water which has seeped ~~into~~ captured and stored in the groundwater basin ~~underneath~~ underneath the City ~~through natural seepage or formal spreading programs.~~ The Kern River ~~has provided~~ provides multiple additional benefits to the City and its residents and is the primary physical, ecological, and recreational landscape feature in the City. In 2015, the City had a population of 373,640.

¹ When using "City" capitalized as an abbreviation, it is the City of Bakersfield as a governmental entity (i.e., departments, agencies, facilities and equipment, materials) that is being referred to, as distinct from the geographical area within the city limits.

making it the ninth largest city in the State of California. The City expects that its population will increase to approximately 500,000 by 2030.

The City holds extensive “pre-1914” appropriative rights to Kern River water (sometimes referred to herein as “Source 1” water) which historically have yielded an average of 135,000 acre feet per year (afy), as a result of its 1976 purchase of all of the. The City purchased those appropriative Kern River water rights held formerly by and related assets in 1976 from Tenneco West, Inc. (Tenneco). Such rights and held assets were previously held by the Kern County Land Company. (KCLC).

The residents of Bakersfield receive water for municipal uses through a combination of groundwater, local surface water, and imported water sources. The Kern River serves as the primary source of recharge and replenishment for the Kern County Groundwater Basin, (Basin), a subbasin of the Southern San Joaquin Valley Groundwater Basin. Although this groundwater basin it is not adjudicated, the City manages the basin Basin through groundwater recharge projects and monitored extractions of water. The Kern River is therefore the primary water-supply source for the residents of Bakersfield, either directly as a surface water supply or as groundwater after percolation and recharge.

Groundwater, primarily banked and stored Kern River water, supplies the majority of the city's City's water demand. The treatment and distribution of groundwater for potable consumption is conducted primarily by the City's Water Resources Department and a private company, the California Water Service Company (Cal Water). Surface water supply from the Kern River is also treated at local treatment plants before it is distributed to city City residents by the City's Water Resources Department or by Cal Water. The California State Water Project (SWP) supply is treated and sold wholesale by Improvement District No. 4 of the Kern County Water Agency (ID4) to the City, Cal Water, and others, which comprises the third and smallest source of the Bakersfield's water supply.

The Domestic Water Division of the City's Water Resources Department oversees and administers the City-owned Ashe, Riverlakes, and Fairhaven domestic water systems that provide drinking water to residents and local businesses in Bakersfield. The City also provides water to municipal water companies, primarily Cal Water, to meet the domestic water demands of the remainder of the city's City's residents.

Water in the Kern River channel infiltrates naturally into the groundwater aquifer Basin below the river and supports and serves to serve as a municipal and local water supply through private wells, and wells owned by the City and other municipal water purveyors operating within the City. The use of such water historically allows City residents to meet their municipal, industrial, and residential water supply needs.

In modern times, the Kern River has faced many threats to its water supply and viability as a natural water course. Diversions by, and on behalf of, various water districts and agricultural interests through a complex system of canals and diversion facilities have resulted historically in a mostly dry river bed through Bakersfield downstream of the Calloway Weir. The dewatering of reaches of the Kern River, along with increased groundwater pumping in the vicinity of the river by various water districts, has depleted water levels in the groundwater basin serving the City Basin. The loss of the river has

severely diminished and threatened the City's surface and groundwater supply, and also resulted in damage and threats to the quality of the local water supply, the local environment, including vegetation and fish and wildlife in and around the river, and aesthetic and recreational opportunities in and around the river.

The City therefore took action, beginning in the 1960s, to preserve and protect the Kern River for the benefit of the residents of the City, and to secure the City's long term water supply. Those actions eventually resulted in the City's acquisition, in 1976, of all of the "first point" Kern River rights and assets held by Tenneco West, Inc., and previously held by ~~the Kern County Land Company ("KCLC")~~. The City's acquisition of ~~such~~these water rights and assets was reviewed and analyzed in a Final Environmental Impact Report, (EIR), re. *Use and Disposition of Property and Water Rights Acquired by the City of Bakersfield from Tenneco West, Inc., In Settlement of Litigation*, prepared on behalf of the City in 1975.

~~The Proposed Program represents a consistent continuation of the City's policies and prior efforts to protect and preserve the Kern River. Previous Kern River related planning processes focused mostly on land use practices and policies along the river. The Proposed Program instead focuses on providing more streamflow in the river channel to support and enhance the municipal water supply. The Program would continue the City's role as a steward of the Kern River to provide flows that maintain and enhance the river as an important resource for the community and the water supply for the City and region.~~

~~The City of Bakersfield currently has a population of 351,443 residents. The City expects that the population will increase to approximately 500,000 residents by 2030.~~

Beginning in the early 1980s, the City undertook several planning studies and projects to formalize and implement its stated goals and policies to utilize, maintain, and protect the Kern River and, consequently, the municipal water supply. "The Kern River Plan Element" of the *City of Bakersfield General Plan* and the *Kern County General Plan* was adopted in 1985 and updated in 1988. This planning element includes specific goals and policies to improve public access to the Kern River, protect and enhance open spaces and natural resources, provide flood protection for the community, maximize groundwater recharge, protect the rights of private landowners, and support the economic use of resources along the Kern River. The City then developed the Kern River Parkway Plan (Parkway Plan), based on guidance established in "The Kern River Plan Element." An environmental impact report ~~(EIR)~~ for the Parkway Plan was completed in 1988 (Draft EIR June 1988, Final EIR November 1988). The Parkway Plan EIR included a conceptual plan map identifying recreational areas, greenbelts, trails, preserved open spaces, and proposed land-use changes along the river. To date, the City has developed and constructed the majority of the features envisioned in the Parkway Plan, including an extensive bicycle trail system, hiking and running trails, equestrian trails, preserved open spaces, and restored vegetation.

~~In 2001, the City Council reaffirmed and adopted water policies to protect and preserve Kern River water for use within the city limits, including establishing additional flows in the Kern River channel (Water Board Report No. 2-01)(City of Bakersfield 2001). The City has also continued to use Kern River water to recharge the groundwater basin underlying the river and at the City's 2,800 Acre Recharge and Groundwater Storage Facility (2,800 Acre Recharge Facility).~~

In 1996, the City undertook efforts to obtain additional water supplies to meet its municipal demands by filing with the State Water Resources Control Board (SWRCB) an application to appropriate additional quantities of Kern River water. The City filed the application based on litigation between the City and local water districts arising out of claims that ~~that~~ a significant quantity of Kern River water held by the Kern Delta Water District (KDWD) had been forfeited due to non-use, and was therefore surplus, unappropriated water. After the conclusion of that litigation in 2007, the City filed a second application to the SWRCB to appropriate surplus, unappropriated water.

In 2001, the City Council reaffirmed and adopted water policies to protect and preserve Kern River water for use within the city limits, including establishing additional flows in the Kern River channel (Water Board Report No. 2-01) (City of Bakersfield 2001). The City has also continued to use Kern River water to recharge the Basin, which ~~the court found had been forfeited, based on non-use.~~underlies the river and the City's 2,800 Acre Recharge and Groundwater Storage Facility (2,800 Acre Recharge Facility).

2.3 Program Purpose and Objectives

2.3.1 Program Purpose

The Proposed Program represents a continuation of the City's policies and prior efforts to protect and preserve the Kern River, consistent with past planning and implementation efforts. Previous Kern River-related planning processes focused mostly on land use practices and policies along the river. The Proposed Program instead focuses on providing more streamflow in the river channel through the acquisition of new water supplies to support and enhance the municipal water supply. The Program would continue the City's role as a steward of the Kern River to provide flows that maintain and enhance the river as an important resource for the community and the water supply for the City and region.

~~Some portion of the City's Source 1 water supply may presently run down the Kern River channel, even past the Calloway Weir, but such flows of water are infrequent and intermittent. In most years~~In most years, there is little or no flow of water in the Kern River channel below the Calloway Weir. In order to implement the Program, the City would allocate regular, consistent quantities of the Source 1 water, referred to herein as "allocated Source 1 water," to flow in the Kern River channel. The allocated Source 1 water would be ~~combined with the water derived from~~combine unappropriated surplus water obtained by the City through its application to appropriate ~~(the SWRCB (Source 2" water water)~~ with some portion of its current Source 1 water supplies (allocated Source 1 water) to provide a regular, year-round and more consistent flow of water in the Kern River channel.

The Proposed Program aims to increase, protect, and preserve the City's municipal water supply to meet present and future demands for water. The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River, while also providing important flood management and water supply needs. The Program also furthers California State water

policy by putting Kern River water to multiple reasonable and beneficial uses, with an emphasis on municipal, environmental, recreational, and public trust purposes.

The water that the City intends to utilize ~~and acquire~~ through the Program will support projected, planned, and approved growth and development within the City's Sphere of Influence (SOI). Such growth and development has already been reviewed in the City's current General Plan (adopted in 2002), and the impacts from such growth were reviewed and analyzed in the EIR adopted for the General Plan.

The City's efforts to protect and preserve the Kern River have received significant and vocal support from residents of the City and the surrounding areas. Local citizens have recognized and strongly embraced the multiple, far-reaching benefits of a restored and revitalized Kern River. Residents of the City have consequently sent thousands of letters and comments to the SWRCB to support the City's application to appropriate water for use in the Kern River channel, and provided similar letters and comments in support of the Proposed Program. These comments and letters have consistently extolled the benefits of the Proposed Program on the environment, the City's water supply, recreation, aesthetics, the quality of life for City residents, and the economic viability of the City.

The City cannot predict when the SWRCB will formally accept the City's pending application to appropriate, when the SWRCB will determine the quantity of unappropriated water on the Kern River, or when the SWRCB will award rights to any available unappropriated water. The City's application to appropriate, along with other applications submitted to the SWRCB, have been pending for several years and have not yet been formally accepted by the SWRCB. The City therefore does not know, and cannot predict with any certainty, when it will adopt and implement the Program. As described below in Section 2.4, this draft EIR (DEIR) evaluates the general Program. Following any decision or action by the SWRCB that may better define the amount of Source 2 water available to the City to support the Program, the City will undertake additional analysis under the California Environmental Quality Act (CEQA) to evaluate more specific Program conditions and impacts.

The residents of the City, and the public, should therefore be aware that approval and implementation of the Program will likely be delayed for a considerable period of time, in addition to the previous delays. The SWRCB proceedings involving the City's application to appropriate, wherein the SWRCB should determine the quantity of surplus, unappropriated water available for use in the Program, has already been delayed, and will likely be further delayed in the future as a result of various factors and legal and procedural requirements. Legal challenges to the actions of the City and the SWRCB, in connection with the applications to appropriate, may further delay the SWRCB's actions and decisions regarding the quantity of water to be used in the Program, as well as the SWRCB's award of available unappropriated water to the City.

The public will have an additional opportunity to review and comment on the impacts of the Program on the environment in the future after the additional quantity of water available for use in the Program is determined by the SWRCB. At that time, the City will undertake more specific project level CEQA review which tiers off of this program level EIR. The City would only approve and implement the Program once it has prepared and adopted any necessary project level CEQA compliance documentation.

2.3.2 Program Objectives and Benefits

The City has proposed this Program to increase and restore more regular flows of water to the Kern River channel with the goals of protecting and preserving the local water supply, environment, and quality of life for City residents. To implement City policies, and to provide water for prior and ongoing City projects, the City will attempt to increase and restore stream flows in the Kern River channel more consistently during the year, primarily below the Calloway Weir, through the addition of a new supply of Kern River water (Source 2).

The primary objective of the Program is to allow additional quantities of water awarded to the City by the SWRCB to flow in the Kern River channel to protect, increase, and enhance the City's water supply to meet present and future demands for water. Increased flows in the Kern River through the addition of the new Source 2 supply would also increase infiltration and percolation to the Basin, to serve as a long term water supply and source for City residents.

The Program calls for the utilization of an, as of yet, undetermined quantity of a new water supply (Source 2) to create more regular, measured flows and that will increase Kern River flows throughout the year. Up to an average of approximately 160,000 afy of water (as available based on hydrologic conditions) may be provided to the Kern River.

Providing a restored and consistent, flow of water in the Kern River throughout the Bakersfield city limits would produce multiple reasonable and beneficial uses of water associated with a more natural flowing river. Such benefits include purposes and uses associated with environmental, public trust, domestic and municipal and industrial purposes, and more specifically for uses related to streamflow restoration, constructed wetlands, recreation, aesthetics, fish and wildlife restoration and protection, underground aquifer supply, aquifer water quality enhancement and underground water banking for drought and other emergencies.

The Program and the restored and increased flows of water in the river channel would provide these benefits to the City, its residents, and the Basin and environment by, among other things:

1. Increasing river flows, which will increase groundwater levels beneath the river to help address historic overdraft conditions and to help alleviate and reverse the depletion of the Basin.
2. Providing an additional water source, and protecting and preserving the City's present water supply and source for City residents.
3. Restoring, enhancing and preserving the natural riparian environment and habitat in and around the river channel, including restoring plants, vegetation, animals, birds and aquatic species habitats.
4. Ensuring that flows of water in the Kern River will be kept within the river channel so that such water is not diverted and used outside the County. The development,

- protection and preservation of more natural flows in the Kern River will protect and preserve the river as a water supply for the City for the present and into the future.
5. Enhancing and improving water quality through, among other things, increased recharge and migration of high quality Kern River water into areas of the Basin where the quality of groundwater has been diminished or threatened.
 6. Improving the desirability and quality of life in the Bakersfield area by improving and enhancing the aesthetic and recreational benefits and opportunities in and around the river, and by restoring the Kern River as the important, central, and productive natural resource feature of the community. Residents of the City have consistently noted that a restored, flowing Kern River is critically important to the economic success, pride, identity and well-being of the entire community.

The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs. The Program also furthers California water policy by putting Kern River water to multiple reasonable and beneficial uses, with an emphasis on municipal, environmental, recreational, and public trust purposes.

The water that the City intends to utilize and/or acquire through the Proposed Program would support projected, planned, and approved growth and development within the City's SOI. Water from the Proposed Program would also be potentially available, in certain high-flow years, or when the City has a surplus of water, for temporary sale or transfer to local water districts and water purveyors. While a possible outcome of the Program, the future sales or transfers of surplus water are undetermined at this time. If and when surplus water sales or transfers are better defined in terms of specific quantities, locations of use, and timing of the transfer; then further CEQA analysis may be necessary. Such analysis could occur via a tiered CEQA document from this program EIR.

2.3.3 Program Consistency with Sustainable Groundwater Management Act

The 2014 Sustainable Groundwater Management Act (SGMA) represents a significant new approach toward planning, managing, and regulating groundwater in California. SGMA requires that Groundwater Sustainability Agencies (GSAs) be developed in medium- and high-priority basins by June 2017 to oversee and manage the implementation of Groundwater Sustainability Plans (GSPs). For critically overdrafted basins, such as the Kern County Subbasin (within the San Joaquin Basin), GSPs are required to be submitted to the California Department of Water Resources (DWR) for approval by January 2020.

SGMA became law on January 1, 2015, several years after the preceding DEIR for the Program was distributed for public review in June 2012. While the preceding DEIR for the Proposed Program did not consider SGMA, as it had not yet been developed or become law, the goals and objectives of the Program are very consistent with the goals and objectives of SGMA. Implementation of the Proposed Program would provide an effective management action to

support the sustainable long-term management and use of groundwater in the Kern County Subbasin. The Program's purpose, objectives, and benefits, described in Sections 2.3.1 and 2.3.2 above, are very consistent with the overall goal of SGMA, which is to manage groundwater sustainably through local agencies. Moreover, SGMA aims for local GSAs to develop GSPs that, when implemented, will protect against the following undesirable results:

1. Chronic lowering of groundwater levels and depletion of supply;
2. Significant and unreasonable reduction of groundwater storage;
3. Significant and unreasonable seawater intrusion;
4. Significant and unreasonable degradation of water quality, including the migration of contaminant plumes that impair water supplies;
5. Significant and unreasonable land subsidence that substantially interferes with surface land uses; and
6. Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

By increasing groundwater recharge through increased flows within the Kern River, the Proposed Program would also help prevent the same undesirable results that SGMA is intended to prevent.

The coincidental timing of the SGMA process was one of the key reasons that this recirculated DEIR required several months to develop since the previous DEIR was decertified by the City following a legal challenge. During 2015 and currently in 2016, the City was tracking SGMA developments and requirements as they became available. The City has been hard at work coordinating with other local agencies and organizations to form the Kern River Groundwater Sustainability Agency (KRGSA) with KDWD and Improvement District No. 4 of the Kern County Water Agency (ID4). The KRGSA submitted its notification materials to DWR on April 12, 2016, and the notification was posted to the DWR website on April 21, 2016. Only recently, in June 2016, DWR provided final guidance on the contents and requirements for GSPs. The City waited to revise and recirculate this DEIR to gain an understanding of SGMA requirements as they were developed and to explain through this recirculated DEIR how the Proposed Program would be consistent and aligned with SGMA and the direction the KRGSA would be taking to manage groundwater sustainably.

2.4 Intended Use of Program EIR

2.4.1 Purpose and Need for This EIR

This DEIR is an informational document for decision makers as well as for the general public. CEQA requires that decision makers review and consider the EIR in their deliberations on the Proposed Program. In compliance with CEQA Guidelines Section

15124(d), the SWRCB is an agency with subsequent review or approval authority over certain components of the Proposed Program, and is the only agency, other than the City, that is expected to use the DEIR as the environmental basis of its decision making, specifically in connection with its approval the City's water rights application.

In compliance with CEQA, this DEIR has been prepared for the City's Proposed Program to enhance the Bakersfield water supply.

The City will use the analyses presented in this DEIR, and the public response to them, to evaluate the Proposed Program's environmental impacts, and consider if additional project level CEQA evaluation and compliance will be necessary based on a later and more refined understanding of the Program's available water supplies. Based on such subsequent analysis, and the analysis provided herein, the City may later modify, approve, or deny approval of the Proposed Program.

The City has determined that the Proposed Program is necessary to increase, protect, and preserve the municipal water supply to meet present and future demands. The Proposed Program directly supports the City's long-term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs.

Adoption of the Proposed Program and final approval and certification of this DEIR by the City has been delayed as a result of a legal challenge to the DEIR. After the City initially approved and certified the DEIR on September 26, 2012, several local water districts and other entities filed three separate petitions for writ of mandate challenging the City's compliance with CEQA in connection with the DEIR. Following a January 30, 2015 hearing in the Tulare County Superior Court, the Honorable Lloyd L. Hicks, Judge of the Tulare County Superior Court, issued a judgment granting the consolidated petitions for writ of mandate and ordering the City to set aside its certification of the DEIR (*Kern Water Bank Authority v. City of Bakersfield*, Tulare County Superior Court, Case Nos. VCU251535, VCU251598, and VCU251748). The Court found that the City had not complied with CEQA in connection with its preparation of the Program Description chapter of the DEIR. The Court, however, found that the City had otherwise complied with CEQA in every other respect with regard to the prior 2012 DEIR, and the Court did not require the City to revise or change any section or chapter of the 2012 DEIR other than the Program Description.

As a result of the judgments and writs issued in the Tulare County CEQA litigation, the City rescinded its prior certification of the DEIR on September 2, 2015. The City has also complied with the Judgments and Writs by revising the Program Description chapter of the DEIR to bring it into compliance with CEQA requirements and the direction of the Court. The City is not required to revise the remaining chapters or sections of the DEIR, which the Court found to be in compliance with CEQA. The City will and hereby does recirculate the DEIR with the revised Program Description. Pursuant to California Code of Regulations Title 14, Section 15088.5, the City is only required to recirculate the chapters or portions of the EIR that have been modified. Section 15088.5 states: "If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified."

2.4.2 General Use of Program EIRs and Tiered CEQA Evaluations

According to CEQA Guidelines Section 15168, a state or local lead agency may prepare a program EIR when the series of proposed actions can be characterized as one large project and are related to one another. The actions must be related either geographically, as part of a logical chain of contemplated actions, in connection with a specific regulation, or as individual activities carried out under the same authorizing regulatory authority, granted the actions have similar environmental effects.

In developing a program EIR, a complete and comprehensive list of all subsequent activities that may occur as the result of the Proposed Program is not required. However, each subsequent activity must be examined and evaluated (following the program EIR) as to whether the subsequent activity is consistent with the scope of this original program EIR. At that subsequent time, the original program EIR will then be evaluated for how well or completely it describes the subsequent activity and its potential effects. Based on that evaluation, additional CEQA documentation may or may not be needed to describe the subsequent activity within the overall program.

Only those subsequent activities that would have effects not within the scope of the program EIR would require additional CEQA documentation. In the event that the scope of a program EIR would not adequately encompass the specific details of subsequent program activities, then additional CEQA analysis would occur and additional CEQA documentation would be prepared.

A program EIR generally establishes a framework for “tiered” or project-level environmental documents that are prepared for subsequent, focused steps and projects that implement the program (CEQA Guidelines Section 15152). Tiering is a CEQA method that enables a more specific environmental analysis to follow a program-level EIR. A tiered CEQA analysis would address more specific aspects of a program that are not yet defined in the program EIR.

Project level environmental documents incorporate by reference the broader discussions in the program EIR and concentrate on project-specific issues. CEQA Statutes and Guidelines encourage the use of tiered environmental documents to reduce delays and excessive paperwork in the environmental review process. This is accomplished in tiered documents by eliminating repetitive analyses of issues that were adequately addressed in the original program EIR, and by incorporating those analyses by reference.

The level of CEQA review provided in this DEIR does not involve or constitute an “action item” for the City because the City will not approve the Program at this time in connection with the approval and certification of the DEIR.

2.4.3 City’s Intended Use of This Program EIR

The Program expands on, and further implements, existing City policies and plans to increase flows of water in the Kern River through the acquisition and use of additional water supplies awarded to the City by the SWRCB in connection with the City’s pending

application to appropriate undetermined quantities of surplus, unappropriated Kern River water. This DEIR reviews the impacts of increased flows of water within the Program area resulting from the City's acquisition of new water supplies through the SWRCB application process in support of the City's current and ongoing efforts to increase flows in the Kern River channel.

Through this DEIR, the City describes and confirms existing City policies and plans to increase water flows in the Kern River in anticipation of future actions by the SWRCB. It is anticipated that future actions by the SWRCB will result in the potential for more flows in the Kern River.

The City has prepared a program EIR because the SWRCB has not yet determined the specific quantity of surplus, unappropriated water on the Kern River that could be utilized by the City to increase flows of water in the Kern River (Source 2 water).

The City expects the SWRCB will determine the quantity of surplus, unappropriated water on the Kern River, and will also determine related issues involving the timing, source, availability, and current uses of such water, in future administrative proceedings involving the City and other entities that have applied for or claimed rights to such surplus, unappropriated water.

When the details for potential increases in river flows are better known, then the potential environmental effects of such actions will be evaluated through a tiered CEQA process, referencing this program EIR, but conducting further evaluation as necessary to address more specific potential environmental effects, based on the future quantity of water involved in the Program. A future CEQA tiering process would build from this program EIR, but then evaluate potential effects more specifically according to the magnitude and extent of projected river flows, following a decision, or interim decision, by the SWRCB.

The Proposed Program is not the City's application to appropriate. Nor is the Proposed Program the City's prior, long standing policy to use its existing water supplies to increase flows of water in the Kern River. Instead, the Proposed Program consists of the use of new, additional water supplies (Source 2 water) obtained through the City's application to appropriate (submitted to the SWRCB) to enable increased flows of water in the Kern River. This program EIR analyzes the impact of the City's proposed use of the new Source 2 water supplies to increase flows of water in the Kern River channel through the Program Area.

The City has elected to defer review of certain secondary impacts associated with the use of new water supplies in the Program, including water supplies that may currently be used by other entities without authorization or a valid right or permit, until the SWRCB determines the quantity of unappropriated water available for use in the Program, and makes other determinations regarding the extent, timing, and availability of such water.

2.4.4 City's Application to Appropriate and SWRCB Determination Process

After the SWRCB formally accepts the City's application to appropriate, and any other applications that comply with state law, the City expects that the SWRCB will make an

interim, preliminary determination as to the quantity of unappropriated water on the Kern River available for appropriation. No further decision or formal action by the City, or subsequent CEQA review by the City, is necessary for this step of the SWRCB process.

The SWRCB has indicated that “[i]t will be up to the applicants to show when and how much available water there is for appropriation” in connection with the SWRCB’s processing of various applications to appropriate surplus, unappropriated Kern River water. (Order WR 2010-0010, p. 5.)

The SWRCB has further stated that:

[p]rior to any potential approval or decision to proceed with a proposed project, [applicants] and the State Water Board must fulfill their obligations under the California Environmental Quality Act (CEQA). (Pub. Res. Code, § 21000 et seq.) In addition to meeting statutory responsibilities under CEQA, the State Water Board will comply with its obligation to consider environmental and public interest issues under the Water Code and the public trust doctrine in the context of processing the water right applications submitted by Petitioners. (Order WR 2010-0010, p. 6.)

CEQA requires the SWRCB to consider the environmental effects of a project or program related to the use of unappropriated water before it issues a permit for such water. The SWRCB examines the proposed project’s potential environmental impacts and determines whether mitigation measures will be needed.

After the SWRCB determines the quantity of unappropriated water available on the Kern River, the City will undertake further project level CEQA review which examines, among other things, (1) the impact of the Program based on the specific quantity of water available on the Kern River, including any secondary or third party impacts, as required by CEQA, and (2) any changes to the information in the program EIR, and any new CEQA requirements imposed since the certification of the program EIR. After the City adopts, approves, or certifies the subsequent CEQA documents, the City may utilize such subsequent CEQA documents, as well as this program EIR, in continued proceedings before the SWRCB to determine rights and claims to the surplus, unappropriated water.

If the SWRCB awards or grants the City rights to some or all of the unappropriated water, the City will consider the adoption and implementation of the Program, with the quantity of water awarded by the SWRCB (Source 2 water), once it has completed all necessary project level CEQA review.

2.4.5 City’s Tiered CEQA Review and Program Adoption Process

After the SWRCB makes its anticipated initial determination of the quantity of unappropriated water on the Kern River, and prior to adoption and implementation of the Program, the City will undertake further tiered and specific CEQA review (project level), as necessary to evaluate potential environmental effects due to the specific range and magnitude of flows available for the Program. That CEQA review will likely focus on the specific impacts of the Program on the environment, as well as related and secondary

impacts, based on the City's projected use of the quantity of additional, unappropriated water (Source 2 water) found to be available on the Kern River by the SWRCB.

The City expects to complete such project level CEQA review prior to the SWRCB awarding rights to such water to the City. After the SWRCB awards rights to such water, and after the City completes further, project level CEQA review, the City will consider whether to adopt and implement the Program.

The City emphasizes that it will not approve, adopt or implement the Program as a result of, or in connection with, its approval and certification of this program EIR. Instead, the City will not approve, adopt or implement the Program until it has completed all necessary project level CEQA review, and any additional CEQA review, which tiers off this program EIR.

The City contemplates that the final, certified EIR for the Proposed Program will be used and referred to by the City in connection with its pending application to appropriate, and also used by the SWRCB in its consideration and processing of the City's application to appropriate. The Proposed Program's EIR will provide helpful, detailed and necessary information to the SWRCB, and the public, regarding the City's proposed plan to utilize additional quantities of unappropriated, surplus Kern River water (Source 2 water) to increase flows of water in the Kern River through the Program Area. The City will not take any further action in connection with the Program at this time, as the City will not approve or implement the Program until after it undertakes further, project level CEQA review of the Program, based on the SWRCB's subsequent determination of the quantity of unappropriated Kern River water. Pursuant to CEQA Guidelines Section 15125(d)(2), the City lists below the currently understood decisions which will be subject to CEQA in connection with or related to the Program, in the order in which they will occur. This list includes and describes later "tiers" that are anticipated to utilize and rely on this program EIR.

1. The Program is related to and arises out of prior City actions, policies, plans and projects to increase flows of water in the Kern River, primarily through the use of the City's existing water supplies. Such matters have already been approved or adopted by the City, and some of those matters were subject to prior CEQA review. Such actions, policies, plans and projects, and supporting CEQA documents, include the following:
 - a. City's 1983 Draft and Final EIRs for the City's 2800 Acre Groundwater Recharge Facility.
 - b. City's 1985 (July) Kern River Plan Element, as updated August 15, 2007.
 - c. City's 1988 Kern River Parkway Draft and Final EIRs.
 - d. City's December 12, 2001 Statement of Water Resources Policy.
 - e. City's 2002 Metropolitan Bakersfield General Plan.
2. Certification and approval of this program EIR.

3. After the SWRCB determines the quantity of unappropriated, surplus water available for appropriation on the Kern River, and presumably before the SWRCB determines and awards rights to such water to the City, the City will prepare, certify, and approve subsequent project level CEQA documents which tier off this program EIR, which CEQA documents will primarily review and consider impacts associated with the use of the specific quantity of water in the Program, including any secondary and third party impacts, if necessary.
4. If the SWRCB approves the City's application to appropriate and awards the City rights to all or some portion of the unappropriated Kern River water, the City will, if necessary, undertake, and certify and approve, additional project level CEQA documents which tier off this program EIR, based on any changes to the Program required by the SWRCB, or as a result of any conditions or requirements imposed by the SWRCB in connection with a new permit or license for the use of such water.
5. Adoption and authorization to proceed with the Program will follow certification and approval of all necessary project level CEQA documents. Again, the City will not approve, adopt or implement the Program based on this program EIR, but only after it has completed all required project level CEQA review, and after the SWRCB determines the quantity of unappropriated water on the Kern River.

2.35 Program Area

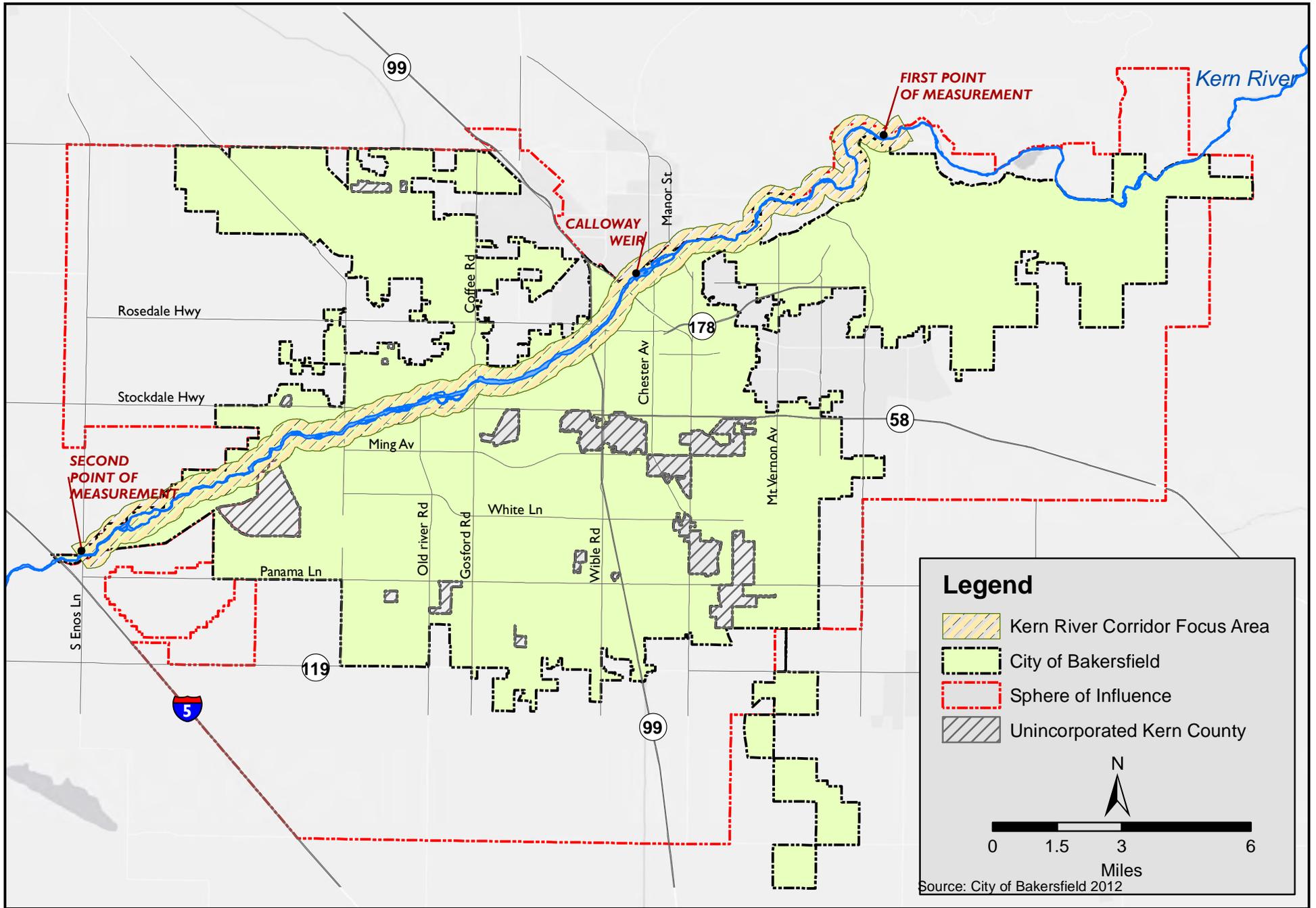
The Program Area is shown in **Figure 2-1**. The Program Area is organized into two overlapping focus areas for the purposes of this EIR, consisting of (1) the Kern River corridor, and (2) the ~~city~~City of Bakersfield (Figure 2-1). The area of focus for impact analyses in this EIR depends on the nature of the resource topic. For example, biological resources and recreation evaluations focus on the immediate Kern River corridor, while other water supply and groundwater evaluations extend to the broader city area.

2.35.1 Kern River Corridor Focus Area

The Kern River passes through the northern portion of the city, generally flowing in a northeast to southwest direction. Key features of the Kern River Corridor Focus Area, are shown in **Figure 2-2** and include the First Point of Measurement (First Point) identified in the northeast portion of the map. At First Point, the City maintains a monumented river cross-section and gage station. Downstream of First Point, the Beardsley Weir and Canal divert streamflow to areas north of the Kern River. The Rocky Point Weir diverts water south of the Kern River into the Carrier Canal (and further west, into the Kern River Canal), which directs flows southward to the canals operated by the ~~Kern Delta Water District~~KDWD (Kern Island, East Side, Stine, Buena Vista and Farmers Canals). Downstream of the Calloway Weir, which is west of the Rocky Point Weir, the Kern River remains generally dry through the city. The City also jointly maintains a gage station at the Second Point of Measurement (Second Point), which is located near the western edge of the 2,800 Acre Recharge Facility near the crossing of Enos Lane. The terminus of the Kern River Corridor Focus Area is at the river crossing at Second Point. The 2,800 Acre Recharge

Facility and Second Point are shown in the western portion of Figure 2-2. For several of the resource evaluations included in this EIR, including the hydrology, biology, and aesthetics evaluations, the Kern River was further divided into seven reaches, as shown in **Figure 2-3**. These reaches are:

- Reach 1–First Point to Rocky Point Weir
- Reach 2–Rocky Point Weir to Calloway Weir
- Reach 3–Calloway Weir to River Canal Weir
- Reach 4–River Canal Weir to Bellevue Weir
- Reach 5–Bellevue Weir to McClung Weir
- Reach 6–2,800 Acre Recharge Facility
- Reach 7–McClung Weir to Second Point



**Figure 2-1
Program Area**

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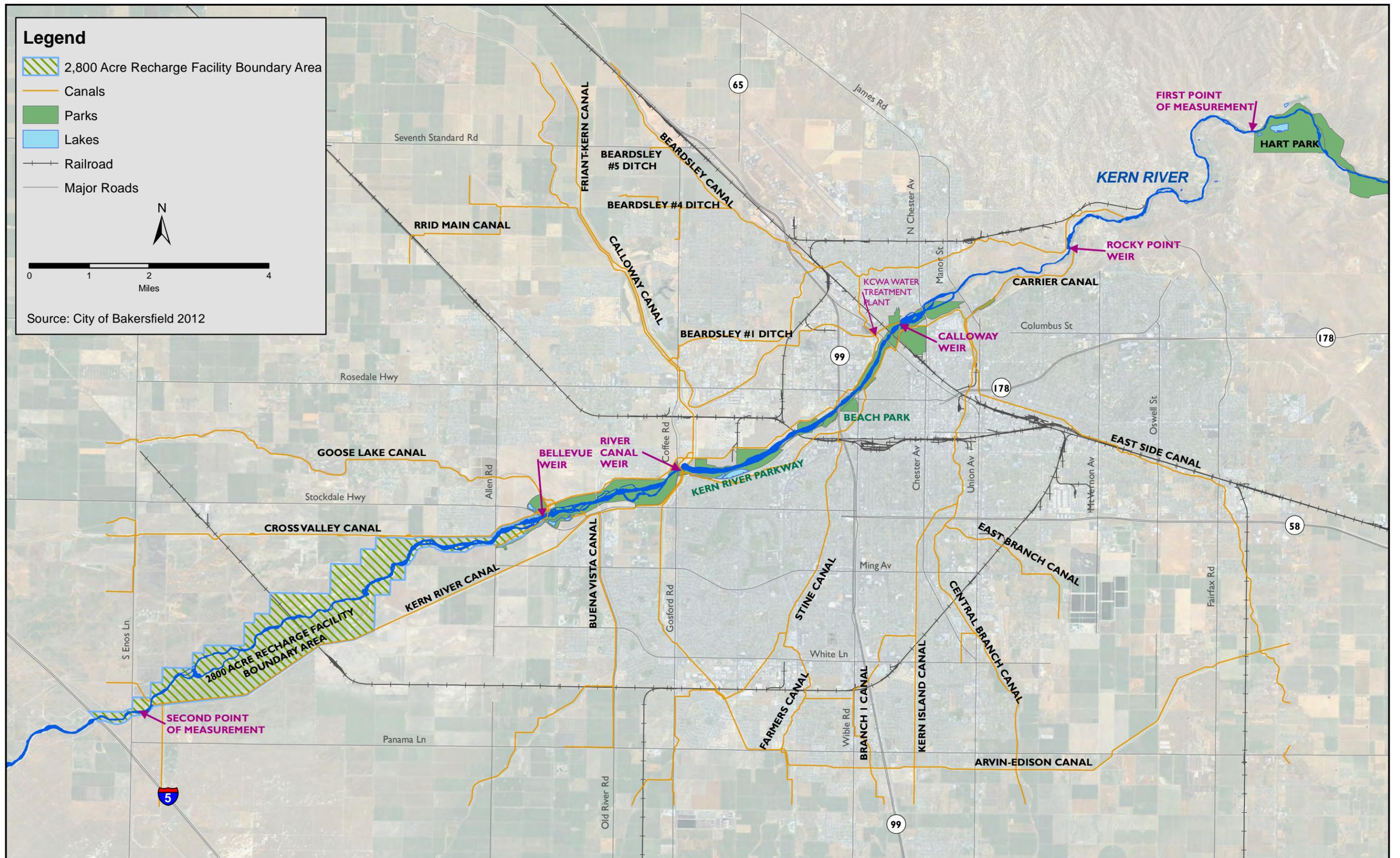


Figure 2-2
Kern River Corridor Focus Area

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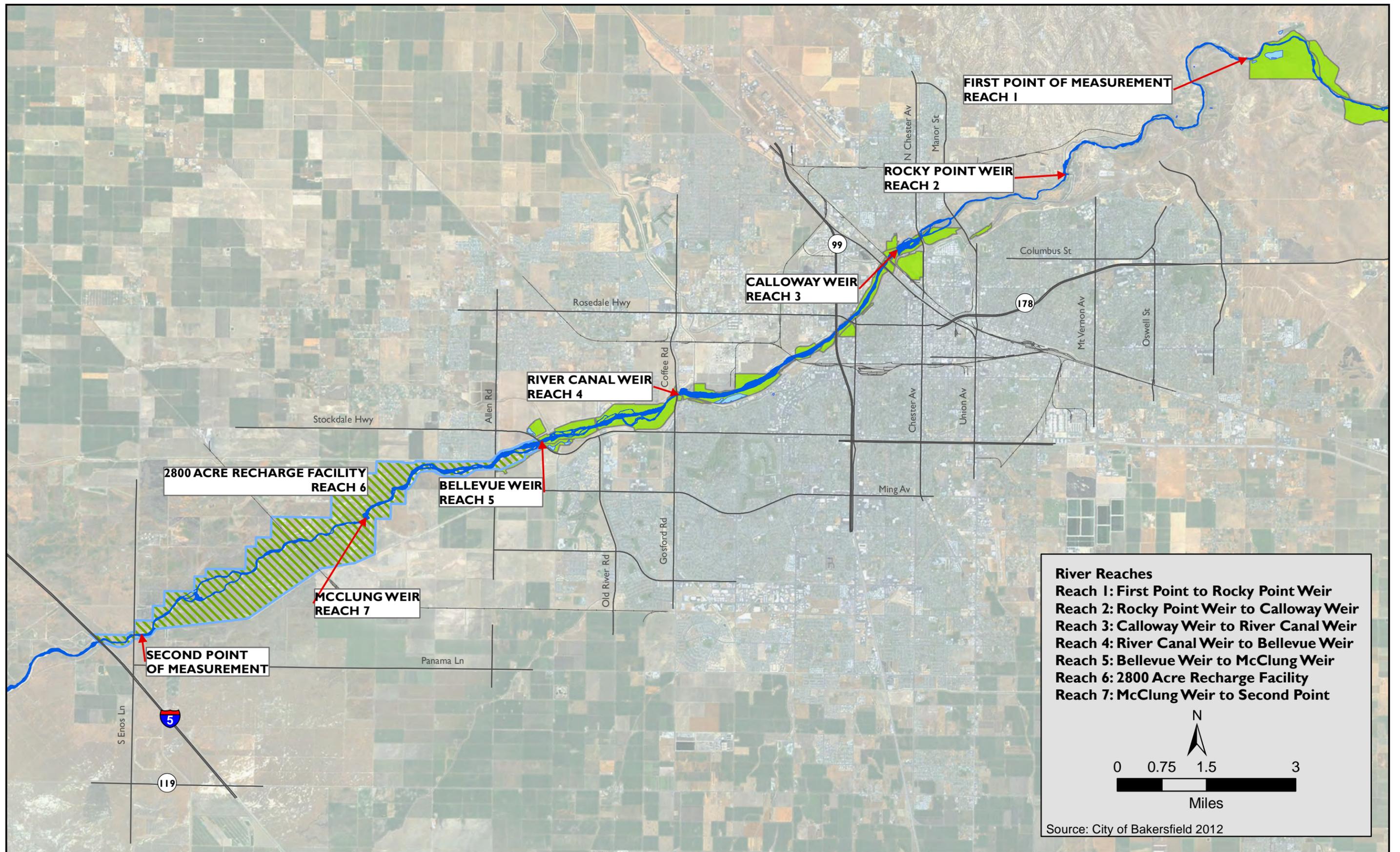


Figure 2-3
River Reaches in the Kern River Corridor Focus Area

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The Kern River Plan Element encompasses the Kern River Corridor Focus Area, from the mouth of the Kern River Canyon (approximately 5 miles upstream of First Point) to Interstate 5 (I-5), and includes the primary and secondary floodway channel areas of the river. The Proposed Program would support implementation of this plan and the Parkway Plan. The Parkway Plan area includes the Kern River channel and adjacent river parkway facilities within metropolitan Bakersfield (see below) from the river crossing at Manor Street, downstream to the river crossing at Stockdale Highway. The Kern River Corridor Focus Area evaluated in this EIR encompasses ~~the~~the Kern River Plan Element and Parkway Plan areas.

2.35.2 City of Bakersfield Area

The City's current General Plan, the *Metropolitan Bakersfield General Plan* (City of Bakersfield 2002), was adopted in 2002. Within this General Plan, the City has established an SOI establishing the maximum extent of growth envisioned for Bakersfield. The General Plan plans for future growth through 2022. The City is currently developing a General Plan Update that will focus on amendments to policies that will incorporate recently adopted ~~legislature~~legislation. This General Plan Update will plan for future growth within the same SOI boundaries as established in the existing City General Plan. To provide consistency with the forthcoming General Plan Update, the City focus area evaluated in this EIR extends to the SOI boundary. The current city limits and SOI boundaries are shown in Figure 2-1.

City of Bakersfield Water Resources Policies

In 2001, the City enumerated policies designed to preserve, protect, and promote the efficient use of its water resources (City of Bakersfield 2001). The City policies relevant to the Proposed Program include the following:

- Kern River water shall not be utilized outside the boundaries of the San Joaquin Valley Portion of Kern County.
- City water which returns by deep percolation to the underlying groundwater basin through the delivery for, and beneficial uses by, the City and/or its customers or contractors shall remain the property of the City and subject to recapture by the City.
- When irrigated lands now being served by Kern River water become urbanized, the water rights related to these lands shall be protected to insure that such water will continue to be available to satisfy the water requirements of said lands.
- Consistent with existing City "User Pay" policies, costs for water service shall be paid by revenues derived from those who benefit from the water service.
- The City is concerned with potential contamination of its water supplies and will continue monitoring activities to prevent degradation of its water supply sources. Water quality for domestic and agricultural uses shall be maintained to meet all federal, state and local standards.

- The City will continue to preserve its water resources to provide for the future orderly growth of the City, and those benefits derived from the water rights and related properties acquired by the City from Tenneco-West, Inc. on December 22, 1976 shall remain dedicated to the residents and taxpayers within the incorporated boundaries of the City of Bakersfield.
- The City shall continue to encourage conservation, recycling, and reclamation of all water resources to make available for beneficial uses in a safe and efficient manner.
- The City of Bakersfield supports groundwater management, including conjunctive use of surface water and groundwater under local programs that enhance and benefit the Kern County portion of the San Joaquin Valley Groundwater Basin.
- The City shall continue its policy to acquire river flood plain properties deemed essential to carry out and implement the goals of the Kern River Plan; including the City's adopted Kern River Channel Maintenance Program and the Kern River Parkway Plan.
- The City will participate with other Kern River interests in the protection, enhancement and efficient management of all Kern River water.
- All records of Kern River water supplies, including Watermaster records and all spreading and extraction of water, shall continue to be maintained by the City's Water Resources Department.
- Pursuant to the Kern River Plan, it is the policy of the City to establish a minimum annual flow of water in the Kern River channel between Manor Street and Stockdale Highway Bridge as soon as possible.
- The City Manager, City Attorney, City Water Consultant and the Water Resources Manager shall be responsible for monitoring all water related activities concerning the City of Bakersfield and shall report any deviations from the above stated policies to the City Water Board for remedial action.
- In order to preserve and provide the resources necessary to administer the above policies, all revenues received from the operation of the water enterprise, including water sales, water banking, miscellaneous sales and/or cost savings resulting from a reduction in debt service shall continue to be used only for the purposes outlined in the above-stated Water Resources Policies.

Bakersfield Urban Water Management Plan Update

The City is currently ~~updating~~ operating under its 2010 Urban Water Management Plan (UWMP). ~~The City is in the process of updating its UWMP as of 2010. Urban water management plans~~ 2015. UWMPs are prepared by urban water suppliers to ensure adequate supplies are available to meet future demands and support long-term resource planning. The City's UWMP update will follow the *Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan* issued by the California Department of Water Resources. The City expects that the ~~2010~~ 2015 UWMP will be completed ~~in 2012~~ by early 2017.

As shown in **Figure 2-4**, the City's municipal water service area does not encompass the entire city limits. The City purchased both Kern River water rights and physical water distribution systems of the Ashe Water Company service area from Tenneco in 1976. The City subsequently added service areas in the Fairhaven and Riverlakes areas. These service areas encompass approximately 35% of the city limits and are the only areas that directly receive water service from the City. The remainder of the city limits is serviced by other water purveyors, including Cal Water, East Niles Community Services District, Greenfield County Water District, North of the River Municipal Water District, Oildale Mutual Water Company, and Vaughn Mutual Water Company. These water purveyors distribute water from the Kern River, the SWP, and other sources, as well as groundwater, to customers within their service areas. Many of the water purveyors maintain contracts with other water districts, such as ID4, for water supply. Additional information on other water suppliers and purveyors in the Program Area is provided in Section 3.8, "Water Supply and Groundwater Resources."

Kern River water supplies in the Program Area are also used directly or indirectly for agricultural purposes, such as crop irrigation. While most agricultural practices occur outside the city limits, there are some agricultural water uses within the City's SOI. According to Kern County's 2005 crop data, approximately 14,000 acres within the municipal service areas in the city limits are identified for agricultural land use (City of Bakersfield 2009).

2.4 Program Objectives

~~To protect and preserve the local water supply, environment and quality of life for City residents, the City has proposed this project to increase and restore more regular flows of water to the Kern River channel. Consistent with and to implement City policies, and to provide water for prior and ongoing City projects, the City will attempt to increase and restore stream flows in the Kern River channel throughout the year, primarily below the Galloway Weir.~~

~~The Program calls for more regular, measured flows that will increase Kern River flows throughout the year. Up to an average of approximately 160,000 acre feet per year (afy) of water (as available based on hydrologic conditions) may be provided to the Kern River. The primary objective of the Program is to allow additional quantities of water to flow in the Kern River channel to protect, increase, and enhance the City's water supply to meet present and future demands for water. Increased flows in the Kern River would also increase infiltration and percolation to the aquifer beneath the river, to serve as a long term water supply and source for City residents.~~

~~Providing a restored and consistent flow of water in the Kern River throughout the Bakersfield city limits, 2.62.6 would produce multiple reasonable and beneficial uses of water associated with a more natural flowing river. Such benefits include purposes and uses associated with environmental, public trust, domestic and municipal and industrial purposes, and more specifically for uses related to streamflow restoration, constructed wetlands, recreation, aesthetics, fish and wildlife restoration and protection, underground~~

~~aquifer supply, aquifer water quality enhancement and underground water banking for drought and other emergencies.~~

~~The Program and the restored and increased flows of water in the river channel would provide these benefits to the City, its residents, and the local groundwater basin and environment; by, among other things:~~

~~1. Increasing river flows, which will increase groundwater levels beneath the river to help address historic overdraft conditions and to help alleviate and reverse the depletion of the groundwater basin.~~

~~2.1. Providing an additional water source, and protecting and preserving the City's present water supply and source for City residents.~~

~~3.1. Restoring, enhancing and preserving the natural riparian environment and habitat in and around the river channel, including restoring plants, vegetation, animals, birds and aquatic species habitats.~~

~~4.1. Ensuring that flows of water in the Kern River will be kept within the river channel so that such water is not diverted and used outside the County. The development, protection and preservation of more natural flows in the Kern River will protect and preserve the river as a water supply for the City for the present and into the future.~~

~~5.1. Enhancing and improving water quality through, among other things, increased recharge and migration of high quality Kern River water into areas of the basin where the quality of groundwater has been diminished or threatened.~~

~~6.1. Improving the desirability and quality of life in the Bakersfield area by improving and enhancing the aesthetic and recreational benefits and opportunities in and around the river, and by restoring the Kern River as the important, central, and productive natural resource feature of the community. Residents of the City have consistently noted that a restored, flowing Kern River is critically important to the economic success, pride, identity and well being of the entire community.~~

~~The Proposed Program directly supports the City's long term planning process and policies to conserve, protect, and enhance the natural resources of the Kern River while also providing important flood management and water supply needs. The Program also furthers California water policy by putting Kern River water to multiple reasonable and beneficial uses, with an emphasis on municipal, environmental, recreational, and public trust purposes.~~

~~The water that the City intends to utilize and/or acquire through the Proposed Program would support projected, planned, and approved growth and development within the City's SOI. Water from the Proposed Program would also be potentially available, in certain high flow years, or when the City has a surplus of water, for temporary sale or transfer to local water districts and water purveyors. While a possible outcome of the Program, the future sales or transfers of surplus water are undetermined at this time. If and when surplus water sales or transfers are better defined in terms of specific quantities, locations of use, and timing~~

~~of the transfer, then further CEQA analysis may be necessary. Such analysis could occur via a tiered CEQA document from this program EIR.~~

2.56 Kern River and Historic Flows

The Kern River is one of the primary river courses in the southern portion of the Central Valley of California. The Kern River in the Bakersfield area is supported by a large watershed (2,407 square miles above the City) that extends high into the Sierra Nevada Mountain Range, including Mt. Whitney (elevation 14,494 feet) at the watershed's northern end.

The Kern River and its watershed are noted for their range of geographic and topographic conditions. The high elevations of the upper Kern River watershed typically collect a deep snowpack that supports Kern River flows. **Figure 2-5** presents typical monthly flow volumes in the Kern River at First Point. As shown in the graph of Figure 2-5, annual river flows are lowest in the late summer and fall and greatest in the late spring and early summer following melting of the Sierra Nevada snowpack. The climate and hydrology of the Kern River and its watershed are also noted for their high degree of annual and seasonal variability. Figure 2-5 portrays the variability in the flow record by showing maximum monthly flows, "wet" monthly flows (75th percentile of the monthly flow dataset), median, "dry" (25th percentile of the monthly flow dataset), and minimum monthly flow volumes over the 117-year period of record from 1894 to 2010.

The observed hydrologic variability of the Kern River has required river management approaches that address the potential for both severe flooding and drought along the Kern River. Construction of Lake Isabella was completed by the U.S. Army Corps of Engineers (USACE) in 1953 to address flood control and water conservation capacity. Within the City, the Kern River is the central physical landscape feature. The history of management of the Kern River for flood protection and water supply purposes parallels the history of Bakersfield itself.

The hydrology of the Kern River is also characterized historically by severely diminished flows of water below the primary diversion points along the river, particularly below the Calloway Weir. Since the mid-20th century, major improvements, such as canal enlargements and concrete lining, were made to canal systems to increase the flow of water to agriculture. As a result, since that time period, the vast majority of Kern River flow between First Point and the Calloway Weir has been diverted for agricultural use, resulting in a dry river bed downstream of the Calloway Weir throughout most of the year.

Water has flowed in the Kern River channel downstream of the Calloway Weir primarily when the river has experienced very wet, high-flow conditions or when water has been introduced from outside sources, such as the SWP. In recent years, the City has worked to increase the flow of water below the Calloway Weir, and such increased flows are reflected in the baseline flow quantities described in this EIR.

The City's Water Resources Department assumed responsibility for the operation of the Kern River, including flow monitoring and water use recording, following the Tenneco purchase in 1976 (*The Kern River Purchase*, City of Bakersfield 2003). The City maintains

and continues to prepare the hydrographic records for the Kern River flows and water use dating to 1893. The City's Water Resources Department currently measures and records flows and diversions at key points along the river system on a daily basis, beginning with outflows from Lake Isabella.

Kern River flows are measured at multiple locations, including at First Point, Beardsley Weir, Rocky Point Weir, Calloway River Weir, River Canal Weir, Bellevue Weir, the 2,800 Acres Recharge Facility, including the McClung Weir, and the river channel at Second Point (see Figure 2-2). Additions or diversions to the river channel are computed and tracked. The Carrier Canal parallels the Kern River channel and diverts water from a headgate above the Rocky Point Weir. Records are also kept of the flow and additions and diversions along the Carrier Canal at key points, including the Carrier Headgate, Reclamation Weir, Eastside Canal Headgate, Kern Island Canal Headgate, Levee No. 1, Carrier at Oak Street, Stine Canal Headgate, River Canal at Stockdale Highway, Buena Vista Canal Headgate, Pioneer Turn-Out, and the River Canal at Alternate Second Point.

The City also operates the Kern River diversion system for the benefit of other Kern River interests. On a daily basis, the City's Water Resources Department acts as the central dispatch and receives orders for Kern River water from dispatchers at various water districts, in addition to the City's own demands for water. The Kern River Watermaster coordinates Lake Isabella reservoir storage and Kern River flow management between participating water districts, ~~the U.S. Army Corps of Engineers~~ USACE, and the City of Bakersfield. The City communicates with USACE on a daily basis to coordinate releases to the river from Isabella Dam. City employees thereafter physically divert water out of the river into various canals, and operate and maintain the headgates, weirs, and other physical facilities that divert water from the Kern River.

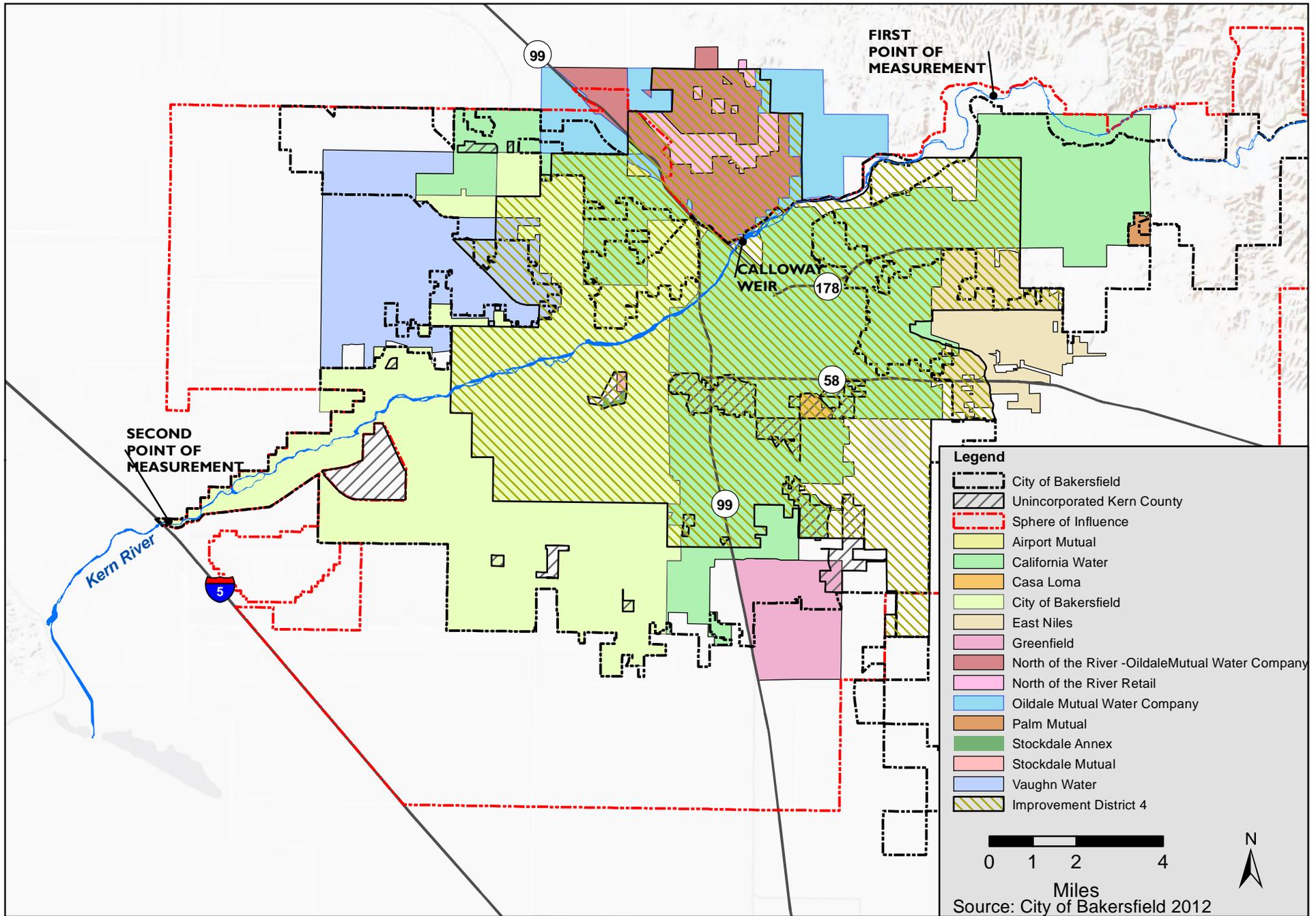
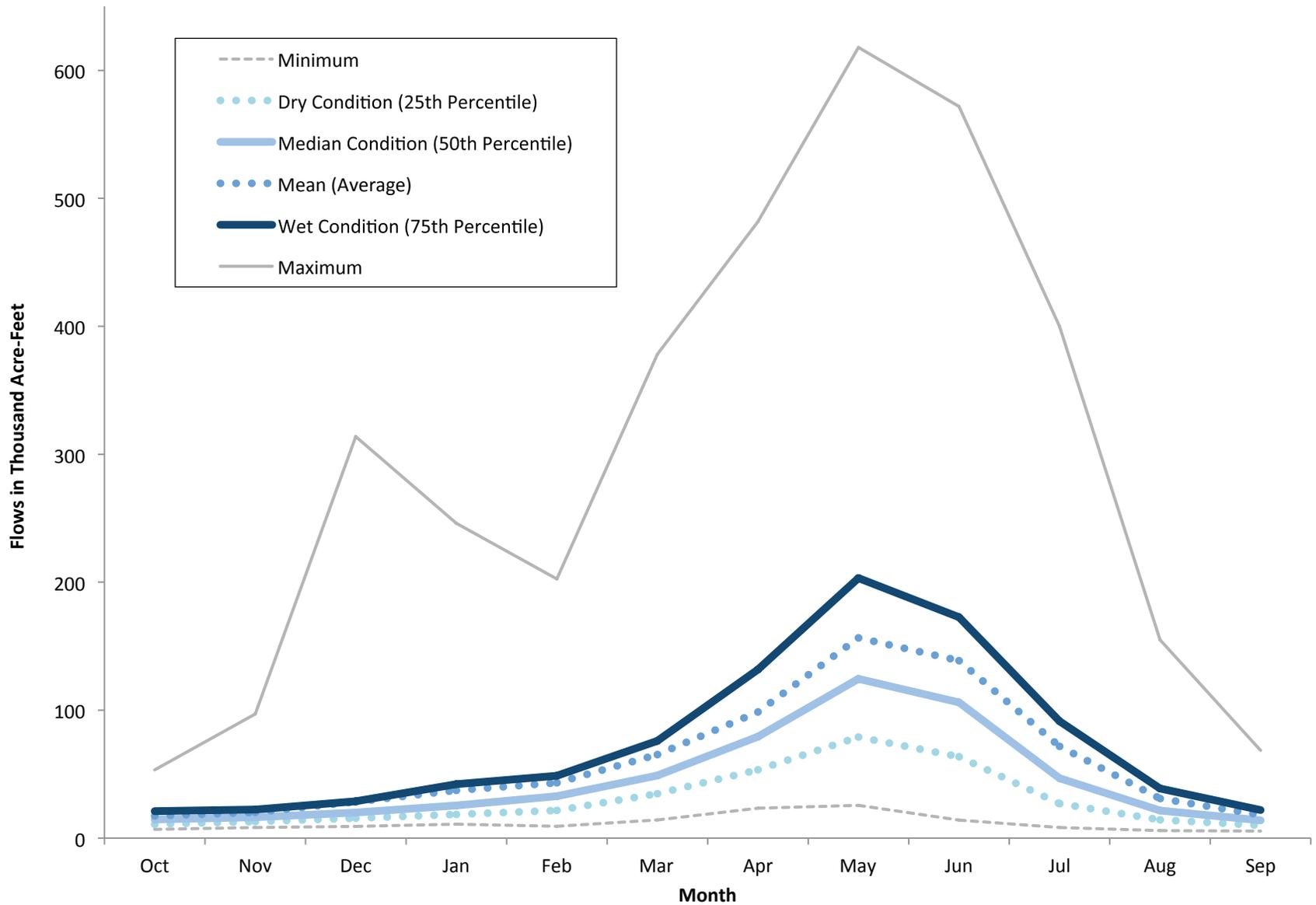


Figure 2-4
Municipal Water Service Areas

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Note: Values are the "natural flow," computed to exclude the effect of storage in Lake Isabella.
 "Wet"--indicates the 75th percentile of monthly flows over the period of record.
 "Dry"--indicates the 25th percentile of monthly flows over the period of record.

Figure 2-5
Range of Monthly Flow Volumes
Kern River at First Point of Measurement (1894-2010)

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Table 2-1 summarizes historic flow conditions for the Kern River at First Point and the Calloway Weir (approximately 9 miles downstream of First Point) between 1893 and 2010. Table 2-1 includes monthly and annual totals for median, average, dry-year, and wet-year flows from the period of record. The total annual median flow at First Point is 550 thousand acre-feet (TAF). This is a computed “natural flow” that accounts for the role of storage in Lake Isabella following the completion of reservoir construction in 1953. River flows from before Lake Isabella was operational can be compared with flows after Lake Isabella by using a “computed natural flow” approach. The wet-year and dry-year flows at First Point show the large annual variation in discharge on the Kern River. The typical wet-year flow is 899 TAF, over 60% greater than the median flow, and the dry-year flow is about 361 TAF, about 35% less than the median flow. The monthly totals for median, average, dry-year, and wet-year flows show a similar pattern, with the highest flows typically occurring from April through June associated with the melting Sierra Nevada snowpack, and the lowest flows in September or October.

Table 2-1 also summarizes flow conditions downstream of Calloway Weir during the period from 1970 to 2010. The values shown illustrate the precipitous drop in the median river flow downstream of Calloway Weir. Whereas long-term median flow at First Point is 550 TAF, it is only 3 TAF downstream of Calloway Weir. This reduction in flow is primarily a result of diversions into the various canals between First Point and the Calloway Weir. Dry years have no measurable flow at Calloway Weir, while wet years result in higher quantities of flow at Calloway Weir. In average and wet years at the Calloway Weir, the peak monthly total occurs in June, while median years have no discernible monthly pattern. It is noted that for several months shown in Table 2-1, the average baseline flow at Calloway Weir (mean monthly flow) is greater than the “wet monthly flow” as determined by the 75th percentile monthly flow. The flow conditions which lead to this situation are described in more detail in Section 3.6.3, *Surface Water Hydrology and Water Quality – Environmental Setting*. [Please note that Section 3.6.3 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

2.67 City’s Historic Water Supply and Use

The City’s water supply from the Kern River is summarized in **Table 2-2**. As shown in Table 2-2, The City’s ~~“Source 1”~~ Kern River water rights have historically yielded an average of 135,000 ~~acre feet per year (afy)~~. The City’s ~~Source 1~~ Kern River water deliveries include the City’s “pre-1914” appropriative water rights acquired from Tenneco in December 1976, including additional historic water rights identified as the Kern River Canal and Irrigating Company rights (the Laterals), and other “minor rights” listed in the Shaw Decree that belong to the City. The amount of water available to the City pursuant to these ~~Source 1~~ rights varies yearly depending on hydrologic conditions and the quantity of water flowing in the Kern River. To represent the annual variation in water available to the City’s rights, values in Table 2-2 are shown for the median, average, dry, and wet months, based on Kern River flows from 1954 to 2010.

In Table 2-2 the quantities of water available through the City’s rights are separated into median, average, dry, and wet months. The City’s base median yield is 90 TAF, and varies

from a dry-year average of approximately 52 TAF to a wet-year average of 155 TAF, a range of over 100 TAF. The amount of water available through the City's rights is lowest from September through February, rises through March, and peaks in May, reflecting the influence of snowmelt on the hydrographic chart of the Kern River.

The Laterals' average yield shown in Table 2-2 follows a pattern similar to the City's primary water rights, with the lowest amounts received from September through February, and the highest amounts received in May. The Laterals' average supply comprises a much smaller portion of the City's water supply than the City's primary water rights, totaling 7 TAF for a median year. The other minor rights constitute less of the City's total supply, ranging from 1.5 TAF in a dry year to 5 TAF in a wet year.

The total quantity of ~~Source 1~~ Kern River water available to the City results from a combination of water accruing to the City's primary "pre-1914" appropriative water rights, the Laterals, and other minor rights. The median historic yield of Kern River water from these rights is 99 TAF. During a wet year, the rights may yield as much as 179 TAF, while during a dry year the rights may yield an average of 55 TAF.

Table 2-2 also depicts some of the current minimum annual, short-term obligations and demands on the City's ~~Source 1~~ Kern River water rights. These demands include canal seepage and evaporative losses of 20,000 afy (on average); deliveries to water treatment plants operated by Cal Water in the amount of 19,000 afy to provide water for municipal use; the obligation to deliver 10,000 afy of water to the Rosedale-Rio Bravo Water Storage District as the result of a long-term sale; and deliveries of an average of 13,000 afy to satisfy various obligations and agreements, including deliveries to the Kern River Canal and Irrigating Company, Olcese Water District, and various City water amenities.

All of these demands will vary based on climatic and hydrologic conditions and other factors. The amounts listed above and in Table 2-2 only represent historic and current average quantities. The City further expects that the above demands will increase in the future, as anticipated and projected population growth will place increasing demands on the City's water supply.

Designated ~~Some~~ quantities of ~~Source 1~~ the City's current water, or supply may run down the Kern River channel prior to implementation of the Program, but such flows are not expected to be regular or consistent, and would most likely be in lesser amounts than pursuant to the Program.

Various quantities of water accruing to the City's Kern River rights, will also be allocated to available for use in the Program to create a ~~year-round,~~ more regular, consistent flow of water in the Kern River channel throughout the City, including below Calloway Weir. ~~That quantity~~ The additional quantities of water allocated used to increase flows of water in the Kern River is ~~were previously~~ identified herein as "allocated Source 1 water," ~~will generally be available in amounts ranging up to 70,000 afy, on average. That represents the approximate quantity of water which will be available out of the City's average annual Source 1 yield of 135,00 afy, after the above current demands, totaling an average of 62,000 afy, are satisfied.~~

Table 2-1. Historic Kern River Flow Conditions at First Point and Calloway Weir

| | Monthly Supply (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------------|-----|-----|------|------|------|------|------|------|-----|-----|-----|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| Historic Kern River Flow at First Point (1893–2010) | | | | | | | | | | | | | |
| Median Flow at First Point ^(a) | 25 | 33 | 49 | 79 | 124 | 106 | 47 | 22 | 14 | 15 | 16 | 20 | 550 |
| Average Flow at First Point (mean) | 37 | 43 | 65 | 99 | 157 | 139 | 72 | 31 | 18 | 17 | 20 | 28 | 726 |
| Dry Year Flow at First Point (25th percentile) ^(b) | 18 | 22 | 35 | 53 | 79 | 64 | 27 | 14 | 10 | 11 | 13 | 16 | 361 |
| Wet Year Flow at First Point (75th percentile) ^(c) | 42 | 49 | 76 | 132 | 203 | 173 | 91 | 39 | 22 | 21 | 22 | 29 | 899 |
| Historic Kern River Flow at Calloway Weir (1970–2010) ^{(d)(e)} | | | | | | | | | | | | | |
| Median Flow at Calloway | 0.1 | 0 | 0 | 0 | 0 | 0.3 | 1.5 | 0.7 | 0 | 0 | 0.1 | 0 | 3 |
| Average Flow (mean) at Calloway | 3.6 | 6.9 | 8 | 14.2 | 26.1 | 31 | 24 | 13.4 | 5.9 | 5.5 | 5.6 | 4.8 | 149 |
| Dry-Year Flow at Calloway (25th percentile) ^(b) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wet-Year Flow at Calloway (75th percentile) ^(c) | 5 | 2.2 | 1 | 1.2 | 17.4 | 39.8 | 32.1 | 17.6 | 2.6 | 3.7 | 4.5 | 3.4 | 130 |

Notes: TAF = thousand acre-feet

(a) Historic flows at First Point are considered “computed natural flows” from 1954 onward, and account for the role of storage provided by Lake Isabella upstream.

(b) “Dry” Year is defined as the 25th percentile (of median) over the period of record, or about 50% of the mean.

(c) “Wet” Year is defined as the 75th percentile (of median) over the period of record, or about 125% of the mean.

(d) The monthly flow values used generate this table are shown in Appendix D

(e) Flows at the Calloway Weir, as shown in this table, may include water from other sources and rights. Flows in the river below Calloway Weir are not necessarily from the City's Source 1 water rights.

Source: City of Bakersfield Water Resources Department 2011

Note: This table is reproduced in Chapter 3, Section 3.6 “Surface Water Hydrology and Water Quality” as Table 3.6-1. [Please note that Section 3.6 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, Program Description.]

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Table 2-2. City of Bakersfield Current Minimum Obligations and Kern River Yields

| | Quantity (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------|------|------|------|------|------|------|------|------|------|------|------|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| City Water Obligations | | | | | | | | | | | | | |
| Water Treatment Plants | 0.5 | 1.7 | 1.5 | 1.3 | 1.6 | 2 | 2.1 | 2.1 | 2 | 1.6 | 1.4 | 1 | 19 |
| Kern River Canal & Irrigating Company (KRC&I) | 0.05 | 0.15 | 0.45 | 0.8 | 1.05 | 1.10 | 1.10 | 1.10 | 0.73 | 0.30 | 0.15 | 0.03 | 7 |
| Olcese Water District | 0.02 | 0.05 | 0.08 | 0.10 | 0.12 | 0.13 | 0.13 | 0.13 | 0.13 | 0.08 | 0.03 | 0.02 | 1 |
| City Water Feature Amenities ^(c) | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 0.42 | 5 |
| Miller-Haggin Obligations + Isabella Evaporation Losses, and Preexisting Delivery Obligations ^(b) | 0 | 0 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 | 0 | 0 | 0 | 0 | 20 |
| Long-Term Sale to Rosedale-Rio Bravo Water Storage District | 3.4 | 3.3 | 3.3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 |
| <i>Current Minimum Obligations</i> | 4.4 | 5.6 | 9.1 | 5.9 | 6.5 | 7.0 | 7.1 | 7.1 | 3.3 | 2.4 | 2.0 | 1.5 | 62 |
| Kern River Water Yield (1954–2010) | | | | | | | | | | | | | |
| <i>City Historic Rights^(a)</i> | | | | | | | | | | | | | |
| Median Year | 1.1 | 1.1 | 16.1 | 18.4 | 22.5 | 20.1 | 9.9 | 0.7 | 0 | 0 | 0.1 | 0.4 | 90 |
| Average Year (mean) | 1.5 | 1.7 | 17.1 | 19.7 | 28.3 | 25.2 | 14.2 | 5.9 | 0.4 | 0.3 | 0.4 | 1.1 | 116 |
| Dry Year (25th percentile) | 0.3 | 0.8 | 8.0 | 13.6 | 16.3 | 11.3 | 1.8 | 0 | 0 | 0 | 0 | 0 | 52 |
| Wet Year (75th percentile) | 1.4 | 1.3 | 24 | 24.8 | 36.4 | 31.9 | 19.9 | 11.4 | 0.9 | 0.7 | 0.8 | 1.1 | 155 |
| <i>Kern River Canal & Irrigating Company (KRC&I) Laterals</i> | | | | | | | | | | | | | |
| Median Year | 0 | 0 | 0 | 0.8 | 3.5 | 2.5 | 0 | 0 | 0 | 0 | 0 | 0 | 7 |
| Average Year (mean) | 1.2 | 1.3 | 0.5 | 2 | 4.7 | 3.7 | 1.1 | 0.3 | 0.2 | 0 | 0.2 | 1 | 16 |
| Dry Year (25th percentile) | 0 | 0 | 0 | 0.1 | 1.3 | 0.4 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Wet Year (75th percentile) | 0.7 | 0.5 | 0.8 | 3.4 | 7.2 | 5.8 | 1.6 | 0 | 0 | 0 | 0 | 0 | 20 |
| <i>Old South Fork Right</i> | | | | | | | | | | | | | |
| Median Year | 0.5 | 0.5 | 0 | 0.2 | 0.3 | 0.2 | 0.1 | 0 | 0 | 0 | 0.1 | 0.2 | 2 |
| Average Year (mean) | 0.4 | 0.4 | 0.1 | 0.2 | 0.3 | 0.3 | 0.2 | 0.1 | 0.2 | 0.2 | 0.2 | 0.3 | 3 |
| Dry Year (25th percentile) | 0.1 | 0.4 | 0 | 0.1 | 0.2 | 0.1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Wet Year (75th percentile) | 0.6 | 0.6 | 0.1 | 0.3 | 0.3 | 0.3 | 0.2 | 0.1 | 0.5 | 0.3 | 0.4 | 0.6 | 4 |
| <i>Total Historic City Water Yield: Sum of City Base, KRC&I Laterals, and Old South Fork Deliveries</i> | | | | | | | | | | | | | |
| Median Year | 1.6 | 1.6 | 16.2 | 19.4 | 26.4 | 22.8 | 10 | 0.7 | 0.1 | 0 | 0.2 | 0.5 | 99 |
| Average Year (mean) | 3 | 3.5 | 17.7 | 21.9 | 33.3 | 29.2 | 15.5 | 6.4 | 0.8 | 0.5 | 0.8 | 2.4 | 135 |
| Dry Year (25th percentile) | 0.4 | 1.2 | 8 | 13.8 | 17.8 | 11.8 | 1.8 | 0 | 0 | 0 | 0 | 0.1 | 55 |
| Wet Year (75th percentile) | 2.7 | 2.3 | 24.9 | 28.5 | 44 | 38 | 21.7 | 11.6 | 1.4 | 1 | 1.2 | 1.7 | 179 |

Table 2-2. (continued) City of Bakersfield Current Minimum Obligations and Kern River Yields

| | Quantity (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |

Notes: TAF = thousand acre-feet

(a) Water deliveries do not include water released by other rights holders or the City of Bakersfield.

(b) Miller-Haggin Obligations include river channel and canal recharge to make deliveries to first point canals below the Kern Island right and to deliver second point water and lower River water to second point undiminished during the March-August period. Preexisting delivery obligations are from agreements assumed by the City upon the City's purchase of Kern River water rights. These include agreements with Kern County for Isabella Recreation Pool, Lake Ming, and Hart Park. Other year to year miscellaneous water sales are not included in the City Existing Water Obligations.

(c) City Water Feature Amenities = Truxtun Lakes, The Park at RiverWalk, Aera Park Pond, Wilson Ponds, etc.

Note: This table is reproduced in Chapter 3, Section 3.7 "Water Supply and Groundwater Resources" as Table 3.7-1. [Please note that Section 3.7 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

Prior to implementation of the Program, the allocated Source 1 water ~~will~~may be available to satisfy and address multiple additional demands and projects of the City, including restoration and maintenance of reserve water supplies in storage in Lake Isabella and the Basin to protect the City's long-term drinking water supplies; occasional, intermittent instream flows of water in the Kern River pursuant to prior projects and policies of the City, including the 1985 Kern River Plan Element of the City's General Plan (adopted by both the City and the County of Kern)), which called for the establishment and maintenance of a minimum annual flow of water in the Kern River channel; and policies of the City and the City's water board adopted and confirmed in 2001, including the policy and directive calling for the establishment of minimum annual flows of water in the Kern River channel, and the Kern River bike path and parkway project. The allocated Source 1 water ~~will~~may also be available, prior to implementation of the Program, for the recharge and storage of water for municipal use in the City's 2800 Acre ~~recharge facility~~Recharge Facility, and Groundwater replenishment in other areas of the City. The water ~~will~~may also be available for other projects and policies involving the supply of water to City residents, directly and through Cal Water, including pursuant to the City's 1976 acquisition of its Kern River water rights, from Tenneco West, Inc., and the Metropolitan Bakersfield General Plan, adopted by the City on December 11, 2002.

~~Some quantities of Source 1 water may run down the Kern River channel prior to implementation of the Program, but such flows are not expected to be regular or consistent, and would most likely be in lesser amounts than pursuant to the Program.~~

The quantity of water available for use within the City is uncertain as a result of hydrological conditions, climate considerations, recent statutory and regulatory changes (including SGMA), increased demands and requirements for water in storage, and a recent legal action brought by the North Kern Water Storage District (North Kern). As a result of a final judgment issued in that action (*North Kern Water Storage District v. City of Bakersfield*, Ventura County Superior Court Case No. 56-2011-00408712) in 2014, the City may have an obligation in certain years to transfer up to 20,000 af of surplus water supplies to North Kern.

Legal proceedings between 1996 and 2007 reviewed and considered questions regarding the potential forfeiture of appropriative Kern River water rights held by ~~the Kern Delta Water District (Kern Delta)~~KDWD. As a result of those proceedings, California courts concluded that ~~Kern Delta~~KDWD had "forfeited" a large portion of its Kern River water rights owing to non-use. Following the conclusion of those proceedings in 2007, the ~~California State Water Resources Control Board (SWRCB)~~SWRCB began proceedings to assess whether the Kern River was still fully appropriated. The Kern River was originally designated as a river with fully appropriated status (FAS) by SWRCB in 1964. In February 2010, the SWRCB issued an order revising the status of the Kern River, finding that the river was no longer fully appropriated.

As a result of the court decisions regarding forfeited water on the Kern River and in anticipation of SWRCB's revision of the FAS of the river, the City filed an application with the SWRCB to obtain rights to surplus, unappropriated, and available water in the Kern River. The City's application can be reviewed online at the SWRCB's Division of Water Rights webpage at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/2007_kern/publicnotice113007.pdf

The City's application to appropriate indicates that surplus unappropriated Kern River water awarded to the City, identified herein as Source 2 water, will remain in the Kern River watercourse to support beneficial uses, including domestic purposes, municipal and industrial uses, protection of the public interest, environmental purposes, streamflow restoration, constructed wetlands, recreational uses, fish and wildlife restoration, underground aquifer supply, aquifer water quality enhancement, and underground water banking for drought and other emergencies.

~~The City's application contemplates that SWRCB will determine that an anticipated supply of 87,000 AFY of unappropriated, surplus Source 2 water will be awarded and available to the City to satisfy the demands of the Proposed Program. The City expects that water obtained by the City through the SWRCB will be dedicated to instream flows, pursuant to California Water Code Section 1707.~~

~~The Program will therefore be implemented by combining allocated Source 1 water in the approximate amount of 70,000 afy with the approximately 87,000 afy on average. Although the specific quantity of Source 2 water that will be available for use by the City in the Program is unknown at this time, this DEIR reviews the impact of a range of increased flows of water in the Kern River, up to 160,000 afy, from a combination of new water supplies (Source 2 water) and some portion of the City's current water supply (allocated Source 1 water). The City will undertake further project level CEQA review which will evaluate the impact of the specific quantity of water that will be available for use in the Program after the SWRCB determines the quantity of surplus, unappropriated water available on the Kern River. As described above in Section 2.4 and other locations in this Program Description chapter, such additional CEQA review will take place prior to the City's adoption and implementation of the Program.~~

~~The Proposed Program will be implemented by combining the supply of Source 2 water the City expects to receive receives from the SWRCB, with other available City water supplies (allocated Source 1 water). The Program therefore involves the use of almost up to 160,000 afy of water to create a permanent, consistent, and regular flow of water in the Kern River channel through the City, down to the 2800 Acre recharge facility Recharge Facility.~~

The quantities discussed above do not include or take into account additional quantities of water accruing to rights owned and held by the City but diverted by or on behalf of other entities, such as ~~the North Kern Water Storage District~~, in connection with the City's rights, pursuant to various agreements involving the use of water accruing to the City's rights.

The quantities discussed in connection with the City's rights do not include excess, surplus water sometimes diverted by the rights held by the City. These diversions primarily consist of ~~water surplus water~~ diverted to satisfy the demands of prior right holders and "released" to the river.

Finally, the quantities discussed above and in Table 2-2 do not reflect or account for Kern River water recharged or otherwise percolated into the ~~groundwater basin, naturally or Basin~~ through a controlled and regulated flows of water in the river channel, or other

spreading or recharge ~~project~~projects, which thereafter serves as a significant source of supply for City residents through deliveries by the City and Cal Water.

2.78 Proposed Program Actions

The primary program action would be to allow additional quantities of water obtained by the City through its application to appropriate to flow in the Kern River channel to enhance natural resources and municipal amenities along the Kern River, to protect, increase, and enhance the City's water supply, and to meet existing and newly identified demands. Key elements of the program are conceptually illustrated in **Figure 2-6**. The Proposed Program involves the following processes:

1. The Program will utilize new water supplies which the City is seeking through an application to appropriate previously filed by the City with the SWRCB. Such new water supplies (Source 2 water) include and consist of water lost or forfeited by KDWD, as well as additional quantities of surplus water that has not been previously used under any valid permit or right. The City will still not adopt or implement the Program until after the SWRCB determines the quantity of unappropriated water on the Kern River, and after the City undertakes further project level CEQA review, as necessary, which "tiers off" of this program EIR.
- 1.2. Kern River flows will increase below the Calloway Weir (Figure 2-2) and continuing downstream. More description of downstream flow conditions is presented in Section 3.6, "Surface Water Hydrology and Water Quality." Increased river flows will serve multiple reasonable beneficial uses and demands, including demands for water for domestic, municipal and industrial, environmental, recreational, aesthetic purposes; fish and wildlife restoration; underground aquifer enhancement and storage; water quality; public interest; streamflow restoration; and other purposes.
- 2.3. Increased river flows downstream of the Calloway Weir will increase infiltration and percolation to the groundwater aquifer portion of the Basin below the Kern River downstream.
- 3.4. Over time, increased flows in the Kern River and percolation to the Basin will increase subsurface storage in the shallow, near-surface river aquifer and portion of the Basin, which, over time, will recharge storage in the deeper underlying aquifer portion of the Basin. Increased groundwater levels and quantities that result from the programProgram will enhance water quality and serve as drought protection.
- 4.5. Water will be withdrawn from the aquifer Basin for municipal uses or; if there is a surplus, water may be transferred to local water districts.
- 5.6. Over the long term, municipal water use or transfers will occur at a sustainable rate (to be consistent with the GSP that is developed by the KRGSA) such that aquifer Basin water table levels will be maintained or raised through net aquifer Basin replenishment over the course long term implementation of the programProgram.

The Proposed Program would increase river flows to further implement and enhance the goals and policies of the City's adopted Kern River Plan Element and Parkway Plan, and

water supply plans and programs. There would be no construction activities associated with this program. No new facilities would be constructed under the Proposed Program.

The Proposed Program would encourage infiltration of additional water to recharge the ~~groundwater basin, which provides water supply to the City.~~ Basin. Increased river flows would be percolated into the ~~underlying aquifer~~ Basin along the river channel and at the 2,800 Acre Recharge Facility. The Proposed Program would utilize existing well facilities within the city to extract recharged groundwater for municipal use within the city limits to support existing and future water demands.

The Proposed Program would be initiated following a favorable decision by the SWRCB on the City's application to appropriate. Once initiated, the Proposed Program is envisioned as an ~~on-going~~ ongoing, continuous, and year-round program. However, for program scoping purposes, a planning horizon to 2035 is considered in this ~~EIR~~ DEIR. This projected timeline aligns with the City's current planning efforts, including updates to the General Plan and ~~Urban Water Management Plan~~ UWMP.

The information presented in **Table 2-3** is the expected monthly distribution of water for Program use. However, the specific quantity of water available to the Kern River and the Proposed Program ~~would~~ will depend on the quantity of water awarded to the City by the SWRCB, and would further depend on annual and seasonal climatic and hydrologic conditions, as well as available storage capacity in Lake Isabella. In very dry years, all of the quantities described above may not be available for retention in instream flows of the Kern River because of diminished quantities of water accruing to the City's water rights. The quantity of water retained in the Kern River through the Proposed Program may also be constrained in dry years owing to competing municipal water-supply needs, including the City's contracted delivery obligations to water treatment plants operated by Cal Water for the benefit of residents of the city.

2.78.1 Municipal Water Use

Increased municipal water supplies derived from infiltrated Kern River flows is a key component of the Proposed Program. Water flowing in the Kern River channel and infiltrated into the ~~groundwater aquifer~~ Basin would be available for municipal use through existing wells owned by the City and other municipal water purveyors operating within the city. The use of infiltrated water from the Program would assist the City in meeting its municipal, industrial, and residential water supply needs. The City's ability to pump and distribute such infiltrated river water would depend on a number of factors, including the overall demand for instream flows in the Kern River channel, groundwater levels in the ~~basin~~ Basin, climatic and hydrologic conditions, and competing demands for water. Existing municipal wells would continue to operate to provide municipal water supplies.

The Proposed Program would provide water to address current and projected municipal groundwater demands. The Proposed Program would also provide increased recharge beneath the Kern River. This increased recharge would enable the City to increase its municipal use as needed, per its long-term demand increases. Increased quantities of recharged water would also replenish the ~~basin~~ Basin.

The recharged ~~aquifer~~Basin would also provide opportunities for groundwater extraction by other municipal and agricultural water entities for use within the City's SOI and in the region. The City may also make surplus quantities of water, above the demands of the Proposed Program, available to local water and agricultural districts on an occasional basis.

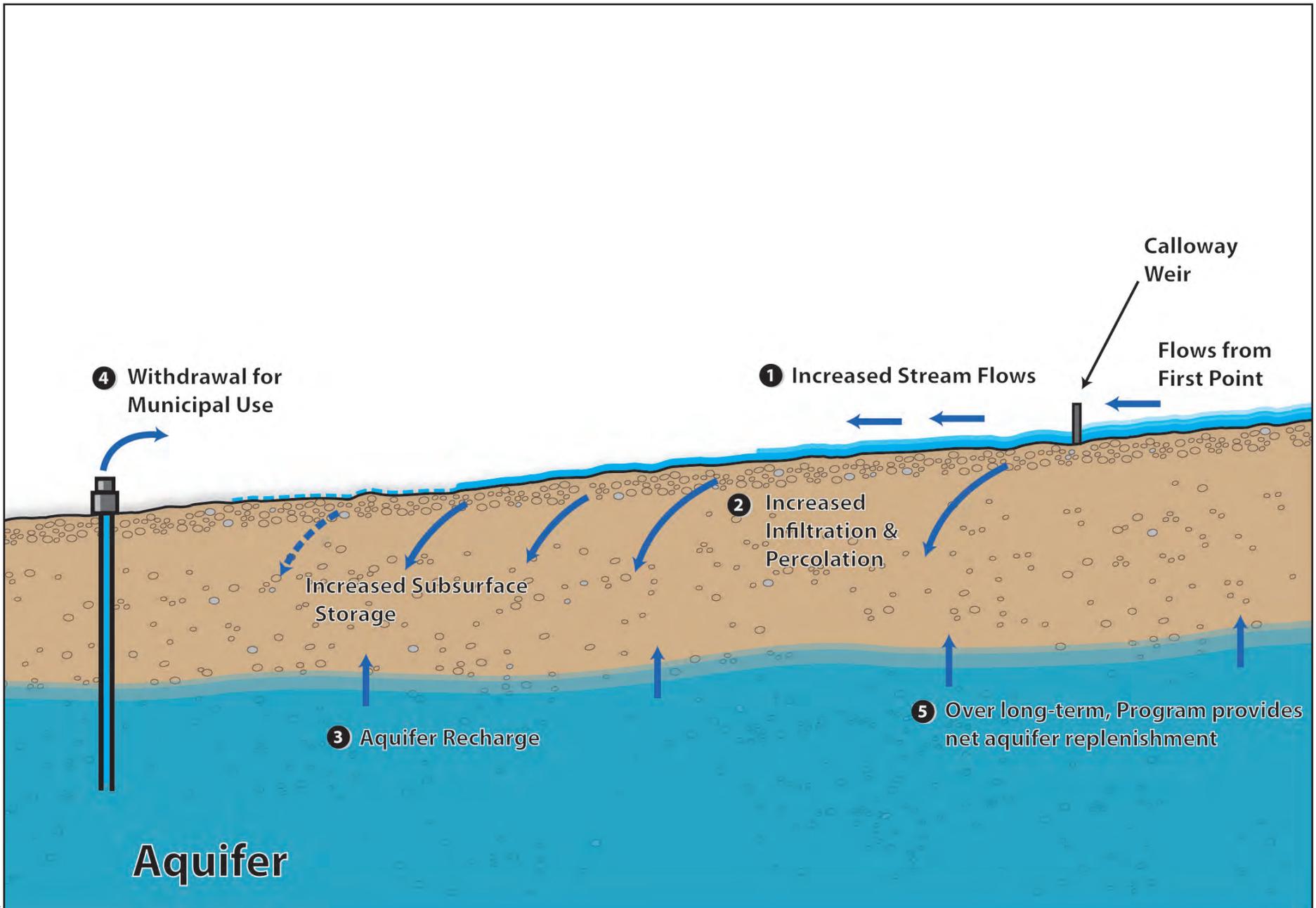


Figure 2-6
Proposed Program Process

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Table 2-3. Proposed Program Water Supplies

| | Monthly Supply (TAF) | | | | | | | | | | | | Total Annual (TAF) |
|--|----------------------|-----------|----------|-----------|----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|--------------------|
| | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| City Allocated Source 1 supply | | | | | | | | | | | | | |
| Annual Allocated Source 1 Supply ^(a) | 0 | 0 | 0 | 10 | 10 | 15 | 15 | 10 | 10 | 0 | 0 | 0 | 70 |
| Dry-Year Allocated Source 1 Supply ^(b) | 0 | 0 | 0 | 0-10 | 4-10 | 4-15 | 4-15 | 4-10 | 4-10 | 0 | 0 | 0 | 20-70 |
| <i>Median Historic Flow^(c) at Calloway + Allocated Source 1</i> | 0.1 | 0 | 0 | 10 | 10 | 15.3 | 16.5 | 10.7 | 10 | 0 | 0.1 | 0 | 73 |
| <i>Dry-Year Historic Flow at Calloway + Allocated Source 1 Dry Year</i> | 0 | 0 | 0 | 0-10 | 4-10 | 4-15 | 4-15 | 4-10 | 4-10 | 0 | 0 | 0 | 20-70 |
| Projected SWRCB water supply (Source 2) | | | | | | | | | | | | | |
| Annual Source 2 Supply ^(d) | 14.5 | 9 | 4.1 | 4.5 | 4.3 | 2.2 | 1.4 | 1.8 | 6.3 | 7.9 | 13.1 | 18.1 | 87 |
| Dry-Year Source 2 Supply ^(e) | 6.5 | 3.5 | 2.5 | 1.5 | 1 | 0 | 0 | 0.5 | 1.5 | 2.5 | 6.5 | 10 | 36 |
| Wet-Year Source 2 Supply ^(f) | 14.5-39.1 | 9-24.3 | 4.1-11.1 | 4.5-12.2 | 4.3-11.5 | 2.2-5.9 | 1.4-3.7 | 1.8-4.8 | 6.3-17 | 7.9-21.3 | 13.1-35.2 | 18.1-48.8 | 87-235 |
| <i>Median Historic Flow at Calloway + Source 2</i> | 14.6 | 9 | 4.1 | 4.5 | 4.3 | 2.5 | 2.8 | 2.5 | 6.3 | 7.9 | 13.1 | 18.1 | 90 |
| <i>Dry-Year Historic Flow at Calloway + Source 2 Dry Year</i> | 6.5 | 3.5 | 2.5 | 1.5 | 1 | 0 | 0 | 0.5 | 1.5 | 2.5 | 6.5 | 10 | 36 |
| <i>Wet-Year Historic Flow at Calloway + Source 2 Wet Year</i> | 19.5-44.1 | 11.2-26.5 | 5.1-12.1 | 5.7-13.4 | 21.7-29 | 42-45.7 | 33.4-35.8 | 19.4-22.4 | 8.9-19.6 | 11.6-25.1 | 17.5-39.7 | 21.5-52.1 | 218-365 |
| Program Total (Historic Flows + Allocated Source 1 and Source 2) | | | | | | | | | | | | | |
| <i>Median Annual Flows (with both sources)</i> | 14.6 | 9 | 4.1 | 14.5 | 14.3 | 17.5 | 17.9 | 12.5 | 16.3 | 7.9 | 13.1 | 18.1 | 160 |
| <i>Dry-Year Flows (with both sources)</i> | 6.5 | 3.5 | 2.5 | 1.5-11.5 | 5-11 | 4-15 | 4-15 | 4.5-10.5 | 5.5-11.5 | 2.5 | 6.5 | 10 | 56-106 |
| <i>Wet-Year Flows (with both sources)</i> | 19.5-44.1 | 11.2-26.5 | 5.1-12.1 | 15.7-23.4 | 31.7-39 | 57-60.7 | 48.5-50.8 | 29.4-32.4 | 18.9-29.6 | 11.6-25.1 | 17.5-39.7 | 21.5-52.1 | 288-435 |

Notes: TAF = thousand acre-feet

- (a) In dry years (when annual discharge is well below mean/median conditions—see Table 2-1), Allocated Source 1 supply may be reduced. A range of values is provided to represent a range of potential reductions in available supply.
- (b) Historic flow is characterized according to a median flow amount because of highly variable annual hydrologic conditions (see Table 2-1).
- (c) Source 2 supplies (as a water supply) are described using average monthly flow values, while historic river-flow conditions are described using median flow values, which are more appropriately used for highly variable natural-discharge conditions of the Kern River (see Table 2-1).
- (d) Dry-year Source 2 supplies are based on a historical assessment of dry-year conditions.
- (e) Wet-year Source 2 supplies are based on a historical assessment of wet-year conditions.

Source: Data compiled by City of Bakersfield, Water Department, 2011

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While the transfer of temporary surplus water is a possible outcome of the Program, the exact details of future sales or transfers of surplus water or future activities of other water suppliers and purveyors are undetermined at this time. The general impacts associated with such potential surplus water transfers are further described in Chapter 4, within the evaluation of potential cumulative effects of the Proposed Program. [Please note that Chapter 4 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.] If and when surplus water sales or transfers are better defined in terms of specific quantities, locations of use, and timing of the transfer, then further CEQA analysis may be necessary. Such analysis could occur via a tiered CEQA document from this program EIR, including in the additional project level CEQA review that will follow the SWRCB's determination of the quantity of surplus, unappropriated water on the Kern River, and prior to the City's adoption and implementation of the Program.

2.78.2 Program Implementation

The Proposed Program would primarily be accomplished through existing infrastructure and facilities on the Kern River. Under the Proposed Program, the City would monitor, control, and regulate increased streamflows in various reaches of the Kern River channel, from the Calloway Weir to the 2,800 Acre Recharge Facility.

Flow rates on the Kern River are managed by the mechanical manipulation of constructed weirs. With the exception of the First Point station, the basic function of the weirs is to raise or maintain water surface elevation in the channel to allow gravity to divert flows to specified destinations. The weirs also regulate water velocity to reduce erosion and scouring of the channel bed and banks, and to also allow the settling of sediment for later removal. For the Proposed Program, six weirs are already in place in the river channel to safely control, divert, and measure water flow. These include the Beardsley Weir, Rocky Point Weir, Calloway Weir, River Canal Weir, Bellevue Weir, and McClung Weir. Each weir is unique to its location. All of the weirs are manually operated and require in-field personnel for any change in flow rates. Several methods of flow control are used. Wooden board controlled bays of certain weirs are set for either over-pour style of flow or below-water surface openings. Some weirs have steel gates that control the flow through the bays, most generally for the submerged opening. The Beardsley and Rocky Point Weirs have "radial gates," which are designed to quickly change flow rates, provide a sluicing effect if sediment needs to be cleared, and offer long life and low maintenance.

The Proposed Program would not be operated to create or generate unsafe, sudden, or dramatic changes in the existing flow rates of the Kern River. The City would continue to closely coordinate with USACE for daily, as well as extraordinary, flow changes in the river from Lake Isabella. The City has extensive experience operating and managing the Kern River during unusual and extreme weather conditions, including where sudden storm events have produced flow rates over 20 times (10,000 cubic feet per second) the maximum flow rates expected under the Proposed Program. The flow rates and volumes projected for the Proposed Program would fall into the normal and routine category of river regulation events performed by the City, and the City does not expect the increased flows to make any difference or have any effect on storm flows or unusual, higher flow events. Changes in flow

conditions within the parameters of the Program would be relatively gradual and not noticeable to the public.

The City's operational policies give highest priority to flood control. If weather or storm events occur that substantially increase the flow of water in the river, the City would first attempt to store as much extra water as possible in Lake Isabella. The City would next spread and store as much water as possible in recharge facilities in and near the river, including the 2,800 Acre Recharge Facility. The Proposed Program would not cause a noticeable change in river flows during storm or flood events.

The water supply produced and utilized by the Proposed Program would not substantially affect river operations during dry years. In dry years, flows from the Program would likely be the only water flowing in the river channel below Calloway Weir, as that portion of the river channel would normally be dry in most years, absent the Program.

Given the increasing demands on and pumping from the ~~groundwater aquifer~~ Basin, there is little chance that the ~~aquifer~~ Basin would become "full" as a result of the Program or otherwise. ~~The aquifer underlying the Program Area~~ The Basin encompasses over 450,000 acres and is estimated to have a storage capacity of over 10,000,000 acre-feet. The ~~basin~~ Basin is deemed to be in a state of overdraft by the California Department of Water Resources (DWR 2003). As a result of projections in population growth, competing demands for water, uncertain SWP and other imported supplies, demands for water and consequently demands on groundwater may increase in the future. The ~~basin~~ Basin would have capacity for accepting increased quantities of water through recharge and spreading activities into the future. The City would continue to closely monitor ~~basin~~ Basin conditions, including by monitoring water depth levels and rates of production for wells throughout the Program Area.

2.89 Program Monitoring, Maintenance, and Adaptive Management

To implement the Proposed Program, the City would closely monitor groundwater levels in the vicinity of the Kern River to record and account for increasing groundwater levels and supplies, and to ensure that increased extractions of groundwater for municipal use are attributable to the Program.

The City and Cal Water measure depth to water in each of its wells on a monthly basis. The City prepares hydrographs of the measurements. Records of such measurements are maintained by the City and Cal Water. The information is also supplied to ID4, which uses that information and measurements from additional wells, to prepare maps and annual reports on groundwater conditions in the region. ~~The California Department of Water Resources~~ DWR also compiles and prepares groundwater table maps for the area. These combined data resources will provide an accurate and timely account of the effectiveness of the Proposed Program's contribution to and replenishment of the ~~groundwater basin~~ Basin in the region.

The hydrographic section of the City's Water Resources Department, in addition to the Kern River Watermaster, has for decades measured, recorded, verified, and published the complete record of flows on the Kern River. The City measures and will continue to measure flows of water at multiple locations, including First Point, the Beardsley Weir, the Rocky Point Weir, Calloway River Weir, River Canal Weir, the 2,800 Acre Recharge Facility (including the McClung Weir), and the river channel at Second Point. Additions, diversions, percolation rates, and flows associated with the Proposed Program would be measured by City employees on a 24-hour per day basis by on-site visual gauging while on routine river patrols. In addition, data collected from continuous water flow recording devices installed on all river weirs and diversion structures would be used to assist in verifying flows. Measurements and flow readings would be audited and confirmed by routinely scheduled streamflow measuring techniques based on generally accepted industry water-measuring standards. Groundwater extractions by turbine well pumping would be measured by industry-certified flow meters verified by Overall Pumping Efficiency ratings and meter testing. All flows would be tabulated, reviewed, verified, and recorded through the City's hydrographic section, whose current tasks include the central recordkeeping for all Kern River flows in the San Joaquin Valley. Additionally, the City would continue to conduct monitoring of biological resources, as described in Section 3.4, "Biological Resources." [Please note that Section 3.4 was developed as part of the prior 2012 DEIR and has not undergone any changes. As such, that section is not being recirculated with this revised Chapter 2, *Program Description*.]

2.89.1 Kern River Channel Maintenance Program

The City currently administers its Kern River Channel Maintenance Program (Draft EIR October 1985, Final EIR December 1985, Program adopted January 1986) to ensure that the river channel provides adequate flood protection and conveyance capacity. The purpose of the Channel Maintenance Program is to preserve storm-flow carrying capacity of the Kern River as it passes through the city. The Channel Maintenance Program involves phased removal of river sand, soil, and vegetation within the primary floodway that impedes flood flows. A maximum of 70,000 cubic yards can be removed in a year. However, far less sediment is typically removed on an annual basis (City of Bakersfield ~~1988~~1988a, 1988b). Vegetation is removed from the primary floodway and areas outside the primary floodway to convey flood flows. Mitigation for the loss of vegetation within the primary floodway is provided by riparian restoration planting activities within the secondary floodway. The Channel Maintenance Program also includes maintenance and operation of weir and diversion structures.

Implementation of the Proposed Program may result in increased river maintenance activities owing to the increased flows and subsequent vegetation growth within the river corridor. The City ~~is in the process of updating~~intends to update and amending~~amend~~ its Channel Maintenance Program to reflect and account for the Proposed Program and the potential for increased channel-maintenance activities resulting from the Program. CEQA compliance for the Channel Maintenance Program update may be required. This EIR does not include evaluation of impacts of the City's current or updated channel maintenance activities themselves; however, the potential for the Proposed Program to affect existing channel maintenance activities is addressed in this ~~EIR~~DEIR.

2.9 Intended Uses

~~As indicated above, this EIR is an informational document for decision makers as well as for the general public. CEQA requires that decision makers review and consider the EIR in their deliberations on the Proposed Program. In compliance with CEQA Guidelines sec. 15124(d), agencies with subsequent review or approval authority over the Proposed Program include the SWRCB. This is the only “responsible, trustee, and other agency” under CEQA that may use the EIR as the environmental basis of their decision to approve the City’s water rights application.~~

2.10 References

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