

HATCH AND PARENT

A PROFESSIONAL CORPORATION

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THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
** ALSO LICENSED IN NEVADAOUR FILE #
DIRECT DIAL #

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 L. ELIZABETH STRAHLESTROM

October 10, 1996

Edward Anton, Chief
 Division of Water Rights
 State Water Resources Control Board
 901 "P" Street
 Sacramento, California 95814

RE: North Kern Water Storage District v. Kern Delta Water District
 (Tulare County Superior Court Case # 96-172919)
 SUBJ: Petition to SWRCB to Revise its Declaration that the Kern River
 is Fully Appropriated; Application to Appropriate from Kern
 River by City of Bakersfield

Dear Mr. Anton:

This letter of transmittal is submitted on behalf of the City of Bakersfield (City) for two purposes. 1) petition the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1205 to revise its declaration that the Kern River is fully appropriated, and 2) accept the attached Application to Appropriate from the Kern River.

It is presently undisputed that for many decades the waters of the Kern River have been fully appropriated. However, as discussed in detail below, the City files this petition and application in anticipation that the Tulare County Superior Court *may* find, in resolving the above-referenced lawsuit involving water appropriations from the Kern River, that significant quantities of Kern River water have been forfeited to the State and thus are available for appropriation. The central issue in this lawsuit is whether Kern Delta Water District (and its predecessors-in-interest) has utilized its full paper entitlement to divert water from the Kern River. It is *possible* that the court will rule that a significant quantity of water has been forfeited back to the State because of nonuse. As one of the major appropriators on the Kern River, and the only municipal user pursuant to Water Code sections 106, 106.5, and 1460, the City submits this petition and application to appropriate in anticipation that there will be unappropriated water available on the Kern River.

BACKGROUND

The Kern River emerges from the Sierra foothills into the southern San Joaquin Valley about four miles northeast of the City of Bakersfield. It then runs across the northern aspect of the City, about twenty miles into the San Joaquin Valley eventually turning to the northwest to Tulare Lake.

Diversion and use of the water flowing in the Kern River began in earnest in the late 1860's, as various individuals began to develop the southern San Joaquin Valley for agriculture. By the 1870's, substantially all of the flow of the Kern River had been applied to various agricultural domestic or municipal uses. Competition for the pre-1914 rights to use the water of the Kern River was fierce, triggering several important legal battles.

In 1879, Henry Miller and others representing claimed riparian interest to the Kern River filed a lawsuit against James B. Haggin and other individuals and entities seeking to enjoin appropriative diversions which Miller, et al. claimed were altering the flow of the Kern River. The Haggin defendants were primarily located upstream relative to the Miller plaintiffs and exercised appropriate rights to the water of the Kern River. The appropriative diverters (defendants) won at trial, but in April 1886, the California Supreme Court reversed the trial court ruling and remanded the case for a new trial in the now famous Lux v. Haggin (1886) 69 Cal. 255, decision.

In lieu of a new trial, on July 28, 1888, the parties executed an agreement, entitled "Contract and Agreement Between Henry Miller and Others, of the First Part, and James B. Haggin and Others, of the Second Part," ("Miller-Haggin Agreement")¹ settling the pending lawsuit. (The Miller-Haggin Agreement is recorded with the Kern County Recorder beginning at Book 2, Contracts and Agreements, page 40.)

Among other things, the Miller-Haggin Agreement established two points of measurement of existing water flow on the Kern River: an upstream "First Point" and the downstream "Second Point." Further, the Miller-Haggin Agreement established an allocation regime and hierarchy for distribution of the Kern River water as between the appropriators (Haggin defendants in the Lux v. Haggin lawsuit and "James B. Haggin and Others" in the Miller-Haggin Agreement) and the riparians (Lux plaintiffs and "Henry Miller and Others" in the Miller-Haggin Agreement).

¹/The Miller-Haggin Agreement has been amended on several occasions. Any reference herein to the Miller-Haggin Agreement is meant to include the initial Agreement and any and all amendments thereto.

The Miller-Haggin Agreement did not provide for an allocation regime or distribution hierarchy *inter se* between and amongst the Haggin defendants. Following the execution of the Miller-Haggin Agreement, a dispute arose among the First Point interests as to how Kern River water would be allocated under the agreement. This dispute led to trial in the matter of Farmers Canal Company v. J.R. Simmons (1899) Kern County Superior Court No. 1901. The court decree in this action, commonly referred to as the "Shaw Decree," confirmed the validity of the Miller-Haggin Agreement and established a priority for the use of waters between parties within the First Point of diversion.

Since 1900, the First Point rights have been allocated in accordance with the Shaw Decree. Among other things, the "Shaw Decree" determined the existence, date of priority (hierarchy) and maximum rate of diversion for each of the specified individuals or entities as of August 6, 1900.

Through the first half of this century, most of the water rights to the Kern River were held by private companies. However, since 1952, North Kern Water Storage District (North Kern), and subsequently the City and Kern Delta Water District (Kern Delta), have succeeded to essentially all the rights to divert water from the Kern River at the First Point of diversion.

On October 29, 1964, the State Water Rights Board denied several applications to appropriate from the Kern River because there was no showing that unappropriated water was available on the Kern River. (In the Matter of Applications 9446, 9447, 10941, 11071, 11148, 11351, 13403, 13709, and 15440 of Buena Vista Water District and Others Decision 1196.) The SWRCB subsequently declared the Kern River to be fully appropriated on or about November 16, 1989. (In the Matter of Declaration of Fully Appropriated Stream Systems in California Order No. WR 89-25.)

NORTH KERN'S ACQUISITION, DIVERSION AND USE OF KERN RIVER WATER

North Kern is a public entity and water storage district organized and operating pursuant to California Water Code section 39000 et seq. North Kern's jurisdictional boundaries are located within Kern County.

On January 1, 1952, North Kern acquired certain rights to use Kern River water pursuant to an agreement entitled "Agreement For Use of Water Rights" ("1952 Agreement"). Pursuant to the 1952 Agreement, Kern County Land Company, Kern County Canal and Water Company, James Canal, Inc., Anderson Canal, Inc., Plunket Canal, Inc., Joyce Canal, Inc., Pioneer Canal, Inc., Lerdo Canal Company, James and Dixon Canal, Inc., and Central Canal Company, granted to North Kern, in perpetuity and subject to the terms of the 1952 Agreement,

the Shaw Decree, the Miller-Haggin Agreement and any and all other limitations or restrictions applicable by operation of law or equity, the right to use specified amounts of water accruing to the water rights to Kern River water held by the above listed companies.

The 1952 Agreement did not purport to alter in any way or modify the individual rights and priorities of allocations established under the Miller-Haggin Agreement or the Shaw Decree and North Kern agreed to utilize the rights it obtained under the 1952 Agreement in compliance with the Miller-Haggin Agreement and the Shaw Decree.

CITY'S ACQUISITION, DIVERSION AND USE OF KERN RIVER WATER

The City is a municipal corporation, located in Kern County. On April 12, 1976, City entered into a written agreement, entitled "Agreement By and Between City of Bakersfield, City of Bakersfield Water Facilities Corporation, Tenneco West, Inc., Kern Island Water Company and Kern River Canal and Irrigating Company," ("Tenneco Agreement") whereby, among other things, the City acquired certain rights to use the water of the Kern River provided for in the Miller-Haggin Agreement and the Shaw Decree from the above companies, who were successors in interest to the parties to the Miller-Haggin Agreement and the Shaw Decree. The actual conveyance of the water rights which were the subject of the Tenneco Agreement occurred on or about December 13, 1976, upon entry of the Final Judgment in Condemnation in the matter of City of Bakersfield v. Kern Island Water Company (1976) Kern County Superior Court Action No. 140616.

The City has continuously and without interruption since the date of acquisition put to reasonable beneficial use the water and water rights to the Kern River it acquired under the Tenneco Agreement, with the exception of the water and water rights subsequently conveyed to Kern Delta.

KERN DELTA'S ACQUISITION, DIVERSION AND USE OF KERN RIVER WATER

Kern Delta is a public entity and water district organized under and operating pursuant to California Water Code section 34000 et seq. Kern Delta's boundaries are located within Kern County. On June 15, 1976, the City and Kern Delta entered into a written agreement, entitled "Agreement No. 76-70 Agreement For The Sale of Kern River Water Rights and Canals By and Between City of Bakersfield and Kern Delta Water District," ("1976 Agreement") whereby Kern Delta acquired from the City certain assets, including certain rights to use the water of the Kern River arising out of the Miller-Haggin Agreement and the Shaw Decree, and subject to other terms and conditions and pre-existing agreements as set forth in the 1976 Agreement and the Tenneco Agreement. The actual conveyance of the assets which were the subject

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of the Tenneco Agreement and the 1976 Agreement occurred on or about December 13, 1976, upon entry of the Final Judgment in Condemnation in the matter of City of Bakersfield v. Kern Island Water Company (1976) Kern County Superior Court Action No. 140616.

The practical effect of the 1976 Agreement, was to immediately pass through the City to Kern Delta, a portion of the water rights previously held by Tenneco. Based on the paper entitlement of Kern Delta's predecessor's, Kern Delta succeeded to the right to use approximately 250,000 acre feet per year from the Kern River.

CURRENT DISPUTE BETWEEN THE CITY, NORTH KERN AND KERN DELTA

In 1981, a dispute arose between and among all the holders of rights to water at First Point, consisting of the City, North Kern and Kern Delta. This dispute was primarily attributable to the fact that Kern Delta had increased its diversion of Kern River water beyond the historical level of diversion of Kern Delta's predecessor's-in-interest. On paper Kern Delta has acquired sufficient rights under the Shaw Decree to support this increased level of diversion; however, it has been alleged that Kern Delta rights to divert are limited to a much smaller quantity because of historical use practices (i.e., a portion of the paper right has been forfeited by nonuse).

Since 1982, the City, North Kern and Kern Delta have executed several interim agreements pending good faith negotiations to resolve their differences. However, the perceived conflicted has only escalated and on November 21, 1995, North Kern filed the above action against Kern Delta. (A copy of the North Kern complaint is attached hereto as Exhibit "A".) On June 18, 1996, Kern Delta filed a cross-complaint against the City. The City will file its cross-complaint against Kern Delta and North Kern on October 11, 1996. (A copy of Kern Delta's cross-complaint is attached hereto as Exhibit "B". A copy of the City's cross-complaint will be forwarded under separate cover.)

In summary, at issue in the lawsuit is the breadth the rights to Kern River water Kern Delta acquired from the City in 1976. It is possible that the court may find that Kern Delta's purchased rights were limited by the partial forfeiture attributable to Kern Delta's successors-in-interest. (Smith V. Hawkins (1898) 120 Cal. 86; Lindblom v. Round Valley Water Co. (1918) 178 Cal. 450.) While on paper Kern Delta's successors-in-interest had rights to take up to approximately 250,000 acre feet per year from the Kern River, in fact, prior to Kern Delta's purchase these entities had forfeited approximately 90,000 acre feet per year by continuous nonuse.

Both North Kern and the City have asserted against Kern Delta several causes of action and theories to support this result. Even if the court finds that Kern Delta's rights are

limited, one result may be that the lower-in-priority Shaw Decree rights simply swell to capture this "released" water. Another possibility is that the court will find that these forfeited rights revert back to the state for subsequent appropriation under the provisions of the Water Code. The City anticipates that as much as 90,000 acre feet of water per year (and perhaps more) may become available for appropriation on the Kern River as a result of this dispute between it, North Kern and Kern Delta. The City submits this petition and application in anticipation of this possibility.

Currently, this matter is set for trial in October, 1997.

REVISED DECLARATION OF STATUS OF KERN RIVER

The City acknowledges that pursuant to Water Code section 1206 and SWRCB Order WR 89-25, the Kern River is fully appropriated and the SWRCB will not accept any application for a permit on the Kern River. However, the City submits this petition and application pursuant to Water Code section 1205 in anticipation of the court's ruling in the above referenced lawsuit. Should the court find that, in effect, there is water available for appropriation on the Kern River, the City requests that the SWRCB immediately provide for notice and a hearing to revise the fully appropriated status of the Kern River. (Wat. Code § 1205(c).) The City would then expect the SWRCB to formally accept its application to appropriate forwarded with this correspondence and acknowledge the City's priority right to the unappropriated water. (See Wat. Code §§ 106, 106.5, 1460.)

APPROPRIATION OF AVAILABLE SURPLUS

The enclosed application requests 100,000 acre-feet to meet the City's existing and anticipated future demand. Given projected growth patterns (population growth from 215,000 to 525,000 by the year 2030) and the City's current water supply, the proposed increased appropriation is necessary to meet the present and future municipal needs of the City's customers, including such uses as municipal, recreation, irrigation and groundwater replenishment. The City's application is entitled to priority status. (Wat. Code § 1460.) The City's existing distribution facilities are sufficient to appropriate the requested water. No new construction of any kind is necessary to accomplish the additional appropriation.

Because of the present status of the Kern River, there are no current filings on the river. Indeed, because the Kern River was essentially fully appropriated prior to 1914, most of the rights on the River are either riparian or pre-1914 appropriative rights.

As a municipal corporation charged with the duty to obtain an adequate wholesome supply for its existing and future customers, the City is responding to the anticipated supply needs by attempting to become self-sufficient in meeting its water requirements. The

proposed project will provide a secure and reliable water supply for the City's existing and future water users.

ENVIRONMENTAL CONSIDERATIONS

In the modern age of water development, virtually any use of water can trigger environmental review. However, in this instance, the City proposes to utilize existing diversion structures and distribution lines for all its water diversions. Since no new construction is contemplated, and the fact that the Kern River is currently considered fully appropriated, the environmental impacts associated with this application should be minor and of no consequence.

PUBLIC INTEREST

As a municipal corporation, the City's entire water supply is impressed with a public use. Moreover, the City provides water solely for municipal uses within its municipal boundaries. As such, the use is entitled to preference under the Water Code. (Water Code section 106.)

As proposed by the City, the project will not impair existing uses, permitted or otherwise. Available yield from the Kern River system remains as it was, however, the City rather than Kern Delta will be the entity entitled to divert this available supply. The proposed project will serve to maximize the utilization of all water available consistent with the water policy of this state. (Allen v. California Water & Telephone Co. (1946) 29 Cal.2d 466 [176 P.2d 8].) Finally, because the project can be implemented without additional construction or additional facilities of any kind, the environmental impacts are expected to be minimal. Accordingly, the project is within the public interest. (See Wat. Code §§ 106, 106.5, 1460.)

CONCLUSION

As a municipal corporation charged with the duty to provide a safe and wholesome reliable water supply for its customers, the City is requesting that the SWRCB maintain this petition to revise the fully appropriated status of the Kern River until such time as the court makes its final ruling in the above referenced matter. If the court finds that there is unappropriated water on the Kern River, the City requests the SWRCB conduct proceedings pursuant to Water Code section 1205(c) to revise the status of the Kern River. Concurrently with these proceedings, the City would then request that the SWRCB approve the City's application to appropriated from the Kern River in its entirety. Of course, the City is willing to provide whatever additional information the SWRCB deems necessary to appropriately evaluate this

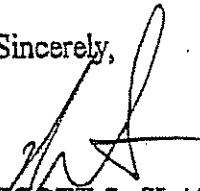
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petition and application and to assist in the environmental review process should environmental analysis be required.

Sincerely,



SCOTT S. SLATER
ROBERT J. SAPERSTEIN
For HATCH AND PARENT

SSS:ROB:gml

Enclosure

cc: Gene Bogart
Judy Skousen

93809.13334.22

(Check one box only) APPLICATION TO APPROPRIATE WATER BY PERMIT
OR
 REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION*

(If this form is used to register a small domestic use appropriation, the terms "application" and "applicant" herein, and in related forms, shall mean "registration" and "registrant".)

Application No. _____
(Leave blank)

1. APPLICANT

City of Bakersfield (Name of applicant) (805) 326 - 3715 (Telephone number where you may be reached between 8 a.m. and 5 p.m. - includes area code)
Water Resources Department
1000 Buena Vista Road, Bakersfield, CA 93311
(Mailing address) (City or town) (State) (Zip code)

2. SOURCE

a. The name of the source at the point of diversion is Kern River
(If unnamed, state that it is an unnamed stream, spring, etc.)
tributary to Tulare Lake Basin
b. In a normal year does the stream dry up at any point downstream from your project? YES NO If yes, during what months is it usually dry? From _____ to _____
What alternate sources are available to your project should a portion of your requested direct diversion season be excluded because of a dry stream or nonavailability of water? Ground water

3. POINTS OF DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of Kern

b. List all points giving coordinate distances from section corner or other fix as allowed by Board regulations L & California Coordinate System

	Point to which (40-acre subdivision)	Section	Township	Range	Base and Meridian
See 3.b. attached	1/4 of 1A				
	1/4 of 1A				
	1/4 of 1A				

c. Does applicant own the land at the point of diversion? YES NO See 3.c. and d. attached
d. If applicant does not own the land at point of diversion, state name and address of owner and what steps have been taken to obtain right of access: _____

4. PURPOSE of USE, AMOUNT and SEASON

a. In the table below, state the purpose(s) for which water is to be appropriated, the quantities of water for each purpose, and the dates between which diversions will be made. Use gallons per day if rate is less than 0.025 cubic foot per second (approximately 16,000 gallons per day). Purpose must only be "Domestic" for registration of small domestic use.*

PURPOSE OF USE (Irrigation, Domestic, etc.)	DIRECT DIVERSION				STORAGE		
	QUANTITY		SEASON OF DIVERSION		AMOUNT	COLLECTION SEASON	
	RATE (Cubic foot per second or gallons per day)	AMOUNT (Acre-foot per year)	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)	Acre-foot per annum	Beginning Date (Mo. & Day)	Ending date (Mo. & Day)
Municipal)						
Recreation)						
Irrigation)	2,000 cfs	See 4.a. attached				
Groundwater)	100,000	Jan. 1	Dec. 31	100,000	Jan. 1	Dec. 31
Replenishment)				Groundwater storage		
			TOTAL AMOUNT			TOTAL AMOUNT	

b. Total combined amount taken by direct diversion and storage during any one year will be 100,000 acre-foot.

* Not to exceed 4,500 gallons per day by direct diversion or 10 acre-foot per annum by storage.

a. IRRIGATION: Maximum area to be irrig. _____ one year is 30,000 acres.

CROP	ACRES	METH. OF IRRIGATION (sprinklers, flooding, etc.)	ACRE-FEET PER YEAR	NORMAL SEAF	
				Beginning date	El.
Various		See 5. attached			

b. DOMESTIC: Number of residences to be served is _____. Separately owned? YES NO
 Total number of people to be served is _____, Estimated daily use per person is _____ (Gallons per day)
 Total area of domestic lawns and gardens is _____ square feet.
 Incidental domestic uses are _____ (Dust control area, number and kind of domestic animals, etc.)

c. STOCKWATERING: Kind of stock _____ Maximum number _____ Describe type of operation: _____
 (Feed lot, dairy, range, etc.)

d. RECREATIONAL: Type of recreation: Fishing Swimming Boating Other

e. MUNICIPAL: (Estimated projected use)

POPULATION		MAXIMUM MONTH		ANNUAL USE		
5-year periods until use is completed		Average daily use per capita (gal)	Rate of diversion (cfs)	Average daily use (gal. per capita)	Acre-foot (per capita)	Total acre-foot
PERIOD	POP.					
Present	215,000					
2030	525,000					

Month of maximum use during year is _____, Month of minimum use during year is _____

f. HEAT CONTROL: The total area to be heat protected is _____ net acres.
 Type of crop protected is _____
 Rate at which water is applied to use is _____ gpm per acre.
 The heat protection season will begin about _____ and end about _____ (Date)

g. FROST PROTECTION: The total area to be frost protected is _____ net acres.
 Type of crop protected is _____
 Rate at which water is applied to use is _____ gpm per acre.
 The frost protection season will begin about _____ and end about _____ (Date)

h. INDUSTRIAL: Type of industry is _____
 Basis for determination of amount of water needed is _____

i. MINING: The name of the claim is _____ Patented Unpatented
 The nature of the mine is _____ Mineral to be mined is _____
 Type of milling or processing is _____
 After use, the water will be discharged into _____ (Name of stream)
 in _____ 1/4 of _____ 1/4 of Section _____, T _____, R _____, B. & M.
 (40-acre subdivision)

j. POWER: The total fall to be utilized is _____ feet. The maximum amount of water to be used through the penstock is _____ cubic feet per second. The maximum theoretical horsepower capable of being generated by the works is _____ kilowatts at _____ % efficiency.
 (Cubic feet per second x fall = E.F.) (Hp x 0.746 x efficiency)
 After use, the water will be discharged into _____ (Name of stream)
 in _____ 1/4 of _____ 1/4 of Section _____, T _____, R _____, B. & M. FERC No. _____
 (40-acre subdivision)

k. FISH AND WILDLIFE PRESERVATION AND/OR ENHANCEMENT: YES NO If yes, list specific species and habitat type that will be preserved or enhanced in Item 17 of Environmental Information form WR 1-2.

l. OTHER: Describe use: _____ Basis for determination of amount of water needed is _____

- a. Does applicant own the land where water will be used? (All joint owners should include their names and sign the application.)
 If applicant does not own land where water will be used, give name and address of owner and state what have been made with the owner.

The water will be used in the San Joaquin Valley portion of Kern County.

b.

USE IS WITHIN (40-acre subdivision)	SECTION	TOWNSHIP	RANGE	BASE & MERIDIAN	IRRIGATED	
					Number of acres	Presently irrigated (Y/N)
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						
1/4 of 1/4						

(If area is unsurveyed, state the location as if lines of the public land survey were projected, or contact the Division of Water Rights. If space does not permit listing all 40-acre tracts, include on another sheet or state sections, townships and ranges, and show detail on map.)

7. DIVERSION WORKS See 7. attached.

- a. Diversion will be by gravity by means of existing diversion dams described in 3.b.
(Dam, pipe in unobstructed channel, pipe through dam, siphon, weir, gate, etc.)
- b. Diversion will be by pumping from _____ Pump discharge rate _____ Horsepower _____
(Sump, offset well, channel, reservoir, etc.) (cfs or gpd)
- c. Conduit from diversion point to first lateral or to offstream storage reservoir:

CONDUIT (Pipe or channel)	MATERIAL (Type of pipe or channel lining) <small>(Indicate if pipe is buried or not)</small>	CROSS SECTIONAL DIMENSION (Pipe diameter or ditch depth and top and bottom width)	LENGTH (Feet)	TOTAL LIFT OR FALL		CAPACITY (Estimate)
				Feet	ft. or in.	
Existing Facilities						

- d. Storage reservoirs: (For underground storage, complete Supplement 1 to WRI, available upon request.)

Name or number of reservoir, if any	DAM			RESERVOIR			
	Vertical height from downstream toe of slope to spillway level (ft.)	Construction material	Dam length (ft.)	Freeboard Dam height above spillway crest (ft.)	Approximate surface area when full (acres)	Approximate capacity (acre-feet)	Maximum water depth (ft.)
Existing Facilities							

- e. Outlet pipe: (For storage reservoirs having a capacity of 10 acre-feet or more.)

Diameter of outlet pipe (inches)	Length of outlet pipe (feet)	FALL		HEAD (Vertical distance from spillway to outlet pipe in reservoir in feet)	Estimated storage below outlet pipe entrance (dead storage)
		Vertical distance between entrance and exit of outlet pipe in feet	Vertical distance between entrance and exit of outlet pipe in feet		
Existing Facilities					

- f. If water will be stored and the reservoir is not at the point of diversion, the maximum rate of diversion to offstream storage will be _____ cfs. Diversion to offstream storage will be made by: Pumping Gravity

8. COMPLETION SCHEDULE See 8. attached.

- a. Year work will start "Existing" b. Year work will be completed _____
 c. Year water will be used to the full extent intended 2010 d. If completed, year of first use 2000

9. GENERAL

- a. Name of the post office most used near the proposed point of diversion is Bakersfield
- b. Does any part of the place of use comprise a subdivision on file with the State Department of Real Estate? Yes NO
 If yes, state name of the subdivision _____
 If no, is subdivision of these lands contemplated? YES NO
 Is it planned to individually meter each service connection? YES NO If yes, When? _____
- c. List the names and addresses of diverters of water from the source of supply downstream from the proposed point of diversion: Buena Vista Water Storage District, Hacienda Water District,
Tulare Lake Basin Water Storage District.
- d. Is the source used for navigation, including use by pleasure boats, for a significant part of each year at the point of diversion, or does the source substantially contribute to a waterway which is used for navigation, including use by pleasure boats? YES NO If yes, explain: _____

10. EXISTING WATER RIGHT

Do you claim an existing right for the use of all or part of the water sought by this application? YES NO
 If yes, complete table below:

Nature of Right (riparian, appropriative, prescriptive)	Year of First Use	Purpose of use made in recent years including amount, if known	Season of Use	Source	Location of Point of Diversion
Pre-1914 appropriation	1870	Irrigation	All Yr.	Kern River	
Overlying groundwater	1961	Municipal	All Yr.	Groundwater Basin	

11. AUTHORIZED AGENT (Optional)

With respect to all matters concerning this water right application those matters designated as follows:

Scott S. Slater and Robert J. Saperstein
of Hatch and Parent on behalf of the (805) 963-7000
(Name of agent) City of Bakersfield (Telephone number of agent between 8 a. m. and 5 p. m.)
21 E. Carrillo St., Santa Barbara, CA 93101
(Mailing address) (City or town) (State) (Zip code)

is authorized to act on my behalf as my agent.

12. SIGNATURE OF APPLICANT

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.
 Dated October 10, 1996, at Santa Barbara, California

Ms.
 Miss. Mrs. _____


(Signature of applicant)

(If there is more than one owner of the project, please indicate their relationship.)

Scott S. Slater, Robert J. Saperstein
of Hatch and Parent, on behalf of the City
 Ms. Mr. _____ of Bakersfield
 Miss. Mrs. _____
(Signature of applicant)

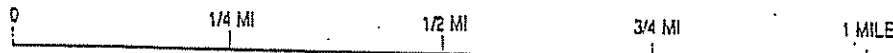
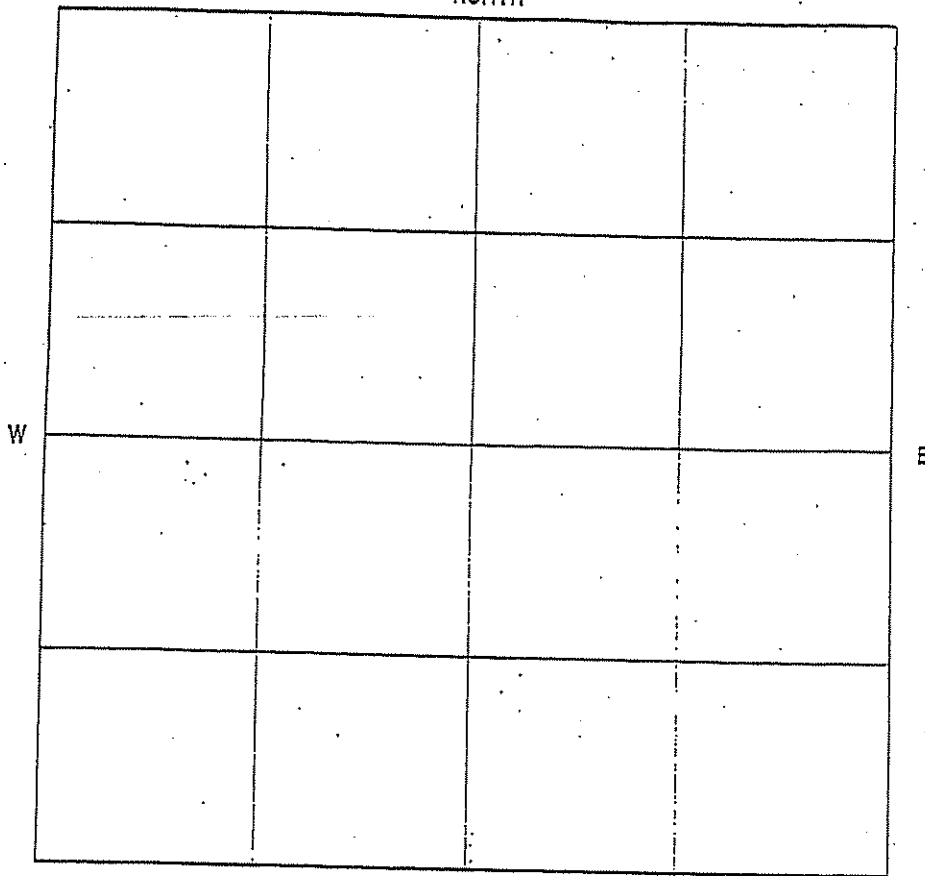
Additional information needed for preparation of this application may be found in the Instruction Booklet entitled "HOW TO FILE AN APPLICATION TO APPROPRIATE WATER IN CALIFORNIA". If there is insufficient space for answers in this form, attach extra sheets. Please cross-reference all remarks to the numbered item of the application to which they may refer. Send original application and one copy to the STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS, P. O. Box 2000, Sacramento, CA 95810, with \$100 minimum filing fee.

NOTE:

If this application is approved for a permit, a minimum permit fee of \$100 will be required before the permit is issued. There is no additional fee for registration of small domestic use.

SECTION(S) _____ HIP _____ RANGE _____ B. _____

NORTH



- (1) Show location of the stream or spring, and give name.
- (2) Locate and describe the point of diversion (i. e. the point at which water is to be taken from the stream or spring) in the following way: Begin at the most convenient known corner of the public land survey, such as a section or quarter section corner (if on unsurveyed land more than two miles from a section corner, begin at a mark or some natural object or permanent monument that can be readily found and recognized) and measure directly north or south until opposite the point which it is desired to locate; then measure directly east or west to the desired point. Show these distances in figures on the map as shown in the instructions.
- (3) Show location of the main ditch or pipeline from the point of diversion.
- (4) Indicate clearly the proposed place of use of the water.

14. SUPPLEMENTAL INFORMATION

- a. If you are applying for a permit, Environmental Information form WR 1-2 should be completed and attached to this form.
- b. If you are registering a small domestic use, Fish and Game Information form WR 1-3 should be completed and attached to this form.
- c. If you are applying for underground storage, Supplement 1 to WR 1 (available upon request) should be completed and attached to this form.

3. Points of Diversion
b.

<u>Name</u>	<u>Coordinate Distances from Section Corner</u>	<u>Point is Within</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Base and Meridian</u>
Lake Isabella	1400 feet east & 200 ft. north of S.W. Cor. Sec. 19.	S.E. 1/4 of S.W. 1/4	19	26S.	33E.	M.D.
Hart Park	300 ft. east & 1100 ft. north of S.W. Cor. Sec. 31.	S.W. 1/4 of S.W. 1/4	31	28S.	29E.	M.D.
Lake Ming	100 ft. west & 300 ft. north of S.E. Cor. Sec. 33.	S.E. 1/4 of S.E. 1/4	33	28S.	29E.	M.D.
Beardsley Weir	2100 ft. east & 500 ft. south of N.W. Cor. Sec. 10.	N.E. 1/4 of N.W. 1/4	10	29S.	28E.	M.D.
Rocky Point Weir	2500 ft. east & 2050 ft. north of S.W. Cor. Sec. 9.	N.E. 1/4 of S.W. 1/4	9	29S.	28E.	M.D.
Calloway River Weir	1700 ft. west & 600 ft. north of S.E. Cor. Sec. 13.	S.W. 1/4 of S.E. 1/4	13	29S.	27E.	M.D.
Kern River Canal Diversion Weir	350 ft. east & 1900 ft. south of N.W. Cor. Sec. 33.	S.W. 1/4 of N.W. 1/4	33	29S.	27E.	M.D.
Bellevue Weir	400 ft. west & 400 ft. south of N.E. Cor. Sec. 1.	N.E. 1/4 of N.E. 1/4	1	30S.	26E.	M.D.
Kern River (2800-acre) Spreading Weir	900 ft. west & 2700 ft. north of S.E. Cor. Sec. 9.	S.E. 1/4 of N.E. 1/4	9	30S.	26E.	M.D.

c. and d.

City either owns the land at the point of diversion or has legal access to the point of diversion.

SUPPLEMENT OF APPLICATION TO APPROPRIATE
BY THE CITY OF BAKERSFIELD

4.a. Purpose of Use, Amount and Season

All use historically and currently is for irrigation and replenishment and storage in the underlying groundwater basin of the San Joaquin Valley portion of Kern County for subsequent extraction and use. Diversion rates for such uses can be as much as 2,000 cubic feet per second (cfs), and 100,000 acre-feet per year, including storage in Lake Isabella. The diversion season is from January 1 through December 31. Storage at Lake Isabella can be as much as 570,000 acre-feet. The storage season is January 1 through December 31, although periodic releases are made to reduce stored water to provide storage space for flood control purposes in Lake Isabella. However, future uses of such water will include municipal, industrial, domestic and other uses by the City of Bakersfield.

5. Justification of Amount

The City of Bakersfield has entered into long-term agreements to annually supply a basic quantity of 70,000 acre-feet of irrigation water to four agricultural water districts -- North Kern Water Storage District, Cawelo Water District, Kern-Tulare Water District and Rag Gulch Water District. The City is also the successor to a long-term agreement to supply an average of at least 10,000 acre-feet per year to the Rosedale-Rio Bravo Water Storage District which spreads the water for groundwater replenishment and subsequently recovers for irrigation through wells in the district.

In addition, each of the above five districts has rights through their agreements to purchase additional water from the City when available. Also, the James-Pioneer Improvement District of the North Kern Water Storage District has rights under an agreement with the City to purchase irrigation or replenishment water when available.

The City is also the successor to agreements with Kern County to supply water to Hart Park and Lake Ming.

7. Diversion Works

See the map attached. (The map is a reproduction of Plate 5 in Volume I of the September 29, 1975 Final Environmental Impact Report showing the canal system acquired by the City of Bakersfield from Tenneco West, on file with the applicant.)

8. Completion Schedule

All facilities were completed and in operation long before the City of Bakersfield acquired the water rights and property from Tenneco West, Inc. in December 1976, and most of the facilities have been in operation for more than 100 years.

One improvement was completed more recently to enhance and formalize the long historic practice of spreading water for groundwater replenishment at the City's 2,800-acre water spreading facility astride the Kern River between Renfro Road and Interstate Highway 5. This is described in the two volumes of the Draft Environmental Impact Report dated February 10, 1983, and Comments and Responses to Draft Environmental Impact Report dated August 9, 1983, copies of which are on file with the applicant.

94206.1:3334.22

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
901 P Street, Sacramento
P. O. Box 2000, Sacramento, CA 95812-2000

APPLICATION TO APPROPRIATE WATER BY PERMIT
ENVIRONMENTAL INFORMATION

(THIS IS NOT A CEQA DOCUMENT)

APPLICATION NO. _____
(leave blank)

The following information will aid in the environmental review of your application as required by the California Environmental Quality Act (CEQA). IN ORDER FOR YOUR APPLICATION TO BE ACCEPTED AS COMPLETE, ANSWERS TO THE QUESTIONS LISTED BELOW MUST BE COMPLETED TO THE BEST OF YOUR ABILITY. Failure to answer all questions may result in your application being returned to you, causing delays in processing. If you need more space, attach additional sheets. Additional information may be required from you to amplify further or clarify the information requested in this form.

PROJECT DESCRIPTION

1. Provide a description of your project, including but not limited to type of construction activity, structures existing or to be built, area to be graded or excavated and project operation, including how the water will be used.
The City of Bakersfield's existing project stores water in Lake Isabella,
which water is subsequently released and diverted at various locations
identified in Attachment 3.b. of WRI for delivery to irrigation areas or
groundwater storage in the San Joaquin Valley portion of Kern County. The
current application is to appropriate water to supplement the existing Kern
River supply to the City's existing project.

public agency be preparing the environmental document for your project:

If necessary, the City of Bakersfield will prepare the environmental documents for the project.

Note: When completed, please submit a copy of the final environmental document (including notice of determination) or notice of exemption to the State Water Resources Control Board. Processing of your water right application cannot proceed until such documents are submitted.

5. Will your project, during construction or operation, generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or cause erosion, turbidity or sedimentation? No

If so, explain: _____

If you answered yes or you are unsure of your answer, contact your local Regional Water Quality Control Board for the following information (See attachment for address and telephone number):

Will a waste discharge permit be required for your project? No

Person contacted _____ Date of contact _____

What method of treatment and disposal will be used? None

6. Have any archeological reports been prepared on this project, or will you be preparing an archeological report to satisfy another public agency? _____

Do you know of any archeological or historic sites located within the general project area? _____ If so, explain: _____

Literature source: Mayer, K.E., and W.F. Lauder, Jr., (eds). 1988. A Guide to Wildlife Habitats of California. California Department of Forestry and Fire Protection, Sacramento. 166 pp. (Note: You may view a copy of this document at our public counter at the address given at the top of this form or you may purchase a copy by calling the California Department of Fish and Game, Wildlife Habitat Relationships (WHR) Program, at 916/653-7203)

9. Provide below an estimate of the type, number, and size (trunk/stem diameter at chest height) of trees and large shrubs that are planned to be removed or destroyed due to construction and operation of your project. Consider all aspects of your project, including diversion structures, water distribution and use facilities, and changes in the places of use due to additional water development.

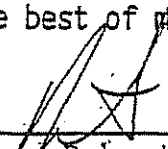
FISH AND WILDLIFE CONCERNS

10. Identify the typical species of fish which occur in the source(s) from which you propose to divert water and discuss whether or not any of these fish species or their habitat has been or would be affected by your project (Note: See footnote denoted by * under Question 11 below):

CERTIFICATION

I hereby certify that the statements I have furnished above and in the attached exhibits are complete to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date October 10, 1996 Signature _____


Scott S. Slater, Robert J. Saperstein
for Hatch and Parent, on behalf of the
City of Bakersfield

UNDERGROUND STORAGE SUPPLEMENT
TO APPLICATION TO APPROPRIATE WATER BY PERMIT

1. State amount of water to be diverted to underground storage from each point of diversion in Item 3b of form WR1.

- a. Maximum Rate of diversion (1) 2,000 c.f.s. (2) acre-feet (3) dis Spreading in river bed upstream
b. Maximum Annual Amount (1) 100,000 (2) acre-feet (3) acre-feet of Kern River (2,800 acre) spreading weir and

2. Describe any works used to divert water to offstream spreading grounds or injection wells not identified in Item 7 of form WR1. ing weir and
See 3.b. attached to WR-1 diversion to spreading grounds at
Kern River (2,800 acre) weir.

3. Describe spreading grounds and identify its location and number of acres or location of upstream and downstream limits if onstream.

See 8 attached to WR-1

4. State depth to groundwater table in spreading grounds or immediate vicinity.

65 feet below ground surface on August 1975 measured at a point located within the SE 1/4 of NW 1/4 of
Section 9 T 30S R 26E B&M.

5. Give any historic maximum and or minimum depths to the groundwater table in the area.

Location T30S/R26E-9 Maximum 180 feet below ground surface on 1992 (date)
Location T30S/R26E-9 Minimum 60 feet below ground surface on 1983 (date)

6. Describe proposed spreading operation. See Environmental Impact Report, February 10, 1983
report. SCH B2090305 "2,800 Acres Groundwater Recharge Facility" City of Bakersfield.

7. Describe location, capacity and features of proposed pretreatment facilities and/or injection wells. Desilting basin at
headworks. No other treatment at this time.

8. Reference any available engineering reports, studies or data on the aquifer involved. See Environmental Impact Report,
February 10, 1983 "2,800 Acres Groundwater Recharge Facility" City of Bakersfield.

9. Describe underground reservoir and attach a map or sketch of its location. See No: 8 above.

10. State estimated storage capacity of underground reservoir. 2,000,000 acre-feet

11. Describe existing use of the underground storage reservoir and any proposed change in its use. Storage and retrieval
of Kern River, Federal CVP and CAL SWP water for municipal, industrial,
recreation and irrigation use.

12. Describe the proposed method and location of measurement of water placed into and withdrawn from underground storage.

Spreading and percolation measured by 24-hour recorder operation of gravity
flow measuring structures, verified with routine stream flow metering
techniques. Withdrawals by turbine well pumping through propeller or turbine
type meters, verified by OPE ratings and meter testing.