



Water Audit California
A PUBLIC BENEFIT CORPORATION

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June 20, 2025

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
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Submitted via email to SGMA-Kern@waterboards.ca.gov

RE: Water Audit California Comment re Probationary designation for the Kern County Subbasin under the Sustainable Groundwater Management Act (SGMA).

To the State Water Resources Control Board,

Water Audit California (“Water Audit”) is a California public interest corporation with a mission of advocating for the public trust. We comment on the assertion in the proposed Kern County Groundwater Sustainability Plan (“GSP”) that there is no evidence of depletion of surface water by extraction of ground water.

Water Audit respectfully submits that the Arvin Community Services District, City of Bakersfield, California Water Service, City of Wasco, and City of Shafter have failed to disclose the adverse impacts that their groundwater extraction is having on interconnected surface waters, thereby causing injury to the public trust and its biological components. California Water Service extracts a substantial portion of Kern County’s water from groundwater wells—approximately 36% of the water supply via 69 active wells in the surrounding area. (Water Association of Kern County. Water in Kern County. <https://www.wakc.com/water-overview/kern-county/>; see also attached Figure 2 Active Wells in the KRGSA.)

On November 30, 2022, Water Audit became part of the plaintiff team that seeks to restore public trust flows to the Bakersfield reach of the Kern River. (See Superior Court of the State of California in and for the County of Kern, [*Bring Back the Kern et al., v. City of Bakersfield, et al.*](#), Case No.: BCV-22-103220; [*Bring Back the Kern v. City of*](#)

[Bakersfield \(2025\) 110 Cal.App.5th 322](#); see also California Supreme Court, Case Nos. S285481 and S290840.)

Pursuant to the public trust doctrine and Fish & Game Code, section 5937, the litigation seeks sufficient flows downstream of a series of weirs in the Kern River to keep fish in good condition.

The court has recognized that the operation of the Kern River frequently totally dries the watercourse.

Plaintiffs' contend that a failure to issue the preliminary injunction will almost certainly result in a completely dry, dead river channel which has been witnessed by the City of Bakersfield's residents and visitors the majority of time during the past few decades. (See, e.g., Dec. of Love, parag. 4; Damian, parag. 3; Mayry, parag. 3; and McNeely, parag. 3.) Plaintiffs' position is simple: no water in the river means no aquatic life, including fish. In addition, declarations filed in support of the moving papers establish that a dry river greatly reduces other forms of life such as birds. (See, e.g., Dec. of Love, parag. 3-10 and McNeely, parag. 11.) The declarations also note that the quality of life for Bakersfield's residents and visitors suffer without a flowing river, such as when the Kern River Parkway Bike Trail has no actual river. (See, e.g., Dec. of Damian, parag. 3, 9; Mayry, parag. 7-12; McNeely, parag. 11.) Therefore, it appears that significant harm would result to the general population and the environment if the injunction is not issued.

(see [October 13, 2023 Ruling on Plaintiffs' Motion for Preliminary Injunction](#), pp. 14-15, Superior Court of the State of California in and for the County of Kern, *Bring Back the Kern et al., v. City of Bakersfield, et al.*, Case No.: BCV-22-103220.)

Water Audit has learned that water flowing in the Kern River that is essential to preservation of the public trust is diverted from the natural watercourse into groundwater recharge basins. Thereafter the recharged groundwater is pumped for beneficial uses.

Groundwater aquifers are often hydrologically connected to surface water flowing through stream channels. The recharge basins are areas determined to have such connectivity. When groundwater is pumped from a well, it creates a localized depression in the water table, known as a "cone of depression". As pumping continues, the cone of depression expands downward and outward. If the falling water table occurs in proximity to stream, it can deplete flows by either reducing natural groundwater inputs to the stream or by increasing infiltration of surface water into the subsurface. In addition to the injurious cycle of diversion, recharge and extraction, it is a reasonable

hypothesis that the extractions directly cause diminution of flows. In both instances, the extractions are subject to inquiry pursuant to the public trust doctrine. (See *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844 237 Cal.Rptr.3d 393.)

The Fifth Circuit District Court of Appeal has held that a trial is necessary to allocate beneficial and environmental flows.

Since the reasonable use requirement applies to all uses of water in the state—including in-stream public trust uses like the one envisioned by section 5937—... [o]n remand, the court must determine whether and to what extent using the waters of the Kern River to keep fish in good condition is a reasonable and beneficial use of water...

[\(April 2, 2025, Fifth Appellate District Opinion](#), p. 17, *Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322.)

A decision by the DWR founded on the premise that no injury is occurring would be contradictory the courts' findings, and tend to moot the judicial process, or at the least complicate evidentiary inquiry. A conclusion to accept the GSP as submitter would be premature and ill-advised, ratifying injury to the environment that SGMA is intended to avoid.

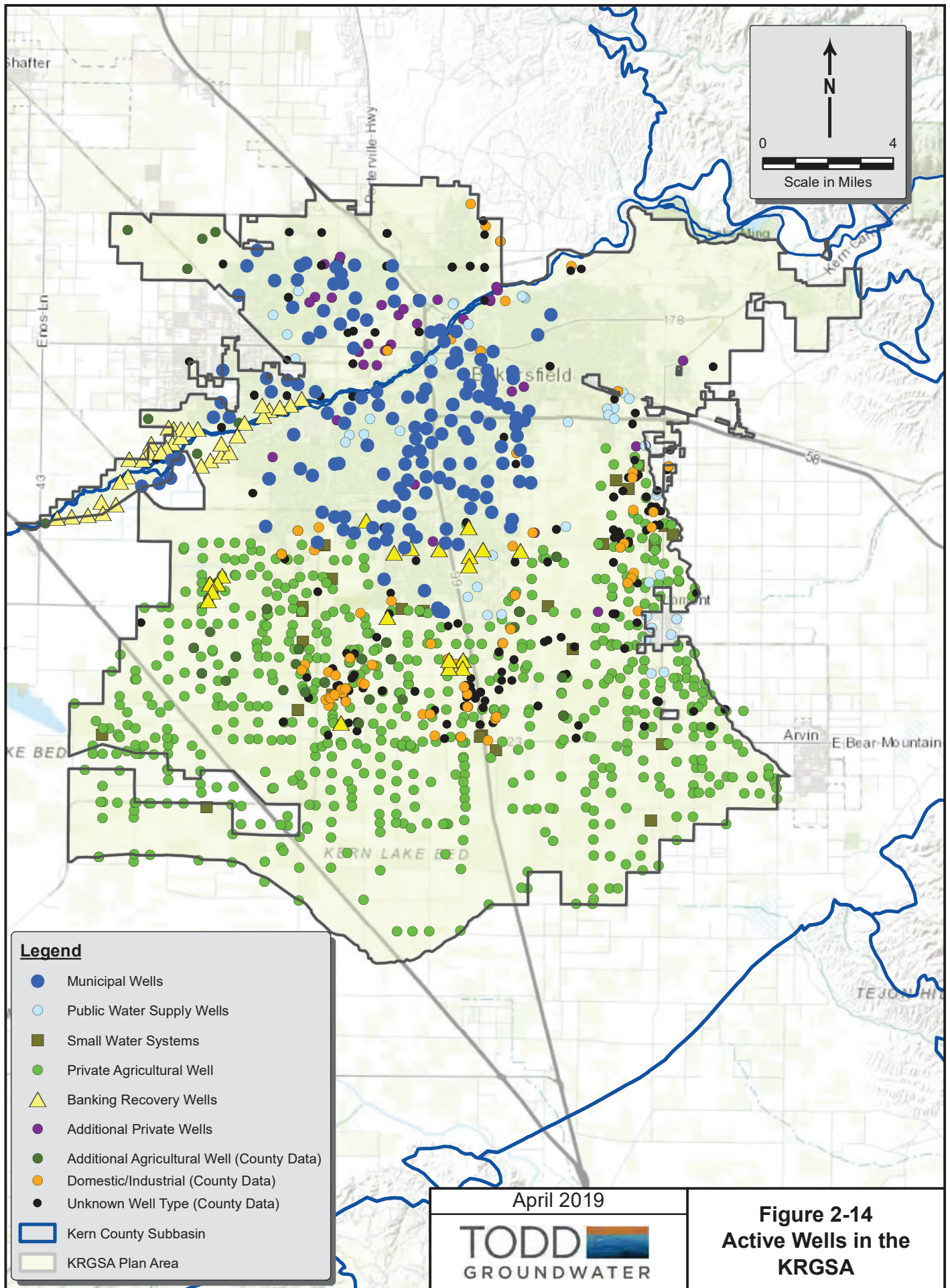
Water Audit respectfully requests the opportunity to comment and make a presentation on these matters at the next public hearing, which we understand is presently scheduled for September 17, 2025.

Respectfully,



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cc: see attached list



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