

# The Sunday Californian

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# WHERE DOES THE RIVER GO?

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A group of skateboarders scoot along the Kern River Parkway bike path through Beach Park along the dry Kern River channel. **CASEY CHRISTIE / THE CALIFORNIAN**

**Lois Henry** CALIFORNIAN COLUMNIST  
All stories by Californian columnist Lois Henry

If you're like most people in Bakersfield getting to and from work, ferrying kids, doing your shopping, you've probably gotten to the point you no longer even notice that big, bone-dry ditch running through town. You likely cross several times a day. And it never occurs to you that weed-pocked gully is a river. In fact, if you were born in Bakersfield in the mid-1980s and lived your whole life here, you can count on one hand how many times you've seen the once mighty Kern River run through town — and I mean really run, not just a reluctant trickle here and there.

We live in a desert and we've suffered droughts. But that's not why the Kern's water no longer runs its natural course.

Practically since the first white man laid eyes on that river, it's been under siege. The fights for its water are the stuff of legends, as are the men who struggled to control it.

The Kern's waters created empires out of sand and swamp. They've sustained vast agricultural operations and populations never dreamed of when the first canals were scratched from its banks.

Those few who still control the river's flow know it has even more fortunes to yield as California is ever determined to out-grow its water resources.

So the tug of war continues.

Yet we residents of Bak-

ersfield, a city built in this very spot because of the existence of that river, have placidly accepted a dry riverbed as the cost of local ag, local jobs and a certain water supply for the city.

We've been told the Kern can't sustain us and still be a river, that one is the price of the other.

These stories examine that premise. River water is the backbone of local ag. It truly has spawned an agricultural miracle. Thousands of acres of arid land now produce food and fiber shipped around the world.

The two districts that started the fight resulting in loose water farm more than 155,000 acres alone. And that doesn't count the other districts with river rights or those that buy

Please see **RIVER / A7**



**ALEX HORVATH / THE CALIFORNIAN**

The Carrier Canal runs west along Truxtun extension with the dry Kern River channel on the right. The Carrier, owned by the City of Bakersfield and Kern Delta Water Storage District, takes river water near Gordon's Ferry and feeds it to farms south of Bakersfield and on west to Coffee Road where its water goes into the River Canal and is delivered to Enos Lane.

## 'True-ups' added to last summer's high PG&E bills

Glitches prevented utility from receiving accurate usage data

BY JOHN COX  
Californian staff writer  
jcox@bakersfield.com

Some of the high electric bills that hit Bakersfield residents last summer were actually "true-up" charges after Pacific Gas and Electric Co. underestimated usage for months because of communication problems with its first-generation SmartMeters.

Data bottlenecks and technological glitches prevented company computers from receiving usage information from some of PG&E's remote meters. Once the utility finally got readings from the meters, it realized it had in some cases undercharged customers. So PG&E lumped in back charges onto a single bill, except in the cases of customers who called the company and were given extra time to pay.

The number of Bakersfield residents who received true-up bills last summer because of this particular problem was relatively small — about 100 customers, according to two people who spoke on condition of anonymity, one a former PG&E manager, the other a company employee who works in Bakersfield. Local PG&E spokesman Denny Boyles said the company has no data indicating how often this occurred here. Some estimations are to be expected with any metering technology, he said.

The estimations and true-up bills are significant partly because PG&E has long insisted that last summer's high bills resulted from a steep rate increase combined with unusually hot weather and people falling out of discounted rate programs. Not until *The Californian* asked did the company concede that true-up charges stemming from technological failures contributed to the wave of high bills that prompted a

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# Gulf oil spill swiftly balloons, could move east

If oil reaches Gulf Stream, result will be an epic disaster, experts warn

By ALLEN G. BREED and SETH BORENSTEIN  
The Associated Press

VENICE, La. — A sense of doom settled over the American coastline from Louisiana to Florida on Saturday as a massive oil slick spewing from a ruptured well kept growing, and experts warned that an uncontrolled gusher could create a nightmare scenario if the Gulf Stream carries it toward the Atlantic.

President Barack Obama planned to visit the region today to assess the situation amid growing criticism that the government and oil company BP PLC should have done more to stave off the disaster. Meanwhile, efforts to stem the flow and remove oil from the surface by skimming it, burning it or spiking it with chemicals to disperse it continued with little success.

"These people, we've been beaten down, disaster after disaster," said Matt O'Brien of Venice, whose fledgling wholesale shrimp dock business is under threat from the spill.

"They've all got a long stare in their eye," he said. "They come asking me what I think's going to happen. I ain't got no answers for them. I ain't got no answers for my investors. I ain't got no answers."

He wasn't alone. As the spill surged toward disastrous proportions, critical questions lingered: Who created the conditions that caused the gusher? Did BP and the government react robustly enough in its early days? And, most important, how can it be stopped before the damage gets worse?

The Coast Guard conceded Saturday that it's nearly impossible to know how much oil has gushed since the April 20 rig explosion, after saying earlier it was at least 1.6 million gallons — equivalent to about 2½ Olympic-sized swimming pools. The blast killed 11 workers and threatened beaches, fragile marshes and marine mammals, along with fishing grounds that are among the world's most productive.

Even at that rate, the spill should eclipse the 1989 Exxon Valdez incident as the worst U.S. oil disaster in history in a matter of weeks. But a growing number of experts warned that the situation may already be much worse.

The oil slick over the water's surface appeared to triple in size over the past two days, which could indicate an increase in the rate that oil is spewing from the well, according to one analysis of images collected from satellites and reviewed by the University of Miami. While it's hard to judge the volume of oil by satellite because of depth, it does show an indication of change in growth, experts said.

"The spill and the spreading is getting so much faster and expanding much quicker than they estimated," said Hans Graber, executive director of the university's Center for Southeastern Tropical Advanced Remote Sensing. "Clearly, in the last couple of days, there was a big change in the size."

Doug Suttles, BP's chief operating officer for exploration and production, said it was impossible to know just how much oil was gushing from the well, but said the company and federal officials were preparing for the worst-case scenario.

In an exploration plan and environmental impact analysis filed with the federal government in February 2009, BP said it had the capability to handle a "worst-case scenario" at the Deepwater Horizon site, which the document described as a leak of 162,000 barrels per day from an uncontrolled blowout — 6.8 million gallons each day.

Oil industry experts and officials are reluctant to describe what, exactly, a worst-case scenario would look like — but if the oil gets into the Gulf Stream and carries it to the beaches of Florida, it stands to be an environmental and economic disaster of epic proportions.

The Deepwater Horizon well is at the end of one branch of the Gulf Stream, the famed warm-water current that flows from the Gulf of Mexico to the North Atlantic. Several experts said that if the oil enters the stream, it would flow around the southern tip of Florida and up the eastern seaboard.

"It will be on the East Coast of Florida in almost no time," Graber said. "I don't think we can prevent that. It's more of a question of when rather than if."

At the joint command center run by the government and BP near New Orleans, a



HATTIESBURG AMERICAN, RYAN MOORE / AP

Work crews with Ashland Cleaning Services lay oil retention booms in Bay St. Louis, Miss., Saturday. Environmentalists are concerned about the impact of the oil slick when it makes landfall.

Coast Guard spokesman maintained Saturday that the leakage remained around 5,000 barrels, or 200,000 gallons, per day.

But Coast Guard Adm. Thad Allen, appointed Saturday by Obama to lead the government's oil spill response, said no one could pinpoint how much oil is leaking from the ruptured well because it is about a mile underwater.

"And, in fact, any exact estimation of what's flowing out of those pipes down there is probably impossible at this time due to the depth of the water and our ability to try and assess that from remotely operated vehicles and video," Allen said during a conference call.

The Coast Guard's Allen said Saturday that a test of new technology used to reduce the amount of oil rising to the surface seemed to be successful.

During the test Friday, an underwater robot shot a chemical meant to break down the oil at the site of the leak rather than spraying it on the surface from boats or planes, where the compound can miss the oil slick.

From land, the scope of the crisis was difficult to see. As of Saturday afternoon, only a light sheen of oil had washed ashore in some places.

The real threat lurked offshore in a swelling, churning slick of dense, rust-colored oil the size of Puerto Rico.

From the endless salt marshes of Louisiana to the white-sand beaches of Florida, there is uncertainty and frustration over how the crisis got to this point and what will unfold in the coming days, weeks and months.

The concerns are both environmental and economic. The fishing industry is worried that marine life will die — and that no one will want to buy products from contaminated water anyway. Tourism officials are worried that vacationers won't want to visit oil-tainted beaches. And environmentalists are worried about how the oil will affect the countless birds, coral and mammals in and near the Gulf.

"We know they are out there" said Meghan Calhoun, a spokeswoman from the Audubon Aquarium of the Americas in New Orleans. "Unfortunately the weather has been too bad for the Coast Guard and NOAA to get out there and look for animals for us."

Fishermen and boaters want to help contain the oil. But on Saturday, they were again hampered by high winds and rough waves that splashed over the miles of orange and yellow inflatable booms strung along the coast, rendering them largely ineffective. Some coastal Louisiana residents complained that BP, which owns the rig, was hampering mitigation efforts.

## Climate bill in danger from Gulf disaster

By MATTHEW DALY AND NOAKI SCHWARTZ  
Associated Press Writers

WASHINGTON — A historic environmental protection bill is in danger after a massive oil spill put a new focus on the perils of offshore drilling, a feature that was supposed to win wider support for the legislation.

The bill, supported by President Barack Obama, calls for new offshore drilling — a concession by environmentalists.

But with the tragedy off the Gulf Coast growing daily, even conservationists who have waited a decade for the legislation are now saying it will fail if offshore drilling remains in the bill.

"When you're trying to resurrect a climate bill that's face-down in the mud and you want to bring it

back to life and get it breathing again, I don't think you can have offshore drilling against the backdrop of what's transpiring in the Louisiana wetlands," said Richard Charter, energy adviser to Defenders of Wildlife. "I think it's flat-lined."

The bill aims to cut emissions of carbon dioxide and other greenhouse gases 17 percent below 2005 levels by 2020, and it also would expand domestic production of oil, natural gas and nuclear power.

Obama called for new offshore drilling in the Atlantic Ocean from Delaware to central Florida, and the northern waters of Alaska. He also asked Congress to lift a drilling ban in the oil-rich eastern Gulf of Mexico, 125 miles from Florida beaches.

## Afghanistan, Iraq deaths

The military announced the death of a soldier in Afghanistan.

**1st Lt. Salvatore S. Corma**, 24, of Wenonah, N.J., died April 29 at Forward Operating Base Bullard, Afghanistan, of wounds sustained when insurgents attacked his unit using improvised explosive devices. He was assigned to the 2nd Battalion, 508th Parachute Infantry Regiment, 4th Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

## METERS: Bakersfield's experience with estimations appears to be unique

CONTINUED FROM A1

customer outcry that still echoes across the electric utility industry.

### Why it wasn't mentioned sooner

Opinions differ over why PG&E did not acknowledge the true-ups sooner. Boyles said the company chose not to because it had already begun switching to a better, second-generation technology that has reduced communication problems resulting in estimated bills. And, he said, bill estimations are routine among utilities.

But the company employee who spoke anonymously said PG&E probably kept quiet about true-ups because it might have made the company look bad.

"I just don't think as a company we're gonna admit to a lot of true-ups and just give (PG&E critic, Shafter Democrat and state Senate Majority Leader) Dean Florez or the people ... more ammunition," the employee said.

The Utility Reform Network, a San Francisco-based consumer advocacy group, questioned PG&E's honesty regarding Bakersfield true-ups.

"PG&E kept acting like the customers were crazy and nothing is wrong," TURN spokeswoman Mindy Spatt said, "and now PG&E is admitting that there are some problems here."

Some local customers may not have been aware they received true-up bills, since

the company did not point out the underestimations unless customers asked. However, Boyles said company bills clearly state when they are estimations.

PG&E is permitted to estimate bills for up to 90 days. After that, the company said, it usually sends out a meter reader. Customers then have extra time to pay the true-up bill, as long as a period as their bills were being estimated.

Boyles said some estimations led to customer refunds because the company overestimated usage.

### Like nowhere else

Bakersfield's experience with estimations and true-up bills appears to be unique in some ways. Last year PG&E began switching out its first-generation SmartMeters in favor of more advanced devices. Only in Bakersfield, where the rollout began, is there a significant number of the earlier SmartMeters in California.

Ben Schuman, an energy management technologies research analyst with Portland, Ore.-based Pacific Crest Securities, said it's the first instance he has heard of in which customer advocates have complained about bill corrections instead of meter accuracy problems.

He also said technological missteps should not come as a surprise, given that PG&E was among the first U.S. utilities to incorporate smart meters. But he added that PG&E "probably should've been more open" about its true-up prac-

### QUESTIONS?

People who have questions about their PG&E bills are advised to call the company's 24-hour, toll-free customer service line: 800-743-5000

tices.

### Information lost and found

The former PG&E manager who spoke anonymously said some meters' information became inaccessible, or "lost," because it was automatically transferred between data collection points. When at last the readings were located, too much information — as many as 96 readings a day — had essentially clogged the system.

The former manager added that PG&E's billing system was estimating customers' usage based on historical averages provided by older, traditional meters. In many cases, these pre-SmartMeter devices had been running slowly and were unintentionally lowballing usage. The source said switching out old meters for new ones contributed to the need for estimations.

But in many cases estimations were unnecessary, the former PG&E manager said. Even though the company's first- and second-generation SmartMeters were programmed to transmit readings at regular intervals, usually once an hour, PG&E's

system requires only two readings — one at the start of a period, one at the end — to generate an accurate bill.

### Switching over

Fixing communication glitches was but one of several stated concerns when in early 2009 PG&E won regulators' permission to convert to more advanced SmartMeter technology. The company said it had found a cost-efficient system that could do things the older SmartMeter system could not, such as connect or disconnect electric service remotely and eventually allow customers to manage their appliances from afar.

Switching to the second-generation SmartMeters meant customer's usage data would travel by radio waves rather than over power lines. The new devices also create a relay system in which meters unable to send data directly can forward information to neighboring meters for transmission.

The changeover came at a price. Boyles said the switch cost \$37 million, and that regulators allowed the company to charge customers for only about half of this amount. He emphasized that the system is still expected to save customers money over the long run by helping them manage their use of electricity more efficiently.

### Starting too early?

Some argue PG&E could have saved customers money by selecting better technology

in the first place. They say the company should have tested the first-generation meters more thoroughly.

"We said all along this technology was not ready for prime time," TURN's Spatt said.

The former PG&E manager says the testing of 2,500 meters in Vacaville was too small: Communication problems did not become evident until the company had already installed more than 200,000 first-generation SmartMeters in Bakersfield.

Boyles disputed this, saying the earlier models represented the best available technology when PG&E decided to launch SmartMeters, as many utilities are doing as part of a nationwide shift toward a "smart grid" designed to empower consumers with more usage information.

Moreover, Boyles said that since the adoption of either generation of SmartMeters the rate of bill estimation has decreased by a factor of three to about one-fifth of 1 percent.

Ron Smith, CEO of Esco Technologies Inc., the St. Louis-based company that owns the first-generation SmartMeters' manufacturer, Distribution Control Systems Inc., or DCSI, denied that there is anything wrong with his company's meters.

Nearly 15 million DCSI meters, most of them in North America, work fine, Smith said. He added that some of his utility customer have more than 1.5 million meters that

transmit readings on an hourly basis.

"We've not heard some of these issues with them," he said of PG&E's troubles with its first-generation SmartMeters.

### An incomplete network

First-generation SmartMeters have become more reliable in Bakersfield, Boyles said, because newer meters have reduced the volume of data carried by earlier meters.

But PG&E has not fully replaced the meter technology that caused the trouble. There remain about 120,000 first-generation meters in Bakersfield along with about 330,000 second-generation meters.

Boyles said the company was unable to swap out all the older SmartMeters here largely because of customer anger and suspicion over last summer's high bills. He said the company quit trying to roll out the second-generation meters in Bakersfield until a state-sponsored inquiry into high bills is finished in late summer.

In the meantime, Boyles said, some customers with older SmartMeters will have to live with perhaps one successful data transmission a day instead of more frequent signals intended to give customers more useful information online.

"It's not going to be an ideal world," he said, "until we get them all switched."

— Staff writer Lois Henry contributed to this report.

WHERE DOES THE RIVER GO?

# Nickel deal waters far-flung developments

To say Jim Nickel's great-great grandfather, Henry Miller, would be proud of the family's deal for "lower" Kern River water is an understatement.

Miller, who made up half of the 1888 Miller-Haggin agreement — what's become known as "the law of the river" — would have been stunned at what his descendants pulled off in 2001 using the final vestige of their inherited river rights.

The family sold its lower-river "Hacienda right" to the Kern County Water Agency for \$10 million in public bond money.

Good money, sure. But that wasn't the sweetest part of the deal.

The Hacienda right is for high-flow water averaging 50,000 acre feet a year — nearly one-tenth of the capacity of Isabella reservoir. Except the Kern only runs that high every four or five years, which means it often gave the Nickels zero water. It was a golden egg, but an unreliable one.

Until the deal with the KCWA.

The Nickels got the taxpayer dough plus a hard-and-fast promise of 10,000 acre feet each year to be delivered by the agency anywhere in the state the family cared to sell it.

In exchange, the agency retained what it could of the remaining Hacienda water — when there is any. Plus they get 10 percent of every sale the Nickels make and have access to store what they can in Lake Isabella with up to 30,000 acre feet or so allowed for carry-over. Given the price of water these days, that's the real prize to the agency.

### Guaranteed water

Drought, no drought, water problems in Sacramento, regulations run amok, nuclear attack, it doesn't matter. The Nickels' 10,000 acre feet a year of water is absolute.

It's made them a fortune and will continue to do so in perpetuity.

"Yeah, certainty is worth a lot," Nickel said.

About \$30 million since 2001 alone as the Nickels have peddled the water around the state, including locking it up in two 35-year contracts with the controversial Newhall Ranch development and most recently with DMB Associates for 12,000 houses in Redwood City.

Though Nickel wouldn't say how much he sells the water for, the agency's 10 percent share has worked out to \$3.2 million over the last decade.

Clearly, this has been a good deal for the Nickels and the agency.

More and more cities are looking for Central Valley ag water as a solution to their supply problems. But no one in Kern County is debating the wisdom of such permanent transfers or exchanges.



James Nickel

### Kern River and far-flung sprawl

Since the Redwood City sale has come to light, at least some Northern California observers — who don't want houses built on the salt marshes — are pushing back.

They're questioning not only the legality of such an elaborate water transfer but also the impacts to Kern County.

"The idea that there is a substantial amount of water in Kern County that is unneeded and available for sale without redirected impacts is fanciful," Assemblyman Jared Huffman wrote to the Redwood City mayor on March 21 urging the council to kibosh the development. "In reality, California's future water reliability and the Delta ecosystem will require fewer diversions of water from the Central Valley, not more."

Reducing dependence on delta water by maximizing regional sources was adopted as water policy by the Legislature, he said. This deal flies in the face of that policy.

Huffman and others are also questioning the legality of these transfers, which have relied for the last 10 years on a single blanket negative declaration written by the KCWA saying any environmental impacts of exporting the water are outweighed by the overall benefits of the project as a whole.

Court rulings have held that such "netting of benefits," rather than identifying exact benefits for each sale is a no-no, according to a report done by Redwood City on the possible use of the Nickel water.

"The statute of limitations has passed on being able to sue over that 2000 negative declaration," said Stephen Knight, policy director of Save the Bay, which is opposing DMB's project. "But it's still a concern because Redwood City would have to redo CEQA (studies required under the California Environmental Quality Act) *legally* this time."

### It's all good

Back here, we're told it's all good for us. "It's a huge benefit for Kern County," Nickel



ALEX HORVATH / THE CALIFORNIAN

An aerial photo shows the Intertie, a structure that connects the Kern River with the California Aqueduct just north of Taft Highway. In high-flow years it allows Kern water to flow to Southern California.

el said of the agency's purchase of his family's rights.

Before, he said, most of the Hacienda water couldn't be captured and left the county, flowing out the Intertie and into the California Aqueduct to be used by folks on down the line.

Now, the agency can use Isabella and its water banks to regulate the water. They can store it for future use locally or sell it to keep costs lower for farmers who, in theory, then could hire more workers or fallow less land in lean water times. Essentially a "trickle-down theory."

At best, though, it's an indirect benefit and hardly seems worth the cost of tying local water up in houses hundreds of miles away.

Since the Agency bought Nickel's rights, there've been only two years the river flowed high enough to produce Hacienda water, from which the Agency grabbed and banked 83,000 acre feet.

They may have been able to bank that much regardless of the Hacienda right since big flow years mean everyone gets a share if they have a place to put it, which the Agency has had since the 1990s with Kern Water Bank and its Pioneer Project.

Agency managers have said the purchase was the best way to keep the maximum amount of Kern River water here in our watershed.

"Otherwise, the Nickels could have sold all that water out of the watershed," former Agency General Manager Tom Clark has said in the past and current General Manager Jim Beck agreed.

Not exactly. Without a banking facility, the

Nickels couldn't regulate the supply enough to ensure steady sales. Certainty, as Jim Nickel said, is worth a lot.

### The art of the deal

Yes, the Nickels had been selling at least some of their Hacienda water for years, when they could.

It was a crap shoot though, even with the Isabella storage, Nickel said. In high-water years, no one needed it and they had to find places to park it. Lower-water years yielded smaller amounts or nothing at all, meaning smaller paychecks or zero sales.

Those feast or famine days are gone for the Nickels, who never could have nailed down such long-term development contracts as they have with Redwood City and Newhall Ranch without the certainty this deal gave them.

More than 100 years ago, Nickel's great-great grandfather, Henry Miller fought and won an epic legal battle to keep Kern River water in the river.

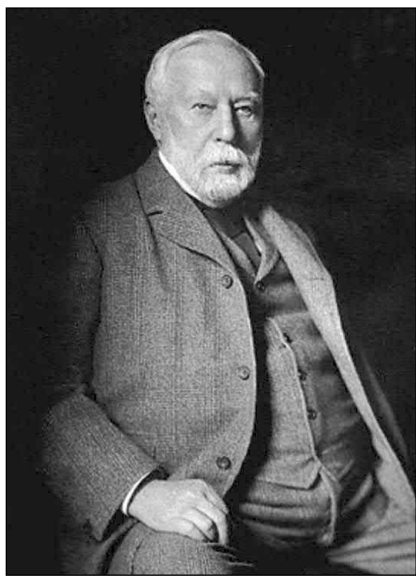
What would he think of Nickel's deals today?

Nickel laughed. "You have to remember the rest of the story," he said. "Yes, he got the riparian rights. But then he turned right around and told the Kern County Land Company, 'You build me a reservoir and I'll give you two-thirds of the river.'"

"He violated his own law." Making a deal, it seems, has always been the true "law of the river."

## Historical glance at the Kern River | 1877

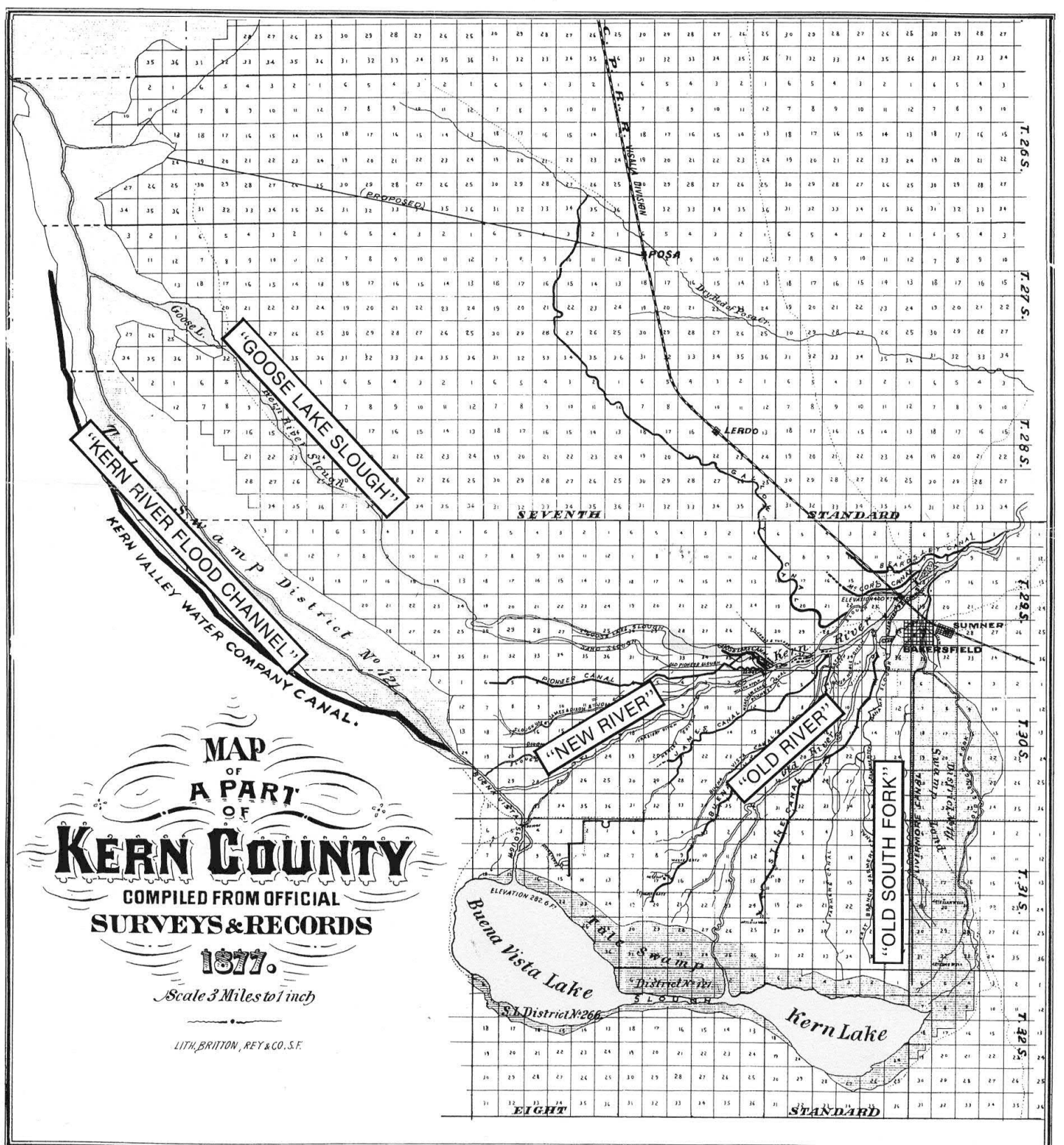
Miller and Haggin battled in court for nearly a decade over the Kern River. The fight established two main principles of California water law, riparian, which are attached to land along the water and appropriative, belonging to those who use the water away from its source. Miller, who had riparian rights, won in court but divided the river with Haggin privately in a settlement known as the Miller-Haggin Agreement.



**James Ben Ali Haggin** was a wealthy land speculator from San Francisco. He bought huge swaths of land in Kern County north of Bakersfield and through canals used Kern River water to create a farming empire.

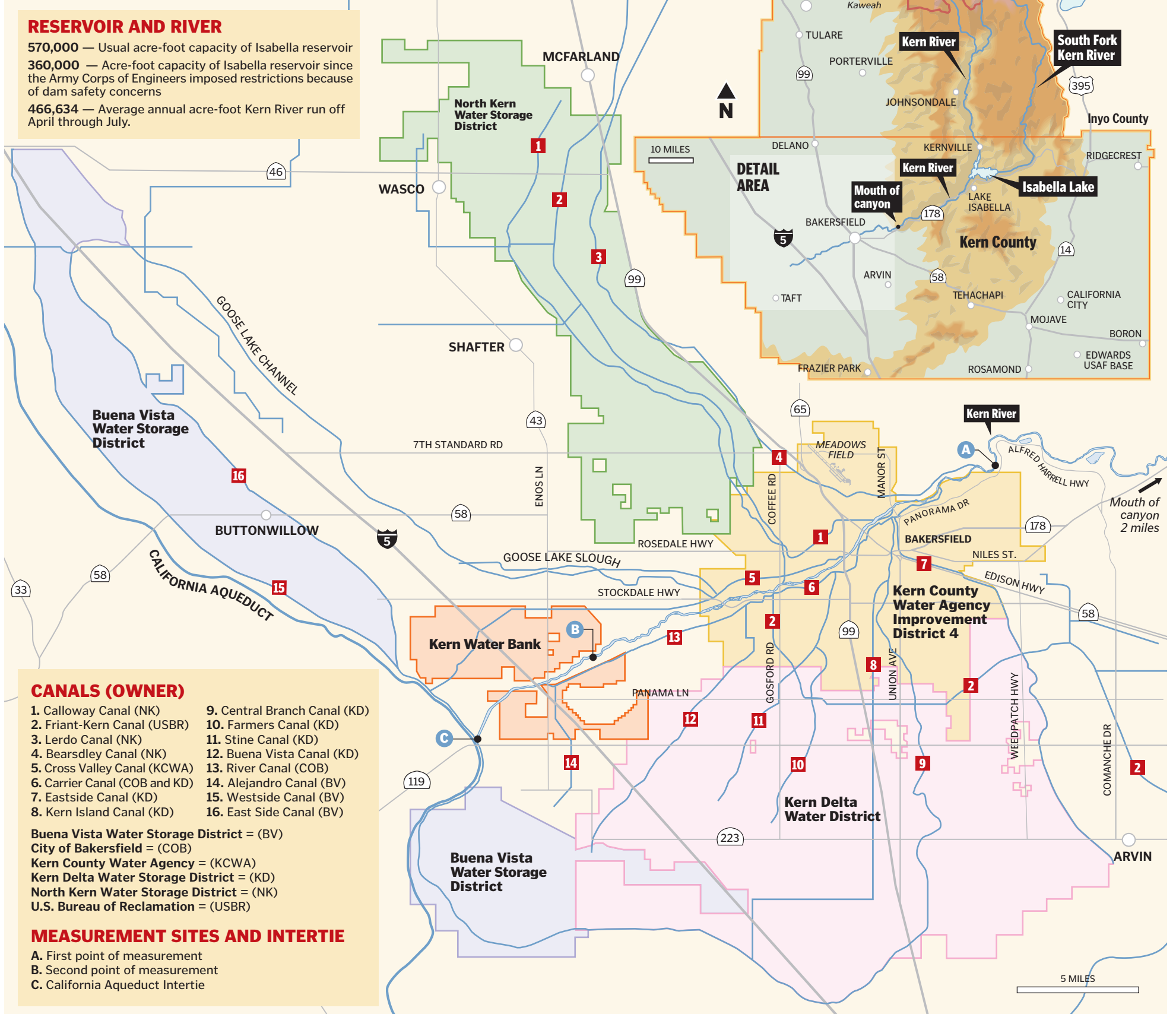


**Henry Miller**, a German immigrant, also hailed from San Francisco and made his fortune in California land. He owned thousands of acres along the Kern River west of town where he ran a large cattle operation.



## WHERE DOES THE RIVER GO?

## Kern River canals and water districts



## How the Kern River is divvied up

## Long history of the Kern established state water law and divided the river's ownership into complex layers

For more than a century, fights over the Kern River have pitted ag against ag or, more recently, ag versus urban uses.

But really, there's a third right that until now has been ignored — the public's right to simply have a river.

That right, known as the public trust doctrine, may have the power to revive at least a portion of the river.

In an historic ruling, the State Water Resources Control Board declared the Kern River not fully appropriated in February. Now, the board is mulling how much water may be available and who should get it.

For the first time in 150 years ago, the public's rights are just as strong as any of the powerful ag districts vying for that water.

Understanding who owns the Kern River is vital to the debate now before the state.

Rights to the river (focusing only on water from the mouth of the canyon west) are complex and multi-layered but actually rest on a fairly simple foundation.

#### First point Second point

Back in 1880, a fight over Kern River water erupted that would ultimately create new law in California.

People with names we still know today, if only from housing tracts, like Haggin-Tevis and Miller-Lux got into a nearly decade long legal battle over who the water rightfully belonged to.

As early as the 1860s, the Haggin-Tevis side had been developing property to build their farming empire and were taking more and more water from the river through canals that moved it far from its source.

In 1879, the Calloway Canal was completed. It was so big, it literally siphoned the river dry to irrigate Haggin-Tevis lands north of town.

The success of the Calloway Canal was a disaster to Miller-Lux, which had property along the river, riparian lands, west of town and needed the water for cattle and grazing lands.

Off to court they went and thus were born two of California's main water rights principles, prior appropriation (Haggin-Tevis, who were using the water first) versus riparian (Miller-Lux, who had land on the river).

The riparian right actually won, but then Miller-Lux made a deal with Haggin-Tevis to divide the river on their own terms. It's known as the "Miller-Haggin Agreement."

Kern River water would be measured above Gordon's Ferry at a site known as "First Point of Measurement."

One third of the water during the six spring and summer months would belong to downstream lands — Miller-Lux. That water would be delivered in undiminished quantities to a site known as "Second Point of Measurement," just east of Enos Lane.

Haggin-Tevis, who later formed the Kern County Land Company, and several "upstream canal companies" would get the remaining two-thirds of the river during that six month period.

All of the First Point rights that Haggin-Tevis owned are now owned by the City of Bakersfield and Kern Delta Water District. Miller-Lux's Second Point rights are now owned by Buena Vista Water Storage District.

#### Shaw Decree

Layered over the Miller-Haggin Agreement is the "Shaw Decree."

This outlines the priority of First Point rights between Haggin-Tevis and the "upstream canal companies."

Back in the day, farmers were slapping up weirs and digging their own ditches willy nilly. Those ditches later became independent canal companies. It wasn't long before squabbles erupted over how much water could be taken from the river and when, so off to court it went again.

In 1900 a Kern County Superior Court judge named Lucien Shaw issued a decree that detailed the areas each canal company served and the priority of flows each company was entitled to based on the amount of water in the river.

At the time, there were more than 30 individual canal companies. Most were consolidated by Haggin-Tevis' Kern County Land Company and the rights given to those canals as outlined in the Shaw Decree still stand.

#### North Kern and the '52 Agreement'

It's through many of those Kern County Land Company canals that North Kern

Water Storage District has rights to use Kern River water.

The Land Company created North Kern in the 1930s to administer water to large tracts of land it owned north of the river.

South-of-the-river farmers feared the Land Company would give water they had been using to North Kern. In response, the Land Company gave North Kern rights to use some water from certain canals in perpetuity but promised no ownership of water rights would go to North Kern.

That arrangement was later codified in what's known as the "1952 Agreement."

#### Lost water of Kern Delta

The Kern Delta Water District was formed in 1965 to buy state water and ultimately bought substantial Kern River water rights on the coattails of the city's 1976 purchase from Tenneco West (which had bought the Land Company in the late 1960s).

As the city's deal was being worked out, it made a side deal with Kern Delta to sell them the five canals that had historically served those south-of-the-river farms: Kern Island canal (whose water runs through Mill Creek in downtown Bakersfield), Eastside, Buena Vista, Stine and Farmers canals.

Per the Shaw Decree, the Kern Island Canal has the choicest of all the First Point rights, taking the first 300 second feet off the river no matter what the river's flow is. On average, that and the other canals gave Kern Delta rights to about 250,000 acre feet a year, or about half the average annual flow, of the Kern River.

Historically, the canal companies acquired by Kern Delta used only about 60 percent of that 250,000 acre feet a year and released the rest back to the river. The city picked up to a third of that so-called "release" water and North Kern used the rest.

Kern Delta began using more of its water as more land went into production, cropping patterns changed and the district felt it needed to solidify its rights.

North Kern sued in 1994 under the "use it or lose it" theory of California water law.

In 2007, a judge agreed that since Kern Delta hadn't used all of its water rights, a portion of those rights were forfeited.

But the court left the question of who

should own that water, about 50,000 acre feet in an average year, up to the State Water Resources Control Board.

Earlier this year, the state board agreed there was unappropriated water on the Kern based on flood waters.

But the board also said it would work out the issue of Kern Delta's forfeited rights and who, if anyone, should get that water as it processed applications for the flood water.

#### Recap

So the Kern's ownership goes like this:

First Point, owned by Kern Delta and the City of Bakersfield and Second Point, owned by Buena Vista Water Storage District.

There is another right that was established by the Nickel family for Lower River, or so-called Hacienda water, which is only available in flood years. The Nickels sold that right to the Kern County Water Agency in 2000.

Layered over that basic division are obligations mostly attached to Bakersfield's First Point rights to make sure Second Point gets all its water "undiminished" and to honor use agreements with North Kern.

#### Public trust

Until recently, the public trust as it relates to the Kern River was virtually ignored.

But under California law, this is a fundamental and legitimate right that the State Water Resources Control Board must consider.

The public trust doctrine deems that resources such as rivers are so vital they must be held in trust for all the people.

People in Bakersfield have been leery of asserting that right. But we have in the past when city leader sued Tenneco West (the successor to the Kern County Land Company) in order to protect the public's inherent water rights.

Tenneco settled by selling the city substantial rights to the river. The water has been tied up in long-term contracts with several local ag districts to pay for the rights.

When those contracts are up the city will have some water to run down the river. But the majority of that water was bought to help facilitate Bakersfield's growth. When real estate comes back, the water will go away again.

In its application to the state for the forfeited 50,000 acre feet of Kern Delta water, the city has pledged to run it down the river channel.

Through all the twists and turns of the Kern's long history, no one has ever promised that before.

WHERE DOES THE RIVER GO?

# River divides agency, city

It could not be more clear that putting water in the Kern River was one of the goals of a series of projects proposed by the Kern County Water Agency back in 2000.

The very title of the document used to apply for \$23 million in state bond money was "Kern River Restoration and Water Supply Program."

Paragraphs like this were rife throughout the document:

"The project plans to assure through acquisition of the Lower Right and by annual water exchanges with local water districts having other Kern River Water rights, that the heart of the City of Bakersfield (from Manor Street downstream to Allen Road) will enjoy a 12 mile stretch of re-watered Kern River, at least from May through September."

It worked. The Agency got its \$23 million in taxpayer money, bought the Lower River (or Hacienda right) for \$10 million from the Nickel family and built its facilities.

And that document that glowingly promised taxpayer money would help restore the river?

It's been used over and over for the last 10 years as blanket environmental paperwork allowing Kern River water to be sold to support urban sprawl hundreds of miles away.

Meanwhile, the river remains dry.

## Good deal for Kern

The Agency argues it has lived up to promises made in that 2000 document, a negative declaration.

And it has done a great deal to re-wet the river even though that was never the intent of the projects funded by the 2000 bond money, insisted General Manager Jim Beck.

"We've consistently demonstrated a willingness toward restoring the river as related to the Kern River Parkway plan and I feel the Agency has complied with the spirit of that negative declaration," he said.

The Parkway plan was a collaborative agreement that put water from the Agency and the city in the river during summer. The water was already destined for river flows, the agreement simply moved it to summertime.

But the Agency pulled out of the Parkway agreement, which it heralded in the 2000 document as "landmark," a few years after getting the bond money.

And wells that were funded with \$3 million of that \$23 million and were intended to put water in the river during dry years have never been used. The Agency said the city was supposed to foot the operating bill, even though the 2000 document states that in dry years, "KCWA pumps the Urban wells." The city has said operating the wells was too expensive.

Beck said the Agency had to pull out of the Parkway agreement because water purveyors, including the city, demanded more treated water, which meant the agency had to expand its plant and pull water from other sources like the river.

"We had no choice in that matter."

Yes, the city and others asked for more treated water which required expansion of the plant. It should be finished later this year.

The Agency, however, yanked its water from the



Jim Beck

CONTRIBUTED

Parkway agreement in 2006.

## A curious stance

While this could all be considered water long gone under the bridge, it does serve as a curious backdrop to an even more curious stance by the Agency against the city's latest quest to get water in the river.

About 50,000 acre feet a year of Kern River rights were deemed forfeit by an upstream water district. The city has applied to the State Water Resources Control Board for that water.

Four other agricultural water districts — including the Agency — also applied for it.

Only the city has promised to run the water down the river.

If the city gets it, that would actually help the Agency live up to promises made in its 2000 document as well as those made back in the 1970s to run excess water down the river to recharge groundwater in exchange for charging the public well and property taxes for its water treatment operation.

Yet the Agency has joined the other ag districts against the city, filing joint petitions to try and keep the state out of the Kern River and even having their attorneys work together at hearings.

Beck didn't see it that way.

"We're not fighting against the city," he said.

"The actions we've taken are to ensure we have a say in defending our rights to the Kern River Water we've acquired. Our decision to file a petition with the state was defensive."

That has proved prudent, he said, as the state board found there is loose water on the river based on flood waters that escape to the California Aqueduct.

"That is of grave concern to the Agency," he said because the Agency's river rights, purchased from the Nickel family in 2000, are based on high flow years.

The Agency did not apply for that water, however. Its petition and application focus only on the 50,000 acre feet of forfeiture water, not flood water.

The Agency has estimated the forfeiture water may yield up to 2.279 million acre feet a year. In its application, it said it would store some of the water and use the rest for irrigation and unspecified municipal uses.

That's a heck of a lot of water.

Not enough, apparently, to spare for the river.

# The Kern's Sierra origins



ERICK DAMICO / SPECIAL TO THE CALIFORNIAN

Ryan Lobre measures the snow at Beach Meadow as part of a regular snow survey. Snowpack depths and moisture content measurements are used to estimate how much water will be produced when the snow melts.



ERICK DAMICO / SPECIAL TO THE CALIFORNIAN

Casa Vieja Meadow is one of the places where the Kern River watershed is measured.

# RIVER: Public rights to water can no longer be ignored

CONTINUED FROM A1

river water or even others that use it through exchange agreements.

But the river's flow is also being shunted hundreds of miles away in elaborate deals to sprout houses far beyond the San Joaquin Valley enriching a few individuals and districts.

And even while local taxpayers continue to foot the bill in a decades-old deal that brought state water here for homes and was supposed to also give us a small bit of river most years, that water has vanished as well, either tucked into underground banks or exchanged away.

We're told over and over that it's all done in the community's best interests.

That could be a page out of the playbooks of the two men most responsible for how the Kern is controlled even now, James Ben Ali Haggin and Henry Miller.

When the two immensely wealthy San Francisco land speculators fought for the river more than a century ago, they both played the populist card, accusing the other of wanting the river only to exploit it for personal benefit.

Each claimed he wanted to save the river from the other carpet-bagging robber barron. Not for public use, of course. Not even for use by most local farmers. But still, somehow their cause was portrayed as a noble effort for the greater community benefit.

Dueling newspapers took up sides. Haggin even wrote a column defending his actions.

"My object has not been, nor do I wish to monopolize large bodies of land, but I desire to make valuable and available that which I have, by extending irrigating ditches over my lands ... to divide them up and sell them out in small tracts with the water-rights necessary for irrigation," he wrote in 1880.

Never mind that Haggin already did monopolize large bodies of land having used a variety of nefarious schemes. And that while he often talked about selling out to small farmers, he never did.

One newspaper, the *Kern County Gazette*, saw the battle for what it was and in 1880 tried to sound the alarm.

"The people of the county are not willing



CASEY CHRISTIE / THE CALIFORNIAN

There is currently water in the section of the Kern River west of Truxtun Lake, east of Coffee Road.

to see any partnership of rich men in the command of the water of the country. They might as well take the air, for it would be impossible for any settler to breathe for a year in this valley with the water of the river out of his reach."

But people of that time had no means to join the fight.

Miller had thousands of acres along the river. Haggin's land was further away and needed canals to siphon the water.

When the legal dust settled, Miller and his riparian rights were essentially the victor. But, in a decision that set the course for California water law to this day, the court also acknowledged that Haggin's appropriate rights had weight as well.

Though Miller won the nearly decade-long battle, the cantankerous old German

immigrant turned right around and made a deal with Haggin: If Haggin would build him a reservoir (Buena Vista Lake), Miller would give him two-thirds of the river.

Done. The so-called "Miller-Haggin agreement" securely locked the water away, dividing it among a small circle of owners. That rights structure has remained in place to this day.

Over the 130 years since Miller and Haggin went to war, several more agreements and decrees have come along. Today's river users would have us think those are all implacably cemented in place with no room for upstarts.

But times have changed.

In 1994, North Kern Water Storage District and Kern Delta Water District, both offspring of Haggin's Kern County Land Com-

pany, went to battle over 50,000 acre feet of Kern River water whose ownership was in question.

In 2007 that skirmish ended in the hands of the State Water Resources Control board. The board will now decide where that 50,000 acre feet ends up. That has given the public the chance to make a case for the water — and the city has just as much weight as the ag districts.

What once was a murmur from Bakersfield residents — revive the river — has grown to a roar.

The door to the river was cracked open by that lawsuit. Now the residents are pushing to swing it wide, telling the board loudly that we've waited on the sidelines long enough.

We want our river back.

## WHERE DOES THE RIVER GO?

## District's suit could forever change the river

Two local ag water districts went to war 16 years ago, eventually battling to a draw in 2007 when a court ruled that one district had forfeited some of its rights to Kern River water but the other district didn't get those rights.

It was a classic case of "be careful what you wish for" for North Kern Water Storage District, which brought the suit against Kern Delta Water District.

North Kern won the argument, but now the water is in the hands of the State Water Resources Control Board, which could give the water to anyone. Or the board could deem the water doesn't exist at all and erase the right entirely if they find the river is oversubscribed.

With so much to lose, you'd think North Kern and Kern Delta would have worked out a private deal. But the two districts were born fighting.

North Kern was created first, in the 1930s by the Kern County Land Company. It covers 60,000 acres that straddle Highway 99 north of Bakersfield from northern Rosedale up to Shafter.

Right from the start, farmers in what would become Kern Delta, which covers 125,000 acres south of Bakersfield from Arvin to Enos Lane, feared North Kern was after their water.

They were right to worry.

The Land Company owned nearly all the canals that served Kern Delta farmers as well as nearly all the land in the North Kern district. Without a steady water supply, the land was worthless.

Kern Delta farmers could easily see where the Land Company's economic incentives would lie. They raised a fuss and forced the Land Company company to curtail North Kern's rights. North Kern could use some of the water coursing through the Land Company's web of canals but not own it. That became what's known as the 1952 Agreement.

### Uneasy truce

In the 1970s Kern Delta bought rights to some river water. North Kern had been using some of that water all along and when Kern Delta wanted it back, North Kern sued.

That resulted in the 2007 judgment that 50,000 acre feet was forfeit.

Now, North Kern has the most to lose among all the players in this drama.

Richard Diamond, general manager of North Kern, and John Guinn, city manager



CONTRIBUTED

### Richard Diamond

of Shafter, said if that 30,000 acre feet is pulled out of North Kern it would devastate the district, the farmers and the area's economy.

Aside from the Kern Delta water, North Kern gets about 100,000 acre feet a year from the river through the 1952 Agreement.

It also buys 20,000 acre feet a year from Bakersfield and has banking operations that bring in water from a variety of partners.

Oddly, Diamond wasn't worried about the prospect of losing that 20,000 acre feet when North Kern's contract with Bakersfield is up in 2012. It's a small portion of the district's overall water picture, he said.

And he wasn't worried about giving up some of that 1952 Agreement water for urban use as Shafter develops.

In fact, North Kern fought Bakersfield tooth and nail in order to give, or sell, Shafter 1952 Agreement water.

Diamond said if Shafter built out to its full plans tomorrow, it wouldn't suck that much water from ag interests.

But losing that 30,000 acre feet of Kern Delta forfeiture water would be a heavy blow, he said. Particularly in light of state water reductions which could cause adjacent districts to pump more groundwater.

### Fighting the state board

"That water has always gone to the interests up here," Guinn said. "If they lose water and we're all pumping from the same basin, it could have a tremendous impact on our little community."

So, it would seem logical for Guinn and Diamond to slap back any hands reaching for Kern Delta forfeiture water.

Instead, they've joined with the other dis-



ALEX HORVATH / THE CALIFORNIAN

The Beardsley Canal, which splits off the river and runs northwest toward the top of the photo, is the first major diversion off the Kern River. It takes water to North Kern Water Storage District. The Carrier Canal, at the bottom of the photo, runs along the base of the bluffs all the way to Coffee Road.

tricts — Kern Water Bank, Kern County Water Agency and Buena Vista — applying for the same water to oppose Bakersfield.

Each entity filed petitions to have the state board declare the Kern River not fully appropriated. And each one asked that the forfeited water be given to them.

If any one of them wins, North Kern loses.

Yet, North Kern, and the the other ag districts, are bitter only toward Bakersfield.

"The city has been a cheerleader for the state board process," Diamond explained. "Otherwise, I don't think the state would have found that there was unappropriated water."

Bakersfield's actions, Diamond said, "Put all the users at risk."

However, the records show that it was North Kern that first filed with the state board, not Bakersfield.

### Pointing fingers

Diamond said if Bakersfield wants to re-let the river, as it has stated in its application for the 50,000 acre feet of forfeiture water, it could put water it currently runs in a lined canal back in the riverbed.

Or Bakersfield could run other supplies down the river and pump groundwater for its planned water treatment plants.

"Pumping would be more expensive and they don't want to do that," he said. "And that's unfair. If they want a river, they should use their own water."

It's true the city delivers water to the Buena Vista district in a lined canal, but it's obliged to get that water to them "undiminished" per rights and agreements dating back more than 100 years.

The water he's talking about that's destined for the treatment plants was purchased more than 30 years ago for the express purpose of sustaining the city's growth. The economic slow down may leave some for the river, but eventually the water will have to be used for homes.

Finally, it seems, North Kern's, and the other districts', ire with Bakersfield comes down to fear. And Diamond thinks Bakersfield could use a bit more caution as well.

"I'm saying they should be concerned about how (the river) could be looked at by the state," Diamond said.

"There are risks to everyone."



Two cyclists, left, get ready to pedal through the Beach Park area of the bike path, while the dry Kern River bed is seen to the right in this photo taken on Sunday, April 25, 2010. Photo was taken from underneath the 24th Street overpass.

CASEY CHRISTIE / THE CALIFORNIAN

## Selling water out of Kern is 'drought protection'

As the fight over forfeited Kern River water has heated up, Buena Vista Water District has come out swinging — hard.

Which is interesting for a number of reasons.

One, because Buena Vista's rights aren't in question. The water that may be up for grabs is First Point water and flood waters. Buena Vista has rock solid rights to Second Point water.

And two, because while Buena Vista officials have decried the very idea of running that forfeited water down the river saying the loss to local farmers now using it would be devastating, the district has been selling 11,000 acre feet a year, backed by its own Kern River supply, to Castaic Lake Water Agency for \$550 an acre foot to support homes and businesses hundreds of miles away.

And it may be positioning itself for even more such sales.

As to the Castaic sale, General Manager Dan Bartel explained that the district banks much of its river water and uses its state supplies to fulfill the Castaic contract.

If that state supply gets low enough, though, Buena Vista must meet that Castaic obligation and that means Kern River water will go over the Grapevine.

"We could potentially have to pump water out for Castaic," Bartel said.

Such sales, Bartel and other water district officials say, benefit locals by helping pay for facilities to better use water here and by keeping costs low to farmers, who can then keep more jobs filled or more land in production. The trickle down theory.

In Buena Vista, costs to members are low, going from a per acre assessment of \$38 10 years ago to \$20 now.

But that's not the whole picture.

### Water use dropping

According to an environmental impact

report on several new projects planned for the district, water use has dropped in Buena Vista as cropping patterns have changed and more owners have taken land out of production putting it under wildlife conservation easements.

Water use peaked in the mid-1970s at 113,000 acre feet a year and has steadily declined to an average of 99,500 acre feet a year, according to the environmental report.

The projects include groundwater banking to capture and recover high flow Kern River water (these are flood waters that exceed Buena Vista's regular allotment of river water), land acquisition and a new turnout in the California Aqueduct.

The environmental document also says Buena Vista has a positive groundwater balance.

So, Buena Vista has good ground water, solid Kern River rights and less in-district demand.

All those factors make it seem as though Buena Vista is gearing up to market more of its water out of the county.

Given state supplies are sketchy (it only received 13,000 acre feet of its contracted 21,300 acre feet last year), that leaves the banked Kern River water as Buena Vista's strongest asset.

That is not the intent of the program, Bartel said. They just want to manage their water more efficiently, he said.

Besides, the relatively few number of wells included in the banking operation mean it could never pull water out on the scale of say Kern Water Bank, which can suck hundreds of thousands of acre feet a year out of Kern's ground. By comparison, Buena Vista's project would only be able to recover 10,000 to 15,000 acre feet a year.

But, yes, he acknowledged, the new facilities could lead to more out-of-county sales. And yes, that could mean Kern River water. "That's not our intent, in fact I hadn't even thought about the water going out of coun-

ty," Bartel said. "But these days everybody is trying to put whatever water resources they have to the best value."

### Sales just another tool

The Kern River is one of the most variable rivers in the state, overflowing one year and dead dry the next. Harvesting as much flood water as possible is good whether the local farmers get it or it's sold out of county and the money used to improve water management locally, he said.

"It's drought protection," Bartel said of the district's projects.

Eric Averett, general manager of the Rosedale-Rio Bravo Water Storage District, which also sells water to developers and others out of the county, agreed with Bartel.

Sales make sense if they benefit the district, such as providing money to build more facilities to capture more water.

Rosedale's contract with Coachella Valley developer Glorious Land Company gives the developer between 1,300 and 1,500 acre feet a year for the next 30 years, escalating each year as the development is built out.

What happens at the end of that 30 years? "They have to extend the contract or find water somewhere else," Averett said.

He had no concerns that such long-term sales to hard water needs could eventually result in the permanent loss of local water.

Bartel said selling water out of county may seem counterintuitive when there's so much talk about the need for water locally. But it's not necessarily bad as long as it's done on a term basis.

"It's short-sighted for any district to sell their water rights," he said.

Term contracts though, even 30 or more years, are a wise way to use excess water.

He compared it to the City of Bakersfield selling water to local ag districts under 35-year contracts to pay off the bonds they used to buy the water rights.

"If they hadn't been able to contract that

water out, they wouldn't have been able to buy the rights."

The big difference, of course, is the city sold the water to local districts, keeping it in our groundwater basin. When it reverts back to the city, its policy is it will never be sold or transferred out of the county.

### Mystery on the river

When it comes to sales, apparently, it's all "just business" for Bartel and other water district officials.

But Buena Vista's reaction to the city's position on the 50,000 acre feet of forfeited water seems much more personal.

Bartel has said his fear is the State Water Resources Control Board, which is deciding the fate of the forfeiture water, could tinker with other rights on the river.

In its environmental documents, however, Buena Vista states that the forfeiture water issue would, in no way, affect its own supplies.

The 50,000 acre feet of forfeiture water popped up after a court found that an upstream district had lost some of its river rights for lack of use. The matter was taken to the state water board where the city and four other districts — including Buena Vista — petitioned to have the river deemed not fully appropriated. Each entity also applied to get that water.

Even so, Bartel singled out the city as the bad guy.

"The city is the only one looking to open up the river," Bartel insisted.

And "opening up the river" is clearly something that unnerves Bartel and the other districts.

As Bartel said in response to an explanation that this series would attempt to take the mystery out of the Kern River:

"When it comes to the river, mystery is a good thing."

WHERE DOES THE RIVER GO?

# City's fight for the river never ends

When the City of Bakersfield bought its extensive water rights to the Kern River more than 35 years ago, it was a defensive move no one ever thought would be needed.

A brimming aquifer and river flowing through town made water a non-issue for Bakersfield. The city always had enough, more than enough in some years.

Then in the late 1950s and early '60s, things changed. Groundwater levels dropped, wells had to be deepened regularly and the river went dry. Not unlike today.

City leaders began a years-long investigation to find out where our water had gone.

Bakersfield had never been a party to the deal-making and lawsuits on the Kern River. Instead, powerful ag interests divvied up the river amongst themselves.

The city found its river, and the groundwater it supplied, had gone to support vast farming empires, sometimes on far-flung lands.

Weirs upstream were taking bigger and bigger bites of the river. More groundwater was being pumped out from under the city for new ag lands.

And Tenneco West (the successor to the Kern County Land Company) had built a concrete-lined canal to deliver water west of town that was depriving the city of even that amount of percolation.

The city's water and its implicit right to Kern River water was, literally, being pumped away.

## Getting the water back

City leaders tried to negotiate with Tenneco but got nowhere.

So they filed several lawsuits asking the courts to, among other things, determine the river's ownership, declare that the city had rights to the water and stop ag interests from taking more water than their rights.

Tenneco settled by selling all its rights and facilities to the city for \$17 million, giving Bakersfield rights to an average 160,000 acre feet a year of pristine Kern River water.

In order to pay off that \$17 million, Bakersfield locked up 70,000 acre feet a year of its river water in long-term contracts with several agricultural water districts. Those contracts are up in 2012.

The rest of the water has been used to accommodate growth, bank for dry years and sold to other local ag districts as requested.

Even with its Kern River rights, though, Bakersfield's groundwater levels have

dropped drastically in the last three years and the river, again, is dry.

## Almost back where we started

With the city's river water tied up in ag contracts, it hasn't had extra for the river channel. And even after the 2012 contracts come due, that water is slated for future growth. The city could run some down the river while housing is still in a slump, but it will eventually go to growth.

That's why the city is seeking ownership of 50,000 acre feet of river water forfeited by an ag district in 2007. The city has vowed to keep that water in the river.

Other water districts, including the Kern County Water Agency, are also seeking that 50,000 acre feet of water, for irrigation and unspecified municipal uses.

The Agency and the city have long had a tense relationship so this latest face-off should come as no surprise.

The city is still upset over an agreement for the Agency to put water in the river to recharge the aquifer in exchange for having levied pump and property taxes (about \$5 million a year) on Bakersfield residents over the last 30 odd years.

Agency General Manager Jim Beck said the Agency has run water down the river when possible. But the drought, state water reductions and added demands for treated water have made that impossible.

The city disputes Beck's arguments, saying the Agency has had extra water even during the drought that hasn't gone in the river or has only run east of Manor Street.

Either way, the outcome is a dry river.

## Water flows toward money

Meanwhile, the rate of groundwater depletion isn't explained merely by the recent drought and lack of water in the channel.

Groundwater levels have dropped 150 feet in some areas, said Tim Treloar, manager of California Water Services, Bakersfield's main private water purveyor.

The drop is steadily moving east as Kern's major water banks at the western end of the Kern River suck out more water.

In other, even worse, dry spells, farmers pumped more groundwater, but a lot of it made it right back into the aquifer when it was spread on local fields.

Some of Bakersfield area groundwater is going to westside farmers because of reductions in state water. That basin doesn't con-



ALEX HORVATH / THE CALIFORNIAN

The First Point of Measurement. This is the point where the river is divided up by historic rights based on the river's flow.

nect to ours, so the water is lost.

But the big difference is that a lot of our groundwater is going over the Grapevine to Southern California cities.

"It shouldn't be happening this fast if it were only going to local ag," Treloar said.

Several city and Cal Water wells have already had to be shut down as water quality has worsened because of declining supplies.

Eric Averett, General Manager of the Rosedale Rio-Bravo Water Storage District, said his district, which relies solely on groundwater and is right next to two major water banks, is being hit hard.

Some Rosedale landowners have had wells go dry, Averett said.

## Showdown looming

Members of the Kern Fan Monitoring Committee, made up of the water bank representatives, have promised to study the problem.

Agency General Manager Beck said it would be a year or two before data is avail-

able from the study. That could be too late for some areas.

The Agency operates the Pioneer Project and is a partner in the Kern Water Bank.

A report done by Rosedale Rio-Bravo a few years ago showed, among other things, that the Kern Water Bank was pumping out more water than it needed and that it hadn't put as much water into the bank as it had claimed.

Jonathan Parker, manager of the Kern Water Bank Authority, disputed those findings. Beck said he hadn't seen the report.

The argument could be headed to a courtroom sometime soon.

All of which makes the 50,000 acre feet of forfeited water the city wants to run down the river to replenish our groundwater "huge, really huge," Treloar said.

Back in the '70s, Cal Water joined the city in its lawsuits against Tenneco West.

Just like a lot of things on the river, not much has changed over the years.

"We're joined at the hip with the city on this issue," Treloar said. "We're all in."

## HOW FORFEITED WATER WOULD BE USED

The entities seeking forfeited Kern River water offered different requests and purposes in their applications to the State Water Resources Control Board.

### Buena Vista

**Estimate:** 700,000 acre feet per year

**Use:** Irrigation, 180,000 acre feet per year; storage 520,000 acre feet per year

### Kern Water Bank Authority

**Estimate:** 500,000 acre feet per year

**Use:** Municipal, 5,000 acre feet per year; industrial, 5,000 acre feet per year; irrigation, 490,000 acre feet per year

### Kern County Water Agency

**Estimate:** 2.279 million acre feet per year

**Use:** Municipal, 74,000 acre feet; irrigation, 866,000 acre feet; storage for municipal and ag uses, 1.339 million acre feet

### North Kern Water Storage District

**Estimate:** 500,000 acre feet per year

**Use:** Irrigation (no amount given); groundwater recharge (no amount given); municipal and industrial and other 1,850 cubic feet per second

### City of Bakersfield

**Estimate:** 90,000 acre feet per year

**Use:** Municipal, recreation, fish and wildlife enhancement and water quality all achieved by running the water down the river.

### Rosedale-Rio Bravo Water Storage District

The district has applied for the flood waters that go past all earlier users and make it to the Intertie. The district has not applied for the forfeited water.

**Estimate:** 67,750

**Use:** Domestic (Riverside, Los Angeles and Orange county)

## Wet river irresistible



HENRY A. BARRIOS / THE CALIFORNIAN

Ezekiel, left and Gabriel Olmos play in the wet sand of the Kern River near Yokuts Park over Labor Day in 2008. The water was placed in the river channel by North Kern Water Storage District and lasted a few days.

## Water use facts

AF= acre feet AFY = acre feet per year

District	Kern Delta Water District	North Kern Water Storage District	Buena Vista Water Storage District
Size of district	125,000 acres	60,000 acres	50,000 acres
Farmed	100,000 acres	55,000 acres	40,000 acres
Housing/Industrial or other	15,000 acres	1,000 acres	10,000 acres
Landowners	2,000	100	590
Kern River water rights	200,000 AFY	Uses 100,000 AFY (plus uses about 30,000 AFY of Kern Delta water and buys 20,000 AFY from Bakersfield)	Receives 1/3 of the river (March through August) amount varies depending on water year, roughly 158,000 AFY
Water used in district	185,000 AFY	Uses all for irrigation or groundwater recharge	99,500 AFY on crops, groundwater recharge
State water contract	25,000 AFY (last year 12,000 AF)	None	21,300 AFY (last year 13,000 AF)
Charge to farmers	\$20 AF for Kern River water, \$40 to \$55 AF for state water	Varies - \$14 (2009) to \$28 (projected 2010) per acre; water tolls - \$30 AF (wet year) to \$75 AF (dry year)	\$20 an acre, down from \$38 an acre 10 years ago. No other water charge.
Banking projects	Up to 250,000 AFY w/Metropolitan Water District (Los Angeles)	Kern-Tulare Water District (30,000 AF)	Participates in many banking projects w/many partners.

## What Kern River water sells for

(price per acre foot)

**\$20**

Paid by City of Bakersfield to Kern Delta Water Storage District

**\$20**

Paid by North Kern Water Storage District and other ag contractors to Bakersfield

**\$311**

Potential cost to Shafter via North Kern to be paid to Bakersfield

**\$500**

Paid by Glorious Land Company, a Coachella Valley housing developer to Rosedale-Rio Bravo Water Storage District

**\$550**

Paid by Castaic Lake Water Agency to Buena Vista Water Storage District

**\$560**

Paid by housing developers Newhall Ranch Co. in Ventura County and DMB Associates in Redwood City to the Nickel Family LLC.

### Kern Water Bank

- 32 square miles
- No acres farmed
- Storage capacity over 1 million AF
- No Kern River water rights.

Received Kern River water in high flow years:

**1995**  
91,442 AF

**1996**  
27,956 AF

**1997**  
45,190 AF

**1998**  
89,605 AF

**2006**  
52,631 AF

### Kern County Water Agency

Wholesales State Water Project water to 13 member units from Tehachapi to the valley floor

**Rights to Kern River water:** An average 40,000 AFY of lower river water. High flow only.

**Kern River water received:** 179,400 AF in 2005 and 2006

**The water went to:**

- 83,000 AF Pioneer Project Bank
- 991 AF in-district demands
- 43,000 AF reservoir spillage or other losses
- 48,393 AF to the Nickel family from 2005-2009
- 2,781 AF sold to Western Hills Water district from 2005-2007

**State water for urban use:** 82,954 AFY (delivered last year 25,000 AF). Apprx. 25,000 AFY is needed for Improvement District 4's treatment plant, which supplies Oildale and northeast Bakersfield, the rest is used for groundwater recharge and exchanges.

### City of Bakersfield

**Population served by City Water Resources:** 140,000

**Demand:** 37,000 AFY

**Kern River water rights:** 160,000 annual average AFY (ranges from 25,000 to 400,000 AFY)

**City deliveries to private purveyors:** 30,000 AFY, increasing to 70,000 AFY with new treatment plants coming online in upcoming years

**Groundwater used by private purveyors:** 80,000 AFY

**Kern River water sold:** 80,000 AFY to ag districts in long-term contracts

**River water losses:** 10,000 to 18,000 AFY delivering to other river rights holders; 6,000 to 8,000 AFY evaporation from Isabella Lake.

**Other:** 12,000 AFY Lake Ming, CALM, Hart Park, Truxtun Lakes and Park at Riverwalk lakes.

**Water Banked:** 185,000 AF stored in the city's 2800 Acres bank project