

Kern River State Supreme Court Case: Background and History

The Kern Audubon Society, working with the local chapter of the Sierra Club and the Kern River Parkway Foundation, filed a lawsuit in local superior court asking the court to require the city of Bakersfield, which controls water that flows in the Kern River, to establish a minimum annual flow of water necessary to support animal life and the enjoyment of the people who use the river for recreation. A local judge, Judge Greg Pulskamp of Superior Court, issued a preliminary injunction that required the city of Bakersfield to keep a minimal flow of water in the river as it passes through the city. An appellate court in Fresno ruled that the judge erred. Now the Kern Audubon Society, along with the other parties, will take the case to the California Supreme Court for a final ruling. Estimated year for hearing: 2028.

One of the laws that guided Judge Pulskamp in reaching his decision is Section 5901 of the California Department of Fish and Wildlife Code. It states that fish populations must be maintained with sufficient water flow and protected from arbitrary reduction of water flow. The other legal item is a section found in the California State Constitution: Article 8, Section 2, better known as the Public Trust doctrine.

Background: The Kern River, with the nickname “The Mighty Kern”, begins at Mt. Whitney. The headwater flows south, dividing into two branches (north and south). They both end up at Lake Isabella (its dam constructed in 1953) and operated by the Army Corps of Engineers. The north fork is the larger of the two and provides excellent white-water rafting during the Spring runoff from Mt. Whitney. From the dam, the water exits, to form the canyon portion of the Kern River. It flows down the Kern River Canyon (its pre-dam course). After exiting the canyon, it flows towards the city of Bakersfield. However, before reaching the city, several weirs (dams) have been constructed to divert water from the river into canals for use by water districts formed by agricultural interests. So much water is diverted that water no longer reaches Bakersfield. 100% is gone. Only a riverbed of sand remains. No fish, few trees, and no recreational opportunities for the residents of the city. Only in rare wet years does the city allow excess water to flow through city. In the convenience store at Meadows Field (the regional airport), there are T-shirts for sale with the motto: “Bakersfield: A riverbed runs through it.”

Section 5901: It requires that a city/or governmental agency that manages a river that can support a fish population must take all efforts to maintain conditions to support a survivable fish population. This requires that diversions of water from the river must be limited in volume as to not put the fish population in jeopardy of extinction. All river water supports a variety of life, from tadpoles, fish, beavers, bobcats to fish which are excellent food for birds, such as egrets. This is a mandate, a law from CDFW.

Public Trust Doctrine: The best way to interpret the Public Trust Doctrine is that one of the roles of government is to protect the natural resources that allow people to recreate in a river, from hiking to canoeing and bird watching. The people willingly give this trust to the government much like a bank is a trust for your money. Diverting water from the river is a violation of this trust. The city of Bakersfield has deprived us, the citizens, of the recreational activities that this river offers.

History: The Kern River, since the construction of Lake Isabella dam, has not always been described this way. Beach Park, appropriately located along the river, got its name because in the 1950s and 1960s families could swim in the river here, along with kayaking/canoeing. Residents then of Bakersfield, with only swamp coolers to ward off the high temperature at home, would escape the heat and have a picnic along the river.

Stewardship: It is our responsibility, as citizens, to be the stewards of wildlife and plants. This allows us to maintain a proper ecosystem that allows for the continuation of a riparian ecosystem along the river. Water is essential for this stewardship to work. It supports our variety of recreational activities. Flowing water also recharges the aquifer. It is the duty of the city to support us to reach these stewardship goals. We have entrusted the city to take on this responsibility.

What's next: The KAS is participating in what is turning out to be a very protracted legal effort to restore the Kern River to its role as a vibrant river that supports ecosystems for plants and animals, along with recreational opportunities for Bakersfield's residents. Opposition is highly financed. Water districts, financed by corporate farming interests, now take up to 100% of the water, leaving nothing for the people and animals. It is a protracted fight that has gone well beyond Judge Pulskamp's decision and timeframe. It has also reduced the amount of money set aside to provide us with legal counsel. To date, the Kern Audubon Society has donated \$10,500 towards funding the case, along with a \$10,000 Anonymous donation. The other parties (Sierra Club and the Kern Parkway Committee) have also contributed funds towards funding the group's legal obligations.

What can you do?

First, be a passionate supporter of this effort. How? Speak before the city council asking them to settle out of court. Write letters to the editor of the Californian or your city councilperson. Attend events along the riverbed and at Beach Park. Post messages and photos on a variety of digital formats, from Facebook, TikTok to Instagram.

Second, help support this effort through a donation to the Kern Audubon Society (P.O. Box 3581, Bakersfield CA 93385) or the Kern Parkway Foundation (P.O. Bx 1602, Bakersfield

93302-1602. Your donation is tax free. Any communication with them please note your donation is for the Kern River litigation.



BEACH PARK—A typical late morning at one of the beach parks along the Kern River results in many people—young and old alike—taking part in an activity made possible by the Kern County Parks and Recreation Department. Just in the past year many new facilities have been built along the Kern River for the enjoyment of both children and adults.

Douglas D. Beach Park 1958

Found this in the Bakersfield Californian for July 12, 1958. It's notable that the river was full in mid-July and that the paper reports "Just in the past year, many facilities have been built along the Kern River for the enjoyment of both children and adults." Clearly, the Kern River was a dependable recreational resource that the city and county were investing in on behalf of their residents.



Opinion

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COMMUNITY VOICES

Bakersfield has promised a flowing Kern River for nearly 50 years. Now is the moment to keep that promise.

For more than half a century, I, and many others in Bakersfield, have been fighting for one simple idea: that water should flow in the Kern River through the heart of our city. Since the city purchased the Tenneco water rights in 1976, Bakersfield leaders have repeatedly told residents that restoring the river is a shared goal worth pursuing, something central to our identity, pride and future.

And yet today, in court, the city is arguing against what may be the most meaningful opportunity in decades to finally make that promise real.

That contradiction deserves public attention — especially now.

The California Supreme Court has accepted review of the city's appeal of the preliminary injunction requiring water to remain in the Kern River for fish and public trust purposes. The city will file its opposition brief by Feb. 11, just days away. This is not an abstract legal exercise. What the city argues now will shape the future of the Kern River in Bakersfield for generations.

Residents deserve to know what the city is saying on their behalf, and why many of those arguments directly conflict with the city's own words and commitments.

In its appellate filings to the Fifth District Court of Appeal, the city painted a dire picture. Its attorneys warned that keeping water in the river would jeopardize drinking water supplies, expose the city to endless lawsuits, and threaten basic municipal operations. These are doomsday scenarios presented as fact.

But here's the problem: those claims are absurd. They are inconsistent with both the city's history and its documented plans.

As recently as 2015, the city told the State Water Resources Control Board the exact opposite. In its application to appropriate Kern River water, Bakersfield clearly stated that its primary objective

was to allow substantial quantities of water to remain in the natural river channel through the city. The city emphasized that doing so would put water to "multiple reasonable and beneficial uses," including environmental protection, recreation, public trust purposes, groundwater recharge, water quality improvement and drought resilience.



RICHARD O'NEIL

The city went even further, stating that a restored and consistent flow through Bakersfield would improve quality of life, strengthen community identity, support economic success and reaffirm the river as "the important, central and productive natural resource feature of the community."

Those are not the words of an agency claiming that a flowing river is impossible or dangerous.

In practice, the city's actions have also contradicted its litigation posture. Under the initial preliminary injunction's interim flow regime, Bakersfield has already contributed significant amounts of its own water to support fish flows. The river did not dry up our taps. The city did not collapse under lawsuits. The city did not fall.

What the city argues now is not that a flowing river cannot exist, it is that responsibility should always lie somewhere else. The filings repeatedly emphasize that Bakersfield does not "control" other water rights holders, that it merely follows orders, that accountability belongs to others. That may be a convenient litigation strategy, but it clashes sharply with the authority the city assumed in 1976 when it acquired the Tenneco rights and took on the role of river operator and record keeper.

You cannot claim leadership when it suits you and helplessness when it does not.

Much of the confusion in this debate comes from how terms like public trust and minimum flows are framed. Public trust simply means that...

in trust for all of us, not just for diversion, but for fishing, wildlife, recreation, groundwater recharge, and the health and safety of our communities. A year-long minimum flow is not about wasting water; it is about keeping the river alive so it can continue providing those benefits, cleaner/recharged groundwater, quality of life boost, healthier ecosystems, and a river that actually looks and functions like a river.

The irony is hard to miss: while city leaders speak proudly about downtown revitalization, civic pride and quality of life, their attorneys argue that keeping water in the river running through downtown Bakersfield is an existential threat.

Bakersfield residents should ask: If not now, when? If not under these conditions; when the state itself has weighed in, what exactly are we waiting for? Since 1976 I have, personally, witnessed promises made by city leaders. Let's not wait any longer.

The Supreme Court's acceptance of this case gives the city a rare opportunity, not just to defend itself, but to change hyperbolic arguments designed to avoid responsibility, or it can stand by what it has told the public for decades: that a flowing Kern River through Bakersfield is achievable, beneficial and worth fighting for.

City Council members and senior staff should understand this clearly: residents are paying attention. If the city continues to fight meaningful river flows, despite its promises, people will remember. Accountability does not end at the courthouse steps.

For nearly 50 years, Bakersfield has talked about restoring its river. The moment to align words with actions is here. The city should use its February 11th filing to show that it, finally, means what it has long promised.

Richard O'Neil is president of the Kern River Parkway Foundation that has long advocated for protection of the Kern River and its adjacent riparian land for public