

**ATTACHMENT**  
**TO APPLICATION TO APPROPRIATE WATER OF**  
**NORTH KERN WATER STORAGE DISTRICT and CITY OF SHAFTER**

**SECTION A: NOTICE INFORMATION**

**A.1. APPLICANT/AGENT**

**a.**

North Kern Water Storage District (Applicant and Assigned Agent)\*  
P.O. Box 81435  
Bakersfield, CA 93380-1435  
Ph. (661) 393-2696  
Fax (661) 393-6884  
E-mail: Northkern@aol.com

City of Shafter (Applicant)  
336 Pacific Avenue  
Shafter, CA 93263  
Ph. (661) 746-6365  
Fax (661) 746-0607  
E-mail: [jguinn@shafter.com](mailto:jguinn@shafter.com)

\*In accordance with Title 23 CCR § 691(b), North Kern Water Storage District (“North Kern”) is designated to receive correspondence from the Board and to act for both applicants in all matters pertaining to the usual processing of the Application. Likewise, in accordance with Title 23 CCR § 707, notices and other correspondence concerning any matter relating to the Application may be mailed to North Kern’s address. Notice mailed to North Kern’s address will be considered notice to North Kern and the City of Shafter (“Shafter”).

**A.2. OWNERSHIP INFORMATION**

North Kern is a California water storage district formed and existing pursuant to California Water Code section 39000 et seq., and located within the County of Kern, State of California.

Shafter is a charter city of the State of California and is a municipal corporation organized and existing under the laws of the State of California, and located within the County of Kern, State of California.

### **A.3. PROJECT DESCRIPTION**

North Kern's existing project consists of the continued implementation of the "1950 Project" approved by the State Engineer and set forth in the "North Kern Water Storage District Report to State Engineer on Feasibility of Project," dated March, 1950. Implementation of the project includes North Kern's continued diversion, storage and reasonable and beneficial use of up to an annual total of 500,000 acre-feet of Kern River accruing to existing pre-1914 appropriative rights in accordance with and as more specifically provided in the "Agreement for Use of Water Rights," dated January 1, 1952 ("1952 Agreement") (attached as Exhibit 2 to the Petition). North Kern diverts and stores Kern River water in Isabella Lake and then uses the water principally for irrigation and replenishment of the underlying groundwater basin through developed spreading areas and canals located within North Kern. Water in the underlying groundwater basin is subsequently extracted by North Kern, landowners within the boundaries of North Kern, and landowners and other purveyors located outside the boundaries of North Kern.

The points of diversion and other facilities used by North Kern to divert, store, transport and use Kern River water are more particularly described in Sections A.5. & B.2.a.-d. of the Application, including the attached Underground Storage Supplement (form APP-UGSTOR), and are generally shown on Maps 1 and 2 attached.

The Application is to appropriate water to supplement the existing water supplies available to North Kern's project (see Application, Sections A.6.d & B.5.) with additional Kern River water supplies for direct diversion and storage necessary to meet the existing and future water demands of North Kern and the future water demands of Shafter. As shown on Maps 1 and 2 attached, Shafter is a municipality located both adjacent to and within North Kern's boundaries. The water will be used in the place of use described in Section A.7 of the Application and shown in Maps 1 and 2 attached, and for the purposes identified in Sections A.4.a. and B.1. of the Application.

The project will use North Kern's existing points of diversion and other facilities including Lake Isabella and the spreading areas more particularly described in Table 1 to the attached Underground Storage Supplement (form APP-UGSTOR) and shown in Map 2 attached. No construction activity is necessary or expected.

### **A.4. PURPOSE OF USE, DIVERSION/STORAGE AMOUNT AND SEASON**

#### **a.**

North Kern diverts, stores and uses Kern River water principally for irrigation and replenishment of the underlying groundwater basin. Water in the underlying groundwater basin is subsequently extracted and used by North Kern, landowners within North Kern, and landowners and other purveyors outside the boundaries of North Kern. North Kern's project to continuously maintain groundwater levels within reasonable and

economic limits through groundwater replenishment is more particularly described in the report for the 1950 Project referred in Section A.3. above.

The maximum rate of diversion is about 1,850 cfs. The total combined amount for direct diversion and storage during any one year will be up to 500,000 acre-feet. However, it is not practical to separate the amounts as between direct diversion and storage inasmuch as all North Kern's diversions are routed through storage in Isabella Lake. While available storage space in Isabella Lake fluctuates based on the time of year, use of storage by others and other factors, North Kern is generally entitled to one-third of the available storage space in Isabella Lake. The maximum available storage space in Isabella Lake reservoir is about 568,100 acre-feet.

The diversion season is from January 1 through December 31. The storage season is from January 1 through December 31.

Year around, North Kern delivers Kern River water to farms for irrigation use within its boundaries, consisting of about 63,000 irrigable acres, through a system of largely unlined earthen canals. The amount of water needed to irrigate crops in North Kern can be as much as 252,000 acre-feet annually. Existing crops include: almonds, pistachios, grapes, apples, carrots, other nuts, fruits and vegetables, roses, cotton, alfalfa and grain.

Year around, North Kern uses about 2,000 acres of developed spreading areas within its boundaries north of the Kern River to percolate and store water in the underlying groundwater basin for replenishment purposes. These spreading areas can be used by North Kern to store up to about 328,000 acre-feet annually in the underlying groundwater basin. Additional amounts that North Kern could store in the underlying basin by use of the existing spreading area in the Kern River channel located within its boundaries is variable and currently under investigation.

Shafter is located both immediately adjacent to and within a large part of North Kern (see Maps 1 and 2 attached). In the near future, farmed lands within Shafter and North Kern are expected to become urbanized and continue to draw on supplies in the underlying groundwater basin. To meet the future demands of urbanized lands, North Kern and Shafter will be required to divert, store and beneficially use water for municipal, industrial, domestic and other uses related to urban development from January 1 through December 31. The purposes of use are further discussed in Section B.1. of the Application.

e.

Applicants' understanding is that, in lieu of APNs, it is sufficient to identify the exterior boundaries of the place of use where, as here, it covers an extremely large area. The townships, ranges and sections corresponding to the places of use, diversion and storage are included in Maps 1 and 2. APNs, however, can be provided upon request if necessary or required.

## A.6. WATER AVAILABILITY

### a.

As indicated in the accompanying Petition to revoke and/or revise the Kern River FAS Declaration, two trial courts and, most recently, the Fifth District Court of Appeal has ruled that Kern Delta's rights have been partially forfeited by nonuse in *North Kern Water Storage District v. Kern Delta Water District*, Tulare County Superior Court, Case No. 96-172919 (Complaint filed in 1995). (See: *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555.)

The most recent judgment (Reed Judgment), however, determined non-use and forfeiture of Kern Delta's pre-1914 rights only with regard to the five-year period 1972-1976 as provided in *North Kern Water Storage District v. Kern Delta Water District*, Tulare County Superior Court, Case No. 96-172919. The Reed Judgment found the forfeited quantity amounted to over 60,000 acre-feet. The Fifth District Court of Appeal modified the Reed Judgment to include additional forfeiture of Kern Delta's pre-1914 rights, again only using the 1972-1976 five-year period to determine forfeiture. (*North Kern Water Storage District v. Kern Delta Water District*, *supra*, 147 Cal.App.4th at p. 585.)

There is a reasonable likelihood that additional forfeiture of Kern Delta's pre-1914 rights will be found upon consideration of five-year periods of non-use both before 1972 and/or after 1977 up to the present. Continuous nonuse by Kern Delta and its predecessors in interest is well known and documented. Data relating to other five-year periods of non-use exists and is available for State Board review upon request.

The City of Bakersfield has argued that Kern Delta's forfeiture "must" result in unappropriated water that is subject to appropriation. However, the Fifth District Court of Appeal recently disagreed, stating that "may" or "may not" occur:

"When a natural watercourse is fully appropriated, as the Kern River is, forfeiture of an appropriative right may or may not result in unappropriated water than can be awarded to an applicant through the statutory permitting system administered by SWRCB. That is, a river may be so oversubscribed by pre-1914 common law rights that any water released to the river by forfeiture of a senior rights holder will simply be used in full by existing junior right holders under their existing entitlements." (*North Kern Water Storage District v. Kern Delta Water District*, *supra*, 147 Cal.App.4th 555 at 583.) (Emphasis added.)

Applicants do not concede that forfeiture of Kern Delta's pre-1914 rights has resulted in unappropriated water that is available for appropriation pursuant to this Application. It may be, as the Court of Appeal indicated, that forfeiture does not result in unappropriated water because "water released to the river by forfeiture ... will simply be used in full by existing junior right holders under their existing entitlements." (*North Kern Water Storage District v. Kern Delta Water District*, *supra*, 147 Cal.App.4th at 583.) However, the Court of Appeal has indicated that forfeiture of Kern Delta's pre-1914 rights – even

when limited to evaluation of non-use during a single five-year period (1972-1976) – “may” result in unappropriated water.

Additionally, consideration of whether future increased uses by Kern Delta under its remaining pre-1914 appropriative rights is reasonable under article X, section 2 of the California constitution, and is otherwise lawful, may affect the availability of water. Furthermore, as stated in the Petition there may be other grounds for determining that the Kern River FAS Declaration be revoked and/or revised.

Therefore, Applicants suggest reasonable cause exists to conduct a hearing on the question of whether the fully appropriated status of the Kern River should be revoked or revised (23 CCR § 871).

**d.**

(1) 1952 Agreement Rights. As indicated in Section B.5. of the Application, North Kern has the right to divert and use Kern River water under existing pre-1914 rights held by it in accordance with the 1952 Agreement (attached as Exhibit 2 to the Petition). However, Bakersfield in a separate recently filed litigation against the Applicants appears to challenge and dispute such rights.

(2) Groundwater. North Kern and Shafter have legal rights to extract and use groundwater existing in the underlying basin for reasonable and beneficial uses. However, Bakersfield in a separate recently filed litigation against the Applicants appears to challenge and dispute such rights.

(3) Contract. Since the 1970’s, North Kern has had a contract to purchase 20,000 acre-feet of Kern River water annually from the City of Bakersfield. The contract is subject to renewal in 2012. However, Bakersfield has informed North Kern of its position that North Kern should not expect that the contract will be renewed in whole or in part.

(4) Miscellaneous Water. Quantities of miscellaneous water become available to or are purchased by North Kern from time to time, including a portion of Poso Creek’s flows. However, the quantities of miscellaneous water available are generally relatively small and the availability of such water is generally irregular in time and amount.

Note: Nothing in this Attachment, the Application or the accompanying Petition shall be considered as an admission, concession or agreement by either North Kern or Shafter with regard to the allegations, contentions or positions of Bakersfield or any other third party relating to North Kern’s or Shafter’s existing water rights.

**A.7. PLACE OF USE**

North Kern will use existing facilities to divert from the Kern River, store in Isabella Lake and transport the water to the boundaries of North Kern. Then, North Kern will use existing canals and spreading areas within its boundaries to meet surface water demands

in North Kern and replenish groundwater in the underlying groundwater basin. The replenished groundwater will be subsequently extracted and beneficially used in the place of use within North Kern and Shafter, including for irrigation and municipal, domestic, industrial and other purposes related to future urban development.

The location of, among other things, the approximate boundaries of North Kern, place of use within North Kern and Shafter, Isabella Lake and points of diversion are shown on Map 1. The approximate location of, among other things, the spreading areas are shown on Map 2 and are more particularly described in Table 1 to the attached Underground Storage Supplement (form APP-UGSTOR).

#### **A.8. PROJECT SCHEDULE**

**a.**

The project will use existing spreading areas and other facilities. The original points of diversion were constructed in the 1800's by predecessors in interest. North Kern's facilities were constructed by the 1950's. Lake Isabella Dam and Reservoir were completed by 1954. The project does not require construction of additional facilities.

**b.**

Applicants believe water applied for can be used to the full extent intended presently and, in any event, no later than 10 years after issuance of permit.

### **SECTION B: MISCELLANEOUS INFORMATION**

#### **B.1. JUSTIFICATION OF AMOUNTS REQUESTED**

**a.**

Irrigation use is also discussed A.3. and A.4.a. above.

**b./e./h.**

As mentioned, the municipality of Shafter is located adjacent to and within North Kern. In the near future, farmed land in Shafter and North Kern is expected to become urbanized. To meet future water demands of urbanized lands, Shafter and North Kern will require additional high quality water for municipal, domestic and other related demands related to urban development including industrial.

Presently, Shafter's boundaries cover 16,962 acres, approximately 13,373 acres of which are located within North Kern. (See Maps 1 and 2 attached.) The recent annexation of property in the southeast portion of the Shafter and the estimated population growth of Shafter will increase the future demand for additional water supplies.

As of 2006, Shafter's population was approximately 14,501 and it provided water service to approximately 3,700 connections within Shafter and to some outlying, unincorporated communities. Shafter provides water service to approximately 275 commercial and industrial connections. The population of Shafter is expected to increase to 25,712 in 2010, 37,424 in 2015, 49,136 in 2020 and 60,847 in 2025. Additionally, the City of Shafter has approved a project for the newly annexed area, which will add an additional 11,778 residential units over the twenty-year build out period. Shafter's population with the newly annexed area is expected to increase to 34,104 in 2010, 54,208 in 2015, 74,312 in 2020 and 94,415 in 2025

These population increases will not only result in the increased future demand for municipal purposes such as homes, schools and parks, but will increase the future demand for industrial and commercial uses within the Shafter's sphere of influence. As of 2005, the City of Shafter has municipal and industrial uses of 2,870 acre-feet per year (afy). The City projects that its future water demand in 2025 will be approximately 21,838 afy.

**I.**

Basis for determination of amount of water needed for storage and groundwater replenishment is discussed in A.3, A.4.a. and A.6.d. above.

**B.3. CONSERVATION AND MONITORING**

**a.**

North Kern developed and implemented a project, more than 50 years ago, which is based on the conjunctive use of available Kern River water and groundwater. Through this project, North Kern has regulated a highly variable Kern River supply through both surface storage (in Isabella Reservoir) and underground storage. It is a classic, and one of the first, conjunctive use projects of its kind. North Kern principally uses the concrete-lined Beardsley Canal to divert water from the Kern River and transport it to North Kern. The water is measured at the point of diversion from the River, at the point where it enters North Kern, and at each point of delivery, whether to irrigation or groundwater replenishment. Regarding irrigation deliveries, there has been a trend, over many years, toward permanent crops and away from annual crops. With this change has come a corresponding increase in the growers' use of more controlled irrigation methods, such as micro sprinklers and drip. In this regard, it is important to note, and is in fact the basis for North Kern's project, that all water that percolates to the underlying groundwater, whether intentionally through spreading or seepage from canals, is recoverable for reasonable and beneficial use.

**B.4. RIGHT OF ACCESS**

North Kern either owns the land where the water will be diverted, stored, transported and used or has existing legal right of access to the same.

## **B.5. EXISTING WATER RIGHTS AND RELATED FILINGS**

### **a./b.**

Existing water rights are more particularly described in Section A.6.d. above. The season of use is January 1 through December 31. Locations of the points of diversion are specified in Section A.5. of the Application and shown on Map 1 attached. Kern River water was first used by predecessors in interest in the 1870's for agricultural and other beneficial uses.

### **c.**

Poso Creek flows through the northerly portion of North Kern, as shown on Maps 1 and 2 attached. North Kern has a permit (Application A026351/Permit 21051) to use a portion of Poso Creek's flows. As indicated in A.6.d.(4) above, the availability of such water is generally irregular in time and amount and the quantity of usable water is relatively small.

## **B.6. OTHER SOURCES OF WATER**

North Kern's and Shafter's other sources of water are described in Section A.6.d. above. Applicants intend to use such sources of water to meet the existing and future needs of the Project to the extent they have the legal right to do so.

## **SECTION C: ENVIRONMENTAL INFORMATION**

### **C.3. ENVIRONMENTAL DOCUMENTS**

#### **d.**

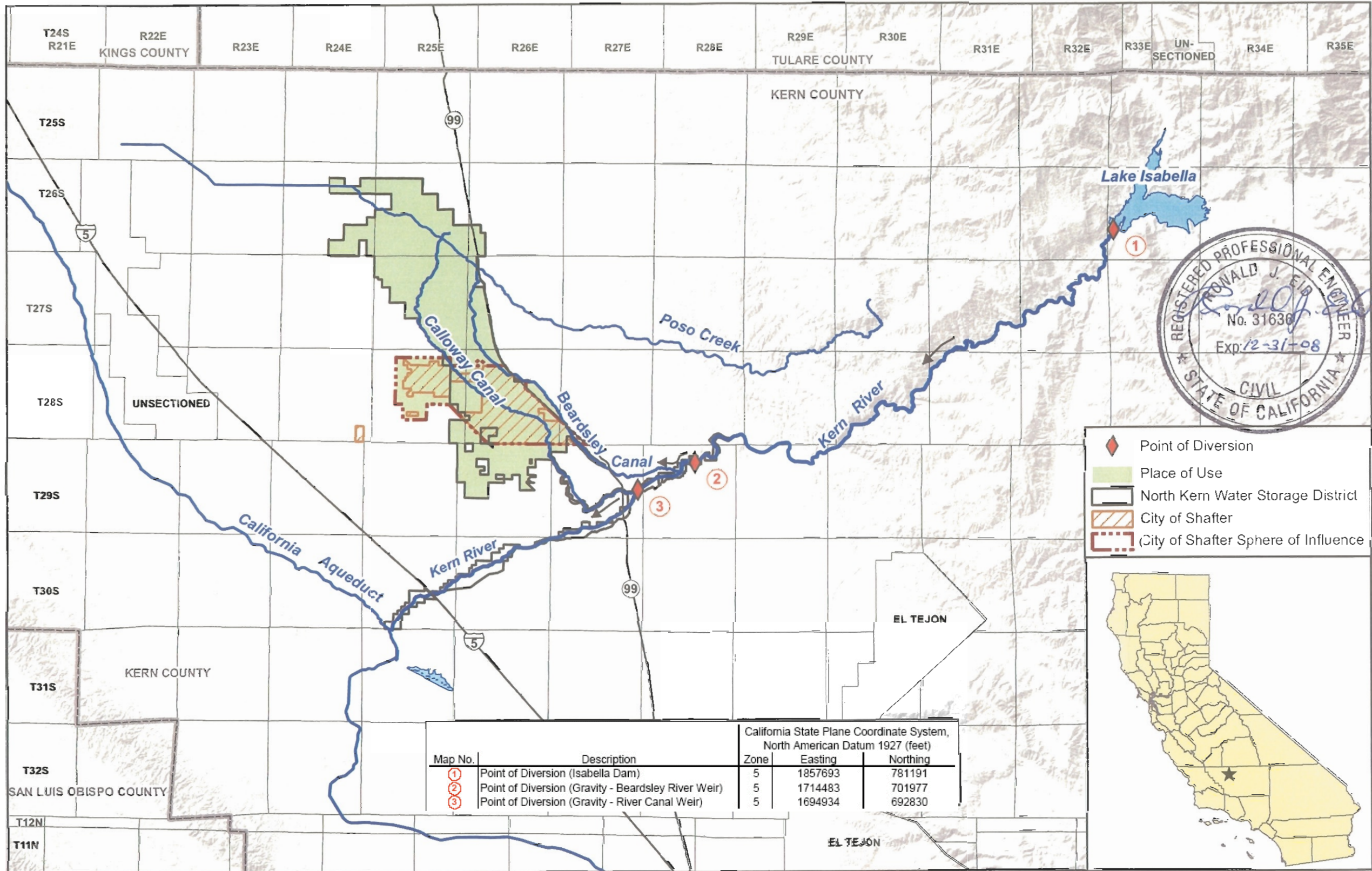
All Project facilities were completed several years before enactment of the California Environmental Quality Act ("CEQA"). The Project does not involve any construction activity. If not exempt, North Kern, Shafter or other appropriate lead agency under CEQA will prepare the required environmental documents for the Project.

### **C.6. ENVIRONMENTAL SETTING**

Applicants' understanding is that this request for photographs is made with regard to vegetation located at proposed sites of construction of new points of diversion as compared to existing facilities constructed decades ago. Because the Project will use only existing facilities, no photographs have been included. Photographs, however, can be provided upon request if necessary or required.

Attached Maps 1 and 2 show the places where the water is to be used, namely in North Kern and Shafter. One (1) copy of each map is included with the Application.





- Point of Diversion
- Place of Use
- North Kern Water Storage District
- City of Shafter
- City of Shafter Sphere of Influence



Map No.	Description	California State Plane Coordinate System, North American Datum 1927 (feet)		
		Zone	Easting	Northing
①	Point of Diversion (Isabella Dam)	5	1857693	781191
②	Point of Diversion (Gravity - Beardsley River Weir)	5	1714483	701977
③	Point of Diversion (Gravity - River Canal Weir)	5	1694934	692830



North Kern Water Storage District  
City of Shafter  
Kern County, California

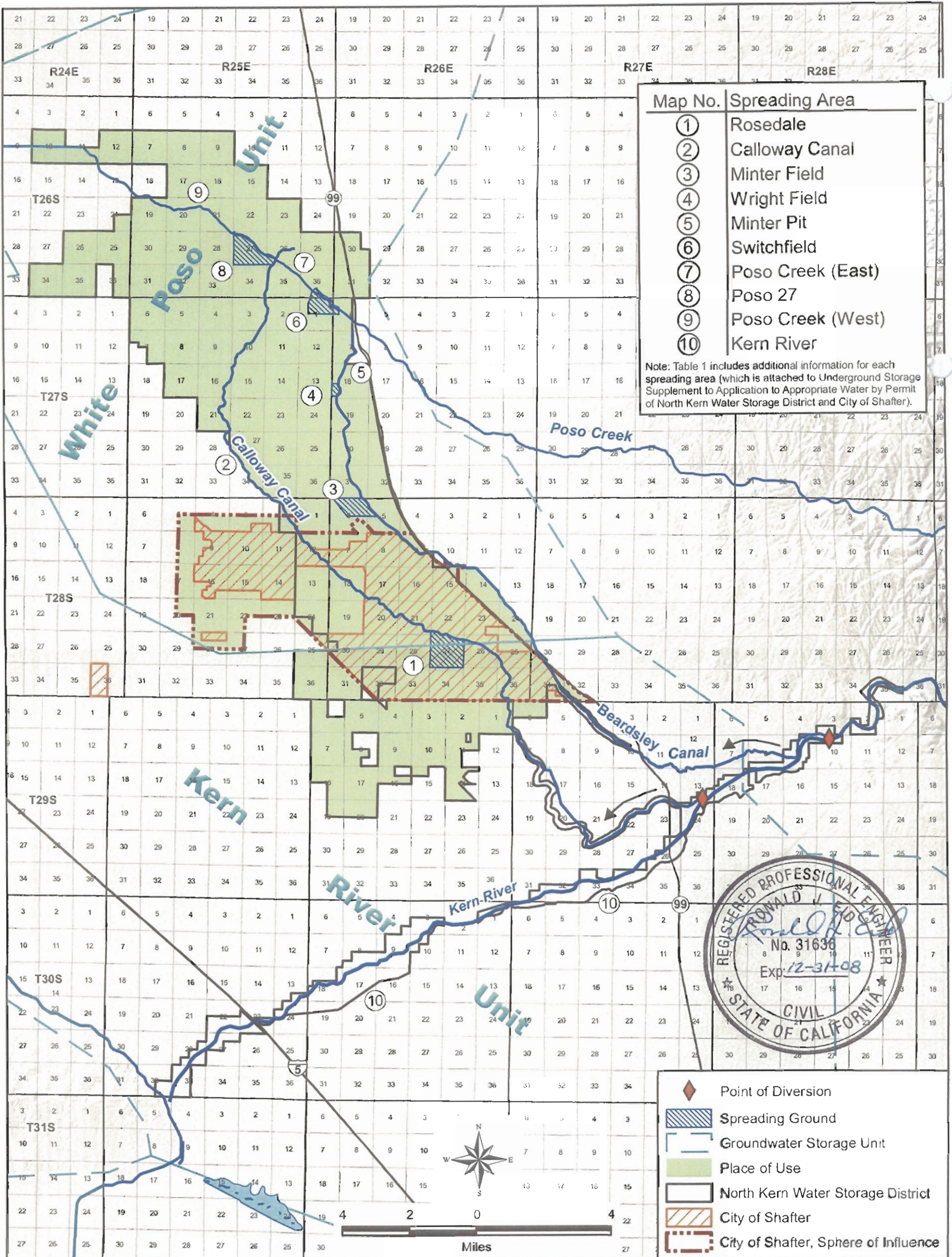


POINTS OF DIVERSION AND PLACE OF USE

APRIL 2007

MAP 1





Map No.	Spreading Area
①	Rosedale
②	Calloway Canal
③	Minter Field
④	Wright Field
⑤	Minter Pit
⑥	Switchfield
⑦	Poso Creek (East)
⑧	Poso 27
⑨	Poso Creek (West)
⑩	Kern River

Note: Table 1 includes additional information for each spreading area (which is attached to Underground Storage Supplement to Application to Appropriate Water by Permit of North Kern Water Storage District and City of Shafter).



- ◆ Point of Diversion
- ▨ Spreading Ground
- ▭ Groundwater Storage Unit
- ▭ Place of Use
- ▭ North Kern Water Storage District
- ▨ City of Shafter
- ▭ City of Shafter, Sphere of Influence

North Kern Water Storage District  
City of Shafter  
Kern County, California



SPREADING AREAS AND PLACE OF USE  
APRIL 2007