



Superior Court of California
County of Kern
Bakersfield Department 8

Date: 12/27/2023

Time: 8:00 AM - 5:00 PM

BCV-22-103220

BRING BACK THE KERN ET AL VS CITY OF BAKERSFIELD

Courtroom Staff

Honorable: Gregory A. Pulskamp

Clerk: Inez Trimble

NATURE OF PROCEEDING:

Ruling on Motions and Objections heretofore submitted on December 21, 2023.

RULING:

1. The "FIRST AND SECOND POINT PARTIES' MOTION FOR RECONSIDERATION OF PRELIMINARY INJUNCTION AND IMPLEMENTATION ORDER" is denied in part and granted in part.
2. The "FIRST AND SECOND POINT PARTIES' MOTION FOR STAY OF PRELIMINARY INJUNCTION AND IMPLEMENTATION ORDER" is denied in part and granted in part.
3. The "KERN COUNTY WATER AGENCY'S MOTION FOR RECONSIDERATION AND STAY, AND REQUEST FOR EVIDENTIARY HEARING" is denied in part and granted in part.
4. The "FIRST AND SECOND POINT PARTIES' OBJECTIONS TO EVIDENCE SUBMITTED IN OPPOSITION TO MOTION FOR RECONSIDERATION" is denied.
5. The "KERN COUNTY WATER AGENCY'S EVIDENTIARY OBJECTIONS TO DECLARATION OF COLIN L. PEARCE IN SUPPORT OF CITY OF BAKERSFIELD'S RESPONSE TO MOTIONS FOR RECONSIDERATION" is denied.
6. The "WATER AUDIT CALIFORNIA'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION" is denied.
7. The "REAL PARTIES' OBJECTION TO WATER AUDIT CALIFORNIA'S EX PARTE

RULING
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APPLICATION” is denied.

8. The “REAL PARTIES’ OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF WATER AUDIT CALIFORNIA’S EX PARTE APPLICATION” is denied.

DISCUSSION:

The Court’s “ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION” filed on November 9, 2023 did not require the Real Parties in Interest to participate in the good faith consultations because they do not operate the weirs subject to the injunction. However, the Order did not preclude the Real Parties in Interest from engaging in the consultations. Evidence submitted in advance of the hearing on December 21, 2023 indicates that the Real Parties in Interest were invited to participate in the consultations, but declined. Nevertheless, out of an abundance of caution and in an effort to reach a global resolution satisfactory to all the parties, the Court is willing to modify the Order as set forth below. In addition, recent circumstances demonstrate the potential for exceptionally low periodic flow rates from Lake Isabella, requiring this Court to make at least a partial determination regarding priority of flows.

Based on the foregoing, the Court’s “ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION” filed on November 9, 2023 is hereby modified as follows (changes are in *italics*).

“IT IS HEREBY ORDERED THAT:

1. Plaintiff’s Motion for Preliminary Injunction is granted;
2. Defendant City of Bakersfield and its officers, directors, employees, agents, and all persons acting on its behalf are prohibited from operating the Beardsley Weir, the Rocky Point Weir, the Calloway Weir, the River Canal Weir, the Bellevue Weir, and the McClung Weir in any manner that reduces Kern River flows below the volume sufficient to keep fish downstream of said weirs in good condition, *unless exempted by dire necessity to sustain human consumption through the domestic water supply.*
3. Defendant, Plaintiffs, *and Real Parties in Interest* shall engage in good faith consultation to establish flow rates necessary for compliance with this order;
4. The Court shall retain jurisdiction to ensure compliance with this order and to modify the terms and conditions thereof if reasonably necessitated by law or in the interests of justice. If after good faith consultation, Defendant, Plaintiffs, *and Real Parties in Interest* are not successful in agreeing to flow rates necessary for compliance, *any party* may file a request for this Court to make a determination regarding compliance, impose specific flow rates, or make any other legal determination pertinent to the order, after

reasonable notice to *all the parties*;

5. This order shall become effective immediately upon the posting of a bond in the amount of \$1,000.00, or of cash or a check made out to the Clerk of the Kern County Superior Court in lieu thereof. The date and time of the posting of the bond, or of cash or a check in lieu thereof, shall be reflected in a Notice of Posting of Undertaking to be filed by Plaintiff and served on all parties.
6. This order shall remain in place until the conclusion of trial, further order of this Court, or further order by a court of higher jurisdiction.”

The Court’s “Order for Implementation of Preliminary Injunction” filed on November 14, 2023 is stayed.

DISPOSITION:

Real Parties in Interest shall prepare a formal order consistent with this ruling for the Court's signature pursuant to California Rule of Court 3.1312.

Copy of minutes mailed to all parties as stated on the attached certificate of mailing.

FUTURE HEARINGS:

No future hearings are currently set.

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the ***Ruling dated December 27, 2023*** attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: December 27, 2023

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tara Leal
CLERK OF THE SUPERIOR COURT

Date: December 27, 2023

By: *Inez Trimble*
Inez Trimble, Deputy Clerk

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