
**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

BRING BACK THE KERN, et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent,

BUENA VISTA WATER STORAGE DISTRICT, et al.,
Real Parties in Interest and Appellants.

After Decision by the Court of Appeal
Fifth Appellate District, Court Case No. F087487

Kern County Superior Court, Case No. BCV-22-103220
The Honorable Gregory Pulskamp

PETITION FOR REVIEW

William McKinnon (CSB 129329)
Attorney at Law
952 School St., PMB 316
Napa, CA 94559
Telephone: 530-575-5335
legal@waterauditca.org
Attorney for Water Audit California

Adam Keats (CSB No. 191157)
Law Office of Adam Keats, PC
2489 Mission St., Suite 16
San Francisco, CA 94110
Telephone: 415-964-0070
adam@keatslaw.org
*Attorney for Bring Back the Kern,
Kern River Parkway Foundation,
Kern Audubon Society, Center for
Biological Diversity*

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners hereby certify that they are not aware of any entity or person that rules 8.208 and 8.488 of the California Rules of Court require to be listed in this Certificate.

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PETITION FOR REVIEW

William McKinnon (CSB 129329)
Attorney at Law
952 School St., PMB 316
Napa, CA 94559
Telephone: 530-575-5335
legal@waterauditca.org
Attorney for Water Audit California

Adam Keats (CSB No. 191157)
Law Office of Adam Keats, PC
2489 Mission St., Suite 16
San Francisco, CA 94110
Telephone: 415-964-0070
adam@keatslaw.org
*Attorney for Bring Back the Kern,
Kern River Parkway Foundation,
Kern Audubon Society, Center for
Biological Diversity*

PETITION FOR REVIEW

**TO THE HONORABLE PATRICIA GUERRO,
CHIEF JUSTICE OF THE SUPREME COURT OF
CALIFORNIA, AND THE HONORABLE
ASSOCIATE JUSTICES:**

Pursuant to California Rule of Court, rule 8.500(a) and the California Constitution Article VI section 14, Water Audit California, Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, and Center for Biological Diversity, (collectively “Petitioners”) respectfully pray the Supreme Court to issue a writ of mandate to the Fifth District Court of Appeal directing the provision of the reasons for a May 3, 2024, issuance of a writ of supersedeas (the “Writ”).

In its entirety the Writ stated:

Good cause appearing, a writ of supersedeas shall issue as follows.

Pending further action of this court, the superior court’s orders filed on November 9, 2023, and November 14, 2023, are both stayed, as are all proceedings embraced or affected by said orders, including proceedings on plaintiffs/respondents’ “Motion to Compel Compliance with Preliminary Injunction.” (hereinafter the “Writ”) (see Attachment 1.)

Pursuant to California Rules of Court, rule 8.500(b) the Supreme Court may order review of a Court of Appeal decision:

(1) When necessary to secure uniformity of decision or to settle an important question; ...

(4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

Petitioners have twice sought rehearing of the Writ seeking reasons for the decision. On both occasions rehearing was summarily denied. (see Attachments 2, 3.) This is a matter of substantial public interest, as the Writ has the potential to substantially injure the *res* of the public trust in the Kern River.

I. ISSUE PRESENTED

May an appellate court grant a writ of supersedeas staying a preliminary prohibitory injunction without providing reasons for its action?

**A. THE WRIT WAS DETERMINATIVE OF A CAUSE,
AND THEREFORE REASONS ARE REQUIRED**

The Court of Appeal shares original jurisdiction over petitions for writs of mandate with the Supreme Court and the superior courts. (Cal. Const., art. VI, § 10.) The California Constitution requires that "decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated." (Cal. Const., art. VI, § 14.)

“The requirement of written opinions has been in existence as to this court since the adoption of the state Constitution of 1879 (former art. VI, § 2) and as to the Courts of Appeal since their creation in 1904 (former art. VI, § 24). ... (See Strauss, *Written Opinions* (1964) 39 State Bar J. 127; Gibson, *Judicial Article of California Constitution* (1956) 29 So.Cal.L.Rev. 389, 395; Radin, *The Requirement of Written Opinions* (1930) 18 Cal.L.Rev. 486.)”(*People v. Medina* (1972) 6 Cal.3d 484, 490, fn. 5.)

II. WHY THE COURT SHOULD GRANT REVIEW

A. THE WRIT DETERMINED A CAUSE WITHIN THE MEANING OF CAL. CONST., ART VI, § 14

Review should be granted pursuant to California Rule of court, rule 8.500(b)(1) to settle an important question of law: whether an appellate court must provide reasons for granting a writ of supersedeas to stay a trial court's prohibitory preliminary injunction.

Notice to the adverse party by petitioner or the court is a prerequisite to the issue of a writ of mandate or prohibition. "In addition, an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected." (*Palma v. U. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 ("*Palma*").)

If the respondent chooses to act in conformity with the prayer, the petition becomes moot. There is a "long line of authorities which hold that the remedy of mandamus will not be employed where the respondents show that they are willing to perform the duty without the coercion of the writ." (*George v. Beaty* (1927) 85 Cal.App. 525, at 529.)

Alternatively, the respondent and/or the real party in interest may file a written return setting forth the factual and legal bases which justify the respondent's refusal. (California Rule of court, rule 3.110.)

An appellate court may summarily deny a petition without reasons, “It is settled law that an appellate court's action **denying without opinion a petition for a writ of mandate or prohibition is not the determination of a ‘cause’** requiring oral argument and a written opinion. [Citation omitted]” (*People v. Medina* (1972) 6 Cal.3d 484, 490) (Emphasis added.)

The Supreme Court has held “the denial of a writ petition does not establish law of the case **unless** the denial is accompanied by a written opinion following the issuance of an alternative writ.” (*Kowis v. Howard*, 3 Cal.4th 888, 891 (Cal. 1992) (Emphasis added.)

However, “**the decision to grant a peremptory writ, unlike the summary denial of a petition seeking a writ, is determinative of a “cause” within the meaning of article VI, section 14** [Citations], the order directing that it issue must, however, “be in writing with reasons stated.”” (*Palma*, *supra*,

36 Cal. 3d 171, 178, 681 P.2d 893, 897 (1984) (Emphasis added.)

Herein the opposition was sought in the Petition for Writ. The Appellate Court later affirmed that opposition was anticipated.¹ Petitioners filed oppositions to the Writ, and the matter thus became at issue. Accordingly, the issue of the Writ determined a cause within the meaning of Cal. Const., art. VI, § 14. Under the plain language of Article VI, section 14, and under prevailing judicial authority, the Appellate Court should be required to provide the reasons it granted the writ of supersedeas in its order granting the writ. Review should be granted to make clear the scope of Article VI, section 14, and provide much-needed guidance to the courts.

III. STATEMENT OF THE CASE

California Rule of Court, rule 8.500(c) limits review in the normal course to the appellate court's statement of the issues and facts. Herein there is no such statement, precluding

¹ Docket Entry 04/24/2024, Order filed. This court is in receipt of the "Petition for Writ of Supersedeas or Other Stay," filed by appellant and real parties in interest on April 19, 2024. Any party desiring to file an opposition to the petition must do so on or before April 29, 2024...

conventional Supreme Court briefing and review. Petitioners called the appellate court's attention to its omission by two petitions for rehearing, as set forth below in detail, both of which were summarily denied. In the absence of any appellate statement, Petitioners respectfully make the following statement of facts, and recitation of the issues set forth in the proceedings below.

A. FACTS

A series of small dams, or "weirs" are located in the Kern River ("River") proximate to the City of Bakersfield ("City"). (Petition for Writ of Supersedeas or Other Stay "Petition", Ex. 3, at p. 85.) The weirs divert water from the River for potable consumption by the City's residents and agricultural irrigation for adjacent water districts: Buena Vista Water Storage District, Kern Delta Water Storage District, North Kern Water Storage District, and Rosedale-Rio Bravo Water District (the "Water Districts") (Petition, Ex. 3, at pp. 85, 86.)

The trial court held that the diversion weirs were "dams" as defined in Fish and Game Code, section 5900, subdivision (a), (Petition, Ex. 3, at p. 89) and that the City is the owner of

the weirs pursuant to Fish and Game Code, section 5900, subdivision (c). (Petition, Ex. 3, at p. 89.)

Water sharing and distribution was directed by over a century and a half of contracts, litigation and judicial resolutions (Water Audit California Opposition to Petition for Writ of Supersedeas “Opposition”, at pp. 15-16; see also (Petition, Ex. 3, at pp. 84-85.)

Before litigation, weir operations resulted in the frequent dewatering of the City’s reach of the River, resulting in the routine extirpation of all aquatic life that constitutes the public trust *res* in the River. (see Petition, Ex. 3, at pp. 85, 90-91, 96.)

B. PROCEEDINGS IN THE COURTS BELOW

On November 30, 2022, a coalition consisting of Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Sierra Club, and Center for Biological Diversity (collectively “BBTK”), together with public trust advocates Water Audit California (“Water Audit”) (collectively the Petitioners herein) filed a complaint and petition seeking, *inter alia*, to enjoin the City’s excessive diversion of Kern River water pursuant to Fish and Game Code, section 5937 to

keep the fish in the City’s reach of the River in good condition.
(see Petition, Ex. 3, at pp. 86, 88.)

After voluminous briefing and extended hearing, on November 9, 2023, the trial court issued a preliminary injunction prohibiting the City from conduct that would dewater the River. (see Petition, Ex. 3, at pp. 88-92.) In reaching this decision, the trial court determined that Fish and Game Code, section 5937 mandated the bypass of “sufficient” flows to keep “fish downstream” in good condition. (see Petition, Ex. 3, at pp. 89-92.) The trial court held that Fish and Game Code, section 5937 is a “specific rule” concerning the public trust doctrine. (*California Trout v. St. Water Resources Ctrl. Bd.* (1989) 207 Cal.App.3d 585, 629-30 (“*CalTrout I*”).)” (Petition, Ex. 3, at p. 90.)

The trial court concluded that “[c]ase law therefore very clearly confirms that Section 5937 was deliberately adopted by the State Legislature after balancing the competing uses of water and is enforceable as a legislative mandate. For the foregoing reasons, this Court must conclude that Plaintiffs have a very high likelihood of succeeding on the merits.” (Petition,

Ex. 3, at p. 92.) Further, “[s]ince the conduct to be restrained would prevent Defendant from engaging in a particular behavior, the injunction sought is prohibitory, not mandatory.” (Petition, Ex. 3, at p. 88.) “[I]t is relatively clear that an injunction that is designed to restrain illegal conduct is prohibitory in nature, not mandatory, (See, e.g., *Oiye v. Fox* (2012) 211 Cal.4th 1036, 1048.)” (*Id.*).

In support of its decision, the trial court held the “Plaintiff appears to have access to some of the most highly qualified subject matter experts in the county ...” (Petition, Ex. 3, at 87.) Water Audit’s hydrological expert was held to be “ ... well qualified to render opinion on multiple topics that are within the scope of the issues framed by the moving papers and the oppositions ...” (*Id.*, see also Petition, Ex. 3, at 16, 17)

The trial court thoroughly considered the balance of harm, concluding that “it appears that the Kern River has never failed to provide sufficient water for domestic use and, in the ‘average year,’ the river provides over five times [City’s] total current use. Accordingly, the present action does not appear to threaten the domestic water supply.” (Petition, Ex. 3, at p. 94.)

“... several courts expanded on the principles set forth in *National Audubon* to establish Section 5937 as a non-discretionary, specific legislative rule reflecting the public trust doctrine. (See, e.g., *CalTrout I*, *CalTrout II*, *Patterson I*, and *Patterson II*.) As such, the courts held that compliance with Section 5937 is compulsory, as is compliance with any other state law. It is well established that contractual obligations do not take precedence over compliance with state law. (See, e.g., *Patterson I*, supra, 791 F. Supp. 1425.) ... What is clear, however, is that the average annual Kern River flows of approximately 726,000 acre-feet is an enormous amount of water that should suffice for the reasonable use of all interested stakeholders.” (Petition, Ex. 3, at p. 96.)

As additional information became available over the following months the November 9, 2023 preliminary injunction was modified twice by the court on November 14, 2023 and January 9, 2024. (see Petition, at pp. 12-13, see also Petition Exs. 4, 5) and a third time by stipulation between the City and the Appellants.

On April 15, 2024, BBTK filed its Motion to Compel Compliance with Preliminary Injunction in the trial court. (see Petition, at 6, 25; see also Ex. 1.) On April 19, 2024, the Water Districts filed its Petition for Writ Supersedeas or Other Stay (5th Appellate District, Case No. F087487.) BBTK and Water Audit filed their oppositions on April 29, 2024 (5th Appellate District, Case No. F087487.)

On May 3, 2024, the Court of Appeal held that a writ of supersedeas (“supersedeas”) would issue “for good cause.” (Order re supersedeas, at p. 3.) On May 16, 2024, BBTK sought rehearing of the supersedeas to determine if the court had based its decision on characterization of the preliminary injunction as prohibitory or mandatory in nature, and if the supersedeas was issued based on an automatic or discretionary stay. (BBTK Petition for Rehearing, at p. 6.) Rehearing was denied. (see May 16, 2024 Order Denying Petition for Rehearing, at p. 3.)

Additionally, on May 17, 2024, Water Audit asked the appellate court to take judicial notice of relevant records, and for the court to provide reasons for its decision. (see Water Audit Petition for Rehearing.)

California Rule of Court, rule 8.500 (c) states in part: (1) As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal. In accord, Water Audit asked the appellate court to reconsider whether the trial court applied the correct legal principles to: (1) determine the weirs' status as "dams;" the ownership of the weirs, the duties of the owner(s) and the duty to bypass pursuant to Fish and Game code, section 5937; (2) determine the requirement for sufficient bypass being made by the weirs pursuant to Fish and Game Code, section 5937; (3) determine initial interim flow; (4) adjust the interim flow as additional information became available; (5) determine that the injunction prohibiting dewatering of the Kern River was prohibitory; and (6) determine the balance of harms and the likelihood of irreparable harm when issuing the preliminary injunction.

Further, Water Audit asked the court to determine whether the trial court in its application of the law to the facts was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.

Rehearing was denied, (May 24, 2024 Order Denying Petition for Rehearing, at p. 3.)

IV. ARGUMENTS AND LEGAL AUTHORITIES

A. THE STANDARDS OF WRIT REVIEW

In *Ng v. Superior Court* (1992) 4 Cal. 4th 29, 13 Cal. Rptr. 2d 856, 840 P.2d 961, the Supreme Court emphasized that the issuance of a peremptory writ in the first instance is a procedural rarity. “A writ of supersedeas is not a matter of right but it is issued in aid of appellate jurisdiction only when the appellate court, from the record before it, believes such action is ‘necessary or proper to the complete exercise of its appellate jurisdiction.’ [Citations omitted].” (*San Diego Research Library v. Brown* (1962) 21 Cal. Rptr. 537, 539.)

“It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory . . . law in the exercise of its official duties.’ [Citation.]” (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 741.)

“ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be

affirmatively shown...’ [Citations]” (*Denham v. Superior Court* (1970) 2 Cal. 3d 557, 567.)

The decision to grant or deny a preliminary injunction rests in the sound discretion of the trial court. (*IT Corp. v County of Imperial* (1983) 35 Cal.3d 63, 69 (“*IT Corp*”).) A trial court abuses its discretion “only when it ‘ ‘has exceeded the bounds of reason or contravened the uncontradicted evidence.’ ’ ” (*Ibid.*) “In other words, judicial discretion must be measured against the general rules of law and, in the case of a statutory grant of discretion, against the specific law that grants the discretion.” (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App. 4th 359, 393, 33 Cal. Rptr. 3d 644.)

Although granted broad discretion, the trial court may not transgress “the confines of the applicable principles of law...’ ” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal. 4th 747, 773, 149 Cal. Rptr.3d 614, 288 P.3d 1237 quoting *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-1298, 255 Cal.Rptr. 704.)

Review is confined to a consideration whether the trial court abused its discretion in evaluating two factors when deciding whether or not to issue a preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm the defendant is likely to suffer if the preliminary injunction were issued. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1109.)

Review of a preliminary injunction “may trigger any or all of the three standards of appellate review.” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App. 4th 400, 408, 58 Cal.Rptr.3d 527 (“*Huong Que*”).) The likelihood of success on the merits and the balance of harm is reviewed for abuse of discretion. (*IT Corp.*, supra, 35 Cal.3d 63, 69-70, 196 Cal.Rptr. 715, 672 P.2d 121.) The appellate court is to then review the trial court’s application of legal principles and review its findings of fact under the substantial evidence standard. (*Huong Que*, supra, at pp. 408-409, 58 Cal. Rptr. 3d 527.)

Code of Civil Procedure section, 916 provides for stays of trial court proceedings regarding matters embraced in or affected by the appealed order. (Code Civ. Proc. § 916, subd. (a).) But automatic stays only apply to mandatory injunctions, not prohibitory injunctions: “An injunction that requires no action and merely preserves the status quo (a so-called prohibitory injunction) ordinarily takes effect immediately, while an injunction requiring the defendant to take affirmative action (a so-called mandatory injunction) is automatically stayed during the pendency of the appeal.” (*Daly v. San Bernardino Cnty. Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1048.)

Code of Civil Procedure, section 923, in turn, allows for discretionary stays, but “a party seeking a writ must convincingly show that substantial questions will be raised on appeal and must demonstrate it would suffer irreparable harm outweighing the harm that would be suffered by the other party.” (*Smith v. Selma Community Hospital* ((2010) 188 Cal.App.4th 1, 18.)

The issuance of a writ of supersedeas does not depend “on the 'balancing of conveniences or hardships,' but rather, 'upon a consideration of the respective rights of the litigants, which contemplates the possibility of the affirmance of the decree as well as of a reversal.' (*Food & Grocery Bureau of Southern California v. Garfield*, supra, 18 Cal.2d 177, 114 P.2d 581.)” (*San Diego Research Library v. Brown* (1962) 21 Cal. Rptr. 537, 540.)

B. GOOD CAUSE DOES NOT CONSTITUTE A REASONED DECISION

"The concept of good cause should not be enshrined in legal formalism; **it calls for a factual exposition of a reasonable ground** for the sought order.” (*Waters v. Superior Court* (1962) 58 Cal.2d 885, 893.) (Emphasis added) ""[I]n determining the meaning of 'good cause' in a particular context, the courts utilize common sense based upon the totality of the circumstances," **which "include[s] the purpose of the underlying statutory scheme."** [Citation.]" (*Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514, 527.) (Emphasis added.)

In the Writ decision, the Appellate Court did not inform the parties whether or not the trial court abused its discretion,

identified the correct legal rule to apply to the relief requested, or Under what authority it issued its stay, whether Code of Civil Procedure, sections 916 or 923. Further, the Court did not discuss whether or not Appellants were likely to prevail on the merits or if the trial court erred in its analysis considering and balancing harm. Perhaps most seriously, the Court did not address the certainty of irreparable environmental harm if the Writ results in elimination of sufficient flow in the Kern River to keep fish existent there in good condition.

V. CONCLUSION

Wherefore the Petitioners respectfully pray the Supreme Court review the Fifth District Court of Appeal writ of supersedeas dated May 3, 2024, and remand for the preparation of a statement of the issues and facts, or such other relief as this Court considers just in the circumstances.

This request is consistent with the Constitutional mandate that judicial decisions should explain the basis on which they are made. Providing detailed reasons for a judgment ensures that the decision-making process is transparent. It allows the public, parties involved, and lower courts to understand how the

decision was reached. This accountability helps maintain trust in the judicial system.

Appellate decisions often serve as precedents for lower courts. Detailed reasoning helps these courts understand how to apply legal principles to similar cases, ensuring consistency and uniformity in the application of the law.

Finally, a reasoned decision will help guide the conduct of the parties to this litigation.

Date: June 11, 2024

/s/ William McKinnon
William McKinnon
Attorney for Plaintiff
Water Audit California

Date: June 11, 2024

/s/ Adam Keats
Adam Keats
Attorney for Bring Back
the Kern, Kern River
Parkway Foundation, Kern
Audubon Society, Center
for Biological Diversity

VI. CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(5) of the California Rules of the Court, the enclosed petition for writ of mandate is produced using 14-point Times New Roman and contains 3470 words, not including the cover, the Table of Contents and the Table of Points and Authorities, this certificate, and the signature block. Counsel relies on the word count of the Microsoft Word computer program used to prepare this brief.

Date: June 11, 2024

/s/ William McKinnon
William McKinnon
Attorney for
Water Audit California

Date: June 11, 2024

/s/ Adam Keats
Adam Keats
Attorney for Bring Back
the Kern, Kern River
Parkway Foundation, Kern
Audubon Society, Center
for Biological Diversity

VII. ATTACHMENTS

1 - Order issuing writ of supersedeas

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087487

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN DELTA WATER DISTRICT;
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087503

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
ROSEDALE-RIO BRAVO WATER STORAGE
DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087549

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,
v.
CITY OF BAKERSFIELD,
Defendant and Respondent;
BUENA VISTA WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087558
(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,
v.
CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN COUNTY WATER AGENCY,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087560
(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,
v.
CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents;
J.G. BOSWELL COMPANY,
Intervener and Appellant.

F087702
(Kern Super. Ct. No. BCV-22-103220)

ORDER

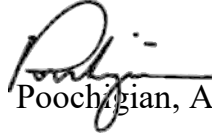
BY THE COURT:*

* Before Poochigian, A.P.J., Detjen, J. and Peña, J.

Good cause appearing, a writ of supersedeas shall issue as follows.

Pending further action of this court, the superior court's orders filed on November 9, 2023, and November 14, 2023, are both stayed, as are all proceedings embraced or affected by said orders, including proceedings on plaintiffs/respondents' "Motion to Compel Compliance with Preliminary Injunction."

The Clerk/Executive Officer of this court is directed to notify the trial court of this order pursuant to California Rules of Court, rules 8.112(d)(3) and 8.489.


Poochigian, A.P.J.

2 - Order Denying Rehearing

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087487

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN DELTA WATER DISTRICT;
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087503

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
ROSEDALE-RIO BRAVO WATER STORAGE
DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087549

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
BUENA VISTA WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087558

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN COUNTY WATER AGENCY,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087560

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents;
J.G. BOSWELL COMPANY,
Intervener and Appellant.

F087702

(Kern Super. Ct. No. BCV-22-103220)

**ORDER DENYING PETITION
FOR REHEARING**

BY THE COURT:*

* Before Poochigian, A.P.J., Detjen, J. and Peña, J.

Respondents Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Sierra Club, and Center for Biological Diversity's "PETITION FOR REHEARING," filed on May 16, 2024, is denied.


POOCHIGIAN, A.P.J.

WE CONCUR:



DETJEN, J.



PEÑA, J.

3 - Order Denying Rehearing

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087487

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN DELTA WATER DISTRICT;
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087503

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
ROSEDALE-RIO BRAVO WATER STORAGE
DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087549

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
BUENA VISTA WATER STORAGE DISTRICT,
Real Party in Interest and Appellant;
KERN DELTA WATER DISTRICT et al.,
Real Parties in Interest and Respondents.

F087558

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
KERN COUNTY WATER AGENCY,
Real Party in Interest and Appellant;
BUENA VISTA WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents.

F087560

(Kern Super. Ct. No. BCV-22-103220)

BRING BACK THE KERN et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent;
NORTH KERN WATER STORAGE DISTRICT
et al.,
Real Parties in Interest and Respondents;
J.G. BOSWELL COMPANY,
Intervener and Appellant.

F087702

(Kern Super. Ct. No. BCV-22-103220)

**ORDER DENYING PETITION
FOR REHEARING**

BY THE COURT:*

* Before Poochigian, A.P.J., Detjen, J. and Peña, J.

No opposition having been filed within the time permitted and good cause appearing, respondent Water Audit California's "REQUEST FOR JUDICIAL NOTICE ...," filed on May 17, 2024, is granted.

Respondent Water Audit California's "PETITION FOR REHEARING," filed on May 17, 2024, is denied.


POOCHIGIAN, A.P.J.

WE CONCUR:



DETJEN, J.



PEÑA, J.

PROOF OF SERVICE

I, Valerie Stephan, am over eighteen years of age and not a party to this action. My business address is 952 School Street #316, Napa, CA 94559.

On June 11, 2024, I served the following document as follows on the interested parties in this action as follows:

PETITION FOR REVIEW

Case Name

**BRING BACK THE KERN, et al.,
Plaintiffs and Respondents,**

v.

**CITY OF BAKERSFIELD,
Defendant and Respondent,**

**BUENA VISTA WATER STORAGE DISTRICT, et al.,
Real Parties in Interest and Appellants.**

Court of Appeal Case No. F087487

Superior Court Case No. BCV-22-103220

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system.

Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who

are not registered TrueFiling users will be served by email as listed
in the following service list.

City of Bakersfield

Colin L. Pearce
Jolie-Anne S. Ansley
Ashley L. Barton
DUANE MORRIS LLP
clpearce@duanemorris.com
jsansley@duanemorris.com
abarton@duanemorris.com
cc baherrera@duanemorris.com
mcollom@bakersfieldcity.us

Virginia A. Gennaro
CITY ATTORNEY'S OFFICE
City of Bakersfield
vgennaro@bakersfieldcity.us

Kern Delta Water District

Robert E. Donlan
Craig A. Carnes, Jr.
Kevin W. Burse
ELLISON, SCHNEIDER & HARRIS
& DONLAN
red@eslawfirm.com
cac@eslawfirm.com
kburse@eslawfirm.com

Richard Iger
General Counsel
richard@kerndelta.org

North Kern Water Storage District

Scott K. Kuney
Brett A. Stroud
YOUNG WOOLDRIDGE, LLP
skuney@youngwooldridge.com
bstroud@youngwooldridge.com
cc kmoen@youngwooldridge.com

**Buena Vista Water Storage
District**

Isaac St. Lawrence
James A. Worth
Amanda M. Rodriguez
MCMURTREY HARTSOCK
WORTH & ST. LAWRENCE
isaac@mhwslegal.com
jim@mhwslegal.com
amanda@mhwslegal.com

**Rosedale-Rio Bravo Water
Storage District**

Daniel N. Raytis
Daniel M. Root
BELDEN BLAINE RAYTIS LLP
dan@bbr.law
droot@bbr.law

Jennifer L. Spaletta
STOEL RIVES LLP
jennifer.spaletta@stoel.com

Kern County Water Agency

Amelia T. Minaberrigarai
KERN COUNTY WATER
AGENCY
ameliam@kcwa.com

Nicholas A. Jacobs
Louinda V. Lacey
Somach Simmons & Dunn APC
njacobs@somachlaw.com
llacey@somachlaw.com

pmacpherson@somachlaw.com
jestabrook@somachlaw.com
gloomis@somachlaw.com

J.G. Boswell Company
Hanson Bridgett LLP
Nathan A. Metcalf
Sean G. Herman
Jillian E. Ames
nmetcalf@hansonbridgett.com
sherman@hansonbridgett.com
james@hansonbridgett.com

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

Executed this 11th day of June, 2024, in Lincoln County,
Oregon.

By: /s/ Valerie Stephan
Valerie Stephan

ADDITIONAL PROOF OF SERVICE

I, Linda Ghiringhelli, am over eighteen years of age and not a party to this action. My business address is 952 School Street #316, Napa, CA 94559.

On June 11, 2024, I served a copy of the following documents as follows:

PETITION FOR REVIEW

Case Name

BRING BACK THE KERN, et al.,
Plaintiffs and Respondents,

v.

CITY OF BAKERSFIELD,
Defendant and Respondent,

BUENA VISTA WATER STORAGE DISTRICT, et al.,
Real Parties in Interest and Appellants.

Court of Appeal Case No. F087487

Superior Court Case No. BCV-22-103220

(1 copy)
Office of the Attorney General
P. O. Box 944255
Sacramento, CA 94244-2550

(1 copy)
Clerk of the Kern County Superior Court
1215 Truxtun Ave
Bakersfield, CA 93301

(1 copy)
Clerk of the Court of Appeal
Fifth District
2424 Ventura Street
Fresno, CA 93721

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

Executed this 11th day of June, 2024, in Napa, California.

By: /s/ Linda Giringhelli
Linda Ghiringhelli