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10 *Attorneys for Real Party in Interest North Kern Water Storage District*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BRING BACK THE KERN, WATER AUDIT
CALIFORNIA, KERN RIVER PARKWAY
FOUNDATION, KERN AUDUBON
SOCIETY, SIERRA CLUB, and CENTER
FOR BIOLOGICAL DIVERSITY,

Plaintiffs and Petitioners,

v.

CITY OF BAKERSFIELD, and DOES 1
through 500,

Defendants and Respondents,

BUENA VISTA WATER STORAGE
DISTRICT, KERN DELTA WATER
DISTRICT, NORTH KERN WATER
STORAGE DISTRICT, ROSEDALE-RIO
BRAVO WATER STORAGE DISTRICT,
KERN COUNTY WATER AGENCY, and
DOES 501-999,

Real Parties in Interest.

Case No. BCV-22-103220
Assigned to Hon. Gregory Pulskamp

**FIRST AND SECOND POINT
PARTIES' NOTICE OF MOTION AND
MOTION FOR STAY OF
PRELIMINARY INJUNCTION AND
IMPLEMENTATION ORDER**

Date: December 21, 2023
Time: 9:00 a.m.
Dept.: 8
Judge: Hon. Gregory Pulskamp

Complaint Filed: November 30, 2022
FAC Filed: March 6, 2023
SAC Filed: October 4, 2023
Trial Date: None Set

1 **Additional Attorneys and Interested Persons**

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27 *Attorneys for Real Party in Interest Buena Vista Water Storage District*

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Notice of Motion

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on December 21, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department 8 of the Kern County Superior Court, located at 1415 Truxtun Avenue in Bakersfield, California, Real Parties in Interest Kern Delta Water District, North Kern Water Storage District, and Buena Vista Water Storage District (“Moving Parties”) will move the Court for an order staying enforcement of the “Order Granting Plaintiffs’ Motion for Preliminary Injunction” and filed on November 9, 2023 (“Injunction”) and the “Order for Implementation of Preliminary Injunction” filed on November 14, 2023 (“Implementation Order”).

The motion will be made under Code of Civil Procedure section 918 on the ground that the Injunction and Implementation Order are fundamentally altering the status quo of Kern River operations, are causing significant daily impacts to the Moving Parties, and have not yet been shown to be legally and scientifically justifiable with regard to the Kern River.

The motion will be based on the attached Memorandum of Points and Authorities, the Motion for Reconsideration and related declarations and exhibits filed concurrently herewith, the files and records in this action, and any further evidence and argument that the Court may receive at or before the hearing.

Dated: November 21, 2023

The Law Offices of Young Wooldridge, LLP

By: /s/ Brett A. Stroud

Brett A. Stroud

Attorneys for Real Party in Interest

North Kern Water Storage District

Dated: November 21, 2023

Ellison, Schneider & Harris

By: /s/ Craig A. Carnes, Jr.

Craig A. Carnes, Jr.

Attorneys for Real Party in Interest

Kern Delta Water District

1 Dated: November 21, 2023

McMurtrey, Hartsock, Worth & St. Lawrence

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By: /s/ Isaac L. St. Lawrence

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Isaac L. St. Lawrence

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Attorneys for Real Party in Interest

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Buena Vista Water Storage District

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1 **Memorandum of Points and Authorities**

2 **I. Introduction**

3 Real Parties Kern Delta Water District, North Kern Water Storage District, and Buena
4 Vista Water Storage District (“Moving Parties”) submit this memorandum in support of their
5 motion to stay the enforcement of the “Order Granting Plaintiffs’ Motion for Preliminary
6 Injunction” and filed on November 9, 2023 (“Injunction”) and the “Order for Implementation of
7 Preliminary Injunction” filed on November 14, 2023 (“Implementation Order”), pending the
8 outcome of appeals that the Real Parties intend to pursue if their motions for reconsideration are
9 denied.

10 The Kern River has been subject to a complex, daily process of allocation and
11 administration for well over a century. As demonstrated in the Motion for Reconsideration filed
12 concurrently herewith, the Injunction and Implementation Order have resulted in Defendant City
13 of Bakersfield (“Bakersfield”) unilaterally rewriting that process and granting itself a new, first-
14 priority diversion of seven times the amount of Kern River water it would have otherwise been
15 entitled to under the Law of the River. Furthermore, the fish flow regime set forth in the
16 Implementation Order is without any scientific justification and should be deferred until all the
17 Real Parties are given notice and an opportunity to be heard.

18 **II. Authority for Motion**

19 Under Code of Civil Procedure section 918,¹ this Court “may stay the enforcement of any
20 judgment or order” it has made. (Code Civ. Proc., § 918, subd. (a).) The only limitation on this
21 authority applies where an order “would be stayed on appeal only by the giving of an
22 undertaking.” (§ 918, subd. (b).) That limitation does not apply, because Real Parties are all
23 public agencies exempt from any undertaking requirement. (§ 995.220.) Under Section 918, the
24 Court has power to stay the operation of its own injunctive orders, regardless of whether they are
25 characterized as mandatory or prohibitory. (*City of Hollister v. Monterey Ins. Co.* (2008) 165
26 Cal.App.4th 455, 481–82.) It also has that power regardless of whether or not a Notice of Appeal
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¹ All further statutory references are to the Code of Civil Procedure, unless otherwise noted.

1 has yet been filed. (§ 918, subd. (c).) Although the Court of Appeal also has power to issue a
2 stay, it is appropriately first brought to the trial court. (See *Veyna v. Orange County Nursery, Inc.*
3 (2009) 170 Cal.App.4th 146, 157.)

4 **III. Argument**

5 The Moving Parties believe that the Injunction and the Implementation Order constitute
6 a mandatory injunction and will be automatically stayed under Code of Civil Procedure section
7 916 when Notices of Appeal are filed. As discussed in the motion for reconsideration filed
8 concurrently herewith, the Implementation Order and other facts emerging subsequently to the
9 Injunction make the mandatory character of the Injunction apparent. However, for the avoidance
10 of doubt, the Moving Parties also request that this Court exercise its discretion pursuant to Section
11 918 to stay the operation of these two orders until the resolution of all appeals. The questions
12 involved are simply too important to proceed without hearing argument, taking scientific
13 evidence, and considering the implications.

14 Under the Injunction and the Implementation Order, Moving Parties are being harmed on
15 a daily basis, as set forth in the declarations of Steven Teglia, Perry Hyatt, Ram Venkatesan, and
16 Tim Ashlock filed in support of the motion for reconsideration. The Implementation Order has
17 allowed Bakersfield to claim a windfall in the form of a seven-fold increase of the Kern River
18 water it would have otherwise had before the Injunction, essentially providing Bakersfield with
19 a new, unprecedented first priority water right on the Kern River, all at the expense of the Real
20 Parties, particularly Kern Delta and North Kern. (Venkatesan Decl., ¶¶ 18–22; Teglia Decl.,
21 ¶¶ 12–15.)

22 **IV. Conclusion**

23 The Moving Parties respectfully request that the Court grant this motion for a stay.
24

25 Dated: November 21, 2023

The Law Offices of Young Wooldridge, LLP

26 By: /s/ Brett A. Stroud

27 Brett A. Stroud

Attorneys for Real Party in Interest

28 *North Kern Water Storage District*

1 Dated: November 21, 2023

Ellison, Schneider & Harris

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By: /s/ Craig A. Carnes, Jr.

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Craig A. Carnes, Jr.

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Attorneys for Real Party in Interest

Kern Delta Water District

5 Dated: November 21, 2023

McMurtrey, Hartsock, Worth & St. Lawrence

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By: /s/ Isaac L. St. Lawrence

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Isaac L. St. Lawrence

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Attorneys for Real Party in Interest

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Buena Vista Water Storage District

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