

No. F087487

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

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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.*

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On Appeal from the Superior Court of Kern County  
Hon. Gregory Pulskamp, Case No. BCV-22-103220

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MOTION BY AMICI CALIFORNIA ATTORNEY GENERAL AND  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE TO  
PARTICIPATE IN ORAL ARGUMENT

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Pursuant to California Rules of Court, rule 8.256(c)(2), amicus curiae California Attorney General and California Department of Fish and Wildlife (State Amici) respectfully request permission to participate in the oral argument of this matter.

This case concerns the interpretation and application of Fish and Game Code section 5937, which requires dam owners or operators to allow sufficient water to pass over, around or through the dam to keep fish downstream in “good condition.” California’s Attorney General is the “chief law officer of the State,” with unique powers to protect the State’s environment and natural resources. (Cal. Const., art. V, § 13; Gov. Code, §§ 12606, 12607.) The California Department of Fish and Wildlife is the state trustee agency for California’s fish and wildlife resources and is responsible for administering and enforcing the Fish and Game Code. (Fish & G. Code, §§ 702, 711.7, subd. (a), 1802.)<sup>1</sup> To protect those interests and to provide their unique perspectives to this Court, State Amici filed a brief with this Court’s permission on October 14, 2024.

On October 28 and 29, 2024, the various Appellants and the Respondent City of Bakersfield filed answers to State Amici’s brief. Those answers raised both factual issues and legal arguments directed specifically to State Amici’s brief. State Amici anticipate that those issues, and the arguments State

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<sup>1</sup> State Amici’s interests are described more fully in the Department’s October 14, 2024, application to file a brief as amicus curiae.

Amici made in their brief, may be the subject of argument if oral argument occurs in this matter. Accordingly, State Amici respectfully request permission to participate in oral argument, if argument is ordered or requested, so that State Amici may provide clarity and answer any questions this Court may have relating to State Amici's brief.

State Amici's participation at oral argument would not prejudice any party to this appeal, as all parties have had an opportunity to respond to State Amici's brief. Further, State Amici have conferred with counsel for the Environmental Respondents, who have not expressed objection to State Amici's participation.<sup>2</sup> If this Court grants State Amici permission to participate, State Amici anticipate splitting argument time with the Environmental Respondents in a mutually agreeable manner.

Additionally, on December 9, 2024, State Amici sent an email to counsel for all parties to this appeal notifying them of State Amici's intent to file this motion and soliciting objections or other responses by close of business on December 11. Counsel for Respondent City of Bakersfield responded that the City takes no position. Counsel for Appellant Kern County Water Agency expressed an objection on the grounds that the issues raised in State Amici's brief are the same as those briefed by Respondents, who are well represented and will argue those issues. State

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<sup>2</sup> The Environmental Respondents are Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Sierra Club, Center for Biological Diversity, and Water Audit California

Amici respectfully disagree that the issues and arguments are the same.

For the foregoing reasons, State Amici respectfully request permission to participate in oral argument of this matter.

Dated: December 12, 2024    Respectfully submitted,

ROB BONTA  
*Attorney General of California*  
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/s/ Jeffrey P. Reusch

JEFFREY P. REUSCH  
*Deputy Attorney General*  
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*California Attorney General and*  
*California Department of Fish &  
Wildlife*

CERTIFICATE OF COMPLIANCE

I certify that the attached MOTION BY AMICI CALIFORNIA ATTORNEY GENERAL AND CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE TO PARTICIPATE IN ORAL ARGUMENT uses a 13-point Century Schoolbook font and contains 511 words.

Dated: December 12, 2024

ROB BONTA

*Attorney General of California*

/s/ Jeffrey P. Reusch

JEFFREY P. REUSCH

*Deputy Attorney General*

*Attorneys for Amici Curiae*

*California Attorney General and*

*California Department of Fish & Wildlife*

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Document received by the CA 5th District Court of Appeal.

**CERTIFICATE OF SERVICE**

Case Name: *Bring Back the Kern, et al. v. City of Bakersfield*  
Case No.: California Court of Appeal, Fifth Appellate District, F087487

I hereby certify that on December 12, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**MOTION BY AMICI CALIFORNIA ATTORNEY GENERAL AND CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE TO PARTICIPATE IN ORAL ARGUMENT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 12, 2024, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Kern County Superior Court  
Hon. Gregory Pulskamp, Division J  
Metropolitan Division Justice Building  
1215 Truxtun Ave  
Bakersfield, CA 93301

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct, and that this declaration was executed on December 12, 2024, at Sacramento, California.

Valerie A. Tamulevich  
Declarant

/s/ Valerie A. Tamulevich  
Signature