



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN**

Minute Order

Date: January 22, 2026

Time: 8:00 AM

Location: Bakersfield Metro-Justice
Ruling

Case Number: BCV22103220

BRING BACK THE KERN ET AL VS CITY OF BAKERSFIELD

Judicial Officer: Gregory Pulskamp

Clerk: Robin McDonald

Court Reporter: None

Finalized by: Robin McDonald

Nature of Proceedings: Ruling on Motion for Summary Adjudication – Filed by Real Party in Interest North Kern Water Storage District; heretofore submitted on 01/12/2026.

The Court rules as follows:

See attached discussion for bases for Court's ruling (5 pages)

Copy of minute order provided to all parties as stated in the attached Certificate of Service.

NATURE OF PROCEEDING:

Ruling on the RPI's Motion for Summary Adjudication, heretofore submitted on January 12, 2026.

RULING:

For the reasons set forth below, the Court grants the motion as to all the RPI and Defendant/Respondent City of Bakersfield.

DISCUSSION:**I. Background**

The operative complaint is the Third Amended Complaint (TAC) for Injunctive Relief and Petition for Writ of Mandate pursuant to Code of Civil Procedure section 1085 brought by Petitioners, Bring Back the Kern, Water Audit California, et al., (Plaintiffs) against Respondent, the City of Bakersfield. Five water storage districts are named as real parties in interest (RPI).

On October 21, 2025, the RPI filed a notice of motion and motion for summary adjudication on the basis that Fish and Game Code section 5901 does not authorize a private right of action and Plaintiffs, as private parties, have no standing to enforce section 5901. RPI argues that a private right of action is found neither in the plain language of the statute nor in the legislative history of Section 5901. RPI contends that there is a comprehensive regulatory scheme with civil penalties issued by the California Department of Fish and Wildlife (CDFW) for administrative enforcement of Section 5901. RPI also filed a request for judicial notice of documents in support of their motion.

On December 23, 2025, Plaintiffs filed an Opposition to the motion. Plaintiffs argue that the argument that there is no private right of action under Section 5901 was raised in the RPI's demurrer to the TAC and that this Court ruled that Sections 5901 and 5937 of the Fish and Game Code should be "treated similarly." Plaintiffs request the Court find that members of the public have a right to enforce section 5901 as they do section 5937. According to Plaintiffs, because members of the public may bring actions to enforce the Public Trust Doctrine, they may also bring actions to enforce section 5901 as a "legislative expression" of the Public Trust because a private action "is strongly implied by the nature of the rights protected by section 5901 ..." (Opp. p. 10, Ins. 7-10.) Plaintiffs also contend that because they are seeking a writ of mandate, they are expressly authorized to enforce Section 5901. Lastly, Plaintiffs argue that they have no other adequate remedy to enforce Section 5901 because "the administrative enforcement scheme does not provide Plaintiffs with an adequate remedy, especially when, as is the case here, the [CDFW] does not take enforcement action." (Opp. p. 13, Ins. 3-5.)

On December 31, 2025, RPI filed a Reply arguing that Plaintiffs' assertion they can enforce section 5901 via a writ of mandate under Code of Civil Procedure section 1085 fails because Section 5901 does not impose a ministerial duty that would be enforceable via a writ. According to RPI, because there is no mandatory duty under Section 5901, the Plaintiffs have no standing under Code of Civil Procedure section 1086.

II. Law

A. Summary Adjudication Standard

"A party may move for summary adjudication as to one or more causes of action within an action ... if the party contends that the cause of action has no merit ..." (Code Civ. Proc., § 437c(f)(1).) "[A] cause of action for purposes of a summary adjudication motion means a group of related paragraphs in the complaint reflecting a separate theory of liability." (Silva v. See's Candy Shops, Inc., (2016) 7 Cal. App. 5th 235, 257 (quotations omitted).)

B. Writ of Mandate Requirements

A traditional writ of mandate is a legal tool to compel a public agency to perform a legal, typically ministerial, duty. (Code Civ. Proc., § 1085.) A petitioner seeking a writ of mandate under this section is required to show the existence of two elements: (1) a clear, present and usually ministerial duty upon the part of the respondent, and (2) a clear, present, and beneficial right belonging to the petitioner in the performance of that duty. (Jacobs v. Regents of Univ. of California (2017) 13 Cal. App. 5th 17, 24.)

"Mandamus will lie to compel a public official to perform an official act required by law. [Citation.] Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. (Water Audit California v. Merced Irrigation Dist. (2025) 111 Cal. App. 5th 1147, 1180–81.) "Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." [Citation omitted.] In this context, 'mandatory' and 'ministerial' duties are generally synonymous." (Id. at 1181.)

III. Analysis

A. Private Right of Action

Whether a statute supports a private right of action is a question of statutory interpretation for the court. The Appellate Court in Noe v. Superior Court summarized the applicable legal standards as follows:

A violation of a state statute does not necessarily give rise to a private cause of action. Instead, whether a party has a right to sue depends on whether the Legislature has manifested an intent to create such a private cause of action under the statute. Such legislative intent, if any, is revealed through the language of the statute and its legislative history. We consider the statute's language first, as it is the best indicator of whether a private right to sue exists. A statute may contain clear, understandable, unmistakable terms, which strongly and directly indicate that the Legislature intended to create a private cause of action. For instance, the statute may expressly state that a person has or is liable for a cause of action for a particular violation. Or, more commonly, a statute may refer to a remedy or means of enforcing its substantive provisions, i.e., by way of an action. If the statute does not include explicit language regarding a private cause of action, but contains provisions that create some ambiguity, courts may look... to legislative history for greater insight.

...

It is well settled that there is a private right of action to enforce a statute only if the statutory language or legislative history affirmatively indicates such an intent. That intent need not necessarily be expressed explicitly, but if not it must be strongly implied. Particularly when regulatory statutes provide a comprehensive scheme for enforcement by an administrative agency, the courts ordinarily conclude that the Legislature intended the administrative remedy to be exclusive unless the statutory language or legislative history clearly indicates an intent to create a private right of action.

(Noe v. Superior Ct. (2015) 237 Cal. App. 4th 316, 336–37 [internal citations and quotations omitted].)

B. Application to Section 5901

1. This Court’s Prior Ruling

In its prior ruling issued on February 5, 2024, this Court ruled that a writ of mandate to force the City to comply with statutory duties under Fish and Game Code section 5937 and public trust duties was appropriate. There, this Court stated:

While there have been private enforcement actions for Section 5937, the same does not appear true for Section 5901. However, “it is an established rule of statutory construction that similar statutes should be construed in light of one another and that similar phrases appearing in each should be given like meanings.” (People v. Tran, 61 Cal.4th 1160, 1167-1168.)

Therefore, Sections 5901 and 5937 should be treated similarly. They both relate to the presence of dams in waterways and the impact thereof on the condition of fish and their ability to pass up and down streams. As such, it seems appropriate that the Plaintiffs can assert a claim for violations of Section 5901 in addition to Section 5937.

Upon closer inspection, any ruling that Section 5901 provides for private enforcement via a writ of mandate under Code of Civil Procedure section 1085 appears to have been erroneous for the reasons below.

2. Section 5901 Does Not Impose a Ministerial Duty

The first element required for a writ of mandate—a ministerial duty pursuant to 5901—is where this petition fails as a matter of law.

Petitioners assert that they brought an action for a writ of mandate pursuant to Code of Civil Procedure section 1085 to force the City to comply with a mandatory and nondiscretionary duty. This is true as to Fish and Game Code section 5937, which states: “The owner of any dam shall ...” That section imposes on dam owners a duty to “allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.” The mandatory language (“shall”) creates an enforceable ministerial duty. In addition, an owner of a dam may receive permission from the Department of Fish and Wildlife to use a culvert or wastegate when “in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.”

In contrast, Section 5901 is prohibitory in nature. The language of section 5901 is not directed at the owner of a dam or anyone in particular. It simply states: "Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream ... any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream." In plain words, it is unlawful to put something in a stream that does or could impede fish passage. Section 5901 does not impose a mandatory ministerial (non-discretionary) duty on the City or anyone else that could be enforced through a writ of mandate under section 1085. Unlike section 5937, which provides for a duty on the owners of dams, no such mandate is to be found in the plain language of section 5901.

3. Section 5901 Has a Comprehensive Administrative Enforcement Scheme

Section 5901 violations are enforced within the discretion of the Department of Fish and Wildlife through a comprehensive regulatory scheme. Section 12025.1(a) provides for the imposition of civil penalties for violations of Section 5901 of not more than \$8000 for each violation. Title 14 of the California Code of Regulations, section 748.5, details the procedures for the Department of Fish and Wildlife to impose the civil penalties referenced in Fish and Game Code section 12025.1, specifically, sections 12025.1(d) [violations of 5901] and 12025(e) [production or cultivation of cannabis on public lands].

Section 12025.1(d)(1) reiterates that enforcement of the Fish and Game Code is within the discretion of the Department of Fish and Wildlife because it uses permissive ("may"), not mandatory ("shall"), language: "Civil penalties authorized pursuant to subdivision (a) may be imposed administratively by the department." A writ can't be used to compel a discretionary action. And as Plaintiffs admit, they can't seek a writ to compel the Department to enforce section 5901. "[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." (Water Audit California v. Merced Irrigation Dist., (2025) 111 Cal. App. 5th 1147, 1185.)

4. Disposition of Civil Penalties Indicates No Private Right of Action

The penalties that may be imposed upon a finding that there was a violation of Section 5901 are not monetary damages recoverable by the Plaintiffs. Section 12025.1 provides the framework for civil penalties for violations of section 5901. All civil penalties imposed or collected by a court for violations are specifically allocated:

First, thirty percent of the civil penalties is allocated to the county in which the violation occurred. The county board of supervisors "shall first use any revenues from those penalties to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation." (Fish & Game Code § 12025.1(c)(1).) (Emphasis added.) This demonstrates a legislative intent not for private right of action, but rather one prosecuted on behalf of the public by a city or district attorney.

Second, thirty percent of the penalties is allocated "to the investigating agency to reimburse the cost of any investigation directly related to the violations." (Fish & Game Code § 12025.1(c)(2)(A).)

Third, forty percent to the Fish and Game Preservation Fund. (Fish & Game Code § 12025.1(c)(3).)

These "civil penalties" don't go to the party that sues to enforce compliance, which implies that there is no private right of action and only the Department may enforce section 5901. No language suggests that a private plaintiff could bring a direct action under section 5901 or that a private plaintiff could collect the civil penalties described in section 12025.1.

5. Legislative History Supports Public, Not Private, Enforcement

The legislative history of section 5901 indicates that it originated as part of the Penal Code—something enforced on behalf of the public by the District Attorney, as opposed to private citizen enforcement. To use a writ of mandate to force compliance with a mandatory duty, the language of the statute which is sought to be enforced must clearly indicate that the statute imposes a mandatory duty. There is no such language in Section 5901. There is no language in Section 5901 that creates any ambiguity as to the existence of a private right of action.

C. Sections 5901 and 5937 Are Distinguishable

While this Court previously ruled that it was appropriate for Plaintiffs to assert claims for violations of both statutes, when they are examined independently rather than read together, any private enforcement of section 5901 becomes precluded. While it is true that similar statutes should be construed in light of one another, the Court should also refrain from adding to a statute when the language is not explicit.

Here, Plaintiffs have standing to file a petition for a writ of mandate for violations of the public trust, specifically violations of Fish and Game Code section 5937. And while this Court previously noted the parties had not argued whether the legislative history of Section 5901 implies a private right of action for violations, the record now before the Court clarifies that issue.

This line of reasoning is further bolstered by the arguments of Plaintiffs in their request to bifurcate the trial. Currently, the Supreme Court is hearing an issue with respect to section 5937 and the sufficiency of water flow to fish.

IV. Conclusion

A reading of the plain language, the existence of a statutory scheme for enforcement by the Department, the disposition of any civil penalties imposed for violations, and the legislative history make clear there is no private action to enforce Section 5901. The Court cannot compel performance of a discretionary action through a writ of mandate. Enforcement of section 5901 is within the discretion of the Department of Fish and Wildlife. The language of section 5901 does not provide for private enforcement. Therefore, the Court grants the RPI's motion for summary adjudication.

DISPOSITION:

RPI shall prepare an order consistent with this ruling for the Court's signature pursuant to the California Rules of Court, and provide notice of entry of such order thereafter.

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

FUTURE HEARINGS:

A Case Management Conference is scheduled for August 10, 2026 at 8:30 am in Division J.

**BRING BACK THE KERN ET AL vs CITY OF BAKERSFIELD
BCV-22-103220**

CERTIFICATE OF SERVICE

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, that I am not a party to the within action and that my business address is 1215 Truxtun Avenue Bakersfield, CA 93301, that I served the **Minutes dated January 22, 2026** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: January 22, 2026

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

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: January 22, 2026

By: Robin McDonald
Robin McDonald, Deputy Clerk

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