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Supreme Court of California
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NO. S290840

IN THE SUPREME COURT OF CALIFORNIA

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 Appellants.

After a Decision by the Court of Appeal, Fifth District
Case No. F087487 (and consolidated cases)
Kern County Superior Court, Case No. BCV-22-103220
The Honorable Gregory A. Pulskamp, Judge

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS ON THE CONSTITUTIONAL QUESTION PRESENTED; PROPOSED BRIEF

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MILK PRODUCERS COUNCIL;
WESTLANDS WATER DISTRICT; AND
CALIFORNIA CATTLEMEN'S ASSOCIATION

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APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS

Pursuant to California Rules of Court, rule 8.520(f), Western Growers Association, California Chamber of Commerce, California Farm Bureau Federation, Kern County Farm Bureau, California Fresh Fruit Association, California Cotton Ginners and Growers Association, American Pistachio Growers, California Citrus Mutual, Western Tree Nut Association, Milk Producers Council, Westlands Water District, and California Cattlemen's Association (collectively, "Amici") respectfully request permission to file the attached amici brief in support of Real Parties in Interest and Appellants North Kern Water Storage District, Buena Vista Water Storage District, Kern Delta Water District, Rosedale-Rio Bravo Water Storage, Kern County Water Agency, and the J.G. Boswell Company.

The Court's decision will directly affect the sustainable management of groundwater basins throughout California. Judicial directives (and administrative decisions) reallocating surface water supplies to instream uses have foreseeable and measurable impacts on the availability of surface water supplies and on groundwater extractions. These impacts inevitably increase when surface water supplies are reduced. Because courts themselves direct such reallocations through injunctions and remedial orders, Amici offer the Court technical and policy context regarding the surface water-groundwater nexus under

the Sustainable Groundwater Management Act ("SGMA") (Wat. Code, § 10720 *et seq*.).

California Rules of Court, rule 8.520 permits the filing of amicus curiae briefs after the Court orders review. (Cal. Rules of Ct., rule 8.520(f)(1).) The proposed amicus curiae brief "must be filed no later than 30 days after all briefs that the parties may file under this rule–other than supplemental briefs–have been filed or were required to be filed." (Cal. Rules of Ct., rule 8.520(f)(2).) This application and proposed amici brief are timely submitted.

Authorship and Monetary Contribution

No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person or entity other than Amici and their counsel has made a monetary contribution intended to fund the preparation or submission of the brief.

Interest of Amici

Amici are non-profit trade associations that represent agricultural producers, business owners, and landowners who depend on reliable and lawfully managed water supplies for farming, ranching, business operations, and long-term stewardship of working lands; a non-profit business association representing California's business community and virtually every economic interest in the state; and a California public water district that is the largest agricultural water district in the United States. Amici have no financial interest in the parties, but Amici have a substantial interest in ensuring that judicial

water allocation decisions account for the practical realities of California's interconnected water systems and the effects those decisions can have on agricultural communities and regional groundwater sustainability. Accordingly, they have a substantial interest in the Court's resolution of the constitutional issue presented—whether Article X, section 2 of the California Constitution is self-executing and, therefore, applies whenever a court adjudicates or directs the use of water, including instream uses. For these reasons, the following Amici request leave to file the accompanying brief.

Western Growers Association ("WG"), founded in 1926, is a non-profit trade association that represents local and regional family farmers primarily engaged in the cultivation of fresh produce and tree nuts in California, Arizona, Colorado, and New Mexico. WG provides legislative and regulatory advocacy at both the state and federal levels, focusing on issues including environmental sustainability and water management.

The California Chamber of Commerce ("CalChamber") is a non-profit business association with approximately 12,000 members, both individual and corporate, representing 25 percent of the state's private sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in California, 70 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues.

California Farm Bureau Federation ("CFBF"), founded in 1919, is a non-profit mutual benefit corporation and agricultural trade association comprised of farming and ranching families throughout California. CFBF is California's largest farm organization, comprised of 54 county Farm Bureaus currently representing approximately 23,000 agricultural, associate, and collegiate members in 57 counties. CFBF strives to improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable food and fiber supply through responsible stewardship of California's resources.

The Kern County Farm Bureau ("KCFB"), founded in 1914, is a non-profit trade association that supports the agricultural community in Kern County. With CFBF and the American Farm Bureau Federation, KCFB protects the social, economic, and educational interests of farmers and ranchers in Kern County. It is a member-driven organization dedicated to protecting, promoting, and strengthening agriculture through advocacy, education, and community engagement.

Established in 1936, the California Fresh Fruit Association ("CFFA") is a voluntary public policy association that represents growers, packers, and shippers of California table grape, blueberry, kiwi, pomegranate, and deciduous tree fruit communities. CFFA serves as a public policy representative for these growers, shippers, and packers on issues at both the state and federal levels.

The California Cotton Ginners and Growers Association ("CCGGA"), with roots dating back to 1949, is a voluntary dues

trade association representing cotton gins and cotton growers throughout the state of California on regulatory and legislative issues. While membership is voluntary, CCGGA currently represents 100 percent of the cotton gins and cotton growers in the state, of which there are 15 operating cotton gins and approximately 300 cotton growers throughout California. CCGGA works on many regulatory and legislative issues, including water, water quality, air quality, safety, transportation, pesticides, and labor.

American Pistachio Growers ("APG"), founded in 1989, is a non-profit trade association representing over 800 growers of pistachios in California, Arizona, New Mexico, and Texas with the shared goal of increasing global awareness of nutritious, American-grown pistachios. Based in Fresno, California, APG serves as a unified voice for the United States commercial pistachio industry. APG's members represent an industry that feeds our nation, and they have a vital interest in the issues presented in this case.

California Citrus Mutual ("CCM") is a voluntary, non-profit trade association that was founded in 1977 to represent and protect the interests of California's citrus growers. Based in Exeter, California, it acts as the primary advocate for California citrus growers, who collectively grow over 90 percent of the nation's fresh citrus.

The Western Tree Nut Association ("WTNA"), dating back to 2009, is a voluntary dues trade association representing growers, hullers, and processors of almonds, pecans, pistachios,

and walnuts on regulatory and legislative issues. WTNA currently represents more than 200 tree nut growers, hullers, and processors throughout California. WTNA works on many regulatory and legislative issues, including water, water quality, air quality, food safety, worker safety, transportation, pesticides, and labor.

Milk Producers Council ("MPC") is California's oldest voluntary, nonprofit trade organization representing dairy families across California. Since 1949, its Board of Directors and staff have advocated for its members at the local, state, and federal levels. From milk pricing and environmental regulations to broader policy issues impacting dairy farms, MPC is committed to protecting and promoting the environmental and economic sustainability of its producers.

California Cattlemen's Association ("CCA") is the predominant organization of cattle grazers in California, with over 1,700 members throughout the state. Incorporated in 1917, CCA is a mutual benefit corporation organized under California law as an "agricultural and horticultural, non-profit, cooperative association" with a stated purpose of "Nourishing people, caring for livestock and sustaining the environment for all Californians." CCA's membership is open to any person or entity engaged in breeding, producing, maturing, or feeding cattle, or who leases land for cattle production.

Westlands Water District ("WWD"), located in Fresno and Kings Counties, is the nation's largest agricultural water district in terms of irrigated acreage. WWD supplies irrigation water to

California's Central Valley farmlands which produce a substantial portion of the fruits and vegetables grown and consumed in the nation.

Conclusion

Amici respectfully request that the Court accept the attached amici curiae brief in support of Real Parties in Interest and Appellants.

Respectfully submitted this 29th day of April, 2026.

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PROPOSED AMICI CURIAE BRIEF

I. INTRODUCTION

This case presents a foundational question of California water law: whether Article X, section 2 of the California Constitution is self-executing and, therefore, requires courts, when directing or reallocating the use of water, to ensure that all uses—consumptive and nonconsumptive alike—are reasonable and beneficial. The issue is not whether instream flows are beneficial uses (they are), but whether courts may impose them through judicial orders without performing the constitutional reasonableness inquiry that guards against displacement harms elsewhere in the hydrologic system.

The practical stakes of that constitutional question are substantial. When courts enforce statutory mandates governing surface water in isolation—without assessing whether the resulting reallocation is reasonable in light of its foreseeable and systemwide consequences—the effect is not merely to protect one beneficial use, but to drive existing water demand onto other sources, commonly groundwater basins that are already subject to regulatory constraint. Article X, section 2 exists precisely to prevent decision-making in a vacuum without consideration of uninformed and constitutionally unreasonable reallocation. Instead, courts are expressly and constitutionally required to evaluate the full consequences of directing water to one use at the expense of others.

The California Court of Appeal for the Fifth Appellate District ("Fifth District") correctly held that Article X, section 2 is

self-executing and, therefore, always applies when a court directs or adjudicates the use of water, even when applying statutes that do not expressly incorporate a reasonableness determination. No statute may authorize a court to order water use in a manner that bypasses the Constitution's independent limitation on unreasonable use. Article X, section 2's constitutional command does not diminish the importance of instream environmental uses. Rather, it requires courts to evaluate instream environmental uses, like *all* other uses, in the context of the totality of the circumstances of the affected water system, which include the effects on all beneficial uses and systemwide hydrologic effects.

Changes in surface water availability can have consequential effects across interconnected groundwater basins, water users, and local sustainability efforts. Restrictions on surface water deliveries frequently and predictably push existing demand to groundwater extraction, and that substitution can exacerbate overdraft conditions, impair basin sustainability, and frustrate the statutory objectives of the Sustainable Groundwater Management Act ("SGMA;" Wat. Code, § 10720 *et seq*.). The availability and sustainability of alternative sources along with these foreseeable effects are constitutionally relevant to any judicial determination that directs the use of surface water. For these reasons, courts should consider the practical systemwide effects of water reallocation decisions, including decisions to change surface water availability. Article X, section 2's

constitutional requirement of reasonableness provides for such consideration.

A constitutional rule that requires courts to consider reasonableness in light of the entire hydrologic system—including the interrelationship between surface water and groundwater—is not merely doctrinally correct; it is essential to the coherent administration of California's water laws and to the proper exercise of judicial authority when remedies dictate how water is used.

When a court orders water released, withheld, or reallocated, it compels a "use" within the meaning of Article X, section 2. The Constitution therefore requires a contemporaneous determination that the ordered use is "reasonable" in light of foreseeable, systemwide consequences—including substitution of surface supplies with groundwater pumping, risks of chronic groundwater level decline, land subsidence, degradation of drinking water, and depletion of interconnected surface waters—as reflected in SGMA's sustainability metrics. Judicial remedies that overlook these consequences risk authorizing constitutionally unreasonable uses.

II. ARTICLE X, SECTION 2 IS SELF-EXECUTING AND, THEREFORE, LIMITS ALL JUDICIAL AND ADMINISTRATIVE WATER ALLOCATIONS.

Long-established precedent declares that courts and the State Water Resources Control Board ("State Board") have concurrent jurisdiction in water rights controversies. (*National*

Audubon Society v. Superior Court (1983) 33 Cal.3d 420, 427.) For this reason, this Court's decision on the application of Article X, section 2 will apply to both judicial and administrative oversight of water rights disputes—and will govern the constitutional limits of judicial remedial orders affecting water use.

Article X, section 2 provides that "the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use . . . of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." It further declares that "[t]he right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served . . . ."

This Court itself has viewed Article X, section 2 as a self-executing constitutional mandate that imposes an independent constitutional limitation on all water uses. (See, e.g., *Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132, 138; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367; *Gin Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 700.) That limitation operates regardless of statutory silence and cannot be displaced by legislative characterization of a use as "mandatory."

The Fifth District's holding is consistent with these precedents. When a court issues an injunction or otherwise

directs that water be released, withheld, or allocated to a particular purpose, the court is not merely enforcing statutory policy—it is directly determining the use, timing, and destination of water. In doing so, it must apply Article X, section 2 and ensure that the resulting use of water is reasonable and beneficial under the circumstances presented. The Constitution does not carve out exceptions for judicial orders implementing particular statutory mandates or categories of use, nor does it elevate any beneficial use into a *per se* entitlement immune from constitutional scrutiny.

Environmental instream uses are recognized beneficial uses under California law, as are agricultural water uses under the Agricultural Supply (AGR) beneficial use designation. But recognition as a beneficial use does not resolve the constitutional inquiry. Statutes directing or prioritizing certain uses do not displace the Constitution's independent limitation on unreasonable water use. The Legislature may define beneficial uses, such as instream flows, but only Article X, section 2 governs whether a particular use—under particular hydrologic conditions—is constitutionally reasonable. Courts therefore may not bypass the reasonableness inquiry by characterizing statutory directives as "mandatory." The Constitution requires an evaluation of reasonableness under the totality of the circumstances—including hydrologic realities, competing demands for the use of water, and systemic impacts.

III. THE SURFACE WATER-GROUNDWATER NEXUS IS CENTRAL TO THE REASONABLENESS INQUIRY.

A. California's Water System is Hydrologically Integrated.

In many regions of California, surface water supplies and groundwater basins are interconnected and, therefore, closely related. Changes in the availability of one resource can predictably and materially affect management of the other, with implications for basin sustainability, infrastructure, local communities, and compliance with SGMA. Reduced surface water availability commonly results in increased groundwater pumping—an effect that courts can and should anticipate when directing the use of surface water. Increased reliance on groundwater in response to surface-water constraints can produce a cascade of well-documented, constitutionally relevant impacts, including:

- Chronic declines in groundwater levels;
- Land subsidence damaging infrastructure;
- Loss of storage compromising drought resilience;
- Degraded water quality harming domestic supplies; and
- Depletion of interconnected surface waters impacting other beneficial uses.

These impacts are not hypothetical or attenuated; they are well-documented responses to surface-water curtailments that courts

can—and under Article X, section 2 must—anticipate when directing water use. They are central to the conditions that prompted enactment of SGMA.

B. SGMA Requires Avoidance of Chronic Overdraft and Significant Impacts.

In 2014, California enacted SGMA to promote sustainable management of groundwater basins throughout the State. (Wat. Code, § 10720.1(a).) SGMA establishes minimum standards statewide to measure sustainability and avoid six defined "undesirable results," including chronic lowering of groundwater levels and depletion of interconnected surface water that has significant and unreasonable adverse impacts on beneficial uses of the surface water. (Wat. Code, §§ 10720.1, 10721(x).) Judicial decisions that alter surface-water availability directly affect whether those standards can be met.

Reductions in surface water supplies, whether due to drought or restrictions on court-ordered diversions intended to protect instream uses, can lead directly and foreseeably to increased groundwater pumping. Groundwater Sustainability Agencies ("GSAs") must then address those increased pumping impacts in their groundwater sustainability plans, often at substantial economic and social cost. That may require:

- Imposing pumping allocations;
- Curtailing groundwater use;
- Mandating fallowing;
- Developing recharge projects; or

- Seeking alternative water supplies.

In short, surface water restrictions reverberate through groundwater basins and can impose substantial compliance burdens on GSAs and their constituents under SGMA.

C. Ignoring the Effects of Substituting the Use of Surface Water with the Use of Groundwater Undermines Coherent Water Management.

A judicial order directing additional instream flows without evaluating the foreseeable effects of substituting groundwater for surface water risks authorizing an unreasonable use under Article X, section 2. The Constitution commands prevention of unreasonable use not in isolation, but in light of the public welfare as a whole. If a surface water directive results in significant basin overdraft, land subsidence damaging public infrastructure, or impairment of drinking water supplies in disadvantaged communities, those consequences are relevant to whether the use under the surface water directive is reasonable under Article X, section 2.

The Fifth District's requirement that courts consider reasonableness properly ensures that these systemic effects are part of the analysis.

IV. THE HISTORY OF THE SAN LUIS UNIT ILLUSTRATES THE DIRECT AND FORESEEABLE RELATIONSHIP BETWEEN SURFACE WATER SUPPLIES AND GROUNDWATER SUSTAINABILITY.

Because surface water supplies and groundwater basins are often interconnected, surface water availability historically

helps stabilize regional water conditions, while reductions in those supplies can generate reliance on groundwater with the associated risk of difficult management consequences. The history of the San Luis Unit illustrates foreseeability and directness of substitution effects that courts must examine.

In 1960, Congress authorized the San Luis Unit as an integrated feature of the Central Valley Project ("CVP"). Before construction of the San Luis Unit, large portions of the west side of the San Joaquin Valley relied almost exclusively on groundwater extraction. The San Luis Unit's principal purpose in delivering imported surface water from the Sacramento–San Joaquin Delta to the westside of the San Joaquin Valley was to:

- Supplement depleted groundwater supplies;
- Reduce reliance on groundwater pumping; and
- Mitigate land subsidence caused by overdraft.

The availability of CVP surface water through the San Luis Unit substantially reduced groundwater pumping in served areas. As surface deliveries increased, groundwater levels stabilized in many locations and subsidence rates declined. But, beginning in 1990 and intensifying in subsequent decades, operational constraints—including biological opinions and flow requirements—have reduced CVP deliveries to San Luis Unit contractors, with foreseeable impacts, such as groundwater level declines and subsidence.

This sequence—surface water curtailment, predictable groundwater substitution, and basin impacts—is precisely the

chain of foreseeable consequences Article X, section 2 requires courts to examine before ordering reallocations. The San Luis Unit stands as a concrete historical example of difficult management consequences that a self-executing Article X, section 2 requires a court to consider.

V. RECOGNIZING THE SELF-EXECUTING NATURE OF ARTICLE X, SECTION 2 PROMOTES INTEGRATED WATER MANAGEMENT.

California's modern water policy—including SGMA—embraces integrated water management. An interpretation of Article X, section 2 that exempts certain uses of water from the constitutional mandate that all water use must be reasonable, as well as beneficial, would fragment that integration.

Affirming that Article X, section 2 applies to all uses, including instream uses of water:

1. **Preserves Judicial Neutrality Among Uses.** Courts must weigh competing beneficial uses rather than categorically elevate any particular category of use.

2. **Encourages System-Wide Analysis.** Reasonableness can—and should—account for hydrologic connectivity, substitution effects, and long-term sustainability.

3. **Harmonizes Surface Water and Groundwater Law.** SGMA does not displace constitutional constraints; it operates within them. Judicial and

administrative allocations that materially affect groundwater basins should not proceed without constitutional scrutiny.

4. **Supports Sustainable Outcomes.** Requiring a reasonableness determination does not preclude instream protections; it ensures that judicial directives protect instream uses while avoiding constitutionally unreasonable consequences elsewhere in the hydrologic system.

5. **Promotes the Underlying Principle of Article X, Section 2.** Application of the reasonable use doctrine to instream uses of water will promote the constitutional mandate that water resources of the State be put to beneficial use to the fullest extent of which they are capable and to avoid waste.

VI. CONCLUSION

Article X, section 2 is a constitutional mandate that the State's "limited water resources be put only to those beneficial uses 'to the fullest extent of which they are capable,' that 'waste or unreasonable use' be prevented, and that conservation be exercised 'in the interest of the people and for the public welfare.'" (*Joslin v. Marin Municipal Water Dist.*, *supra*, 67 Cal.2d at 141 [quoting Cal. Const., Art. X, § 2].) That mandate extends to *all* uses of water, including instream environmental uses. Thus, to achieve its purposes, Article X, section 2 declares it is self-executing.

In the first case to construe California Constitution Article X, section 2 in *Gin Chow v. City of Santa Barbara*, the Supreme Court observed that "conservation of the waters of the state is of transcendent importance . . . the very life blood of its existence." (*Gin Chow v. City of Santa Barbara*, *supra*, 217 Cal. at 701-702.) Through the Amendment, "[t]he people of the state . . . pointed the way." (*Id.* at 703.)

Affirming the Fifth District would not require courts to favor or disfavor any category of beneficial water use. It would simply reaffirm that when courts direct the use of water, the Constitution requires a reasonableness determination that accounts for the full hydrologic system and its foreseeable consequences. That rule preserves judicial neutrality among uses, harmonizes surface-water and groundwater law, and gives effect to the constitutional mandate that California's limited water resources be used reasonably and beneficially for the public welfare.

Because California's water resources are hydrologically interconnected, reasonableness must be evaluated in light of the foreseeable effects of surface water reallocations on groundwater basins. Ignoring those effects risks undermining SGMA's objectives and the broader public welfare.

Respectfully submitted this 29th day of April, 2026.

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WESTLANDS WATER DISTRICT; and
CALIFORNIA CATTLEMEN'S ASSOCIATION

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c) and (f), I certify that this Proposed Brief of Amici Curiae contains 2,383 words, not including the Application, table of contents, table of authorities, the caption page, or this Certification page.

Respectfully submitted this 29th day of April, 2026.

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PROOF OF SERVICE

Bring Back the Kern; et al. v. City of Bakersfield
Supreme Court of California, Case No. S290840
Court of Appeal of the State of California, Fifth Appellate District, Case No. F087487 (and consolidated cases)
Kern County Superior Court, Case No. BCV-22-103220

I am a resident of the State of California, over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 550, Costa Mesa, California 92626.

On April 29, 2026, I served true copies of the following documents(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS ON THE CONSTITUTIONAL QUESTION PRESENTED; PROPOSED BRIEF** on the interested parties as follows:

By Electronic Service via TrueFiling: On the same date, I caused the document(s) to be sent to the attorneys identified below at the electronic notification addresses listed with the TrueFiling Servicing Notification.

By U.S. Mail: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Murphy & Evertz LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Clerk, Court of Appeal Fifth Appellate District 2424 Cesar Chavez Boulevard Fresno, CA 93721	*Court of Appeal* BY U.S. MAIL

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

Executed on **April 29, 2026**, at Costa Mesa, California.

_____

Alexandra Constant

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/30/2026 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **BRING BACK THE KERN v. CITY OF BAKERSFIELD (NORTH KERN WATER STORAGE DISTRICT)**
Case Number: **S290840**
Lower Court Case Number: **F087487**

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Date

/s/Ali Constant

Signature

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