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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.

Review of a Decision by the Fifth District Court of Appeal, Case No. F087487; Consolidated with Case Nos. F087503, F087549, F087558, F087560, and F08770

Appeal from Kern County Superior Court Case No. BCV-22-103220 (Honorable Gregory A. Pulskamp, Presiding)

APPLICATION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS; PROPOSED AMICUS CURIAE BRIEF

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APPLICATION TO FILE AMICUS BRIEF IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS

Under California Rules of Court, rule 8.520(f), Wheeler Ridge-Maricopa Water Storage District (the District) requests permission to file the attached brief as amicus curiae in support of the position of the Real Parties in Interest and Appellants in this appeal.

Interest of Amicus District

The District is a public agency with an elected board of directors. Its territory is in Kern County south of the City of Bakersfield. The District serves water for irrigation to approximately 89,000 acres of farmland.

Historically, farmers in the area now encompassed by the District pumped groundwater for irrigation.[1] As groundwater levels in the region dropped, farmers formed the District in 1959 with the aim of supplementing their groundwater with imported surface water from what is now the State Water Project. Currently, the District receives its State Water Project surface water through the Kern County Water Agency, a real party in interest here.

In light of its particular circumstances in the region, the District's proposed brief respectfully requests this Court take into account—under article X, section 2 of the California Constitution—not only the reasonableness of the competing

[1] The District's territory overlies two subbasins within the larger San Joaquin Valley Groundwater Basin.

demands on the Kern River but also the indirect impact of the Court's decision on intertwined water supplies.

Authorship and Monetary Contribution

No party or counsel for a party authored the attached proposed amicus brief in whole or in part. No party or counsel for any party made any monetary contribution to fund the preparation or submission of the attached brief. The District does wish to note that its general counsel is colleagues (at Young Woolridge, LLP) with counsel for real party in interest North Kern Water Storage District. The District's general counsel provided background information about the District to the author of the proposed amicus brief.

Conclusion

The District respectfully requests the Court accept for filing the attached amicus curiae brief in support of Real Parties in Interest and Appellants.

Dated: May 4, 2026

Respectfully submitted,

FERGUSON CASE ORR PATERSON LLP

Neal Maguire, Attorneys for Proposed Amicus Curiae, WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT

PROPOSED AMICUS CURIAE BRIEF

A. Article X, Section 2 Compels Case-Specific Reasonableness Determinations Even When The Public Trust Is At Stake

Article X, section 2 limits all water rights to reasonable and beneficial uses. (Cal. Const., art. X, § 2; see also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241-1242 (*Mojave*).) In a dispute between parties asserting competing water rights, a trial court must first determine whether the parties are reasonably and beneficially using water "giving consideration to all factors involved." (*Mojave*, *supra*, 23 Cal.4th at p. 1242.) Because reasonableness "depends on the circumstances of each case, such an inquiry cannot be resolved *in vacuo* isolated from statewide considerations of transcendent importance." (*Id.*, internal citation and quotation marks omitted.) A reasonableness determination may differ depending on whether there is plenty of water for all or whether there is "an area of great scarcity and great need." (*Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 567.)

These same principles apply when there is an effort to enjoin water production on the basis of the public trust doctrine. (See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443-447.)

B. A Reasonableness Determination Should Consider Impacts To Intertwined Water Sources

Farmers within the District initially relied solely on groundwater pumping for their irrigation needs. They began

importing surface water to supplement that supply and alleviate impacts associated with excessive groundwater pumping in the area. However, competing demands on the State Water Project and other constraints (e.g., sustained periods of drought and regulatory requirements) have limited the District's ability to import State water as well. So, while surface water comprises the bulk of the District's existing supply, groundwater still contributes to meeting the irrigation needs of those in the District. Many other public and private entities are in the same boat, either directly or indirectly, in that they rely on both surface and groundwater depending on availability.

Unfortunately, groundwater is not a panacea for the region's water ills. Even though the District had the foresight decades ago to expand its water portfolio, surface water supplies are limited. Groundwater is limited, too. The Sustainable Groundwater Management Act of 2014 (SGMA) (Wat. Code, § 10720 et seq.), requires the sustainable management of many basins. (Wat. Code, §§ 10720.7, 10721, subd. (x).) The groundwater subbasins relied on by the District and its farmers are subject to SGMA and have constrained supplies.

So, while this case is about the Kern River and the instream use of its water, the District highlights the intertwined nature of the region's water supplies to demonstrate the importance of considering, under article X, section 2, not only the reasonableness of the competing uses of Kern River water but also how decisions made about the Kern will reverberate throughout the region. For example, the District neighbors the

Kern Delta Water District (Kern Delta), a real party in interest here. Kern Delta's lands have received Kern River water for over a century, which has significantly benefited groundwater aquifers in the region. Reallocating Kern River surface water from historic places of use, including agricultural uses south of the River, could substantially affect those aquifers. It is critical that a reasonableness analysis grapple with the indirect consequences of reallocating surface water.

C. Conclusion

Of course, to take such consequences into account, the trial court had to engage in a reasonableness analysis in the first instance. Because it did not, the District supports the brief of the Real Parties in Interest and Appellants. The District respectfully requests the Court affirm the opinion of the Court of Appeal in reversing the trial court's grant of a preliminary injunction.

Dated: May 4, 2026

Respectfully submitted,

FERGUSON CASE ORR PATERSON LLP

Neal Maguire, Attorneys for Proposed Amicus Curiae, WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c) and (f), I certify that this Proposed Amicus Curiae Brief contains 1,287 words, excluding the accompanying application, table of contents, table of authorities, caption page, and this certificate.

Dated: May 4, 2026

Respectfully submitted,

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Supreme Court of California, Case No. S290840;

Court of Appeal of the State of California, Fifth Appellate District, Case No. F087487 (and consolidated cases);

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