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Appeal No. S290840

IN THE SUPREME COURT OF THE

STATE 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.

Court of Appeal of the State of California
Court of Appeal Case No. F87487
Superior Court of the State of California
County of Kern
The Honorable Gregory A. Pulskamp
Civil Case No. BCV-22-103220

APPLICATION BY SOUTHERN CALIFORNIA WATER COALITION, SAN GORGONIO PASS WATER AGENCY, WESTERN MUNICIPAL WATER DISTRICT, CITY OF EL PASO DE ROBLES, HELIX WATER DISTRICT AND LAMONT PUBLIC UTILITY DISTRICT FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF REAL PARTIES IN INTEREST AND APPELLANTS NORTH KERN WATER STORAGE DISTRICT ET AL.; PROPOSED AMICUS CURIAE BRIEF

Filed concurrently with Motion Requesting Judicial Notice

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, rule 8.208)

This is the initial certificate of interested entities or persons submitted on behalf of Amici Curiae SOUTHERN CALIFORNIA WATER COALITION; SAN GORGONIO PASS WATER AGENCY; WESTERN MUNICIPAL WATER DISTRICT; CITY OF EL PASO DE ROBLES; HELIX WATER DISTRICT; and LAMONT PUBLIC UTILITY DISTRICT in the case number listed above.

The undersigned certifies that there are no interested entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

Dated: May 4, 2026 BEST BEST & KRIEGER LLP

By: */s/ Eric L. Garner*
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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

Pursuant to California Rules of Court, rule 8.520(f), Southern California Water Coalition ("SCWC"), San Gorgonio Pass Water Agency, Western Municipal Water District, City Of El Paso De Robles, Helix Water District, and Lamont Public Utility District, (collectively, "Water Coalition") hereby apply for permission to file a brief as amici curiae in support of Real Parties in Interest and Appellants, North Kern Water Storage District et al. A copy of the proposed amicus curiae brief is attached to this application.

Amicus Curiae SCWC is a nonprofit, nonpartisan organization representing a broad cross-section of public water agencies, business interests, agriculture, labor, and community stakeholders throughout Southern California and across the State of California. SCWC is dedicated to advancing policies and investments that ensure safe, reliable, affordable, and environmentally responsible water supplies for California's communities and economy. SCWC's mission is to educate policymakers, opinion leaders, decision-makers and the public on the importance of a diversified and resilient water supply portfolio; to promote sound, science-based water management and infrastructure investment; and to support state and federal policies that balance environmental stewardship with the critical needs of California's residents, agriculture, and economy.

San Gorgonio Pass Water Agency, Western Municipal Water District, City Of El Paso De Robles, Helix Water District, and Lamont Public Utility District are public agencies that provide water service to California consumers and businesses. They collectively provide water service to over 1,414,000 water customers and residents situated in five counties across California (including Kern, Riverside, San Bernardino, San Diego, and San Luis Obispo). Each of their respective service area overlies

communities designated by the State as disadvantaged. Those disadvantaged communities rely on these public agencies for safe, reliable, and affordable water supply.

The resolution of this case is of critical importance to the Water Coalition, as the Court's decision in this case may impact groundwater management and therefore impair water agencies' ability to protect public health and safety by supplying reliable and safe drinking water.

The Water Coalition's proposed brief will assist the Court in deciding the case. The brief presents additional arguments and authorities focusing on groundwater and supporting the conclusion that Fish & Game Code section 5937 does not alter water rights priorities. In particular, courts must consider and balance the public interest and reasonable and beneficial use, as required under Article X, section 2 of the California Constitution in determining the exercise of water rights priorities to achieve the most equitable result.

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

Dated: May 4, 2026 BEST BEST & KRIEGER LLP

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PROPOSED BRIEF OF AMICUS CURIAE

I. INTRODUCTION

For nearly a century, courts have relied on Article X, section 2 of the California Constitution ("Article X, section 2") to balance the reasonableness of water uses based on the specific facts and circumstances of each case—a constitutional principle that has long defined California's water law. This is particularly true with groundwater, where the physical and legal issues are extremely complex. Plaintiffs seek to undermine this long-settled application of the law by claiming an absolute priority to supply sufficient water to keep fish in good condition under Fish and Game Code section 5937 ("Section 5937"). Plaintiffs characterize this as "mandatory duty." (Joint Opening Brief of Plaintiffs and Respondents ("OB"), at p. 43.) Allowing an absolute priority to water without considering the reasonableness of competing water demands would disrupt the court's use of its Article X, section 2 balancing authority and could have significant consequences for groundwater law and management. This Court should reject Plaintiffs' argument, and uphold the Court of Appeal's opinion.

II. GROUNDWATER IS ESSENTIAL TO CALIFORNIA

Groundwater is an essential component of California's water supply. It functions as both a primary source of water and a critical buffer against hydrologic variability. The Department of Water Resources' ("DWR") most recent comprehensive assessment, California's Groundwater: Bulletin 118 – Update 2025 Highlights, states that groundwater provides approximately 40 percent of the State's total demand in average years. (Motion Requesting Judicial Notice ("RJN"), Exh. A, p. 16.) In dry years groundwater supplies significantly more of the State's demand, up to 60

percent. (*Ibid.*) Eighty-two percent of the State's population, 32 million people, rely on groundwater for drinking and household uses. (*Ibid.*)

The importance of groundwater is further magnified by its role as the State's key drought reserve. Groundwater provides a stable and consistent supply, even during droughts. (RJN, Exh. A, p. 16.) This is because during droughts when surface water supplies are scarce, groundwater is available. (*Ibid*.) However, California's groundwater resources are already stressed in many places.

DWR has identified 515 groundwater basins and sub-basins, of which 94 are designated as high- or medium-priority under the Sustainable Groundwater Management Act ("SGMA"). (RJN, Exh. A, p. 20.) These 94 basins must be managed under SGMA. Decades of over-pumping has caused significant impacts, and in many cases damage, to these basins. DWR concluded that:

> Restoring groundwater resources to sustainable and healthy conditions will require difficult economic decisions and changes in historical groundwater use and considerations, particularly in areas that have long depended on unsustainable pumping." (RJN, Exh. A, p. 17.)

It is inevitable that some of these changes will wind up being litigated and it is essential to managing these groundwater resources that courts are not bound by absolute water rights priorities but have the ability to balance competing water rights priorities under Article X, section 2.

III. THE REASONABLE USE DOCTRINE SET FORTH IN ARTICLE X, SECTION 2 SHOULD BE CONSIDERED IN EVALUATING WATER PRIORITIES

A. <u>This Court Has Recently Affirmed the Primacy of Article X, Section 2, in Modifying Water Rights Priorities</u>

City of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224 (*Barstow*), this Court's most recent water law decision, involved

groundwater. In it, the Court affirmed that Article X, section 2 takes precedence over absolute water rights priorities. In *Barstow*, which adjudicated the Mojave groundwater basin, the Court was faced with a lower court basin adjudication that had not determined water rights priorities.

The Court upheld the importance of water rights priorities:

> Thus, water right priority has long been the central principle in California water law. The corollary of this rule is that an equitable physical solution must preserve water right priorities to the extent those priorities do not lead to unreasonable use. (*Barstow, supra,* 23 Cal.4th at p. 1243.)

However, even though water rights priority is the "central principle" in California water law, this Court acknowledged that "a trial court may use its equitable powers to implement a physical solution." (*Barstow, supra,* 23 Cal.4th at pp. 1249-1250, citing *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383-384 [court has power to make reasonable regulations for water use, provided they protect the one enjoying paramount rights].).

The Court further held that the protection of the priority water right is not absolute:

> Thus, although it is clear that a trial court may impose a physical solution to achieve a practical allocation of water to competing interests, the solution's general purpose cannot simply ignore the priority rights of the parties asserting them. (See *City of San Fernando, supra,* 14 Cal.3d at p. 290.) In ordering a physical solution, therefore, a court **may neither change priorities among the water rights holders nor eliminate vested rights in applying the solution without first considering them in relation to the reasonable use doctrine**. (See 1 Rogers & Nichols, Water for California (1967) § 404, p. 549, and cases cited.). (*Barstow, supra,* 23 Cal.4th at p. 1250, emphasis added.)

As this Court recognized in *Barstow*, a court can, in ordering a physical solution, adjust priorities after considering them under the

reasonable use doctrine. Plaintiffs want Section 5937 read as providing a "mandatory duty" which is effectively a water rights priority. (OB, p. 43.) Even if the Court agrees with Plaintiffs, the priority water right should still be able to be adjusted after it and the water rights on the river are considered by the Court under the reasonable use doctrine of Article X, section 2.

However, as there are no absolute water rights priorities, Section 5937 should not be read as an absolute water rights priority. Rather, water to keep fish in good condition should be another water need that courts consider in its balancing of water demands under the reasonable use doctrine.

B. Almost a Century of California Supreme Court Decisions Support Courts Balancing the Reasonableness of All Water Uses

Shortly after the adoption of Article X, section 2, this Court was confronted with a groundwater conflict under the then new constitutional reasonable use doctrine. In *City of Lodi v. East Bay Municipal Utility District* (1936) 7 Cal.2d 316 (*Lodi*), this Court was confronted with a priority water rights holder seeking to enjoin a junior water user. In that case the trial court found that the City of Lodi had a priority water right over the East Bay Municipal Utility District and that substantial releases of water from the District's upstream reservoir were required to maintain groundwater levels at the City's wells. (*Id.*at p. 337.)

The *Lodi* Court noted that the trial court's decision would have been correct prior to the adoption of Article X, section 2:

> It may be assumed that before the adoption of the constitutional amendment in 1928 to article 14, § 3, it was the law of this state that under basic findings, such as are enumerated above, the prior appropriator was entitled to an injunction so fixing releases by the subsequent appropriator as to substantially maintain the water table as it would have

> existed if the subsequent appropriator had not come upon the stream, if to lower the water table would materially injure the prior appropriator. (*Lodi, supra,* 7 Cal.2d at p. 337.)

However, the Court held that the City as the prior water rights holder was no longer entitled to an absolute priority in maintaining its well levels:

> Under the present law of the state, in accomplishing the necessary and beneficent purpose of the 1928 constitutional amendment, the trial court should attempt to cause its decree to protect fully the prior appropriator's rights, and at the same time should so frame its decree as to prevent an unreasonable waste of the waters of the stream. A consideration of the facts in this case and as above outlined leads to the inevitable conclusion that the decree entered herein would result in an unjustifiable and unreasonable waste which should be avoided if a practical physical solution may be found. (*Lodi, supra,* 7 Cal.2d at p. 343.)

After rejecting the need to absolutely maintain water levels for the priority water rights holder, the Court, in considering the facts under the reasonable use doctrine of Article X, section 2, turned to the remedy:

> In our opinion the cause should be sent back to the trial court to permit it to take evidence as to the levels, to which plaintiff's wells may be lowered without substantial danger to the city's water supply. In fixing this danger level an adequate safety factor in favor of the city should be allowed. (*Lodi, supra,* 7 Cal.2d at p. 344.)

The Court's solution was to have the trial court consider a reasonable level of diminution to the City's well levels. Thus, even though the City had a priority water right, it was not entitled to the absolute maintenance of its well levels. The Court held that the District should be required to maintain the City's well levels above a "danger level" and that if the wells fell to the danger level the District should supply the City with water.

The Court said that such a decree would say to the District:

> You should maintain the water levels so as not to cause substantial damage to the city, and you may do this in any way best suited to your needs, or if you do not maintain those levels you should supplement the city's supply to the extent of the deficiency caused by your operations by the furnishing of water by artificial means and at your expense. If you do not do these things you are subject to an injunction compelling releases to maintain natural conditions. (*Lodi, supra,*7 Cal.2d at p. 345.)

So, under the reasonable use doctrine the City was not entitled to an injunction to require the absolute maintenance of its well levels but instead those well levels could be lowered and the City could be required to receive water through a pipeline.

Plaintiffs' argument is directly contrary to the *Lodi* holding in that it seeks to impose an absolute, mandatory duty on dam owners to release water and not allow the trial court to balance water for fish with competing uses (OB, p. 40.)

The next groundwater case facing this Court involved a claim of absolute priority that would have enjoined junior users and deprived them of groundwater. In *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908 (*Pasadena*), an unsustainable amount of groundwater was being pumped from the Raymond Basin. If the *Pasadena* Court had allocated the pumping reduction based on the date of appropriation: "it would result in an unequal sharing of the burden of curtailing the overdraft in that all pumping conducted under authority of certain of the later appropriations would be completely eliminated, whereas no restriction in amount would be imposed upon pumping based on earlier appropriations." (*Id* at pp. 932-933.)

The *Pasadena* Court was cognizant of the new Constitutional doctrine of reasonableness. (*supra,* 33 Cal.3d at p. 936.) The Court held:

> **Public interest** requires that there be the greatest number of beneficial uses which the supply can yield, and water may be

> appropriated for beneficial uses subject to the rights of those who have a lawful priority. *Peabody v. City of Vallejo*, 2 Cal.2d 351, 368, 40 P.2d 486. (*Id.* at p. 925, emphasis added.)

In considering the public interest, as it is required to do under Article X, section 2, the Court rejected an allocation based on pure priority. Instead the Court held that a priority allocation:

> …does not appear to be justified where all of the parties have been producing water from the underground basin for many years, and none of them have acted to protect the supply or prevent invasion of their rights until this proceeding was instituted. Moreover, it seems probable that the solution adopted by the trial court will promote the best interests of the public, because a pro tanto reduction of the amount of water devoted to each present use would normally be less disruptive than total elimination of some of the uses. (*Pasadena, supra,* 33 Cal.2d at p. 933.)

Lodi and *Pasadena* both are contrary to Plaintiffs' position that Section 5937 should provide an absolute priority water right. Further, they demonstrate how essential the primacy of Article X, section 2 and the court's ability to balance competing uses and consider the public interest is to managing groundwater.

The next time the Supreme Court confronted a groundwater adjudication was in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 (*San Fernando*) where it allocated water rights pursuant to priority. However, it followed priority water rights based on its equitable authority under Article X, section 2. The Court noted that if it had not followed strict priority and instead used mutual prescription as it had in *Pasadena*:

> …a restriction to safe yield on a strict priority basis might have deprived parties who had been using substantial quantities of ground water for many years of all further access to such water. (*Id.* at p. 266.)

The *San Fernando* Court went on to state that it could follow priority because it was faced with a different set of facts:

> In the present case, none of the defendants now before us commenced their uses of ground water from the basins of the ULARA after the years in which the trial court found overdraft to have commenced. To the contrary, the amount that each defendant was using at the beginning of overdraft was substantial in relation to such defendant's later use, and there is a notable correlation between the relative levels of usage at the time of overdraft and the restricted pumping quotas allocated in the decree based on awards of prescriptive rights.
>
> Thus, the mutual prescription doctrine was not needed or applied in the present case for the purpose achieved in Pasadena—that of avoiding complete elimination of appropriative rights stemming from uses of recent years in favor of those based on earlier uses. (*San Fernando, supra,* 14 Cal.3d at pp. 266-267.)

Because of these facts the Court rejected, but did not overrule, the mutual prescription doctrine and applied priority to achieve the most equitable result. This decision also does not support Plaintiffs' claim of an absolute priority under Section 5937. Further the ability of courts to choose, under their equitable authority, the best law to apply, again demonstrates the importance of balancing under Article X, section 2 in managing groundwater.

One of the most important California Supreme Court cases for present day groundwater management in California is, ironically, a surface water case. In *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339 (*Long Valley*), the Court was faced with the issue of riparian rights that had never been exercised. Riparian rights, like overlying rights to groundwater, run with the land and are generally considered analogous. (*Barstow, supra,* 23 Cal.4th at pp. 1240-1241, citing *California Water Service Co. v. Edward Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715,

725.) As a general rule they are not lost by nonuse. In fact, no court had ever held that either a riparian or overlying right had a different priority because it had not been exercised. The Supreme Court changed that in *Long Valley*.

The Court stated that it had previously held that riparian rights aren't lost or impaired by not being used and that unexercised riparian rights have priority over appropriative rights that are being used. *Long Valley, supra,* 25 Cal.3d at p. 347.) However, the Court also stated that riparian rights "must not be exercised in a manner that is inconsistent with constitutional policy provisions that are to govern interpretations of water rights in California." (*Id.* at p. 351.)

The Court then went on to provide guidance for the State Board under Article X, section 2 (*Long Valley* was a statutory adjudication overseen by the State Board) as to how it could treat unexercised riparian rights:

> For the future guidance of the Board, however, we undertake to identify the limitations on unexercised riparian claims that are constitutionally permissible and thus authorized by the statute in light of our analysis herein. As previously discussed, when the Board determines all rights to the use of the water in a stream system, an important interest of the state is the promotion of clarity and certainty in the definition of those rights; such clarity and certainty foster more beneficial and efficient uses of state waters as called for by the mandate of article X, section 2. Thus, the Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Moreover, to the extent that an unexercised riparian right may also create uncertainty with respect to permits of appropriation that the Board may grant after the statutory adjudication procedure is final, and may thereby continue to conflict with the public interest in reasonable and beneficial use of state waters, the Board may also determine that the future riparian right shall have a lower priority than any uses of water it authorizes

> before the riparian in fact attempts to exercise his right. (*Long Valley*, *supra,* 25 Cal.3d at pp. 359-360.)

Therefore, based on its authority under Article X, section 2, the Supreme Court held that an unexercised riparian right could have its priority reduced below that of all water rights currently being used. This decision, made pursuant to the courts' Article X, section 2 ability to not be limited by absolute water rights priorities, has had profound implications for groundwater management.

In adopting the Sustainable Groundwater Management Act, the legislature incorporated this aspect of *Long Valley* directly into groundwater management in California. Code of Civil Procedure section 830, subd. (b)(7) provides that in a comprehensive groundwater adjudication a court may consider applying the principles of the *Long Valley* case.

The 2021 decision in the *Antelope Valley Groundwater Cases* (2021) 63 Cal.App.5th 17 (*Antelope Valley II*), did exactly that.

In the *Antelope Valley II* case, the court relied upon *Los Angeles v. San Fernando, supra*, to equitably apportion groundwater among overlying owners:

> We conclude that, when apportioning water in an overdrafted basin among correlative rights holders, a court may employ equitable apportionment principles to the extent necessary to reach a practical apportionment of the available water among parties holding equivalent priorities. (Cf. *San Fernando, supra*, 14 Cal.3d at p. 265, 123 Cal.Rptr. 1, 537 P.2d 1250 [allocating water based on prescriptive rights "does not necessarily result in the most equitable apportionment of water according to need. A true equitable apportionment would take into account many more factors"].) Equitable apportionment should factor in the various legal priorities accorded to the competing users. (*Antelope Valley II, supra,* 63 Cal.App.5th at pp. 46-47.)

The *Antelope Valley II* Court relied on *Long Valley* in holding that: "the protection of the interests of correlative rights holders who are actually using all available water for reasonable and beneficial purposes may (under appropriate circumstances) permit a court to craft a physical solution which recognizes the rights held by overliers . . . but subordinates any future use by [those] correlative rights holders who [] demonstrate[d] they presently use the available supply." (*Antelope Valley II, supra,* 63 Cal.App.5th at pp. 47-48.)

All of these cases demonstrate the importance of the primacy of Article X, section 2 over water rights priorities and the need for courts to have the ability to balance competing priorities in managing groundwater. *Lodi, Pasadena, San Fernando, Long Valley*, *Mojave* and *Antelope Valley II* all demonstrate that it is essential for courts to have discretion to allocate groundwater to maximize its reasonable and beneficial use. Whether a court is allocating water to avoid cutting off junior users as in *Pasadena*, or addressing the future uncertainty of unexercised overlying rights as in *Antelope Valley II*, it is not an overstatement to say that it would be essentially impossible to manage groundwater without the primacy of Article X, section 2 over priority.

C. Legislative Direction Regarding Water Rights Priorities Is Subject to Reasonableness Under Article X, Section 2

On several occasions courts have addressed the impact of legislation on groundwater rights priorities. One notable example is the application of Civil Code section 1007 in *Los Angeles v. San Fernando, supra.*

In *San Fernando,* the Court held that Civil Code section 1007 prevented prescription against public entities. However, the Court held it did not change the nature of the underlying water right even though it could not be prescripted against. The Court held:

> Exemption from prescription does not change the nature of the right itself; the right is inherently the same whether prescription is precluded by exemption or is avoided by appropriate legal action before expiration of the prescriptive period. No water right, regardless of exemption from prescription, affords entitlement to water in excess of the constitutional limitation. Each kind of water right or claimed water right against which prescription is asserted in the present case is limited in scope to the amount of water which the holder of the right reasonably requires for the beneficial uses that the right authorizes, and no such right entitles the holder to prevent others from using water not so required. (*San Fernando, supra,* 14 Cal.3d at pp. 272-273.)

The Supreme Court has even struck down the legislature's attempt to extinguish a water right. In *Tulare Irr. Dist. v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, the Court found that a legislative attempt to sunset unexercised riparian rights after ten years was unconstitutional.

The 1913 Water Commission Act provided that a riparian right that had not been used for ten years shall be deemed abandoned. (*Tulare Irr. Dist., supra,* 3 Cal.2d at p. 514.) This Court struck down this provision: "In so far as the section attempts to declare that 10 years' nonuse, without an intervening use, shall constitute an abandonment of the riparian right, we think the section is unconstitutional." (*Id.* at p. 530.)

> The basis for this conclusion was Article X, section 2:
>
> More important, however, is the fact that such provision is contrary to the letter and spirit of the 1928 constitutional amendment, above discussed. That amendment, while limiting the riparian as against an appropriator, to reasonable beneficial uses, as likewise does section 11 of the Water Commission Act, expressly protects the riparian not only as to his present needs, but also as to future or prospective reasonable beneficial needs. Since this is so, it would be incongruous and in violation of the spirit of the constitutional provision to hold that 10 years' nonuse, without any intervening use giving rise to a right by prescription,

> constitutes a complete abandonment. (*Tulare, supra,* 3 Cal.2d at p. 531.)

The *Tulare* opinion affirms that legislative provisions that potentially impact water rights priority, such as Section 5937, are subject to the constitutional requirement of reasonableness.

Recently, in the *Antelope Valley Groundwater Cases* (2020) 59 Cal.App.5th 241, 268 (*Antelope Valley I*), the court rejected an argument that Water Code provisions created a water right. In that case, the provisions at issue were Water Code sections 106 and 106.5. Water Code section 106 provides that:

> It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation. (Wat. Code, § 106.)

Water Code section 106.5 provides:

> It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses…. (Wat. Code, § 106.5.)

In *Antelope Valley I*, the Phelan Piñon Hills Community Services District, which was supplying water for domestic use, asserted that it was a "public use appropriator" and that Water Code sections 106 and 106.5 gave it a protectable right in the aquifer. (*Antelope Valley I, supra,* 59 Cal.App.5th at p. 268.) Crucially the Court held:

> We conclude neither Water Code sections 106 and 106.5 nor the cases cobbled together by Phelan provides support for this novel theory that a pumper for municipal purposes can tap into an overdrafted aquifer and in doing so acquire protectable water rights in that aquifer. While the statutes cited by Phelan are declarative of general public policy, Phelan has cited no case (nor have we located any) in which those sections were employed to acquire a water right that

> would not otherwise have been acquired under the laws governing acquisition of water rights by overlying, appropriative, or prescriptive users. (*Id.* at pp. 268-269.)

Similarly, here, the fish have no water right and the Fish and Game Code cannot give them one. The provision at issue can be nothing more than public policy guidance subject to the standard of reasonableness.

IV. CONCLUSION

For these reasons, this Court should affirm the Court of Appeal's narrow opinion reversing the trial court's grant of a preliminary injunction and reaffirm the importance of a court's equitable balancing under Article X, section 2.

Dated: May 4, 2026

BEST BEST & KRIEGER LLP

By: */s/ Eric L. Garner*

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CERTIFICATE OF WORD COUNT

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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 4, 2026, at Los Angeles, California.

/s/ *Houda Matar*
Houda Matar

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 5/4/2026 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S290840**
Lower Court Case Number: **F087487**

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/s/Houda Matar

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