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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.

[And five other cases.]*

AFTER A DECISION BY THE COURT OF APPEAL, FIFTH DISTRICT • CASE NO. F087487 (LEAD)
CONSOLIDATED WITH F087503/F087549/F087558/F087560/F08770
KERN COUNTY SUPERIOR COURT • GREGORY PULSKAMP, JUDGE
CASE NO. BCV-22-103220

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE TOM TAYLOR IN SUPPORT OF REAL PARTIES IN INTEREST NORTH KERN WATER STORAGE DISTRICT, ET AL.

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to California Rules of Court, Rule 8.520(f), Tom Taylor respectfully applies for permission to file the accompanying amicus curiae brief. Rule 8.520(f) permits a person or entity, after the Supreme Court orders review, to serve and file an application for permission of the Chief Justice to file an amicus curiae brief, and requires the application to state the applicant's interest, explain how the proposed brief will assist the Court, identify any party or party counsel who authored or funded the brief, and accompany the application with the proposed brief. (*See,* Cal. Rules of Court, rule 8.520(f).)

Interest of Amicus Curiae

Tom Taylor is a retired fishery biologist with extensive field experience on California rivers and native fishes. He began his career in the late 1970s after completing a master's degree in Wildlife and Fisheries at the University of California, Davis, where he studied under Dr. Peter Moyle. He worked for the California Department of Fish and Game on Delta recreational fisheries and on rare and endangered desert fishes, including Owens pupfish, Desert pupfish, and Mohave tui chub. He later worked at California State Parks on statewide aquatic resources and restoration issues in coastal wetlands and riverine habitats.

In private consulting, Mr. Taylor worked on habitat restoration and flow-related habitat assessment in a broad range of California river systems, including Rush and Lee Vining Creeks tributary to Mono Lake, Lagunitas Creek, the Carmel River, Alameda Creek, the Sacramento-San Joaquin Delta, the Russian River, the San Joaquin River below Millerton Dam, and San Joaquin River Reach 2B. His work included fish-passage assessment, spawning assessment, restoration planning, evaluation of flow and habitat impacts, and assessment of construction-related effects on fish. After retirement in 2017, Mr. Taylor continued to work on restoration issues, including the Wings Landing restoration project in Suisun Marsh, and has co-authored recent public writing on native fishes with Dr. Moyle.

Mr. Taylor's interest in this case is not to repeat the legal arguments of the parties. His interest is to assist the Court in understanding, from the perspective of an experienced field biologist, what the statutory phrase "fish in good condition" should require in a heavily altered river reach, and why any fish flow program should be grounded in a realistic, watershed-scale assessment of habitat, geomorphology, flow timing, native fish needs, migration barriers, and consideration of *other* beneficial uses of water.

How This Brief Will Assist the Court

The question before the Court concerns whether article X, section 2 of the California Constitution requires a court to consider whether a proposed water use is reasonable and beneficial whenever the court directs or adjudicates a particular

use of water, including when applying a water-use statute that does not expressly incorporate that determination. The Supreme Court case information identifies the issue in those terms. (*See,* GMSR case summary for Bring Back the Kern v. City of Bakersfield, S290840.)

This brief will assist the Court because the legal question cannot be answered sensibly without attention to the biological question embedded in Fish and Game Code section 5937: what conditions are sufficient "to keep in good condition any fish that may be planted or exist below the dam." The statute uses that phrase. (*See*, California Fish & Game Code section 5937.) In a modified, sand-bedded, partly intermittent, barrier-fragmented reach such as the Kern River through Bakersfield, "fish in good condition" should not be reduced to the presence of water alone. Instead, other factors should be considered with an eye toward creating a process that helps enable fish populations to succeed, such as: a framework for flow and habitat conditions sufficient to support healthy fish populations in healthy biotic communities, with attention to spawning, rearing, recruitment, water temperature, channel form, riparian function, migration barriers, and the natural and altered watershed context. While other uses of water occur, the brief is focused on instream uses as those uses relate to fish in good condition.

The brief also explains why a categorical flow mandate may fail to protect public trust resources as a whole if it overlooks effects on other instream uses and ecological resources, including the Lower Kern River canyon and Lake Isabella

operations. The California Environmental Flows Framework provides a structured method for developing scientifically defensible environmental flow recommendations, including an ecological assessment followed by tradeoff analysis that considers human water needs. (*See,* California Environmental Flows Framework, Framework Overview; The California Environmental Flows Framework, Frontiers in Environmental Science.)

Disclosure Under Rule 8.520(f)(4)

No party or counsel for a party authored this proposed brief in whole or in part. No party, counsel for a party, or other person or entity made a monetary contribution intended to fund preparation or submission of this brief, other than amicus curiae and/or his counsel.

Request for Permission

For these reasons, Tom Taylor respectfully requests that the Chief Justice grant permission to file the accompanying amicus curiae brief.

Date: May 4, 2026

Respectfully submitted,

/s/ *Wesley A. Miliband*

Wesley A. Miliband
Miliband Water Law
Attorney on behalf of Applicant
and Amicus Curiae Tom Taylor

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PROPOSED AMICUS CURIAE BRIEF

I. INTRODUCTION

This case asks how California courts should apply a fish-protection statute in a water system where every flow decision has consequences. The answer should protect fish, but it should do so in a way that is biologically meaningful, geographically honest, and consistent with the constitutional requirement that water uses be reasonable and beneficial.

Amicus Tom Taylor has spent much of his career observing rivers and fish in the field. Midway through that career, the collective experience of sampling streams, including underwater observations of fish behavior and habitat use, crystalized into a simple lesson with legal importance here: fish condition extends far beyond quantity of water available for the fish because water alone is not habitat.

Fish and Game Code section 5937 requires a dam owner to allow sufficient water to pass a dam "to keep in good condition any fish that may be planted or exist below the dam." (*See*, California Fish & Game Code section 5937.) Article X, section 2 of the California Constitution provides that the right to water is limited to the amount reasonably required for the beneficial use served, and that the section is self-executing. (*See,* California Constitution, article X, section 2.) Those two commands should be read together in a way that asks what fishery objective is actually

achievable, what flow and habitat conditions are needed to achieve it, and what other resources would be affected by imposing that flow regime.

The Court should not treat "fish in good condition" as a phrase that automatically compels a fixed quantity or percentage of flow without a showing of biological benefit and without considering broader watershed effects. Nor should it treat the phrase as empty. Properly understood, it requires a case-specific inquiry into the fish that exist or could realistically exist in the affected reach, the habitat they need for healthy population function, the physical limits of the channel, the effects of non-flow stressors, and the tradeoffs imposed on other beneficial and public trust uses.

That inquiry is especially important on the Kern River. The river historically terminated in the Tulare Basin, usually at Buena Vista Lake and Kern Lake. It distributed flow through a delta of shifting channels, and it was not an anadromous river. The modern valley-floor Kern River channel is radically changed. Buena Vista Lake has been drained for nearly a century. Bakersfield occupies much of the historic Kern River Delta. Diversion structures, levees, canals, groundwater changes, urban development, oilfield infrastructure, parks, golf courses, grazing, gravel mining, and flood-control operations have altered the river and its floodplain.

The question is therefore not whether the past can be restored. Some changes are effectively irreversible on the scale relevant to this case. The question is what can be improved now, to what extent, at what water cost, and with what consequences for other remaining resources.

The California Environmental Flows Framework ("CEFF") offers one scientifically grounded way to answer those questions. CEFF uses a functional-flows approach and produces environmental flow recommendations that balance ecological and human water needs. (*See,* California Environmental Flows Framework, Framework Overview.) It recognizes that environmental flows should consider magnitude, timing, duration, frequency, and rate of change, and that non-flow impairments such as altered habitat, high temperature, and invasive species can limit the usefulness of flow alone. (*See,* California Environmental Flows Framework, Framework Overview.)

The Court should affirm that section 5937 is meaningful and enforceable, while also recognizing that any judicially directed flow regime must be biologically defined, objectively administrable, and reasonable under article X, section 2 by taking into account all beneficial uses of water.

II. ARGUMENT

A. "FISH IN GOOD CONDITION" SHOULD BE UNDERSTOOD AS A FUNCTIONING BIOLOGICAL CONDITION, NOT MERELY AS WATER IN A CHANNEL

Section 5937 does not merely ask whether water is present below a dam. It asks whether sufficient water is passing to keep fish "in good condition." (*See*, California Fish & Game Code section 5937.) In biological terms, that phrase should refer to more than short-term survival of individual fish. It should refer to flow and habitat conditions capable of supporting fish as populations within functioning aquatic communities.

For purposes of this case, "fish in good condition" should include at least four related concepts.

First, the inquiry should focus on native resident fish and, where historically and physically applicable, migratory fish. The Kern River through Bakersfield was not an anadromous river system. Its historical fish functions were tied to a terminal river and lake system in the Tulare Basin, not to ocean-going salmonids.

Second, the inquiry should ask whether the fish community can maintain healthy populations, not merely whether isolated adult fish can persist. A reach dominated by aging adults with little evidence of

spawning success or recruitment is not in good biological condition simply because fish are visible.

Third, the inquiry should include living space for spawning, rearing, refuge, movement, and seasonal use. Different fish require different substrates, velocities, depths, temperatures, cover, and floodplain or backwater conditions. Sacramento suckers, for example, generally require gravel or cobble spawning areas; warmwater species such as bass and carp use different habitats; and introduced species may benefit from conditions that do not support native fish recovery.

Fourth, the inquiry should include habitat-maintenance flows. A river is not only a conveyance channel. Flow interacts with substrate, vegetation, gradient, and floodplain form to create and maintain habitat. A flow regime that wets the channel but cannot maintain channel function may not produce the biological condition section 5937 is meant to protect. Conversely, during wetter periods, flood control conditions (and applicable requirements) should be considered so that any habitat-maintenance flows yield to flood control measures that are designed to protect health and safety needs.

This understanding is consistent with California water law. *In National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, this Court explained that the public trust doctrine and the appropriative rights

system are parts of an integrated water-law system, and that courts and agencies should consider public trust effects and avoid or minimize harm where feasible. (*Ibid.* at p. 452.) It is also consistent with *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, which recognized that section 5937 requires sufficient water to sustain fish below a dam and that such a requirement can limit water available for other uses. (*Ibid.* at p. 605.)

But neither biological science nor California water law supports an empty formula. The flow needed to keep fish in good condition depends on the fish, the reach, the season, the channel, the available habitat, and the other limiting factors. A judicial order should therefore identify the fishery objective and the objective standard for compliance.

B. THE KERN RIVER THROUGH BAKERSFIELD MUST BE EVALUATED IN ITS ACTUAL WATERSHED, GEOMORPHIC, AND HISTORICAL CONTEXT

Rivers are aquatic systems in which flow interacts with substrate and vegetation to shape the channel. Channel form reflects flow regime, sediment size, and gradient. Steeper reaches tend to contain boulder and cobble. Lower-gradient reaches tend to contain more sand and gravel. California's Mediterranean climate adds strong seasonality: flows are naturally lowest in late summer to early winter, rise with winter precipitation, and often peak during spring snowmelt.

Dams and water operations have altered that pattern statewide. High flows now often occur mainly in wet years when reservoirs exceed flood-control storage, while many regulated rivers are operated with relatively constant releases or with summer increases aligned to irrigation demand. As climate change increases hydrologic variability, competition for limited water will intensify. That makes clear tradeoff analysis more important, not less.

The Kern River has always differed from coastal and Central Valley rivers that support anadromous fisheries. Historically, the Kern was a terminal river whose usual termini were Buena Vista Lake and Kern Lake. In dry years, surface flow did not necessarily remain connected to those lakes year-round. In wet years, the channel to Buena Vista Lake was likely connected for much of the year. Other Tulare Basin rivers, including the Kings, Kaweah, and Tule, functioned in comparable ways.

The historic Kern River also included a delta. Sand and gravel eroded from Sierra granitic terrain were transported downstream and deposited where the valley-floor gradient decreased. As a result, the river fanned out and split into distributary channels conveying water west and south. Historic maps show channel divisions near modern canal intakes, and modern canal systems such as Calloway and Kern Island broadly mimic historic distributary pathways.

That history matters because no single modern channel should be assumed to have carried all historic flow below the delta bifurcation. Dominant flow paths likely shifted with sediment deposition and large flood events. The 1896 configuration, as reflected in Figure 1, appears to have favored the channel toward Buena Vista Lake, and subsequent management largely maintained that configuration. But the broader historical lesson is that the valley-floor Kern was a distributary, seasonal, terminal system, not a permanently connected, anadromous river corridor.

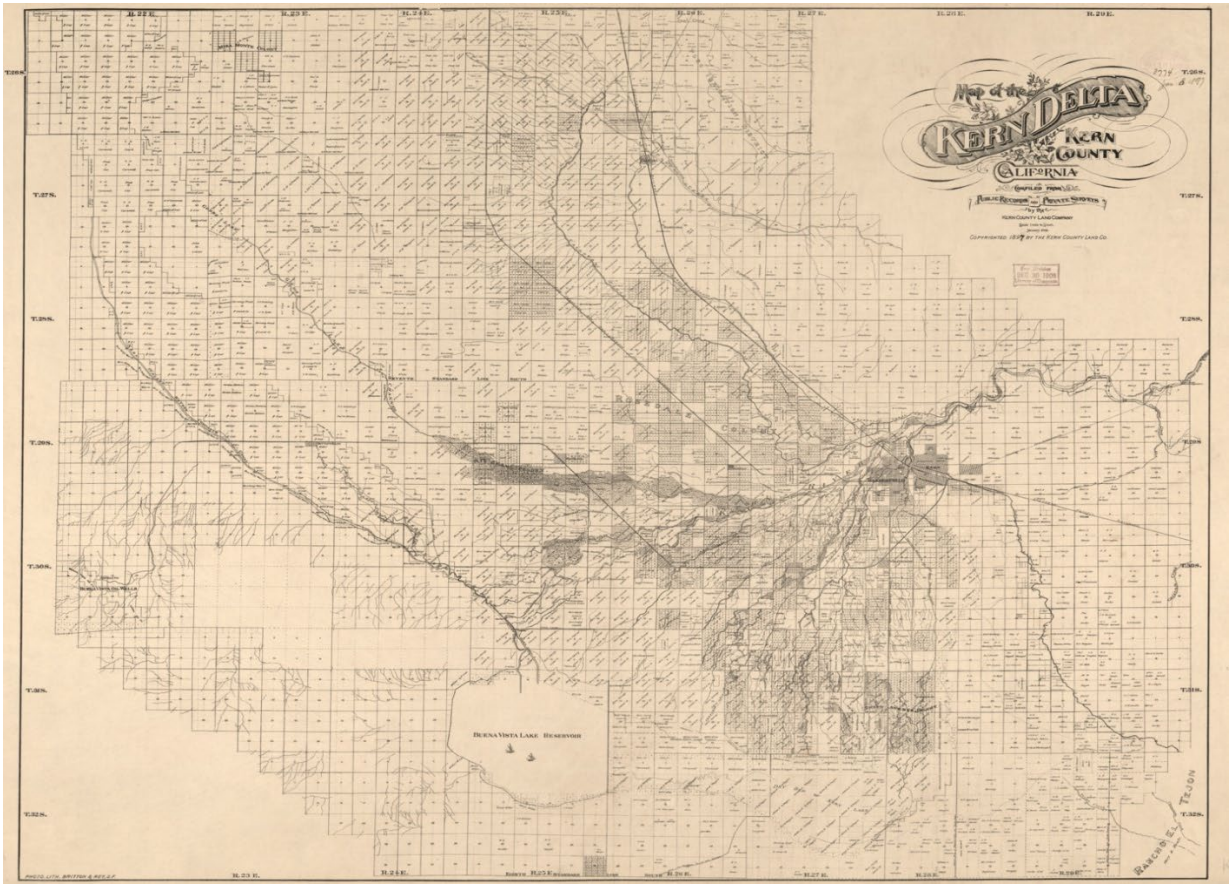

Figure 1. An 1896 map of the southern San Joaquin Valley showing the distributary channels of the Kern River and Lake Buena Vista. The main NW-SE black line on the map through Bakersfield is the Southern Pacific Railroad. (Source: Kings River Parkway website downloaded 21 April 2026). (Available at: www.kernriverparkway.org.)

The landscape has since changed profoundly. Buena Vista Lake has been drained for nearly a century and converted to agriculture. Urban development now covers much of the historic Kern River Delta. Wetlands and marshes along the western channel are largely gone, although some groundwater recharge basins can support seasonal wetlands in wet years. Regional groundwater overdraft has contributed to chronic groundwater declines and land subsidence in parts of the Tulare Basin and San Joaquin Valley.

Imported water further reshaped regional management. The Central Valley Project began transferring San Joaquin River water to the Bakersfield area in the 1950s. The State Water Project followed in the 1960s, delivering Sacramento-San Joaquin Delta water through the Cross Valley Canal. Oil production, railroad and highway corridors, urbanization, and agricultural groundwater dependence all further altered the river's setting.

While these land use and water resources changes over the decades do not justify from a biological perspective reduced flows or diminished habitat conditions, especially where fish-protection laws apply, these changes demonstrate why the solution must be based on present physical conditions and characteristics. A court cannot protect fish in good condition by assuming a river that no longer exists.

C. THE BAKERSFIELD REACH IS HEAVILY CONSTRAINED BY SAND-BED CHANNEL CONDITIONS, FRAGMENTATION, TEMPERATURE, POOR RECRUITMENT, AND NON-NATIVE FISH ASSEMBLAGES

The Bakersfield Reach should be evaluated segment by segment. From the Calloway Canal intake to South Allen Road, the Kern is largely a sand-bedded channel. Sand-bed rivers often provide limited aquatic habitat because the bed is mobile, pools and riffles are poorly developed, and the channel tends to be wide and shallow. Wide, shallow water is exposed to solar and air-temperature effects, causing high summer temperatures and strong day-night temperature swings that can stress fish.

Under existing management, the Bakersfield Reach functions poorly as fish habitat, even when wetted. Dry sections have no meaningful fish habitat. Wetted sections may provide poor-to-fair habitat for some warmwater fishes, depending on season and location, but they do not necessarily provide conditions for healthy, self-sustaining fish populations.

The native fish picture appears limited. Based on the available observations summarized by amicus, the only recently documented native fish in the Bakersfield Reach is Sacramento sucker. The assemblage appears dominated by introduced species, including carp, red shiner, smallmouth bass,

and largemouth bass. The recreational fishery is primarily an introduced bass fishery.

The observed population structure also matters. The available information suggests that most observed fish are adults, with limited evidence of recruitment. That is consistent with a reach where flows are sporadic, habitat is poor, spawning substrates are limited, temperatures are stressful, and migration is constrained.

Spawning habitat is a particular limiting factor. Sacramento suckers typically spawn over gravel and cobble. Largemouth bass are primarily lake or quiet-water spawners. Smallmouth bass may use lower-velocity backwaters. Carp often use inundated floodplain habitat. The Bakersfield Reach offers limited and discontinuous examples of these habitat types, especially under dry-year and low-flow conditions.

Migration barriers further constrain recovery. Between the foothills near Lake Ming and the channel's effective end near the California Aqueduct, the river is interrupted by multiple diversion and control structures. These include the Beardsley, Kern Island, East Side, and Calloway canal diversions; a grade-control structure downstream of the Golden Gate Boulevard bridge; and the Gates and Buena Vista Canal diversion upstream of Coffee Road. These structures limit upstream fish movement and fragment habitat. Even in the most extreme of scenarios of removing migration barriers, doing so does not

guarantee fishery health. Instead, a process for developing a program better suits meeting fishery needs while simultaneously doing so with practicable measures. (*See,* California Environmental Flows Framework, Framework Overview.)

Riparian condition is also uneven. From Lake Ming downstream to Oildale, riparian vegetation is generally poor to fair, often occurring as thin, discontinuous strips, with broader stands mainly on undeveloped point bars. Vegetation is sparse from Oildale to the East Side Canal diversion, then improves in quality and extent toward the Calloway Canal intake. Downstream of Calloway, the channel narrows and vegetation diminishes. Below Highway 99, the channel becomes braided with little to no riparian cover for a substantial distance. Some vegetation reappears along bars near the Stockdale Highway and South Allen Road bridges, but sparse cover remains the rule over much of the reach.

Downstream of South Allen Road, the channel and floodplain widen into groundwater recharge basins extending west to Enos Lane, where another canal forms a migration barrier. From Enos Lane to the California Aqueduct, the river remains braided with minimal riparian vegetation.

These facts point to a practical conclusion. If the legal objective is "fish in good condition," then flow alone is not enough. Any solution should identify which fish populations are to be supported, where, during which seasons, under

what water-year types, with what habitat improvements, and subject to what monitoring and adaptive management program, while also giving consideration of *other* beneficial uses of water. Taking this latter point one step further, requiring that flows or habitat conditions in a specific section of the river (such as a lower reach of the river) may not be practical or beneficial to the fish yet would deprive use of that water by others.

D. ARTICLE X, SECTION 2 REASONABLENESS REVIEW IS IMPORTANT BECAUSE ADDITIONAL FLOWS THROUGH BAKERSFIELD MAY AFFECT OTHER PUBLIC TRUST, INSTREAM RESOURCES, AND OTHER BENEFICIAL USES OF WATER

Article X, section 2 provides that water rights are limited to the amount reasonably required for the beneficial use served and do not extend to waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion. (*See,* Justia, California Constitution, article X, section 2). That constitutional standard is not an obstacle to fish protection. It is a framework for making fish protection effective, proportionate, and transparent.

The need for reasonableness review is concrete here. Additional flow to keep the Kern continuously wetted through Bakersfield must come from Lake Isabella releases and pass through the approximately 33-mile Lower Kern River canyon before reaching valley-floor diversion points. There is no bypass

conduit that delivers Isabella storage directly to Bakersfield while avoiding the canyon.

That means a Bakersfield flow order is not only a Bakersfield flow order. It is also a Lower Kern canyon flow order and a Lake Isabella operations order. Releases that might improve wetted habitat through Bakersfield may also change habitat, recreation, water temperature, reservoir storage, hydropower conditions, and boating access upstream.

The Lower Kern canyon already conveys managed flows that differ from the natural hydrograph. During the irrigation season, releases from Lake Isabella commonly range from about 800 to 3,000 cubic feet per second and can be higher in wet years. Additional bypass requirements could increase those releases further. For example, if a diversion were required to bypass 40 percent while delivering the same diverted quantity, an 800 cfs release would become 1,120 cfs, and a 3,000 cfs release would become 4,200 cfs. Those increases could affect fish habitat, riparian vegetation, channel margins, rafting safety, reservoir drawdown, hydropower generation, late-summer water quality, and flood control measures and requirements.

The point is not that any such effect defeats a fish-flow requirement. The point is that those effects must be evaluated. National Audubon teaches that neither municipal and domestic uses nor instream uses enjoy an absolute priority, and that courts and agencies must consider public trust effects and

attempt to avoid or minimize harm where feasible. (*See, In National Audubon Society v. Superior Court, supra,* 33 Cal.3d at 426.) That integrated approach applies with special force where a flow program may help one reach while imposing ecological or recreational costs on another. Furthermore, in this case, it could be detrimental to 33 miles of the Kern River canyon and Lake Isabella for the benefit of 8 miles of the Kern River through Bakersfield.

The Court should therefore make clear that section 5937 enforcement requires an objective biological and hydrologic showing. A court should determine what fish condition is being protected, what flow is necessary to protect it, whether non-flow measures are also needed, and whether the resulting use of water is reasonable in light of other beneficial and public trust uses.

E. A CEFF-BASED EVALUATION WOULD HELP DEFINE FEASIBLE FISHERY OBJECTIVES AND TRANSPARENTLY COMPARE TRADEOFFS

The California Environmental Flows Framework is well suited to the type of inquiry this case requires. CEFF was developed as a management approach to help develop scientifically defensible environmental flow recommendations in California, with objectives that include improving transparency, accommodating diverse management goals, and improving coordination and data sharing. (*See,* California Environmental Flows Framework, Framework Overview.)

CEFF uses a functional-flows approach. Rather than focusing only on a single target species or a single minimum flow, it asks what components of the flow regime support ecological, geomorphic, and biogeochemical functions. The framework recognizes five common functional flow components: fall pulse flow, wet-season baseflow, peak magnitude flow, spring recession flow, and dry-season low flow. (*See,* California Environmental Flows Framework, Framework Overview.)

That matters because "good condition" is not always produced by the same flow every day. Spawning, rearing, temperature control, channel maintenance, riparian recruitment, sediment transport, and refuge habitat may depend on different flow magnitudes and timing. A static minimum flow may be too much at one time, too little at another, and poorly tailored to biological need.

CEFF also distinguishes ecological flow criteria from environmental flow recommendations. Ecological flow criteria describe flow ranges needed to support natural functions of healthy ecosystems. Environmental flow recommendations then consider human uses and other management objectives. (*See,* California Environmental Flows Framework, Framework Overview.) That distinction matches the legal structure of this case: The Court seeking to understand the fishery need so that the Court can then determine how that need

fits within reasonable and beneficial use of limited water resources that practically requires prioritization of uses of the limited water supplies.

A CEFF-based evaluation for the Kern River should include at least the following steps.

First, it should define the study area at the right scale. The Bakersfield Reach should be divided into segments between diversion structures and other meaningful geomorphic breaks. The Lower Kern canyon and Lake Isabella operations should be included because additional Bakersfield flows must pass through the canyon.

Second, it should identify realistic ecological objectives. Those objectives should distinguish between native resident fish, introduced warmwater sport fish, riparian vegetation, amphibians, channel function, seasonal wetland values, and recreational uses. The objective should not be an assumed return to a pre-development condition that cannot be recovered.

Third, it should assess non-flow limiting factors. In the Bakersfield Reach, those factors include sand-bed instability, high temperature, lack of riparian cover, lack of functional floodplain, migration barriers, degraded channel form, invasive or introduced fish assemblages, and groundwater disconnection. CEFF expressly recognizes that non-flow impairments may limit whether natural flow metrics will support desired ecological functions. (*See,* California Environmental Flows Framework, Framework Overview.) As

such, a specific section of the river (such as a lower reach of the river) may not be practical or beneficial to the fish yet would deprive use of that water by others, thus site selection to target fishery health is critically important for actually providing the opportunity for fish to survive.

Fourth, it should evaluate water-year type and season. A flow regime that is biologically justified in a wet year may be unreasonable or ineffective in a critically dry year. Conversely, short-duration functional flows in wet years may produce ecological benefits that a uniform dry-season baseflow cannot.

Fifth, it should analyze tradeoffs. A flow requirement through Bakersfield should be compared with effects on the Lower Kern canyon, Lake Isabella storage, municipal supply, irrigation, hydropower, recreation, fish habitat, riparian vegetation, water temperature, groundwater recharge, and public trust resources. CEFF's third section is designed to guide development of environmental flow recommendations by reconciling ecological flow criteria with non-ecological management objectives. (*See,* California Environmental Flows Framework, Framework Overview.)

Sixth, it should consider monitoring and adaptive management, the extent of which can vary depending on specific conditions and characteristics. Flow prescriptions should be evaluated against biological outcomes, including recruitment, temperature, habitat availability, fish movement, and community composition. If a flow regime does not improve fish condition because non-

flow constraints dominate, the remedy should be adjusted rather than repeated by assumption.

This approach would not weaken section 5937. It would make the statute work. It would define "fish in good condition" in a way that is measurable, biologically credible, and tied to the actual river.

III. CONCLUSION

The Kern River through Bakersfield has value. It should not be treated as merely a dry conveyance channel or as a place where fish-protection law has no work to do. But it also should not be treated as if a simple command to keep the channel wet will restore the historic Kern River, Buena Vista Lake, the Kern River Delta, or a fishery that the modern landscape can no longer support.

"Fish in good condition" should mean healthy fish populations in functioning habitat, evaluated in the context of the river that exists, the river that historically existed, and the river that can realistically be improved. That inquiry requires attention to native fish, habitat structure, water temperature, spawning and rearing conditions, migration barriers, channel maintenance, riparian function, and recruitment. It also requires attention to the cost of any flow prescription for other beneficial and public trust resources.

Article X, section 2 supplies the constitutional discipline for that inquiry. Section 5937 supplies the fish-protection directive. The two should be read together. The Court should hold that when a court directs or adjudicates a particular use of water to keep fish in good condition, it must determine the biologically necessary and objectively administrable flow and habitat requirements, and it must consider whether that water use is reasonable and beneficial in the full watershed context.

For the Kern River, a CEFF-based evaluation would provide a scientifically defensible path. It would help identify feasible objectives, define functional flows, account for non-flow limitations, assess water-year and seasonal variation, and transparently compare tradeoffs among remaining public trust and beneficial uses.

For these reasons, the Court should require any fish-flow remedy in this case to be grounded in a case-specific, biologically meaningful, and constitutionally reasonable assessment.

Date: May 4, 2026

Respectfully submitted,

MILIBAND WATER LAW

/s/ *Wesley A. Miliband*

Wesley A. Miliband
Attorney on behalf of Amicus Curiae
Tom Taylor

CERTIFICATION OF COMPLIANCE WITH CAL. R. CT. 8.204(c)(1)

Pursuant to California Rules of Court, rules 8.204(c) and 8.520, counsel certifies that this brief contains 3,876 words, including footnotes, as counted by Microsoft Word, excluding the items permitted to be excluded by the California Rules of Court.

Executed on May 4, 2026, at Sacramento, California.

MILIBAND WATER LAW

/s/ *Wesley A. Miliband*

Wesley A. Miliband
Attorney on behalf of Amicus Curiae
Tom Taylor

PROOF OF SERVICE

I, Wesley A. Miliband, hereby certify that at the time of service, I was at least 18 years of age and not a party to this action. My business address is 3626 Fair Oaks Boulevard, Suite 100, Sacramento, California 95864.

I certify that on May 4, 2026, I served the following document:

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE TOM TAYLOR IN SUPPORT OF REAL PARTIES IN INTEREST NORTH KERN WATER STORAGE DISTRICT, ET AL.

By electronic service – TrueFiling System: By causing the document(s) listed above to be served via the California Supreme Court's TrueFiling System on all registered parties list on the attached Service List.

By U.S. Mail: By placing the document(s) listed above in a sealed envelope addressed to the Superior Court of California, as shown below, and depositing the sealed envelope with the United States Postal Service, with postage fully paid:

Clerk of the Court
Attn: Hon. Edward G. Weil, Dept. 39
Superior Court of California
County of Contra Costa
725 Court Street
Martinez, CA 94553

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

Executed on May 4, 2026, at Sacramento, California.

/s/ *Wesley A. Miliband*

Wesley A. Miliband

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

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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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.

5/4/2026

Date

/s/Wesley Miliband

Signature

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Last Name, First Name (PNum)

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