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Supreme Court of California
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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.

APPLICATION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF CALIFORNIA CONSTITUTION SCHOLARS SUPPORTING REAL PARTIES IN INTEREST

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Under Rule of Court 8.520(f), David A. Carrillo and Stephen M. Duvernay (collectively, *amicus* California Constitution Scholars) request leave to file the attached *amicus curiae* brief. *Amicus* certifies under Rule of Court 8.520(f)(4) that no party or counsel for any party authored this brief, participated in its drafting, or made any monetary contributions intended to fund the preparation or submission of the proposed brief.

Amicus are California constitution scholars who seek to aid this Court in resolving an issue of state constitutional interpretation presented here; we are academics affiliated with the California Constitution Center, a nonpartisan academic research center at the University of California, Berkeley, School of Law. The University of California is not party to this brief.

The proposed brief will assist the Court by addressing the core issue: which is the higher law, a statute, or the California constitution? Petitioners argue that once a water use is shown to comply with the applicable statute, a court need not consider whether the use also complies with the state constituiton's mandate that all water uses be reasonable. From that premise, petitioners argue that the legislature is empowered to define the constitutional concept of reasonable water uses.

If true those propositions would require this Court to elevate statutes over the state's organic law, and in so doing destroy the judiciary's power to interpret the state constitution. This Court should reaffirm its past holdings that all water uses are constitutionally mandated to be reasonable, and that the courts have authority to hold such uses to that standard on a case-by-case basis.

Respectfully submitted,

Dated: May 4, 2026

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AMICUS CURIAE BRIEF

I. Summary of argument

Petitioners argue that a water use's unconstitutionality is irrelevant as long as the use complies with the applicable statute. They base this on the provision in California constitution article X, section 2 that the state's waters must be reserved to "reasonable and beneficial" uses, and that the legislature may adopt laws furthering that policy. From this petitioners conclude that the legislature by statute can define what water uses are constitutionally "reasonable," and the courts have no jurisdiction over such questions. Were that so the legislature would be the arbiter of article X, section 2's meaning, making legislative acts the state's highest law on the matter.

Yet interpreting the law is a judicial function, and this Court is the final arbiter of the state constitution's meaning. Accordingly, since article X, section 2 was first adopted in 1928 this Court has exercised its power to declare the law in the water-use context. And the standard this Court has adopted — that all water uses must be reasonable on the facts of the case — applies here to any water use directed by statute. The trial court erred in concluding that it had no jurisdiction to consider the question of constitutional reasonableness. This Court should remand

with directions for findings on whether the proposed water use here is reasonable and beneficial on all the facts.

II. Argument

The California constitution is superior to any statute, and a statute cannot alter a constitutional provision.[1] California constitution article X, section 2 requires any water use to be "reasonable." That provision is "self-executing" by its own terms, and it permits the legislature to enact laws furthering the reasonable use policy.[2] Accordingly, this Court has held that "[a]ll uses of water, including public trust uses, must now conform to the standard of reasonable use" imposed by article X, section 2.[3] This scheme is straightforward: Any statute the legislature adopts in this context must further the policy of reasonable use, and courts as arbiters of the constitution's meaning must judge whether a

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[1] *See, e.g.*, *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 961 ("Obviously" if a statute conflicted with the state constitution the statute would have to yield); *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 602 (a "statute inconsistent with the California Constitution is, of course, void"); *People v. Navarro* (1972) 7 Cal.3d 248, 260 ("Wherever statutes conflict with constitutional provisions, the latter must prevail."); *Carter v. Seaboard Finance Co.* (1949) 33 Cal.2d 564, 579 (California's constitution is "the supreme law of the state" to which all statutes must conform).

[2] Cal. Const., art. X, § 2.

[3] *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367 (a reasonable-use limit "appl[ies] to the use of all water, under whatever right the use may be enjoyed").

water statute meets the constitutional standard of reasonable use. The standard this Court (and, by necessity, any lower court) uses in such cases is whether a water use is reasonable considering all the facts and circumstances of the case.[4] Against that standard on review, any statute that conflicts with article X, section 2 must give way.[5] Consequently, the trial court erred in holding that courts have no jurisdiction to review acts done under section 5937 for compliance with article X, section 2's reasonable-use requirement. Affirming the trial court's decision would elevate statute over constitution, divest the courts of their constitutional jurisdiction, and violate the separation of powers.

A. Courts have a sua sponte duty to uphold the state constitution

It is axiomatic that the state courts must enforce the state constitution's provisions. This Court is bound to uphold California's charter, the state's highest law.[6] And this Court is the final arbiter of the

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[4] *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 354 ("what is a reasonable use of water varies with the facts and circumstances of the particular case"); *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist*. (1935) 3 Cal.2d 489, 531 (art. X, § 2 requires courts to assess water uses "in view of all the circumstances").

[5] *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 700 (art. X, § 2 "supersede[s] all state laws inconsistent therewith").

[6] *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 306; *People v. Superior Court (Guevara)* (2025) 18 Cal.5th 838, 862, quoting *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council* (1988) 485 U.S. 568, 575.

state constitution's meaning.[7] Indeed, along with that general duty of fidelity and power of interpretation, this Court has acknowledged that it is bound to enforce the particular constitutional provision at issue here.[8] Those principles suffice to doom petitioners' argument that courts have no responsibility for applying the article X, section 2 reasonableness principle to specific water uses directed by statute.

This Court may well be wary of broad statements of judicial power over California's waters. Courts do generally attempt to avoid making cases turn on constitutional issues.[9] But here the parties agree that this case pivots on the conflict between a statute and the state constitution.[10] In such cases courts have a sua sponte duty to uphold the higher law. Here, the constitutional requirement that all water uses be reasonable and beneficial makes the judicial duty of review inescapable. Only a court can define what "reasonable use" means in general, and in context.

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[7] *People v. Jacinto* (2010) 49 Cal.4th 263, 269.

[8] *Peabody*, 2 Cal.2d at 367, 373 (art. X, § 2 imposed on courts the responsibility of "weighing the evidence in conformity with constitutional requirements and framing their decrees accordingly"); *Gin S. Chow*, 217 Cal. at 700 ("courts are bound to enforce" it).

[9] *Long Valley*, 25 Cal.3d at 349–350 (canon of avoidance).

[10] Joint Opening Brief at 12 ("The relationship between Section 5937 and Section 2 is the heart of this case."); Answer Brief on the Merits at 20 ("section 5937 as misread by plaintiffs would be facially unconstitutional").

B. California's constitution is self-executing, mandatory, and prohibitory

The water use policy of reasonableness fixed by article X, section 2 has independent force and effect. Our state charter is by its nature self-executing and needs no implementing legislation. It says so: "The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."[11] Under this provision, "all branches of government are required to comply with constitutional directives."[12] As this Court has put it, "the constitution is self-executing"[13] and "everything done in violation of it is void."[14]

Any doubt on this point is put to rest by the express language of the constitutional provision. Article X, section 2 itself says that it "shall be self-executing," and this Court has acknowledged the provision's independent vitality.[15] That the legislature is *also* empowered to enact statutes to further the policy of reasonable use article X, section 2 establishes detracts not one jot from that constitutional provision's

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[11] Cal. Const., art. I, § 26.
[12] *Katzberg*, 29 Cal.4th at 306.
[13] *Spring Valley Waterworks v. City and County of San Francisco* (1890) 82 Cal. 286, 315; see *Oakland Paving Co. v. Hilton* (1886) 69 Cal. 479, 484 (every constitutional provision is self-executing in that everything done in violation of it is void).
[14] *Katzberg*, 29 Cal.4th at 307.
[15] *Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 198 (the provisions of art. X, § 2 are self-executing).

independent force. Even if the legislature adopted *no* implementing statutes the constitutional mandate that all water uses be reasonable would abide undiminished.

C. Courts are the exclusive arbiters of constitutional meaning

Courts interpret the state constitution, not the legislature. Interpreting the law — the power "to say what the law is" — is the province and duty of the judiciary.[16] It follows that the legislature cannot exercise the judicial function by interpreting its own laws, because the state constitution bars one branch from exercising the powers of another.[17] The legislature has even less power to interpret the constitutional provision at issue here. Indeed, in the water use context this Court has acknowledged that it is the courts who have "traditionally enforced the proscriptions against unreasonable uses and unreasonable methods of diverting water."[18] These principles show that there is no merit to petitioners' contention that the legislature can define reasonable

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[16] *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 469–70, citing *Marbury v. Madison* (1803) 5 U.S. 137, 177.
[17] Cal. Const., art. III, § 3; *McClung*, 34 Cal.4th at 472; *People v. Bunn* (2002) 27 Cal.4th 1, 14.
[18] *Environmental Defense Fund*, 26 Cal.3d at 198.

water uses by statute. Interpreting the constitutional concept of a reasonable use is a judicial task.

Petitioners are at least correct that the legislature can and should effectuate constitutional provisions in general. So too with their acknowledgment that article X, section 2 itself allows the legislature to effectuate its provisions. But neither the general principle or the express grant here have any effect on the judicial power to interpret the law; they do not (and could not) divest the judiciary of its core functions. The legislature's act implementing article X, section 2 is all well and good. But as with any statute it is not a final determination of the constitutional meaning; of the act's constitutionality; or whether a particular balancing of interests is reasonable under section 2. Those are all judicial questions.[19]

Petitioners complain that allowing for judicial review here converts "Section 5937's mandatory duty to one contingent on a judicial process."[20] But *every* statute is potentially subject to a judicial process. Just so, petitioners concede that it would be unconstitutional for the legislature to authorize an unreasonable water use — and the main

[19] *McClung*, 34 Cal.4th at 469–70; *People v. Cruz* (1996) 13 Cal.4th 764, 780.
[20] JOB at 43.

authority they rely on holds as much.[21] Petitioners thus surrender the core issue in this case: that the power of judicial review includes deciding questions about the constitutional reasonableness of a water use. And so it should. While the legislature may pass any act it pleases, all its acts are subject to limits imposed by the the state or federal constitutions.[22] And a statute inconsistent with the California constitution "is, of course, void."[23] Those limits are applied by the courts, and courts do not take the legislative construction as correct.[24] Even express constitutional authorizations are no different.[25]

When necessary this Court has invalidated statutes in other contexts as inconsistent with some state constitutional provision.

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[21] JOB at 14–15 ("This does not preclude a party from bringing an as-applied constitutional challenge; as *CalTrout I* observed, the Legislature cannot sanction a 'manifestly unreasonable' use of water.").
[22] *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 498.
[23] *Hotel Employees*, 21 Cal.4th at 602.
[24] *Nougues v. Douglass* (1857) 7 Cal. 65, 70; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 354, somewhat misquoting *Marbury v. Madison* (1803) 1 Cranch 137, 176 (interpreting and applying the Constitution is "the very essence of judicial power"); *People v. Breverman* (1998) 19 Cal.4th 142, 178 n.26 (state constitutional provision's meaning is a matter on which this Court is the final arbiter); *Marin Water & Power Co. v. Railroad Commission of State of California* (1916) 171 Cal. 706, 711–12 (the judicial function is to declare the law and define the rights of the parties under it).
[25] *Western Indem. Co. v. Pillsbury* (1915) 170 Cal. 686, 702 (express constitutional grant of power "could be exercised by the Legislature to such an extent as it saw it, provided, of course, that any exceptions made did not violate some independent provision of the Constitution").

Article X, section 2 is no different; this Court has reviewed statutes for compliance with that provision.[26] And the Court has invalidated a statute because it conflicted with article X, section 2.[27] Put simply, the reasonable use provision is not exempt from the judiciary's powers to interpret the state constitution and to judge statutes against what its provisions require.

What to make, then, of the legislature's views on a constitutional provision's meaning? They matter, but the legislature's gloss on constitutional text is not dispositive. To be sure, legislative acts are presumed constitutional, and the legislature's read on the constitution merits some deference.[28] Yet "this is but a shorthand for placing the burden on a challenger to establish affirmatively that it is not." And even where some measure of deference is at play, the presumption applies "only where the enactment of a statute incorporates a considered legislative judgment of its constitutionality," and review of this legal question is "ultimately de novo."[29] So despite any acknowledgment of the

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[26] See *Long Valley*, 25 Cal.3d 339.
[27] *Tulare*, 3 Cal.2d at 531.
[28] *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 192 (well-established general rule that statutes are presumed to be constitutional; strong presumption favoring the legislature's interpretation of a constitutional provision).
[29] *People ex rel. Pierson v. Superior Court* (2017) 7 Cal.App.5th 402, 408 (quotations omitted), citing *Property Reserve*, 1 Cal.5th at 192–93.

legislature's views on a constitutional provision, legislative statements are not binding on courts, which must make their own determination.[30] This leads us back to where we began: the ultimate constitutional interpretation remains with the judiciary.[31]

Here, this Court can show respect for the goal of another branch of government — but maintain a completely independent viewpoint. A legislative determination of what a constitutional provision means "would not bind this court" and the legislature's decisions about how to implement the state constitution "cannot alter the requirements of the Constitution itself."[32] This Court should presume that the legislature intended its statute to be construed in a fashion that would avoid constitutional conflicts and risks of judicial invalidation.[33] Reading the law here to harmonize it with the constitutional requirement that all

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[30] *Gerard v. Orange Coast Memorial Medical Center* (2018) 6 Cal.5th 443, 455; *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 565 (citation omitted) (although legislative statements receive great weight "the resolution of constitutional challenges to state laws falls within the judicial power, not the legislative power"); *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1209 n.6 (regardless of whatever action the legislature takes the ultimate constitutional interpretation "of course" rests with the judiciary).

[31] *Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 291.

[32] *People v. Arredondo* (2019) 8 Cal.5th 694, 706 n.2.

[33] *Long Valley*, 25 Cal.3d at 349.

water uses be reasonable requires us to assume that the legislature expected judicial review of that constitutional question.

The decision below here and *Cal Trout I* are consistent in stating that same ultimate conclusion: that the constitutional reasonableness question rests with the courts. As petitioners note, the *Cal Trout I* opinion observed that article X, section 2 was enacted to vest the legislature with power to determine the useful and beneficial purposes of water use in light of statewide considerations — and that such legislative judgments about reasonable use are entitled to deference unless they are "manifestly unreasonable."[34]

Yet in that phrasing petitioners (and perhaps *Cal Trout I*) attempt to shade the test in their favor beyond what the constitution requires. Adding a "manifest" element tilts the standard by suggesting (with no basis in the text) a weighted balancing of interests — far exceeding the standard this Court has always employed. "[I]t is well established that what is a reasonable use of water varies with the facts and circumstances of the particular case."[35] There is no call here for inventing new barriers

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[34] JOB at 45, referencing *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 624–25.

[35] *Long Valley*, 25 Cal.3d at 354; see *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1242; *Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132, 139.

to judicial review. Instead, this Court need only reaffirm its usual rule for water use cases: reasonableness is judicially reviewable and case-specific.[36]

D. The legislature cannot define reasonable uses

Because Section 2 is a constitutional amendment the electorate's intent is what matters here, not legislative intent. Petitioners argue that article X, section 2 was meant to "constitutionalize the Legislature's power to determine reasonable and beneficial uses in the first instance."[37] Yet the ballot materials (the primary source for voter intent regarding constitutional amendments such as this) say nothing about vesting the legislature with such a radical power. Voter intent would be frustrated by holding that courts could not review water-apportioning statutes for constitutional reasonableness. Section 2 does empower the legislature to adopt implementing laws. But it *also* requires that all water uses be reasonable, and determining whether a water statute's allocation is constitutionally reasonable is a judicial task. Absent that, there would be no recourse even for (in petitioners' phrasing) a manifestly unreasonable water statute.

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[36] *Gin S. Chow*, 217 Cal. at 706 (courts can assess what is an unreasonable use of water depending upon the facts in each case).
[37] JOB at 34–35 and 38.

E. The only separation-of-powers problem here is the one petitioners would create

Petitioners charge the Court of Appeal with violating the separation of powers by second-guessing the legislature's judgments regarding reasonable uses of water without due deference. But this Court will review this legal issue de novo, so the Court of Appeal's views on any separation-of-powers issues here are unimportant. In any event, reviewing a statute's constitutionality as the Court of Appeal did (and this Court presumably will do) is a core judicial power.[38] That makes the only separation-of-powers issue here the one petitioners would create with their argument that the legislature can interpret the state constitution.

III. Conclusion

Conserving the state's waters "is of transcendent importance."[39] Doing so requires the courts to enforce article X, section 2's mandate that all water uses be reasonable. The trial court erred by concluding that it lacked jurisdiction to assess whether the facts here show a constitutionally reasonable water use. The Court should affirm the

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[38] *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53 (the judiciary passes upon the constitutional validity of legislative and executive actions).

[39] *Gin S. Chow*, 217 Cal. at 701–702.

courts' jurisdiction over such questions and remand with directions for the trial court to apply the proper *Long Valley* standard of reasonableness on all the facts and circumstances.[40]

Respectfully submitted,

Dated: May 4, 2026

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[40] Both the opinion below and *Cal Trout I* recognized that article X, § 2 imposes an umbrella constitutional standard that all water uses be reasonable. But if the Court granted review to resolve the conflict between the decision below and *Cal Trout I* on the reasonableness question, it should affirm the decision below and disapprove *Cal Trout I* to the extent it is inconsistent.

CERTIFICATE OF COMPLIANCE

I certify that the attached brief uses a 13-point Century Schoolbook font and contains 3231 words as counted by the Microsoft Word software program used to prepare this brief.

Dated: May 4, 2026

By: /s/ Stephen M. Duvernay
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CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will e-mail everyone requiring notice.

Dated: May 4, 2026

By: /s/ Stephen M. Duvernay
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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

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

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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/Stephen Duvernay

Signature

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