

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 five other cases.]*

AFTER A DECISION BY THE COURT OF APPEAL, FIFTH DISTRICT • CASE No. F087487
(LEAD) CONSOL. W/F087503/F087549/F087558/F087560/F087702
KERN COUNTY SUPERIOR COURT • GREGORY PULSKAMP, JUDGE
CASE No. BCV-22-103220

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SUPPLEMENTAL BRIEF

Plaintiffs and their amici seek to transform Fish and Game Code section 5937 into a singular outlier in water law. Water law is technical, expert-driven, discretion-laden, and stream-system-specific. (ABOM 21–25, 33–35, 59–62; Consol. Ans. to ACBs 19–20, 49–52, 71–73.) Yet plaintiffs would convert section 5937 into a blunt instrument—a statewide, categorical decree elevating one water use to “a priori” status above all others without any analysis of what would be reasonable for a particular stream system at that time. (E.g., OBOM 35.) Plaintiffs and their amici insist this would be unremarkable. (RBOM 48–49; Trout Unlimited ACB 12; Cal Trout ACB 34–37; CWIN ACB 7.) But two recent Courts of Appeal decisions vindicate real parties’ explanation of water law and expose how improbable it is that the Legislature intended the result pushed by plaintiffs.¹

In *Russian Riverkeeper v. County of Sonoma* (2026) 122 Cal.App.5th 382, the First District rejected private plaintiffs’ petition for a writ of mandate under the public trust doctrine commanding a county to cease issuing groundwater well permits. (*Id.* at pp. 390–391, 398–409.) The First District reiterated this Court’s holding that the public trust doctrine does not mandate any particular substantive outcome; it requires only that the state “‘take the public trust into account’ ” and weigh it against “‘conflicting policy concerns.’ ” (*Id.* at pp. 398, 403–404.) The

¹ Consistent with California Rules of Court, rule 8.520(d)(1), both decisions were issued after real parties’ answer brief on the merits, as well as their consolidated answer to the amicus briefs.

county discharged that duty by commissioning policy and technical working groups and studies—even though plaintiffs disagreed with the balance the county struck. (*Id.* at pp. 393–394, 403–406.) This decision illustrates the simple truth that no water use “can claim an absolute priority.” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 447 fn. 30.) And that rule is rooted firmly in the 1928 Amendment. (*Id.* at p. 443 [the 1928 amendment establishes the “state water policy” that “[a]ll uses of water, including public trust uses, must now conform to the standard of reasonable use”].)

In *AquAlliance v. Vina Groundwater Sustainability Agency* (2026) 122 Cal.App.5th 118, the Third District affirmed dismissal of private plaintiffs’ challenge to local governments’ groundwater sustainability plan. (*Id.* at pp. 129–131.) The court explained that groundwater sustainability involves a “‘long-term process’ ” “focused on local management with a steadily increasing involvement from” the Department of Water Resources and Water Board, requiring “highly technical analysis” replete with “expert value judgments.” (*Id.* at pp. 145–146.) Indeed, government experts required 18 months merely to assess whether the factual conclusions underlying the plan were “‘scientifically reasonable.’ ” (*Id.* at p. 146.) Allowing the private litigation in question, the court warned, would have a “direct and meaningful impact” on that technical regulatory scheme. (*Id.* at p. 147.)

These decisions confirm that this Court should reject plaintiffs’ attempt to upend settled principles of water law by

removing the fact-based expert analysis required to evaluate the real-world impacts of any proposed changes to the operations of a river system. The Court should affirm the Court of Appeal's opinion vacating the preliminary injunction.

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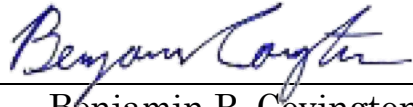
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**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(d).)**

The text of this brief consists of 543 words as counted by the program used to generate the brief.

Dated: September 25, 2026

A handwritten signature in blue ink, reading "Benjamin Covington", is positioned above a horizontal line.

Benjamin P. Covington

PROOF OF SERVICE

Bring Back the Kern et al. v. City of Bakersfield
Case No. S290840

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On September 25, 2026, I served true copies of the following document(s) described as **SUPPLEMENTAL BRIEF** on the interested parties in this action as follows:

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

Executed on September 25, 2026, at Burbank, California.



Raeann Diamond

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Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **BRING BACK THE KERN v. CITY OF BAKERSFIELD (NORTH KERN
WATER STORAGE DISTRICT)**

Case Number: **S290840**

Lower Court Case Number: **F087487**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

9/25/2026

Date

/s/Benjamin Covington

Signature

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