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No. 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.

After a Decision by the Court of Appeal, Fifth Appellate District
Case No. F087487 (and consolidated cases)

Appeals from Orders Granting a Preliminary Injunction
in Favor of Plaintiffs
Kern County Superior Court Case No. BCV-22-103220
The Honorable Gregory A. Pulskamp, Judge Presiding

JOINT OPENING BRIEF OF PLAINTIFFS AND RESPONDENTS

Filed concurrently with Request for Judicial Notice

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California Fish & Game Commission, Twenty-Third Biennial Report for the Years 1912-1914, p. 107 30

Deering's Penal Code, 1915 Ed. 29

QUESTION PRESENTED

In order to obtain preliminary injunctive relief under Fish and Game Code section 5937 ("Section 5937"), which requires the owner or operator of a dam to allow sufficient water to pass the dam to keep fish below the dam in good condition, must the party seeking the injunction show not only that the statute is being violated, but also that the statute's application is consistent with article X, section 2 of the California Constitution ("Section 2"), by demonstrating that compliance with the statute is "reasonable" when "balanced" against all other uses of water and interests on the river?

SHORT ANSWER

A party seeking a preliminary injunction need not demonstrate that application of Section 5937 by its terms is "reasonable" in relation to all other water uses and interests as a prerequisite to obtaining relief. Nor must a court engage in such an analysis sua sponte before granting a preliminary injunction. Section 5937 establishes an a priori legislative rule that leaving sufficient water in a stream to keep fish below a dam in "good condition" is reasonable. Nothing in Section 2, including its "self-executing" clause, requires courts to second-guess Section 5937

on a case-by-case basis before granting preliminary injunctive relief. On the contrary, Section 5937 advances the purposes of Section 2 and should be applied by its clear and mandatory terms.

This does not preclude an argument that Section 5937 is unconstitutional as applied. (See *California Trout, Inc. v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585, 625 ("*CalTrout I*") [noting that a statute sanctioning a "manifestly unreasonable" use of water would "transgress the constitution"].) However, as with any as-applied challenge, the party contesting enforcement bears a heavy burden to show that the statute is unconstitutional, particularly given the considerable deference due the Legislature's judgment. Plaintiffs seeking a preliminary injunction do not have the burden of proving Section 5937 constitutional as a prerequisite to relief.

The Court of Appeal's contrary Opinion (*Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322) ("Opinion") should be reversed.[1]

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[1] Page citations to the "Opinion" are to the version published at 110 Cal.App.5th 322.

INTRODUCTION

From time immemorial, water has flowed with the seasons in California's rivers. Countless generations of fish survived and thrived in those waters. Then came dams and diversions of water for human use, which significantly disrupted these natural processes. In this case, several dams owned and operated by the City of Bakersfield leave the Kern River, after it spills out of the mountains, entirely dry and devoid of fish life almost all of the time.

California law squarely prohibits dam operators from drying up rivers at the expense of fish downstream. Since at least 1915, the Legislature has mandated that dam owners and operators allow sufficient water to pass over, around, or through their dams to keep fish below the dams in good condition. That requirement, recodified and expanded over the years, remains at the heart of Section 5937. As the trial court found, the City's operation of its dams in a manner that dries up the Kern River clearly violates the statute.

The relationship between Section 5937 and Section 2 is the heart of this case. In 1928, California's voters approved adding the language now found in Section 2 to the California

Constitution. The original purpose of Section 2 was twofold: (1) to overturn a line of cases holding that riparian landowners could insist on the full natural flow of the rivers bordering their lands—and thereby enjoin diversions of water by upstream appropriators—without any requirement that the riparians' water use be "reasonable"; and (2) to confirm the Legislature's authority to adopt statutes furthering the "reasonable" and "beneficial" uses of water. Section 2 thus requires both riparian and appropriative uses of water to be "reasonable" and "beneficial." Section 2's provisions are "self-executing," but not exclusively so; rather, Section 2 expressly authorizes the Legislature to adopt statutes furthering its purposes.

Section 2 did not vitiate or supersede Section 5937. On the contrary, Section 5937 is an exercise of the express legislative authority granted in Section 2. It *advances* Section 2's "reasonable use" policy by establishing both (1) the a priori rule that leaving sufficient water in a stream to keep fish below a dam in good condition is at least presumptively reasonable, and (2) the logical corollary that taking all of the water out of a stream at the expense of fish is at least presumptively unreasonable. The Legislature has repeatedly reaffirmed and substantively

expanded Section 5937 following Section 2's adoption. In so doing, the Legislature has already "balanced" competing interests and mandated protection for fish.

The Court of Appeal failed to effectuate the legislative judgment reflected in Section 5937. Its Opinion concluded that a court must "always consider reasonableness whenever it would direct or adjudicate a particular use of water, even when applying statutes that do not expressly incorporate a reasonableness determination," as a precondition to granting preliminary injunctive relief. (Opinion, p. 351.) In particular, the Opinion read Section 2's "self-executing" clause as subjecting Section 5937 to ad hoc judicial second-guessing in every case—an extreme and unprecedented interpretation without support in the decisions on which the court relied. The Opinion thus can be read as suggesting that Section 5937 is presumptively unconstitutional in all cases, even though no facial challenge is at issue here. The Opinion's conclusions are overbroad and unsupported by decisional law or the text, history, and purpose of Section 2.

Section 5937 is presumptively constitutional, entitled to significant deference, and should be enforced by its clear and mandatory terms. 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. (207 Cal.App.3d at p. 625.) But the party challenging Section 5937's as-applied constitutionality has the heavy burden of proving that the Legislature's direction to release sufficient water to keep fish in good condition is "manifestly unreasonable" under the circumstances. The party seeking enforcement of Section 5937 should not have the burden of demonstrating the statute's as-applied constitutionality in the first instance.

The Court of Appeal's judgment should be reversed and the cause remanded so the trial court can reinstate the preliminary injunction and continue the work it had already begun to implement and refine an appropriate flow regime based on the best available science. Real Parties or the City can raise an as-applied challenge to the statute, but they must carry the heavy burden of showing that application of the statute is manifestly unreasonable. Finally, in evaluating any such challenge, the trial court must give great deference to the Legislature's determination that maintaining sufficient flows for fish is reasonable—and that leaving no water below dams for fish is not.

STATEMENT OF THE CASE

I. Factual Background

The waters of the Kern River are sourced high in the Sierra Nevada mountains, on the slopes of Mt. Whitney. The river winds through the mountains into Lake Isabella, formed by Isabella Dam, and then cuts a sharp canyon until it spills onto the floor of the San Joaquin Valley, just east of Bakersfield. From there it flows west, through the City, to its natural terminus. (AA12:2773[2]; see Opinion, p. 335.) In the last stretch of the Kern River that flows through and past Bakersfield on the valley floor, the river encounters six dams owned and operated by the City. (AA12:2774.)

The City operates its Kern River dams to divert water for itself and for several water districts, primarily for use by agriculture. (AA12:2774; see also AA5:980; see Opinion, pp. 334-37.) City workers mechanically operate each dam to raise or lower the water level, diverting river flows into various canals. (AA11:2396; AA12:2774.) The City typically diverts *all* of the

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[2] Citations to the Appellants' Appendix are denoted "AA [Volume]:[Page].

Kern River's flow, leaving the river dry for much of its run through the City. As the trial court found,[3] due to "major improvements" made to "increase the diversion of water away from the Kern River" for agricultural use, the riverbed downstream of the third dam is "completely dry throughout most of the year." (AA12:2774.) Water now flows in this stretch "primarily only during very wet, high-flow conditions or when water has been introduced from outside sources, such as the State Water Project." (AA12:2774-75.) "For nearly half a century prior to 2023, the Kern River had not been recorded flowing past the [City's final dam] on a sustained basis." (Opinion, p. 338.)

The winter of 2022-2023 brought one of those rare high-flow events to the River, swelling its banks through the City despite the City's diversions. For a few months in 2023, the Kern

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[3] On appeal from an order granting a preliminary injunction, the trial court's factual findings govern review if supported by substantial evidence; accordingly, the reviewing court will "accept all evidence supporting the order[,] disregard contrary evidence," and will not "reweigh evidence." (*Loy v. Kenney* (2022) 85 Cal.App.5th 403, 406; see also *Mattson Technology, Inc. v. Applied Materials, Inc.* (2023) 96 Cal.App.5th 1149, 1159 [court reviews the evidence "in the light most favorable to the plaintiff and indulg[es] in all reasonable inferences in support of the trial court's order.")

River came back to life as the heavy winter snows melted. Fish returned, reinhabiting the reaches below The City's dams. (See AA5:1100-06, 1136-38; AA6:1189-98.) Egrets and herons walked the riverbanks and shallows, and children played and swam in the cool water. (AA5:1091-98, 1108-12.) Residents enjoyed a once-hostile space that now gave them both refuge from the summer heat and cause to be proud of their city. (See AA5:1102; AA6:1191; AA12:2785-86.) Years like 2023 confirm that the Kern River could sustain fish if its waters were allowed to flow. However, any fish that return during such rare, temporary flows may simply die when the City's diversions once again deplete the river. (AA5:1101.)

II. Procedural History

Plaintiffs filed this action on November 30, 2022, naming the City as the defendant and several water districts as Real Parties in Interest. (AA1:21-40.) Among other things, the operative Verified Third Amended Complaint for Injunctive Relief and Petition for Writ of Mandate seeks a writ of mandate and/or prohibition "compelling the City to release water of sufficient flow and with appropriate timing to keep fish downstream of the [dams] in good condition" (AA14:3257) and

"commanding the City to desist or refrain from diverting water from the Kern River in any manner that reduces river flows below a volume that is sufficient to keep fish downstream of said weirs in good condition." (*Ibid*.)

On August 10, 2023, Plaintiffs filed a motion for preliminary injunction, along with numerous declarations and other supporting evidence. (AA2:304-AA6:1258.) The motion sought preliminary relief commensurate with the writ relief sought in Plaintiffs' Third Amended Complaint: an order compelling the City's compliance with its "clear statutory duty" under Section 5937 to allow sufficient water to pass over, under, or through each of its dams to keep fish below those dams in good condition. (AA2:323.) The motion sought to preserve the status quo as it existed in August 2023, when the Kern River was still flowing below the City's dams.

The City and the water district Appellants[4] filed briefs, declarations and exhibits opposing the motion. (AA6:1330-

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[4] References to the "water district Appellants" include all Appellants except J.G. Boswell Company ("Boswell"), which did not intervene in the action until after the preliminary injunction issued.

AA11:2400.) Plaintiffs filed replies and additional evidence. (AA11:2464-AA12:2743.)

After hearing argument, the trial court issued a ruling and entered an order granting the preliminary injunction on November 9, 2023 ("Injunction Order"). (AA12:2768-92.) Applying the familiar two-step preliminary injunction standard, the court first ruled that Plaintiffs had a "very high likelihood of succeeding on the merits" of their claim that Bakersfield was violating Section 5937 by leaving no water in the Kern River for fish. (AA12:2781.) The court found that a "plain reading of the statute support[ed] Plaintiffs' claim that Section 5937 prevents a dam owner from diverting all the water in a river." (AA12:2780.)

Applying the second step, the court noted that the weighing of harms was "given relatively less weight" in light of Plaintiffs' clear likelihood of success. (AA12:2786.) Nonetheless, the court carefully balanced the relative harms to the City, the water districts, and Plaintiffs before issuing the injunction, finding that "the average annual Kern River flows of approximately 726,000 acre-feet is an enormous amount of water that should suffice for the reasonable use of all interested stakeholders." (AA12:2781-86.)

The Injunction Order prohibited Bakersfield from operating its dams in a manner that reduces Kern River flows below the volume necessary to keep fish in good condition and directed Bakersfield and Plaintiffs to "engage in good faith consultation to establish flow rates necessary for compliance." (AR12:2769.) Following consultation, Plaintiffs and Bakersfield filed a stipulation and proposed order establishing an "Interim Flow Regime." (AA13:2827-30.) The Interim Flow Regime required Bakersfield to leave 40 percent of the total measured daily flow in the river below the City's lowermost dam, subject to "municipal needs and demands." (AA13:2864.) The trial court entered the proposed order on November 14, 2023 ("Implementation Order"). (AA13:2866.)

The water district Appellants moved for reconsideration and a stay of the Injunction and Implementation Orders, arguing *inter alia* that they were excluded from consultations on the Interim Flow Regime adopted in the Implementation Order. (See Opinion, p. 342; AA13:2896-AA14:3232; AA14:3270-AA15:3573.) On January 9, 2024, the court granted in part and denied in part the motions for reconsideration. (AA16:3735-43 ("Modification Order").) Although the court noted "evidence" that the water

district Appellants "were invited to participate" in the consultations but declined, the court modified the Injunction Order "out of an abundance of caution" to direct all parties to meet and confer in good faith to establish flow rates necessary for compliance. (Opinion, p. 343; AA16:3735-39, 3742.) The court also stayed the Implementation Order. (AA16:3739.)

The water district Appellants filed notices of appeal from the Injunction and Implementation Orders, but not the Modification Order. (AA16:3766-AA17:3964.) Appellant Boswell moved to intervene and was joined to the action as an additional Real Party in Interest on February 15, 2024. (Opinion, p. 344.) Boswell also appealed from the Injunction and Implementation Orders. Bakersfield did not appeal, but rather participated in appellate proceedings as a respondent.

The Court of Appeal subsequently stayed the Injunction Order, Implementation Order, and all related proceedings in the trial court, including proceedings on Plaintiffs' pending Motion to Compel Compliance with Preliminary Injunction. (Order, Cal.Ct.App. 5th Dist., May 3, 2024, No. F087487 (lead case).) The Court of Appeal also denied Plaintiffs' petitions for rehearing of the stay order and motion to dismiss the appeal. (Order,

Cal.Ct.App. 5th Dist., May 24, 2024, No. F087487 (lead case); Order, Cal.Ct.App. 5th Dist., August 27, 2024, No. F087487 (lead case).)

III. The Court of Appeal's Opinion

The Court of Appeal reversed the Injunction and Implementation Orders. (Opinion, pp. 368-69.) The Opinion acknowledged that the trial court conducted "the balancing-of-harms analysis for issuing an injunction," but concluded that "whether a water use is 'reasonable' under section 2 is not the same determination." (*Id.*, p. 350, fn. 11.) Accordingly, the Opinion held that "the [trial] court's refusal to consider impacts to all water users in its analysis of the 'underlying, substantive issue'" of Section 5937's enforceability "was error." (*Ibid.*)

The Opinion held that "a court must *always* consider reasonableness *whenever* it would direct or adjudicate a particular use of water, even when applying statutes that do not expressly incorporate a reasonableness determination." (*Id.*, p. 351 (italics added).) Under the Opinion, therefore, courts must determine in *every* case—sua sponte if necessary—whether Section 5937 can be constitutionally applied before granting preliminary relief. (*Ibid.*; see also *id.*, pp. 335 ["under the self-

executing provisions of article X, section 2 of the state Constitution, courts must *always* consider reasonableness *whenever* adjudicating a use of water" (italics added)]; 353 ["reasonableness must *always* be evaluated before a court orders *any* particular water use" (italics added)], 356 ["*no* judicial adjudication of competing water uses is complete until the court assesses whether the use is beneficial and reasonable" (italics added)].)

The court grounded its conclusion primarily in Section 2's "self-executing" clause, quoting liberally from *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, even though *Gin S. Chow* did not directly construe the self-executing clause. (Opinion, pp. 335, 347-49.) For example, because Section 2 is "self-executing," the Opinion found it "limits legislative authority by 'supersed[ing] all state laws inconsistent therewith'" and "prohibiting the Legislature from sanctioning manifestly unreasonable uses of water." (*Id.*, p. 348, quoting *Gin S. Chow*, *supra*, 217 Cal. at p. 700.) The Opinion also concluded that Section 2 "directly governs decisions in individual court cases, like a statute," that "'*courts are bound to enforce*'" it, and that "'*it must be made effectual in all cases* and as to all rights not

protected by other constitutional guaranties.'" (Opinion, p. 348, quoting *Gin S. Chow*, *supra*, 217 Cal. at p. 700 (italics added by Opinion).) Accordingly, the Opinion held that reasonableness "'is a judicial question to be determined in the first instance by the trial court'" based on "multiple factors" in a case-specific, fact-based analysis. (Opinion, pp. 348-49, quoting *Gin S. Chow*, *supra*, 217 Cal. at p. 706.)

The court dismissed Plaintiffs' argument that the Legislature had already determined, by enacting Section 5937, that maintaining sufficient flows for fish below dams is a reasonable use of water. (Opinion, p. 355 ["the fact that section 5937 is one expression of the Legislature's policy preferences does not alter the fact that section 2 must nonetheless be applied in every case"].) The court found "much to commend" in *CalTrout I*, but ultimately distinguished the case on the ground that it primarily involved Fish and Game Code section 5946 (and addressed Section 5937 only indirectly). (Opinion, pp. 354-55.) The court concluded that in adopting section 5946, the Legislature had engaged in "consideration of the specific tradeoffs" applicable in a particular geographic region; however, this "balancing of the specific, localized needs" pertaining to that

region's streams "does not mean the Legislature engaged in a similar determination as to all waterways statewide" under Section 5937. (*Id.*, p. 356.)

Finally, the Opinion addressed the burdens on parties seeking to enforce Section 5937. The Opinion placed the burden on Plaintiffs to provide an "estimate" of how much water is sufficient to keep fish in good condition, which the court found necessary to support the "reasonableness" inquiry. (See Opinion, pp. 357-359.) The Opinion thus suggested that Plaintiffs bear the burden of demonstrating that Section 5937 is constitutional as applied in each specific instance—i.e., that leaving a sufficient amount of water in the stream is reasonable considering all other interests.

This Court granted review on July 16, 2025.

STANDARD OF REVIEW

The proper interpretation of Section 5937, and of Section 2's relationship to Section 5937, present questions of law this Court reviews de novo. (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 40 [reviewing statutory interpretation question de novo]; *Professional Engineers in California Government v.*

Kempton (2007) 40 Cal.4th 1016, 1024, 1032 [reviewing effect of constitutional change on statutes de novo].)

ARGUMENT

I. The Text, History and Context of Section 5937 and Article X, Section 2

In its present form, Section 5937 reads as follows:

> The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the [Department of Fish and Wildlife] to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

(§ 5937.) The term "owner" extends to a person or political subdivision "controlling" or "operating" a dam. (Fish & G. Code, § 5900, subd. (c).)

Section 2, in turn, currently reads:

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be

> exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

(Cal. Const., art. X, § 2.) The history and purpose of both provisions are discussed below.

A. Early History

Statutes have protected fish from harm caused by dams since the 1850s. As early as 1852, the Legislature criminalized

erection of a weir or other structure that blocked salmon runs.[5] In 1870, the Legislature added a broader requirement that "mill-dams, water weirs or other obstructions on rivers or streams" be constructed with "fish ways or fish ladders" allowing fish to pass the obstruction "at all seasons of the year."[6] Because these "fish ways" had to allow passage "at all seasons," the 1870 enactment "created a de facto year-round minimum flow requirement for dams with fishways."[7]

The Legislature made flow requirements explicit in 1915 in an amendment to former Penal Code section 637.[8] (Plaintiffs' Motion Requesting Judicial Notice ("RJN") Ex. A1, p. 20 [Stats. 1915, ch. 491, § 1, p. 820 (AB 1533)].) The amendment was a response to the state Fish and Game Commission's serious

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[5] Börk, The Rebirth of California Fish & Game Code Section 5937: Water for Fish (2012) 45 U.C. Davis L.Rev. 809, 817 & fn. 36 (citing 1852 Cal. Comp. Laws 62). As Professor Börk notes, laws requiring the removal of obstructions to fish passage date back to the Magna Carta. (*Id.*, fn. 37.)

[6] *Id.* at p. 818 & fn. 40 (quoting Stats. 1870, ch. 663).

[7] *Id.* at p. 818.

[8] The 1915 edition of Deering's Penal Code recounts the complete history of former Penal Code section 637. (RJN Ex. A3, pp. 30-31.)

concern that dams and diversions were blocking and drying up rivers; absent adequate fish passage and maintenance of instream flows, the Commission feared the state's fish life "would entirely disappear from the face of nature."[9]

In relevant part, former Penal Code section 637 authorized the state board of fish and game commissioners to direct the "owners or occupants" of a "dam or artificial obstruction" (1) to construct a "fishway" providing passage around the dam and (2) "to allow sufficient water at all times to pass through such fishway to keep in good condition any fish that may be planted or exist below said dam or obstruction." (*Ibid*.) During periods of "minimum" flow, the provision allowed commissioners to permit such flows "through a culvert, waste gate, or over or around the dam" when "it is impracticable to pass the water through the fishway." (*Ibid.*) A contemporaneous "California Fish and Game" publication addressing "Recent Fish Legislation" described the

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[9] Börk, *supra*, 45 U.C. Davis L.Rev. at pp. 821-822 & fn. 58 (quoting Cal. Fish & Game Comm., Twenty-Third Biennial Report for the Years 1912-1914, at p. 107).

statute as designed to "prevent the destruction of fish below the dam by cutting off the entire flow of water." (RJN Ex. A2, p. 26.)

B. The 1928 Constitutional Amendment

California has long recognized the water rights of both "riparians" who own the land abutting a watercourse and "appropriators" who remove water from a watercourse and put it to use on non-contiguous lands. (*Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1478.) Long-simmering tension between these two sources of water rights came to a head in the late 1920s, culminating in adoption of the 1928 constitutional amendment now codified as Section 2.

In 1927, a Joint Committee of the Senate and Assembly released a report on its "Intensive Study of the Water Resources of California and the State Engineer's Coordinated Plan for Their Development." (RJN Ex. B1, pp. 33-44.) The State Engineer's plan contemplated building hundreds of reservoirs to store tens of millions of acre-feet of water for expanded agricultural and domestic use. (*Id.*, p. 35.)

The Joint Committee identified a "most serious legal obstacle" to the plan: "the doctrine of wasteful riparian rights, a doctrine set forth in the recent decision of the Supreme Court of

California in the Herminghaus case and substantiated by a long line of court decisions." (*Id.*, p. 36; see *Herminghaus v. Southern Cal. Edison Co.* (1926) 200 Cal. 81.)

In *Herminghaus*, this Court affirmed prior cases holding that a downstream riparian's use of the full flow of the stream was not limited by "reasonable" use as against the rights of an upstream appropriator. (See 200 Cal. at pp. 100-101, citing *Miller & Lux v. Madera Canal & Irrigation Co.* (1907) 155 Cal. 59, 64; see also *Gin S. Chow*, *supra*, 217 Cal. at pp. 696-98.) As a practical matter, this rule meant a riparian could claim a right to the full natural flow of the stream, and could deny an upstream appropriator use of that water, even if the riparian's use of the water was unreasonable or wasteful.

Herminghaus further concluded that sections 11 and 42 of the 1913 Water Commission Act, by which the Legislature had attempted to impose reasonable and beneficial use requirements on riparians, unconstitutionally infringed on riparians' vested property rights. (200 Cal. at pp. 116-17 [rejecting argument that police power authorized Legislature to "arrogate to itself the right to determine what are the 'useful and beneficial purposes' to

which" riparian rights "shall be limited in their use and enjoyment"]; see also *Gin S. Chow*, *supra*, 217 Cal. at pp. 698-99.)

Herminghaus and the cases on which it relied thus posed a significant obstacle to the State Engineer's "comprehensive plan" by (1) preventing upstream appropriators from storing and diverting waters during high winter flows at the expense of downstream riparians who might or might not ever put those waters to reasonable and beneficial use, and (2) preventing the Legislature from doing anything to constrain riparian rights.

The Joint Committee appointed a subcommittee to study the issue further. (RJN Ex. B1, p. 36.) The subcommittee issued a report noting the "imperative need that the limits of the right of an owner of riparian land should be set" and proposing constitutional changes to further this goal. (*Id*., pp. 39-42.)

The Legislature introduced Assembly Constitutional Amendment 27 as the vehicle for these changes, which proposed adding former article XIV, section 3 to the Constitution. (See RJN Ex. B2, pp. 46-55.) As enacted and chaptered, former article XIV, section 3 subjected riparian landowners to reasonable use requirements and expressly authorized the Legislature to enact statutes furthering the new section's policies. (*Id.*, pp. 54-55.)

The amendment went before the voters at the November 1928 election. (See RJN Ex. B3, pp. 59-62.) The ballot pamphlet argument in favor of the measure focused squarely on the need to overturn the "English doctrine of riparian rights," under which landowners bordering a stream "could insist upon all of the waters of that stream being allowed to flow undiminished past [their] land." (*Id.*, p. 60.) The argument specifically cited *Herminghaus*'s conclusion that "the riparian owner is not bound by any rule of reasonableness in the use of water" and declared that "[t]he development of California requires that a different rule from this be adopted." (*Ibid.*) The voters overwhelmingly approved the measure. (RJN Ex. B4, p. 66.)

The clear and immediate purpose of former article XIV, section 3—now codified as Section 2—was therefore to overrule *Herminghaus* and the riparian rights cases that preceded it. (See *Gin S. Chow*, *supra*, 217 Cal. at pp. 699-700.) Nothing in the provision's history indicates that the Legislature originally intended Section 2 to do anything other than (1) impose beneficial and reasonable use requirements on both riparian landowners and appropriators and (2) constitutionalize the Legislature's power to determine reasonable and beneficial uses in the first

instance. And nothing in the history of Section 2 suggests that it was ever intended to force courts to second-guess the Legislature's determinations regarding reasonable uses of water as a precondition to their application in every instance.

C. Subsequent Recodification, Expansion, and Reenactment of Section 5937

Following Section 2's adoption in 1928, the Legislature recodified, substantively expanded, and again re-enacted Section 5937. This history clearly indicates legislative intent to adopt Section 5937 as an a priori rule concerning the reasonable use of water under the express authority of Section 2. Section 5937's post-1928 history also shows that the Legislature never viewed Section 2 as repealing or superseding the statute.

1. 1933 Codification into the Fish and Game Code

In 1933, the Legislature reorganized the state's fish and wildlife laws into a new Fish and Game Code. (See RJN Ex. C1, p. 71; Ex. C2, p. 85.) The Legislature codified Section 5937's predecessor language from former Penal Code section 637 into former Fish and Game Code section 525. (RJN Ex. C3, pp. 96-98, 101 [Stats.1933, ch. 73, p. 443 (AB 310)].)

As part of its overall codification project, the California Code Commission compiled a "statutory record" containing "every act" of the Legislature in order to determine which statutes had been repealed or superseded (RJN Ex. C1, pp. 71-73) and "to repeal all obsolete statutes" (RJN Ex. C2, p. 85). The Commission specifically considered whether adoption of former article XIV, section 3 in 1928 superseded existing statutes or rendered them obsolete. (See RJN Ex. D, pp. 108 [explaining use and organization of statutory record], 114-15 [index to statutory record listing former article XIV, section 3 among laws considered].) But the statutory record did not identify former article XIV, section 3 as among the laws affecting former Penal Code section 637. (*Id.*, p. 111.) The Legislature's recodification of former Fish and Game Code section 525 thus reflects an understanding that adoption of former Article XIV, section 3 did not supersede former Penal Code section 637.

2. 1937 Amendment Expanding the Statute's Scope

The Legislature substantively expanded former Fish and Game Code section 525 in 1937. Prior to 1937, the requirement to allow sufficient water to pass a dam applied only to dams with

"fishways." (RJN Ex. A1, p. 20 [Stats. 1915, ch. 491, p. 820; former Penal Code § 637]; Ex. C3, p. 101 [Stats. 1933, ch. 73, p. 443 (AB 310)].) The 1937 amendment expanded the provision to require sufficient flows of water "over, around or through" a dam even "in the absence of a fishway." (RJN Ex. E1, p. 119 [Stats. 1937, ch. 456, pp. 1400-01 (SB 800)].) As explained in the 1937 Legislative Digest, "[p]resent law requires owner to permit sufficient water to flow through fishway to protect fish below dam. Bill amplifies this to provide where there is no fishway sufficient water shall be permitted to flow over, around or through the dam." (RJN Ex. E2, p. 122.) As the Court of Appeal recognized, the 1937 amendment "extend[ed]" the mandatory water release requirement currently codified in Section 5937 to all dams, regardless of whether those dams were required to install fishways under the prior law. (Opinion, p. 346, citing *CalTrout I*, *supra*, 207 Cal.App.3d at p. 600.)

Because the Kern River dams at issue in this case do not have fishways (AA11:2506), they are subject to Section 5937 by virtue of the 1937 amendment.

3. 1957 Reorganization of the Fish and Game Code

In 1957, the Legislature once again reorganized the Fish and Game Code, reenacting and recodifying former section 525 into its present form as Section 5937.[10] (RJN Ex. F, p. 133 [Stats.1957, ch. 456, p. 1399 (AB 616)].) As in 1933, this reorganization effort began with legislative direction to the Law Revision Commission to "eliminate obsolete, superseded, ambiguous, anachronistic, and other defective provisions" of the Fish and Game Code. (*Id*., p. 125.) The Legislature's decision to reenact former section 525 as Section 5937 reflects another implicit finding that the 1928 constitutional amendment did not overrule or supersede the statute.

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[10] The Legislature enacted Section 5937 with minor changes (e.g., substituting "department" for "commission" to reflect "administrative practice"). (RJN Ex. F, pp. 127-28.)

II. Section 5937 was enacted in furtherance of Section 2, is presumptively constitutional, and should be enforced by its terms.

A. The courts must give effect to the Legislature's determinations in Section 5937 that sustaining fish in good condition below dams is a reasonable use of water, and that drying up rivers at the expense of fish is not.

1. Section 5937 establishes a mandatory and enforceable duty for dam owners and operators.

On its face, Section 5937 is straightforward: "The owner of any dam *shall* allow sufficient water *at all times* to pass … to keep in good condition any fish that may be planted or exist below the dam." (§ 5937 (italics added); see also *id.*, § 5900, subd. (c) ["owner" includes any operator].) An owner or operator who fails to allow sufficient water to pass violates the statute and is guilty of a misdemeanor. (*Id.*, § 12000, subd. (a); *cf. also Water Audit California v. Merced Irrigation Dist.* (2025) 111 Cal.App.5th 1147, 1183 [the imposition of criminal penalties emphasizes "the mandatory nature of the duty" imposed by statutes in this part of the Fish & Game Code].)

Settled canons of statutory construction confirm that Section 5937 means precisely what it says. A "statute's plain meaning controls" its interpretation "unless its words are

ambiguous." (*People v. Rhodius* (2025) 17 Cal.5th 1050, 1057, quoting *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126.) "If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent." (*Green v. State of California* (2007) 42 Cal.4th 254, 260; *Water Audit*, *supra*, 111 Cal.App.5th at p. 1182.)

Nothing in the plain language of Section 5937 requires or even hints at the need for de novo judicial rebalancing of competing uses of water before the statute can be enforced. On the contrary, the statute imposes a clear, present, and mandatory duty with which all dam owners and operators must actively comply. (§ 5937; *San Luis & Delta-Mendota Water Authority v. Haugrud* (9th Cir. 2017) 848 F.3d 1216, 1234 ("*San Luis*") [the plain language of Section 5937 "not only allows, but requires" compliance notwithstanding other provisions of state water law].)

The Fifth District Court of Appeal's recent decision in *Water Audit*, *supra*, is illustrative. Plaintiff Water Audit filed a petition for writ of mandate alleging that an irrigation district failed, *inter alia*, to maintain a fishway in violation of Fish and Game Code section 5935. (111 Cal.App.5th at pp. 1155-56.) Like Section 5937, Fish and Game Code section 5935 is part of the

State's "statutory scheme governing 'the damming of rivers and streams which are naturally frequented by fish.'" (*Water Audit*, *supra*, 111 Cal.App.5th at p. 1155, quoting *State of California v. San Luis Obispo Sportsman's Assn.* (1978) 22 Cal.3d 440, 448.) Section 5935 requires that "[t]he owner of any dam upon which a fishway has been provided *shall* keep the fishway in repair and open and free from obstructions to the passage of fish *at all times*." (*Water Audit*, *supra*, 111 Cal.App.5th at p. 1183, quoting Fish & G. Code, § 5935 (italics in decision).)

Defendant irrigation district demurred to the petition, arguing that the statute imposed no clear, present, or mandatory duty that the Court could compel through mandamus. (*Water Audit*, *supra*, 111 Cal.App.5th at pp. 1180-87.) The Court disagreed, noting that the statute states that dam owners "shall" comply with its terms "at all times." (*Id.* at p. 1183.) "As used throughout the Fish and Game Code, '"[s]hall" is mandatory'," and its use "indicates a legislative intent to impose a mandatory duty." (*Ibid.* (quoting Fish & G. Code, § 79)). This intent is further reinforced by the imposition of criminal penalties for Fish and Game Code violations. (*Ibid.*, citing Fish & G. Code, § 12000, subd. (a).) *Water Audit* thus concluded, based on the plain

statutory language, that compliance with Fish and Game Code section 5935 is mandatory. (111 Cal.App.5th at p. 1183.)

Section 5937 similarly imposes a mandatory duty on dam owners and operators, who "shall" allow sufficient water to pass their dams "at all times." (§ 5937.) Anything less is an enforceable violation. (See *Water Audit*, *supra*, 111 Cal.App.5th at pp. 1180-87.)

2. The adoption of Section 2 reinforced the mandatory duty of dam owners and operators to comply with Section 5937.

The Opinion acknowledges that Section 5937 imposes a duty on dam owners and operators, but then concludes that a dam owner cannot be compelled to perform that duty unless a court first determines that compliance is reasonable under Section 2. (Opinion, pp. 351 ["the terms of the statute dictate the outcome unless section 2 requires otherwise"], 356 ["the court must determine whether and to what extent using the waters of the Kern River to keep fish in good condition is a reasonable and beneficial use of water under section 2" before it can require compliance with Section 5937].) Because the Opinion considers reasonableness "'a judicial question to be determined in the first instance by the trial court,'" the Opinion effectively converts

Section 5937's mandatory duty to one contingent on a judicial process. (Opinion, p. 348, quoting *Gin S. Chow*, *supra*, 217 Cal. at p. 700; cf. *Water Audit*, *supra*, 111 Cal.App.5th at p. 1181, quoting *Redwood Coast Watersheds Alliance v. State Bd. of Forestry and Fire Protection* (1999) 70 Cal.App.4th 962, 970 [a duty is mandatory if its "performance is 'unqualifiedly required'"].) That conversion finds no support in the text of Section 2, its history, or any case that has applied it to this point.

a. Section 2 expressly authorizes the Legislature to make enforceable rules, including Section 5937, that determine reasonable uses of water.

Far from being inconsistent with Section 2, Section 5937 gives direct effect to the Constitution's requirements by establishing an a priori rule that maintaining minimum flows for fish below dams is reasonable. (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 625 [discussing Fish & G. Code § 5946, which incorporates and applies Section 5937].)

Section 2 expressly authorizes the Legislature to "enact laws in the furtherance of [its] policy." (Cal. Const. Art. X, sec. 2.) Courts have interpreted this authority "to allow the Legislature 'to enact statutes which determine the reasonable

uses of water.'" (*Los Angeles Waterkeeper v. State Water Resources Control Bd.* (2023) 92 Cal.App.5th 230, 268, quoting *CalTrout I*, *supra*, 207 Cal.App.3d at p. 625; *accord City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 273, disapproved of on other grounds by *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224; *Stanford Vina Ranch Irrig. Co. v. State of California* (2020) 50 Cal.App.5th 976, 1001-1004 ["the Legislature may, consistent with this constitutional provision, legislate per se rules of unreasonable use"]; *Light*, *supra*, 226 Cal.App.4th at pp. 1483-1484.) Section 2's "self-executing" clause does not conflict with or supplant the need for legislative rules; courts have long recognized that its policy of reasonable use "require[s] legislative implementation" "to be made truly effective." (*Modesto Properties Co. v. State Water Rights Bd.* (1960) 179 Cal.App.2d 856, 860, italics omitted; *accord In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 351-52 [finding that goals of Section 2 "require[d] granting the Legislature broad flexibility in determining the appropriate means for protecting scarce state water resources"].)

As the Third District explained in *CalTrout I*, Section 5937's mandate that dam owners maintain sufficient flows to

keep fish downstream in good condition reflects a legislative determination that doing so is reasonable under Section 2. In *CalTrout I*, the Los Angeles Department of Water and Power ("LADWP") challenged Fish and Game Code section 5946 ("Section 5946"), which requires the State Water Resources Control Board ("Water Board") to condition permits and licenses in a particular Fish and Game District on compliance with Section 5937. (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 592.) LADWP argued that Section 5946 "would be unconstitutional by virtue of" Section 2 if, consistent with the plain language of Section 5937, it "were construed as requiring a minimum in-stream flow for the preservation of fish." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 622; see also *id.* at p. 605 & fn. 11 [directly construing Section 5937].) But the Third District Court of Appeal disagreed. (*Id.* at pp. 622-25.)

The Third District observed that Section 2 was "enacted to vest the 'right' in the Legislature … to determine the useful and beneficial purposes of water use" in light of statewide considerations. (*Id.* at p. 625.) Such legislative judgments about reasonable use are entitled to deference unless they are "manifestly unreasonable." (*Id.* at pp. 624-25 ["An invitation to

substitute the policy view of a court … for a reasonable policy enacted in a statute … is an invitation to return to the benighted days of substantive due process."].) And because the Legislature's mandate to keep fish in good condition was *not* "manifestly unreasonable," the court had "no warrant to override the Legislature's rule." (*Id.* at p. 625.)

Following remittitur in *CalTrout I*, the Water Board claimed it could not implement Section 5946 until it had time to "balance competing claims for the beneficial use of water and thereby determine the relative amounts to be allocated for the preservation and enhancement of fish … and other beneficial uses." (*California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 201 ("*CalTrout II*"); see also *id.* at p. 198.) The Third District once again disagreed, reiterating that "the Legislature has already balanced the competing claims for water from the streams affected by section 5946 and determined to give priority to the preservation of their fisheries." (*Id.* at p. 201.) Because the Legislature's directive is mandatory, the Water Board lacked discretion to do anything "other than [to] enforce its requirements." (*Ibid.*)

While the Third District decided *CalTrout I* and *II* in the context of Section 5946, those cases' reasoning applies equally to Section 5937.[11] Section 2 confers "'broad legislative authority'" empowering "the Legislature to enact statutes which determine the reasonable uses of water." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 625 [quoting *In re Waters of Long Valley Creek Stream System*, *supra*, 25 Cal.3d at p. 352, fn. 6].) Like Section 5946, the plain language of Section 5937 shows unmistakable legislative intent to prioritize uses of water that maintain fish in good condition. (*Id.* at pp. 625-26; see also *San Luis*, *supra*, 848 F.3d at p. 1234 [holding Section 5937 "not only allows*, but requires* [the Bureau of Reclamation] to allow sufficient water to pass the Lewiston Dam to maintain the fish below the Dam."] (italics added).) Accordingly, the Legislature's prioritization of fish flows cannot be disturbed unless it is "manifestly unreasonable." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 625.)

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[11] Indeed, the Opinion acknowledged that *CalTrout I* "concerned itself" with the constitutionality of Section 5937 "by extension." (Opinion, p. 355.)

The Opinion distinguished the *CalTrout* cases on the mistaken ground that they addressed Section 5937 only indirectly through Section 5946. (See Opinion, pp. 354-56.) In fact, both cases directly construed Section 5937. (See *CalTrout I*, *supra*, 207 Cal.App.3d at pp. 592, 599, 605-06 & fn. 11; see also *CalTrout II*, *supra*, 218 Cal.App.3d at p. 195.) But even more importantly, the Opinion ignored how Sections 5946 and 5937 function together.

Section 5937 imposes a duty directly on the owner or operator of "any dam" to "keep in good condition any fish that may be planted or exist below the dam." (§ 5937.) That duty applies to all dam owners and operators in the state and is not limited to water right permittees or licensees. (*Ibid.*; see *CalTrout I*, *supra*, 207 Cal.App.3d at p. 605.)

Section 5946, in turn, imposes a specific duty on the Water Board to condition Board-issued water right permits and licenses in a particular district on "full compliance with Section 5937." (Fish & G. Code, § 5946, subd. (b).) Section 5946 thus facilitates enforcement of Section 5937, but it does not limit the broader reach of Section 5937 in any way. Nor does Section 5946 express a distinct legislative policy limiting the need for in-stream flows

only to certain streams; rather, it imposes a separate duty on the Water Board to give specific effect to the statewide legislative policy established in Section 5937.[12] (See *ibid.*) Because the same operative legislative policy requiring sufficient instream flows underlies both Sections 5937 and 5946, *CalTrout I*'s rationale applies equally to both statutes.

Section 5937 thus represents a legislative determination pursuant to Section 2 that sufficient water must be allowed to flow over, through, or around dams to maintain fish below the dam in good condition at all times. (See *CalTrout I*, *supra*, 207 Cal.App.3d at p. 625.) Keeping *enough* water in the river to maintain fish is presumptively reasonable, and therefore required, under the statute. (*Ibid.*)

Section 5937 also establishes a corollary rule: leaving *no water at all* in the river is presumptively *unreasonable*. This

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[12] The Water Board apparently does not consider Section 5946's geographic specificity to be a limitation on Section 5937. As *CalTrout I* noted, Water Board regulations enacted after Section 5946's adoption require that *all permits and licenses throughout the state* be conditioned on compliance with Section 5937. (Cal. Code Regs., tit. 23, § 782; *CalTrout I*, *supra*, 207 Cal.App.3d at pp. 600, fn. 4, & 606, fn. 13.)

corollary is reflected in recent cases holding that uses of water that deprive fish of minimum flows or leave them stranded in dry streambeds are properly deemed "unreasonable." (See *Stanford Vina*, *supra*, 50 Cal.App.5th at p. 1004 [upholding emergency minimum flows to enable fish passage during drought]; *Light*, *supra*, 226 Cal.App.4th at pp. 1483-87 [limiting diversions for agricultural frost protection to protect fish from stranding].) By requiring reasonable uses of water that protect the state's fisheries, while restricting unreasonable uses of water that imperil them, Section 5937 straightforwardly advances Section 2's policies.

b. Legislative history further affirms the Legislature's intent to preserve the mandatory effect of Section 5937 in furtherance of Section 2.

The legislative history confirms that the Legislature intended Section 5937 to establish a per se rule of reasonableness consistent with Section 2. As discussed above, the Legislature amended Section 5937's predecessor statutes three times after Section 2 took effect. (See Part I.C., *supra*.) The most substantive amendment occurred in 1937, when the Legislature *extended* the statute's application to dams that do not have "fishways" and

thus brought all dams in the state—including Bakersfield's Kern River dams—within the statute for the first time. (See Part I.C.2, *supra*; AA11:2506 [Kern River dams do not have "fishways"].)

"[T]he Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes" in light thereof. (*Apple, Inc. v. Superior Court* (2013) 56 Cal.4th 128, 146 (quotations and citation omitted); *accord People ex rel. Dept. of Conservation v. County of El Dorado* (2005) 36 Cal.4th 971, 994; *Hays v. Wood* (1979) 25 Cal.3d 772, 784 ["The courts assume that in enacting a statute the Legislature … intended to maintain a consistent body of statutes."].) Each time the Legislature reenacted and substantively expanded the requirements of Section 5937, it did so with the understanding that Section 2 "is now the supreme law of the state" with respect to water rights, *and* that Section 2 empowers the Legislature to "enact laws in the furtherance of [its] policy." (*Gin S. Chow*, *supra*, 217 Cal. at p. 700.)

Rather than make Section 5937 contingent on a judicial finding of reasonableness, the Legislature consistently readopted the statute's mandatory language and substantively expanded it

to apply to all dam owners. Section 5937 is thus best understood as an exercise of the Legislature's authority under Section 2 to establish per se standards of reasonable and unreasonable uses of water. (See, e.g., *CalTrout I*, *supra*, 207 Cal.App.3d at pp. 622-25 [construing Section 5946 as a similar exercise of the Legislature's authority].)

B. Section 2 does not require additional judicial balancing to implement the Legislature's reasoned mandate in Section 5937.

1. Courts must defer to the Legislature's judgments regarding reasonable use.

The Opinion fundamentally erred in adopting an unprecedented construction of Section 2's self-executing clause that has no support in the Constitution or the case law. The Court of Appeal observed that because Section 2 is "self-executing," its rule of reasonable use "'must be made effectual in all cases.'" (Opinion, p. 351, quoting *Gin S. Chow*, *supra*, 217 Cal. at p. 700.) But as the *CalTrout* cases made clear nearly forty years ago, the Legislature has already made Section 2 "effectual" by adopting Section 5937. Enforcing Section 5937 by its terms *gives full effect* to Section 2 in every case in which the statute applies. Nothing more is required of the courts or authorized by

the Constitution as a precondition to preliminary injunctive relief.

Section 2 closes with the instruction that "[t]his section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained." (Cal. Const. art. X, § 2.) Because Section 2 is self-executing, "in the absence of an a priori rule a court may ascertain whether a use of water is unreasonable from the facts and circumstances of particular cases." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 624.) But where the Legislature has exercised its "right and obligation to enact laws in furtherance of" Section 2, "the view enacted by the Legislature is entitled to deference by the judiciary." (*Id.* at pp. 624-25, citing *In re Waters of Long Valley*, *supra*, 25 Cal.3d at pp. 351-52.)

As discussed above, Section 5937 reflects a legislative judgment that leaving sufficient water in a stream for fish is presumptively reasonable and that operating a dam so as to leave nothing for fish is presumptively unreasonable. (Part II.A.3, *supra*; *CalTrout I*, *supra*, 207 Cal.App.3d at p. 625; *CalTrout II*, *supra*, 218 Cal.App.3d at p. 201.) That judgment cannot be displaced by an individual court's ad hoc, de novo rebalancing of

interests without inviting a "return to the benighted days of substantive due process." (*CalTrout I*, *supra*, 207 Cal.App.3d at p.625; see also *CalTrout II*, *supra*, 218 Cal.App.3d at p. 201.)

2. The Court of Appeal erred in holding that Section 2 requires separate judicial "balancing" as a precondition to enforcing Section 5937.

The Court of Appeal found "much to commend" in *CalTrout I*, but nonetheless declined to apply its rule in this case. (Opinion, p. 354.) Instead, the Opinion took the unprecedented position that this Court's 1933 decision in *Gin S. Chow* requires ad hoc judicial balancing in every case, even when the Legislature has already spoken. (*Id.* at pp. 351-53.) In so ruling, the Opinion misconstrued both *Gin S. Chow* and *CalTrout I*.

a. The Opinion disregarded more than 90 years of consistent precedent applying *Gin S. Chow*.

Gin S. Chow presented the prototypical dispute between downstream riparians and upstream appropriators that Section 2 was intended to remedy. There, downstream riparians claimed the full, natural flow of a stream, unlimited by reasonable or beneficial use restrictions, and sought to enjoin upstream appropriators from diverting water for municipal and domestic

uses. (*Gin S. Chow*, *supra*, 217 Cal. at pp. 677-80.) Ruling for the appropriators, this Court held that Section 2 extended the rule of reasonable use to riparian rights holders and that such extension was a constitutional exercise of the state's police power. (*Id.* at pp. 699-700, 705.) This Court also rejected the riparians' argument that reasonableness was too vague a standard to be constitutionally applied, finding it no more difficult than determining "probable cause, reasonable doubt," and similar "problems" courts routinely confront. (*Id.* at pp. 705-06.) Courts can thus assess "what is an unreasonable use [of water] … depending upon the facts in each case." (*Id.* at p. 706.)

The Opinion erred by misreading *Gin S. Chow* as indicating that Section 2's self-executing clause requires courts in every case to adjudicate what constitutes a reasonable and beneficial use of water. (Opinion, pp. 352, 355.) *Gin. S. Chow* "did not consider such a question." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 624.) Indeed, *Gin S. Chow* did not construe or rely on Section 2's "self-executing" clause at all, and in fact mentioned it only once—in quoting the full text of Section 2. (*Gin S. Chow*, *supra*, 217 Cal. at p. 700.)

As *CalTrout I* observed, "[a]ll that the reasoning in *Gin S. Chow* connotes is that in the absence of an a priori rule a court may ascertain whether a use of water is unreasonable from the facts and circumstances of particular cases." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 624.) But the "self-executing" nature of Section 2 does not override—or require courts to second-guess—every specific legislative determination enacted pursuant to its authority. *CalTrout I* found the argument that *Gin S. Chow* requires an ad hoc, judicial determination of a *statute's* reasonableness not only incorrect, but particularly ironic, given that Section 2 was specifically "enacted to vest the 'right' in the Legislature, over the judicial objection in *Herminghaus*, to determine the useful and beneficial purposes of water use." (*CalTrout I*, supra, 207 Cal.App.3d at p. 625.) As *CalTrout I* correctly held, courts must defer to legislative rules like Section 5937, not second-guess them. (*Id.* at pp. 624-25.)

In the ninety-two years since this Court decided *Gin S. Chow*, no case has held otherwise. On the contrary, courts have repeatedly affirmed the Legislature's power to determine reasonable uses of water by statute. For example, in 1979, this Court found that the Legislature enjoys "broad flexibility" under

Section 2 to set rules of reasonable use. (*In re Waters of Long Valley*, *supra*, 25 Cal.3d at p. 352; see also *id.* at p. 351 [Section 2 "inhibits judicial interpretations of water rights that are inconsistent with its goals."].)

More recently, in *Light*, *supra*, the First District held that the Legislature may delegate its authority to develop rules of reasonable use to the Water Board. (226 Cal.App.4th at p. 1485.) The regulation at issue in *Light* limited diversions of water to protect crops from frost damage, which were leaving fish stranded in suddenly dry streams. (*Id.* at p. 1486.) The Water Board decided that whether such diversion amounts to a reasonable use of water "depends upon whether the diversion can be managed to avoid the harm to salmonids." (*Ibid.* (quotation omitted).) In upholding the Water Board's authority to enact such a regulation, the First District affirmed that both the Legislature and the Water Board can adopt rules governing the reasonable use of water without additional judicial balancing. (*Id.* at 1484-85.)

Similarly, in *Stanford Vina*, *supra*, the Third District upheld the Water Board's authority to "set[] minimum flow requirements" for three creeks in order to "enable those fish to

survive their yearly migration through the creeks during severe drought conditions." (50 Cal.App.5th at p. 1002.) The Court expressly found that the Water Board, like the Legislature, may "legislate per se rules of unreasonable use" (*id.* at p. 1004) and that "fish survival is an appropriate consideration in determining what is or is not an 'unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state'" (*id.* at p. 1003).

As these cases emphasize, nothing in Section 2 displaces the Legislature's authority to codify certain uses of water as per se reasonable or unreasonable. On the contrary, Section 2 specifically charges the Legislature with adopting such rules in order to advance its policy goals. Section 5937 is expressly authorized, furthers Section 2's policies, and cannot be disturbed unless it is "manifestly unreasonable." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 625.)

b. The Opinion misunderstood the significance of Fish and Game Code section 5946 in the *CalTrout* cases.

The Opinion also attempted to distinguish *CalTrout I* on the basis that the Legislature analyzed "specific tradeoffs" for streams in Fish and Game District 4½ when it adopted Section

5946. (Opinion, p. 356.) The Court of Appeal acknowledged that the Legislature's "choice to prioritize fisheries in that area" reflected a "balancing of the specific localized needs pertaining to the streams" of that district. (*Id.* at p. 356.) However, the Opinion stated, this "does not mean the Legislature engaged in a similar determination as to all waterways statewide under [Section] 5937." (*Ibid.*) This conclusion rests on a fundamental misreading of *CalTrout I* and the statutes it construed.

First, *CalTrout I* never suggested that the Legislature must undertake an explicit, stream-specific analysis in order for a statutory rule of reasonableness to be valid under Section 2. The Court simply looked to the plain language of Sections 5946 and 5937 and found that the Legislature's "rule forbidding the complete drying up of fishing streams … is manifestly not unreasonable." (*CalTrout I*, *supra*, 207 Cal.App.3d at p. 625.) "Accordingly, [the courts] have no warrant to override the Legislature's rule in section 5946 concerning that balance." (*Ibid.*) Courts should not be reweighing the facts considered by the Legislature to determine which statutes reflect the requisite "balancing" of interests and which do not.

Second, and as discussed above, Section 5946 does not establish that maintaining flows below dams is reasonable only in Fish and Game District 4½. It simply provides an additional method to enforce Section 5937 in that district by requiring compliance as an express condition of a new water rights permit or license.[13] Thus, the reasoning of *Cal Trout I* applies equally to Section 5937.

3. The Court of Appeal's reasoning threatens the Legislature's express authority under Section 2 to define reasonable and unreasonable uses of water.

If broadly adopted, the Opinion's suggestion that the Legislature's rules regarding reasonable use of water are subject to de novo judicial rebalancing in every case would dramatically weaken the Legislature's express authority under Section 2.

The Legislature has enacted numerous statutes determining reasonable and unreasonable uses of water pursuant to its Section 2 authority. For example, the Legislature has declared the use of potable domestic water for specified

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[13] See Börk, *supra*, 45 U.C. Davis L.Rev. at pp. 884-85 [discussing legislative history of Section 5946 as a response to Water Board's refusal to enforce 5937 in context of issuing new permits].

nonpotable uses to be unreasonable. (Water Code, §§ 13550, 32601 [irrigation of parks, cemeteries and golf courses, and industrial and irrigation uses], 13553 [toilet and urinal flushing].) The Legislature has also empowered public entities to use "allocation-based conservation water pricing" as a preferred method of preventing unreasonable uses of water. (Water Code, § 370.) Pursuant to express legislative delegation, the Water Board exercises similar authority under Section 2, and courts have upheld its regulations declaring uses of water than harm threatened fish unreasonable. (See, e.g., *Stanford Vina*, *supra*, 50 Cal.App.5th at pp. 1000-04; *Light*, *supra*, 226 Cal.App.4th at p. 1487 ["Efficient regulation of the state's water resources in these circumstances *demands* that the Board have the authority to enact tailored regulations"] (emphasis added.) The Opinion's conclusion that "a court must *always* consider reasonableness *whenever* it would direct or adjudicate a particular use of water, even when applying statutes that do not expressly incorporate a reasonableness determination" (Opinion, p. 351 (italics added)) could throw these and other legislative and regulatory judgments into question.

The Opinion's approach also creates uncertainty for dam owners and operators, and water rights holders, concerning implementation and enforcement of the statute. For example, as discussed in Part II.A, *supra*, Section 5937 imposes a clear, present, and mandatory duty on dam owners that is enforceable by mandamus. But if Section 5937's reasonableness must be adjudicated anew in every instance of its application, then a dam owner cannot know whether they have an obligation to comply with the statute (and if they may be civilly or criminally liable for any violation) unless and until it is enforced against them.

Further, a rule that requires judicial second-guessing of the Legislature's judgments regarding reasonable uses of water without due deference is inconsistent with the separation of powers. (See *CalTrout I*, *supra*, 207 Cal.App.3d at pp. 624-25 ["a conflict in public policy between the view of the judiciary and the Legislature must be resolved in favor of the latter"].) Such a rule is also inconsistent with the deference courts must accord to Water Board regulations. (See *Stanford Vina*, *supra*, 50 Cal.App.5th at pp. 1004-05 [holding regulation defining unreasonable use of water was "not arbitrary, capricious, or entirely lacking in evidentiary support"].) This Court should

reverse the Opinion and eliminate any uncertainty concerning the Legislature's (and the Water Board's) power to advance Section 2's policies through regulation of reasonable uses of water.

III. A party may challenge Section 5937 as "manifestly unreasonable," but that party bears a heavy burden to prove the statute is unconstitutional as applied.

The Legislature's determinations in Section 5937 that leaving sufficient water in a river to keep fish below a dam in good condition is reasonable—and that leaving the river below the dam dry and devoid of fish is unreasonable—do not completely foreclose an as-applied constitutional challenge under Section 2. As *CalTrout I* cautioned, a statute sanctioning a "manifestly unreasonable use of water … would transgress the constitution." (207 Cal.App.3d at p. 625.)

However, as with all as-applied challenges, the party *challenging* the statute's application bears the burden of proving the statute is unconstitutional as applied. The Opinion therefore erred in suggesting that plaintiffs seeking to enforce the statute have the burden of proving Section 5937's as-applied constitutionality in every case.

Furthermore, the burden on the party challenging Section 5937's application is a very heavy one. The Legislature's a priori determinations regarding reasonableness in Section 5937 are entitled to considerable deference. Only in truly extreme circumstances should a court find application of Section 5937 by its terms "manifestly unreasonable."

As the trial court correctly found, Plaintiffs demonstrated their entitlement to a preliminary injunction here. They did not also need to prove that Section 5937 is "reasonable" and therefore constitutional as applied. Rather, the burden of proving that Section 5937 is "manifestly unreasonable" falls on those objecting to the statute's application. This Court should reverse the Opinion to the extent it holds or suggests otherwise.

A. Plaintiffs properly demonstrated their entitlement to preliminary injunctive relief.

Plaintiffs presented evidence, which the trial court found persuasive, that the City was violating Section 5937 by diverting all of the Kern River's water to other uses and leaving none for fish below the City's dams. (AA12:2780-81 [trial court concluding that "Section 5937 prevents a dam owner from diverting all the water in a river"].) Plaintiffs thus carried their burden of

demonstrating a likelihood of success on the elements of their statutory claim, and the trial court determined that the balance of harms (including harm to Respondent water districts) favored an injunction. (AA12:2779-86.)

The Opinion disagreed, finding among other things that plaintiffs must provide "at least an estimate of how much water previously used for domestic consumption, irrigation, etc." must be left in the river to comply with Section 5937. (Opinion, pp. 358-59.) The Opinion identified this "estimate" as necessary to support the "reasonableness" inquiry the Court of Appeal thought Section 2 requires as a precondition to preliminary relief in every case. (*Ibid.*) As shown in Part II, *supra*, Section 2 does not require such an inquiry before Section 5937 can be enforced. The Opinion's premise in requiring plaintiffs to produce an "estimate" of sufficient flows to support this inquiry was therefore wrong.

Nor did Plaintiffs need to provide an "estimate" of required flows to demonstrate entitlement to "the specific injunctive relief being requested," as the Opinion suggests. (Opinion, p. 358, citing *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481, and *Anderson v. Souza* (1952) 38 Cal.2d 825, 843; see also Opinion, p. 357 & fn. 20 [stating plaintiff must justify "particular

breadth" of injunction].) Plaintiffs met their burden here. The preliminary injunction was tailored to the requirements of the statute and the remedy sought in Plaintiffs' petition for writ of mandate: an order directing the City to comply with its mandatory duty under Section 5937 to allow "sufficient" water to pass its dams to keep fish below the dams in "good condition." (See AA2:323.) The injunction was thus consistent with *O'Connell* and *Anderson*. (See *O'Connell*, *supra*, 141 Cal.App.4th at pp. 1478-81 [injunction requiring state to award diplomas to all students who failed to pass high school exit exam was not tailored to violations of right to equal educational access and support plaintiffs sought to enforce]; *Anderson*, *supra*, 38 Cal.2d at pp. 843-45 [plaintiffs failed to justify broad injunction entirely shutting down private airport rather than narrower injunction prohibiting only operations that caused a nuisance]; see also, e.g., *People v. Uber Technologies* (2020) 56 Cal.App.5th 266, 313-14 [distinguishing *O'Connell* and holding that by proposing injunction "fitted to the scale of the ongoing violations of law shown by the evidence," the People "carried their initial burden of requesting appropriately tailored relief"].)

Nor was the injunction impermissibly vague. Indeed, Plaintiffs proposed specific interim flows, supported by competent expert testimony. (AA11:2471, 2488-89, 2514-20.) The trial court then directed the parties to "engage in good faith consultation to establish flow rates necessary for compliance," retained jurisdiction to "modify the terms and conditions thereof," and allowed the parties to "file a request" for further determinations by the court if necessary. (AA12:2769-70.) The trial court correctly concluded that it could order compliance with the statute and direct the parties to attempt to reach agreement on flows sufficient to keep fish in good condition without violating prohibitions on indefinite injunctions. (See AA12:2786-89.) The trial court also envisioned further proceedings to modify and refine the necessary flows if the parties could not reach agreement. (See AA16:3742-43.)

Accordingly, Plaintiffs were not required to demonstrate or estimate the precise amount of water that is required to keep fish in good condition in order to obtain preliminary injunctive relief. Such a requirement would impose a burden beyond that required of plaintiffs seeking to enforce mandatory duties like those in Section 5937. And it could frustrate the Legislature's purpose by

precluding or unduly delaying enforcement of the statute. (See *CalTrout II*, *supra*, 218 Cal.App.3d at pp. 211-12.) Plaintiffs carried their burdens and were entitled to the preliminary injunction.

B. The party challenging Section 5937's as-applied constitutionality has the burden of proving that claim.

The Opinion can be read as holding that Plaintiffs bear the additional burden of demonstrating Section 5937's "reasonableness," and thus its as-applied constitutionality, as a precondition to obtaining preliminary relief.[14] (See Opinion, pp. 357-59.) The Opinion inverts the proper burdens. As with all as-applied constitutional challenges, the burden of demonstrating that Section 5937 is "manifestly unreasonable" in specific circumstances should fall on the party *challenging* enforcement of the statute. That burden is especially heavy here because courts must defer to the Legislature's judgment in Section 5937 that

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[14] In their answer to the Petition for Review in this case, Appellants took the position that Plaintiffs bear this burden. (Answer to Petition for Review at pp. 7, 14-16.)

leaving water in rivers for fish is reasonable—and that taking all the water, to the detriment of fish, is not.

It is "garden variety constitutional law" that the party challenging a law's as-applied constitutionality "has the burden of 'evincing facts' showing the application is unconstitutional." (*Adoption of T.K.* (2015) 240 Cal.App.4th 1392, 1398, citing *Associated Homebuilders of Greater E. Bay, Inc. v. City of Livermore* (1961) 56 Cal.2d 847, 855; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084-85.) This rule applies equally to plaintiffs, defendants, and real parties in interest. (See, e.g., *Lent v. Cal. Coastal Com.* (2021) 62 Cal.App.5th 812, 849 [plaintiff bore burden]; *Stuard v. Stuard* (2016) 244 Cal.App.4th 768, 785 [defendant bore burden]; see also *People v. Superior Ct.* (2019) 34 Cal.App.5th 376, 387 [real parties bore burden].) Appellants have not made any facial challenge to Section 5937 here. (See Opinion, pp. 351, 353, fn. 16.) Accordingly, any objections they may have to Section 5937's constitutionality under Section 2 are as-applied challenges. To avoid application of Section 5937 by its terms, *Appellants* must prove that the statute is "manifestly unreasonable" as applied.

Appellants made an important concession in their response to the Attorney General's request for depublication, where they argued that the Opinion does *not* require courts to consider the reasonableness of Section 5937 sua sponte. (Response to Depublication Request (June 9, 2025), p. 2.) Plaintiffs agree that courts should not have to conduct a sua sponte reasonableness inquiry in every Section 5937 case; because the Opinion can be read otherwise, it should be reversed. (See Part II, *supra*.) Moreover, if sua sponte consideration of reasonableness is *not* required, that means a party has to raise it before a court considers it. Raising the issue necessarily challenges the constitutionality of applying the statute in that particular case.

A party challenging Section 5937's as-applied constitutionality bears a very heavy burden. Courts must accord statutes like Section 5937—which implement Section 2 pursuant to express constitutional direction—considerable deference. Courts may not simply substitute their own policy views for reasonable policies enacted by the Legislature. (*CalTrout I*, *supra*, 207 Cal.App.3d at pp. 624-25.) Section 2 gives the Legislature clear authority to adopt rules determining reasonable uses of water and "inhibits judicial interpretations of water rights

that are inconsistent with its goals." (*In re Waters of Long Valley*, *supra*, 25 Cal.3d at pp. 351-52; see also, e.g., *Stanford Vina*, *supra*, 50 Cal.App.4th at pp. 1003-04; *Light*, *supra*, 226 Cal.App.4th at pp. 1484-85.)

Strong deference to Section 5937 is also consistent with general rules of constitutional and statutory interpretation. Constitutional provisions authorizing legislative action are "construed liberally in favor" of the Legislature, and courts apply a "strong presumption in favor of the Legislature's interpretation of a provision of the Constitution." (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691-92.) "[C]ourts should not and must not annul, as contrary to the constitution, a statute passed by the Legislature, unless it can be said of the statute that it positively and certainly is opposed to the constitution," and "[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Id.*, at pp. 691-692 (quotation omitted); accord *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 520-21.)

Accordingly, a party may claim Section 5937 is "manifestly unreasonable" as applied to certain circumstances, but that party

has the burden of proving as much. Moreover, courts must accord considerable deference to the Legislature in adjudicating any such as-applied challenge. The freewheeling, de novo judicial reconsideration of Section 5937's "reasonableness" that the Opinion envisions in every case (see Opinion, pp. 353, 356-57) is directly contrary to basic principles of statutory construction and judicial deference. Courts should invoke *CalTrout I*'s "manifestly unreasonable" standard in only the most extreme circumstances, not use it to second-guess the Legislature's judgment in every Section 5937 case. This Court should reverse the Opinion to the extent it can be read as holding otherwise.

IV. This Court should reverse the Court of Appeal's judgment and remand with specific directions to ensure interim compliance with Section 5937 while the case proceeds.

For the reasons stated above, this Court should reverse the Court of Appeal's judgment. This Court also should remand with directions clarifying how the trial court should proceed. The trial court should be free to reinstate the preliminary injunction, as modified by the Modification Order (AR16:3742-43), to proceed with refining the flows required to ensure compliance with

Section 5937, and to enter a new or revised Implementation Order as necessary.

CalTrout II parallels the trial court's approach here and provides support for continuing that approach on remand. In that case, both the Water Board and LADWP sought to delay conditioning water rights licenses on compliance with Section 5937 pending additional studies to determine appropriate flow rates. (See 218 Cal.App.3d at pp. 200, 206-07, 209.) The court resoundingly rejected these arguments, finding "imprecise compliance … immeasurably superior to no compliance," particularly in the absence of any "showing that the gain in precision warrants a delay of years before acting to comply" with section 5946's directive to condition the licenses. (*Id.*, p. 207.) The court thus directed that water rights licenses immediately be conditioned on Section 5937 compliance. (*Id*., p. 209.) But it also directed "expeditious" interim proceedings to set interim flow rates "based on approximate data presently available" and additional "refinement of those rates in subsequent proceedings." (*Ibid*.) The court noted that either the State Water Board or the trial court exercising its concurrent jurisdiction could conduct any necessary evidentiary hearings. (*Id.*, p. 211-12.) *CalTrout II* is

clear: the Legislature's directives must be promptly implemented, even if specific flow rates must be determined and refined in subsequent "expeditious" proceedings.

The trial court followed a similar process here, and its Modification Order envisioned continuing that process. (AA16:3742-43.) Here, Plaintiffs proposed an interim remedial flow regime based on the best available science, including the limited evidence available regarding the Kern River and extrapolation from other similar river systems. (AA11:2514-20 [Decl. of Theodore Grantham, Ph.D].) Plaintiffs' proposal did not purport to provide flows that would, with certainty, keep fish below the dams in good condition, but instead provided "a logical starting point for restoring the environmental benefits and values of the Kern River." (AA11:2516.) Dr. Grantham made clear that this starting point "should be coupled with development and implementation of a study plan to inform final environmental flow recommendations." (AA11:2518.) The trial court's Modification Order would have continued this process by ordering the parties to "engage in good faith consultation" regarding flow rates and retaining jurisdiction to "make a

determination" itself if the parties could not agree.[15] (AA16:3742-43.)

The trial court's approach is appropriate under Section 5937. Courts should proceed in light of the best available science. However, in many cases, scientific data necessary to determine the amount of water "sufficient" to keep fish in "good condition" will not be readily available to plaintiffs. This is especially true of rivers like the Kern, where diversions have depleted the river of both its water and its fish for decades. Moreover, essential data on stream flows, diversion methods, and water use may be controlled by entities other than the plaintiffs, including the very entities operating dams in violation of Section 5937. Courts

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[15] Following entry of the Modification Order, the parties consulted but were unable to establish mutually-agreeable flow rates. (See Petition for Writ of Supersedeas by North Kern Water Storage District, et al., April 17, 2024, p. 030 [Ex. 1, "Bring Back the Kern et al.'s Motion to Compel Compliance with Preliminary Injunction"].) Bring Back the Kern subsequently filed a "Motion to Compel Compliance with the Preliminary Injunction," proposing an interim flow regime and requesting that the trial court make a determination. (*Id.* at p. 031.) That motion was fully briefed, with a hearing scheduled for May 9, 2024 (see *id.* at p. 6), when the Court of Appeal stayed all trial court proceedings. (Order, Cal.Ct.App. 5th Dist., May 3, 2024, No. F087487 (lead case).)

should be able to order injunctive relief that provides for the collection of the best available scientific data, ongoing monitoring, and refinement of flows necessary to ensure statutory compliance. And scientific uncertainty should not preclude or delay preventing uses of water that are obviously harming fish. (See *Light*, *supra*, 226 Cal.App.4th at pp. 1496-97; see also *CalTrout II*, *supra*, 218 Cal.App.3d at pp. 209-10.)

Dam operators who have dried up a river completely, in clear violation of Section 5937, should not be allowed to continue violating the law indefinitely due to the lack of available evidence regarding the exact amount of water sufficient to keep fish in good condition. Courts should move expeditiously to determine necessary flows, in accordance with the best available science, and must avoid the lengthy delays *CalTrout II* refused to countenance. (See 218 Cal.App.3d at pp. 206-12 & fn. 6.) The trial court was on the right track here, and it should be directed to resume its efforts in accordance with *CalTrout II* and the principles set forth in Parts II and III, *supra*.

CONCLUSION

For all of the foregoing reasons, the Opinion erred in holding that courts must engage in an ad hoc, de novo

rebalancing of competing interests in every case before granting a preliminary injunction under Section 5937. Nothing in Section 2 or the decades of case law following its adoption supports second-guessing the Legislature's determinations regarding reasonable uses of water in this matter. Parties may challenge Section 5937's as-applied constitutionality, but they bear a heavy burden to show that application of the statute is "manifestly unreasonable." In considering such challenges, moreover, courts must accord the statutes that implement Section 2 considerable deference. This Court should reverse the Court of Appeal's judgment and remand with directions to the trial court to reinstate the preliminary injunction as set forth above.

DATED: October 14, 2025

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DATED: October 14, 2025 WATER AUDIT CALIFORNIA

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court Rule 8.504(d)(1), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this JOINT OPENING BRIEF OF PLAINTIFFS AND RESPONDENTS contains 13,073 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: October 14, 2025

SHUTE, MIHALY & WEINBERGER LLP

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PROOF OF SERVICE

Bring Back the Kern, et al. v. City of Bakersfield, et al.
Case No. S290840
California Supreme Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On October 14, 2025, I served true copies of the following document(s) described as:

JOINT OPENING BRIEF
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Hon. Gregory Pulskamp
Kern County Superior Court, Division J
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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 October 14, 2025, at Union City, California.

David Weibel

David Weibel

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 10/14/2025 by M. Alfaro, Deputy Clerk

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

10/14/2025

Date

/s/David Weibel

Signature

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