

1 Scott K. Kuney (SBN 111115)
2 Brett A. Stroud (SBN 301777)
3 The Law Offices of Young Wooldridge, LLP
4 10800 Stockdale Highway, Suite 202
5 Bakersfield, CA 93311
6 Phone: (661) 327-9661
7 Fax: (661) 663-4140
8 Email: skuney@youngwooldridge.com
9 bstroud@youngwooldridge.com

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Gov. Code, § 6103

10 *Attorneys for Real Party in Interest North Kern Water Storage District*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BRING BACK THE KERN, WATER AUDIT
CALIFORNIA, KERN RIVER PARKWAY
FOUNDATION, KERN AUDUBON
SOCIETY, SIERRA CLUB, and CENTER
FOR BIOLOGICAL DIVERSITY,

Plaintiffs and Petitioners,

v.

CITY OF BAKERSFIELD, and DOES 1
through 500,

Defendants and Respondents,

BUENA VISTA WATER STORAGE
DISTRICT, KERN DELTA WATER
DISTRICT, NORTH KERN WATER
STORAGE DISTRICT, ROSEDALE-RIO
BRAVO WATER STORAGE DISTRICT,
KERN COUNTY WATER AGENCY, and
DOES 501-999,

Real Parties in Interest.

Case No. BCV-22-103220
Assigned to Hon. Gregory Pulskamp

**REAL PARTIES IN INTEREST'S
NOTICE OF MOTION AND MOTION
TO CONTINUE TRIAL AND RESET
AS A BENCH TRIAL;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
BRETT STROUD**

Date: August 13, 2025
Time: 8:30 a.m.
Dept.: J
Judge: Hon. Gregory Pulskamp

Complaint Filed: November 30, 2022
FAC Filed: March 6, 2023
SAC Filed: October 4, 2023
TAC Filed: December 1, 2023
Trial Date: December 8, 2025

Additional Counsel and Parties

<p>Robert Edward Donlan (SBN 186185) Craig A. Carnes, Jr. (SBN 238054) Shawnda M. Grady (SBN 289060) Kevin William Bursey (SBN 328999) Wanger Jones Helsley PC 400 Capitol Mall, Suite 2550 Sacramento, California 95814 (559) 233-4800 rdonlan@wjhattorneys.com ccarnes@wjhattorneys.com sgrady@wjhattorneys.com kbursey@wjhattorneys.com</p> <p>Richard L. Iger (SBN 263412) Kern Delta Water District 501 Taft Highway Bakersfield, CA 93307 (661) 834-4656 richard@kerndelta.org</p> <p><i>Attorneys for Real Party in Interest Kern Delta Water District</i></p>	<p>Isaac St. Lawrence (SBN 229789) James A. Worth (SBN 147207) McMurtrey, Hartsock, Worth & St. Lawrence 2001 22nd Street, Suite 100 Bakersfield, CA 93301 (661) 322-4417 isaac@mhwlegal.com</p> <p><i>Attorneys for Real Party in Interest Buena Vista Water Storage District</i></p>
<p>Nicholas A. Jacobs (SBN 210091) Max C. Bricker (SBN 350150) Somach Simmons & Dunn A Professional Corporation 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 (916) 446-7979 njacobs@somachlaw.com mbricker@somachlaw.com pmacpherson@somachlaw.com jestabrook@somachlaw.com gloomis@somachlaw.com</p> <p><i>Attorneys for Real Party in Interest Kern County Water Agency</i></p>	<p>Daniel N. Raytis, Esq. (SBN 218374) Daniel M. Root (SBN 311840) Belden Blaine Raytis 5016 California Avenue, Suite 3 Bakersfield, CA 93309 (661) 864-7826 dan@bbr.law droot@bbr.law</p> <p>Jennifer Lynn Spaletta (SBN 200032) Stoel Rives LLP 500 Capitol Mall, Suite 1600 Sacramento, CA 95814 (916) 447-0700 jennifer.spaletta@stoel.com</p> <p><i>Attorneys for Real Party in Interest Rosedale-Rio Bravo Water Storage District</i></p>

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Nathan A. Metcalf (SBN 240752)
Sean G. Herman (SBN 302261)
Jillian E. Ames (SBN 340657)
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, California 94105
(415) 777-3200
nmetcalf@hansonbridgett.com
sherman@hansonbridgett.com
james@hansonbridgett.com

Attorneys for Real Party in Interest
J. G. Boswell Company

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1	Dated: July 7, 2025	The Law Offices of Young Wooldridge, LLP
2		By: <u>/s/ Brett A. Stroud</u>
3		Brett A. Stroud
4		<i>Attorneys for Real Party in Interest</i>
		<i>North Kern Water Storage District</i>
5	Dated: July 7, 2025	Kern Delta Water District
6		By: <u>/s/ Richard Iger</u>
7		Richard Iger, General Counsel
8		<i>Attorney for Real Party in Interest</i>
		<i>Kern Delta Water District</i>
9	Dated: July 7, 2025	McMurtrey, Hartsock, Worth & St. Lawrence
10		By: <u>/s/ Isaac L. St. Lawrence</u>
11		Isaac L. St. Lawrence
12		<i>Attorneys for Real Party in Interest</i>
		<i>Buena Vista Water Storage District</i>
13	Dated: July 7, 2025	Somach Simmons & Dunn
14		By: <u>/s/ Nicholas A. Jacobs</u>
15		Nicholas A. Jacobs
16		<i>Attorneys for Real Party in Interest</i>
		<i>Kern County Water Agency</i>
17	Dated: July 7, 2025	Belden Blaine Raytis
18		By: <u>/s/ Daniel N. Raytis</u>
19		Daniel N. Raytis
20		<i>Attorneys for Real Party in Interest</i>
		<i>Rosedale-Rio Bravo Water Storage District</i>
21	Dated: July 7, 2025	Hanson Bridgett LLP
22		By: <u>/s/ Nathan A. Metcalf</u>
23		Nathan A. Metcalf
24		<i>Attorneys for Real Party in Interest</i>
		<i>J.G. Boswell Company</i>
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1 **Memorandum of Points and Authorities**

2 **I. Introduction**

3 This matter is currently scheduled for a jury trial on December 8, 2025. That trial setting
4 was based on Plaintiffs' demand for a jury trial and on Plaintiffs' theory of the case—i.e., that
5 Fish and Game Code section 5937 is a “strict liability” statute and that the only issue relevant at
6 trial would be whether fish are currently in good condition below each of the weirs on the Kern
7 River. Since trial setting, the Court of Appeal has rejected Plaintiffs' theory and clarified that a
8 wide range of complex scientific and public policy issues must be considered at the trial of this
9 matter. Additionally, the parties have met and conferred regarding the jury trial issue and agreed
10 that this matter should properly be set for a bench trial, as there is no right to a jury in this case.
11 Therefore, the Real Parties in Interest (“Real Parties”) bring this motion to continue the trial date
12 and various trial-related deadlines by approximately six months to allow the parties to develop
13 their case in light of the Court of Appeal's decision, and to set the matter for a bench trial.

14 **II. Applicable Law**

15 Trial dates may be continued “on an affirmative showing of good cause.” (Cal. Rules Ct.,
16 rule 3.1332, subd. (c).) The rules of court provide a non-exhaustive list of circumstances
17 indicating good cause, which include any “significant, unanticipated change in the status of the
18 case as a result of which the case is not ready for trial” (*Id.*, subd. (c)(7)) and “[t]he unavailability
19 of an essential lay or expert witness because of death, illness, or other excusable circumstances”
20 (*Id.*, subd. (c)(1)). When considering a motion to continue trial, the Court must consider “all the
21 facts and circumstances that are relevant to the determination,” including without limitation the
22 following:

23 “(1) The proximity of the trial date;

24 (2) Whether there was any previous continuance, extension of time,
25 or delay of trial due to any party;

26 (3) The length of the continuance requested; ...

27 (5) The prejudice that parties or witnesses will suffer as a result of
28 the continuance;

1 (6) If the case is entitled to a preferential trial setting, the reasons for
2 that status and whether the need for a continuance outweighs the
3 need to avoid delay; [and] ...

4 (10) Whether the interests of justice are best served by a continuance,
5 by the trial of the matter, or by imposing conditions on the
6 continuance.” (*Id.*, subd. (d).)

7 Motions to continue trial implicate multiple public policies, including “[d]elay reduction
8 and calendar management” on the one hand and the need to “promote the just resolution of cases
9 on their merits” on the other. (*Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246.)
10 Ultimately, such decisions “must be made in an atmosphere of substantial justice. When the two
11 policies collide head-on, the strong public policy favoring disposition on the merits outweighs
12 the competing policy favoring judicial efficiency.” (*Ibid.*, quoting *Bahl v. Bank of America*
13 (2001) 89 Cal.App.4th 389, 398–99.)

14 **III. Argument**

15 The Court should continue the trial based on the Court of Appeal’s clarification of the
16 scope of the issues, as well as based on the unavailability of a key expert witness, Dr. Grantham.
17 Regardless of its ruling on the continuance, the Court should grant the motion to reset this case
18 for a bench trial, because all parties agree that there is no right to jury trial in this case.

19 **A. The Court of Appeal Decision confirms that the scope of the trial is broad, 20 and the parties should be given more time to prepare their case.**

21 When the Court set the current trial date, Real Parties objected that this case presents
22 complex scientific, technical, and factual questions that will necessitate a longer period of discovery
23 and trial preparation. (Stroud Decl., ¶ 3.) Plaintiffs’ position at the time was that the decisive issues
24 in this case are actually narrow, given the “strict liability” interpretation of Fish and Game Code
25 section 5937 that Plaintiffs had urged in this case. (*Id.*, ¶ 4.) At the time, the Preliminary Injunction
26 and Implementation Order were on appeal in the Court of Appeal (Case No. F087487). The Court
27 scheduled the trial based on Plaintiffs’ theory of the scope of the case, but explained that if the Court
28 of Appeal issued its ruling and provided guidance that would make a later trial date appropriate, the
Court would revisit the issue at that time. (Stroud Decl., ¶ 5.)

The Court of Appeal has now soundly rejected Plaintiffs’ “strict liability” interpretation and

1 made clear that a full analysis of **all** the facts and circumstances of the system—including the
2 reasonability of Plaintiff’s requested relief under Article 10, Section 2—is required in this case.
3 (*Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322, 356–57, review filed (May
4 12, 2025).) Now, in addition to the biological and ecological issues involved in the “good condition”
5 analysis, the Court must also consider

6 “whether and to what extent using the waters of the Kern River to
7 keep fish in good condition is a reasonable and beneficial use of
8 water under section 2. Such a determination looks to the totality of
9 the circumstances, which include effects on fish and other wildlife
10 (Wat. Code, § 1243, subd. (a)), recreation (*ibid.*), water quality, the
11 transportation of adequate water supplies where needed (*United*
12 *States, supra*, 182 Cal.App.3d at p. 130, 227 Cal.Rptr. 161), water
13 supplies for the domestic needs of people such as the residents served
14 by the City of Bakersfield (Wat. Code, § 106), irrigation (Wat. Code,
15 § 106), effects on other users of the watercourse [including flood
risks]¹⁹ (*In re Waters of Long Valley Creek Stream System* (1979) 25
Cal.3d 339, 354, 158 Cal.Rptr. 350, 599 P.2d 656), and any effects
on ‘appropriations essential to the economic development of this
state’ (*Audubon, supra*, 33 Cal.3d at p. 445, 189 Cal.Rptr. 346, 658
P.2d 709; see also *Gin S. Chow, supra*, 217 Cal. at pp. 701-702, 22
P.2d 5).” (*Ibid.*)

16 These issues clearly implicate difficult scientific, engineering, economic, and public policy
17 questions. Real Parties are confidentially engaged in intensive research and collaboration with
18 potential expert witnesses to develop evidence on all of these questions. (Stroud Decl., ¶ 6.) Those
19 efforts require additional time, and the requested continuance is a reasonable one in light of those
20 demanding projects. (*Id.*, ¶ 7.)

21 The issue of the scope of trial is also complicated by the fact that plaintiffs have sought
22 review from the California Supreme Court (Case No. S290840). (Stroud Decl., ¶ 8.) The parties may
23 not have a decision on whether the Supreme Court will hear this case until as late as September 10,
24 2025.² The exchange of expert witness designations in this case will take place just over one month
25 later on October 20, 2025. (Code Civ. Proc, § 2034.230, subd. (b) [50 days before the initial trial
26

27 ² Review may be granted as late as 90 days after the latest-filed Petition for Review. (Cal. Rules
28 Ct., rule 8.512, subd. (b).) Water Audit California was the last petitioner to file, filing a joinder
on June 12, 2025. (Stroud Decl., ¶ 8.)

1 date].) Thus, a continuance would also allow parties to make their designation of expert
2 witnesses with the knowledge of whether the scope of the trial may be further modified by
3 subsequent appellate opinions.

4 **B. The unavailability of Dr. Grantham is grounds for continuance of the trial.**

5 On June 16, 2025, counsel for Water Audit California notified the parties that Dr. Theodore
6 Grantham will be out of the country on sabbatical through the end of 2025. (Stroud Decl., ¶ 9, Exh.
7 A.) Dr. Grantham has not yet been designated as a witness by Water Audit California, but he has
8 submitted multiple declarations in this proceeding. (Decl. of Theodore (Ted) Grantham in Support
9 of Pl.'s Mot. for Prelim. Inj. (10/6/2023); Declaration of Theodore (Ted) Grantham in Support of
10 Water Audit California's Ex Parte Appl. for TRO and for OSC re Prelim. Inj. (12/18/2023).) Those
11 declarations discuss important, substantive issues in this case. It is anticipated that, whether
12 designated as a testifying expert or not, Dr. Grantham will likely be called to testify and be an
13 important witness. (Stroud Decl., ¶ 10.) Therefore, his unavailability on the currently scheduled trial
14 date is further reason to continue the trial.

15 **C. There is no right to a jury trial in this case, and the parties agree that the Court**
16 **should set the case for a bench trial.**

17 When the Court set the current trial date, Real Parties objected that there was no right to a
18 jury trial in this matter. The right to a jury trial depends on the cause of action and can arise either
19 from the California Constitution or by statute. (See *Nationwide Biweekly Administration, Inc. v.*
20 *Superior Court* (2020) 9 Cal.5th 279, 296-297; quoting *Shaw v. Superior Court* (2017) 2 Cal.5th at
21 994.) The constitutional right to jury trial in civil cases extends only to cases subject to jury trial
22 under the common law as of 1850. (See *Baugh v. Garl* (2006) 137 Cal.App.4th 737, 740; *Martin v.*
23 *County of Los Angeles* (1996) 51 Cal.App.4th 688, 694.) Plaintiffs' operative complaint, the Third
24 Amended Complaint filed on December 1, 2023, presents two causes of action (the third and fourth
25 having been resolved on demurrer). The first is for writs of mandamus or prohibition. Case law is
26 clear that there is no right to a jury trial in writ proceedings. (See, e.g., *Hutchison v. Reclamation*
27 *Dist. No. 1619* (1927) 81 Cal.App. 427, 434; *Hewel v. Hogin* (1906) 3 Cal.App. 248, 250.) The
28 second is for injunctive relief under Article 10, Section 2 of the California Constitution. Actions for

1 injunctive relief are equitable in character and thus there is no right to a jury trial in such actions.
2 (See *Sherwood v. Ahart* (1917) 35 Cal.App. 84, 87.)

3 The Court set the matter for a jury trial and stated that the parties could meet and confer
4 regarding those arguments and that any party could bring a motion to modify the trial setting. (Stroud
5 Decl., ¶ 11.) On May 20, 2025, on a teleconference call between counsel, Bryan Wilson, attorney
6 for the Bring Back the Kern plaintiffs (the parties who demanded a jury trial), agreed that the case
7 should be set for a bench trial. (*Id.*, ¶ 12.)

8 **D. This Motion is timely, and Real Parties made a good faith effort to secure a**
9 **stipulation before filing the motion.**

10 This motion is being made “as soon as reasonably practical once the necessity for the
11 continuance [wa]s discovered.” (Cal. Rules Ct., rule 3.1332, subd. (b).) The Court of Appeal
12 Decision was filed on April 2, 2025. (Stroud Decl., ¶ 13.) Counsel for the Real Parties promptly
13 convened to discuss implications of the decision for trial preparations. (*Id.*, ¶ 14.) After
14 conferring about such preparations and conducting further research on the jury trial issue, counsel
15 for the Real Parties sent a letter to the Bring Back the Kern plaintiffs’ counsel requesting that
16 they stipulate to the orders sought in this motion. (*Id.*, ¶ 15, Exh. B.) After further discussion with
17 plaintiffs’ counsel by email and in-person, Real Parties received Bring Back the Kern’s final
18 refusal on June 20, 2025. (*Id.*, ¶ 16, Exh. C.) Real Parties then proceeded to prepare this motion
19 and arrange an appropriate hearing date, so that the matter could be promptly put before the Court
20 for decision. (*Ibid.*)

21 **E. Based on the factors listed in Rule 3.1332, a continuance is appropriate.**

22 The Court should consider “all the facts and circumstances that are relevant to the
23 determination” and find that a continuance is appropriate. (Rule 3.1332, subd. (d).) The “proximity
24 of the trial date” (subd. (d)(1)) does not weigh against a continuance, as this motion is made 5 full
25 months before the scheduled trial date, not on the eve of trial. There has been no “previous
26 continuance, extension of time, or delay of trial due to any party.” (Subd. (d)(2).) The “length of the
27 continuance requested” is modest and calculated to avoid undue delay. (Subd. (d)(3).) There is no
28 identifiable “prejudice that parties or witnesses will suffer as a result of the continuance” (subd.

(d)(5)), particularly given that the Kern River has been operated in the current manner for decades. The case is not “entitled to a preferential trial setting.” (Subd. (d)(6).) But most importantly, in light of the complexity and the significance of the issues presented in this case, “the interests of justice are best served by a continuance.” (Subd. (d)(10).)

III. Conclusion

The Court should grant the modest continuance of trial requested by the Real Parties, and all trial-related or trial-based deadlines should be recalculated based on the new trial date. Furthermore, the case should be set for a bench trial, as there is no right to a jury trial in this case.

Dated: July 7, 2025

The Law Offices of Young Wooldridge, LLP

By: /s/ Brett A. Stroud

Brett A. Stroud

Attorneys for Real Party in Interest

North Kern Water Storage District

Dated: July 7, 2025

Kern Delta Water District

By: /s/ Richard Iger

Richard Iger, General Counsel

Attorney for Real Party in Interest

Kern Delta Water District

Dated: July 7, 2025

McMurtrey, Hartsock, Worth & St. Lawrence

By: /s/ Isaac L. St. Lawrence

Isaac L. St. Lawrence

Attorneys for Real Party in Interest

Buena Vista Water Storage District

Dated: July 7, 2025

Somach Simmons & Dunn

By: /s/ Nicholas A. Jacobs

Nicholas A. Jacobs

Attorneys for Real Party in Interest

Kern County Water Agency

Dated: July 7, 2025

Belden Blaine Raytis

By: /s/ Daniel N. Raytis

Daniel N. Raytis

Attorneys for Real Party in Interest

Rosedale-Rio Bravo Water Storage District

1 Dated: July 7, 2025

Hanson Bridgett LLP

2

By: /s/ Nathan A. Metcalf

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Nathan A. Metcalf

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Attorneys for Real Party in Interest

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J.G. Boswell Company

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1 **Declaration of Brett A. Stroud**

2 I, Brett A. Stroud, declare as follows:

3 1. I am an attorney at law duly admitted to practice before all the courts of California
4 and one of the attorneys of record herein for Real Party in Interest North Kern Water Storage
5 District. I have personal knowledge of the facts set forth below, and if called as a witness, I could
6 and would competently testify thereto.

7 2. I am a partner in The Law Offices of Young Wooldridge, LLP and one of the
8 counsel responsible for representing North Kern in this litigation. I submit this declaration in
9 support of the foregoing “Real Parties in Interest’s Notice of Motion and Motion to Continue
10 Trial and Reset as a Bench Trial.”

11 **Background of Original Trial Setting**

12 3. I was present at the Case Management Conference conducted in this matter on
13 November 14, 2024 (“CMC”), when the Court set the currently-scheduled trial date. At that
14 hearing, I and other counsel for the Real Parties objected that this case presents complex
15 scientific, technical, and factual questions that will necessitate a longer period of discovery and
16 trial preparation.

17 4. At the CMC, counsel for the Plaintiffs took the position that the decisive issues in
18 this case are actually narrow, given the “strict liability” interpretation of Fish and Game Code
19 section 5937 that Plaintiffs had urged in this case.

20 5. At the CMC, The Court decided to schedule the trial based on Plaintiffs’ theory
21 of the scope of the case, stating that, if the Court of Appeal issued its ruling and provided
22 guidance that would make a later trial date appropriate, the Court would revisit the issue at that
23 time.

24 **Grounds for Continuance**

25 6. Real Parties are confidentially engaged in intensive research and collaboration
26 with potential expert witnesses to develop evidence on numerous scientific and public policy
27 questions implicated in this case.

28 7. It is my professional opinion that those efforts to develop evidence cannot be

1 appropriately completed based on the currently-set trial schedule and that the Real Parties will
2 require additional time to adequately prepare. I believe the requested continuance is a reasonable
3 one in light of those demanding projects.

4 8. Plaintiffs have sought review from the California Supreme Court (Case No.
5 S290840). The Bring Back the Kern parties filed their Petition on May 12, 2025. Water Audit
6 California was the last petitioner to file, filing a joinder on June 12, 2025.

7 9. On June 16, 2025, I received an email from counsel for Water Audit California,
8 notifying the parties that Dr. Theodore Grantham will be out of the country on sabbatical through
9 the end of 2025. A true and correct copy of that email is attached hereto as Exhibit A.

10 10. I anticipated that, whether designated as a testifying expert or not, Dr. Grantham
11 will likely be called to testify and be an important witness in the trial of this matter. I was not
12 aware and could not reasonably have been aware of his unavailability when the original trial date
13 was set at the CMC.

14 **Ground for Resetting as a Bench Trial**

15 11. At the CMC, the parties disagreed about whether there was a right to jury trial in
16 this case and whether a jury trial would be appropriate. The Court set the matter for a jury trial
17 and stated that the parties could meet and confer regarding those arguments and any party could
18 bring a motion to modify the trial setting.

19 12. On May 20, 2025, I was on a teleconference call between counsel in this case. On
20 that call, Bryan Wilson, attorney for the Bring Back the Kern plaintiffs, agreed that the case
21 should be set for a bench trial.

22 **Timeliness of the Motion**

23 13. The Court of Appeal decision was filed on April 2, 2025.

24 14. After the decision was filed, counsel for the Real Parties promptly convened to
25 discuss implications of the decision for trial preparations.

26 15. After conferring about such preparations and conducting further research on the
27 jury trial issue, I, on behalf of counsel for the Real Parties, sent a letter to the Bring Back the
28 Kern plaintiffs' counsel requesting that they stipulate to the orders sought in this Motion. A true

1 and correct copy of that letter is attached hereto as Exhibit B.

2 16. After further discussion with plaintiffs' counsel by email and in-person, I received
3 Bring Back the Kern's final refusal to stipulate via an email from Bryan Wilson on June 20, 2025.
4 A true and correct copy of that email is attached hereto as Exhibit C. I then proceeded to prepare
5 this motion and arrange an appropriate hearing date, so that the matter could be promptly put
6 before the Court for decision.

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct.

10

11 Date: July 3, 2025



Brett Stroud

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Exhibit A

Brett Stroud

From: Valerie Stephan <vstephan@waterauditca.org>
Sent: Monday, June 16, 2025 10:49 AM
To: Pearce, Colin L.; Ansley, Jolie-Anne S.; Barton, Ashley; vgennaro@bakersfieldcity.us; rdonlan@wjhattorneys.com; ccarnes@wjhattorneys.com; kbursey@wjhattorneys.com; sgrady@wjhattorneys.com; Richard Iger; Scott Kuney; Brett Stroud; isaac@mhwslegal.com; jim@mhwslegal.com; Dan Raytis; Daniel Root; Jennifer.spaletta@stoel.com; jciampa@lagerlof.com; Nick Jacobs; Pennie MacPherson; Jennifer Estabrook; Gloria Loomis; Adam Keats; Nathan A. Metcalf; Sean G. Herman; Jillian Ames; Wilson, Bryan; Kehrer, Chelsea Caylin; Frentzen, William; Chitour, Anissa; Arjomand, Mehran; Robinson, Matt
Cc: Water Audit California; Herrera, Blanca A; mcollom@bakersfieldcity.us; dwittenborn@wjhattorneys.com; Patricia Banda; Sharrol S. Singh; Smith, Heather; MoFo_BBtK_Kern@mofo.com
Subject: Kern - Question re Deposition of Dr. Grantham

From William McKinnon:

Counsel

Dr Grantham will be absent from the country on sabbatical from the third week of July through until the end of the year. Naturally he will be virtually available, but if you wish to conduct an in person deposition please contact me immediately.

William McKinnon
legal@waterauditca.org

Valerie Stephan
Paralegal/Researcher

WATER AUDIT CALIFORNIA - A California Public Benefit Corporation
952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

WATER AUDIT CALIFORNIA - A California Public Benefit Corporation
952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

Exhibit B



Brett A. Stroud, Partner

May 6, 2025

VIA EMAIL ONLY

Bryan Wilson (BWilson@mofo.com)

Adam Keats (adam@keatslaw.org)

William McKinnon (general@waterauditca.org)

Re: Meet and Confer Regarding Resetting of Trial
Bring Back the Kern, et al. v. City of Bakersfield

Dear Counsel:

I write on behalf of counsel for all the Real Parties in Interest in this matter to meet and confer with you regarding the scheduled trial date of December 8, 2025. We intend to move the Court to reschedule the trial for a later date in light of the Court of Appeal's opinion published on April 2, 2025. We also intend to move the Court to set this matter for a court trial, rather than a jury trial as is currently the case. The purpose of this meet and confer effort is to attempt to reach a stipulation as between the parties before presenting our motion to the Court.

Continuance of Trial Is Appropriate

When the Court set the current trial date, our clients objected that the case presents complex scientific, technical, and factual questions that will necessitate a longer period of discovery and trial preparation. Plaintiffs' position was that the decisive issues in the case are actually narrow, given the "strict liability" interpretation of Fish and Game Code section 5937 that Plaintiffs have urged in this case. The Court indicated, at that time, that if the Fifth District Court of Appeal issued its ruling on the preliminary injunction it might provide guidance that would make a later trial date appropriate and that the Court would revisit the issue at that time.

The Fifth District's opinion has now soundly rejected Plaintiffs' interpretation and made clear that a full analysis of the facts and circumstances of the system, including the reasonability of Plaintiff's requested relief under Article 10, Section 2, is required in this case. The complexity of the issues involved cannot be overstated, and the Real Parties intend to seek a continuance of the trial date. We ask that the Plaintiffs stipulate on this point.

No Right to a Jury Trial

When the Court set the current trial date, our clients objected that there was no right to a jury trial in this matter. The Court set the matter for a jury trial and stated that the parties could meet and confer regarding those arguments and that any party could bring a motion to modify the trial setting. Further research confirms our prior objections, and we ask that plaintiffs stipulate on this point.

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The right to a jury trial depends on the cause of action and can arise either from Article 16, Section I of the California Constitution or by statute. (See *Nationwide Biweekly Administration, Inc. v. Superior Court* (2020) 9 Cal.5th 279, 296-297; quoting *Shaw v. Superior Court* (2017) 2 Cal.5th at 994.) The constitutional right to jury trial in civil cases extends only to cases subject to jury trial under the common law as of 1850. (See *Baugh v. Garl* (2006) 137 Cal.App.4th 737, 740; *Martin v. County of Los Angeles* (1996) 51 Cal.App.4th 688, 694.)

Plaintiffs' operative complaint, the Third Amended Complaint filed on December 1, 2023, presents two causes of action (the third and fourth having been resolved on demurrer). The first is for writs of mandamus or prohibition. Case law is clear that there is no right to a jury trial in writ proceedings. (See, e.g., *Hutchison v. Reclamation Dist. No. 1619* (1927) 81 Cal.App. 427, 434; *Hewel v. Hugin* (1906) 3 Cal.App. 248, 250.) The second is for injunctive relief under Article 10, Section 2 of the California Constitution. Actions for injunctive relief are equitable in character and thus there is no right to a jury trial in such actions. (See *Sherwood v. Ahart* (1917) 35 Cal.App. 84, 87.)

* * * * *

We request your response to this letter no later than May 13, 2025. If we are unable to reach a stipulation on these matters, we will obtain a hearing date and file our motion forthwith.

Sincerely,



Brett A. Stroud, Esq.

Exhibit C

Brett Stroud

From: Wilson, Bryan <BWilson@mofo.com>
Sent: Friday, June 20, 2025 9:53 AM
To: Brett Stroud; adam@keatslaw.org; legal@waterauditca.org; Linda.asc@sbcglobal.net; vstephan@waterauditca.org; clpearce@duanemorris.com; jsansley@duanemorris.com; mcollom@bakersfieldcity.us; baherrera@duanemorris.com; Craig Carnes; rdonlan@wjhattorneys.com; sgrady@wjhattorneys.com; kbursey@wjhattorneys.com; richard@kerndelta.org; isaac@mhwslegal.com; jim@mhwslegal.com; amanda@mhwslegal.com; lupe@mhwslegal.com; dan@bbr.law; heather@bbr.law; jennifer.spaletta@stoel.com; sprince@kcwa.com; njacobs@somachlaw.com; pmacpherson@somachlaw.com; jestabrook@somachlaw.com; gloomis@somachlaw.com; 'Jim Ciampa'; nmetcalf@hansonbridgett.com; bhummer@hansonbridgett.com; sherman@hansonbridgett.com; james@hansonbridgett.com; ssingh@hansonbridgett.com; Max C. Bricker; MoFo_BBtK_Kern
Subject: RE: [EXT] BBTK v. COB Trial Continuance

We've confirmed that Bring Back The Kern wishes to keep the current trial date. Assuming you'll be filing a motion, please consult with us regarding a hearing date given the potential for conflict with summer schedules. Thanks.

(To make things slightly more manageable, I'm replacing the individual MoFo emails with our distribution list.)

Bryan Wilson

Partner
bwilson@mofo.com
T: +1 (650) 813-5603

Morrison Foerster
755 Page Mill Road
Palo Alto, CA 94304-1018



[mofo.com](https://www.mofo.com) | [LinkedIn](#)

From: Brett Stroud <bstroud@youngwooldridge.com>
Sent: Wednesday, June 18, 2025 1:43 PM
To: adam@keatslaw.org; Wilson, Bryan <BWilson@mofo.com>; Kehrer, Chelsea Caylin <CKehrer@mofo.com>; Chitour, Anissa <AChitour@mofo.com>; Frentzen, William <WFrentzen@mofo.com>; Robinson, Matt <MRobinson@mofo.com>; Arjomand, Mehran <MARjomand@mofo.com>; legal@waterauditca.org; Linda.asc@sbcglobal.net; vstephan@waterauditca.org; clpearce@duanemorris.com; jsansley@duanemorris.com; mcollom@bakersfieldcity.us; baherrera@duanemorris.com; Craig Carnes <ccarnes@wjhattorneys.com>; rdonlan@wjhattorneys.com; sgrady@wjhattorneys.com; kbursey@wjhattorneys.com; richard@kerndelta.org; isaac@mhwslegal.com; jim@mhwslegal.com; amanda@mhwslegal.com; lupe@mhwslegal.com; dan@bbr.law; heather@bbr.law; jennifer.spaletta@stoel.com; sprince@kcwa.com; njacobs@somachlaw.com; pmacpherson@somachlaw.com; jestabrook@somachlaw.com; gloomis@somachlaw.com; 'Jim Ciampa' <jciampa@lagerlof.com>;

nmetcalf@hansonbridgett.com; bhummer@hansonbridgett.com; sherman@hansonbridgett.com;
james@hansonbridgett.com; ssingh@hansonbridgett.com; Max C. Bricker <mbricker@somachlaw.com>

Subject: [EXT] BBTK v. COB Trial Continuance

Bryan,

To confirm our conversation on Tuesday, following up on our previous meeting about trial scheduling: I communicated to you that the Real Parties think a continuance to May or June of 2026 would be appropriate to facilitate the kind of expert witness work and potential motion practice that will be involved in preparing for this trial. I also spoke with Colin for the City, and he indicated he agrees. You indicated that you would check with your clients about that but that you were inclined to think the December 2025 date should stay on calendar. Please let me by next Monday if we can reach a stipulation. Otherwise, I anticipate real parties will file a motion to continue the trial date.

Best,
Brett

BRETT A. STROUD
YOUNG WOOLDRIDGE, LLP
10800 Stockdale Highway, Suite 202
Bakersfield, CA 93311
Tel. (661) 327-9661 | Fax (661) 663-4140
bstroud@youngwooldridge.com

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NOTICE IS HEREBY GIVEN that this office does not accept ex parte notice via email and does not accept or consent to the service of process, motions, pleadings, documents, or any other items by electronic format unless consent to such service is given and is given expressly. Correspondence via electronic format does not indicate agreement or consent to acceptance of service in that format.

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PROOF OF SERVICE

Bring Back the Kern, et al. v. City of Bakersfield
Kern County Case No. BCV-22-103220

The undersigned hereby declares that I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is 10800 Stockdale Highway, Suite 202, Bakersfield, CA 93311. My electronic service address is pbanda@youngwooldridge.com.

Pursuant to California Rules of Court, rule 2.251(c)(4) and Code of Civil Procedure section 1010.6, I served by email the foregoing document entitled **REAL PARTIES IN INTEREST’S NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL AND RESET AS A BENCH TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF BRETT STROUD** on the interested parties in this action as listed on the attached service list.

On the date set forth below, I caused the document to be sent to the persons at the e-mail addresses listed on the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 7, 2025, at Bakersfield, California.

/s/ Patricia Banda
Patricia Banda

SERVICE LIST

Bring Back the Kern, et al. v. City of Bakersfield
Kern County Case No. BCV-22-103220

Adam F. Keats adam@keatslaw.org Bryan Wilson BWilson@mofo.com Chelsea Caylin Kehrner CKehrner@mofo.com Anissa Chitour ACHitour@mofo.com William Frentzen WFrentzen@mofo.com Matt Robinson MRobinson@mofo.com Mehran Arjomand MArjomand@mofo.com	<i>Attorneys for Plaintiffs: Bring Back the Kern, Kern River Parkway Foundation, Kern Audubon Society, Sierra Club, Center for Biological Diversity</i>
William McKinnon legal@waterauditca.org Linda Ghiringhelli Linda.asc@sbcglobal.net Valerie Stephan vstephan@waterauditca.org	<i>Attorneys for Plaintiff: Water Audit California</i>
Colin L. Pearce clpearce@duanemorris.com Jolie-Anne S. Ansley jsansley@duanemorris.com Ashley L. Barton abarton@duanemorris.com Matthew S. Collom mcollom@bakersfieldcity.us Blanca A. Herrera baherrera@duanemorris.com	<i>Attorneys for Defendant: City of Bakersfield</i>
Robert E. Donlan rdonlan@wjhattorneys.com Craig A. Carnes ccarnes@wjhattorneys.com Kevin W. Bursey kbursey@wjhattorneys.com Richard Iger richard@kerndelta.org	<i>Attorneys for Real Party in Interest: Kern Delta Water District</i>
Isaac St. Lawrence isaac@mhwslegal.com James A. Worth jim@mhwslegal.com Amanda M. Rodriguez amanda@mhwslegal.com Lupe Gonzalez lupe@mhwslegal.com	<i>Attorneys for Real Party in Interest: Buena Vista Water Storage District</i>
Daniel N. Raytis dan@bbr.law Heather McCoy heather@bbr.law Jennifer L. Spaletta jennifer.spaletta@stoel.com	<i>Attorneys for Real Party in Interest: Rosedale-Rio Bravo Water Storage District</i>
Stephanie Prince sprince@kcwa.com Nicholas A. Jacobs njacobs@somachlaw.com Pennie MacPherson pmacpherson@somachlaw.com Max C. Bricker mbricker@somachlaw.com Jennifer Estabrook jestabrook@somachlaw.com Gloria Loomis gloomis@somachlaw.com James Ciampa jciampa@lagerlof.com	<i>Attorneys for Real Party in Interest: Kern County Water Agency</i>
Nathan Metcalf nmetcalf@hansonbridgett.com Rosslyn Hummer bhummer@hansonbridgett.com Sean Herman sherman@hansonbridgett.com Jillian Ames james@hansonbridgett.com Sharrol Singh ssingh@hansonbridgett.com	<i>Attorneys for Intervenor and Real Party in Interest: J.G. Boswell Co.</i>