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*Exempt From Filing Fees Pursuant
to Government Code Section 6103*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND 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 1-500,

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-GAP
*Currently Assigned for All Purposes to
Hon. Gregory A. Pulskamp, Division J*

**MOTION FOR PEREMPTORY
CHALLENGE [C.C.P. § 170.6]**

JUDGE: Hon. John W. Lua,
Presiding Judge
DEPT: 1

Action Filed: November 30, 2022

1 TO THE HONORABLE JOHN W. LUA, PRESIDING JUDGE OF THE KERN COUNTY
2 SUPERIOR COURT:

3 Real Party in Interest Kern County Water Agency (KCWA) hereby moves that this matter,
4 which has been assigned to the Honorable Gregory A. Pulskamp, be reassigned to another judge of
5 the Kern County Superior Court, and that no matters hereinafter arising in this cause be heard or
6 assigned to Judge Pulskamp on the grounds that said judge is prejudiced against KCWA. A
7 peremptory challenge “may be made following reversal on appeal of a trial court’s decision, or
8 following reversal on appeal of a trial court’s final judgment, if the trial judge in the prior
9 proceeding is assigned to conduct a new trial on the matter.” (Code Civ. Proc., § 170.6(a)(2).) “A
10 new trial is a re-examination of an issue of fact in the same court after a trial and decision by a
11 jury, court, or referee.” (Code Civ. Proc., § 656.)

12 The term “new trial” is interpreted broadly to include any reexamination of factual or legal
13 issues in controversy in the prior proceeding. (*Paterno v. Superior Court* (2004) 123 Cal.App.4th
14 548, 560; *Geddes v. Superior Court* (2005) 126 Cal.App.4th 417, 424.) The reversal, remand, and
15 “new trial” must be on the merits and require “a ‘reexamination’ of a factual or legal issue that
16 was in controversy in the prior proceeding.” (*C.C. v. Superior Court* (2008) 166 Cal.App.4th
17 1019, 1022 (*C.C.*), quoting *Geddes, supra*, at p. 424.) “In order to conduct a reexamination, a
18 court must revisit some factual or legal issue that was in controversy in the prior proceeding.”
19 (*Paterno v. Superior Court* (2004) 123 Cal.App.4th 548, 560.) Remands requiring only
20 ministerial actions or reconsideration of a motion not involving the merits of the underlying
21 proceeding do not trigger the “new trial” provision. (*C.C., supra*, at p. 1022 [ministerial act];
22 *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530 [remand to prepare statement of
23 decision]; *Akopyan v. Superior Court* (2020) 53 Cal.App.5th 1094, 1096 [reconsideration of
24 *Batson/Wheeler* motion].) “[S]ection 170.6 is to be liberally construed in favor of allowing a
25 peremptory challenge, and a challenge should be denied only if the statute absolutely forbids it.”
26 (*Maas v. Superior Court* (2016) 1 Cal.5th 962, 973, quoting *Stephens v. Superior Court* (2002)
27 96 Cal.App.4th 54, 61-62, internal quotes omitted; accord, *Int’l Union of Operating Eng’rs v.*
28 *Superior Court* (1989) 207 Cal.App.3d 340, 349.)

1 This motion is timely and appropriately filed following the Fifth District Court of Appeal's
2 decision to reverse both Judge Pulskamp's November 9, 2023 order granting the motion for
3 preliminary injunction and setting a nominal bond (Declaration of Nicholas A. Jacobs in Support
4 of Motion for Peremptory Challenge ("Jacobs Decl.") Exh. A), and the November 14, 2023
5 stipulation and implementation order (Jacobs Decl. Exh. B), along with directions that this "matter
6 is remanded for proceedings consistent with the views expressed in this opinion." (*Bring Back the
7 Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322, 368-369 (*Bring Back the Kern*);¹ Code
8 Civ. Proc., § 170.6(a)(2).) Among other rulings, the appellate opinion directed this Court to
9 "determine whether and to what extent using the waters of the Kern River to keep fish in good
10 condition is a reasonable and beneficial use of water under California Constitution, article X,
11 section 2." (*Bring Back the Kern, supra*, at p. 356.) Resolution of this issue will involve new
12 proceedings that are both factual and legal in nature; such proceedings will occur in the context of
13 a subsequent motion for preliminary injunction and a trial on the merits.

14 The appellate opinion also directed that any subsequent preliminary injunction issued after
15 remand must "immediately set an objective standard for compliance upon a proper showing by the
16 moving parties." (*Bring Back the Kern, supra*, 110 Cal.App.5th at p. 358.) The Court of Appeal
17 found error in the nominal bond imposed on the Plaintiffs, and directed that:

18 [N]o further preliminary injunction shall be issued unless its issuance is
19 conditioned upon the furnishing of an adequate undertaking. We do not purport to
20 determine what an adequate amount would be. Rather, we leave that determination
to the trial court.

21 (*Id.* at p. 361, quoting *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 22, internal quotes
22 omitted.) Finally, the Court of Appeal found that the "Implementation Order" violated the due
23 process rights of KCWA and the other Real Parties in Interest (*Bring Back the Kern, supra*, at
24 pp. 361-365) and conflicted with established water right priorities (*id.* at pp. 365-366).

25 Whether arising in a subsequent motion for preliminary injunction or at trial, these
26 proceedings constitute a "new trial" on the same issues. As set forth in the attached Jacobs

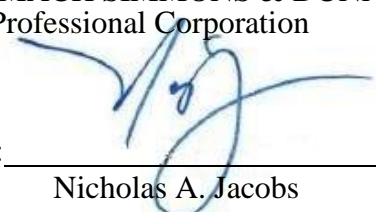
27 ¹ The *Bring Back the Kern* decision to remand the matter back to the Kern Superior Court was filed April 2, 2025.
28 (Jacobs Decl. Exh. C.) Subsequently, on May 12, 2025, plaintiffs in this action filed a Petition for Review in the
California Supreme Court (Case No. S290840).

1 Declaration, KCWA alleges that Judge Pulskamp is prejudiced against KCWA so that KCWA
2 cannot have a fair and impartial trial or hearing before the judicial officer. Granting this
3 peremptory challenge would be “consistent ‘with the established rule that section 170.6, in
4 guaranteeing a litigant the extraordinary right to disqualify a judge, should be liberally construed
5 to effect its objects and to promote justice.’” (*Ghaffarpour v. Superior Court* (2012)
6 202 Cal.App.4th 1463, 1471, quoting *Hendershot v. Superior Court* (1993) 20 Cal.App.4th 860,
7 865; accord, *Ziesmer v. Superior Court* (2003) 107 Cal.App.4th 360, 366.)

8 Finally, Code of Civil Procedure section 170.6(a)(2) provides that this motion “shall be
9 made within 60 days after the party or the party’s attorney has been notified of the assignment.”
10 Exactly what constitutes “notification of the assignment” is not clear in the context of the instant
11 action, where Judge Pulskamp has been assigned as the trial judge for all purposes. One
12 interpretation of this time period is that it begins to run on April 2, 2025 – the date on which the
13 Fifth District Court of Appeal published its *Bring Back the Kern* opinion. Although the remittitur
14 has not yet issued in this matter, out of an abundance of caution, KCWA files this motion now in
15 order to demonstrate clear compliance with the 60-day period. As such, if this Court determines
16 that it lacks jurisdiction to rule on this motion until such time as the remittitur issues, KCWA
17 respectfully requests that the Court hold this motion in abeyance and rule on it when jurisdiction
18 has been returned to the Court.

19 SOMACH SIMMONS & DUNN
20 A Professional Corporation

21 Dated: May 30, 2025

22 By: 
23 Nicholas A. Jacobs
24 Attorneys for Real Party in Interest
25 KERN COUNTY WATER AGENCY
26
27
28

1 *Bring Back the Kern, et al. v. City of Bakersfield*
2 Kern County Superior Court Case No. BCV-22-103220-GAP

3 **PROOF OF SERVICE**

4 I am employed in the County of Sacramento; my business address is 500 Capitol Mall,
5 Suite 1000, Sacramento, California; my electronic service address is jestabrook@somachlaw.com;
I am over the age of 18 years and am not a party to the foregoing action.

6 On May 30, 2025, I served the following document(s):

7 **MOTION FOR PEREMPTORY CHALLENGE**
8 **[C.C.P. § 170.6]**

9 on the following persons or parties:

10 **XX**: **(By Mail)**: I enclosed the document(s) in a sealed envelope or package addressed to the
11 person at the address set forth below and placed the envelope in the area designated for
12 collection and mailing. Following our ordinary business practices, on the same day that the
correspondence is placed for collection and mailing, it is deposited in the ordinary course
of business with the United States Postal Service.

13 Hon. Gregory A. Pulskamp
14 Kern County Superior Court, Dept. J
15 Metro Justice Building
1415 Truxtun Avenue
Bakersfield, CA 93301

Courtesy Copy

16
17 **XX**: **(Via Electronic Service)**: I transmitted the document(s) listed above to the email
18 address(es) of the person(s) set forth on the attached service list. My electronic service
19 address is: jestabrook@somachlaw.com. Service is deemed complete at the time of
transmission of the document or at the time the electronic notification of service of the
document is sent.

20 **SEE SERVICE LIST ATTACHED**

21 I declare under penalty of perjury that the foregoing is true and correct. Executed on
22 May 30, 2025, at Sacramento, California.

23 
24 Jennifer Estabrook

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