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CITY OF BAKERSFIELD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

METROPOLITAN

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;
J.G. BOSWELL COMPANY, and DOES 501 – 999,
inclusive,

Real Parties in Interest.

Case No. BCV-22-103220-GAP

Assigned For All Purposes To:
Judge: Honorable Gregory A. Pulskamp
Division: J

**CITY OF BAKERSFIELD'S
OBJECTION AND OPPOSITION TO
KERN COUNTY WATER AGENCY'S
MOTION FOR PEREMPTORY
CHALLENGE [C.C.P. § 170.6]**

Complaint Filed: November 30, 2022

1 Defendant and Respondent City of Bakersfield (“City” or “Bakersfield”) hereby objects to
2 and states its opposition to Real Party in Interest Kern County Water Agency’s (“KCWA”) Motion
3 for Peremptory Challenge [C.C.P. § 170.6] filed Friday, May 30, 2025 (“Motion”).

4 KCWA’s Motion is without merit and is untimely. This Court should summarily reject and
5 deny the Motion. By its express terms, Code of Civil Procedure Section 170.6(a)(2) does not apply
6 to the present situation. Section 170.6(a)(2) states, in part, that a “motion under this paragraph may
7 be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a
8 trial court's final judgment, if the trial judge in the **prior proceeding** is assigned to conduct a new
9 trial on the matter.” (Emphasis added.) The statute further provides: “**The motion shall be made**
10 **within 60 days after the party or the party's attorney has been notified of the assignment.**”
11 (Emphasis added.)

12 In the present case there is and has been only a single proceeding, and no “prior proceeding,”
13 and Judge Puskamp has presided over the entire proceeding since the case was filed in 2022. The
14 case remained active and under the authority and supervision of Judge Puskamp throughout the
15 appeal of the ruling on the motion for preliminary injunction. Judge Puskamp continued to conduct
16 proceedings and to issue rulings during the pendency of the appeal, including by setting a trial date
17 for the matter.

18 Code of Civil Procedure Section 170.6(a)(2) is additionally inapplicable because the case has
19 not been and will not be “assigned” to Judge Puskamp following the appeal, since the case has
20 remained under his authority and supervision throughout the appeal process. The 60-day deadline
21 for filing a motion under Section 170.6(a)(2) was not and will not be triggered by any new
22 assignment, or reassignment, to Judge Puskamp, and thus the statute has no application to the
23 present situation. KCWA essentially concedes this point in the final paragraph of the Motion, as it
24 admits that it appears this Court “lacks jurisdiction” to consider its Motion.

25 The authority KCWA relies on does not establish that Code of Civil Procedure Section
26 170.6(a)(2) applies in the present situation. None of the cases cited by KCWA involve the
27 disqualification of a judge following an interim, interlocutory appeal of a ruling on a motion or
28 preliminary injunction, or where the trial judge retained authority over the case during the appeal.

1 The cases cited by KCWA instead support immediate denial of the Motion. In *Geddes v. Superior*
2 *Court* (2005) 126 Cal.App.4th 417, 423-424, for example, the court held that it was not proper to
3 apply Section 170.6(a)(2) where the court of appeal reversed a grant of summary judgment and
4 remanded the case with directions to the trial judge who had granted the motion, stating that the
5 statute did not apply where a case “is remanded with instructions that require the trial court to
6 complete a judicial task not performed in the prior proceeding.” In our case, the court of appeal
7 issued instructions to Judge Pulskamp following its reversal of his ruling on the motion for
8 preliminary injunction, and Section 170.6(a)(2) therefore has no application to this case.

9 If this Court does not summarily deny the Motion, Bakersfield respectfully requests that this
10 Court set a hearing on the Motion, and permit Bakersfield and other parties a reasonable amount of
11 time to prepare and file more detailed opposition papers, and permit Bakersfield to appear at the
12 hearing to argue in opposition to the Motion.

13 Dated: June 2, 2025

DUANE MORRIS LLP

14
15
16 By:



Colin L. Pearce
Jolie-Anne S. Ansley

Attorneys for Defendant and Respondent
CITY OF BAKERSFIELD

1 **PROOF OF SERVICE**

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

4 I am a citizen of the United States, over the age of 18 years, and not a party to interested in
5 the cause. I am an employee of Duane Morris LLP and my business address is One Market, Spear
6 Tower, Suite 2200, San Francisco, California 94105. I am readily familiar with this firm's practices
for collecting and processing correspondence for mailing with the United States Postal Service and
for transmitting documents by FedEx, fax, email, messenger and other modes. On the date stated
below, I served the following documents:

7 **CITY OF BAKERSFIELD'S OBJECTION AND OPPOSITION TO KERN COUNTY**
8 **WATER AGENCY'S MOTION FOR PEREMPTORY CHALLENGE [C.C.P. § 170.6]**

9 ☒ **BY ELECTRONIC SERVICE:** I caused the documents to be sent to the person(s) at
10 the e-mail addresses listed below. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was
11 unsuccessful.

12 **SEE ATTACHED SERVICE LIST**

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed on June 2, 2025, at San Francisco, California.

15 

16 _____
Blanca A. Herrera

17 DM2\21522357.1

SERVICE LIST (Last Updated 5/14/25)

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