



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

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June 2, 2025

Honorable Chief Justice Patricia Guerrero
and the Associate Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

via e-filing

Re: Bring Back the Kern v. City of Bakersfield
Fifth Appellate District Case No. F087487
Supreme Court Petition for Review Case No. S290840

REQUEST TO DEPUBLISH APPELLATE OPINION

Dear Chief Justice Guerrero and Associate Justices,

Pursuant to California Rules of Court, rule 8.1125, Water Audit California (“Water Audit”) respectfully requests that the Supreme Court order the depublication of the Fifth District Court of Appeal’s opinion in the matter of *Bring Back the Kern et al. v. City of Bakersfield et al.*, F087487, (2025) 110 Cal. App. 5th 322 (“Opinion”).

I. Statement of Interest.

Water Audit is a co-plaintiff in the underlying trial court proceeding and co-respondent in the underlying appellate proceeding and is a California

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public benefit corporation with a mission of advocacy for the public trust. (see Corp. Code, §§ 5060, 5110 et seq.). Water Audit is united with co-plaintiffs/respondents in the goal of restoring flows for fish in the Kern River through the City of Bakersfield.

On May 30, 2025, the Court granted Water Audit's joinder to Bring Back the Kern, et al.'s Petition for Review. (See S.Ct. Case No. S290840, Petition for Review filed May 12, 2025.)

II. Concurrence with Requests for Depublication.

Water Audit concurs with Bring Back the Kern, et. al.'s letter submitted to this Court on June 1, 2025, seeking depublication of the Opinion due to its advisory discussion regarding Code of Civil Procedure section 529 and bonds required in preliminary injunctions.

Water Audit also concurs with the California Department of Justice's and the California Department of Fish and Wildlife's request for depublication of the Opinion to restore stability in the law concerning whether the application of Fish and Game Code, section 5937 would be reasonable under article X, section 2 of the California Constitution. (See. S.Ct. Case No. S290840, Request for Depublication filed May 30, 2025.)

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III. A Court's Authority to Set Nominal Bonds

Code of Civil Procedure, section 995.240 provides that

The court may, in its discretion, waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given, if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties, whether personal or admitted surety insurers. In exercising its discretion the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived.

Many public interest environmental plaintiffs do not have the financial resources to post a bond equivalent to all damages a restrained party might incur during the pendency of an injunction. Thus, pursuant to Code of Civil Procedure, section 995.240, a court may waive or reduce bond requirements for indigent plaintiffs.

Water Audit is an example of a public interest organization where the application of bonds, in excess of a nominal bond, would cause Water Audit California undue economic hardship.

Water Audit is a public benefit B Corporation incorporated under the California Corporation Code. As a B Corporation, all shareholder investment is to be transferred to a 501(c)(3) on dissolution and not returned to the investors. Because of this characteristic, shareholder investment in Water

Audit was the minimum determined necessary to support initial operations. The public interest character of its operations has allowed for profitability to be subordinated to its mission of advocacy to the public trust. Water Audit is itself operated to sustain its mission, not to accomplish economic growth.

Conventional surety bond underwriting for entities such as Water Audit require the posting of the principal amount of the bond and at least the first year's 1-2% bond premium. Water Audit is unable able to sequester significant funds to collateralize a substantial bond without being forced to cease operations, the ultimate of corporate hardships.

IV. Conclusion

The Opinion conflicts with the plain language of the relevant statutes, conflicts with federal case law, and creates instability in California law. Therefore, Water Audit requests that this Court order the Opinion depublished.

Respectfully,

A handwritten signature in blue ink, appearing to read 'WM', with a long horizontal stroke extending to the right.

William McKinnon
General Counsel
Water Audit California

see attached service list

PROOF OF SERVICE

I, Valerie Stephan, am over eighteen years of age and not a party to this action. My business address is 952 School Street #316, Napa, CA 94559.

On June 2, 2025, I caused to be served the following document described as:

WATER AUDIT CALIFORNIA REQUEST TO DEPUBLISH APPELLATE OPINION

on the parties in this action as follows:

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

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Bring Back the Kern

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MORRISON & FOERSTER LLP

On June 2, 2025, I caused to be served the following document described as:

**WATER AUDIT CALIFORNIA REQUEST TO
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By having placed, true and correct copies thereof in a sealed envelope(s) as follows:

FOR COLLECTION VIA U.S. MAIL:

Honorable Gregory Pulskamp Courtesy *Copy*,
Division J
Kern County Superior Court
1215 Truxtun Avenue
Bakersfield, CA 93301

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

Executed this 2nd day of June, 2025, in Lincoln County, Oregon.

By: /s/ Valerie Stephan
Valerie Stephan

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