

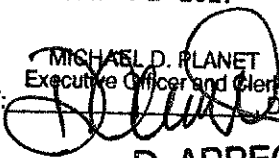
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SCOTT K. KUNEY, ESQ., SBN 111115  
BRETT A. STROUD, ESQ., SBN 301777  
THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP  
1800 30<sup>th</sup> Street, Fourth Floor  
Bakersfield, CA 93301  
Telephone: (661) 327-9661  
Facsimile: (661) 327-0720  
Email: [skuney@youngwooldridge.com](mailto:skuney@youngwooldridge.com)  
[bstroud@youngwooldridge.com](mailto:bstroud@youngwooldridge.com)

Attorneys for Plaintiff and Cross-Defendant  
NORTH KERN WATER STORAGE DISTRICT

VENTURA  
SUPERIOR COURT  
FILED

MAY 21 2021

BY:   
MICHAEL D. PLANET  
Executive Officer and Clerk Deputy  
D. ARREOLA

EXEMPT FROM FILING  
FEE [GOV. CODE §6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

NORTH KERN WATER STORAGE  
DISTRICT, a California Water Storage District,

Plaintiff,

vs.

CITY OF BAKERSFIELD, a charter city and  
municipal corporation, and DOES 1-100,

Defendants.

CITY OF BAKERSFIELD, a charter city and  
municipal corporation,

Defendant/Cross-Complainant,

vs.

NORTH KERN WATER STORAGE  
DISTRICT, a California Water Storage District,  
and DOES 1-50,

Plaintiff/Cross-Defendants.

Case No. 56-2011-00408712-CU-CO-VTA  
*Assigned to Hon. Kevin G. DeNoce*

~~RECEIVED~~ ORDER FOLLOWING  
HEARING/COURT TRIAL

Complaint Filed: October 21, 2011  
Judgment Entered: December 1, 2014

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Having considered all the written briefs, argument of counsel, and evidence submitted during the joint hearing and contempt trial, and good cause otherwise appearing therefor, as stated in the Final Statement of Decision dated May 12, 2021 attached hereto and incorporated herein as Exhibit "A", the Court rules in favor of North Kern as follows,

**A. Motion for Enforcement of Judgment and to Obtain Relief from City of Bakersfield's Violations of the Judgment.**

1. The motion is granted;
2. The City shall, upon issuance of this Order, deliver by instantaneous transfer of title 20,000 acre-feet (Net Total Delivery) of City's nonutility Kern River water in storage in Lake Isabella to North Kern's storage in Lake Isabella;
3. The City is enjoined from diverting or using any water subject to constructive trust until the City first makes an accounting to North Kern and the Court confirming its compliance with this Order.

**B. Motion for Monetary Relief from City of Bakersfield's Violations of the Judgment.**

1. The motion is granted;
2. The City shall, upon issuance of this Order, deliver payment to North Kern of \$624,000.00 as the remaining accounting balance of the additional costs of pumping.

Date: 5/20/21

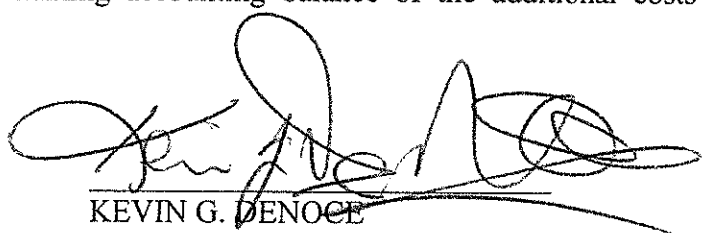
  
KEVIN G. DENOCE  
Judge of the Superior Court

Exhibit A

MAY 12 2021

BY: MICHAEL D. PLANET  
Executive Officer and Clerk  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA

NORTH KERN WATER STORAGE  
DISTRICT, a California Water Storage District,  
  
Plaintiff,

vs.

CITY OF BAKERSFIELD, a charter city and  
municipal corporation, and DOES 1-100,  
  
Defendants.

CITY OF BAKERSFIELD, a charter city and  
municipal corporation,  
  
Defendant/Cross-Complainant,

vs.

NORTH KERN WATER STORAGE  
DISTRICT, a California Water Storage District,  
and DOES 1-50,  
  
Plaintiff/Cross-Defendants.

Case No. 56-2011-00408712-CU-CO-VTA  
*Hon. Kevin G. DeNoce*

**COURT'S FINAL STATEMENT OF  
DECISION FOLLOWING  
HEARING/COURT TRIAL (Cal.  
Rules of Court, Rule 3.1590.)**

**THE COURT HEREBY ISSUES ITS FINAL STATEMENT OF DECISION  
FOLLOWING A HEARING AND COURT TRIAL (Cal. Rules of Court, Rule 3.1590.)**

Pursuant to *California Rules of Court, Rule 3.1590*, the Court hereby issues its Final Statement of Decision in the above-entitled matter following a hearing and court trial. The court previously issued its Tentative & Proposed Statement of Decision and the time period for filing

objections to the court's Tentative and Proposed Statement of Decision has passed. (CRC 3.1590(g).) The City of Bakersfield (hereinafter "City") submitted objections and a motion to strike portions of the court's Tentative and Proposed Statement of Decision. North Kern submitted timely Proposed Revisions to the court's Tentative and Proposed Statement of Decision along with a proposed Judgement. In this Final Statement of Decision, the court has slightly modified its Tentative and Proposed Statement of Decision based on the suggested revisions submitted by North Kern.

**THE CITY OF BAKERSFIELD'S OBJECTIONS & MOTION TO STRIKE  
PORTIONS OF THE COURT'S TENTATIVE AND  
PROPOSED STATEMENT OF DECISION**

The City argues that the court's Tentative and Proposed Statement of Decision fails to comply with *Civil Code of Procedure* section 632 in that it does not adequately set forth the factual or legal basis for the court's contemplated decision. The court notes that the City was acquitted of the contempt allegation and the two remaining matters ruled on by the court were law and motion matters which do not require a Statement of Decision. A Statement of Decision, is not required when a court rules on a motion "even if the motion involves an extensive evidentiary hearing [citations]." (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 294, 123 Cal. Rptr. 3d 260, fn. Omitted; (*Lien v. Lucky United Properties Investment, Inc.* (2008) 163 Cal.App.4th 620, 623-624, 77 Cal. Rptr. 3d 707; see also *Gruendl v. Oewel Parntership, Inc.* (1997) 55 Cal.App.4th 654, 600.) Given the significance of the issues addressed in the law and motion matters, the court elected to set forth its reasons. The court provided more detail than it was required to provide in its Tentative and Proposed Statement of Decision.

The City argues that the court merely set forth improper conclusions and failed to cite specific testimony or evidence in its Tentative and Proposed Statement of Decision. The City misstates the requirements of a Statement of Decision. "The court is required only to state the ultimate rather than evidentiary facts. [Citations.] The statement of decision 'need do no more



than state the grounds upon which the judgment rests, without necessarily specifying the particular evidence considered by the trial court in reaching its decision.' [Citation]." (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1318-19.) "A statement of decision need not address all the legal and factual issues raised by the parties. Instead, it need do no more than state the grounds upon which the judgment rests, without necessarily specifying the particular evidence considered by the trial court in reaching its decision." (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125.) A statement of decision need not address how the court "resolved intermediate evidentiary conflicts, or respond point by point to the various issues posed in appellant's request for a statement of decision." (*Id.* at. p. 1126.) "[A] statement of decision is adequate if it fairly discloses the determinations as to the ultimate facts and material issues in the case. [Citation.] When this rule is applied, the term 'ultimate fact' generally refers to a core fact, such as an essential element of a claim. [Citation.] Ultimate facts are distinguished from evidentiary facts and from legal conclusions." (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513, 75 Cal. Rptr. 3d 771.)

The City argues that North Kern's failure to prevail on the contempt charge precludes North Kern from prevailing on the two law and motion matters. In making this argument, the City fails to acknowledge that a contempt proceeding is subject to different rules and a higher burden of proof than generic law and motion matters. Notably, the beyond-a-reasonable-doubt proof standard applies in contempt proceedings unlike civil law and motion matters. (*In re Witherspoon* (1984) 162 Cal.App.3d 1000, 1001-1002; *Farace v. Superior Court* (1983) 148 Cal.App.3d 915, 917-918, 196 Cal.Rptr. 297; *In re Martin* (1977) 71 Cal.App.3d 472, 480; § 1218.) There is no inconsistency in the court acquitting the City of the contempt charge while finding sufficient grounds and evidence to rule in favor of North Kern on the law and motion matters which were litigated concurrently.

The City argues that there is no authority for the court to impose a constructive in this case. A constructive trust may be imposed to correct a misappropriation of property by fraud, undue influence, a violation of a fiduciary duty, or other wrongful act. (*Civ. Code*, § 2224; *Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg* (1989) 216 Cal.App.3d 1139, 1154,

265 Cal. Rptr. 330.) "The purpose of the constructive trust remedy is to prevent unjust enrichment and to prevent a person from taking advantage of his own wrong . . . ." (*Heckmann v. Ahmanson* (1985) 168 Cal.App.3d 119, 135, 214 Cal. Rptr. 177.) A constructive trust may be imposed when three conditions are met: the existence of a res, the plaintiff's right to the res, and the defendant's acquisition of the res by some wrongful act. (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 920, 34 Cal. Rptr. 3d 68; *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 990, 41 Cal. Rptr. 2d 618.)

In this case, the res that is the subject of the constructive trust is the 2020 Extension Quantity water which North Kern had the right to purchase under the Agreement. The City of Bakersfield wrongfully acquired and retained possession of this water while refusing to deliver and sell the water to North Kern in compliance with the Judgment. By wrongfully denying the Extension Quantity to North Kern, Bakersfield became a constructive trustee of the Extension Quantity for the benefit of North Kern. "The trust is passive, the only duty being to convey the property." (*Burger v. Superior Court* (1984) 151 Cal.App.3d 1013, 1018.) Any water retained in Bakersfield's Lake Isabella storage account is presumptively water held in constructive trust for North Kern, even if other water is stored in that account. Trust assets that are commingled with other assets remain subject to the trust. (*Gunter v. Janes* (1858) 9 Cal. 643, 659.)

In many of its remaining objections, the City merely reargues the merits. Objections should not be used to reargue the merits. (*Golden Eagle Ins. Co. v. Foremost Ins. Co.*, 20 Cal.App.4th 1372, 1380 (1993); *Yield Dynamics, Inc. v. TEA Sys. Corp.*, 154 Cal.App.4th 547, 560 (2007); *Heaps v. Heaps*, 124 Cal.App.4th 286, 292 (2004) ["The main purpose of an objection to a proposed statement of decision is not to reargue the merits, but to bring to the court's attention inconsistencies between the court's ruling and the document that is supposed to embody and explain that ruling."].)

The City has moved to strike paragraphs 53 – 63 of the court's Tentative and Proposed Statement of Decision. For the reasons stated above and elsewhere in this decision, the court denies the City's Motion to Strike.

The City raises new issues which are inconsequential to the court's decision. The court, not the parties, decides what the principal controverted issues are. (*Vukovich v. Radulovich* (1991) 235 CA3d 281, 295.) "[I]t is settled that the trial court need not, in a statement of decision, 'address all the legal and factual issues raised by the parties.' [Citation.] It 'is required only to set out ultimate findings rather than evidentiary ones.'" (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 81-82, citations omitted.) "Thus, a court is not expected to make findings with regard to 'detailed evidentiary facts or to make minute findings as to individual items of evidence.'" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983, citation omitted.) The trial court "is not required to respond point by point to the issues posed in a request for statement of decision. The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case." (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379-1380.)

## BACKGROUND

The court has considered all briefs and evidence submitted during a joint hearing and contempt trial regarding three matters: (1) the alleged contempt by the City of Bakersfield for violating the judgment in this case, (2) North Kern's motion to enforce the judgment in this case, and (3) North Kern's motion for monetary relief based on the City's alleged violation of the judgment in this case.

### A. The Agreement Between North Kern & City of Bakersfield.

1. In 1976, the City of Bakersfield and North Kern entered into Agreement 76-89 ("Agreement"), which requires that the City of Bakersfield sell and deliver to North Kern 20,000 acre-feet per year of Kern River water. (Agreement, §3.1(b).)

2. The Agreement had a "Basic Term" of 35 years, immediately after which commenced the "Extension Term," which is on a "year-to-year basis." (Agreement, §§1.2(b), 1.2(j), 3.3(b).)



3. During the Extension Term, the City of Bakersfield is required to continue to deliver and sell the same quantity (20,000 acre-feet) to North Kern each year unless it first shows “a need to and the implementation of a project to divert all or any portion” of that water and also shows North Kern that “all other water available to City” was “first applied to City for its requirements.” (Agreement, §§3.3(b), §6.2.)

4. The Judgment and Agreement are clear that North Kern has a first priority right to the City of Bakersfield’s Kern River water subject only to pre-1976 obligations listed in the Agreement and Bakersfield’s showing a “need to and a project to divert” water from the Kern River. (Judgment, Exh. A, pp. 8, 15, 25, emphasis added.)

5. That first priority right was negotiated as part of the Agreement in recognition of North Kern’s status as a “historical diverter[] and user[]” of Kern River water. (Agreement, p. 3.)

6. Prior to the City of Bakersfield’s acquisition of Kern River water rights, North Kern regularly acquired available supply from the City of Bakersfield’s predecessor in interest, and Bakersfield thus named North Kern in its 1970 eminent domain and quiet title actions to acquire water rights, which were both dismissed without North Kern having to answer. (Agreement, p. 4; Judgment, Exh. A, p. 4.)

7. The Agreement guaranteed North Kern a first priority right “to the City’s nonutility Kern River water after the City meets the pre-existing obligations it assumed upon its purchase from Tenneco.” (*Id.*, p. 8.)

**B. Original Trial, Judgment, and Appellate Affirmation.**

8. Prior to the end of the Basic Term, the City of Bakersfield took the position that it could unilaterally terminate the Agreement, because it declared it had a “need” for all of its water in perpetuity. (Judgment, Exh. A., p. 15.)

9. North Kern brought an action for declaratory relief, specific performance, and injunctive relief to enforce the Agreement during the Extension Term. (Judgment, Exh. A., p. 2.)

10. North Kern prevailed at trial in 2014, and this Court entered its final judgment. (“Judgment”.)

11. At the original trial, North Kern established that it would be irreparably harmed if the City of Bakersfield failed to perform its obligations under Agreement 76-89, and consequently the Court issued a permanent injunction and decree of specific performance. The City of Bakersfield appealed the Judgment, which was affirmed in its entirety in 2016 by the Court of Appeal.

12. The Court of Appeal, in its decision affirming the Judgment (“Appellate Decision”), specifically upheld “the trial court’s interpretation of the Agreement,” which it stated “is reasonable and supported by both the language of the Agreement and the extrinsic evidence introduced at trial.” (Appellate Decision, p. 7.) This court takes judicial notice of the original judgment issued in this case and the Court of Appeal’s decision in this case, and incorporates them by reference in this Statement of Decision as if fully set forth herein.

13. Under the Judgment, the City of Bakersfield is required to “perform the terms and provisions of Agreement 76-89 consistent with the Final Statement of Decision” and further it is “permanently enjoined from taking any action inconsistent with” the Agreement and Final Statement of Decision. (Judgment, ¶¶4-5.)

14. Further, the Judgment provides that “this Court retains jurisdiction for the purpose of a party returning to the Court to obtain relief from violations of the Judgment” which the Court of Appeal affirmed so that this Court could “enforce its declaratory judgment and orders of specific performance and permanent injunction.” (Judgment, ¶12, Appellate Decision, p. 16.)

### **C. 2016 Enforcement Proceedings.**

15. On June 10, 2016, the City of Bakersfield filed a Motion to Interpret and Enforce Judgment, seeking an order determining that the City of Bakersfield was “not obligated to sell any ‘Extension Quantity’ water to North Kern in 2016” and further that Bakersfield had “sufficiently ‘shown’ a need for all of its available water supplies in 2016, and ... otherwise complied with the Agreement.” (Motion to Interpret and Enforce Judgment, 6/10/2016.)

16. On July 5, 2016, North Kern filed a motion to enforce the Judgment.

17. On August 18, 2016, this Court issued minute orders denying the City of Bakersfield's motion and granting North Kern's motion. The Court denied the City of Bakersfield's motion because "the Court did not retain jurisdiction to 'interpret' the judgment and in any event the court disagrees with the City's requested interpretation." The Court granted North Kern's motion because it found that the City of Bakersfield's actions "violated the Final Judgment ... by denying North Kern its right to delivery and purchase from City of its 2016 Extension Quantity supply equal to 20,000 acre-feet of Kern River water" and ordered Bakersfield to "deliver by instantaneous transfer of title 20,000 acre-feet of Kern River water in storage in Lake Isabella to North Kern's storage in Lake Isabella within 10 weekdays following notice of entry of Court order."

**D. 2020 Enforcement Proceedings.**

18. On January 22, 2020, North Kern's General Manager, Richard Diamond, sent a letter to Bakersfield's Water Resources Manager, Arthur Chianello requesting that the City of Bakersfield provide the "Scheduling Information" as required by the Agreement.

19. After an exchange of letters and emails in which the City of Bakersfield failed to provide the information requested by North Kern, and after the City of Bakersfield denied North Kern the delivery of any Extension Quantity water, North Kern filed three motions to obtain relief from the City of Bakersfield's alleged violations of the Judgment: 1.) "Motion for Enforcement of Judgment and to Obtain Relief from City of Bakersfield's Violations of the Judgment" ("Enforcement Motion"), 2.) "Motion for Monetary Relief from City of Bakersfield's Violations of the Judgment" ("Monetary Relief Motion"), and 3.) a Motion for an Order to Show Cause re: Contempt.

20. On September 11, 2020, the Court issued an Order to Show Cause re: Contempt, setting a combined hearing and trial for October 27, 2020 to constitute both the trial in the Contempt Proceeding and a hearing on the Motions.

21. The Trial was held on October 27-30, November 9, and November 24.

22. After Trial, the parties briefed, at the Court's request, certain evidentiary objections made by North Kern at trial. On January 7, 2021, the Court issued a written ruling on those objections.

23. Art Chianello, the City of Bakersfield's Water Resources Manager, has knowledge of the terms of the Judgment, the Appellate Decision, and the 2016 Orders, and that knowledge is imputed to the City of Bakersfield.

24. The City of Bakersfield has imputed knowledge of the Judgment, the Appellate Decision, and the 2016 Orders, because those orders were all served, shortly after they were issued, on Bakersfield's counsel of record.

**E. Failure to Provide Scheduling Information.**

25. In the year 2020, the City of Bakersfield never provided North Kern with the Scheduling Information required by the Agreement and Judgment.

26. The City of Bakersfield failed to provide an anticipated monthly delivery schedule of all its diversions and deliveries of Kern River water in February, March, April, and May of 2020 as required by the Agreement and Judgment.

27. The City of Bakersfield failed to provide the quantity of City water in storage in Lake Isabella on the first day of each month in February, March, April, and May of 2020 as required by the Agreement and Judgment.

28. The Kern River records entitled "Kern River Operations," "Flow and Diversion Record," "To-Date Monthly Report," and "Annual Report" do not constitute the required scheduling information, because they report only past operations and do not provide an anticipated monthly delivery schedule of all the City of Bakersfield's deliveries or diversions.

**F. Failure to Make the Required Showing Before Denying Extension Quantity Water.**

29. The City of Bakersfield did not make the "showing" required by the Agreement, Judgment, and Appellate Decision necessary to modify or terminate its obligation to

deliver and sell 20,000 acre-feet of nonutility Kern River water to North Kern in 2020.

30. The City of Bakersfield violated the Judgment by denying North Kern its first priority right to the delivery and purchase of Extension Quantity water without first making the “showing” required by the Agreement as determined by the Judgment and affirmed by the Appellate Decision.

31. The City of Bakersfield denied water to North Kern by not providing a delivery schedule by February 15, 2020, and in the months thereafter, that provided for delivery to North Kern in accordance with the priorities set forth in the Agreement and Judgment.

32. Bakersfield also denied water to North Kern by not commencing delivery in March 2020, and the months thereafter, in accordance with North Kern’s delivery schedule without presenting another delivery schedule consistent with the priorities set forth in the Agreement and Judgment.

33. The City of Bakersfield’s Kern River operations are prepared and approved on a daily basis, as reflected in Bakersfield’s daily Kern River Operations records, and each daily record reflects the City of Bakersfield’s “plan” to manage its Kern River water that day. Because the City of Bakersfield failed to first make the required showing, every daily plan that did not include delivery of water to North Kern under the Agreement and Judgment was a willful violation of the Judgment.

**G. Failure to Show a Project to Divert Water Recharged in the Kern River Channel.**

34. Between January 1, 2020, and July 15, 2020, the City of Bakersfield caused 27,526 acre-feet of its Kern River water to remain in the river channel, which was not diverted from the Kern River for use and was instead credited to Bakersfield as part of its banked groundwater supply. (Exhibits 17-19, 21.)

35. The City of Bakersfield’s channel losses are not diverted from the Kern River for a use, but instead are recorded as water recharged within the Kern River channel on behalf of the City of Bakersfield for a future use.

36. The City of Bakersfield failed to prove that, prior to denying the delivery and sale of Extension Quantity water to North Kern, it showed a “project to divert” water from the Kern River with regard to water recharged within the Kern River channel.

**H. Failure to Show a Need Within the Meaning of the Agreement for Water Diverted into the 2800 Acres Banking Facility.**

37. Between January 1, 2020 and August 31, 2020, the City of Bakersfield’s records indicate it diverted 13,241 acre-feet of its Kern River water into the 2800 Acre Banking Facility. (Exhibit 25.)

38. The City of Bakersfield failed to make the required showing of “need” within the meaning of the Agreement and Judgment with regard to the 27,526 acre-feet credited to it as recharge in the Kern River channel or with regard to the 13,241 acre-feet diverted into the 2800 Acre Recharge Facility.

39. Art Chianello’s statement that water was “needed to offset domestic groundwater demand” was insufficient to show a need within the meaning of the Agreement and Judgment, because his statement was unsupported by evidence and because he failed to show North Kern that it was a need that did not exist in 1976.

40. The City of Bakersfield failed to prove that, prior to denying the delivery and sale of Extension Quantity water to North Kern, it showed a need within the meaning of the Agreement and Judgment for any of its nonutility Kern River water.

**I. Failure to Show All Other Water Was First Applied to Its Needs.**

41. The City of Bakersfield failed to show before it denied North Kern Extension Quantity water that all other water available to it was first applied to its needs as required by the Agreement and Judgment.

42. The City of Bakersfield’s communications to North Kern did not demonstrate how much groundwater was available to it and then show North Kern that all such water was first applied to its needs, as required by the Agreement and Judgment.



43. The City of Bakersfield's communications to North Kern did not demonstrate how much banked water was available to it and then show North Kern that all such water was first applied to its needs, as required by the Agreement and Judgment.

44. The City of Bakersfield failed to show that all Bakersfield's banked water supply had been depleted or that any of this water was first used to meet Bakersfield's needs as defined by the Agreement and Judgment. As one illustration, according to Bakersfield records, in the last four years alone (2017-2020), it banked more than 151,518 acre-feet of Kern River water in the 2800 Acre Banking Facility. (Exhibits 23-25.)

**City of Bakersfield's Ability to Comply.**

**J. Ability to Provide Scheduling Information.**

45. The City of Bakersfield keeps record of its balance of storage in Lake Isabella on a daily basis and on any given day the City of Bakersfield is capable of reporting its storage balance. Therefore, it was able to provide the quantity of storage on the first of the months of March-May as required by the Agreement and Judgment.

46. The City of Bakersfield was able to provide an anticipated monthly delivery schedule of its deliveries or diversions as required by the Agreement and Judgment, because it was aware of its prior agreements and obligations listed in the Agreement, its available Kern River supply, its daily Kern River Operations plans, and also North Kern's first priority right as stated in the Agreement and Judgment.

47. The City of Bakersfield failed to prove that it was at any time unable to provide the required Scheduling Information to North Kern.

**K. Ability to Deliver and Sell 20,000 Acre-Feet of Extension Quantity Water.**

48. North Kern had a first priority right, under the Agreement and Judgment, to all of the City of Bakersfield's nonutility Kern River water other than water legally required to meet pre-1976 agreements and obligations, which according to Bakersfield did not exceed 12,750 acre-feet in 2020. (Exhibit 12, Exh. A.)

49. From January 2020 through August 2020, the City of Bakersfield diverted a total of 78,884 acre-feet of nonutility Kern River water. At the end of that period, it had an additional 3,810 acre-feet of nonutility Kern River water in storage in Lake Isabella, for a total supply of 82,694 acre-feet available from January to August. (Exhibit 25.)

50. North Kern had a first priority right to at least 69,944 acre-feet not legally required to meet pre-1976 obligations (82,694 minus 12,750) for purchase of its 20,000 acre-feet of Extension Quantity water. The City of Bakersfield was able to deliver and sell any of that water to North Kern.

51. The City of Bakersfield failed to prove that it made the showing required by the Agreement and Judgment with regard to any of that 69,944 acre-feet of nonutility Kern River water.

52. The City of Bakersfield failed to prove that it was unable to deliver and sell the full 20,000 acre-feet of Extension Quantity water to North Kern in 2020.

#### **Facts Relevant to Motions.**

##### **L. Enforcement Motion.**

53. Under the Agreement and Judgment, the City of Bakersfield was required to deliver by instantaneous transfer of title 20,000 acre-feet (Net Total Delivery) of Bakersfield's nonutility Kern River water to North Kern's storage in Lake Isabella, but the City of Bakersfield wrongfully denied and detained that water in violation of the Agreement and Judgment.

54. The City of Bakersfield carried over 5,844 acre-feet of water in storage in Lake Isabella at the end of 2020 into the current year, 2021. (Judicial Notice, December 2020 To-Date Monthly Report.) North Kern had a first priority right to that 2020 water supply under the Agreement and Judgment. That water is subject to a constructive trust in favor of North Kern.

55. The City of Bakersfield's Kern River records established that it routinely acquires title and right to storage of Kern River water in varying amounts throughout the months of the year. All water that subsequently accrues to the City of Bakersfield in storage in Lake

Isabella is subject to a constructive trust in favor of North Kern.

56. Because the City of Bakersfield failed to make the required showing as to the 27,526 acre-feet of water not diverted from the Kern River for use but credited to the City of Bakersfield as part of its banked water supply, that banked water supply is subject to a constructive trust in favor of North Kern.

57. Because the City of Bakersfield failed to make the required showing as to the 13,241 acre-feet of water diverted into the 2800 Acres Recharge Facility, the water stored through that facility is subject to a constructive trust in favor of North Kern.

**M. Monetary Relief Motion.**

58. As a direct result of the City of Bakersfield's violations of the Agreement and Judgment, North Kern incurred losses including \$2,804,000.00 in additional expenses to pump North Kern's own groundwater supply to replace the Extension Quantity supply not timely delivered and sold. This amount was calculated by multiplying the additional amounts pumped by the average energy cost for North Kern's pumping at the time and adding a proportional share of the operations and maintenance expenses budgeted by North Kern to operate its wells. (Exhibit 29.)

59. These additional costs would not have been incurred by North Kern if the City of Bakersfield had timely delivered the Extension Quantity as required under the Agreement and Judgment.

60. These additional costs were reasonably incurred by North Kern, and it would have been unreasonable for North Kern to deplete its entire storage in Lake Isabella rather than pump groundwater to replace the Extension Quantity water it was entitled to.

61. The City of Bakersfield failed to prove that any of these costs incurred were unreasonable or that it would have been reasonable for North Kern to deplete its entire storage in Lake Isabella.

62. North Kern is also obliged under the Agreement to pay the City of Bakersfield the 2020 Extension Price of \$109 per acre-foot for a total of \$2,180,000.00, which was

calculated by Ram Venkatesan consistent with the methodology directed in the Agreement (Exhibit A) and the Judgment—the same methodology used by him and his predecessor to calculate the Extension Price since the Extension Term began and as ordered by this Court. (Exhibit 28A.)

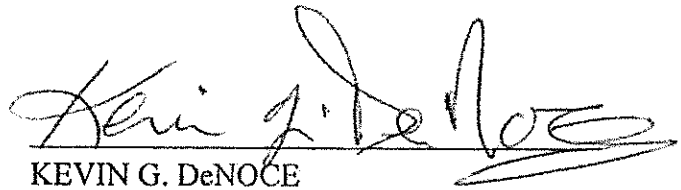
63. Because the additional costs of pumping incurred and owed to North Kern by the City of Bakersfield is greater than the purchase price that North Kern owes the City of Bakersfield according to the 2020 Extension Price required by the Agreement, the Court has separately accounted for and offset these two amounts and has determined that the Extension Price is deemed fully paid upon the City of Bakersfield's delivery of the 20,000 acre-feet of 2020 Extension Quantity supply to North Kern and that Bakersfield is required to pay North Kern only the remaining balance of \$624,000.00.

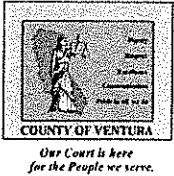
#### **N. Contempt Findings and Verdict.**

64. Civil contempt proceedings under *Code of Civil Procedure* sections 1209 through 1222 may arise out of either civil or criminal litigation. (*In re Koehler* (2010) 181 Cal.App.4th 1153, 1159.) A civil contempt proceeding is viewed as criminal in nature because of the potential penalties. (*CCP* § 1218, subd. (a); *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913; *Rickley v. Goodfriend* (2012) 207 Cal.App.4th 1528, 1537.) The elements of contempt include (1) a valid order, (2) knowledge of the order, (3) ability to comply with the order, and (4) willful failure to comply with the order. (*Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240, 1245; *In re Cassil* (1995) 37 Cal.App.4th 1081.) "The willful refusal to obey a valid court order is an act of contempt." (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1014; *CCP* § 1209, subd. (a)(5); *Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1548.) A contempt finding must be based on the violation of an order that was clear, specific, and unequivocal. (See, *Inland Counties Regional Center, Inc. v. Superior Court* (2017) 10 Cal.App.5th 820, 827; *Marcus, supra*, 138 Cal.App.4th at pp. 1014-1015.) "Any ambiguity in a decree or order must be resolved in favor of an alleged contemnor." (*In re Marcus, supra*, 138 Cal.App.4th at pp. 1014-1015; *Moss v. Superior Court* (1998) 17 Cal.4th 396, 428; *Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1548-1549.)

65. Notably, the beyond-a-reasonable-doubt proof standard applies in contempt proceedings. (*In re Witherspoon* (1984) 162 Cal.App.3d 1000, 1001-1002; *Farace v. Superior Court* (1983) 148 Cal.App.3d 915, 917-918, 196 Cal.Rptr. 297; *In re Martin* (1977) 71 Cal.App.3d 472, 480; § 1218.) With respect to the four previously mentioned elements of contempt, the court finds, beyond-a-reasonable-doubt, that (1) the order and judgement upon which the alleged contempt is based is a clear, specific, and unequivocal valid order and judgement, (2) the City of Bakersfield and its agents had knowledge of the order and judgment; and (3) the City of Bakersfield and its agents had the ability to comply with the order. However, the court is not persuaded beyond-a-reasonable-doubt, that the City of Bakersfield willfully failed to comply with the order and judgment in this case. Therefore, the court finds the City of Bakersfield not guilty of contempt.

Dated: May 21, 2021

  
KEVIN G. DeNOCE  
Judge of the Superior Court



SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

**PROOF OF SERVICE**  
CCP § 1012, 1013a (1), (3) & (4)

**Case Number: 56-2011-00408712-CU-CO-VTA**

**Case Name: North Kern Water Storage v.  
City of Bakersfield, et al.**

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

**ORDER FOLLOWING HEARING/COURT TRIAL**

On the following named party(ies)

Scott K. Kuney  
Brett A. Stroud  
THE LAW OFFICES OF  
YOUNG WOOLDRIDGE, LLP  
1800 30<sup>th</sup> Street, 4<sup>th</sup> Floor  
Bakersfield, CA 93301  
*Attorneys for Plaintiff and Cross-Defendant*

Colin L. Pearce  
Jolie-Anne S. Ansley  
DUANE MORRIS, LLP  
One Market, Spear Tower, Ste. 2200  
San Francisco, CA 94105

Virginia A. Gennaro  
CITY ATTORNEY'S OFFICE  
CITY OF BAKERSFIELD  
1600 Truxton Ave, 4<sup>th</sup> Floor  
Bakersfield, CA 93301  
*Attorneys for Defendant and Cross-Complainant*

       **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

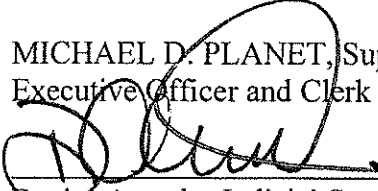
  X   **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

       **BY FACSIMILE:** I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above at \_\_\_\_\_ a.m./p.m. from telephone number **(805) 477-5892**.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on May 21, 2021, at Ventura, California.

MICHAEL D. PLANET, Superior Court,  
Executive Officer and Clerk

By:

  
Denise Arreola, Judicial Secretary