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7
 8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SHASTA

10 Case No.

11 FRIENDS OF THE RIVER;
 12 GOLDEN GATE SALMON ASSOCIATION;
 13 PACIFIC COAST FEDERATION OF
 FISHERMEN'S ASSOCIATIONS;
 14 INSTITUTE FOR FISHERIES RESOURCES;
 SIERRA CLUB;
 15 DEFENDERS OF WILDLIFE; and
 NATURAL RESOURCES DEFENSE COUNCIL,

16 Plaintiffs and Petitioners,

17 v.

18 WESTLANDS WATER DISTRICT; and
 DOES 1-20,

19 Defendants and Respondents.

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**COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF AND VERIFIED
 PETITION FOR WRIT OF MANDATE**

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1 **INTRODUCTION**

2 1. This case challenges Westlands Water District’s (“Westlands”) unlawful assistance
3 and cooperation with the U.S. Bureau of Reclamation’s (“Reclamation”) plan to raise Shasta Dam
4 and enlarge Shasta Reservoir—a project that would flood the protected, free-flowing McCloud
5 River, destroy Native American cultural sites, and harm protected and imperiled species, in the
6 interest of delivering more water from Shasta County to California’s Central Valley.

7 2. The McCloud River is home to a thriving wild trout fishery and many sacred sites of
8 the Winnemem Wintu Tribe. Extending from its headwaters in Siskiyou County to its terminus in the
9 Shasta Reservoir, the McCloud River is prized by fishermen, boaters, naturalists, the Tribe, and
10 other members of the public. In light of the McCloud River’s important public values, the California
11 Legislature amended the California Wild and Scenic Rivers Act in 1989 to protect the river from
12 destructive projects such as the raising of Shasta Dam.

13 3. The California Wild and Scenic Rivers Act prohibits agencies of the State of
14 California from assisting or cooperating with the planning or construction of any dam or reservoir
15 that could have an adverse effect on the McCloud River’s free-flowing condition or its wild trout
16 fishery.

17 4. Consistent with this prohibition, for many decades and as recently as January 2019,
18 many California agencies have declined to support proposals to raise Shasta Dam.

19 5. Reclamation, a bureau of the U.S. Department of the Interior, most recently analyzed
20 the proposed raising of Shasta Dam in 2014 and found that raising the dam by 18.5 feet could have
21 an adverse effect on the free-flowing condition of the McCloud River and on its wild trout fishery, in
22 contravention of the California Wild and Scenic Rivers Act. Reclamation did not proceed with the
23 proposed dam raise.

24 6. Now, under a new federal administration, Reclamation has revived the Shasta Dam
25 raise project and expects to begin construction by December 2019. Before Reclamation can proceed
26 with the project, which will cost over \$1.4 billion, applicable federal law requires it to secure one or
27 more local cost-share partners. Westlands is taking actions to become such a cost-share partner.

28

1 dam raise will harm aquatic and terrestrial biota, damage the land around the reservoir
2 and the banks of the McCloud River, and harm the river’s free-flowing nature and
3 opportunities for river-based recreation. All of these negative impacts harm the ability
4 of FOR members to enjoy, study, and recreate in the affected areas.

- 5 b. The dam raise and Westlands’ current actions in support of the dam raise also
6 threaten FOR’s interest in maintaining rivers protected by the California Wild and
7 Scenic Rivers Act including the McCloud River.
- 8 c. FOR has been closely following Westlands’ support of the proposed dam raise and
9 registering its objections to Westlands’ actions. On December 12, 2018, FOR’s Policy
10 Director attended Westlands’ meeting in Redding, California and commented
11 publicly that the dam raise violated state law. On January 14, 2019, FOR submitted
12 written comments on Westlands’ Initial Study and Notice of Preparation of a Draft
13 Environmental Impact Report. In those comments, FOR explained the harms to the
14 interests of FOR members and the public. FOR also emphasized that Westlands’
15 cooperation with planning for the dam raise violated state law.

16 13. Plaintiff GOLDEN GATE SALMON ASSOCIATION (“GGSA”) is a coalition of
17 salmon advocate—including commercial and recreational fishermen, businesses, restaurants, a tribe,
18 and environmentalists—that rely on salmon, from Oregon to California’s Central Coast, through the
19 San Francisco Bay-Delta and into the Central Valley. GGSA seeks to protect and restore California’s
20 largest salmon-producing habitat in the Central Valley for the benefit of the Bay-Delta ecosystem
21 and the diverse communities that rely on salmon as a long-term, sustainable commercial,
22 recreational, and cultural resource. GGSA currently has over 400 active members and an estimated
23 4,000 to 5,000 members in the affiliated groups that it represents. GGSA works to protect and
24 restore the Sacramento River, including the upper part of the river below Shasta Dam.

- 25 a. Among GGSA’s members are fishing guides and anglers who primarily fish the upper
26 Sacramento River including the reach of the river below Shasta Dam. The interests of
27 GGSA and its members are harmed by the proposed dam raise and by Westlands’
28 assistance of the proposed dam raise because the dam raise will further damage the

1 river downstream of the dam by limiting the water flows needed to create salmon
2 habitat and enable salmon migration.

3 b. These dam raise impacts further harm the already-imperiled salmon populations on
4 the Sacramento River and impede GGSA members' ability to fish for salmon. GGSA
5 has been closely following Westlands' support of the proposed dam raise and
6 registering its objections to Westlands' actions.

7 c. On December 12, 2018, GGSA's president attended Westlands' meeting in Redding,
8 California and commented publicly that the dam raise was illegal and would
9 adversely impact salmon. On January 14, 2019, GGSA submitted written comments
10 on Westlands' Initial Study and Notice of Preparation of a Draft Environmental Impact
11 Report. In those comments GGSA listed the salmon species that would be harmed by
12 the dam raise as well as other adverse impacts from the dam raise that would harm the
13 interests of GGSA and its members.

14 14. Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS
15 ("PCFFA") is the largest trade organization of commercial fishing men and women on the West
16 Coast. PCFFA is a federation of port associations and marketing associations in California, Oregon,
17 and Washington. PCFFA's Southwest Regional Office is located in San Francisco, California.
18 Collectively, PCFFA's members represent more than 750 commercial fishing families, most of
19 whom are small and mid-sized commercial fishing boat owners and operators. Many of PCFFA's
20 members derive all or part of their income from the harvesting of salmonids, a valuable business
21 enterprise for the West Coast and California economies. The decline of California's salmon species
22 has severely impacted PCFFA members in California by limiting commercial harvest opportunities,
23 both through lost production of impaired stocks and because of restrictions imposed on the fishing
24 fleet to protect impaired salmon populations. Habitat losses to date already have cost the West Coast
25 salmon fishing industry (including both commercial and recreational components) tens of thousands
26 of jobs in the last 30 years. These losses are directly related to widespread inland habitat destruction,
27 impaired water quality, and the impediment of volitional fish passage resulting from the construction
28 of dams and diversions of water.

- 1 a. Among PCFFA’s members are hundreds of commercial fishermen and women who
2 fish for salmon and who therefore depend on sufficient water flows from the
3 Sacramento River for the production of salmon. The biological requirements of these
4 salmon include Sacramento River flows sufficient to provide for the conveyance of
5 outmigrating juvenile salmon, whether they are produced by hatcheries or spawned
6 naturally within the river system. In addition, these salmon require flows adequate to
7 provide conveyance and high water quality throughout the Sacramento-San Joaquin
8 River Delta.
- 9 b. The interests of PCFFA and its members are harmed by the proposed dam raise and
10 by Westlands’ assistance of the proposed dam raise because the dam raise would
11 further damage the Sacramento River downstream of the dam and within the Delta by
12 limiting the water flows needed to create salmon habitat and enable salmon
13 migration.
- 14 c. These impacts harm the already-imperiled salmon populations on the Sacramento
15 River and impede PCFFA’s members’ ability to fish for salmon. PCFFA has been
16 closely following Westlands’ support of the proposed dam raise and registering its
17 objections to Westlands’ actions.
- 18 d. On January 14, 2019, PCFFA submitted written comments on Westlands’ Initial
19 Study and Notice of Preparation of a Draft Environmental Impact Report. In those
20 comments, PCFFA listed the salmon species that would be harmed by the dam raise
21 as well as other adverse impacts from the dam raise that would harm the interests of
22 PCFFA and its members.

23 15. Plaintiff INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-profit sister
24 organization of PCFFA with its headquarters in San Francisco, California. Established in 1993 by
25 PCFFA, IFR is responsible for meeting the fishery research and conservation needs of working men
26 and women in the fishing industry by executing PCFFA’s expanding habitat protection program.
27 From its inception, IFR has helped fishing men and women in California and the Pacific Northwest
28 address salmon protection and restoration issues, with particular focus on dam, water diversion, and

1 forestry concerns. IFR is an active leader in several restoration programs affecting winter-run and
2 spring-run Chinook, including removal of antiquated storage and hydroelectric dams and the re-
3 establishment of volitional and non-volitional fish passage above dams. PCFFA and IFR have
4 actively advocated for the protection and restoration of flows critical to the health of the San
5 Francisco Bay and Delta.

- 6 a. IFR's interests in increased flows, higher water quality, and additional harvestable
7 surpluses of salmon in the Sacramento River for the benefit of coastal communities in
8 California and beyond would be harmed by the dam raise because it would result in
9 reduced flows, reductions in water quality, and reductions in fall run Chinook salmon
10 populations in the Sacramento River.
- 11 b. IFR has been closely following Westlands' support of the proposed dam raise and
12 registering its objections to Westlands' actions. On January 14, 2019, IFR submitted
13 written comments on Westlands' Initial Study and Notice of Preparation of a Draft
14 Environmental Impact Report. In those comments IFR listed the salmon species that
15 would be harmed by the dam raise as well as other adverse impacts from the dam
16 raise that would harm the interests of IFR and its members.

17 16. Plaintiff SIERRA CLUB is a national non-profit organization of approximately
18 780,000 members, including 169,419 members in California. The Sierra Club is dedicated to
19 exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the
20 responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to
21 protect and restore the quality of the natural and human environment; and to using all lawful means
22 to carry out these objectives.

- 23 a. The Sierra Club Mother Lode Chapter is a regional chapter of the Sierra Club that has
24 19,151 members and encompasses numerous counties that include all of the McCloud
25 River, Shasta Dam and Reservoir, and most of the Sacramento River and its
26 tributaries.
- 27 b. Sierra Club members are directly impacted by Westlands' unlawful assistance and
28 cooperation with the planning of the Shasta Dam Raise Project. The Sierra Club was

1 a supporter of the 1989 McCloud River provisions of the California Wild and Scenic
2 Rivers Act which are the subject matter of this litigation. Sierra Club therefore has an
3 interest in ensuring that the McCloud protection provisions in section 5093.542 of the
4 Public Resources Code, including section 5093.542(c), are upheld and enforced. The
5 proposed Shasta Dam raise and Westlands' assistance and cooperating with its
6 planning and construction, would effectively nullify the protections of that Act. Sierra
7 Club also advocated for the creation of the state's Wild and Scenic River chapter of
8 the Public Resources Code, Senate Bill 107, and is committed to its implementation
9 and enforcement. Sierra Club has a long history of advocating for the health of the
10 Sacramento River and its fisheries before the legislature, state agencies, and the
11 courts.

12 c. Sierra Club members recreate in areas that would be impacted by the Shasta Dam
13 raise including the free-flowing section of the McCloud River, the Shasta Reservoir,
14 and the upper part of the Sacramento River below Shasta Dam. Sierra Club members
15 boat down the McCloud River, including the reach of the McCloud River that would
16 be further inundated by the dam raise. The resulting higher water level of the
17 reservoir would obliterate some of the existing fishing, hiking, and boat-launching
18 sites on both the McCloud River and Shasta Reservoir used by the public.

19 d. Sierra Club has consistently voiced its objections to the dam raise and to Westlands'
20 support of the dam raise. On January 14, 2019, Sierra Club submitted written
21 comments on Westlands' Initial Study and Notice of Preparation of a Draft
22 Environmental Impact Report. In those comments, Sierra Club stated that Westlands'
23 actions violate state law and that species, sacred sites, and the McCloud River would
24 be harmed by Westlands' actions. Each of these impacts from Westlands' actions
25 harms the interest of Sierra Club members.

26 17. Plaintiff DEFENDERS OF WILDLIFE ("Defenders") is a national non-profit
27 membership organization with offices across the country, including in Sacramento, California.
28 Defenders has approximately 349,000 members across the nation, more than 45,000 of whom live in

1 California. Defenders is a science-based advocacy organization focusing on conserving and restoring
2 native species and the habitat on which they depend.

- 3 a. Defenders has been closely involved in policy and litigation matters associated with
4 water quality and species habitat in the Sacramento River and Bay-Delta region since
5 2000. In particular, through a wide array of actions, including education, scientific
6 analysis, and advocacy, Defenders actively seeks to protect salmon, steelhead, other
7 native fish, the Shasta salamander, and a number of declining bird species.
- 8 b. Defenders' members and staff live, work, and recreate throughout the Sacramento
9 River Basin. Defenders' members and staff use these areas for scientific pursuits,
10 wildlife viewing, and aesthetic enjoyment, and have long-standing interests in the
11 preservation of these ecosystems and the recovery of the imperiled species that
12 depend on them.
- 13 c. Defenders' interests and the interests of its members will be harmed by the proposed
14 dam raise and Westlands' current actions in support of the proposed dam raise
15 because the dam raise will harm aquatic and terrestrial species, damage the land
16 around the reservoir and the banks of the McCloud River, and harm the river's free-
17 flowing nature. All of these negative impacts will harm the ability of Defenders'
18 members to study fish and wildlife, enjoy the natural environment and its healthy fish
19 and wildlife populations, and recreate in the affected areas.
- 20 d. Defenders has been closely following Westlands' support of the proposed dam raise
21 and has participated extensively in opposition to this project. On August 15, 2015,
22 Defenders joined with other organizations in sending a letter to Reclamation raising
23 objections to the Reclamation's Final Feasibility Report and Final Environmental
24 Impact Statement. Defenders also raised numerous objections orally and in writing to
25 the use of state funding for this project during the California Water Commission
26 process for the distribution of funding from Proposition 1. Finally, on March 22,
27 2018, Defenders joined in a March 22, 2018 letter with other organizations to the San
28

1 Luis and Delta Mendota Water Authority objecting to any cooperation with
2 Reclamation regarding Shasta Dam as a violation of state law.

3 18. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL (“NRDC”) is a non-profit
4 environmental organization with more than 513,000 members nationwide, including more than
5 97,000 members in California. NRDC maintains an office in San Francisco, California. NRDC’s
6 purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which
7 all life depends. The organization works to restore the integrity of the elements that sustain life—air,
8 land, and water—and to defend endangered natural places.

9 a. For more than three decades, NRDC has advocated extensively for the protection of
10 the nation’s waterways and wildlife. NRDC has long worked to protect the Bay-Delta
11 watershed, including the Sacramento River and its tributaries such as the McCloud
12 River, and the fish for which it provides habitat, including the native trout, winter-run
13 Chinook, and spring-run Chinook. For example, NRDC has brought and intervened in
14 lawsuits designed to ensure that the operations of the federal Central Valley Project,
15 which includes Shasta Dam, do not jeopardize the continued existence of threatened
16 and endangered fish species or adversely modify those species’ critical habitat.
17 NRDC has also long worked to protect the Bay-Delta watershed, including the
18 Sacramento River and its tributaries, and the fish for which it provides habitat in non-
19 litigation settings.

20 b. NRDC has participated and continues to participate in proceedings before state and
21 federal agencies regarding proposals to raise Shasta Dam. For example, in 2014,
22 2015, and 2016, NRDC participated extensively in Reclamation’s administrative
23 proceedings under the National Environmental Policy Act that resulted in a Final
24 Feasibility Report and Final Environmental Impact Statement concerning the
25 proposed enlargement of Shasta Dam. NRDC also raised numerous objections orally
26 and in writing to the use of state funding for to enlarge Shasta Dam during the
27 California Water Commission process for the distribution of funding from
28 Proposition 1. NRDC also submitted a joint letter with other organizations to the San

1 Luis and Delta Mendota Water Authority on March 22, 2018, objecting to any
2 cooperation with Reclamation regarding Shasta Dam as a violation of state law.

3 c. NRDC’s interests and the interests of its members are harmed by the proposed dam
4 raise, and Westlands’ current actions in support of the proposed dam raise. In
5 particular, the dam raise will harm aquatic and terrestrial biota, damage the land
6 around the Shasta Reservoir and the banks of the McCloud River, and harm the
7 river’s free-flowing nature and opportunities for river-based recreation and
8 enjoyment. In addition, raising the dam will result in further alteration of flows
9 downstream from the dam, which in turn will harm the salmon, trout, and other fish
10 and aquatic organisms that rely on the Sacramento River and the Bay-Delta. All of
11 these impacts harm NRDC’s members’ ability to study, recreate, and enjoy the areas
12 that will be affected by enlarging the dam.

13 d. NRDC and its members also have an interest in the dutiful and faithful execution of
14 and adherence to the laws of the State of California that are designed to protect the
15 state’s natural resources, including the California Wild and Scenic Rivers Act.
16 Westlands’ actions that circumvent compliance with the California Wild and Scenic
17 Rivers Act harm NRDC’s and its members’ interests in seeing that public agencies
18 comply with the law.

19 19. Defendant WESTLANDS WATER DISTRICT is the largest agricultural water
20 district in the United States. It has a service area of over 600,000 acres spanning Fresno and Kings
21 Counties in California’s Central Valley. It was created in 1965 by the Westlands Water District
22 Merger Law (Water Code, § 37800, et seq.), which declares that “[t]he name of the surviving district
23 is Westlands Water District” and “[t]he surviving district is a public agency of the state.” (*Id.*, §§
24 37822, 37823.) The Merger Law falls within Division 13 of the Water Code, entitled
25 “California Water Districts.” (*Id.*, §§ 34000-38501.) Westlands is also a California “special district,”
26 and a special district is an “agency of the state, formed pursuant to general law or special act, for the
27 local performance of governmental or proprietary functions.” (Gov. Code, § 56036(a); accord §
28 16271(d).) Westlands receives water for irrigation through the Central Valley Project, a massive,

1 federally-managed water infrastructure development consisting of dams and reservoirs (including
2 Shasta Dam and Reservoir), conveyance structures, pumping plants, and other water facilities in
3 California.

4 20. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of the Defendants and Respondents sued in this Complaint and Petition under the fictitious names of
6 DOES 1 through 20, inclusive, are unknown to Plaintiffs and Petitioners who therefore bring this
7 action against each such defendant by such fictitious name. Plaintiffs will ask leave of court to
8 amend this complaint to show the true name and capacity of each defendant when these facts are
9 discovered.

10 JURISDICTION AND VENUE

11 21. This Court has jurisdiction to grant declaratory relief pursuant to Code of Civil
12 Procedure section 1060.

13 22. This Court has jurisdiction to grant injunctive relief pursuant to Code of Civil
14 Procedure sections 525 and 526.

15 23. This Court has jurisdiction to issue a writ of mandate pursuant to Code of Civil
16 Procedure sections 1085.

17 24. Venue is proper in this Court pursuant to Code of Civil Procedure section 393(b)
18 because Westlands is a public officer and because the cause, or part of the cause arose in Shasta
19 County, as the dam raise will occur and have impacts in Shasta County.

20 25. Plaintiffs have a beneficial interest in the lands, waters, cultural sites, species, and
21 ecosystems that will be harmed by the proposed Shasta Dam raise and Westlands' unlawful support
22 of the dam raise.

23 26. If Westlands is allowed to proceed in violation of the California Wild and Scenic
24 Rivers Act, Plaintiffs will suffer substantial, clear, and certain irreparable injury because Westlands'
25 actions in support of the Shasta Dam raise harms Plaintiffs' interests in fish and wildlife
26 conservation, recreational quality, and protection of tribal cultural sites and the McCloud River's
27 free-flowing condition.

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1 27. Plaintiffs will also suffer substantial, clear, and certain irreparable injury because
2 Westlands' actions in support of Shasta Dam raise harm Plaintiffs' interests in the dutiful execution,
3 enforcement, and adherence to law by public officers and agencies of the State.

4 28. Plaintiffs have suffered and will continue to suffer irreparable injury unless and until
5 this Court enjoins Westlands from continuing to violate the law through its illegal activities.

6 29. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law
7 because, unless the Court grants the requested writ of mandamus, Westlands will continue to
8 proceed in violation of the California Wild and Scenic Rivers Act.

9 30. An actual controversy exists between the parties. Plaintiffs contend that Westlands is
10 currently acting in violation of the California Wild and Scenic Rivers Act and that this Court should
11 declare Westlands' actions unlawful. Plaintiffs are informed and believe that Westlands disputes this
12 contention. A judicial resolution of this controversy is necessary and appropriate.

13 **STATUTORY BACKGROUND**

14 31. The California Legislature enacted the California Wild and Scenic Rivers Act in
15 1972, declaring that it was the policy of the State of California that rivers possessing "extraordinary
16 scenic, recreational, fishery, or wildlife values" be preserved "in their free-flowing state, together
17 with their immediate environments, for the benefit and enjoyment of the people of the state." (Pub.
18 Resources Code, § 5093.50.)

19 32. In 1989, the Legislature amended the California Wild and Scenic Rivers Act to add
20 specific provisions that protect the McCloud River. Those provisions are codified in section
21 5093.542 of the Public Resources Code.

22 33. Section 5093.542(c) of the Public Resources Code prohibits agencies of the state
23 from assisting or cooperating with planning for any dam or reservoir that could affect the McCloud
24 River, with the exception of the Department of Water Resources, which may only study specified
25 feasibility aspects of the Shasta Dam raise. Specifically, section 5093.542(c) provides that:

26 [e]xcept for participation by the Department of Water Resources in
27 studies involving the technical and economic feasibility of
28 enlargement of Shasta Dam, *no department or agency of the state
shall assist or cooperate with, whether by loan, grant, license, or
otherwise, any agency of the federal, state, or local government in*

1 *the planning or construction of any dam, reservoir, diversion, or*
2 *other water impoundment facility that could have an adverse effect*
3 *on the free-flowing condition of the McCloud River, or on its wild*
4 *trout fishery.*

(emphasis added)

5 34. Other McCloud protection provisions in the California Wild and Scenic Rivers Act
6 establish that the protection of the McCloud River in its free-flowing condition is its highest and best
7 use and prohibit dam and reservoir construction on certain reaches of the river. (See *id.*, § 5093.542,
8 subds. a, b.)

9 **STATEMENT OF FACTS**

10 **The McCloud River**

11 35. The McCloud River begins in Siskiyou County approximately 30 miles southeast of
12 Mount Shasta and ends at Shasta Reservoir, the massive body of water created by Shasta Dam.
13 Before the construction of the Shasta Dam, the McCloud River fed directly into the Sacramento
14 River.

15 36. The McCloud River runs through both private and public property, including the
16 property of Westlands and the property of the U.S. Forest Service.

17 37. The McCloud River has a world-class wild trout fishery that is enjoyed by the public.

18 38. The Winnemem Wintu Tribe considers the McCloud River sacred and home to many
19 important cultural sites that the Tribe uses today.

20 39. Many members of the public, including hikers, boaters, and naturalists, recreate on
21 and near the McCloud River.

22 40. The McCloud River has one dam on it, the McCloud Dam, which was constructed in
23 1965 and is located approximately 25 miles upstream of the point where the McCloud River ends at
24 Shasta Reservoir. Several significant tributaries feed into the McCloud River below the McCloud
25 Dam.

1 **Shasta Dam and Reservoir Impacts**

2 41. Shasta Dam is located on the Sacramento River in Shasta County, approximately 10
3 miles northwest of Redding, California. Shasta Reservoir is the largest human-created water body in
4 California.

5 42. Shasta Dam and Reservoir are key components of the Central Valley Project, a
6 sprawling system of dams, reservoirs, canals, pumping plants, and other facilities operated by
7 Reclamation to deliver water to various parts of California, including to Westlands and other
8 agricultural users in the Central Valley.

9 43. When the U.S. government completed construction of the Shasta Dam in 1945, it cut
10 the Sacramento River off from its upstream tributaries, including the McCloud River, completely
11 extirpating salmon populations that once migrated to spawning grounds upstream of the dam.
12 Construction of the dam also harmed native trout populations and other rare plants and wildlife and
13 also impacted water quality upstream and downstream of the dam.

14 44. When the dam was built, Shasta Reservoir inundated almost 90 percent of the land of
15 the Winnemem Wintu Tribe, including villages, burial grounds, and sacred sites. The dam and
16 reservoir continue to harm the Tribe. Many of the Tribe’s remaining sacred sites will be inundated if
17 the dam is raised.

18 45. Shasta Dam and Reservoir negatively impact fish, wildlife, plants, and water quality
19 both upstream and downstream of the dam.

20 **Reclamation’s Findings on the Impacts of the Proposed Dam Raise to the McCloud River**

21 46. For many decades, Reclamation has contemplated raising Shasta Dam. In 2014, in
22 order to comply with the requirements of the National Environmental Policy Act, Reclamation
23 completed a Final Environmental Impact Statement (“EIS”) for the Shasta Lake Water Resources
24 Investigation. In the Final EIS, Reclamation examined the impacts of raising Shasta Dam by
25 different heights, including by 18.5 feet. In 2015, Reclamation completed the Feasibility Study
26 associated with the Shasta Lake Water Resources Investigation.

27 47. With respect to effects on the McCloud River’s free-flowing condition,
28 Reclamation’s Final EIS concluded that the impacts of raising Shasta Dam 18.5 feet “would be

1 significant” and “would conflict with the State [Public Resources Code].” The Final EIS also
2 concluded impacts to the McCloud River’s free-flowing condition would be “significant and
3 unavoidable.”

4 48. With respect to wild trout fishery impacts, Reclamation recognized in the Final EIS
5 that “the river is considered a premier trout fishery,” and it found that the proposed 18.5-foot Shasta
6 Dam raise would result in “potential adverse effects on the fish that occur in the [McCloud] river,”
7 including wild trout. It found “potential adverse effects” on trout could include “a reduction in
8 spawning habitat for trout,” and “an increase in the range of warmwater fish in the lower McCloud
9 River.” Consequently, Reclamation concluded that effects on the McCloud River’s wild trout fishery
10 would be “potentially significant,” even with mitigation.

11 49. The Final EIS and Feasibility Report did not make a formal recommendation to raise
12 the dam, citing potential conflicts with state law, tribal impacts, and impacts to fish and wildlife as
13 well as budgetary constraints.

14 50. After publishing the Final EIS and Feasibility Report, Reclamation did not issue a
15 Record of Decision on the proposed project.

16 **Reclamation’s Recent Actions to Raise Shasta Dam**

17 51. In 2017, under a new federal administration, Reclamation revived the proposed
18 Shasta Dam raise project.

19 52. Reclamation began design and pre-construction activities for an 18.5-foot dam raise
20 in April 2018 with \$20.5 million in funding that Congress directed to Reclamation in March 2018.

21 53. At the time Congress appropriated funding for design and pre-construction activities,
22 David Bernhardt was Deputy Secretary of the U.S. Department of the Interior. In that capacity, he
23 oversaw matters related to Reclamation and the Central Valley Project. Before assuming his post as
24 Deputy Secretary of the Interior, David Bernhardt was an attorney, consultant, and lobbyist for
25 Westlands Water District. David Bernhardt is currently Secretary of the Interior.

26 54. Reclamation is currently taking actions to raise Shasta dam by 18.5 feet and begin
27 construction by December 2019.

28

1 55. According to the April 2019 “Project Timeline” of “Key Anticipated Actions” on
2 Reclamation’s website for the “Shasta Dam Raise and Enlargement Project,” Reclamation is now
3 undertaking or about to begin “Lands Process Surveys.” According to the same timeline,
4 Reclamation anticipates that it will:

- 5 • Secure a 50 percent cost-share partner by August 2019;
- 6 • Issue a Record of Decision by September 2019; and
- 7 • Award construction contracts by December of 2019.

8 56. Under the federal Water Infrastructure Improvements for the Nation Act (Pub. L. No.
9 114-322 (Dec. 16, 2016), 130 Stat. 1628, 1863, Reclamation cannot fund more than 50 percent of the
10 cost of the dam raise and must therefore secure at least one non-federal cost-share partner.
11 According to Reclamation, the estimated cost of the project is \$1.4 billion in 2014 dollars.

12 57. Westlands is currently taking actions to become a cost-share partner with
13 Reclamation for the Shasta Dam raise project.

14 **Westlands’ Assistance and Cooperation with Planning and Construction of the Dam Raise**

15 58. Despite the findings of Reclamation’s Final EIS and Feasibility Study and the clear
16 statements of state agencies that the proposed dam raise would violate state law, Westlands is
17 currently assisting and cooperating with Reclamation’s planning and constructions of the dam raise
18 in violation of the California Wild and Scenic Rivers Act.

19 59. Westlands is violating the California Wild and Scenic Rivers Act by undertaking and
20 funding CEQA review for the proposed Shasta Dam raise project. In October 2018, Westlands
21 authorized \$1,020,000 to fund such CEQA review.

22 60. The minutes for Westlands’ September 18, 2018 Board of Directors meeting indicate
23 that Westlands considers this CEQA review necessary to become a cost-share partner, and that
24 Westlands believed it should commence the CEQA process “as soon as possible in order to adhere to
25 [Reclamation’s] current schedule” to begin construction in 2019.

26 61. Furthermore, since at least February 2018, Westlands has been negotiating the terms
27 of a potential cost-share agreement with Reclamation. Westlands’ September 18, 2018 Board of
28 Directors meeting minutes indicate that Westlands anticipated that the details of the cost-share

1 arrangement with Reclamation would be “addressed in the coming months.” Such negotiations also
2 constitute assistance and cooperation with planning and construction of the Shasta Dam raise.

3 62. In fact, Westlands has been assisting and cooperating with planning and construction
4 of the proposed dam raise for over a decade. According to Westlands’ financial statements, in 2007,
5 Westlands purchased approximately 3,000 acres of property along the McCloud River “to facilitate
6 the raising of Shasta Dam by the U.S. Department of the Interior.” This property is known as the
7 Bollibokka Fishing Club. Westlands acquired it for over \$30,000,000, a sum greater than the original
8 asking price.

9 **Westlands’ Erroneous Characterization of the Final EIS and Impacts to the McCloud River**

10 63. On November 30, 2018, Westlands issued its Initial Study and Notice of Preparation.
11 It explained in the document that the Initial Study was prepared by Westlands to “preliminarily
12 identify the types and potential significance of the environmental impacts of raising the existing
13 Shasta Dam and expanding the existing Shasta Reservoir.” Westlands also announced that it would
14 be “serving as the lead agency for compliance with CEQA” and that it would prepare an
15 Environmental Impact Report (“EIR”).

16 64. Westlands’ Initial Study falsely represents that Reclamation’s 2014 Final EIS for the
17 Shasta Lake Water Resources Investigation found that the “Effects to McCloud River Free-Flowing
18 Conditions, as Identified in the California Public Resources Code, Section 5093.542” are “TBD.”

19 65. Reproduced below is the table that appears as Table 2.2-10b in Westlands’ November
20 30, 2018 Initial Study that purports to show impact determinations made by Reclamation in the 2014
21 Final EIS that correspond to questions for land use planning set forth in the Guidelines for the
22 Implementation of CEQA.

1 **Table 2.2-10b. Impacts from 2014 SLWRI Final EIS Corresponding to CEQA Guidelines**
 2 **Questions for Land Use Planning**

CEQA Guidelines Question	Impact from 2014 SLWRI Final EIS	Impact Determinations in 2014 SLWRI Final EIS			
		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
See EIS Chapter 17, "Land Use and Planning"					
Section 17.3, "Environmental Consequences and Mitigation Measures"					
b	Impact LU-1: Disruption of Existing Land Uses (Shasta Lake and Vicinity and Upper Sacramento River)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b	Impact LU-2: Conflict with Existing Land Use Goals and Policies of Affected Jurisdictions (Shasta Lake and Vicinity and Upper Sacramento River)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b	Impact LU-3: Disruption of Existing Land Uses (Lower Sacramento River, Delta, CVP/SWP Service Areas)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b	Impact LU-4: Conflict with Existing Land Use Goals and Policies of Affected Jurisdictions (Lower Sacramento River, Delta, CVP/SWP Service Areas)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b	Impact WASR-1: McCloud River's Eligibility for Listing as a Federal Wild and Scenic River	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b	Impact WASR-2: Conflict with Shasta-Trinity National Forest, Land and Resource Management Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b	Impact WASR-3: Effects to McCloud River Wild Trout Fishery, as Identified in the California Public Resources Code, Section 5093.542	TBD			
b	Impact WASR-4: Effects to McCloud River Free-Flowing Conditions, as Identified in the California Public Resources Code, Section 5093.542	TBD			
See EIS Chapter 19, "Aesthetics and Visual Resources"					
Section 19.3, "Environmental Consequences and Mitigation Measures"					
b	Impact Vis-1: Consistency with Guidelines for Visual Resources in the STNF LRMP (Shasta Lake and Vicinity and Upper Sacramento River)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

22 Key:
 CEQA = California Environmental Quality Act
 CRPR = California Rare Plant Rank
 CVP = Central Valley Project
 EIS = Environmental Impact Statement
 LRMP = Land and Resource Management Plan
 SLWRI = Shasta Lake Water Resources Investigation
 STNF = Shasta-Trinity National Forest
 SWP = State Water Project
 TBD = to be determined

24 66. Reclamation *did* make a determination on the impacts of the proposed dam raise on
 25 the free-flowing condition of the McCloud River in the 2014 Final FEIS. Table S-3 of the Final EIS
 26 states that "[i]ncreased inundation could affect the free-flowing conditions of the McCloud River, as
 27
 28

1 identified in the State Public Resources Code” and that the impacts after mitigation were “significant
2 and unavoidable.”

3 67. Reproduced below is an excerpt of the table that appears as Table S-3 in
4 Reclamation’s Final EIS and that represents in relevant part a summary of Reclamation’s findings
5 with respect to effects of the 18.5-foot dam raise on the McCloud River’s free-flowing condition. In
6 this table “WASR-4” indicates the fourth “Wild and Scenic River” impact identified by
7 Reclamation, “Alt” indicates the project alternative, “CP3-CP5” indicates “Comprehensive Plans 3-
8 5” which include the proposed 18.5-foot dam raise project alternative, “LOS” indicates “Level of
9 Significance” of the potential impact, “S” indicates “Significant,” and “SU” indicates “Significant
10 and Unavoidable.”

11 **Table S-3. Summary of Impacts and Mitigation Measures (contd.)**

Resource Topic/Impact	Alt ¹	Impact Duration ²	Quantification/ Relative Magnitude of Impact ³	LOS Before Mitigation ⁴	Mitigation Measure ⁵	LOS After Mitigation ⁴
Impact WASR-4: Effects to McCloud River Free-Flowing Conditions, as Identified in the California Public Resources Code, Section 5093.542	N-A	NA	–	NI	NA	NI
	CP1	Long-term	Increased inundation could affect the free-flowing conditions of the McCloud River, as identified in the State Public Resources Code.	S	Mitigation Measure WASR-4: Develop and Implement Protection, Restoration, and Improvement Measures to Benefit Hydrologic Functions Within the Lower McCloud River Watershed	SU
	CP2	Long-term	Similar to CP1, but greater inundation.	S	Mitigation Measure WASR-4: Develop and Implement Protection, Restoration, and Improvement Measures to Benefit Hydrologic Functions Within the Lower McCloud River Watershed	SU
	CP3- CP5	Long-term	Similar to CP1 and CP2, but greater inundation.	S	Mitigation Measure WASR-4: Develop and Implement Protection, Restoration, and Improvement Measures to Benefit Hydrologic Functions Within the Lower McCloud River Watershed	SU

22 68. Furthermore, in its detailed analysis of the effects of the dam raise on the McCloud
23 River’s free-flowing condition, Reclamation concluded in the Final EIS that the effects “would be
24 significant” and “would conflict with the State [Public Resources Code].”

25 69. Likewise, with respect to the impacts of the dam raise on the McCloud River’s wild
26 trout fishery, Westlands’ Initial Study erroneously represents that the 2014 Final EIS found that the
27 “Effects to McCloud River Wild Trout Fishery, as Identified in the California Public Resources
28

Code, Section 5093.542” are “TBD.” The table reproduced above in paragraph 65 indicates Westlands’ incorrect characterization.

70. Reclamation *did* make a determination on the impacts to the McCloud River’s wild trout fishery in the 2014 Final EIS. Table S-3 in the Final EIS states that “increased inundation could affect the wild trout fishery (access and ecology) of the lower McCloud River identified in the State Public Resources Code” and that these impacts would be “potentially significant” both before and after mitigation.

71. Reproduced below is an excerpt of table that appears as Table S-3 in Reclamation’s Final EIS and that represents in relevant part a summary of Reclamation’s findings with respect to effects of the proposed 18.5-foot dam raise on the McCloud River’s wild trout fishery. In this table, “WASR-3” indicates the third “Wild and Scenic River” impact identified by Reclamation, “Alt” indicates the project alternative, “CP3-CP5” indicates “Comprehensive Plans 3-5” which include the proposed 18.5-foot dam raise project alternative, “LOS” indicates “Level of Significance” of the potential impact, and “PS” indicates “Potentially Significant.”

Table S-3. Summary of Impacts and Mitigation Measures (contd.)

Resource Topic/Impact	Alt ¹	Impact Duration ²	Quantification/ Relative Magnitude of Impact ³	LOS Before Mitigation ⁴	Mitigation Measure ⁵	LOS After Mitigation ⁴
Impact WASR-3: Effects to McCloud River Wild Trout Fishery, as Identified in the California Public Resources Code, Section 5093.542	N-A	NA	–	NI	NA	NI
	CP1	Long-term	Increased inundation could affect the wild trout fishery (access and ecology) of the lower McCloud River identified in the State Public Resources Code.	PS	Mitigation Measure WASR-3 (CP1-CP5): Develop and Implement a Comprehensive Multi-scale Fishery Protection, Restoration and Improvement Program for the Lower McCloud River Watershed.	PS
	CP2	Long-term	Similar to CP1, but greater inundation.	PS	Mitigation Measure WASR-3 (CP1-CP5): Develop and Implement a Comprehensive Multi-scale Fishery Protection, Restoration and Improvement Program for the Lower McCloud River Watershed.	PS
	CP3–CP5	Long-term	Similar to CP1 and CP2, but greater inundation.	PS	Mitigation Measure WASR-3 (CP1-CP5): Develop and Implement a Comprehensive Multi-scale Fishery Protection, Restoration and Improvement Program for the Lower McCloud River Watershed.	PS

72. Furthermore, in its detailed analysis of the impacts of the dam raise to the McCloud River’s wild trout fishery, Reclamation concluded in the Final EIS that the proposed 18.5-foot

1 Shasta Dam raise would result in “potential adverse effects on the fish that occur in the [McCloud]
2 river,” including wild trout.

3 73. On December 12, 2018, Westlands held a “public scoping meeting” in Redding,
4 California “to solicit public input on the scope of the environmental documentation, alternatives,
5 concerns, and issues to be addressed in the EIR.” Westlands did not accept oral public comments on
6 the record at this meeting. Nevertheless, many meeting participants, including tribal members,
7 fishermen, business owners, landowners, and other concerned members of the public, including
8 several Plaintiffs, voiced opposition to the proposed dam raise and to Westlands’ violation of the
9 California Wild and Scenic Rivers Act.

10 74. In January 2019, hundreds of parties, including state agencies, tribes, fishermen,
11 business owners, landowners, and other concerned members of the public, including several
12 Plaintiffs, submitted written scoping comments on Westlands’ Initial Study and Notice of
13 Preparation expressing opposition to the project and explaining that Westlands’ was violating the
14 California Wild and Scenic Rivers Act and other state laws.

15 **State Agency Findings on Impacts to the McCloud River and Westlands’ Unlawful Actions**

16 75. In their January 2019 scoping comments on Westlands’ Initial Study, state agencies
17 with permitting authority over the proposed project explained that the dam raise could adversely
18 affect the free-flowing condition of the McCloud River and its wild trout fishery.

19 76. In its scoping comments, the California State Water Resources Control Board (“Water
20 Board”), a state agency charged with protecting the quality of the state’s waters, the public trust, and
21 the public interest, asserted that the dam raise would impound additional water, “converting the
22 affected area from a free-flowing stretch of river to impounded waters” and therefore “could have
23 an adverse effect on the free-flowing condition of the McCloud River’ within the meaning of section
24 5093.542 of the Public Resources Code.”

25 77. The Water Board also put Westlands on notice that “[a]cting as lead agency under
26 [CEQA] for this Project involves the assistance or cooperation with the planning or construction of
27 water impoundment facilities.”

28

1 78. The California Department of Fish and Wildlife (“DFW”), a state agency charged
2 with implementing and enforcing California’s fish and wildlife conservation laws, explained in its
3 comments to Westlands that “[r]aising the water level behind Shasta Dam will convert part of the
4 McCloud River into reservoir habitat, changing the free-flowing condition of the McCloud River.”
5 This statement is consistent with DFW’s 2008 correspondence concerning a potential dam raise, in
6 which DFW (then called the Department of Fish and Game) directly stated: “Raising Shasta Dam
7 will adversely affect the free-flowing condition of the McCloud River.”

8 79. With respect to the wild trout fishery, DFW determined that “[i]nundation of the
9 McCloud River would result in a significant loss of this river ecosystem to a reservoir ecosystem,
10 resulting in direct and indirect adverse impacts to the current trout fishery in conflict with State law
11 and policy.” DFW further explained that “[l]ikely changes to the trout fishery would include a shift
12 from riverine trout habitat to habitat that supports non-native lake dwelling fish species.”

13 80. The comments of the Water Board and DFW are consistent with statements by other
14 state agencies about the illegality of the proposed dam raise. On March 13, 2018, then-Secretary of
15 the California Natural Resources Agency, John Laird, wrote a letter to members of the U.S.
16 Congress explaining that “the Shasta Dam enlargement project would violate California law due to
17 the adverse impacts that project may have on the McCloud River and its fishery.”

18 81. Similarly, the California Water Commission has determined that the Shasta Dam raise
19 is not eligible for funding under Proposition 1, a ballot measure passed in 2014 that dedicated \$2.7
20 billion for investments in water storage projects in California. The Commission has concluded that it
21 cannot fund the proposed Shasta Dam raise because the project would violate the California Wild
22 and Scenic Rivers Act, and specifically section 5093.542(c) of the Public Resources Code.

23 **Westlands’ Ongoing Violation of State Law**

24 82. Bucking these findings and comments about its unlawful actions in violation of the
25 California Wild and Scenic Rivers Act, Westlands continues to assist and cooperate with planning
26 and construction of the Shasta Dam raise.

27 83. To “adhere to [Reclamation’s] current schedule” to begin construction in 2019,
28 Westlands is continuing to lead and expend funds on the CEQA process.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment as set forth below:

3 A. For a declaration that Westlands Water District is currently in violation of the
4 California Wild and Scenic Rivers Act and cannot fund, lead, or engage in CEQA review of the
5 Shasta Dam raise project, negotiate or sign an agreement to share the cost of the proposed Shasta
6 Dam raise project, or undertake any other activities that constitute unlawful assistance or
7 cooperation with the planning or construction of the Shasta Dam raise project;

8 B. For a preliminary and permanent injunction ordering Westlands to halt all assistance
9 and cooperation with any planning or construction of a project to raise Shasta Dam;

10 C. For a writ of mandate or peremptory writ issued pursuant to Code of Civil Procedure
11 section 1085 under the seal of this Court directing Westlands to halt its assistance and cooperation
12 with planning and construction of the proposed Shasta Dam raise project, including but not limited
13 to cessation of any and all activities as funder of and lead agency for CEQA review and all
14 negotiations related to sharing the cost of the Shasta Dam raise with Reclamation;

15 D. For Plaintiffs’ fees and costs, including reasonable attorneys’ fees and expert witness
16 costs, as authorized by Code of Civil Procedure section 1021.5 and any other applicable provisions
17 of law; and

18 E. For such other legal and equitable relief as this Court deems appropriate and just.

19 DATED: May 13, 2019

Respectfully submitted,

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21 

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VERIFICATION

I, Drevet Hunt, am a senior staff attorney at the Natural Resources Defense Council, one of the Plaintiffs to this action, and I have been authorized to make this verification on behalf of the Natural Resources Defense Council. I have read the foregoing **Verified Petition for Writ of Mandate and Complaint for Declaratory Relief** and know its contents. The matters stated in the foregoing document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Dated: May 13, 2019.



Drevet Hunt