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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SHASTA**

16 FRIENDS OF THE RIVER;
GOLDEN GATE SALMON ASSOCIATION;
17 PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS;
18 INSTITUTE FOR FISHERIES RESOURCES;
SIERRA CLUB;
19 DEFENDERS OF WILDLIFE; and
NATURAL RESOURCES DEFENSE
20 COUNCIL,

21 Plaintiffs and Petitioners,

22 v.

23 WESTLANDS WATER DISTRICT; and
DOES 1-20,

24 Defendants and Respondents.

Case No. 192490

**DEFENDANT AND RESPONDENT
WESTLANDS WATER DISTRICT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO TRANSFER ACTION
FROM SHASTA COUNTY TO FRESNO
COUNTY**

Assigned for All Purposes to:
Hon. Tamara L. Wood

Judge: Hon. Tamara L. Wood
Date: July 15, 2019
Time: 8:30 a.m.
Dept.: 8

Action Filed: May 13, 2019
Trial Date: April 14, 2020

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WESTLANDS WATER DISTRICT

1 **I. INTRODUCTION**

2 This motion to change venue is brought in two related, and very odd, proceedings.¹
3 Westlands Water District (“Westlands”) is evaluating whether to financially support a project being
4 considered by the United States Bureau of Reclamation (“Reclamation”) to raise Shasta Dam. In
5 these two related lawsuits, plaintiffs contend that Public Resources Code section 5093.542 precludes
6 Westlands from even *considering* the environmental effects if it decides to provide funding for
7 Reclamation’s project. Plaintiffs say Westlands’ efforts to analyze environmental effects — through
8 the process prescribed by the California Environmental Quality Act (“CEQA”) — are legally
9 prohibited. Westlands thus finds itself being sued for gathering information necessary to making an
10 informed decision through a public process. This cannot sensibly be the law.

11 Putting aside the merits, these proceedings are brought in the wrong court. Under Code of
12 Civil Procedure section 395, venue lies where Westlands resides, in Fresno County. The plaintiffs
13 allege venue is proper in this Court because raising Shasta Dam will have impacts in Shasta County.
14 But the impacts they cite are from construction and operation of a raised Shasta Dam, not Westlands’
15 environmental review-related activities that plaintiffs are complaining about here. To be clear,
16 Reclamation has not yet approved its project, and Westlands *has not yet decided* whether to provide
17 funding for Reclamation’s project.

18 Accordingly, Westlands moves pursuant to Code of Civil Procedure section 397 to transfer
19 venue to the proper court, in Fresno County.

20 **II. FACTUAL BACKGROUND**

21 1. Reclamation’s Shasta Dam And Reservoir

22 Reclamation completed constructing Shasta Dam and Reservoir in 1945. (See Declaration
23 of Jose Gutierrez [“Gutierrez Dec.”] at ¶ 5.) Shasta Dam and Reservoir were constructed as integral
24 elements of the Central Valley Project (“CVP”), with Shasta Reservoir representing about 41
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26 _____
27 ¹ The two proceedings are *State of California v. Westlands Water District*, Shasta Superior Court Case Number 192487
28 and *Friends of the River et al. v. Westlands Water District*, Shasta Superior Court Case Number 192490. To spare the
Court from reading redundant briefs if the cases are related and heard together, Westlands addresses both proceedings
in a single, combined memorandum of point and authorities.

1 percent of the total reservoir storage capacity of the CVP. (*Id.* at ¶ 5.) Shasta Dam is 602-foot-tall
2 (533 feet above the streambed) and forms Shasta Reservoir with a capacity of 4.55 million acre-feet
3 (“MAF”). (*Ibid.*) Major modifications to Shasta Dam since initial construction include construction
4 of a temperature control device in 1997 for improved management of water temperatures in the
5 upper Sacramento River. (*Ibid.*)

6 Reclamation operates Shasta Dam and Reservoir, in conjunction with other facilities, to
7 provide flood protection, irrigation and municipal and industrial water supply, maintain navigation
8 flows, protect fish in the Sacramento River and the Sacramento-San Joaquin Delta (“Delta”), and
9 generate hydropower. (*Id.* at ¶ 6.) Shasta Lake also supports extensive water-oriented recreation.
10 (*Ibid.*)

11 2. Proposals to Raise Shasta Dam

12 The enlargement of Shasta Dam and Reservoir is not a new idea. For example, in the mid-
13 1990s, a cooperative effort by a group of state and federal agencies known as the CALFED Program
14 studied, in a programmatic environmental impact statement/environmental impact report,
15 enlargement of Shasta Dam and Reservoir as part of a suite of actions intended to solve problems
16 of ecosystem quality, water supply reliability, and water quality. (*Id.* at ¶ 7.) The state agencies that
17 were part of CALFED included the California Resources Agency, the California Department of
18 Water Resources, the California Department of Fish and Game, and the California State Water
19 Resources Control Board. (*Ibid.*) In 2000, CALFED released a Record of Decision that outlined a
20 30-year plan to improve the Delta’s ecosystem, water supply reliability, water quality and levee
21 stability. (*Ibid.*) The CALFED agencies identified enlargement of Lake Shasta as among the actions
22 to be further studied and pursued. (*Ibid.*)²

23 Reclamation has continued investigation of potentially raising Shasta Dam. Reclamation
24 released a Final Feasibility Report and Final EIS in July 2015, for what is called the Shasta Dam
25 Raise Project. (*Id.* at ¶ 8.) Reclamation’s Final Feasibility Report, along with a Final EIS, provide
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27 ² The California Supreme Court rejected various CEQA challenges to the CALFED environmental review in *In re Bay-*
28 *Delta etc.* (2008) 43 Cal.4th 1143. Ongoing state agency responsibilities related to the CALFED Program have since
largely been assumed by the Delta Stewardship Council. (Wat. Code § 85034.)

1 the results of various studies, including planning, engineering, environmental, social, economic and
2 financial, and included possible benefits and effects of alternative plans. (*Ibid.*) In March 2018,
3 Congress appropriated \$20 million for expenditure under the Water Infrastructure Improvements
4 for the Nation (“WIIN”) Act (P.L. No. 114-322 (Dec. 16, 2016) 130 Stat. 1627) for further design
5 and pre-construction activities. However, Reclamation has not made a final decision whether to
6 construct the project. (*Ibid.*) One of the considerations relevant to Reclamation’s decision is whether
7 local agencies are willing to contribute to the costs of raising Shasta Dam. Under section 4007 of
8 the WIIN Act, Reclamation can contribute no more than fifty percent of the cost of the Shasta Dam
9 Raise Project.

10 3. Westlands Water District

11 Westlands is a California water district with its main office in Fresno, California. (See
12 Gutierrez Dec. at ¶ 2.) It was created and is operating pursuant to the California Water Code. (Wat.
13 Code §§ 37800 et seq.; Gutierrez Dec. at ¶ 2.) Westlands’ Board of Directors manages and conducts
14 the district’s business and affairs, and holds its meetings, primarily at its offices in the City of Fresno,
15 though it occasionally meets at another location within the district. (Gutierrez Dec. at ¶ 3.)

16 Westlands serves an area comprised of approximately 614,000 acres of land in western
17 Fresno and Kings counties. (*Ibid.*) Growers in Westlands produce more than sixty high-quality food
18 and fiber crops on some of the most highly productive farmlands in the world. (*Ibid.*) In addition to
19 providing irrigation for farms, Westlands provides water for municipal and industrial uses, including
20 Naval Air Station Lemoore. (*Ibid.*) Westlands’ irrigation water need varies, and historically was in
21 the range of 1.4 million acre-feet per year. (*Id.* at ¶ 4.) Westlands has a contract with the United
22 States for delivery of CVP water, which is the principal source of water it supplies to landowners
23 within the district. (*Ibid.*)

24 4. Westlands Is Considering Whether to Contribute Funding

25 Westlands is considering whether, along with other public water agencies, it will contribute
26 any funding for Reclamation’s project. (Gutierrez Dec. at ¶¶ 8-9.) Westlands’ potential role is
27 extremely narrow; it is limited to providing funding. (Gutierrez Dec. at ¶ 8.) To determine whether
28 it can do that, among numerous other considerations, Westlands must: (1) evaluate whether Public

1 Resources Code section 5093.542 precludes Westlands from entering into a cost share agreement,
2 and (2) comply with CEQA. (*Id.* at ¶ 9.)

3 Westlands' review process is not complete. Westlands has not certified an environmental
4 document or approved a cost share agreement. (*Id.*; Friends of the River et al.'s Complaint for
5 Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate ["FOR Comp.,"], ¶¶ 59,
6 63.) Those actions, if they occur, would occur in Fresno County. (Gutierrez Dec. at ¶ 9.)

7 5. Summary Of Plaintiffs' Allegations And Requested Remedy

8 The FOR Plaintiffs³ consist of various non-profit organizations, trade organizations, and
9 other coalitions headquartered in Sacramento and San Francisco. (FOR Comp. at ¶¶ 12-18.) The
10 FOR Plaintiffs allege that Westlands authorized funding for CEQA review, has negotiated terms of
11 a "potential cost-share agreement," and purchased property along the McCloud River in 2007. (FOR
12 Comp. at ¶¶ 58-62.) With respect to the ongoing CEQA review process, FOR Plaintiffs allege that
13 Westlands issued a Notice of Preparation ("NOP") and Initial Study ("IS") and held a public scoping
14 meeting. (*Id.* at ¶¶ 63, 73.) The Attorney General ("AG") likewise alleges Westlands has authorized
15 funding for CEQA review, and issued a NOP/IS. (Attorney General's Complaint for Declaratory
16 and Injunctive Relief and Petition for Writ of Mandate ["AG Comp.,"], ¶¶ 20-21.)

17 Each of the complaints alleges that Westlands' actions violate Public Resources Code
18 section 5093.542(c), which provides that "no department or agency of the state shall assist or
19 cooperate with, whether by loan, grant, license, or otherwise, any agency of the federal, state, or
20 local government in the planning or construction of any dam, reservoir, diversion, or other water
21 impoundment facility that could have an adverse effect on the free-flowing condition of the
22 McCloud River, or on its wild trout fishery." (Pub. Resources Code § 5093.542(c); FOR Comp. at
23 ¶¶ 86-92, AG Comp. at ¶¶ 27-33.)

24 Plaintiffs seek declaratory relief that Westlands has violated section 5093.542 through its
25 efforts to gather data, through a state-mandated public process, to inform a decision whether to
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27 ³ FOR Plaintiffs include Friends of the River, Golden Gate Salmon Association, Pacific Coast Federation of Fishermen's
28 Associations, Institute for Fisheries Resources, Sierra Club, Defenders of Wildlife, and Natural Resources Defense
Counsel.

1 provide up-front funding for the Shasta Dam Raise Project. On that basis, plaintiffs seek an
2 injunction against future activity by Westlands related to the project. (FOR Comp., Prayer for Relief;
3 AG Comp., Prayer for Relief.)

4 Regarding venue, the FOR Plaintiffs allege venue is proper in Shasta County because “the
5 dam raise will occur and have impacts in Shasta County.” (FOR Comp. at ¶ 24.) The AG likewise
6 alleges venue is proper in Shasta County “because Shasta Dam and Reservoir and the lower
7 McCloud River are located in Shasta County. Impacts to the McCloud River will occur in Shasta
8 County.” (AG Comp. at ¶ 24.)

9 Neither complaint alleges that Westlands has designed or submitted plans for enlargement
10 of Shasta Dam. Neither complaint mentions the CEQA review of potential enlargement of Shasta
11 Dam done by various state agencies as part of the CALFED Program. Neither complaint asserts that
12 Westlands has adopted any resolution or taken any final action to certify any environmental
13 document. Neither complaint alleges that Westlands has executed a cost share agreement or
14 otherwise approved a project.

15 **III. ARGUMENT**

16 Generally, “[v]enue is determined based on the complaint on file at the time the motion to
17 change venue is made.” (*Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361,
18 367.) “[A]ll ambiguities will be construed against the pleader to the end that a defendant shall not
19 be deprived improperly of his fundamental right to have the cause tried in the county of his
20 residence.” (*Bybee v. Fairchild* (1946) 75 Cal.App.2d 35, 37.) Additionally, a defendant may submit
21 declarations and evidence in support of the motion to transfer venue. (*Archer v. Superior Court of*
22 *Humboldt County* (1962) 202 Cal.App.2d 417, 419.)⁴

23 “The general rule is that the defendant is entitled to have an action tried against him in the
24 county of his residence unless the proceeding comes under” an exception. (*Hardy v. White* (1955)
25 130 Cal.App.2d 550, 552.) Once a defendant demonstrates that it is not a resident of the plaintiff’s
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27 _____
28 ⁴ Westlands has not yet filed a response to the complaints, and this motion excuses it from doing so until the motion is decided. (Code of Civ. Proc. § 396b(a).)

1 chosen venue, “the burden is on the plaintiff to show that the case comes clearly within one of the
2 statutory exceptions to the general rule that actions are triable in the place of the defendant’s
3 residence.” (*Archer, supra*, 202 Cal.App.2d at p. 420.)

4 There are no venue rules that permit commencement of this matter in Shasta County.
5 Accordingly, Westlands moves pursuant to Code of Civil Procedure section 397 to change venue of
6 these proceedings from the wrong court, Shasta County Superior Court, to the correct court, Fresno
7 County Superior Court.

8 1. Westlands Resides In Fresno County, And That Is Where These Proceedings Should
9 be Venued.

10 Code of Civil Procedure section 395 states, in relevant part, “the superior court in the county
11 where the defendants or some of them reside at the commencement of the action is the proper court
12 for the trial of the action.” “The right of a defendant to have an action brought against him tried in
13 the county in which he has his residence is an ancient and valuable right, which has always been
14 safeguarded by statute and is supported by a long line of judicial decisions.” (*Cholakian &*
15 *Associates, supra*, 236 Cal.App.4th at p. 371.) A water district is a resident of the county in which
16 its principal place of business is located. (*Gallup v. Sacramento & San Joaquin Drainage Dist.*
17 (1915) 171 Cal. 71, 75.) Westlands is a California water district with its principal place of business,
18 and thus its residence for purposes of venue, in Fresno County. (Gutierrez Dec. at ¶¶ 2-3.) Westlands
19 having shown that its county of residence is Fresno, the burden on this motion shifts to Plaintiffs to
20 show that one of the exceptions to venue at the defendant’s place of residence applies. (*Archer,*
21 *supra*, 202 Cal.App.2d at p. 420.) Plaintiffs cannot make this showing.

22 2. The Potential Impacts Plaintiffs Assert And Rely On For Venue In Shasta County
23 Relate to Raising Shasta Dam — A Decision No Agency Has Made

24 FOR Plaintiffs allege that venue is proper in Shasta County “pursuant to Code of Civil
25 Procedure section 393(b) because Westlands is a public officer and because the cause, or part of the
26 cause arose in Shasta County, as the dam raise will occur and have impacts in Shasta County.” (FOR
27 Comp. at ¶ 24.) The AG alleges that “because Shasta Dam and Reservoir and the lower McCloud
28 River are located in Shasta County [and] [i]mpacts to the McCloud River will occur in Shasta

1 County,” the matter is properly venued there. (AG Comp. at ¶ 24.)

2 The potential effects of the Shasta Dam Raise Project are not a basis for venue of these
3 proceedings, because Westlands has not made a decision to provide up front funding for the potential
4 Shasta Dam Raise Project. The actions Westlands has taken to inform a decision whether it can
5 provide up-front funding for such potential project are not causing any impacts within Shasta
6 County. Indeed, Reclamation has not yet decided whether it will pursue its project. In claiming
7 venue in this Court, plaintiffs are skipping ahead to the potential effects of decisions neither
8 Westlands nor Reclamation have made.

9 Perhaps Plaintiffs misunderstand the purpose of the environmental review that Westlands is
10 conducting. The environmental review is being undertaken to inform Westlands as to whether it
11 may be — and whether it wants to be — a non-federal cost share partner in whatever project
12 Reclamation chooses to undertake. (Gutierrez Dec. at ¶¶ 8-9.) This review includes an evaluation of
13 whether Public Resources Code section 5093.542 precludes Westlands from entering into a cost
14 share agreement. (*Ibid.*) Simply conducting this environmental review, before any substantive
15 decision on whether to provide up-front funding for Reclamation’s Project, cannot be reasonably
16 argued to cause impacts in Shasta County. Instead, the effect of deciding to and conducting the
17 review, if any, is in Fresno County.

18 **IV. CONCLUSION**

19 Based on the foregoing, Westlands respectfully requests the Court grant this motion and
20 transfer venue of the two proceedings to Fresno County Superior Court.

21 DATED: June 12, 2019

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

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23
24 By: 

Daniel J. O’Hanlon
Attorneys for Defendant and Respondent
WESTLANDS WATER DISTRICT

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PROOF OF SERVICE

**People, et al. v. Westlands Water District, et al.
Case No. 192487; and Friends of the River, et al. v. Westlands Water District, et al.
Case No. 192490**

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On June 12, 2019, I served true copies of the following document(s) described as **DEFENDANT AND RESPONDENT WESTLANDS WATER DISTRICT'S COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER ACTION FROM SHASTA COUNTY TO FRESNO COUNTY** on the interested parties in this action as follows:

Nina Robertson Colin O'Brien Marie Logan EARTHJUSTICE 50 California St., Ste. 500 San Francisco, CA 94111 Telephone: (415) 217-2000 Facsimile: (415) 217-2040	Attorneys for Plaintiffs and Petitioners FRIENDS OF THE RIVER; GOLDEN GATE SALMON ASSOCIATION; PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS; INSTITUTE FOR FISHERIES RESOURCES; SIERRA CLUB; DEFENDERS OF WILDLIFE; and NATURAL RESOURCES DEFENSE COUNCIL
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Kronick, Moskovitz, Tiedemann & Girard for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

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

Executed on June 12, 2019, at Sacramento, California.



 Selena Paradee