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

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

17 Plaintiffs and Petitioners,

18 v.

19 WESTLANDS WATER DISTRICT; and
DOES 1-20,

20 Defendants and Respondents.
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**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO TRANSFER
ACTION FROM SHASTA COUNTY TO
FRESNO COUNTY**

Case No. 192490

Date: July 22, 2019

Time: 8:30 a.m.

Dept: 8

Judge: Hon. Tamara L. Wood

Trial Date: April 14, 2020

Action Filed: May 13, 2019

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1 **INTRODUCTION**

2 Westlands Water District (“Westlands”) is a “public officer” and, as such, may properly be
3 sued in Shasta County or anywhere else where its actions allegedly cause injury. (Code Civ. Proc.,
4 § 393, subd. (b).) In this case, Plaintiffs assert violations of the California Wild and Scenic Rivers
5 Act, which prohibits Westlands from assisting or cooperating in the planning for a raise of Shasta
6 Dam if there is any possibility that it could adversely affect the free-flow of the McCloud River or its
7 world-class trout fishery (Pub. Resources Code, § 5093.542, subd. (c))—impacts that other agencies
8 already have analyzed and concluded will occur. Westlands opposes venue in Shasta County, but its
9 motion does not address—let alone refute—that it has completed unlawful acts of assistance and
10 cooperation with planning for a dam raise and continues to undertake planning activities both in and
11 affecting Shasta County. Under applicable federal law, the U.S. Bureau of Reclamation
12 (“Reclamation”) cannot enlarge Shasta Dam unless and until it finds at least one non-federal partner
13 entity to pay for half the cost. To that end, Westlands is unlawfully assisting Reclamation with
14 planning for a dam raise by undertaking analysis and planning under California Environmental
15 Quality Act (“CEQA”) as well as engaging in negotiations with Reclamation over the terms of a
16 potential cost-share agreement. Westlands also purchased property on the McCloud River in Shasta
17 County to facilitate the dam raise. Each of these acts of assistance and cooperation with planning are
18 critical to the advancement of a raised Shasta Dam and injure Plaintiffs in Shasta County. Venue in
19 Shasta County therefore is proper under Civil Code Section 393(b) and Westlands’ motion to
20 transfer this action should be denied.

21 **FACTUAL AND PROCEDURAL BACKGROUND**

22 **I. Illegal Actions by Westlands**

23 Plaintiffs Friends of the River et al. (“Plaintiffs”) allege that Westlands is violating Section
24 5093.542(c) of the Public Resources Code, which is part of the California Wild and Scenic Rivers
25 Act. (See generally Friends of the River et al.’s Complaint and Petition (“Compl.”).) That provision
26 specifically protects the McCloud River by prohibiting agencies of the state from assisting or
27 cooperating with the *construction* of any dam or reservoir that could adversely affect the McCloud
28 River, and even from assisting and cooperating *with planning* for such a project. (*Ibid.* [“no

1 department or agency of the state shall assist or cooperate ... in the planning or construction of any
2 dam, reservoir, diversion, or other water impoundment facility”].) Section 5093.542(c) carves out
3 only one limited exception to this broad prohibition against assistance or cooperation in planning,
4 and that is for the California Department of Water Resources—which is only authorized to study the
5 technical and economic feasibility of a Shasta Dam raise. (*Ibid.*)

6 Plaintiffs assert that Westlands is violating the California Wild and Scenic River Act’s
7 prohibition against assisting or cooperating with planning for a Shasta Dam raise by undertaking at
8 least three separate types of affirmative acts that are integral to Reclamation’s efforts to raise Shasta
9 Dam:

- 10 1. Westlands has commenced and is leading an ultra vires CEQA process to analyze raising
11 Shasta Dam and assist with project planning. Its actions include authorizing funding for
12 environmental review in October 2018; issuing an Initial Study and Notice of Preparation
13 of an Environmental Impact Report on November 30, 2018; and holding a public scoping
14 meeting in Redding, California on December 12, 2018. (Compl., ¶¶ 59, 60, 63, 73.)
- 15 2. Since at least February 2018, Westlands has been in negotiations with Reclamation
16 concerning the terms of a potential cost-share agreement for a dam raise, an agreement
17 that Reclamation requires before it can proceed with its plan to commence construction
18 of the dam raise in 2019. (Compl., ¶¶ 55-56, 61; accord Request for Judicial Notice
19 [RJN] Exh. A [Reclamation website]; Exh. H [email from Reclamation officer to
20 Westlands manager re “our discussion concerning the Agreement in Principle for
21 potential cost sharing of the Shasta Raise”].)
- 22 3. Westlands purchased and maintains property along the McCloud River—a portion of
23 which will be flooded if the Shasta Dam is raised—that it acquired in order to “facilitate”
24 the Shasta Dam raise. (Compl., ¶¶ 36, 62; accord RJN Exh. B at p. 26 [Westlands’
25 Financial Statement])

26 Westlands is providing this prohibited assistance and cooperation with planning for a Shasta
27 Dam raise even though Reclamation’s analysis and the comments of expert state agencies establish
28 that raising the dam “could” and indeed “would” have adverse effects on the McCloud River’s free-

1 flowing condition and wild trout fishery. (Compl., ¶¶ 66-68, 70-72, 75-81; accord RJN Exh. C at pp.
2 S-38, S-131, S-132, 25-27 to 25-41 [Reclamation’s Final Environmental Impact Statement for the
3 Shasta Dam Raise Project]; Exh. D at pp. 1-2 [State Water Resources Control Board Comments on
4 Westlands’ CEQA Notice]; Exh. E at pp. 7-8 [California Department of Fish and Wildlife
5 Comments on Westlands’ CEQA Notice].)

6 **II. Plaintiffs’ Lawsuit**

7 Plaintiffs, who are conservation and fishing organizations, filed this action on May 13, 2019,
8 seeking both a declaration from this Court that Westlands is violating the California Wild and Scenic
9 Rivers Act and a writ of mandate directing Westlands to halt its ongoing assistance and cooperation
10 with planning and construction of the proposed Shasta Dam raise project. The proposed project
11 includes increasing the height of the dam by 18.5 feet, which would raise the reservoir by 20 feet and
12 increase by 39 percent the reach of the McCloud River that is impacted by the dam. Shasta Dam and
13 Reservoir are in Shasta County, and the reach of the McCloud River upstream from the dam that
14 would be inundated by the proposed raising of Shasta Dam is also in Shasta County.

15 Plaintiffs allege numerous forms of injury in Shasta County from Westlands’ illegal actions.
16 Plaintiffs use and enjoy the McCloud River and local fish and wildlife, and raising the dam will
17 harm Plaintiffs’ interests in recreation, aesthetics, fish, and wildlife in Shasta County both upstream
18 and downstream of the dam. Many of these impacts are in Shasta County near the dam. (Compl., ¶¶
19 12, 12(a), 16(a), 16(c), 17(b)-(c), 18(c).) Additional impacts occur further downstream on the
20 Sacramento River and in the San Francisco-San Joaquin Delta, San Francisco Bay, and Pacific
21 Ocean—where members of Plaintiff fishing organizations depend on imperiled salmon populations
22 for their livelihood. (Compl., ¶¶ 13-13(b), 14-14(c), 15-15(a).)¹

25 ¹ The location of Plaintiffs’ respective headquarters is not relevant to resolution of Westlands’ venue
26 transfer motion, but Plaintiffs note that Westlands mistakenly states Plaintiffs are headquartered “in
27 San Francisco and Sacramento.” (Westlands Mem. at p. 6.) Not all Plaintiffs are headquartered in
28 these two cities. Defenders of Wildlife, for example, is headquartered in Washington, D.C.. No
matter where they are headquartered, Plaintiffs have members in Shasta County who use and enjoy
the McCloud River and the area around Shasta Dam and Reservoir. (Compl., ¶¶ 12(a), 16(c), 17(b)-
(c), 18(c).)

1 Plaintiffs also allege that Westlands’ actions harm their interests in ensuring public agencies
2 comply with the California Wild and Scenic Rivers Act and in maintaining rivers protected by Act,
3 including the McCloud River. (Compl., ¶¶ 12, 12(b), 16(b), 18(d).) Although Shasta Dam is owned
4 and operated by Reclamation, Plaintiffs allege that Westlands’ unlawful assistance and cooperation
5 with planning for the dam raise injures them because Westlands’ support is vital to the dam raise.
6 Under applicable federal law, Reclamation cannot proceed to construction without a non-federal
7 cost-share partner like Westlands. (See Compl., ¶ 56 [citing the federal Water Infrastructure
8 Improvements for the Nation Act (Pub. L. No. 114-322 that requires local cost-share partners].)
9 Indeed, Reclamation has explicitly stated that it intends to “Secure a 50% Cost-Share Partner” by
10 August 2019 before it will “Issue a Record of Decision” in September 2019 and “Award
11 Construction Contracts” in December 2019. (Compl., ¶ 55 [quoting Reclamation website]; accord
12 RJN Exh. A.)

13 Plaintiffs further allege that they have been closely tracking Westlands’ unlawful CEQA
14 process, commenting on Westlands’ Notice of Preparation, and even going to Westlands’ only
15 scoping meeting for CEQA—which it held in Shasta County, in Redding—to register their dissent
16 with Westlands’ unlawful actions. (Compl., ¶¶ 12(c), 13(c), 14(d), 15(b), 16(d), 17(d), 18(b).)

17 Finally, Plaintiffs assert that Westlands’ acquisition of property in Shasta County on the
18 McCloud River in order “to facilitate” the U.S. Department of Interior’s raising of Shasta Dam also
19 violates the California Wild and Scenic Rivers Act’s prohibition on assistance and cooperation with
20 planning and has effects in Shasta County. (Compl., ¶ 62; RJN Exh. B at p. 26)

21 On June 12, 2019, Westlands filed a motion to change venue to Fresno County.² Westlands
22 did not attempt to meet and confer with Plaintiffs before filing its motion.

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² On May 13, 2019, the same day Plaintiffs filed this action, the People of the State of California
26 separately filed a complaint and petition seeking declaratory and injunctive relief to halt Westlands’
27 ongoing violation of the California Wild and Scenic Rivers Act, captioned *People of the State of*
28 *California Ex Rel. Attorney General Xavier Becerra. v. Westlands Water District*, Shasta Superior
Court Case No. 192487. On June 13, 2019, the People filed a Motion for Preliminary Injunction.
Westlands has moved to transfer both Plaintiffs’ and the People’s actions to Fresno County.

1 **LEGAL BACKGROUND FOR VENUE**

2 Code of Civil Procedure Section 395 is the default venue provision for civil actions, and it
3 provides that venue generally is proper where the defendant resides at the commencement of the
4 action “except as otherwise provided by law.” (Code Civ. Proc., § 395.)

5 Code of Civil Procedure Section 393(b) establishes an exception to Section 395 for public
6 entities like Westlands. (*Tharp v. Super. Ct.* (1982) 32 Cal.3d 496, 502.) It applies when an action
7 is brought against a “public officer” for “an act done by the officer.” (Code Civ. Proc., § 393, subd.
8 (b).) Under Section 393(b), the “county in which the cause, or some part of the cause, arose, is the
9 proper county” (Ibid.)

10 In evaluating *whether* Section 393(b) applies, the California Supreme Court has held that
11 Section 393(b) governs when plaintiffs “complain, rightly or wrongly” of “act[s] done” by a “public
12 officer” even if the underlying “proceedings” of the defendant public officer “have not yet
13 concluded.” (*Tharp, supra*, 32 Cal.3d at p. 502.) In other words, so long as a public officer has
14 performed some initial acts, a final decision is not required for Section 393(b) to apply. (*Ibid.*)

15 To determine *where* venue is proper when Section 393(b) applies, “the courts generally look
16 to the main relief sought, as determined from the complaint.” (*Cal. State Parks Foundation v.*
17 *Super. Ct.* (2007) 150 Cal.App.4th 830, 833.) Under Section 393(b), “[t]he cause of action ‘arises’
18 wherever the plaintiff would be injured by the state action complained of” (*Id.* at p. 834.) Even
19 when a public officer will act or has acted in another county, venue is proper in “the county in which
20 [petitioner] ... would be hurt by the official action.” (*Tharp, supra*, 32 Cal.3d at pp. 502-03 [venue
21 was proper in Tulare County where petitioners’ business would be hurt, not Sacramento where
22 agency proceedings were underway].) This is because “[i]t is where the shaft strikes [plaintiff], not
23 where it is drawn, that counts.” (*Regents of U. of Cal. v. Super. Ct.* (1970) 3 Cal.3d 529, 542.)
24 “[C]ase law uniformly provides, when plaintiffs are challenging an official act, the cause of action
25 arises where the effects of that act are felt, not where the decision was made.” (*Cal. State Parks*
26 *Foundation* at pp. 833-34, fn. 2 [venue was proper in county that toll road “will traverse,” not county
27 where environmental impact report “was approved”].)

1 In venue disputes, defendants bear the burden of demonstrating that plaintiffs have chosen
2 the wrong venue. (*Mitchell v. Super. Ct.* (1986) 186 Cal.App.3d 1040, 1046.)

3 ARGUMENT

4 Westlands has not met its burden of demonstrating that Plaintiffs selected the wrong court for
5 this action. Code of Civil Procedure Section 393(b)—not Section 395—applies because Westlands
6 is a “public officer” and Plaintiffs ask this Court to address official acts “done” and ongoing by
7 Westlands. (Code Civ. Proc., § 393, subd. (b).) Under 393(b), the “county in which the cause, or
8 some part of the cause, arose, is the proper county” (*ibid*), and a “cause of action ‘arises’ wherever
9 the plaintiff would be injured by the state action complained of ...” (*Cal. State Parks Foundation*,
10 *supra*, 150 Cal.App.4th at p. 834; accord *Tharp, supra*, 32 Cal.3d at pp. 502-03.) Here, venue is
11 proper in Shasta County because Plaintiffs have alleged injury that has occurred, is occurring, and
12 will occur in Shasta County as a result of Westlands’ numerous, ongoing illegal actions.³

13 I. Westlands is a “public officer.”

14 Westlands is a “public agency of the state” as specified in sections 37822 and 37823 of the
15 California Water Code. (Water Code, §§ 37822, 37823.) Further, consistent with its statutory
16 designation as a “public agency of the state,” Plaintiffs allege that Westlands is a “public officer” for
17 purposes of Section 393(b) of the Code of Civil Procedure. (Compl., ¶ 24.) In its motion to transfer
18 venue, Westlands does not dispute that it is a “public officer” under Section 393(b) and thus has
19 waived any argument to the contrary.

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23 ³ Citing *Archer v. Superior Court of Humboldt County* (1962) 202 Cal.App.2d 417, 420, Westlands
24 erroneously argues that because it can show it resides in Fresno, the burden shifts to Plaintiffs to
25 show that venue is proper in Shasta County. (Westlands’ Mem. at pp. 7-8.) In fact, the burden
26 remains with Westlands. The burden-shifting contemplated in *Archer* only applies when it is
27 undisputed that Section 395 controls. In *Archer*, the question was where the defendant resided for
28 purposes of Section 395 and after the defendant proffered evidence that it did not reside in the
county where it was sued, the burden shifted to plaintiffs. (*Archer*, at p. 420.) Here, by contrast, the
dispute is which venue provision applies in the first instance. Plaintiffs’ complaint states Section
393(b)—not Section 395—controls. Westlands has not shown otherwise, and where it resides is
immaterial to this question. Therefore, under *Mitchell*, the burden remains with Westlands to
establish that venue is improper in this Court, even though it can show it resides in Fresno. (*Mitchell*,
supra, 186 Cal.App.3d at p. 1046.)

1 **II. Plaintiffs’ allege “acts done” within the meaning of Section 393(b).**

2 As described above, Plaintiffs allege that Westlands is violating the California Wild and
3 Scenic Rivers Act by undertaking at least three affirmative, ongoing acts that constitute prohibited
4 assistance and cooperation with the planning and construction of a raised Shasta Dam. Westlands
5 has taken actions in furtherance of and continues to lead an ultra vires CEQA process to analyze the
6 impacts of a dam raise and assist with its planning; it is engaged in negotiations with Reclamation
7 regarding an agreement to share costs for such a dam raise; and it purchased and maintains property
8 along the McCloud River intended to facilitate the dam raise. (See discussion supra at pp. 2-4.) In
9 its motion to transfer venue, Westlands does not dispute that it has taken all of the foregoing actions.
10 Plaintiffs thus complain of “act[s] done” by a “public officer” such that Section 393(b) governs
11 venue in this case.

12 **A. Venue is proper in this Court even though Westlands has not made a final**
13 **decision to adopt a cost-share agreement.**

14 Unable to deny that it has done acts of assistance and cooperation with planning for a Shasta
15 Dam raise, Westlands mistakenly relies on the assertion that it has not yet made a final decision to
16 share part of the costs of the dam raise. (Westlands’ Mem. at pp. 3, 9.) But the California Supreme
17 Court has made clear that if acts are occurring, even if there is no final agency decision, they still
18 constitute “act[s] done” for purposes of Section 393(b). In *Tharp*, the Supreme Court rejected the
19 defendant public officer’s contention that there were no “act[s] done” for purposes of Section 393(b)
20 because the permit revocation proceeding that plaintiff contested had not concluded. (*Tharp, supra*,
21 32 Cal.3d at 502.) The Supreme Court reasoned that Section 393(b) still applied because the state
22 entity had moved “beyond the contemplation stage” by noticing and holding a hearing as well as
23 threatening revocation of plaintiffs’ sales license. (*Id.* at p. 503.) Likewise, here, Westlands has
24 noticed and held an initial CEQA scoping meeting in Redding and committed other unlawful acts of
25 assistance and cooperation with planning for the dam raise—like negotiating with Reclamation over
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1 costs and buying property—even as Westlands claims it is still “considering” whether or not to cost-
2 share. Thus, under *Tharp*, Westlands’ argument fails.⁴

3 Westlands also erroneously argues that this action should be transferred from this Court to
4 Fresno County on the ground that any certification of a final environmental review or any approval
5 of a cost-share agreement, if they occur, “would occur in Fresno.” (Westlands’ Mem. at p. 6.) This
6 argument is meritless. The case law is clear that the county where the complained-of acts have been
7 certified or approved is *not* where “the cause, or part of the cause, arose” for purposes of Section
8 393(b) unless Plaintiffs complain of injury in that same county. (See, e.g., *Regents of University of*
9 *California, supra*, 3 Cal.3d at p. 542 [“The county where the resolutions were adopted does not
10 control the issue of venue but the county in which the alleged injury occurs”]; *Cecil v. Super. Ct.*
11 (1943) 59 Cal.App.2d 793, 799 [“Surely a cause of action does not arise in the county in which a
12 state officer happens to affix his name to an order which is to become operative in another county”].)
13 Thus, Westlands’ representation that it has authorized its illegal acts in Fresno and may certify final
14 environmental review or approve cost-sharing in Fresno carries no weight when Plaintiffs allege
15 injury in Shasta County, not Fresno County. Venue is proper in Shasta County.

16 **B. Westlands’ repeated assertions that it has not yet made a final decision on cost-**
17 **sharing miscomprehends the underlying statute that governs Plaintiffs’ cause of**
18 **action.**

19 The California Wild and Scenic Rivers Act does not prohibit only *final* environmental review
20 determinations or *final* funding decisions. Rather, it explicitly prohibits mere “*assist[ance]* or
21 *cooperat[ion]* ... in the *planning*” for any dam or reservoir that could adversely affect the McCloud
22 River’s free-flowing condition or wild trout fishery. (Pub. Resources Code, § 5093.542, subd. (c),
23 italics added.) This protective and cautious language demonstrates that the Legislature did not
24 intend to limit the prohibition on agency assistance to *final* decisions and *signed* agreements in
25 support of a dam raise; rather, it sought to prohibit agency assistance and cooperation with even the

26 ⁴ The *Tharp* court also noted that, in arguing that the lack of a final decision precluded application of
27 Section 393(b), defendant “confuses the issues of ripeness and venue.” (*Tharp, supra*, 32 Cal.3d at
28 503.) So too here, Westlands’ assertions of non-finality confuse *ripeness* arguments with *venue*
arguments. Westlands can later challenge the ripeness of this lawsuit in a demurrer if it so chooses.
But this Court should not entertain misplaced ripeness arguments in a motion to transfer venue as
they are separate and distinct issues of law. (*Ibid.*)

1 early planning stages for any dam that could adversely affect the McCloud River’s free-flow and
2 wild trout fishery. (*Ibid.*) Hence, the fact that Westlands “has not yet decided” to cost-share
3 (Westlands’ Mem. at pp. 3, 9) does not absolve it from liability under the California Wild and Scenic
4 Rivers Act or shield it from venue in this Court for the acts of planning and cooperation it has
5 committed and which continue.

6 Westlands betrays another fundamental misunderstanding of the California Wild and Scenic
7 Rivers Act in the supporting declaration of its Chief Operating Officer, which states that “Westlands
8 must evaluate whether enlarging Shasta Dam 18.5 feet *would* have an adverse effect on the free
9 flowing condition of the McCloud River and its wild trout fishery.” (Gutierrez Decl. at p. 5, italics
10 added.) That is not the law. The California Wild and Scenic Rivers Act prohibits assistance and
11 cooperation with planning for any dam or reservoir that “*could* have an adverse effect on the free-
12 flowing condition of the McCloud River, or on its wild trout fishery.” (Pub. Resources Code,
13 § 5093.542, subd. (c).) The statute explicitly says “could” instead of “would.” Significantly, federal
14 and state agencies have already assessed the potential consequences of raising Shasta Dam and
15 concluded there “could” (and in some cases “would”) be adverse effects on free-flow and wild trout.
16 (RJN Exh. C at pp. S-38, S-131, S-132, 25-27 to 25-41; Exh. D at pp. 1-2; Exh. E at pp. 7-8.).
17 Westlands has not argued let alone demonstrated that there *no possibility* that the dam raise *could*
18 have these adverse effects. Therefore, as Plaintiffs allege, Westlands’ affirmative acts to assist and
19 cooperate with planning for a raised Shasta Dam are prohibited, and Section 393(b) applies to
20 Plaintiffs’ action against Westlands’ “act[s] done” in violation of the law.⁵

21 **III. Plaintiffs’ cause of action “arose” in Shasta County because Westlands’ illegal acts**
22 **cause the injury alleged there.**

23 In addition to alleging that Westlands, as a “public officer,” has taken affirmative unlawful
24 “acts” such that Section 393(b) applies (Code Civ. Proc., § 393, subd. (b)), Plaintiffs also allege past,
25 ongoing, and future injury in Shasta County. As a result, “the cause, or some part of the cause,

26 ⁵ For these same reasons, this case is distinct from *Bonestell. Richardson & Co. v. Curry* (1908) 153 Cal.418.
27 In that case, the California Supreme Court held that Section 393(b) did not apply where plaintiffs did not
28 challenge “acts done” and sought “solely to prevent the doing of certain acts ... in the future.” (*Id.* at p. 420.)
Here, by contrast, Plaintiffs challenge affirmative “act[s] done” by Westlands and seek an order requiring
immediate cessation of Westlands’ *current* acts of assistance and cooperation in planning for a Shasta Dam
raise that are prohibited under the California Wild and Scenic Rivers Act.

1 arose,” in Shasta County, meaning venue in this Court is proper. (*Ibid.*) Westlands has not
2 demonstrated otherwise.

3 **A. Plaintiffs allege injury in Shasta County.**

4 California courts have held that, under 393(b), a cause of action arises where Plaintiffs allege
5 that they “are,” “would” or “will” be injured. For example, in *California State Parks Foundation*,
6 *supra*, 150 Cal.App.4th 826, the court found that venue for a road project approved in Orange
7 County was proper in San Diego County because the defendant agency’s road project allegedly
8 would injure Plaintiffs in San Diego in the future, when the road eventually was built there. The
9 *California State Parks Foundation* court rejected the defendant’s argument that venue was proper
10 only in the county where it had approved the project. (*Id.* at p. 833.) Noting the rule that “[t]he
11 cause of action ‘arises’ wherever the plaintiff *would be injured*” by the action complained of, the
12 court held that Section 393(b) established venue in San Diego County where the road “*will*,
13 according to the allegations of the petitioners’ complaint, have a direct and substantial impact.” (*Id.*
14 at p. 834, italics added.) Other courts agree. In *Tharp, supra*, 32 Cal.3d 496, the Supreme Court
15 found that “the county in which [plaintiff’s] cause of action arose was the county in which [plaintiff]
16 carried on its business and *would be hurt* by the official action.” (*Id.* at p. 502, italics added.)

17 Like the plaintiffs in *California State Parks Foundation*, Plaintiffs in this case allege that
18 Westlands’ current unlawful actions—all pivotal steps in planning for a Shasta Dam raise—will
19 injure their interests in fish and wildlife in Shasta County, and in recreation on and enjoyment of the
20 McCloud River and environs, and in public agency compliance with the law that protects the
21 McCloud River. (Compl., ¶¶ 12, 12(a)-(b), 16(a)-(c), 17(b)-(c), 18(c)-(d).) Because Plaintiffs
22 “would be hurt” in Shasta County if Westlands’ prohibited assistance and cooperation with the dam
23 raise is allowed to continue, this action therefore arises in Shasta County under controlling
24 precedent. (*Tharp, supra*, 32 Cal.3d at p. 502.)

25 Moreover, though Plaintiffs need not show *current* injury in Shasta County from Westlands’
26 illegal activity, they have alleged present harm in numerous forms. Plaintiffs allege that Westlands
27 held its only CEQA scoping meeting in Redding and that they attended that meeting to contest the
28 very legitimacy of the process and Westlands’ assumption of the lead agency role. (Compl., ¶¶

1 12(c), 13(c).) Plaintiffs also allege that Westlands’ illegal actions to assist and cooperate with the
2 Shasta Dam raise directly harm their interest in compliance with the California Wild and Scenic
3 Rivers Act that specifically protects the McCloud River where they recreate and enjoy the local fish
4 and wildlife. (Compl., ¶¶ 12, 12(b), 16(b), 18(d).) Further, Plaintiffs allege that Westlands has
5 already caused injury in Shasta County by acquiring and owning property on the McCloud River to
6 facilitate the dam raise. (Compl., ¶ 62.)

7 Thus, Plaintiffs have alleged impacts in Shasta County from Westlands’ acts. The proper
8 inquiry for purposes of venue is the “main relief sought” by Plaintiffs (*California State Parks*
9 *Found.*, 150 Cal.App.4th at p. 833), and on this basis the Court should conclude venue is proper in
10 Shasta County.

11 **B. Westlands does not refute Plaintiffs’ allegations of injury in Shasta County from**
12 **Westlands’ CEQA planning.**

13 Westlands concedes that it has commenced a CEQA process for raising Shasta Dam but
14 attempts to minimize the consequence of this action by suggesting erroneously that it is merely
15 “gathering information” and insisting that “[s]imply conducting environmental review ... cannot be
16 reasonably argued to cause impacts in Shasta County.” (Westlands Mem. at pp. 1, 9.) Westlands is
17 mistaken for three reasons.

18 First, Westlands’ CEQA actions are much more than mere information gathering: CEQA is a
19 comprehensive environmental review and planning statute that requires agencies to systematically
20 assess impacts, evaluate project alternatives, and design mitigation measures that directly affect the
21 local environment. (*See* Pub. Resources Code, § 21002.) Westlands itself has acknowledged that its
22 CEQA review process includes “evaluat[ing]” “comprehensive *plans*” to enlarge Shasta Dam and
23 Reservoir, and it states that “each of the comprehensive plans” includes “a variety of management
24 measures aimed to address the project objectives.” (RJN Exh. F at p. 1-7 [Westlands’ Notice of
25 Preparation of an Environment Impact Report].). Evaluating plans and management measures violate
26 the California Wild and Scenic Rivers Act’s prohibition against assistance or cooperation with
27 planning. (Pub. Resources Code, § 5093.542, subd. (c).)
28

1 Second, as Plaintiffs allege, Westlands' CEQA planning causes injury in Shasta County
2 because it is necessary for the construction of the dam raise; the dam raise cannot proceed unless and
3 until Reclamation secures a non-federal cost-share partner, and Westlands has determined that it
4 cannot become a cost-share partner unless it completes a CEQA process. (RJN Exh. G at p. 1
5 [Statement in Westlands' September 2018 Board Meeting item that "[b]efore the District...could
6 participate as a local cost share partner, it would have to ensure CEQA compliance by next year"].)
7 Thus, Westlands' protest that its comprehensive planning process is not really assistance with
8 "planning" and cannot "reasonably" be found to impact Shasta County rings hollow.

9 Third, Westlands incorrectly suggests that its CEQA process does not affect Shasta County
10 because Reclamation owns and operates Shasta Dam. (Westlands Mem. at pp. 3-5.) Westlands
11 cannot hide behind Reclamation. Westlands is subject to California law, and the California Wild
12 and Scenic Rivers Act prohibits it from assisting or cooperating with Reclamation in planning for the
13 proposed 18.5-foot Shasta Dam raise. Westlands is violating this prohibition through numerous
14 forms of assistance and cooperation and playing a critical role in advancing a raised Shasta Dam.
15 Therefore, Westlands' actions, separate and apart from those of Reclamation, violate state law and
16 cause Plaintiffs' alleged injury.⁶

17 **C. Westlands does not refute Plaintiffs' allegations about the injury caused by its**
18 **cost-share negotiations and ownership of riverfront property.**

19 In addition to Westlands' unlawful assistance with planning through CEQA, Plaintiffs also
20 allege that Westlands has provided prohibited assistance with the dam raise by engaging in cost-
21 share negotiations and by purchasing property on the McCloud River that will be flooded by an
22 18.5-foot dam raise. (Compl., ¶¶ 61, 62.) Both of these acts cause injury because they are critical
23 for the future of a raised Shasta Dam.

24 With respect to cost-share negotiations, Westlands has been engaging with Reclamation over
25 a potential cost-share arrangement since at least early 2018. (See RJN Exh. H.) More recently, on

26 ⁶ In support of its motion, Westlands points to the fact that Plaintiffs' Complaint does not mention "the CEQA
27 review of potential enlargement of Shasta Dam done by various state agencies as part of the CALFED
28 program." (Westlands Mem. 7:10-11). Who did what almost 20 years ago under CALFED, a program that is
now nearly defunct, is not relevant to the lawfulness of Westlands' current actions or the question before this
Court: Whether Westlands has met its burden of demonstrating that venue is not proper in Shasta County.

1 March 7, 2019, Westlands convened cost-share discussions, inviting nine other water agencies and
2 districts to its office in Sacramento. (RJN Exh. I.) In advance of that meeting, Mr. Jose Gutierrez,
3 Westlands' Chief Operating Officer, wrote the following to the invited public water agencies:

4 Westlands looks forward to seeing everyone at tomorrow's meeting at 3:30 at our
5 Sacramento office. ... We want to continue the discussion we started last month
6 regarding the option to have Westlands sign a cost sharing agreement with Reclamation
7 and serve as the local cost share partner, and to develop repayment agreements for
8 Westlands to be repaid by CVP contractors. We will also have our consultant present
9 to present the water supply modeling results and answer your questions.

10 (*Ibid.*) Westlands is thus orchestrating the entire cost-share arrangement that Reclamation requires
11 in order to proceed with the dam raise. It has hosted meetings with other public agencies to discuss
12 how the 50% cost-share will be apportioned across non-federal entities and even gone so far as to
13 provide water supply modeling to inform the discussion. Moreover, Westlands is undertaking these
14 acts to "adhere to the schedule" that Reclamation has established for the project, as demonstrated by
15 its September 2018 Board of Directors Meeting Minutes. (RJN Exh. G at p. 1.) Like its leading of
16 CEQA planning, Westlands' spearheading of cost-share negotiations is a critical link in the dam
17 raise project chain. In its motion, Westlands does not address or refute these claims.

18 Finally, with respect to its riverfront property, Westlands' is *already* financially supporting
19 the Shasta Dam raise and impacting Shasta County through its ownership of the Bollibokka Fishing
20 Club, part of which will be flooded by the dam raise. According to Westlands' financial statements,
21 it purchased these 3,000 acres in 2007 for over \$30,000,000 "to facilitate the raising of Shasta Dam
22 by the U.S. Department of the Interior." (RJN Exh. B at p. 26.) Westlands does not dispute that it
23 purchased this property to facilitate the dam raise or that its ownership of property in Shasta County
24 has direct effects there. Westlands simply ignores this inconvenient fact and Plaintiffs' allegations
25 that this financial support of the dam raise constitutes unlawful assistance and cooperation with
26 planning and construction of a raised Shasta Dam.

27 CONCLUSION

28 For the foregoing reasons, Westlands has failed to meet its burden to demonstrate that venue
is improper in Shasta County, where Plaintiffs have been, continue to be, and will be further injured

1 by Westlands' acts as a public officer. Plaintiffs therefore respectfully request that the Court deny
2 Westlands' Motion to Transfer Action from Shasta County to Fresno County.

3
4 DATED: July 8, 2019

Respectfully submitted,

5 

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