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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SHASTA

PEOPLE OF THE STATE OF CALIFORNIA EX REL. ATTORNEY GENERAL XAVIER BECERRA,

Plaintiff and Petitioner,

v.

WESTLANDS WATER DISTRICT AND DOES 1-20,

Defendants and Respondents.

Case No. 192487

PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER ACTION FROM SHASTA COUNTY TO FRESNO COUNTY

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

1 **INTRODUCTION**

2 Defendant Westlands Water District (Westlands) argues it is entitled to have this matter
3 heard in its home county, Fresno, because it has not yet committed to carry out its proposed
4 Shasta Dam Raise Project. Westlands is wrong. Although venue is proper in a defendant’s
5 county of residence if no other venue statute applies, here, at least two other statutes, Code of
6 Civil Procedure sections 393, subdivision (b), and 392, subdivision (a)(1), require venue in Shasta
7 County. Controlling case law applying these statutes confirms that in an action challenging a
8 project like the Shasta Dam Raise, venue is proper where the effects of the project will occur, not
9 where the project proponent resides. (*California State Parks Found. v. Superior Court*
10 [*California State Parks*] (2007) 150 Cal.App.4th 826; *Drinkhouse v. Spring Valley Waterworks*
11 (1889) 80 Cal. 308 [venue proper in county where dam was to be built].) Accordingly, venue is
12 proper in this Court, and Westlands’ motion to transfer this action to Fresno County should be
13 denied.

14 **BACKGROUND**

15 The People filed this action to enforce the California Wild and Scenic Rivers Act, or Act,
16 which prohibits any “agency of the state” from assisting or cooperating in the “planning or
17 construction” of any dam project that “*could* have an adverse effect on the free-flowing condition
18 of the McCloud River, or on its wild trout fishery.” (Pub. Res. Code, § 5093.542, subd. (c),
19 emphasis added.) Westlands is a “public agency of the state.” (Wat. Code, §§ 37822, 37823.)

20 **I. WESTLANDS’ PLANNING FOR THE SHASTA DAM RAISE PROJECT**

21 Despite this prohibition, Westlands is engaging in planning and other efforts to share the
22 costs of a federal project to raise Shasta Dam. Under federal law, at least fifty percent of the
23 funding for the Shasta Dam Raise Project must be provided by a non-federal cost-sharing partner.
24 (Water Infrastructure Improvements for the Nation Act (WIIN Act), PL 114-332, 2016, S. 612,
25 §§ 4007(b)(2), (3).) In November of 2018, in furtherance of its efforts to become a federal cost-
26 sharing partner for the Shasta Dam Raise Project, Westlands announced that it was commencing a
27 formal environmental review process under the California Environmental Quality Act (CEQA) to
28 evaluate the impacts of raising Shasta Dam. Westlands issued a Notice of Preparation/Initial

1 Study stating its intent to prepare an environmental impact report (EIR) “as Lead Agency...for
2 the Shasta Dam Raise Project.” (See Request for Judicial Notice [RJN], Exh. A.) On December
3 12, 2019, Westlands held a public scoping meeting in Redding, California, at which it provided
4 information about the Shasta Dam Raise Project. (RJN, Exh. B.) To date, Westlands has not yet
5 issued its EIR for the Shasta Dam Raise Project.

6 **II. BUREAU OF RECLAMATION FINDINGS OF ADVERSE IMPACTS TO THE McCLOUD
7 RIVER’S FREE-FLOWING CONDITION AND WILD TROUT FISHERY**

8 As Westlands acknowledges in its moving papers, in July 2015, the Bureau of Reclamation
9 (Bureau) released a Final Environmental Impact Study (EIS) and Final Feasibility Report for the
10 Shasta Dam Raise Project. (Westlands’ Opening Mem., 4:23-25.) Westlands fails to disclose,
11 however, that the Bureau’s Final EIS and Final Feasibility Report concluded that the Shasta Dam
12 Raise Project would cause numerous adverse effects on the McCloud River’s free-flowing
13 condition and wild trout fishery, in conflict with the California Wild and Scenic Rivers Act.

14 For example, according to the Bureau’s Final EIS, raising Shasta Dam to the proposed
15 height of 18.5 feet would increase the portion of the McCloud River that is periodically inundated
16 by Shasta Lake, known as the “transition reach,” by approximately 3,550 feet, about two-thirds of
17 a mile. (RJN, Exh. C, p. 25-37.) This increased inundation would adversely affect the free-
18 flowing conditions of the McCloud River within the extended transition reach by causing “slower
19 moving waters and a wider river channel,” a modification which would not meet the definition of
20 a free-flowing river. (*Id.* at pp. 25-38, 25-40.) Similarly, the Bureau’s Final Feasibility Report
21 concluded: “Long-term adverse effects in wet years are unavoidable for up to .67 miles of the
22 McCloud River.” (RJN, Exh. D, p. 5-16.)¹ The impacts identified by the Bureau will occur in
23 Shasta County, not in Fresno County.

24
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26 ¹ These findings are only a few examples of the numerous adverse impacts to the
27 McCloud River identified by the Bureau in the Final EIS and Final Feasibility Report, and by
28 other state and federal agencies that evaluated the Shasta Dam Raise Project. The People’s
Memorandum in support of Motion for Preliminary Injunction, filed June 13, 2019, contains a full
discussion of these impacts.

1 Raise Project is irrelevant to the application of these statutes. The Court should deny the motion
2 to change venue.

3 **I. VENUE IS PROPER IN SHASTA COUNTY UNDER CODE OF CIVIL PROCEDURE §**
4 **393(b)**

5 Code of Civil Procedure section 393, subdivision (b), provides that for actions “[a]gainst a
6 public officer,” venue is proper in “the county in which the cause, or some part of the cause,
7 arose[.]” (Code Civ. Proc., § 393, subd. (b).) This provision applies to actions against “state
8 officials and agencies; e.g., mandamus, prohibition, or injunction.” (*California State Parks*,
9 *supra*, 150 Cal.App.4th at p. 834.)

10 **A. The instant action is “[a]gainst a public officer.”**

11 In this case, the People challenge Westlands’ participation, as an agency of the state (Wat.
12 Code, §§ 37822, 37823), in planning for the Shasta Dam Raise Project, including preparation of
13 an EIR under CEQA. Accordingly, the instant action is “[a]gainst a public officer,” and section
14 393, subdivision (b), applies. In its moving papers, Westlands does not appear to dispute that the
15 instant action is “[a]gainst a public officer,” or that Code of Civil Procedure, section 393,
16 subdivision (b), generally applies here.

17 **B. The cause of action arose in Shasta County.**

18 Code of Civil Procedure, section 393, subdivision (b), calls for venue in the county where
19 the cause of action, or some part thereof, arose. For purposes of section 393, subdivision (b), “[a]
20 cause of action arises in the county where the effects of the administrative action are felt, not
21 where the agency signs the challenged order or takes the challenged action.” (*Lipari v. Dep’t of*
22 *Motor Vehicles* (1993) 16 Cal.App.4th 667, 670, fn. 2; see also *Tharp v. Superior Court* (1982)
23 32 Cal.3d 496, 502 [under Code Civ. Proc., § 393, subd. (b), [cause of action arose in “county in
24 which [plaintiff]...would be hurt by the official action”].)

25 Westlands argues that because it purportedly “has not made a decision to provide up front
26 funding for the potential Shasta Dam Raise Project,” its actions “are not causing any impacts
27 within Shasta County.” (Westlands’ Opening Memo, 9:2-6.) But the fact that Westlands has not
28

1 yet begun implementing the Shasta Dam Raise Project is irrelevant to the application of the venue
2 statutes.

3 Westlands' proposal to fund the raising of Shasta Dam constitutes a "project" for purposes
4 of CEQA, triggering CEQA's environmental review requirements. (Pub. Resources Code §
5 21102; see also *Friends of Eel River v. N. Coast R.R. Auth.* (2017) 3 Cal.5th 677, 712 [CEQA
6 applies to state agency decisions to approve, fund, or carry out a project with significant effects
7 on the environment].) Westlands has already engaged in the CEQA planning process, having
8 released a Notice of Preparation/Initial Study (NOP/IS) and initiated preparation of an EIR. The
9 purpose of CEQA is to analyze the impacts of a specific project that a lead agency has determined
10 may have a significant effect on the environment, not to evaluate whether the agency can lawfully
11 propose a project in the first instance. (Pub. Resources Code, § 21100, subd. (a) [lead agencies
12 "shall prepare...and certify the completion of, an environmental impact report on any project
13 which they propose to carry out or approve that may have a significant effect on the
14 environment..."]; see also Cal. Code Regs., tit. 14, § 15002, subd. (e) ["A governmental agency
15 is required to comply with CEQA procedures *when the agency proposes to carry out or approve*
16 *the activity*"], italics added.)

17 Here, as its own NOP/IS explains, Westlands "determined that the Shasta Dam Raise
18 Project has the potential to result in significant environmental effects" (RJN Ex. A., p. 1-3), and
19 those effects will occur in Shasta County. (See *id.* at p. 1-4 ["the primary study area includes
20 Shasta Dam and Lake; the lower portions of all contributing major and minor tributaries flowing
21 into Shasta Lake..."].) According to Westlands' NOP/IS, "[t]he EIR will assess the proposed
22 project's effects on the environment and identify potentially significant impacts and feasible
23 mitigation measures to reduce or eliminate those impacts." (*Id.* at p. 1-20.) Thus, Shasta County
24 is the focus of the CEQA analysis Westlands is currently undertaking and which the People seek
25 to enjoin.

26 Because this action challenges Westlands' unlawful CEQA process for the Shasta Dam
27 Raise Project, section 393, subdivision (b), requires venue in the county where the impacts of the
28 project will occur, not where the defendant resides. (*California State Parks, supra*, 150

1 Cal.App.4th at p. 834.) The *California State Parks* case is illustrative here. In that case, the
2 People of the State of California and several public interest groups filed suit in San Diego County
3 to challenge an EIR for construction of a toll road in both San Diego and Orange Counties.
4 (*California State Parks, supra*, 150 Cal.App.4th at p. 830.) The defendant transportation agency,
5 based in Orange County, moved to change venue to Orange County on the same grounds
6 Westlands asserts here – that as the defendant, it was entitled to have the action transferred to its
7 home county under Code of Civil Procedure, section 395, subdivision (a). (*Id.* at p. 832.) The
8 court disagreed, finding that venue was proper in San Diego County because the project that was
9 the subject of the EIR “will, according to the allegations in the petitioners’ complaint, have a
10 direct and substantial impact on an area of San Diego County[.]” (*Id.* at p. 834.)

11 Westlands claims that it has not yet “certified an environmental document or approved a
12 cost share agreement,” but that “[t]hose actions, if they occur, would occur in Fresno County.”
13 (Westlands’ Opening Mem. 6:3-6.) In *California State Parks*, the defendant agency made a
14 similar argument, “that the cause of action arose in Orange County because the claimed injury is
15 the inadequate EIR, which was approved in Orange County, not the alleged environmental
16 impacts in San Diego County.” (*Id.* at p. 834, fn.2) The court expressly rejected this argument:
17 “[A]s case law uniformly provides, when plaintiffs are challenging an official act, the cause of
18 action arises where the effects of that act are felt, not where the decision was made.”² (*Ibid.*)

19 *California State Parks* controls the result here. The Shasta Dam Raise Project that is the
20 subject of Westlands’ illegal CEQA process will be constructed in Shasta County, and the
21 impacts of that project will be felt in Shasta County. Westlands has acknowledged the impacts of
22 its project on the Shasta County community, choosing to conduct the only public scoping meeting
23

24 ² Westlands may argue that *California State Parks* is distinguishable because in that case,
25 the defendant agency had certified the EIR and formally approved the project. However, the
26 court did not base its venue decision on the status of the CEQA process challenged, but on the
27 effects of the project that was the subject of that CEQA process. (*California State Parks, supra*,
28 150 Cal.App.4th at p. 834.) It did not matter that those effects had not yet occurred, only that
petitioners alleged they would occur if the project were constructed. (*Ibid.*) In *California State
Parks*, as here, the claimed injury was an unlawful CEQA process. (*Id.* at p. 834, fn. 2.) Thus,
under *California State Parks*, the relevant inquiry for purposes of section 393, subdivision (b), is
where the impacts of the project that is the subject of that unlawful CEQA process will occur, not
where the defendant resides.

1 for the Shasta Dam Raise Project to date in Redding, California. (RJN, Exh. B.) Because “the
2 effects of [Westlands’] administrative action” will be felt in Shasta County, venue is proper in
3 this Court under Code of Civil Procedure section 393, subdivision (b).) (*Lipari v. Dep’t of Motor*
4 *Vehicles, supra*, 16 Cal.App.4th at p. 670.)

5 **II. VENUE IS ALSO PROPER UNDER CODE OF CIVIL PROCEDURE § 392(a)**

6 In its moving papers, Westlands declined to address Code of Civil Procedure section 392,
7 subdivision (a), as a separate statutory basis for venue in Shasta County. As a result, Westlands
8 failed to meet its “burden to demonstrate that the [People’s] venue selection is not proper under
9 any of the statutory grounds.” (*Mitchell v. Superior Court, supra*, 186 Cal.App.3d at p. 1046.)

10 In actions “for injuries to real property,” Code of Civil Procedure section 392, subdivision
11 (a), provides for venue “in the county where the real property that is the subject of the action, or
12 some part thereof, is situated[.]” The People’s suit against Westlands seeks declaratory and
13 injunctive relief to protect, among other things, the state’s interests in real property that would be
14 affected by the Shasta Dam Raise Project. (See Complaint for Declaratory and Injunctive Relief
15 and Petition for Writ of Mandate, ¶ 25.)

16 “The State is the owner...of all land below the water of a navigable lake or stream.” (Civ.
17 Code, § 670; see also *Sturgeon v. Frost* (2019) __ U.S. __, 139 S.Ct. 1066, 1078 [state holds title
18 to lands beneath navigable waters flowing through federal lands].) Further, the People have a
19 public trust interest in all lands lying between the high and low water marks of navigable waters,
20 as well as in the right to navigation upon such waters below the ordinary high water mark. (*State*
21 *of California v. Superior Court (Lyon)* (1981) 29 Cal.3d 210; *People ex rel. Baker v. Mack* (1971)
22 19 Cal.App.3d 1040, 1050–51.) The construction of the Shasta Dam Raise Project and
23 subsequent filling of the enlarged reservoir will alter the entire shoreline of Shasta Lake,
24 including inundating lands and tributaries subject to the public trust, public navigation rights,
25 and/or state ownership. (See RJN Exh. A, p. 1-15 [18.5 foot dam raise would raise reservoir full
26 pool height by 20.5 feet].) Additionally, the State of California is the owner of parcels of real
27 property in the vicinity of Shasta Lake, at least one of which is located along the shoreline of the
28 Lake. (RJN Exhs. E and F; Hildreth Decl., Exh. G.) Some or all of this property may be

1 inundated if the Shasta Dam Raise Project is constructed. Because the instant action concerns
2 real property interests of the People, and potential injury to those interests, venue is proper in
3 Shasta County, where that real property is situated. (Code Civ. Proc., § 392, subd. (a).)

4 Code of Civil Procedure section 392, subdivision (a), applies to actions to prevent injury to
5 real property. In *Drinkhouse v. Spring Valley Waterworks*, the plaintiff sought to enjoin the
6 defendant from building a dam, which if completed, would permanently flood the plaintiff's land.
7 (*Drinkhouse v. Spring Valley Waterworks* (1889) 80 Cal. 308.) The court held that the action was
8 for injury to real property within the meaning of Code of Civil Procedure, section 392, and that it
9 did not matter that the dam had not yet been built and injury to the plaintiff's land had not yet
10 occurred. (*Id.* at p. 309.) The court concluded that "[t]he injury is the same whether threatened
11 or completed," and venue was proper in the county where the plaintiffs' land was situated. (*Ibid.*)
12 Here, the People seek to enjoin Westlands' planning efforts for the Shasta Dam Raise Project,
13 which if constructed, will inundate real property of the state or subject to the public trust.
14 Accordingly, under section 392, subdivision (a), Shasta County is the proper venue for this
15 action.

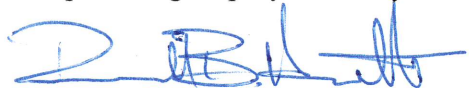
16 CONCLUSION

17 Westlands has failed to demonstrate that the People's venue selection was improper. The
18 People request that the Court deny the Motion to Transfer Action from Shasta County to Fresno
19 County.

20 Dated: July 8, 2019

Respectfully Submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *People ex rel Attorney General Xavier Becerra v. Westlands Water District, et al.*

Case No.: **Shasta County Superior Court no. 192487**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On July 8, 2019, I served the attached **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER ACTION FROM SHASTA COUNTY TO FRESNO COUNTY** by placing a true copy thereof enclosed in a sealed envelope with **GOLDENSTATE OVERNIGHT**, addressed as follows:

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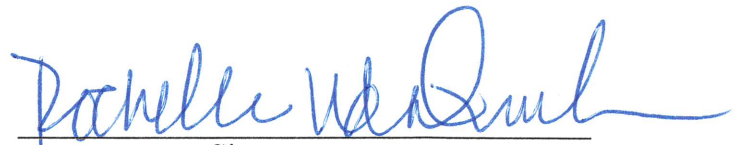
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2019, at Sacramento, California.

Rochelle Uda-Quillen

Declarant



Signature