

1 DANIEL J. O'HANLON, State Bar No. 122380
dohanlon@kmtg.com
2 CARISSA M. BEECHAM, State Bar No. 254625
cbeecham@kmtg.com
3 JENIFER N. GEE, State Bar No. 311492
jgee@kmtg.com
4 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 Capitol Mall, 27th Floor
5 Sacramento, California 95814
Telephone: (916) 321-4500
6 Facsimile: (916) 321-4555

7 ANDREA A. MATARAZZO, State Bar No. 179198
andrea@pioneerlawgroup.net
8 PIONEER LAW GROUP, LLP
1122 S Street
9 Sacramento, CA 95811
Telephone: (916) 287-9500
10 Facsimile: (916) 287-9515

11 Attorneys for Defendant and Respondent
WESTLANDS WATER DISTRICT

12
13 *[Additional Counsel on Next Page]*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SHASTA**

16 PEOPLE OF THE STATE OF CALIFORNIA
EX REL. ATTORNEY GENERAL XAVIER
17 BECERRA,
18 Plaintiff and Petitioner,
19 v.
20 WESTLANDS WATER DISTRICT AND
DOES 1-20,
21 Defendants and Respondents.

Case No. 192487

**REPLY TO OPPOSITION TO
DEFENDANT AND RESPONDENT
WESTLANDS WATER DISTRICT'S
MOTION TO TRANSFER ACTION
FROM SHASTA COUNTY TO FRESNO
COUNTY**

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

Date: July 22, 2019
Time: 8:30 a.m.
Dept.: 8

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

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

ADDITIONAL COUNSEL

JON D. RUBIN, State Bar No. 196944
jrubin@wwd.ca.gov
General Counsel
WESTLANDS WATER DISTRICT
400 Capitol Mall, 28th Floor
Sacramento, CA 95814
Telephone: (916) 321-4207
Facsimile: (559) 241-6277

Attorneys for Defendant and Respondent
WESTLANDS WATER DISTRICT

1 **I. INTRODUCTION**

2 Plaintiffs do not dispute that Westlands Water District (“Westlands”) is a resident of Fresno
3 County.¹ California’s general venue rule in Code of Civil Procedure section 395 dictates that venue
4 is therefore proper in Fresno County. Code of Civil Procedure sections 393 and 392, exceptions to
5 that rule, do not support venue in Shasta County.

6 Absent a decision by Westlands to contribute funding for the Shasta Dam Raise Project
7 (“Project”), the potential impacts of the Project within Shasta County cannot be attributed to
8 Westlands. Thus, there is no injury or impact in Shasta County to support venue of either action
9 based on section 393. The Attorney General’s (“AG”) additional claim that venue should remain in
10 Shasta County under section 392 also fails, because this is not an action for injury to real property.
11 The gravamen of the AG’s complaint is instead a supposed violation of Public Resources Code
12 section 5093.542.

13 Finally, the plaintiffs attempt to argue the overall merits of these cases.² This reply is focused
14 on the issues germane to venue. Westlands does not concede any merits arguments raised by
15 plaintiffs by not addressing them here.

16 The Court should therefore grant these motions for change of venue to Fresno County.

17 **II. STANDARD OF REVIEW**

18 Westlands has demonstrated, and the plaintiffs do not dispute, that its county of residence is
19 Fresno. Thus, under section 395(a) venue lies in Fresno unless an exception applies. *California State*
20 *Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833, which plaintiffs cite as

21 _____
22 ¹ As noted in Westlands’ opening memorandum, this case involves two related proceedings, which
23 are *State of California v. Westlands Water District*, Shasta Superior Court Case Number 192487
24 and *Friends of the River et al. v. Westlands Water District*, Shasta County Superior Court Case
25 Number 192490. Westlands addresses the oppositions filed in each proceeding in this single,
26 combined reply memorandum.

27 ² Plaintiffs also direct the Court’s attention to the AG’s motion for preliminary injunction, with the
28 AG impliedly inviting the Court to review that motion for “a full discussion” of alleged impacts of
the Project. (Friends of the River et al.’s Opposition to Defendant’s Motion to Transfer Action from
Shasta County to Fresno County [“FOR Opp.”] at p. 4, fn. 2; AG Opp. at p. 3, fn. 1.) To do so would
be at best premature; the Court must first decide Westlands’ motion to transfer. (See *Pickwick Stages*
System v. Superior Court of Los Angeles County (1934) 138 Cal.App. 448, 449.)

1 support for venue in Shasta County under section 393(b), applies the same burden-shifting rule from
2 *Archer v. Superior Court of Humboldt County* (1962) 202 Cal.App.2d 417, 420, that the FOR
3 Plaintiffs³ criticize Westlands for relying on. (150 Cal.App.4th at p. 833; FOR Opp. at p. 6, fn. 3.)
4 Regardless of which party bears the burden, however, Westlands has demonstrated that venue is not
5 proper under section 393 or 392, the only exceptions argued by plaintiffs.

6 **III. ARGUMENT**

7 **A. Section 393(b) Does Not Provide A Basis For Venue Because, Pending A**
8 **Decision By Reclamation, Project Impacts Are Not Attributable To Westlands**

9 Plaintiffs contend that venue is proper in Shasta County under Code of Civil Procedure
10 section 393(b). (Friends of the River et al.’s Opposition to Defendant’s Motion to Transfer Action
11 from Shasta County to Fresno County [“FOR Opp.”], pp. 6-13; Attorney General’s Opposition to
12 Defendant’s Motion to Transfer Action from Shasta County to Fresno County [“AG Opp.”], pp. 5-
13 8.)

14 Code of Civil Procedure section 393(b) states, in relevant part, “Subject to the power of the
15 court to transfer actions and proceedings as provided in this title, the county in which the cause, or
16 some part of the cause, arose, is the proper county for the trial ... [a]gainst a public officer ... for an
17 act done by the officer”

18 The FOR Plaintiffs allege venue is proper in Shasta County under section 393(b) because
19 “the dam raise will occur and have impacts in Shasta County.” (Friends of the River et al.’s
20 Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate [“FOR
21 Comp.”] ¶ 24.) The AG likewise alleges venue is proper in Shasta County “because Shasta Dam
22 and Reservoir and the lower McCloud River are located in Shasta County. Impacts to the McCloud
23 River will occur in Shasta County.” (Attorney General’s Complaint for Declaratory and Injunctive
24 Relief and Petition for Writ of Mandate [“AG Comp.”] ¶ 24.)

25 In its opposition to this motion, the AG argues that, because Westlands is engaged in CEQA
26

27 ³ FOR Plaintiffs include Friends of the River, Golden Gate Salmon Association, Pacific Coast
28 Federation of Fishermen’s Associations, Institute for Fisheries Resources, Sierra Club, Defenders
of Wildlife, and Natural Resources Defense Counsel.

1 review related to the Project, and the Project would have effects in Shasta County, venue is proper
2 in Shasta County. (AG Opp. at pp. 5-8.) The FOR Plaintiffs similarly assert that the cause of action
3 arose in Shasta County because of “past, ongoing, and future injury in Shasta County.” (FOR Opp.
4 at pp. 9-10.) The FOR Plaintiffs also contend that Westlands’ alleged “current unlawful actions” of
5 its CEQA review, including its scoping meeting in Redding, its discussions with Reclamation about
6 potential negotiations, and Westlands’ purchase of property along the McCloud River in 2007, have
7 “injured” them in Shasta County. (FOR Opp. at pp. 10-11.)⁴ Plaintiffs’ arguments are unavailing.

8 Plaintiffs primarily rely on two cases, *California State Parks Foundation v. Superior Court*
9 (2007) 150 Cal.App.4th 826, and *Tharp v. Superior Court* (1982) 32 Cal.3d 496, to support their
10 arguments. (FOR Opp. at pp. 10-11; AG Opp. at pp. 5-8.) We address each case in turn.

11 The AG claims support in *California State Parks Foundation* because there the court did not
12 base its venue decision on the status of the CEQA process, but rather on the effects of the project, a
13 new toll road. (AG Opp. at p. 7, fn. 2.) The FOR Plaintiffs make a similar assertion but substitute
14 the term “injury” for effects. (FOR Opp. at p.10.) In *California State Parks Foundation* the court
15 determined that there were effects in the county the plaintiffs chose for venue, which the new toll
16 road would pass through, based on an *approved* EIR and project. (*California State Parks Found.*,
17 *supra*, 150 Cal.App.4th at p. 834.) The issue decided in *California State Parks Foundation* was
18 whether section 393(b) applies in actions to vindicate public rights. (*Id.* at pp. 834-835.) Because
19 there CEQA review had been completed and a decision made to proceed with the project, impacts
20 of the toll road could be attributed to the agency’s decision. The case did not discuss the issue before
21

22 ⁴ The remainder of FOR’s and the AG’s arguments relate to the overall merits of their claim that
23 Westlands’ acts violate the Public Resources Code. Those arguments are not germane to the motion
24 to transfer venue, and therefore, will not be further addressed in Westlands’ reply. Westlands does
25 not concede any of plaintiffs’ arguments on the merits.

26 Additionally, both plaintiffs filed requests for judicial notice in support of their oppositions.
27 Westlands directs this court to its objections to two emails as those are not official acts. Westlands
28 further objects to the extent either party seeks to use documents for the truth of the matter asserted.
(Evid. Code § 1200 [the statements within cannot be admitted for the truth of the matter asserted];
Arce v. Kaiser Foundation Health Plan, Inc., 181 Cal.App.4th 471, 482 [“While we may take
judicial notice of court records and official acts of state agencies (Evid. Code, § 452, subds. (c), (d)),
the truth of matters asserted in such documents is not subject to judicial notice”]; *Coyne v. City and
County of San Francisco*, 9 Cal.App.5th 1215, 1223.)

1 this Court – does Westlands’ incomplete CEQA review process cause any impacts in Shasta
2 County? Framed another way, what impacts of the Project will be attributable to Westlands if it
3 decides against participating as a cost share partner? The answer is none. Without a decision yet
4 from Westlands, or even a completed CEQA review process, there are no impacts within Shasta
5 County to support venue here.

6 In *Tharp*, a new car dealer operating in Tulare County sued the New Motor Vehicles Board
7 in Tulare County to enjoin the board from any further action to suspend or revoke the dealer’s
8 license. In that case, the agency had already taken action injuring the new car dealer who sought a
9 petition. The agency had “noticed and held a hearing under section 3066 of the Vehicle Code, the
10 effect of which could be to put them out of business as a new car dealer.” (*Tharp, Supra*, 32 Cal. 3d
11 at p. 503.) Further, the “general counsel for the Department of Motor Vehicles called petitioner’s
12 counsel and indicated that the board had ‘ordered’ the Department of Motor Vehicles to ‘revoke,
13 suspend or rescind petitioner’s license to sell new Chevrolet motor vehicles.’” (*Ibid.*) In contrast,
14 plaintiffs here cannot point to any actions done by Westlands that have caused any injury to them
15 in Shasta County.

16 In their opposition, the FOR Plaintiffs claim they have alleged “current injury” in Shasta
17 County because Westlands held a scoping meeting in Redding, but they do not explain how their
18 attendance at a scoping meeting is cognizable injury. (FOR Opp. at p.10.) They also point out that
19 section 5093.542 protects their interests in the fish and wildlife of the McCloud River, but do not
20 point to any current harm to fish and wildlife from Westlands’ actions. (FOR Opp. At p. 11.) Finally,
21 they suggest Westlands’ purchase of property on the McCloud River in 2007 has caused current
22 injury, but do not allege or explain how. (*Ibid.*)

23 In addition to Westlands’ CEQA review, the FOR Plaintiffs point to their allegations that
24 Westlands has participated in cost-share negotiations with Reclamation and purchased property on
25 the McCloud River, as “injury.” According to the FOR Plaintiffs, “[b]oth of these acts cause injury
26 because they are critical for the future of a raised Shasta Dam.” (FOR Opp. At p. 12.) Westlands in
27 fact has not entered formal cost-share negotiations with Reclamation, but even if it had, what is
28 missing from FOR’s argument is any claim that Westlands has made a commitment to cost-share,

1 something it will not do absent CEQA compliance. Likewise, Westlands did purchase property on
2 the McCloud River approximately 12 years ago – in 2007, but FOR Plaintiffs do not allege that
3 Westlands has transferred any interest in that property to Reclamation, or committed to do so. As
4 Westlands explained in its opening brief, to support venue in Shasta County based on impacts of
5 the Project, plaintiffs skip ahead to the “would be” injuries of actions Westlands has not yet and
6 may never take.

7 In sum, plaintiffs rely on injury from the future impacts of the Bureau of Reclamation’s yet
8 to be approved Project as a basis of venue in Shasta County, but those impacts cannot support venue
9 of this action against Westlands, when Westlands has not yet decided whether to fund the Project.
10 The FOR Plaintiffs’ claim of “current” injury are unsubstantiated. As plaintiffs cannot point to
11 cognizable injury in Shasta County, their claims did not arise in Shasta County, and Code of Civil
12 Procedure section 393(b) does not support venue.

13 **B. Section 392(a) Does Not Provide A Basis For Venue Because The AG’s Action**
14 **Against Westlands Is For Alleged Violation Of Section 5093.542, Not Injury**
15 **To Real Property**

16 The AG separately argues that venue is proper under Code of Civil Procedure section 392(a)
17 based on “the state’s interest in real property that would be affected by the Shasta Dam Raise
18 Project.” (AG Opp. at p. 8.) The AG characterizes his real property interest as based on the state’s
19 public trust interest and pursuant to the state’s ownership of real property on the Shasta Lake
20 shoreline and within the lake’s vicinity. (AG Opp. at p. 8.)

21 Code of Civil Procedure section 392(a) states, in relevant part, “[s]ubject to the power of the
22 court to transfer actions and proceedings as provided in this title, the superior court in the county
23 where the real property that is the subject of the action, or some part thereof, is situated, is the proper
24 court for the trial of . . . actions . . . [f]or injuries to real property.” (Code of Civ. Proc. § 392(a)(1).)
25 “The action must be wholly local in nature to require it to be brought in the county of the situs as
26 designated in section 392... .” (*Hardy, supra*, 130 Cal.App.2d at p. 552.) A court looks to whether
27 the complaint alleges an injury to the property or the plaintiff’s interest in it. (*Ibid.*; see also
28 *Drinkhouse v. Spring Valley Waterworks* (1889) 80 Cal. 308, 309 [“the sole object and purpose of
the action is to prevent a threatened injury to real property is clear.”])

1 The AG's reliance on *Drinkhouse* is misplaced. (AG Opp. at p. 9.) Here, contrary to what
2 the AG asserts, his action is not for injury to real property. (*Id.* at p. 8.) The AG cites to his complaint
3 where he asserts his basis for standing, alleging his interest in upholding California law and abiding
4 by the state's public trust duties. (AG Comp. at ¶ 25.) The actual "sole object and purpose" and sole
5 cause of action of the AG's complaint is for Westlands' alleged violation of Public Resources Code
6 section 5093.542. *Drinkhouse* is distinguishable on other grounds as well. There, the defendant had
7 already commenced construction of the dam and plaintiff filed a lawsuit to enjoin it. (*Drinkhouse*,
8 *supra*, 80 Cal. at p. 309.) Thus, there was no question of potential impacts from the acts complained
9 of there. In contrast here, and as discussed in its opening brief and this reply above, Westlands has
10 not finished its CEQA review process, much less made a decision to participate as a cost share
11 partner. And, Reclamation has not approved the Project or started any construction.

12 The AG argues that the Project will alter Shasta Lake's entire shoreline, inundating lands
13 subject to the public trust and state ownership and possibly inundating real property the State owns
14 near Shasta Lake and along its shoreline, thus implicating the State's real property interests and
15 supporting venue under section 392. (AG Opp. at pp. 8-9.) But since the Project will be under taken
16 by Reclamation, if it decides to go forward, the AG's claim for injury would be against Reclamation,
17 not Westlands.

18 Thus, this case does not present a threatened injury to real property under section 392, and
19 venue is therefore proper in Fresno County Superior Court.

20 **IV. CONCLUSION**

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

23 DATED: July 15, 2019

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

24
25
26 By: 

27 Daniel J. O'Hanlon
Attorneys for Defendant and Respondent
28 WESTLANDS WATER DISTRICT

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

PROOF OF SERVICE

**People, et al. v. Westlands Water District, et al.
Shasta County Superior Court Case No. 192487**

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.

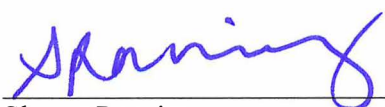
On July 15, 2019, I served true copies of the following document(s) described as **REPLY TO OPPOSITION TO DEFENDANT AND RESPONDENT WESTLANDS WATER DISTRICT'S MOTION TO TRANSFER ACTION FROM SHASTA COUNTY TO FRESNO COUNTY** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

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

Executed on July 15, 2019, at Sacramento, California.



Sherry Ramirez

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

SERVICE LIST
People, et al. v. Westlands Water District, et al.
Shasta County Superior Court Case No. 192487

Xavier Becerra Tracy Winsor Courtney Covington Russell Hildreth Attorney General Office of the Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 210-7825 Facsimile: (916) 327-2319 Email: Russell.Hildreth@doj.ca.gov	Attorneys for Plaintiff and Petitioner PEOPLE OF THE STATE OF CALIFORNIA EX REL. ATTORNEY GENERAL XAVIER BECERRA
Jon D. Rubin General Counsel WESTLANDS WATER DISTRICT 400 Capitol Mall, 28 th Floor Sacramento, CA 95814 Telephone: (916) 321-4207 Facsimile: (559) 241-6277 irubin@wwd.ca.gov	Attorneys for Defendant and Respondent WESTLANDS WATER DISTRICT
Andrea A. Matarazzo PIONEER LAW GROUP, LLP 1122 S Street Sacramento, CA 95811 Telephone: (916) 287-9500 Facsimile: (916) 287-9515 andrea@pioneerlawgroup.net	Attorneys for Defendant and Respondent WESTLANDS WATER DISTRICT
Nina Robertson EARTHJUSTICE 50 California Street, Suite 500 San Francisco, CA 94111 Telephone: (415) 217-2000 Facsimile: (415) 217-2040	Attorneys for FRIENDS OF THE RIVER, et al.