

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 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.
25

Case No. 192490

**WESTLANDS WATER DISTRICT'S
OBJECTION TO PLAINTIFFS'
REQUEST FOR JUDICIAL NOTICE**

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

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

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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 Defendant and Respondent Westlands Water District (“Westlands”) hereby objects to the
2 Plaintiffs and Petitioners Friends of the River, Golden Gate Salmon Association, Pacific Coast
3 Federation of Fishermen’s Associations, Institute for Fisheries Resources, Sierra Club, Defenders
4 of Wildlife and Natural Resources Defense Council’s (“FOR plaintiffs”) request for judicial notice
5 of two documents, both emails, as follows:

6 1. Email dated February 11, 2018, from David van Rijn, Regional Planning Officer for
7 Bureau of Reclamation’s Mid-Pacific Region, to Russ Freeman, Deputy General Manager –
8 Resources, Westlands Water District, with the subject “Shasta Raise – Agreement in Principle for
9 Potential Cost Sharing”:

10 OBJECTION: Statements by individuals who work for an agency are not matters subject to
11 judicial notice when they are not official agency acts. (See *Childs v. Cal.* (1983) 144 Cal.App.3d
12 155, 162 [concluding that “an individual’s description of the general mailing practice of a
13 government agency, a practice which has not been established as governed by specific agency rules”
14 was not an “official act” for purposes of Evidence Code section 452(c)]; contra *Am. Indian Model
15 Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 274, 293 [taking judicial
16 notice of a letter from counsel for the California Department of Education for the limited purpose
17 of the *department’s* position, but not for the truth of the matter asserted].) Here, the February 11,
18 2018, email that the FOR Plaintiffs request judicial notice of is an email from a regional planning
19 officer for the Bureau of Reclamation (“Reclamation”) to Westlands’ Deputy General Manager
20 inquiring as to Westlands’ potential interest in renewing its Agreement in Principle with
21 Reclamation. This informal email is much more akin to the declaration in *Childs* found not subject
22 to judicial notice. (*Childs v. Cal.*, *supra*, 144 Cal.App.3d at p. 162 [refusing to expand the scope of
23 section 452 and noting that matters subject to judicial notice include “resolutions, reports and other
24 official acts”].) Both consist of statements from individuals regarding not yet finalized decisions,
25 and cannot be said to be official acts or statements. The email here is not comparable to the official
26 letter sent by counsel on behalf of the school district in litigation in *American Indian Model Schools*.
27 (See *Am. Indian Model Schools*, *supra*, 227 Cal.App.4th at pp. 274, 293.) Thus, the February 11,
28 2018, email is not an official act and not properly subject to judicial notice.

1 Moreover, the effect of judicial notice of an official act or record, where proper, extends
2 only to existence of the act or record and not to truth of any statement therein. (*Arce v. Kaiser*
3 *Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482 [“While we may take judicial notice
4 of court records and official acts of state agencies (Evid. Code § 452, subs. (c), (d)), the truth of
5 matters asserted in such documents is not subject to judicial notice”]; *Coyne v. City and County of*
6 *San Francisco* (2017) 9 Cal.App.5th 1215, 1223.) The statements within this document cannot be
7 admitted for the truth of the matter asserted. (Evid. Code § 1200.)

8 2. Email dated March 6, 2019, from Jose Gutierrez, Chief Operating Officer of
9 Westlands Water District, to officials representing various other California public water agencies,
10 with the subject “Update on Shasta Dam Raise Project”:

11 OBJECTION: Statements by individuals who work for an agency are not matters subject to
12 judicial notice when they are not official agency acts. (See *Childs v. Cal.* (1983) 144 Cal.App.3d
13 155, 162 [concluding that “an individual’s description of the general mailing practice of a
14 government agency, a practice which has not been established as governed by specific agency rules”
15 was not an “official act” for purposes of Evidence Code section 452(c); contra *Am. Indian Model*
16 *Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 293 [taking judicial notice of
17 a letter from the California Department of Education for the limited purpose of the *department’s*
18 position].) Here, the March 6, 2019, email that the FOR Plaintiffs request judicial notice of is an
19 email from Westlands’ Chief Operating Officer Jose Gutierrez to various California public water
20 agencies regarding a meeting to discuss options of Westlands becoming a cost share partner in
21 Reclamation’s project. This informal email is much more akin to the declaration in *Childs* found not
22 subject to judicial notice. (*Childs v. Cal.*, *supra*, 144 Cal.App.3d at p. 162 [refusing to expand the
23 scope of section 452 and noting that matters subject to judicial notice include “resolutions, reports
24 and other official acts”].) Both consist of statements from individuals regarding not yet finalized
25 decisions, and cannot be said to be official acts or statements. The email here is not comparable to
26 the official letter sent by counsel on behalf of the school district in litigation in *American Indian*
27 *Model Schools*. (See *Am. Indian Model School*, *supra*, 227 Cal.App.4th at pp. 274, 293.) Thus, the
28 March 6, 2019, email is not an official act and not properly subject to judicial notice.

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DATED: July 15, 2019

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

By: 

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

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PROOF OF SERVICE

**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.

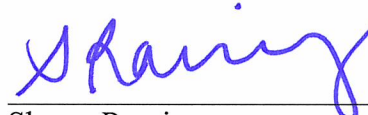
On July 15, 2019, I served true copies of the following document(s) described as **WESTLANDS WATER DISTRICT'S OBJECTION TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE** on the interested parties in this action as follows:

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

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SERVICE LIST
Friends of the River, et al. v. Westlands Water District, et al.
Case No. 192490

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

Jon D. Rubin
General Counsel
WESTLANDS WATER DISTRICT
400 Capitol Mall, 28th Floor
Sacramento, CA 95814
Telephone: (916) 321-4207
Facsimile: (559) 241-6277
jrubin@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

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