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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.
22

Case No. 192487

**DECLARATION OF JOSE GUTIERREZ
IN SUPPORT OF WESTLANDS WATER
DISTRICT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

BY FAX

Date: July 29, 2019
Time: 8:30 a.m.
Dept.: 8

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

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

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Attorneys for Defendant and Respondent
WESTLANDS WATER DISTRICT

1 **DECLARATION OF JOSE GUTIERREZ**

2 I, Jose Gutierrez, declare as follows:

3 1. I am the Chief Operating Officer at Westlands Water District (“Westlands”). I
4 previously worked as Deputy General Manager for Resources for Westlands. My responsibilities
5 for Westlands have included planning, organizing, and directing Westlands’ water resource
6 activities including its Federal contract water supply and acquired supplemental water supplies;
7 administering and scheduling water deliveries; managing Westlands’ power programs; directing
8 groundwater management and conservation activities; implementing State regulatory mandates;
9 reviewing Westlands’ land lease and sales activities; and implementing Westlands’ capital
10 improvement projects to enhance water supply reliability. I have been employed by Westlands since
11 November 1, 2012. Prior to my employment with Westlands, my professional experience included
12 approximately three years serving as an engineer with the U.S. Environmental Protection Agency,
13 and 17 years as a consulting engineer working on water-related projects throughout California. I am
14 a registered Professional Engineer in Civil Engineering in the State of California, and have held my
15 license continuously since 1997. I earned a Bachelors and Masters of Science degree from the
16 University of California at Berkeley in 1992 and 1994, respectively. My coursework focused on
17 groundwater and surface water supply and treatment. I was born and raised in the San Joaquin Valley
18 and worked in agriculture and related industries prior to college.

19 2. Westlands is a California water district created and is operating under the provisions
20 of the California Water Code. Westlands’ main office is located in Fresno, California. Westlands’
21 service area is in western Fresno and Kings counties; it encompasses approximately 614,000 acres
22 and includes some of the most highly productive agricultural lands in the world. Growers in
23 Westlands produce more than sixty high-quality food and fiber crops, including row crops, grapes
24 and nut crops. Westlands provides water primarily for irrigation of farms, but also provides water
25 for some municipal and industrial uses as well, including Naval Air Station Lemoore.

26 3. Historically, the need for irrigation water in Westlands was in the range of 1.4 million
27 acre-feet per year. Westlands works to help meet that need by obtaining and distributing surface
28 water. The Central Valley Project (“CVP”) made available to Westlands under its contract with the

1 United States is the primary source of surface water supplied by Westlands to its farmers. The
2 Bureau of Reclamation (“Reclamation”) operates the CVP.

3 **Westlands Has a Need for Additional Water Supplies**

4 4. Increased competition for CVP water in recent years has frustrated Reclamation’s
5 ability to operate CVP facilities, including Shasta Dam and Reservoir, to meet Congressionally
6 authorized and mandated purposes of the CVP. For example, in recent years, significant conflict has
7 arisen between operation of Shasta Dam and Reservoir to provide cold water immediately below
8 the Dam for the protection of spawning salmon and flow further downstream for other species,
9 particularly the Delta smelt.

10 5. Also, the reliability and quantity of CVP water available for agricultural, urban and
11 wildlife communities have been compromised. In most, if not all years, Westlands must allocate
12 (ration) surface water deliveries to its farmers. Westlands’ annual water allocation from the CVP
13 has declined considerably since 1991. Reclamation has allocated Westlands’ full contractual
14 entitlement to CVP water in only four of the past thirty years. Indeed, in over half of those years
15 Westlands received fifty percent or less of its full contractual allotment, across a broad range of
16 water year types. In water contract year 2015—and for the second consecutive year of a severe
17 drought—Westlands received a zero percent allocation under its CVP contract, and for water
18 contract year 2016 received a mere five percent.

19 6. The adverse impacts of a reduced CVP water supply flow into other areas of concern
20 that include land fallowing, increased groundwater pumping (with increased overdraft and potential
21 for subsidence, and lower crop yields), increased soil salinity, increased energy use, increased water
22 costs for disadvantaged communities, permanent crop damage, increased unemployment, reduced
23 air quality, and potential bird strike damage to Naval Air Station Lemoore’s strike-fighter aircraft
24 because lack of water has led to fallowed land that attracts rodents, which in turn attracts birds of
25 prey to the vicinity.

26 7. In light of the impacts to Reclamation’s ability to operate CVP facilities to meet
27 Congressionally authorized and mandated purposes, Westlands is exploring the potential projects
28 and programs to improve and restore CVP water supplies.

1 **Ongoing Investigations of Enlarging Shasta Dam to Improve CVP Water Supply Reliability**

2 8. One potential project that may improve the ability of Reclamation to operate CVP
3 facilities to meet Congressional authorized and mandated purposes of the CVP is enlargement of
4 Shasta Dam and Reservoir.

5 9. Shasta Dam and Reservoir were constructed as integral elements of the CVP, with
6 Shasta Reservoir representing about 40 percent of the total reservoir storage capacity of the CVP
7 and about 55 percent of total annual CVP supply. Shasta Dam and Reservoir, in conjunction with
8 other facilities, provides flood protection, water supply for irrigation, municipal and industrial uses,
9 and protection for fish and wildlife in the Sacramento River and Sacramento-San-Joaquin Delta
10 (“Delta”). It also maintains water quality, navigation flows, and generates hydropower.

11 10. In the mid-1990s a group of state and federal agencies created the CALFED Program
12 and considered a suite of actions intended to solve problems of ecosystem quality, water supply
13 reliability, and water quality. The state agencies that were part of CALFED included the California
14 Resources Agency (subsequently renamed the California Natural Resources Agency), the California
15 Department of Water Resources, the California Department of Fish and Game (subsequently
16 renamed the California Department of Fish and Wildlife), and the California State Water Resources
17 Control Board. Those agencies, through the CALFED Program, prepared a programmatic
18 environmental impact statement/environmental impact report, which includes enlargement of Shasta
19 Dam and Reservoir. In 2000, the CALFED agencies 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. Information about the CALFED Program, including the Record of Decision, EIS/EIR and
22 the Implementation Plan, is archived online at <http://www.calwater.ca.gov/>.

23 11. Since 2000, Reclamation has continued investigation of raising Shasta Dam. The
24 Shasta Dam Raise Project (“Project”) led by Reclamation proposes to increase the height of Shasta
25 Dam by up to 18.5 feet and expand capacity of Shasta Reservoir by up to 634,000 acre-feet.
26 Reclamation released a Final Feasibility Report and Final EIS in July 2015. The Final Feasibility
27 Report, along with the Final EIS, provided the results of various studies, including planning,
28 engineering, environmental, social, economic and financial, and included possible benefits and

1 effects of alternative plans. However, Reclamation has not made a final decision whether to proceed
2 with the Project.

3 **Westlands is Considering Whether to Provide Funding for the Project**

4 12. Westlands is considering, along with other public agencies, whether to provide
5 funding for the potential Project as a non-federal cost share partner. As one of its many
6 considerations as to whether it will become a non-federal cost share partner in the Project, Westlands
7 must evaluate whether Public Resources Code section 5093.542 precludes Westlands from entering
8 into a cost share agreement. Westlands must also comply with California Environmental Quality
9 Act (“CEQA”). Because the question raised by Public Resources Code section 5093.542 involves
10 issues of fact and law, Westlands is using the CEQA process, as required by law, to develop the
11 necessary factual information to evaluate that question.

12 13. As part of its CEQA process related to funding the Project, on November 30, 2018,
13 Westlands issued a Notice of Preparation of an Environmental Impact Report (“EIR”). Westlands
14 provided a 30-day public comment period and received comments from various stakeholders.

15 14. This CEQA review process is ongoing. Westlands is currently preparing a draft EIR,
16 which will be subject to a public review and comment period. After that, Westlands will prepare a
17 final EIR that responds to comments on the draft EIR. To date, Westlands has neither certified any
18 environmental document nor approved a cost share agreement. Westlands is targeting the end of
19 2019 as the date for completion of its CEQA review and a decision by the Westlands Board of
20 Directors regarding whether it can and whether it should become a non-federal cost share partner in
21 the Project. This is already later than the schedule Reclamation has outlined for decisions by
22 potential cost share partner(s). If Westlands’ CEQA process and hence any decision by its Board of
23 Directors on whether to become a non-federal cost share partner is delayed well into 2020 by an
24 injunction, it is uncertain whether Westlands will still have an opportunity to support the Project as
25 a cost share partner, if that is permitted by State law and makes senses from an economic basis and
26 possibly other bases.

27 15. Westlands did enter into an Agreement in Principle with Reclamation, which
28 provides that Westlands and Reclamation each “may be willing to enter formal negotiations for the

1 sharing of costs to enlarge Shasta Dam and Reservoir” subject to various listed contingencies. Those
2 contingencies did not occur. The Agreement in Principle expired by its terms on September 30, 2017
3 and has not been renewed or extended.

4 **Cost Will be a Significant Factor in Any Decision by the Westlands Board**

5 16. The Project will require a substantial investment. Reclamation has estimated the
6 construction cost of the Project to be \$1.265 billion (2015 Feasibility Report, January 2014 price
7 levels). It is my understanding that not more than 50 percent of the total cost of the Project may be
8 paid by the Secretary of the Interior. Hence, Reclamation is looking for CVP contractors such as
9 Westlands to contribute at least half of the costs up front. Among other things, including whether
10 the Public Resources Code precludes participation, Westlands and other CVP contractors must
11 decide whether the quantity of additional CVP water supply they may realize would economically
12 justify their participation in the Project as non-federal cost share partners.

13 17. In general, the greater the number of CVP contractors that agree to contribute
14 funding, the less the financial burden will likely be on each individual contractor. Hence, Westlands
15 discussed with other CVP contractors their interest in contributing to the costs of the Project. That
16 does not mean Westlands has already made a decision itself to participate. Rather, Westlands is
17 doing the best it can to assess its likely cost of contributing so the Board of Directors can make an
18 informed decision whether the Project is economically feasible. At this point, whether the Board
19 will decide the Project is economically feasible is uncertain.

20 18. There is a recent example of Westlands Board of Directors deciding not to participate
21 in a project despite Westlands having spent considerable resources exploring the feasibility of that
22 project. The example is the proposed project to build twin tunnels beneath the Delta to convey water
23 to areas south of the Delta, known as the California WaterFix. Westlands contributed millions of
24 dollars for technical and environmental studies for that project. Ultimately, however, in September
25 2017 the Westlands Board of Directors voted not to participate in that project, based on concerns
26 the additional water supply that project might provide for Westlands did not justify the additional
27 costs that Westlands farmers would incur to pay for it.

28

1 **The Bollibokka Club and Fishing on the Lower McCloud River**


2 19. In 2007, Westlands purchased property along the first seven miles of the lower
3 McCloud River upstream from Shasta Dam and Reservoir. This property is known as the Bollibokka
4 Club, and has been used for fishing for more than 100 years. Under Westlands' ownership, the
5 property is still used for fishing by members of the Club and their guests. A fly fishing shop in
6 Redding manages use of the property for Westlands. This area is not open for fishing by the public.
7 One road on the right bank of the river provides access to the Bollibokka Club. This road is gated
8 near the boundary between the Shasta-Trinity National Forest (STNF) and the Bollibokka Club,
9 upstream of the McCloud River Bridge, limiting public access.

10 20. The Club permits only 20 guests and 16 rods at a time on the property. All fishing is
11 catch and release, using barbless hooks. The fishing season each year is limited to the period from
12 the last Saturday in April through November 15.

13 21. It is my understanding, based on Reclamation's analysis, that if Shasta Dam is raised
14 by 18.5 feet, then approximately 3,550 feet of the lower McCloud River would be newly inundated
15 when Shasta Reservoir is entirely full. However, that inundation would be only for a limited time
16 within some years. Guests at the Club during those limited times who wanted to fish a riverine
17 environment would still have about 31,680 feet of the lower McCloud River on the Bollibokka Club
18 property to do so.

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

21 Executed this 15th day of July, 2019, at Fresno, California.

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24 _____
25 Jose Gutierrez
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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 16, 2019, I served true copies of the following document(s) described as **DECLARATION OF JOSE GUTIERREZ IN SUPPORT OF WESTLANDS WATER DISTRICT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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 July 16, 2019, at Sacramento, California.



Selena Paradee

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

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