

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

WESTLANDS WATER DISTRICT,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF  
SHASTA,

Respondent,

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,

Real Parties in Interest.

Court of Appeal Case No.

(Shasta County Superior Court  
Case No. 192490)

Honorable Tamara L. Wood;  
Honorable Bradley Boeckman  
Department 8  
Telephone: (530) 225-5116

---

**STAY OF TRIAL COURT PROCEEDINGS REQUESTED**

---

**VERIFIED PETITION FOR WRIT OF MANDATE;  
MEMORANDUM OF POINTS AND AUTHORITIES  
RELATED PETITIONS PENDING**

---

Daniel J. O'Hanlon, SBN 122380  
*dohanlon@kmtg.com*  
Carissa M. Beecham, SBN 254625  
*cbeecham@kmtg.com*  
Jenifer N. Gee, SBN 311492  
*jgee@kmtg.com*  
Kronick Moskowitz Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
Telephone: (916) 321-4500  
Facsimile: (916) 321-4555  
*Attorneys for Westlands Water District*

Jon D. Rubin, SBN 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 Westlands Water District*

Andrea A. Matarazzo, SBN 179198  
*andrea@pioneerlawgroup.net*  
Pioneer Law Group, LLP  
1122 S Street  
Sacramento, CA 95811  
Telephone: (916) 287-9500  
Facsimile: (916) 287-9515  
*Attorneys for Westlands Water District*

<b>COURT OF APPEAL</b> <b>Third APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY:                      STATE BAR NUMBER: 122380 NAME: Daniel J. O'Hanlon FIRM NAME: Kronick Moskovitz Tiedemann & Girard STREET ADDRESS: 400 Capitol Mall, 27th Floor CITY: Sacramento    STATE: CA              ZIP CODE: 95814 TELEPHONE NO.: (916) 321-4500    FAX NO.: (916) 321-4555 E-MAIL ADDRESS: dohanlon@kmtg.com ATTORNEY FOR (name): Westlands Water District	SUPERIOR COURT CASE NUMBER: 192490
APPELLANT/ Westlands Water District PETITIONER: RESPONDENT/ Friends of the River, et al. REAL PARTY IN INTEREST:	
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>	

1. This form is being submitted on behalf of the following party (name): Westlands Water District
2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 20, 2019

Daniel J. O'Hanlon  
(TYPE OR PRINT NAME)

  
 (SIGNATURE OF APPELLANT OR ATTORNEY)

Document received by the CA 3rd District Court of Appeal.

**TABLE OF CONTENTS**

	<b>Page</b>
CERTIFICATE OF INTERESTED PARTIES .....	2
INTRODUCTION .....	6
PETITION FOR WRIT OF MANDATE .....	8
PRAYER .....	14
VERIFICATION .....	16
MEMORANDUM .....	17
I. SUMMARY OF ARGUMENT .....	17
II. STANDARD OF REVIEW .....	17
III. BACKGROUND .....	18
IV. ARGUMENT .....	19
A. Venue Is Mandatory In The Defendant’s County Of Residence, Unless An Exception Applies .....	19
B. The Impacts Of The Project Are Not Attributable To Westlands, Because It Has Not Made Any Decision Whether To Contribute Funding For The Project .....	20
C. None Of the Alleged Acts Done By Westlands Cause Injury In Shasta County .....	24
V. CONCLUSION .....	26

Document received by the CA 3rd District Court of Appeal.

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Archer v. Superior Court of Humboldt County</i> (1962) 202 Cal.App.2d 417 .....	18, 20
<i>Bybee v. Fairchild</i> (1946) 75 Cal.App.2d 35 .....	18
<i>California State Parks Foundation v. Superior Court</i> (2007) 150 Cal.App.4th 826 .....	17, 20, 22
<i>Cholakian &amp; Associates v. Superior Court</i> (2015) 236 Cal.App.4th 361 .....	17, 18
<i>Gallup v. Sacramento &amp; San Joaquin Drainage Dist.</i> (1915) 171 Cal. 71 .....	20
<i>Hardy v. White</i> (1955) 130 Cal.App.2d 550 .....	19
<i>Harris v. Alcoholic Beverage Control Appeals Board</i> (1961) 197 Cal.App.2d 759 .....	21, 24
<i>McCarthy v. Superior Court</i> (1987) 191 Cal.App.3d 1023 .....	21
<i>Palma v. U.S. Indus. Fasteners, Inc.</i> (1984) 36 Cal.3d 171 .....	14
<i>Regents of Univ. of Cal. v. Superior Court</i> (1970) 3 Cal.3d 529 .....	21
<i>State of California v. Westlands Water District,</i> Shasta County Superior Court Case Number 192487 .....	13
<i>Tharp v. Superior Court</i> (1982) 32 Cal.3d 496 .....	22, 23
<i>Westlands Water District v. Superior Court for the County of</i> <i>Shasta,</i> Case No. C090139 .....	8, 13

Document received by the CA 3rd District Court of Appeal.

**Statutes**

Code Civ. Proc.

§ 338(a) ..... 25  
§ 393 ..... 21, 24  
§ 393(b) ..... *passim*  
§ 395 ..... 12, 18  
§ 397 ..... 18  
§ 400 ..... 9, 10, 13, 18  
§§ 1087-88 ..... 14  
§§ 1104-05 ..... 14

Pub. Resources Code

§ 5093.542 ..... *passim*  
§ 5093.542(c) ..... 11

Water Infrastructure Improvements for the Nation Act

Pub. L. No. 114-322

§ 4007(b)(2) 130 Stat. 1864 (2016) ..... 10

## INTRODUCTION

Petitioner Westlands Water District (“Westlands”) seeks this Court’s review of a decision to permit a lawsuit seeking to enjoin Westlands’ *decision-making process* to proceed in Shasta County instead of Fresno County. In denying Westlands’ motion to transfer the action, respondent Shasta County Superior Court unreasonably expanded the exceptions to the general rule that a matter should be venued in a defendant’s county of residence. Specifically, the Superior Court misapplied Code of Civil Procedure section 393(b) to determine that speculative harm from an action Westlands has not yet taken, and might not ever take, was enough to infer harm occurring in Shasta County and hence support venue there.

Real parties in interest 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 (collectively “FOR plaintiffs”) have sued Westlands for allegedly violating Public Resources Code section 5093.542, a statute that provides certain protections for the McCloud River. They contend Westlands is unlawfully “planning” a project proposed by the United States Bureau of Reclamation (“Reclamation”) to raise Shasta Dam (the “Project”). In their complaint and petition, the FOR plaintiffs allege that venue is proper in Shasta County because “the cause, or part of the cause arose in Shasta County, as the dam raise will occur and have impacts in Shasta County.” (Tab 1, SD00016.) The Superior Court accepted this argument in denying Westlands’ motion to transfer the action.

The Superior Court abused its discretion. The FOR plaintiffs’ cause of action against Westlands did not arise in Shasta County, because there has been no injury in Shasta County from any acts done by Westlands. Injury in Shasta County from the impacts of the Project cannot be attributed to Westlands, because that is Reclamation’s Project, not Westlands’ project.

Westlands is only considering whether it can and should contribute funding to support the Project. And, Westlands has not yet made a decision whether to do so. Among the factors Westlands must consider when making that decision is whether the Project could have adverse effects on the McCloud River. If so, that may preclude Westlands from contributing funding, under section 5093.542 of the Public Resources Code. Absent a decision by Westlands to contribute funding for the Project, however, the potential impacts of raising Shasta Dam cannot be attributed to Westlands. Hence, the Superior Court erred in finding venue is proper based on those impacts.

The FOR plaintiffs have alleged three “acts done” by Westlands that supposedly violate Public Resources Code section 5093.542: (1) initiating review of its decision whether to contribute funding for the Project under the California Environmental Quality Act (“CEQA”); (2) purchasing a property on the banks of the McCloud River known as the Bollibokka Club more than a decade ago, in 2007; and (3) discussing a potential cost share agreement with Reclamation. Westlands does not dispute it has taken these three actions. But none of these actions have caused injury in Shasta County.

In sum, the FOR plaintiffs’ cause of action did not arise in Shasta County, because they have not suffered injury there, and hence Code of Civil Procedure section 393(b) does not support venue in Shasta County. Accordingly, the Court should grant this petition and direct the Superior Court to vacate its denial of Westlands’ motion to transfer and enter an order instead transferring the action to Fresno County.

## PETITION FOR WRIT OF MANDATE

Westlands Water District (“Westlands”) petitions this Court for a writ of mandate and/or prohibition, or other appropriate relief, directing respondent Shasta County Superior Court to vacate its order denying Westlands’ motion to transfer, and ordering the Superior Court to grant Westlands’ motion and transfer the case to Fresno County.

This petition is related to the Verified Petition for Writ of Mandate in *Westlands Water District v. Superior Court for the County of Shasta*, trial court docket number 192487, this Court’s docket number C090139, which challenges the Superior Court’s order granting a preliminary injunction in a related case.

Westlands alleges as follows:

### **Beneficial Interest of Petitioner; Capacities of Respondent and Real Parties in Interest**

1. Westlands is a California Water District. (Tab 5, SD00049.) Its principal office is located in Fresno, California. (*Ibid.*) Its affairs are managed by its Board of Directors. (Tab 5, SD00050.) The Superior Court’s order denies Westlands its fundamental right to have this case heard in its resident county, Fresno County. (Tab 14, SD00473-477.)

2. Respondent is the Shasta County Superior Court, which issued the order denying Westlands’ motion to transfer the action from Shasta County to Fresno County (“motion to transfer”). (Tab 14, SD00473-477.)

3. Real parties in interest are the 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 (collectively “FOR plaintiffs”). The FOR plaintiffs filed a complaint against Westlands in Shasta County Superior Court and opposed Westlands’ motion to transfer. (Tab 1, SD00005-30; Tab 7, SD00058-75.)



### **Authenticity of Exhibits**

4. The exhibits accompanying this petition are true and correct copies of original documents filed with respondent court. The exhibits are paginated consecutively from page SD00005 to page SD00477. Page references in this petition are to the consecutive pagination.

### **Timeliness of the Petition**

5. On July 30, 2019, the Honorable Bradley Boeckman issued an order denying Westlands' motion to transfer. (Tab 14, SD00473-477.) The FOR plaintiffs served notice of the ruling by overnight mail on August 2, 2019. (*Ibid.*) This petition is therefore timely under Code of Civil Procedure section 400.

### **Summary of Relevant Facts**

6. Westlands' service area spans approximately 614,000 acres. (Tab 5, SD00049.) It provides irrigation water to some of the most highly productive agricultural lands in the world. (*Ibid.*) Farmers in Westlands produce more than sixty high-quality food and fiber crops, including row crops, grapes, and nuts. (*Ibid.*) Westlands provides water primarily for irrigation of farms, but also provides water for some municipal and industrial uses as well, including Naval Air Station Lemoore. (Tab 5, SD00049-50.)

7. Westlands' primary source of surface water comes from the Central Valley Project ("CVP"). (*Ibid.*) The CVP is a federal water project consisting of reservoirs that provide water supply to California. (*Ibid.*) Shasta Dam and Reservoir are part of the CVP and operated by the United States Bureau of Reclamation ("Reclamation"). (*Ibid.*)

8. The federal government has for decades been investigating raising Shasta Dam as a way to provide additional water supply to California. (Tab 5, SD00050-51.) Most recently, in 2015 Reclamation released a Final Feasibility Report and Final Environmental Impact Statement ("EIS"). (Tab

5, SD00051.) The Final Feasibility Report, along with the EIS, provided the results of various studies, including planning, engineering, environmental, social, economic and financial, and included possible benefits and effects of alternative plans of raising Shasta Dam and expanding its reservoir. (*Ibid.*) However, Reclamation has not made a final decision whether to proceed with its proposal to raise Shasta Dam, which will be referred to hereafter as the “Project,” which is distinct from Westlands’ “project” to evaluate under the California Environmental Quality Act (“CEQA”) whether it will contribute funding to the Project. (*Ibid.*) One of the requirements of existing federal law applicable to the Project involves funding. Under section 4007 of the Water Infrastructure Improvements for the Nation (“WIIN”) Act, Reclamation can contribute no more than 50 percent of the cost of the Project. (P.L. No. 114-322, § 4007(b)(2) (Dec. 16, 2016) 130 Stat. 1864.) Before Reclamation can make a final decision to proceed with the Project, it must secure upfront commitments to share in the costs of the Project. (Tab 5, SD00051.) Ultimately, the Project is Reclamation’s potential action—whether, when, and how the Project will go forward will be decided only by Reclamation.

9. Westlands is considering whether it will help fund Reclamation’s Project. (Tab 5, SD00051.) Before it can make that decision, Westlands must complete a CEQA review. (Tab 5, SD00051-52.) Among its considerations is whether funding the Project would violate Public Resources Code section 5093.542, which provides, in relevant part, that “[e]xcept for participation by the Department of Water Resources in studies involving the technical and economic feasibility of enlargement of Shasta Dam, no department or agency of the state shall assist or cooperate with, whether by loan, grant, license, or otherwise, any agency of the federal, state, or local government in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition of the McCloud River, or on its wild trout fishery.”

(Pub. Resources Code § 5093.542(c).) (See *ibid.*) In 2007, Westlands purchased a property along the banks of the lower McCloud River known as the Bollibokka Club. Since then, Westlands has continued the decades-old use of that property as a fishing club.

10. On September 18, 2018, Westlands’ Board of Directors considered retaining a consultant to study the environmental impacts of Reclamation’s potential Project, including whether the dam raise will have adverse impacts to the free-flowing condition and wild trout fishery of the McCloud River. (Tab 9, Vol. 3, Ex. G, SD00436-438.) Westlands ultimately retained a consultant to help it conduct environmental review.

11. In November 2018, Westlands issued its Initial Study and Notice of Preparation. (Tab 9, Vol. 3, Ex. F, SD00354-435.)

13. On Wednesday, December 12, 2018, Westlands held a public scoping meeting in Redding to invite public input on its Initial Study and Notice of Preparation. (See Tab 9, Vol. 3, Ex. F, SD00356.) No action was taken at the meeting and Westlands has not made a decision since then.

14. Westlands has not completed its environmental review under CEQA and has not yet decided whether to contribute funding for the Project. Among other things, Westlands must first evaluate whether enlarging Shasta Dam by up to 18.5 feet would have an adverse effect on the free-flowing condition of the McCloud River and its wild trout fishery.

### **The Proceedings in the Superior Court**

15. On May 13, 2019, the FOR plaintiffs filed a complaint for declaratory and injunctive relief and petition for writ of mandate in Shasta County Superior Court, alleging Westlands is in violation of Public Resources Code section 5093.542. (Tab 1, SD00005-30.) The FOR plaintiffs alleged three “acts done” by Westlands that supposedly violate Public Resources Code section 5093.542: (1) initiating review of its decision whether to contribute funding for the Project under CEQA; (2) purchasing a

property on the banks of the McCloud River known as the Bollibokka Club in 2007; and (3) discussing a potential cost share agreement with Reclamation. However, the complaint alleges that venue is proper in Shasta County based solely on the alleged potential impacts of Reclamation's Project. The FOR plaintiffs allege venue is proper in Shasta County "pursuant to Code of Civil Procedure section 393(b) because Westlands is a public officer and because the cause, or part of the cause arose in Shasta County, *as the dam raise will occur and have impacts in Shasta County.*" (Tab 1, SD00016 (emphasis added).)

16. On June 12, 2019, Westlands filed its motion to transfer this action from Shasta County to Fresno County on grounds that Code of Civil Procedure section 395 requires venue in Westlands' county of residence. (Tab 3, SD00032-36.) Westlands argued that its ongoing CEQA review has not caused impacts or injury occurring in Shasta County, so that the impacts of the Project are not attributable to Westlands absent a decision to contribute funds, and hence there is no basis for venue in Shasta County under Code of Civil Procedure section 393(b). (Tab 4, SD00037-46.)

17. The FOR plaintiffs filed an opposition to Westlands' motion on July 8, 2019. (Tab 7, SD00058-75.) Westlands filed its reply on July 15, 2019. (Tab 10, SD00445-454.)

18. The Superior Court issued a tentative ruling on Westlands' motion to transfer on Friday, July 19, 2019. (Tab 12, SD00462-463.) The tentative ruling was to deny the motion. (*Ibid.*) The motion was heard on Monday, July 22, 2019, by a retired judge, the Honorable Bradley Boeckman. (Tab 14, SD00475.) At the hearing, Westlands declined oral argument on the motion, as did counsel for the FOR plaintiffs, and the Superior Court adopted its tentative ruling as its final ruling. (Declaration of Daniel J. O'Hanlon, Westlands Water District, Petitioner, v. Superior Court for the County of Shasta, Respondent; Friends of the River, et al., Real

Parties in Interest, [“O’Hanlon Decl.”], ¶ 5.) The Superior Court denied Westlands’ motion to transfer in a written order signed on July 30, 2019. (Tab 12, SD00473-477.)

**Other Related Proceedings**

19. At the same hearing on July 22, 2019, the Superior Court denied Westlands’ motion to transfer venue of a separate but related case brought by the People of the State of California ex rel. Attorney General Xavier Becerra (“AG”) that makes essentially the same claims against Westlands, *State of California v. Westlands Water District*, Shasta County Superior Court Case Number 192487. Westlands will separately seek writ review of that order as well.

20. The following week, on July 29, 2019, the Superior Court heard a motion brought by the AG in that separate but related case for a preliminary injunction enjoining Westlands’ CEQA process, any planning of the Project, and any violation of Public Resources Code section 5093.542. That motion was granted, and hence Westlands is enjoined from continuing its CEQA review and any other “planning” of the Project pending trial, which is set for April 2020. On August 12, 2019, Westlands filed a petition with this Court for a writ of mandate or prohibition, or other appropriate relief, against that preliminary injunction. See *Westlands Water District v. Superior Court for the County of Shasta*, Case No. C090139.

**Absence of Other Remedies**

21. California Code of Civil Procedure section 400 allows a party aggrieved by an order denying a motion to change the place of trial to petition the appropriate appellate court for a writ of mandate requiring trial of the case in the proper court. (Code Civ. Proc. § 400.) Pursuant to Code of Civil Procedure section 400, Westlands petitions this Court for a writ of mandate

requiring Shasta County Superior Court to transfer this matter so the case can be heard in the proper court, which is Fresno County Superior Court.

**Grounds for an Immediate Stay**

22. Westlands’ CEQA review is unfinished, and Westlands has not decided whether it will fund Reclamation’s Project. (Tab 5, SD00051-52.) Thus, the potential effects of the Project in Shasta County, the injury on which the FOR plaintiffs base their claim that their action arises in Shasta County, are not attributable to Westlands. The acts done by Westlands that FOR plaintiffs contend violate Public Resources Code section 5093.542 have not caused injury in Shasta County. Hence, the FOR plaintiffs’ cause of action for violation of Public Resources Code section 5093.542 did not arise in Shasta County, and venue is not proper in Shasta County. Absent a stay, further proceedings will be had in the wrong court, denying Westlands its fundamental right to have this case heard in its county of residence, Fresno County.

**PRAYER**

Petitioner Westlands prays that this Court

1. Issue an immediate temporary stay that restrains the Superior Court from conducting any further proceedings in this case until the proper court is determined; and
2. Issue a peremptory writ of mandate and/or prohibition in the first instance (Code Civ. Proc. §§ 1087-88, 1104-05; see *Palma v. U.S. Indus. Fasteners, Inc.* (1984) 36 Cal.3d 171, 178), directing the Superior Court to vacate its August 2, 2019, order denying Westlands’ motion to transfer; and
3. Should it deem such action necessary and appropriate, issue an alternative writ directing respondent court either to grant the relief specified in paragraph 2 of this prayer or to show cause why it should not be ordered

Document received by the CA 3rd District Court of Appeal.

to do so, and upon the return of the alternative writ, issue a peremptory writ as set forth in paragraph 2 of this prayer; and

4. Award Westlands its costs; and
5. Grant such other relief as may be just and proper.

DATED: August 20, 2019

KRONICK, MOSKOVITZ,  
TIEDEMANN & GIRARD  
A Professional Corporation

By:           /s/ Daniel J. O'Hanlon            
Daniel O'Hanlon  
*Attorneys for Westlands Water  
District*

Document received by the CA 3rd District Court of Appeal.

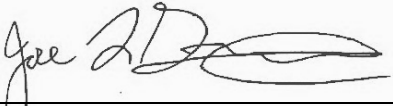
## VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate and know its contents.

I am Chief Operating Officer for Petitioner Westlands Water District, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed at Fresno, California, on August 20, 2019.

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

  
\_\_\_\_\_  
Jose Gutierrez

Document received by the CA 3rd District Court of Appeal.



## MEMORANDUM

### I. SUMMARY OF ARGUMENT

The Superior Court abused its discretion in denying Westlands' motion to transfer. Venue is mandatory in the defendant's county of residence unless the plaintiff can demonstrate an exception applies. (*Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 368.) The Superior Court erroneously relied on the exception in Code of Civil Procedure section 393(b), which allows venue of actions against public officers in the county where the cause of action arises, i.e., where injury occurs. The potential impacts of the Project are not a basis for venue of this action against Westlands, because Westlands has not made a decision to fund the Project (Tab 5, SD00051-52), and unless and until it does the impacts of the Project are not attributable to any action by Westlands. The "acts done" by Westlands alleged in the complaint do not cause injury in Shasta County. Thus, Code of Civil Procedure section 393(b) does not support venue of the this matter in Shasta County because no part of the FOR plaintiffs' cause of action arose there. This matter must therefore be transferred to Westlands' county of residence, Fresno County.

### II. STANDARD OF REVIEW

An order denying a motion to transfer is reviewed for an abuse of discretion. (See *Cholakian, supra*, 236 Cal.App.4th at p. 368.) "A trial court abuses its discretion when venue is mandatory in a county other than the county where the action has been brought." (*Ibid.*) Here, the Superior Court abused its discretion by misapplying Code of Civil Procedure section 393(b) to conclude that venue is proper in Shasta County when instead it is mandatory in Westlands' county of residence, Fresno County. (Tab 14, SD00473-477.)

Generally, venue is based on the allegations of the complaint in effect at the time the defendant brings its motion to change venue. (*California State*

*Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833; *Cholakian, supra*, 236 Cal.App.4th at p. 367.) “[A]ll ambiguities will be construed against the pleader to the end that a defendant shall not be deprived improperly of his fundamental right to have the cause tried in the county of his residence.” (*Bybee v. Fairchild* (1946) 75 Cal.App.2d 35, 37.) Additionally, a defendant may submit declarations and evidence in support of a motion to transfer venue. (*Archer v. Superior Court of Humboldt County* (1962) 202 Cal.App.2d 417, 419.)

An order denying a motion to transfer venue is subject to review through petition for writ of mandate. (Code Civ. Proc. § 400.)

### **III. BACKGROUND**

On May 13, 2019, the FOR plaintiffs filed a complaint for declaratory and injunctive relief and petition for writ of mandate. (Tab 1, SD00005-30.) The complaint alleges venue is proper in Shasta County “pursuant to Code of Civil Procedure section 393(b) because Westlands is a public officer and because the cause, or part of the cause arose in Shasta County, as the dam raise will occur and have impacts in Shasta County.” (Tab 1, SD00016.)

On June 12, 2019, Westlands moved to transfer venue pursuant to Code of Civil Procedure section 397 from Shasta County to Fresno County. (Tab 3, SD00032-36.) Westlands explained that venue was proper in its county of residence, Fresno County, under Code of Civil Procedure section 395. (*Ibid.*) Westlands further explained that the Project is Reclamation’s project, that no injury related to the Project is attributable to Westlands because it had not yet made a decision whether to contribute funding for the Project, that no injury had occurred in Shasta County from Westlands’ still unfinished CEQA process, and so venue is not proper in Shasta County under Code of Civil Procedure section 393(b) because no part of the FOR plaintiffs’ cause of action arose there. (*Ibid.*)

The FOR plaintiffs filed their opposition on July 8, 2019, arguing that venue is proper pursuant to section 393(b). (Tab 7, SD00058-75.) In their opposition the FOR plaintiffs tried to expand the injury on which they based venue to include a public scoping meeting Westlands held in Redding, and Westlands' purchase of property on the McCloud River in 2007. (Tab 7, SD00073-74.) Westlands filed its reply on July 15, 2019, pointing out that the FOR plaintiffs had not explained how those acts done by Westlands caused any injury in Shasta County. (Tab 10, SD00445-454.)

The Superior Court issued a tentative ruling denying Westlands' motion on July 19, 2019, on grounds that section 393(b) applies and the FOR plaintiffs had alleged harm in Shasta County. (Tab 12, SD00462-469.) The Superior Court heard the matter on July 22, 2019. (Tab 14, SD00475.) Westlands' counsel declined oral argument after reviewing the Superior Court's tentative ruling, and the FOR plaintiffs likewise declined oral argument. (O'Hanlon Decl., ¶ 5.) The Superior Court adopted its tentative ruling as its final ruling and denied Westlands' motion to transfer, based on Code of Civil Procedure section 393(b), concluding: "Plaintiffs' allegations that continued assistance by Westlands with planning for a Shasta Dam raise would cause serious and specific environmental harm in Shasta County are sufficient to establish that CCP § 393(b) applies and that venue is proper in Shasta County." (Tab 14, SD00477.) The FOR plaintiffs served notice of the written order on August 2, 2019. (Tab 14, SD00473-477.)

#### **IV. ARGUMENT**

##### **A. Venue Is Mandatory In The Defendant's County Of Residence, Unless An Exception Applies**

"The general rule is that the defendant is entitled to have an action tried against him in the county of his residence unless the proceeding comes under" an exception. (*Hardy v. White* (1955) 130 Cal.App.2d 550, 552.) Once a defendant demonstrates that it is not a resident of the plaintiff's

chosen venue, “the burden is on the plaintiff to show that the case comes clearly within one of the statutory exceptions to the general rule that actions are triable in the place of the defendant’s residence.” (*Archer, supra*, 202 Cal.App.2d at p. 420; see also *California State Parks, supra*, 150 Cal.App.4th at p. 833.)

It is undisputed in the record that Westlands resides in Fresno County. Westlands’ principal office is in Fresno. (Tab 5, SD00051-52.) Its Board of Directors manages district affairs in Fresno as well. (*Ibid.*) Thus, its residence is in Fresno. (See *Gallup v. Sacramento & San Joaquin Drainage Dist.* (1915) 171 Cal. 71, 75 [a water district is a resident of the county in which its principal place of business is located].) Accordingly, venue for this matter should be in Fresno County, unless an exception applies.

As explained next, the exception relied upon by the Superior Court to deny the motion to transfer venue, Code of Civil Procedure section 393(b), does not apply here.

**B. The Impacts Of The Project Are Not Attributable To Westlands, Because It Has Not Made Any Decision Whether To Contribute Funding For The Project**

Code of Civil Procedure section 393(b) provides, in relevant part, that “[s]ubject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part of the cause, arose, is the proper county for the trial ... [a]gainst a public officer ... for an act done by the officer ... .” (Code Civ. Proc. § 393(b).)

For purposes of section 393(b), “[t]he cause of action arises wherever the plaintiff would be injured by the state action complained of: A cause arises in the county where the effects of the administrative action are felt, not where the agency signs the challenged order or takes the challenged action. [Citation.] It is where the shaft strikes [the plaintiff], not where it is drawn, that counts. [Citation.]” (*California State Parks, supra*, 150 Cal.App.4th at

p. 834 [internal quotation marks omitted].) Section 393(b) “has been narrowly construed to apply only to affirmative acts which directly interfere with the personal rights of property of the person complaining, to acts done as distinguished from acts threatened.” (*Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 759, 768; see also *McCarthy v. Superior Court* (1987) 191 Cal.App.3d 1023, 1032-1033 [concluding that section 393 was inapplicable because “the complaint is directed to actions merely threatened rather than actually taken.”].)

For an action to have arisen in a county, there must be injury in that county. (*Regents of Univ. of Cal. v. Superior Court* (1970) 3 Cal.3d 529, 542.) In *Regents*, three taxpayer-plaintiffs sought a declaration that resolutions adopted by the defendant Regents that required the termination of any university faculty who were members of the Communist Party was unconstitutional, and further that the expenditure of public funds in furtherance of those resolutions was unconstitutional. (*Id.* at p. 532.) The court found that although the defendant was a resident of Alameda County, venue was proper in Los Angeles County under section 393(b). (*Id.* at pp. 536, 542-543.) The taxpayers’ cause of action arose in Los Angeles County because public funds had been illegally expended there to terminate an associate professor at UCLA, pursuant to the challenged resolutions. (*Id.* at p. 542.)

In contrast to the taxpayers in *Regents*, the FOR plaintiffs have not identified any injury to them in Shasta County that can be attributed to acts done by Westlands. Their complaint bases venue in Shasta County on “the dam raise [that] will occur and have impacts in Shasta County.” (Tab 1, SD00016). But Westlands has not yet made a decision whether to contribute funds for the Project, and will not until it completes CEQA review. Today, the impacts alleged by plaintiffs to support venue cannot be attributed to Westlands. And those impacts may never be attributable to Westlands, since

Westlands may decide that it cannot or will not help fund Reclamation's Project.

Before the Superior Court, the FOR plaintiffs relied on *California State Parks*, in which the court held that section 393(b) applied to allow venue of a CEQA action in a county where the environmental impacts of the project would be felt. (*California State Parks, supra*, 150 Cal.App.4th at p. 834.) In that case, a transportation agency that resided in Orange County approved a toll road project that would pass through both Orange County and San Diego County, and certified an environmental impact report ("EIR") for the project. The court ruled the CEQA cause of action arose at least in part in San Diego County, because the complaint alleged the approved toll road would have direct and substantial impacts in San Diego County. (*Ibid.*) In contrast here, Westlands has not completed its CEQA review nor made any decision to fund the Project. The rationale for venue of an action against an agency in a county where the impacts of a project that agency has approved will occur therefore has no application here.

In its order denying change of venue, the Superior Court relied in part on *Tharp v. Superior Court* (1982) 32 Cal.3d 496. (Tab 14, SD00476.) In *Tharp*, the court concluded that venue was proper in plaintiffs' county of choice, Tulare County, because the plaintiffs alleged injury to their business there that resulted from actions taken by the defendant public agency. (*Tharp v. Superior Court* (1982) 32 Cal.3d 496, 498, 502-503.) The plaintiffs operated a new car dealership in Tulare County, and sued the New Motor Vehicles Board in Tulare County Superior Court to enjoin the Board from any further action to suspend or revoke their dealer's license. (*Id.* at p. 498.) The Secretary of the Board, also a respondent in the matter, successfully moved to transfer venue to Sacramento County.

The Supreme Court issued a writ to vacate the order transferring venue, holding "the county in which Tharp's cause of action arose was the

county in which it carried on its business and would be hurt by the official action -- i.e., Tulare County.” (*Id.* at p. 502.) The *Tharp* court rejected an argument by the Board that it had not yet completed all proceedings against the plaintiffs, so there were no “acts done” by the Board as required by section 393(b). (*Id.* at pp. 502-503.) “[R]ightly or wrongly,” the *Tharp* court explained, plaintiffs had alleged acts done, acts done which harmed their businesses based in Tulare County. (*Ibid.*) Specifically, the plaintiffs had alleged that the Board had “noticed and held a hearing under section 3066 of the Vehicle Code, the effect of which could be to put [plaintiffs] out of business . . .” (*Id.* at p. 503.) Further, the Department of Motor Vehicles’ general counsel had called plaintiffs’ counsel and indicated “that the board had ‘ordered’ the Department of Motor Vehicles to ‘revoke, suspend or rescind petitioner’s license to sell new Chevrolet motor vehicles.’” (*Ibid.*)

The Superior Court here misread *Tharp* to allow the FOR plaintiffs to attribute injury in Shasta County from the Project to Westlands. Citing *Tharp*, it concluded that “Section 393(b) governs whether plaintiffs complain rightly or wrongly of acts done by a public officer; even if the underlying proceedings of the defendant public officer have not yet concluded.” (Tab 14, SD00476.) The court in *Tharp* accepted the plaintiffs’ allegations that there were “acts done” as true for purposes of deciding venue; but it did not hold that the stage of an agency’s decision making is irrelevant to the question of what injury may be attributed to the “acts done” by the public agency. Here, the FOR plaintiffs do not allege that Westlands has completed its CEQA process or made a decision to fund the Project. In fact, as the undisputed evidence submitted by Westlands with its motion showed, it has not. (Tab 5, SD00051-52.) Absent a commitment by Westlands to contribute funds to the Project, there is no basis for attributing the impacts of the Project to Westlands.

This case is more akin to the situation in *Harris* in which the petitioner sought “to restrain an appeals board from taking further action in connection with” an appeal, a proceeding the *Harris* court said did not fall within the scope of section 393. (*Harris, supra*, 197 Cal.App.2d at p. 768.) This case likewise seeks to restrain Westlands from taking “further action” to complete its unfinished CEQA process. Venue in Shasta County cannot be based on the chance that someday Westlands might decide to contribute funding for the Project once it completes the CEQA process. As *Harris* makes clear, venue under section 393(b) applies only to “acts done as distinguished from acts threatened.” (*Ibid.*) Speculative allegations of injury based on a possible future act do not support venue under section 393(b).

In sum, the basis for venue alleged in the FOR plaintiffs’ complaint, that “the dam raise will occur and have impacts in Shasta County” (Tab 1, SD00016), does not support venue of an action against Westlands in Shasta County under section 393(b). Nor do the “acts done” by Westlands alleged by the FOR plaintiffs, as is explained next.

**C. None Of the Alleged Acts Done By Westlands Cause Injury In Shasta County**

The Superior Court’s order denying Westlands’ motion to transfer identified the following as “acts done” which allegedly violated Public Resources Code section 5093.542 and supported venue under section 393(b):

[U]ndertaking a CEQA process to analyze raising Shasta Dam (Complaint, ¶¶ 59, 60, 63, 73); participating in negotiations with the Bureau of Reclamation concerning the terms of a potential cost-share agreement for the dam raise (Complaint, ¶¶ 59, 60, 63, 73); and acquiring property to facilitate the raise (Complaint, ¶¶ 36, 62).

(Tab 14, SD00477.) None of these acts have caused injury in Shasta County, and thus, none of these acts support venue of this matter in Shasta County.



First, Westlands' incomplete CEQA review process is not a cause of any injury occurring in Shasta County. The alleged "acts done" in furtherance of this process include the issuance of an Initial Study/Notice of Preparation and holding a scoping meeting. (Tab 1, SD00021-22, 26.) The FOR plaintiffs did not articulate how these acts have caused any injury occurring in Shasta County. The Superior Court's order merely repeated the conclusory assertion of the complaint that "if Westlands is permitted to continue its participation in the dam raise project, plaintiffs' interest in fish and wildlife conservation and recreational quality will be harmed . . ." (Tab 14, SD00477.) That Westlands' CEQA process may result in a decision to contribute funding for the Project is not a basis for finding that the CEQA process itself causes injury occurring in Shasta County.

Second, the FOR plaintiffs alleged Westlands was "participating in negotiations with the Bureau of Reclamation." (Tab 14, SD00477.) Westlands has not decided whether to contribute funds to Reclamation's Project, and will not until after it completes CEQA review. (Tab 5, SD00051-52.) But even assuming the truth of the FOR plaintiffs' allegation, discussions or negotiations have not caused any harm in Shasta County.

Third, the FOR plaintiffs do not identify any harm occurring in Shasta County from Westlands' 2007 purchase of the Bollibokka Club, a property along the banks of the lower McCloud River. (Tab 1, SD00018, 22.) Whether that purchase, which occurred twelve years ago, may have been intended to "facilitate the raise" is immaterial. (Tab 14, SD00477.) There is no allegation, for example, that Westlands has transferred any interest in the property to Reclamation to facilitate the Project. Moreover, the purchase was 12 years ago, well beyond the statute of limitations to challenge the purchase. (Code Civ. Proc. § 338(a) [action upon a liability created by statute].) And the FOR plaintiffs do not allege any resulting injury occurring in Shasta County based on Westlands' ownership of the property since 2007.

The FOR plaintiffs, and the Superior Court's order, do not identify any injury occurring in Shasta County as a result of the "acts done" by Westlands, which the FOR plaintiffs allege violated Public Resources Code section 5093.542. Accordingly, there is no basis for venue in Shasta County pursuant to section 393(b).

**V. CONCLUSION**

The Superior Court abused its discretion in denying Westlands' motion to transfer venue. The FOR plaintiffs' cause of action does not arise in Shasta County for purposes of section 393(b), because the FOR plaintiffs have not suffered any injury there from the alleged acts done by Westlands. The Superior Court erred in accepting the FOR plaintiffs' premise that the potential impacts of the Project in Shasta County are injury that may be attributed to Westlands, based on a potential future decision by Westlands to fund the Project. Westlands respectfully requests the Court exercise its discretion to grant writ review, and issue the writ as prayed for in Westlands' petition.

DATED: August 20, 2019

KRONICK, MOSKOVITZ,  
TIEDEMANN & GIRARD  
A Professional Corporation

By:           /s/ Daniel J. O'Hanlon            
Daniel O'Hanlon  
*Attorneys for Westlands Water  
District*

Document received by the CA 3rd District Court of Appeal.

**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA  
RULES OF COURT RULE 8.204(C)(1)**

Pursuant to California Rules of Court Rule 8.204(c)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 6485 words.

DATED: August 20, 2019

KRONICK, MOSKOVITZ,  
TIEDEMANN & GIRARD  
A Professional Corporation

By:           /s/ Daniel J. O'Hanlon            
Daniel O'Hanlon  
*Attorneys for Westlands Water  
District*

Document received by the CA 3rd District Court of Appeal.