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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
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE PORTION OF
COMPLAINT AND PETITION**

Date: October 7, 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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Friends of the River, Golden Gate Salmon Association, Pacific Coast Federation
4 of Fishermen’s Associations, Institute for Fisheries Resources, Sierra Club, Defenders of Wildlife,
5 and Natural Resources Defense Council (collectively, “FOR plaintiffs”) have filed a “Complaint for
6 Declaratory Relief and Injunctive Relief and Verified Petition for Writ of Mandate” against
7 Westlands Water District (“Westlands”), alleging Westlands is violating Public Resources Code
8 section 5093.542. As the basis for judicial review of Westlands’ actions, the FOR plaintiffs allege
9 both a claim for a writ of mandate directing Westlands to comply with section 5093.542 pursuant
10 to California Code of Civil Procedure section 1085, and a claim for declaratory relief that “the acts
11 of defendant Westlands involving planning for a project to raise the height of Shasta Dam violate
12 Public Resources Code section 5093.542” pursuant to Code of Civil Procedure section 1060. The
13 law is clear, however, that an action for declaratory relief is generally not available for judicial
14 review of an agency’s actions. (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1466.)
15 Accordingly, Westlands moves to strike those portions of the complaint and petition that allege
16 entitlement to and request declaratory relief.

17 **II. RELEVANT ALLEGATIONS OF THE COMPLAINT**

18 FOR plaintiffs allege that Westlands has taken actions that violate Public Resources Code
19 section 5093.542, a provision of the California Wild and Scenic Rivers Act. FOR plaintiffs allege
20 Westlands has violated the statute by: (1) “undertaking and funding CEQA review for the proposed
21 Shasta Dam raise project” (Comp. ¶ 59); (2) “negotiating the terms of a potential cost-share
22 agreement with Reclamation” (Comp. ¶ 61) and (3) “in 2007, Westlands purchas[ing] approximately
23 3,000 acres of property along the McCloud River ‘to facilitate the raising of Shasta Dam by the U.S.
24 Department of the Interior.’” (Comp. ¶ 62). FOR plaintiffs summarize their claim as:

25 Westlands has a mandatory, non-discretionary duty to comply with
26 the California Wild and Scenic Rivers Act . . . [and] [i]ts current and
27 ongoing actions to assist and cooperate with the Shasta Dam raise
28 project through leading and funding CEQA review, negotiating a

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1 potential cost-share agreement, and otherwise assisting and
2 cooperating with Reclamation to plan for and construct the project
3 each independently, and collectively, violate Westlands' duty and
4 constitute an abuse of discretion.

(Comp. at ¶ 92.)

5 Based on these allegations, FOR plaintiffs request a "writ of mandate or peremptory writ issued
6 pursuant to Code of Civil Procedure section 1085 . . . directing Westlands to halt its assistance and
7 cooperation with planning and construction of the proposed Shasta dam raise project . . ." (Comp.
8 at Prayer ¶ C.)

9 In addition to a writ of mandate, the FOR plaintiffs request:

10 [A] declaration that Westlands Water District is currently in violation
11 of the California Wild and Scenic Rivers Act and cannot fund, lead,
12 or engage in CEQA review of the Shasta Dam raise project, negotiate
13 or sign an agreement to share the cost of the proposed Shasta Dam
14 raise project, or undertake any other activities that constitute unlawful
15 assistance or cooperation with the planning or construction of the
16 Shasta Dam raise project.

(Comp. at Prayer ¶ A.) Westlands moves to strike the FOR plaintiffs' claim of entitlement
17 to and request for declaratory relief. Each passage to be stricken is listed by page and line number
18 in Westlands' notice of motion, and in its proposed order.

19 III. ARGUMENT

20 Code of Civil Procedure section 435(b)(1) provides, in part, that "[a]ny party, within the
21 time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or
22 any part thereof. . ." Upon such motion, the court may:

(a) Strike out any irrelevant, false, or improper matter inserted in any
23 pleading; and

(b) Strike out all or any part of any pleading not drawn or filed in
24 conformity with the laws of this state, a court rule, or an order of the
25 court.

(Code Civ. Proc. § 436.) "[W]hen a substantive defect is clear from the face of a complaint . . . a
26 defendant may attack that portion of the cause of action by filing a motion to strike." (*PH II, Inc. v.*
27 *Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.) A "motion to strike is an appropriate
28 vehicle to attack allegations requesting improper relief." (*Satz v. Superior Court* (1990) 225

1 Cal.App.3d 1525, 1533 fn. 9; see also *Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) Here,
2 the FOR plaintiffs are not entitled to declaratory relief, and hence, their requests for such relief
3 should be stricken from the complaint.

4 In *City of Pasadena v. Cohen*, the city-plaintiff filed an action for declaratory and injunctive
5 relief against the director of the California Department of Finance challenging its decision that two
6 items were not enforceable obligations of the city's former redevelopment agency, and hence were
7 not eligible for payment from property taxes collected by the local county. (*City of Pasadena, supra*,
8 228 Cal.App.4th at 1463-64.) On appeal from the trial court's preliminary injunction requiring the
9 county to sequester the property tax funds, the Third District Court of Appeal held that the city could
10 not bring an action for declaratory relief, and hence the trial court's injunction based thereon was
11 improper. (*Id.* at 1466.) The *City of Pasadena* court relied upon "the generally available remedy of
12 traditional mandate and the generally applicable prohibition against declaratory 'review' of agency
13 actions." (*Id.* at 1467.) The court applied this rule to reverse the grant of injunctive relief: "The trial
14 court . . . should not have granted a preliminary injunction pending ruling on the merits of a claim
15 for *declaratory* relief to which the City was not entitled as a matter of law." (*Id.* at p. 1467 [emphasis
16 in original].) The *City of Pasadena* court vacated the injunction and remanded to the lower court to
17 dismiss the action or "construe it as one for traditional mandate and proceed accordingly." (*Id.* at
18 1468.)

19 In the more recent case of *Public Employees' Retirement System v. Santa Clara Valley*
20 *Transportation Authority*, the Third District Court of Appeal reaffirmed the rule against judicial
21 review of agency actions through a claim for declaratory relief. It ruled that declaratory relief was
22 not available to the CalPERS executive office, which sought declaratory relief affirming its
23 interpretation of a statute that was at issue in pending administrative appeals before the CalPERS
24 board. (*Public Employees' Retirement System v. Santa Clara Valley Transportation Authority*
25 (2018) 23 Cal.App.5th 1040, 1045-46.) The court explained that declaratory relief was "not
26 appropriate" because the CalPERS executive office sought to have "the judicial branch intrude into
27 the formulation of administrative policy, and issue a ruling to be applied in ongoing administrative
28 proceedings before the CALPERS board." (*Id.* at 1046.)

1 Here, the FOR plaintiffs are pursuing the “generally available remedy of traditional mandate
2 . . . for review of agency actions.” (*City of Pasadena*, 228 Cal.App.4th at 1467.) A claim for
3 “[d]eclaratory relief . . . cannot be joined with a writ of mandate reviewing an administrative
4 determination.” (*Id.* at 1466.) Agency actions generally cannot be judicially reviewed through an
5 action for declaratory relief. (*Id.* at 1467.) Accordingly, those portions of the FOR plaintiffs’
6 complaint and petition seeking declaratory relief must be stricken. (*Satz v. Superior Court, supra*,
7 225 Cal.App.3d at p. 1533 fn. 9.)

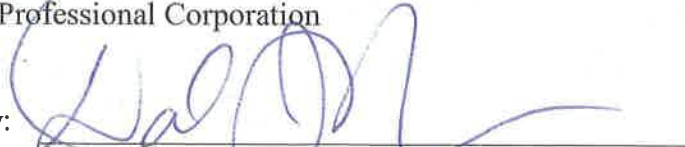
8 During the parties’ meet and confer, counsel for the FOR plaintiffs urged they are not
9 challenging any “agency determination” or “agency decision.” This argument is specious. The FOR
10 plaintiffs seek declaratory relief regarding specific actions by Westlands that supposedly violate
11 section 5093.542. The challenged agency actions are Westlands’ decisions: (1) to undertake and
12 fund a CEQA review; (2) to enter an agreement in principle to potentially negotiate a funding
13 agreement with the Bureau of Reclamation; and (3) to purchase the Bollibokka Club property.
14 (Comp. ¶¶ 59, 61 and 62.) If the FOR plaintiffs’ real point is that Westlands has not yet made a
15 determination whether to contribute funding for Reclamation’s project, that begs the question of
16 why they have sued now at all. But holding them to what is in their complaint and petition, they
17 cannot assert a claim for declaratory relief regarding the actions by Westlands they claim violate
18 section 5093.542. They are instead limited to a claim for traditional mandate under Code of Civil
19 Procedure section 1085.

20 **IV. CONCLUSION**

21 Based on the foregoing, Westlands respectfully requests the court grant this motion, and
22 strike those portions of the FOR plaintiffs’ complaint and petition seeking declaratory relief as set
23 forth in the Notice of Motion and Motion to Strike.

24 DATED: August 30, 2019

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

25
26 By: 
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PROOF OF SERVICE

**Friends of the River, et al. v. Westlands Water District, et al.
Shasta County Superior Court 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 August 30, 2019, I served true copies of the following document(s) described as **WESTLANDS WATER DISTRICT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE PORTION OF COMPLAINT AND PETITION** 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 August 30, 2019, at Sacramento, California.



Terri Whitman

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Shasta County Superior Court Case No. 192490

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