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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SHASTA

13 FRIENDS OF THE RIVER;
14 GOLDEN GATE SALMON ASSOCIATION;
15 PACIFIC COAST FEDERATION OF
16 FISHERMEN'S ASSOCIATIONS;
17 INSTITUTE FOR FISHERIES RESOURCES;
18 SIERRA CLUB;
19 DEFENDERS OF WILDLIFE; and
20 NATURAL RESOURCES DEFENSE COUNCIL,

21 Plaintiffs and Petitioners,

22 v.

23 WESTLANDS WATER DISTRICT; and
24 DOES 1-20,

25 Defendants and Respondents.
26
27
28

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE
PORTION OF COMPLAINT AND
PETITION**

Case No. 192490

Date: October 7, 2019

Time: 8:30 a.m.

Dept: 8

Judge: Hon. Tamara L. Wood

Trial Date: April 14, 2020

Action Filed: May 13, 2019

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1 **INTRODUCTION**

2 Plaintiffs and Petitioners Friends of the River et al. (“Plaintiffs”) properly seek declaratory
3 relief against Defendant Westlands Water District (“Westlands”) for its ongoing, illegal actions in
4 support of the Shasta Dam raise project. The California Wild and Scenic Rivers Act (“Act”)
5 prohibits agencies like Westlands from assisting or cooperating with planning or construction of any
6 dam raise that could have an adverse effect on the McCloud River, and Plaintiffs seek a judicial
7 declaration that Westlands is currently in violation of this prohibition and barred from undertaking
8 any further actions that constitute assistance or cooperation with the planning or construction of the
9 Shasta Dam raise project. Westlands has moved to strike Plaintiffs’ claim for declaratory relief, but
10 its motion fails because California law is clear that declaratory relief is appropriate where, as here,
11 plaintiffs seek clarification and application of the law against a defendant agency that is violating its
12 legal duties. Further, the California Supreme Court has held that declaratory relief may be paired
13 with other forms of relief, including traditional writs of mandate. This Court should accordingly
14 deny Westlands’ motion.

15 **FACTUAL AND PROCEDURAL BACKGROUND**

16 The California Wild and Scenic Rivers Act prohibits agencies of the state, like Westlands,
17 from assisting or cooperating with the planning or construction of any dam or reservoir that could
18 have an adverse effect on the McCloud River’s free-flowing conditions or its wild trout fishery.
19 (Pub. Resources Code, § 5093.542, subd. (c).)

20 On May 13, 2019, Plaintiffs filed a complaint for declaratory relief pursuant to Code of Civil
21 Procedure section 1060 and for injunctive relief pursuant to sections 525 and 526, along with a
22 petition for writ of mandate pursuant to section 1085. Plaintiffs challenge Westlands’ unlawful
23 assistance and cooperation with the U.S. Bureau of Reclamation’s (“Reclamation”) efforts to raise
24 Shasta Dam and enlarge Shasta Reservoir (the “Shasta Dam raise project”). Westlands has admitted
25 to at least three acts of assistance and cooperation: Westlands is undertaking and funding review for
26 the proposed Shasta Dam raise project under the California Environmental Quality Act (“CEQA”),
27 and has authorized a total of \$1,020,000 for this purpose; Westlands has been negotiating the terms
28 of a potential cost-share agreement with Reclamation; and, in 2007, Westlands purchased the

1 Bollibokka Fishing Club located on the banks of the McCloud River “to facilitate the raising of
2 Shasta Dam by the U.S. Department of the Interior.” (See Westlands’ Mem. in Support of Motion to
3 Transfer Action from Shasta County to Fresno County at pp. 5:25-27, 9:10-12; Westlands’ Reply to
4 Friends of the River et al.’s Opposition to Defendant’s Motion to Transfer Action at p. 7:1-2
5 (hereafter “Westlands’ Venue Reply”).)

6 **ARGUMENT**

7 Plaintiffs properly seek a declaration from this Court that Westlands’ ongoing, unlawful acts
8 of assistance and cooperation in the planning of the Shasta Dam raise project violate the California
9 Wild and Scenic Rivers Act. California courts regularly review claims for declaratory relief when,
10 as here, it is alleged that an agency is violating applicable law. Further, it is proper to file a
11 combined pleading including both a complaint for declaratory relief and a petition of writ of
12 mandate as Plaintiffs have done here. Westlands’ argument that Plaintiffs may only proceed with a
13 petition for writ of mandate—to the exclusion of declaratory relief—is meritless and disproven by
14 the two cases on which it bases its motion.

15 **I. Plaintiffs properly seek declaratory relief to address Westlands’ duties under the**
16 **California Wild and Scenic Rivers Act and Westlands’ violations of those duties.**

17 Code of Civil Procedure section 1060 states that a party “may ask for a declaration of rights
18 or duties, either alone or with other relief; and the court may make a binding declaration of these
19 rights or duties.” (Code Civ. Proc., § 1060.) “Declaratory relief is appropriate to obtain judicial
20 clarification of the parties’ rights and obligations under applicable law. [Citations.]” (*Californians*
21 *for Native Salmon and Steelhead Assn. v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419, 1427.)
22 Courts frequently offer such “judicial clarification” of rights and obligations to address “an actual
23 controversy over ... [an agency’s] legally-mandated duties.” (*Ibid.*) For example, in *Venice Town*
24 *Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566, the court ruled that
25 declaratory relief was proper “to resolve the [agency’s] fundamental misunderstanding of its
26 responsibilities under the [law] and to avoid continued violations or nonenforcement in the future.”
27 Likewise, in *Walker v. County of Los Angeles* (1961) 55 Cal.2d 626, 636-37, the California Supreme
28

1 Court held that a claim for declaratory relief was proper to settle whether a county board of
2 supervisors was required to follow certain procedures when setting wages for county workers.

3 Consistent with Code of Civil Procedure section 1060, Plaintiffs properly seek declaratory
4 relief to address Westlands' duties under the California Wild and Scenic Rivers Act. The Act
5 prohibits assistance or cooperation with planning or construction of any dam or reservoir that could
6 adversely affect the McCloud River's free flow or wild trout fishery. (Pub. Resources Code,
7 § 5093.542, subd. (c).) Here, even though federal and state authorities have already determined that
8 the Shasta Dam raise project will or could adversely affect free flow and wild trout, Westlands has
9 been assisting and cooperating with planning and construction for the project by funding and
10 commencing CEQA planning activities, engaging in cost share negotiations, and purchasing
11 riverside property. Westlands argues that these activities are not barred by the California Wild and
12 Scenic Rivers Act (see Westlands' Mem. in Opposition to Motion for Preliminary Injunction, Case
13 No. 192487, p. 13:13-14:3; Westlands' Venue Reply, pp. 6:23-7:6)—thereby confirming that
14 Plaintiffs properly have alleged “an actual controversy over ... [Westlands'] legally-mandated
15 duties” that this Court can and should decide via declaratory relief. (*Californians for Native Salmon*,
16 *supra*, 221 Cal.App.3d at p. 1427.)

17 Additional considerations underscore that Plaintiffs' claim for declaratory relief against
18 Westlands for violations of the California Wild and Scenic Rivers Act is proper. First, this case
19 presents issues of first impression under the McCloud River provisions of the California Wild and
20 Scenic Rivers Act, and “[a] controversy over an interpretation of a statute, and the duties that statute
21 imposes, is a proper basis for a declaratory relief claim.” (*Redwood Coast Watersheds Alliance v.*
22 *State Bd. of Forestry and Fire Protection* (1999) 70 Cal.App.4th 962, 969.) Indeed, “[i]t is
23 elementary that the interpretation of ordinances and statutes is a proper matter for declaratory relief.”
24 (*City of San Joaquin v. State Bd. of Equalization* (1970) 9 Cal.App.3d 365, 374.)

25 Second, although Westlands argues that the Court should ignore its various ongoing acts of
26 assistance and cooperation and await a final administrative decision by Westlands to fund the Shasta
27 Dam raise project, such final agency action is not a prerequisite for declaratory relief. On its face,
28 the California Wild and Scenic Rivers Act requires no such final action; it broadly prohibits even

1 merely “assist[ing] or cooperat[ing] ... in the planning or construction of any dam [or] reservoir.”
2 (Pub. Resources Code, § 5093.542, subd. (c).) In any event, even if the Act’s protections for the
3 McCloud River were not so expansive, courts are empowered to address agency action prospectively
4 before the agency reaches a final determination. “Declaratory relief is an equitable remedy and is
5 unusual in that it may be brought to determine and declare rights before any actual invasion of those
6 rights has occurred.” (*Californians for Native Salmon, supra*, 221 Cal.App.3d at p. 1426, internal
7 citations and quotation omitted.) Courts may thus grant declaratory relief “in order to liquidate
8 uncertainties and controversies which might result in future litigation especially where the
9 interpretation of a statute is the subject of the dispute.” (*In re Claudia E.* (2008) 163 Cal.App.4th
10 627, 635.) “Additionally, judicial economy strongly supports the use of declaratory relief to avoid
11 duplicative actions to challenge an agency’s statutory interpretation or alleged policies.” (*Ibid.*)

12 **II. Plaintiffs are entitled to seek both declaratory relief and a writ of mandate.**

13 Declaratory relief is authorized under section 1060 of the Code of Civil Procedure, and
14 section 1062 specifies that declaratory relief is a “cumulative” remedy. (Code Civ. Proc., §§ 1060,
15 1062.) Consequently, the California Supreme Court has stated that declaratory relief “may be asked
16 alone or with other relief.” (*Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 761.) The
17 availability of alternative remedies against an agency or agency officials—including petition for writ
18 of mandate—does not bar a plaintiff from seeking declaratory relief. (See, e.g., *Steinberg v. Chiang*
19 (2014) 223 Cal.App.4th 338, 344 [“Availability of an alternative remedy, such as mandate ... is not
20 generally a basis for denial of declaratory relief”].)

21 Because declaratory relief is a cumulative remedy, plaintiffs challenging the lawfulness of
22 agency actions commonly seek it in conjunction with a petition for writ of mandate, and this
23 combination is readily accepted by the courts including the California Supreme Court. For example,
24 in *California Building Industry Association v. Bay Area Air Quality Management District* (2016) 2
25 Cal.App.5th 1067, 1088, the court remanded a CEQA case to the trial court with instructions to both
26 issue a writ of mandate and to consider a related claim for declaratory relief. Similarly, in *Venice*
27 *Town Council, supra*, the court ruled that while appellants’ claim for declaratory relief against the
28 defendant city was “potentially cumulative to their right to traditional mandate,” the stated

1 allegations were “sufficient to entitle appellants to declaratory relief.” (47 Cal.App.4th at p. 1565.)
2 And in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 735-36, 746, 764-65, the
3 California Supreme Court described the trial court’s judgment on “causes of action for a writ of
4 mandate, declaratory relief, and injunctive relief” and affirmed a judgment that both resolved legal
5 issues via judicial declaration and ordered issuance of a peremptory writ of mandate that directed the
6 defendant county to reconsider a permit application in light of the court’s clarification of the law.
7 (See also *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 566 [noting without
8 objection that plaintiff “brought an action in superior court seeking both declaratory and mandamus
9 relief” against state Air Resources Board].)

10 Consistent with the foregoing authority and common practice, Plaintiffs in this case properly
11 seek both declaratory relief and a writ of mandate to address Westlands’ ongoing assistance and
12 cooperation in planning for the Shasta Dam raise project in violation of the California Wild and
13 Scenic Rivers Act.¹

14 **III. Neither *City of Pasadena* nor *CalPERS* preclude Plaintiffs from seeking declaratory**
15 **relief in this case.**

16 In a failed attempt to sidestep the foregoing dispositive authority establishing that Plaintiffs
17 are entitled to seek declaratory relief and a petition for writ of mandate, Westlands misrepresents the
18 holdings from two cases—*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461 and *Public*
19 *Employees’ Retirement System v. Santa Clara Valley Transportation Authority* (2018) 23
20 Cal.App.5th 1040 (hereafter “*CalPERS*”). Westlands erroneously claims these two cases hold that
21 declaratory relief (1) is unavailable for review of all types of agency action and (2) may not be
22 joined with a writ of mandate reviewing an administrative determination. (Westlands’ Mem. in
23

24 ¹ Indeed, Westlands itself recently filed a claim for declaratory relief coupled with a petition for writ
25 of mandate in a Fresno County Superior Court challenge to a decision made by the State Water
26 Resources Control Board. (See Request for Judicial Notice, Exh. 1 [Westlands Complaint in Fresno
27 County Case No. 19CECG00165].) As indicated by those pleadings, Westlands is represented in
28 that case by the same counsel of record as this case. During the parties’ August 16, 2019 meet-and-
confer call regarding Westlands’ motion to strike, counsel for Plaintiffs raised Westlands’
conflicting positions with Westlands’ counsel. On August 19, 2019, counsel for Plaintiffs sent to
Westlands’ counsel a copy of Westlands’ combined petition for writ of mandate and complaint for
declaratory relief in its Fresno County Superior Court case.

1 Support of Motion to Strike, pp. 6:4-28, 7:1-7.) Not so. The holdings of *City of Pasadena* and
2 *CalPERS* are much narrower and only apply to specific circumstances that are not present in the
3 immediate case.

4 In *City of Pasadena*, the Third District reviewed a preliminary injunction granted to the
5 plaintiff city in a declaratory relief claim against a city-specific “administrative determination” made
6 by the state Department of Finance. (228 Cal.App.4th at pp. 1463-64.) The court vacated the
7 preliminary injunction, ruling that the city could not proceed via a claim for declaratory relief and
8 must seek a writ of mandate instead. (*Id.* at pp. 1466-68.) The decision, however, did *not* establish a
9 general prohibition against declaratory relief for any and all challenges to agency action. To the
10 contrary, as the Third District subsequently explained in *CalPERS*, its *City of Pasadena* decision
11 “relied on authority that found declaratory relief inappropriate where it challenges an administrative
12 agency’s *application of legal principles to a party.*” (23 Cal.App.5th at p. 1045, italics added.) As
13 fully explained by the *CalPERS* decision, declaratory relief against an agency is only barred where a
14 plaintiff attempts to collaterally attack “adjudicative acts in specific cases” or certain administrative
15 proceedings commenced to develop agency policy “that is to be applied in pending cases” (*Id.* at
16 p. 1046, italics and citations omitted.) Based on this specific rule, the *CalPERS* decision disallowed
17 a claim for declaratory relief that would have disrupted transit workers’ pending adjudicative appeals
18 before the CalPERS board. (*Id.* at pp. 1042-43, 1045-46.)

19 Significantly, in describing the scope of its ruling, the *CalPERS* court was careful to
20 distinguish—and emphasized that it was not disturbing—cases like *Californians for Native Salmon*
21 and *Venice Town Council* that authorized declaratory relief against agencies that “refus[ed] to apply
22 governing law.” (23 Cal.App.5th at p. 1046.)

23 *City of Pasadena* and *CalPERS* therefore offer no support to Westlands’ motion to strike and,
24 in fact, confirm that Plaintiffs properly seek declaratory relief in this case. *City of Pasadena* and
25 *CalPERS* prohibit claims for declaratory relief *only* when a plaintiff seeks to challenge an “agency’s
26 application of legal principles to a party.” (*CalPERS, supra*, 23 Cal.App.5th at p. 1045.) Here,
27 Westlands has not commenced any adjudicative process pursuant to the California Wild and Scenic
28 Rivers Act; no such adjudicative process exists under the Act; and the Act does not otherwise

1 authorize Westlands to interpret or apply the Act. Rather, it is the role of the Court in this case to
2 interpret and apply the Act and to address any violations thereof. California courts, including the
3 *CalPERS* court, have repeatedly confirmed that a claim for declaratory relief is a proper way to
4 construe a statute like the California Wild and Scenic Rivers Act and to resolve allegations that an
5 agency like Westlands has refused to follow the law. (*CalPERS*, at p. 1046; accord *Walker, supra*,
6 55 Cal.2d at pp. 636-37; *Californians for Native Salmon, supra*, 221 Cal.App.3d at p. 1427; *Venice*
7 *Town Council, supra*, 47 Cal.App.4th at p. 1566.) Because Westlands has failed to identify any
8 relevant legal authority that supports its position, its motion to strike Plaintiffs' claim for declaratory
9 relief must be denied.

10 CONCLUSION

11 As set forth above, Plaintiffs properly seek a declaration from this Court that Westlands'
12 ongoing acts of assistance and cooperation in the planning of the Shasta Dam raise project violate
13 the California Wild and Scenic Rivers Act. A claim for declaratory relief is proper when, as here,
14 plaintiffs allege that an agency is violating applicable law. Further, case law including California
15 Supreme Court decisions demonstrate that it is both proper and common for plaintiffs to file a
16 combined complaint for declaratory relief and petition for writ of mandate. Westlands' argument
17 that Plaintiffs may only proceed with a writ petition, to the exclusion of declaratory relief, is not
18 even supported by the only two cases it cites to support its motion—and indeed conflicts with
19 Westlands' own combined petition and complaint in another recently filed case against a state
20 agency. For these reasons, this Court should deny Westlands' motion to strike those portions of
21 Plaintiffs' complaint and petition that seek declaratory relief.

22 DATED: September 24, 2019

Respectfully submitted,

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1 **PROOF OF SERVICE**

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3 Francisco; I am over the age of 18 years and not a party to the within entitled action; my business
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5 I hereby certify that on September 24, 2019, I caused to be served the document herein
6 **(Plaintiffs' Opposition to Defendant's Motion to Strike Portion of Complaint and Petition)** on
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17 I certify under penalty of perjury that the foregoing is true and correct. Executed on
18 September 24, 2019 in San Francisco, California.

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