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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SHASTA

13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA EX REL. ATTORNEY**
GENERAL XAVIER BECERRA,

15 Plaintiff and Petitioner,

16 v.

17 **WESTLANDS WATER DISTRICT AND**
18 **DOES 1-20,**

19 Defendants and Respondents.

Case No. 192487

PEOPLE OF THE STATE OF
CALIFORNIA'S OPPOSITION TO
WESTLANDS WATER DISTRICT'S
MOTION TO STRIKE PORTION OF
COMPLAINT AND PETITION

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

1

INTRODUCTION

2 The People of the State of California (People) filed the instant action in order enforce the
3 California Wild and Scenic Rivers Act (or Act) and stop Defendant Westlands Water District
4 (Westlands) from unlawfully participating in a project to raise Shasta Dam. Relying on *City of*
5 *Pasadena v. Cohen (City of Pasadena)* (2014) 228 Cal.App.4th 1461, and *Public Employee*
6 *Retirement System v. Santa Clara Valley Transportation Authority (PERS)* (2018) 23 Cal.App.5th
7 1040, Westlands now moves to strike the People’s claim for declaratory relief on the grounds that
8 a petition for writ of mandate is the exclusive means for reviewing decisions of an administrative
9 agency.

10 Westlands’ motion should be denied for at least two reasons. First, declaratory relief is the
11 appropriate remedy to address an agency’s unlawful course of conduct or erroneous interpretation
12 of a statute, and thus is the proper remedy for the People’s claim for violation of the Act. Second,
13 the reasoning in *City of Pasadena* and *PERS* does not apply here, as this is an enforcement action
14 to address Westlands’ ongoing statutory violations, not a challenge to a final administrative
15 decision. Accordingly, the People respectfully request that the Court deny Westlands’ motion to
16 strike.

17

PROCEDURAL BACKGROUND

18 The People’s Complaint for Declaratory and Injunctive Relief and Petition for Writ of
19 Mandate (Complaint) asserts a single cause of action for Violation of Public Resources Code
20 section 5093.542. (Complaint, p. 7.) As remedies for this cause of action, the People request,
21 among other things, declaratory relief, injunctive relief, and a writ of mandate (Complaint pp. 8-
22 9), as appropriate based upon the facts and law presented at trial.

23 On July 29, 2019, this Court entered a preliminary injunction enjoining Westlands from
24 taking any action that constitutes planning or construction of the Shasta Dam Raise Project and
25 enjoining Westlands’ then-pending CEQA process.¹

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27 ¹ Westlands subsequently filed a petition for writ of mandate in the Court of Appeal for
28 the Third Appellate District challenging the order granting the preliminary injunction. On August
29, 2019, the Court of Appeal summarily denied the petition for writ of mandate. On September

1 On or about August 30, 2019, Westlands filed this instant motion to strike. Westlands
2 seeks to strike the portions of the Complaint requesting declaratory relief. (See Westlands’
3 Proposed Order, p. 3.)²

4 ARGUMENT

5 I. DECLARATORY RELIEF IS APPROPRIATE TO ADDRESS AN AGENCY’S UNLAWFUL 6 CONDUCT OR ERRONEOUS STATUTORY INTERPRETATION.

7 The People’s claim for declaratory relief is appropriate here, where the parties “dispute
8 whether a public entity has engaged in conduct...in violation of applicable law.” (*Alameda*
9 *County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723; see also *Venice*
10 *Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566 [“Declaratory relief
11 has been held to be the proper remedy when it is alleged an agency has a policy of ignoring or
12 violating applicable laws.”] Further, “[t]he remedy of declaratory relief is cumulative and does
13 not restrict any other remedy... [citation]. Thus the fact that “another remedy is available is an
14 insufficient ground for refusing declaratory relief.”” (*California School Bds. Assn. v. State of*
15 *California* (2011) 192 Cal.App.4th 770, 790, quoting *Filarsky v. Superior Court* (2002) 28
16 Cal.4th 419, 433.)

17 The People allege that Westlands has violated the California Wild and Scenic Rivers Act by
18 engaging in planning and other conduct in furtherance of its efforts to become a cost-sharing
19 partner in the Shasta Dam Raise Project. Westlands’ unlawful conduct includes planning for the
20 Shasta Dam Raise Project by attempting to prepare an environmental impact report under CEQA,
21 cooperation with the U.S. Bureau of Reclamation (Bureau) and others in furtherance of a
22 potential cost-sharing agreement for the Shasta Dam Raise Project, as well as any future decision
23 to enter into a cost-sharing agreement for the Project.³ (See Complaint, ¶¶ 27-32.)

24 6, 2019, Westlands filed a petition for review of the Court of Appeal’s summary denial in the
25 California Supreme Court.

26 ² Westlands’ Proposed Order describes the Complaint at issue as “Plaintiffs Friends of the
27 River, et al’s Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of
28 Mandate,” but the Proposed Order’s page and line references correspond to the People’s
Complaint in this action.

³ The People included a request for a writ of traditional mandate in their Complaint in the
event that it is appropriate at the remedy stage of the case. At the time the Complaint was filed,

1 Declaratory relief is the appropriate mechanism for addressing the present controversy
2 regarding whether, and to what extent, the California Wild and Scenic Rivers Act prohibits
3 Westlands' participation in the Shasta Dam Raise Project. "[J]udicial economy strongly supports
4 the use of declaratory relief to avoid duplicative actions to challenge an agency's statutory
5 interpretation or alleged policies." (*California School Bds. Assn. v. State of California* (2011)
6 192 Cal.App.4th 770, 790.) "Moreover, declaratory relief is generally available to settle the
7 parties' rights with respect to future actions[.]" (*Ibid.*)

8 Westlands concedes that although it has initiated a CEQA environmental review for the
9 Project and entered into agreements in principle with the Bureau regarding cost-sharing for the
10 project, "Westlands has not yet made a determination whether to contribute funding for [the
11 Shasta Dam Raise Project.]" (Westlands' Opening Mem., p. 6:26-7:2.) Further, during the meet
12 and confer process, counsel for the People requested that Westlands "identify the administrative
13 decision(s)" it contends preclude a claim for declaratory relief. (Declaration of Carissa M.
14 Beecham, Exh. B.) Westlands' counsel did not respond to this request. (*Ibid.*)

15 The absence of a final administrative decision by Westlands establishes that declaratory
16 relief is appropriate to address the statutory violations at issue. Westlands has violated the
17 California Wild and Scenic Rivers Act not by issuing any final determination or decision, but by
18 engaging in planning for the Shasta Dam Raise Project in support of a potential cost-sharing
19 agreement with the Bureau. The purpose of the People's suit is to curb Westlands' ongoing
20 violations of the Act and prevent future violations, not to "challenge any particular decision or
21 order." (*Venice Town Council, Inc. v. City of Los Angeles, supra*, 47 Cal.App.4th at p. 1566.)

22 Further, "[t]he proper interpretation of a statute is a particularly appropriate subject for
23 judicial resolution." (*Ibid*; see also *California School Bds. Assn. v. State of California, supra*, 192
24 Cal.App.4th at p. 790.) As this case turns on application of the California Wild and Scenic Rivers
25 Act to Westlands' conduct, declaratory relief is appropriate. The People are entitled to
26 declaratory relief to address a number of issues raised by Westlands, such as whether the

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28 the People were uncertain of the extent or nature of Westlands' decision-making with regard to
the Shasta Dam Raise Project, and Westlands may yet take further action regarding the Project.

1 McCloud River is free-flowing as defined in the California Wild and Scenic Rivers Act, whether
2 raising Shasta Dam could cause an adverse effect on the free flow of the McCloud River within
3 the meaning of the Act, whether Westlands' initiation of a CEQA process is illegal planning
4 under the Act, and whether the statutory term "fishery" in the Act is limited to "fishing," as
5 asserted by Westlands in this litigation.

6 **II. CITY OF PASADENA AND PERS DO NOT APPLY**

7 Westlands relies upon two cases, *City of Pasadena, supra*, 228 Cal.App.4th at p. 1466, and
8 *PERS, supra*, 23 Cal.App.5th at pp. 1045-1046 for the proposition that declaratory relief is
9 generally not available to review agency decisions. While this rule limits the procedure available
10 to challenge administrative decisions like those at issue in *City of Pasadena* and *PERS*, it does not
11 apply here.

12 In *City of Pasadena*, the City challenged a Department of Finance decision disapproving
13 portions of the City's Reorganized Obligation Payment Schedule, which was part of the statewide
14 dissolution process for redevelopment agencies. (*City of Pasadena, supra*, 228 Cal.App.4th at pp.
15 1463-1464.) The court held that the City was limited to a claim for traditional mandate to review
16 the Department of Finance administrative decision and was not entitled to declaratory relief. (*Id.*
17 at p. 1467.) Here, as Westlands concedes, it has made no analogous final administrative decision
18 or determination which the People must challenge through a petition for writ of mandate. Instead,
19 Westlands has engaged in a course of conduct in violation of state law, the proper remedy for
20 which is declaratory and injunctive relief.

21 In the *PERS* case, the California Public Employees' Retirement System (CalPERS)
22 executive office filed a complaint for declaratory relief in order to determine the proper
23 interpretation of a statute's effects on benefits for certain workers. (*PERS, supra*, 23 Cal.App.5th
24 at p. 1042.) But at the time the CalPERS executive office filed suit, the same statutory
25 interpretation issue was pending in administrative appeals before the CalPERS board.⁴ (*Ibid.*)
26 The court held that the CalPERS executive office's declaratory relief action was improper

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28 ⁴ CalPERS itself is distinct from the CalPERS board, which administers the retirement
system. (*Id.* at p. 1042.)

1 because it effectively sought “to have the judicial branch intrude into the formulation of
2 administrative policy, and issue a ruling to be applied in ongoing proceedings before the
3 CalPERS board.” (*Id.* at p. 1046.) In any event, the court further held, the CalPERS executive
4 office was required to first exhaust administrative remedies by following its own “*prescribed*
5 administrative route” for enforcing its interpretation of the statute at issue, “which is through an
6 appeal to the CalPERS board to *adjudicate* a precedential administrative opinion[.]” (*Id.* at p.
7 1047, italics in original.) “Given that the fundamental purposes of the exhaustion doctrine are
8 respect for an agency’s autonomy and expertise in *adjudicating* an issue, and judicial
9 efficiency..., neither is served if we were to allow the CalPERS executive office to make an end
10 run around its board.” (*Id.* at p. 1048, italics in original.)

11 In the instant action, by contrast, there are no similar concerns about judicial intrusion into
12 an agency’s adjudicative process. Unlike in *PERS*, there is no available administrative process
13 for enforcing the California Wild and Scenic Rivers Act, and Westlands is certainly not the
14 agency charged with adjudicating any issues relating to the Act’s enforcement. In fact, the *PERS*
15 court recognized the distinction between the case before it and actions challenging “an agency’s
16 policy of refusing to apply governing law,” where declaratory relief was the proper claim.
17 (*PERS, supra*, 23 Cal.App.5th at p. 1046, citing *Venice Town Council v. City of Los Angeles*,
18 *supra*, 47 Cal.App.4th at p. 1566, *Californians for Native Salmon etc. Assn. v. Department of*
19 *Forestry* (1990) 221 Cal.App. 3d 1419, *Bess v. Park* (1955) 132 Cal.App.2d 49.) *PERS* therefore
20 has no application here, except to confirm that declaratory relief is appropriate to address
21 Westlands’ ongoing “refus[al] to apply governing law” and comply with the California Wild and
22 Scenic Rivers Act. (*Ibid.*)

23 CONCLUSION

24 For the foregoing reasons, the People respectfully request that the Court deny Westlands’
25 motion to strike.

26 ///

27 ///

28 ///

1 Dated: September 23, 2019

Respectfully Submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *People ex rel Attorney General Xavier Becerra v. Westlands Water District, et al.*

Case No.: **Shasta County Superior Court no. 192487**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On September 23, 2019, I served the attached **PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO WESTLANDS WATER DISTRICT'S MOTION TO STRIKE PORTION OF COMPLAINT AND PETITION** by placing a true copy thereof enclosed in a sealed envelope with **GOLDENSTATE OVERNIGHT**, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 23, 2019, at Sacramento, California.

Rochelle Uda-Quillen

Declarant



Signature

SERVICE LIST

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