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8 *People of the State of California ex rel.*
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Government Code section 6103*

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

13 **PEOPLE OF THE STATE OF CALIFORNIA EX**
14 **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

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF MANDATE**

[Pub. Resources Code, § 5093.542]

23 Plaintiff and Petitioner People of the State of California ex rel. Attorney General Xavier
24 Becerra (Plaintiff) brings this action for declaratory, injunctive and/or writ relief pursuant to Code
25 of Civil Procedure sections 525, 526, 1060, 1085, and Civil Code 3422 for violations of Public
26 Resources Code section 5093.542 by defendant and respondent Westlands Water District
27 (Westlands).

PARTIES

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2 1. Plaintiff is the People of the State of California, by and through Attorney General
3 Xavier Becerra. The Attorney General is constitutionally designated as the chief law officer of
4 the State and has the constitutional and statutory authority to ensure that state law is adequately
5 enforced. (Cal. Const., art. V, § 13; Gov. Code, § 12511.)

6 2. Defendant Westlands is a water district in the southern Central Valley of California,
7 and is a public agency of the state pursuant to Water Code sections 37822 and 37823.

8 3. The true names and capacities, whether individual, corporate, associate or otherwise,
9 of the Defendants sued in this Complaint under the fictitious names of Does 1 through 20,
10 inclusive, are unknown to Plaintiff who therefore sues each such defendant by such fictitious
11 name. Plaintiff will ask leave of court to amend this complaint to show the true name and
12 capacity of each defendant when these facts are discovered.

13 4. Plaintiff is informed and believes, and based on that information and belief alleges,
14 that at all times relevant hereto, each entity defendant was the parent, subsidiary, principal,
15 member, related company, affiliated company, director, officer, agent, contractor, employer,
16 employee, and/or representative of the other defendants and each individual defendant was the
17 principal, member, director, officer, agent, supervisor, contractor, employer, employee, and/or
18 representative of the other defendants when committing the violations alleged in this complaint
19 and that each was acting within the course and scope of such role. Whenever in this complaint
20 reference is made to any act of defendants, such allegations shall be deemed to mean that the
21 principal, member, director, officer, agent, supervisor, contractor, employer, employee, and/or
22 representative of said defendants that did or authorized such acts while actively engaged in the
23 management, operation or conduct of the affairs of said defendants, and while acting within the
24 course and scope of their employment.

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JURISDICTION

5. This Court has jurisdiction to grant declaratory relief to Plaintiff pursuant to Code of Civil Procedure section 1060.

6. This Court has jurisdiction to grant injunctive relief to Plaintiff pursuant to Code of Civil Procedure sections 525 and 526, and Civil Code 3422.

7. This Court has jurisdiction to grant writ relief to Plaintiff pursuant to Code of Civil Procedure section 1085.

FACTUAL AND LEGAL BACKGROUND

8. The lower McCloud River is located in Shasta County, California. It flows south from the McCloud Dam to Lake Shasta, a man-made reservoir on the Sacramento River. In the California Wild and Scenic Rivers Act, the California Legislature declared that “the McCloud River possesses extraordinary resources in that it supports one of the finest wild trout fisheries in the state.” (Pub. Resources Code, § 5093.542.) The Legislature further found that “maintaining the McCloud River in its free-flowing condition to protect its fishery is the highest and most beneficial use of the waters of the McCloud River....” (Pub. Resources Code, § 5093.542, subd. (a).) The Legislature intended to maintain the free-flowing condition of the McCloud River from impairment by the construction of any further dam, reservoir, diversion or other water impoundment facility. (Pub. Resources Code, § 5093.542, subd. (b).)

9. The Wild and Scenic Rivers Act expressly bars any agency or department of the state from participating in any way 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, subd. (c).)

10. Shasta Dam is a federally owned facility and the largest reservoir in California. The federal government has been studying the possibility of raising Shasta Dam on and off since the 1980s. In 2006, the U.S. Bureau of Reclamation (Bureau) released a Public Scoping Report for the Shasta Lake Water Resources Investigation.

1 11. In 2012, the Bureau sought comments on a Draft Feasibility Report for the Shasta
2 Lake Water Resources Investigation. In response, the California Department of Fish and Wildlife
3 (Department) submitted comments that concluded the proposed project would result in significant
4 and unavoidable impacts to fish, wildlife, native plants, and natural communities; has highly
5 suspect benefits to fish survival; and will convert part of the McCloud River into reservoir
6 habitat. (September 30, 2013, Department Comment Letter.)

7 12. In addition, the U.S. Fish and Wildlife Service (Service) prepared a report that
8 concluded the proposed project does not provide substantial benefits to fish and wildlife resources
9 and will result in losses of salmonid rearing and riparian habitat; the Service was unable to
10 support the adoption of any of the proposed action alternatives. (November 24, 2014, Service
11 Report.)

12 13. In 2015, the Bureau released a Final Feasibility Report and Final Environmental
13 Impact Statement (EIS) for the Shasta Lake Water Resources Investigation, which examined
14 several proposed project alternatives for raising Shasta Dam 6.5, 12.5, or 18.5 feet. The EIS
15 stated a preferred alternative of raising Shasta Dam 18.5 feet.

16 14. The federal EIS concluded:

- 17 a. The preferred alternative (CP4A, 18.5 feet increased dam height) would cause a
18 39 percent increase over the current transition reach, inundating a larger portion
19 of the lower McCloud River, with no feasible mitigation available to reduce
20 impacts.
- 21 b. Increased inundation could affect the free-flowing condition of the McCloud
22 River, as identified in the Public Resources Code, and this impact would be
23 significant and unavoidable.
- 24 c. The primary impact of the expansion of the transition reach would be conversion
25 of aquatic habitat, in conflict with the Public Resources Code, and this impact
26 would be significant and unavoidable, even with mitigation.
- 27 d. Increased inundation could affect the wild trout fishery of the lower McCloud
28 River.

- e. The lower McCloud River meets the definition of a free-flowing river under both the federal Wild and Scenic Rivers Act and state Public Resources Code.
- f. Implementation of the 18.5 feet dam raise would reduce the total length of the McCloud River that is eligible for wild and scenic river designation by about 3,550 feet.
- g. The inundated area of the McCloud River would increase to about 60 total acres.
- h. The characteristics of the transition reach would be modified, resulting in slower moving waters, and this modification would not meet the definition of a free-flowing river.
- i. Identified impacts would conflict with the California Wild and Scenic Rivers Act, and that impacts would be significant and unavoidable, even with mitigation.

15. The federal EIS also acknowledged that raising Shasta Dam would have a direct, significant impact on cultural resources, including important Native American heritage locations. According to the federal EIS, ceremonial locations, burial sites, and ancestral villages important to the Winnemem Wintu tribe and others would be adversely impacted if Shasta Dam is raised.

16. The federal Final Feasibility Report concluded:

- a. Raising Shasta Dam would inundate portions of the lower McCloud River.
- b. Raising Shasta Dam 18.5 feet would result in inundating an addition 3,550 lineal feet (about 27 acres) of the lower McCloud River.
- c. Long-term adverse impacts in wet years would be unavoidable for up to .67 miles of the McCloud River.
- d. Raising Shasta Dam would impact the free-flows the McCloud River.

17. The Bureau's 2015 Final Feasibility Report announced that it would require cost-sharing partner(s) for the Shasta Dam project.

18. In 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act (WIIN Act, PL 114-322, 2016, S. 612), which requires at least a fifty-percent contribution from non-federal cost-sharing partners for expansion of a federally owned storage project. (WIIN Act,

1 § 4007(b)(2).) The WIIN Act also requires compliance with all applicable environmental laws
2 (WIIN Act, § 4007(b)(4)), including state laws. (WIIN Act, §§ 4007(j), 4012.)

3 19. In March 2018, Congress approved \$20 million in funding for pre-construction and
4 design engineering to raise Shasta Dam 18.5 feet, pursuant to the WIIN Act. (Consolidated
5 Appropriations Act, 2018, PL 115-141, H.R. 1625-169, Division D, Title II.)

6 20. In October 2018, Westlands approved a budget transfer in the amount of \$1,020,000
7 consulting services related to Shasta Dam.

8 21. In November 2018, Westlands published an Initial Study/Notice of Preparation of an
9 Environmental Impact Report for the Shasta Dam Raise Project (Initial Study). The project
10 description includes six alternatives (as described in the 2014 federal EIS), each of which
11 includes enlarging Shasta Dam and Reservoir. The Initial Study identified potentially significant
12 impacts to biological resources, botanical resources and wetlands, and wildlife resources. The
13 Initial Study also identified a potentially significant impact on the McCloud River's eligibility for
14 listing as a federal wild and scenic river. The Initial Study erroneously characterized potential
15 impacts on the McCloud River's free-flowing condition and wild trout fishery as "to be
16 determined." The 2014 federal EIS made specific findings on such potential impacts.

17 22. The California Department of Fish and Wildlife (Department) provided comments on
18 the Initial Study, stating "Raising the water level behind Shasta Dam will convert part of the
19 McCloud River into reservoir habitat, changing the free-flowing condition of the McCloud
20 River," and "Inundation of the McCloud River would result in a significant loss of this river
21 ecosystem to a reservoir ecosystem, resulting in direct and indirect adverse impacts to the current
22 trout fishery in conflict with State law and policy." (January 14, 2019, Department Comment
23 Letter.)

24 23. The California State Water Resources Control Board (State Water Board) provided
25 comments on the Initial Study, stating that additional impoundment of water in Shasta Reservoir
26 will include the reach of the McCloud River protected under the Wild and Scenic Rivers Act and
27 convert the affected area from a free-flowing stretch of river to impounded waters, and that the
28 State Water Board and other state agencies would be barred from issuing any permit or other

1 approval for a project that could adversely affect the free-flowing character of the McCloud River
2 or its wild trout fishery. (January 14, 2019, State Water Board Comment Letter.)

3 **VENUE**

4 24. Venue for this action properly lies in Shasta County because Shasta Dam and
5 Reservoir and the lower McCloud River are located in Shasta County. Impacts to the McCloud
6 River will occur in Shasta County.

7 **STANDING**

8 25. Plaintiff has standing to assert the claims raised in this complaint because the People
9 of the State of California have a direct and beneficial interest in upholding applicable California
10 law and protecting the public trust in natural resources. Plaintiff and the public are directly and
11 adversely affected by the actions of defendant Westlands that violate state law.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF PUBLIC RESOURCES CODE SECTION 5093.542**

14 26. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 paragraphs 1-25, above.

16 27. By taking steps to become a cost-sharing partner with the federal government to raise
17 Shasta Dam and expand Shasta Reservoir, Westlands violated and continues to violate the
18 mandate of Public Resources Code section 5093.542. Raising the dam could have an adverse
19 effect on the free-flowing condition of the McCloud River or on its wild trout fishery. Westlands'
20 development of an environmental impact report, as a lead agency under the California
21 Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) is "planning" that is
22 prohibited under the plain meaning of Public Resources Code section 5093.542. Such planning
23 involves the assistance or cooperation with the planning or construction of water impoundment
24 facilities that could have an adverse effect on the free-flowing condition of the McCloud River, or
25 on its wild trout fishery, in violation of the law.

26 28. Plaintiff is without a plain, speedy, and/or adequate remedy in the ordinary course of
27 law to compel defendant Westlands to comply with the Public Resources Code.

28

1 29. Plaintiff has suffered and will continue to suffer irreparable injury unless and until
2 this Court enjoins defendant Westlands from continuing its illegal conduct.

3 30. Defendant Westlands' illegal conduct is ongoing and threatens to be continued in the
4 future.

5 31. An actual controversy has arisen between Plaintiff and Defendant in that Plaintiff
6 contends defendant Westlands' participation in planning for or otherwise participating in any
7 dam, including Shasta Dam, that could have an adverse effect on the free-flowing condition of the
8 McCloud River, or on its wild trout fishery, violates the law, and that encumbering funding and
9 preparing an EIR is planning and participating in such a dam.

10 32. A judicial declaration is necessary so that the parties may ascertain their rights in this
11 controversy and to prevent illegal conduct by defendant Westlands.

12 33. Illegal expenditure of funds in violation of the law is an ultra vires act and an abuse of
13 discretion. Westlands has a non-discretionary duty to comply with Public Resources Code
14 section 5093.542. Westlands abused its discretion, and continues to abuse its discretion, by
15 taking action to assist with the Shasta Dam Raise Project, including without limitation, issuing the
16 Initial Study, allocating funds for preparation of an Environmental Impact Report, and acting as a
17 lead agency for the issuance of an Environmental Impact Report for the Shasta Dam Raise
18 Project. For these reasons, Plaintiff petitions this Court for a peremptory writ of mandate
19 requiring Westlands to halt and refrain from planning or construction activities relating to the
20 Shasta Dam Raise Project. (Code Civ. Proc., § 1085.)

21 PRAYER FOR RELIEF

22 Plaintiff requests that this Court grant the following relief:

23 1. Determine, declare, and adjudicate that the acts of defendant Westlands involving
24 planning for a project to raise the height of Shasta Dam violate Public Resources Code section
25 5093.542;

26 2. Preliminarily and permanently enjoin defendant Westlands from assisting or
27 cooperating with any actions involving planning or construction of a project to raise Shasta Dam;
28

1 3. A writ of mandate pursuant to Code of Civil Procedure section 1085 directing
2 Defendant Westlands to halt all activities involving planning for or construction of a project to
3 raise the Shasta Dam to comply with Public Resources Code section 5093.542;

4 3. Award Plaintiff its costs of suit and litigation expenses;

5 4. Retain jurisdiction of this case until Defendant Westlands has fully complied with the
6 orders of this Court, and there is reasonable assurance that Defendant Westlands will continue to
7 comply in the future in the absence of continuing jurisdiction; and

8 5. Award such other and further relief as the Court deems just and proper.

9 Dated: May 13, 2019

Respectfully Submitted,

10 XAVIER BECERRA
11 Attorney General of California
12 TRACY L. WINSOR
13 Supervising Deputy Attorney General



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