

Michele King

From: Katja Irvin <katja.irvin@sbcglobal.net>
Sent: Wednesday, July 03, 2019 2:00 PM
To: Clerk of the Board; Board of Directors
Cc: James Eggers
Subject: July 9, 2019 Agenda Item 4.2 Fiscal Year 2019-2020 Board Work Plan
Attachments: 070919 Item 4.2 Board Work Plan and Calendars SC letter.pdf; people-v-westlands-complaint-declaratory-injunctive-relief-shasta-dam.pdf; 062519 SCVWD Public Comment on Shasta Dam Raise.pdf

Chair LeZotte and Members of the Board,

Please find comments from the Sierra Club on the subject agenda item attached along with referenced documents. I hope this are submitted in time to be included in the updated agenda packet.

Thank you for your consideration,

Katja Irvin
Conservation Committee Co-chair
Sierra Club Loma Prieta Chapter



SAN MATEO, SANTA CLARA & SAN BENITO COUNTIES

July 3, 2019

Valley Water Board of Directors
5750 Almaden Expressway
San Jose, CA 95118

RE: July 9, 2019 Agenda Item 4.2 Fiscal Year 2019-2020 Board Work Plan

Dear Chair LeZotte and Members of the Board,

The Sierra Club Loma Prieta Chapter is concerned about Valley Water's continued focus on exploring new surface storage opportunities in your 2019-2020 Board Work Plan, especially the inclusion of the Shasta Dam Expansion project.

It is illegal for California agencies to participate in the Shasta Dam project as documented in the Attorney General's complaint against Westlands Water District for doing so (attached). My public comments to this Board at your June 25, 2019 meeting (attached) further stated how Valley Water is vulnerable as a member of the San Luis and Delta Mendota Water Authority.

The decision about participation in the Shasta Dam project is too important to be left to the Water Storage Exploratory Committee and needs to be brought to the full Board first to give direction to the committee. The Board shouldn't simply allow the committee to discuss participation in a project that both the Secretary of the California Natural Resources Agency and the State Water Resources Control Board have said is illegal. The Board would be wiser to direct the committee to discuss how the District can pull back from any whiff of participation in the project

Furthermore, the Draft Water Supply Master Plan now includes the Shasta Reservoir as an active project, saying "State law ... restricts funding for any studies. Staff will continue to monitor opportunities related to Shasta Reservoir Expansion." The Plan should be updated to say State law prohibits assistance and cooperation with state, federal, or local agencies on the project.

The Draft Water Supply Master Plan also says "The projects already approved by the Board for planning (California WaterFix (SWP and CVP), 24,000 AFY of reuse, the "No Regrets" package of additional water conservation and stormwater capture projects, Transfer-Bethany Pipeline, and Pacheco Reservoir), along with South County Recharge, **exceed the recommended level of service goal.**" This doesn't include the Los Vaqueros Expansion and Sites Reservoir projects, both of which Valley Water has already paid in to.

Basically, the Master Plan is saying that no additional dam projects are needed unless something changes with the approved projects, yet Los Vaqueros, Sites and Shasta remain as active projects under the Plan. As we have explained, Shasta is the most immediately problematic of these dam projects.

Valley Water's Ends Policies says "A net positive impact on the environment is important in support of the District mission and is reflected in all that we do" (policy 1.4). The destruction of a river protected in the California Wild and Scenic Act is a major negative impact on the environment. Do the right thing and don't participate in the destruction of this important environmental resource.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katja Irvin".

Katja Irvin
Conservation Committee Co-Chair
Sierra Club Loma Prieta Chapter

Public Comment to Santa Clara Valley Water District Board of Directors – June 25, 2019

Re: Shasta Reservoir Enlargement Project

I'm here today to talk about the Shasta Reservoir Enlargement Project.

As you may know, Attorney General Javier Becerra has filed a lawsuit against the Westlands Water District for violation of the California Wild and Scenic Rivers Act by assisting and cooperating with the U.S. Bureau of Reclamation in the planning of the Shasta Dam Enlargement. The Sierra Club is also party to a separate suit challenging Westlands unlawful assistance and cooperation with Reclamation's plan to raise Shasta Dam.

Santa Clara Valley Water District is a special district, which, along with Westlands, is subject to this same prohibition.

In March 2018 Valley Water Directors serving on the San Luis & Delta Mendota Water Authority Board voted to authorize sending a letter to the United States Department of the Interior expressing interest in sharing the cost for enlarging Shasta Dam and Reservoir.

The Sierra Club has scant information about how the Authority has followed up on this. Therefore, we would like to ask you, what is the Authority doing pursuant to this authorization to participate in the Shasta Dam Enlargement?

We do know that on May 30, 2019 the Authority held a Board of Directors Special Meeting for a Shasta/McCloud Tour. So we would also like to know, did Valley Water Directors go on this tour?

We believe it is unwise for the Authority to pursue this path and Santa Clara Valley Water District should put some distance between your views on this and those of the rest of the Authority Board members. It is doubtful that District voters would support violating the Wild and Scenic Rivers Act, as that would be inconsistent with the general support for California's landmark environmental laws.

Ideally the San Luis Delta Mendota Board should withdraw its March 2018 authorization to staff to court Reclamation. At least, given your obligations under state law, Valley Water should bring this concern to that Board and urge the Authority to reverse the decision in support of exploring this partnership, to notify the Bureau Reclamation, and to advise the Bureau that California law prohibits cooperation and assistance on the Shasta Dam Enlargement.

Furthermore, you should make an effort to discuss these issues in your own public meetings, including consideration of a resolution to formally withdraw support for the project and in formal opposition to the San Luis Delta Mendota Board's authorization.

In addition, we know that Westlands is courting Valley Water to purchase water that Westlands intends to derive from its illegal partnership with Reclamation. In light of the ongoing litigation, Valley Water should decline and urge other CVP contractors to decline Westlands offer as well.

In summary, we suggest that Valley Water untangle itself from any potential financial commitments and legal vulnerabilities that the San Luis & Delta Mendota Water Authority makes or could make on behalf of the District.

FILED

MAY 13 2019

**CLERK OF THE SUPERIOR COURT
BY: G. HOYT, DEPUTY CLERK**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SHASTA

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

Plaintiff and Petitioner,

v.

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

Defendants and Respondents

Case No.

192487

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

[Pub. Resources Code, § 5093.542]

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

PARTIES

1
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.

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.

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

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

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

14. The federal EIS concluded:

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

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

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

Plaintiff requests that this Court grant the following relief:

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

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,

XAVIER BECERRA
Attorney General of California
TRACY L. WINSOR
Supervising Deputy Attorney General



COURTNEY S. COVINGTON
RUSSELL B. HILDRETH
Deputy Attorneys General
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