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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO,
CENTRAL DIVISION**

WESTLANDS WATER DISTRICT, a
California Water District,

Plaintiff,

vs.

ALL PERSONS INTERESTED IN THE
MATTER OF THE CONTRACT BETWEEN
THE UNITED STATES AND WESTLANDS
WATER DISTRICT PROVIDING FOR
PROJECT WATER SERVICE, SAN LUIS
UNIT AND DELTA DIVISION AND
FACILITIES REPAYMENT,

Defendants.

Case No.: 19CECG03887

**ANSWER OF INTERESTED PERSONS
CENTRAL DELTA WATER AGENCY
AND SOUTH DELTA WATER AGENCY
TO COMPLAINT FOR VALIDATION**

(Cal. Code Civ. Proc. § § 860-870.5)

Judge: Alan Simpson

Department: TBD

Complaint Filed: October 25, 2019

**Exempt from Filing Fees Per
Gov't Code § 6103**

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Attorney for South Delta Water Agency

1 **INTRODUCTION**

2 To protect their interest and preserve their claim and rights of action, interested persons
3 Central Delta Water Agency and South Delta Water Agency ("Delta Agencies") submit this
4 Answer to the Complaint for Validation ("Complaint") filed by Plaintiff Westlands Water
5 District ("Westlands") as follows:
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7 **RESPONSE TO COMPLAINT FOR VALIDATION**

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9 1. Answering Paragraph 1 of Complaint, the Delta Agencies admit that the complaint
10 proports to be a validation action under Code of Civil Procedure § 860 et seq., and Water Code
11 § 35855 and Gov't Code § 53510, et seq., and that Westlands seeks a judgment confirming the
12 validity of the contract with the United States Providing Project Water Service San Luis Unit
13 and Delta Division and Facilities Repayment, the ("Converted Contract"). Other than as
14 expressly admitted, the Delta Agencies deny each and every allegation of Paragraph.1.

15 2. Answering Paragraph 2 of Complaint, the Delta Agencies admit that the validation
16 action is brought under Code of Civil Procedure § 860 as a special in rem proceeding for
17 judicial examination and approval of the Converted Contract. Other than as expressly
18 admitted, the Delta Agencies deny each and every allegation of Paragraph 2.

19 3. Answering Paragraph 3 of Complaint, the Delta Agencies lack sufficient knowledge
20 as to whether or not all such proceedings as set forth in the Complaint were and are in the best
21 interest of the Westlands, and on that basis deny the allegation. The Delta Agencies deny that
22 all such proceedings are in the best interest of all interested parties. The Delta Agencies lack
23 sufficient knowledge to admit or deny the remaining allegations of Paragraph 3, and on that
24 basis, deny the allegations.

25 4. Answering Paragraph 4 of Complaint, the Delta Agencies lack sufficient knowledge
26 to admit or deny the allegations and, on that basis, deny the allegations of Paragraph 4.

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1 5. Answering Paragraph 5 of Complaint, the Delta Agencies lack sufficient knowledge
2 to admit or deny the allegations and, on that basis, deny the allegations of Paragraph 5.

3 6. Answering Paragraph 6 of Complaint, the Delta Agencies admit they are interested
4 parties disputing the request for validation. Except as expressly admitted, the Delta Agencies
5 lack sufficient knowledge to admit or deny the allegations of Paragraph 6, and on that basis,
6 deny the allegations and allege:

7 (a) CENTRAL DELTA WATER AGENCY (“CDWA”) is a political subdivision
8 of the State of California created by the California Legislature under the Central
9 Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code,
10 Appendix, 117-1.1, et seq.), by the provisions of which CDWA came into
11 existence in January of 1974. CDWA’s boundaries are specified in Water Code
12 Appendix section 117-9.1 and encompass approximately 120,000 acres, which
13 are located entirely within both the western portion of San Joaquin County and
14 the “Sacramento-San Joaquin Delta” as defined in California Water Code section
15 12220. While the lands within the agency are primarily devoted to agriculture,
16 said lands are also devoted to numerous other uses including recreational,
17 wildlife habitat, open space, residential, commercial, and institutional uses.
18 CDWA is empowered to “sue and be sued” and to take all reasonable and lawful
19 actions, including pursuing legislative and legal action, that have for their
20 general purpose: (1) to protect the water supply of the lands within the agency
21 against intrusion of ocean salinity; and/or (2) to assure the lands within the
22 agency a dependable supply of water of suitable quality sufficient to meet
23 present and future needs. The agency may also undertake activities to assist
24 landowners and local districts within the agency in reclamation and flood control
25 matters. (See Wat. Code, Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and
26 (b), respectively.) CDWA may assist landowners, districts, and water right
27 holders within its boundaries in the protection of vested water rights and may
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1 represent the interests of those parties in water right proceedings and related
2 proceedings before courts of both the State of California and the United States to
3 carry out the purposes of the agency. (See Wat. Code, Appendix, 117-4.2, subd.
4 (b).)

5 (b) SOUTH DELTA WATER AGENCY ("SDWA") is a political subdivision of the State
6 of California created by the California Legislature under the South Delta Water Agency
7 Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix, 116-1.1, et seq.), by
8 the provisions of which SDWA came into existence in January of 1974. SDWA's
9 boundaries are specified in Water Code Appendix section 116-9.1 and encompass
10 approximately 148,000 acres, which are located entirely within both the south-western
11 portion of San Joaquin County and the "Sacramento-San Joaquin Delta" as defined in
12 California Water Code section 12220. While the lands within the agency are primarily
13 devoted to agriculture, said lands are also devoted to numerous other uses including
14 recreational, wildlife habitat, open space, residential, commercial, municipal and
15 institutional uses. SDWA is empowered to "sue and be sued" and to take all reasonable
16 and lawful actions, including pursuing legislative and legal actions, that have for their
17 general purpose: (1) to protect the water supply of the lands within the agency against
18 intrusions of ocean salinity; and/or (2) to assure the lands within the agency a
19 dependable supply of water of suitable quality sufficient to meet present and future
20 needs. The agency may also undertake activities to assist landowners and local districts
21 within the agency in reclamation and flood control matters. (See Wat. Code, Appendix,
22 116-4.2, subd. (b) & 116-4.1, subds. (a) and (b), respectively.) SDWA may assist
23 landowners, districts, and water right holders within its boundaries in the protection of
24 vested water rights and may represent the interests of those parties in water right
25 proceedings and related proceedings before courts of both the State of California and
26 the United States to carry out the purposes of the agency. (See Wat. Code, Appendix,
27 116-4.2 subd. (b).)
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2 7. Answering Paragraph 7 of Complaint, the allegations are conclusions of law to
3 which no response is required.

4 8. Answering Paragraph 8 of Complaint, the allegations are conclusions of law to
5 which no response is required.

6 9. Answering Paragraph 9 of Complaint, the Delta Agencies lack sufficient knowledge
7 to admit or deny the allegations, and, on that basis, deny the allegations of Paragraph 9.

8 10. Answering Paragraph 10 of Complaint, the Delta Agencies admit the allegations
9 therein.

10 11. Answering Paragraph 11 of Complaint, the Delta Agencies lack sufficient
11 knowledge to admit or deny the allegations of Paragraph 11 and, on that basis, deny the
12 allegations of Paragraph 11.

13 12. Answering Paragraph 12 of Complaint, the Delta Agencies lack sufficient
14 knowledge to admit or deny the allegations of Paragraph 12, and on that basis, deny the
15 allegations of Paragraph 12.

16 13. Answering Paragraph 13 of Complaint, the Delta Agencies admit that congress
17 passed the WIIN Act on December 16, 2016. As for the remaining allegations of this
18 Paragraph, the Act is the best evidence of the language contained, and speaks for itself.

19 14. Answering Paragraph 14 of Complaint, the Delta Agencies lack sufficient
20 knowledge to admit or deny the allegations of Paragraph 14, and on that basis, deny each and
21 every allegation of said Paragraph.

22 15. Answering Paragraph 15 of Complaint, the allegations therein contain statements of
23 intent and conclusions of law to which no response is required.

24 16. Answering Paragraph 16 of Complaint, the language of the Converted Contract is
25 the best evidence of same and therefore, no further response is required.

26 17. Answering Paragraph 17 of Complaint, the allegations therein contain conclusions
27 of law to which no response is required.
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1 18. Answering Paragraph 18 of Complaint, to the extent the allegations therein contain
2 conclusions of law, no response is required. To the extent a further answer is required, the
3 Delta Agencies lack sufficient information to admit or deny the allegations and, on that basis,
4 deny the remaining allegations of Paragraph 18.

5 19. Answering Paragraph 19 of Complaint, the Delta Agencies lack sufficient
6 knowledge to admit or deny the allegations, and on that basis, deny each and every allegation
7 of Paragraph 19.

8 20. Answering Paragraph 20 of Complaint, the Delta Agencies allege and incorporate
9 each and every above response given in response to Paragraphs 1 through 19 of the Complaint,
10 inclusive, to the same extent Plaintiff has incorporated those paragraphs into this cause of
11 action.

12 21. Answering Paragraph 21 of Complaint, to the extent the allegations therein contain
13 conclusions of law, no response is required. To the extent a further answer is required, the
14 Delta Agencies lack sufficient information to admit or deny the allegations and, on that basis,
15 deny the remaining allegations of Paragraph 21.

16 22. Answering Paragraph 22 of Complaint, the allegations consist of conclusions of
17 law to which no response is required. To the extent a further response is required, the Delta
18 Agencies lack sufficient information to admit or deny the allegations and, on that basis, deny
19 the remaining allegations of Paragraph 22.

20 23. Answering Paragraph 23 of Complaint, the allegations set forth the District's
21 request of the court to which no response is required.

22 **WESTLANDS'PRAYER FOR RELIEF**

23 24. Answering Paragraph 1 of the Prayer for Relief, the Delta Agencies assert
24 Paragraph 1 contains legal conclusions and prayers for relief to which no response is required.

25 25. Answering Paragraph 2 of the Prayer for Relief, the Delta Agencies assert
26 Paragraph 2 contains legal conclusions and prayers for relief to which no response is required.

27 26. Answering Paragraph 3 of the Prayer for Relief, the Delta Agencies assert
28 Paragraph 3 contains legal conclusions and prayers for relief to which no response is required.

1 27. Answering Paragraph 4 of the Prayer for Relief, the Delta Agencies assert
2 Paragraph 4 contains legal conclusions and prayers for relief to which no response is required.

3 28. Answering Paragraph 5 of the Prayer for Relief, the Delta Agencies assert
4 Paragraph 5 contains legal conclusions and prayers for relief to which no response is required.

5 29. Answering Paragraph 6 of the Prayer for Relief, the Delta Agencies assert
6 Paragraph 6 contains legal conclusions and prayers for relief to which no response is required

7 30. Answering Paragraph 7 of the Prayer for Relief, the Delta Agencies assert
8 Paragraph 7 contains legal conclusions and prayers for relief to which no response is required.

9 **AFFIRMATIVE DEFENSES**

10 Without admitting any allegations contained in the Complaint, or that they bear the
11 burden of proof as to any such defenses, the Delta Agencies allege as follows:

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Cause of Action)**

14 31. The Complaint, including each purported cause of action and remedy sought
15 therein, fails to allege facts sufficient to constitute a valid cause of action.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Prematurity/Underlying Contract Not Yet Finalized)**

18 32. The Complaint, and its prayer for relief is premature. The public comments on the
19 Interim Renewal Contracts are not due until December 14, 2019. Based on information and
20 belief, responses to those comments will not be available until 30-60 days thereafter.
21 Additionally, the public comments on the Converted Contract are not due until January 8,
22 2020. On information and belief, responses to those public comments will not be provided until
23 at least 30 days thereafter. Therefore, the Converted Contract is not finalized. However, the
24 Summons requires that the responsive pleadings to the subject complaint in validation be filed
25 by December 16, 2019.

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1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Lack of Specificity)**

3 33. Validation of the Converted Contract cannot occur due to the uncertain and vague
4 presentation of the Complaint on the nature of the action to be validated and the scope of relief.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Waiver)**

7 34. The Converted Contract cannot be approved due to waiver of grounds essential to
8 the granting of that relief.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Statutory Condition Precedent Not Met)**

11 35. Contractual validation cannot occur because statutory conditions precedent have not
12 been met.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Unavailability of Contracted Water Supply)**

15 36. The validation cannot occur because the Contract contemplates the availability of
16 1,150,000 acre-feet of water for Westlands on an annual basis from the Central Valley Project.
17 Said amount of water is unavailable to Westlands without violating the rights of senior water
18 right holders, public trust needs, salinity control needs, needs for providing an adequate water
19 supply for Delta users, needs to satisfy ESA requirements and needs for meeting SWRCB
20 water quality standards.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Contrary to the Delta Protection Act)**

23 37. In 1959 when the State Water Project was authorized, the Legislature enacted the
24 Delta Protection Act. In doing so the Legislature recognized the unique water problems in the
25 Delta, particularly salinity intrusion which mandates the need for such special legislation for
26 the protection, conservation, development, control and use of the waters in the Delta for the
27 public good. The Act prohibits project exports from the Delta of water necessary to provide
28 water to which the Delta users are entitled and water which is needed for salinity control and

1 an adequate supply for Delta users. (*See United States v. State Water Resources Control Board*
2 *(1986)182 Cal.App.3d 82, p. 139.*)

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Contrary to Water Right Priorities)**

5 38. The Contract should not be validated because the subject underlying water rights
6 upon which the Converted Contract is based are junior in priority and in conflict with long
7 standing water right priorities.

8 **NINTH AFFIRMATIVE DEFENSE**

9 **(Lack of Water Availability Analysis)**

10 39. The Converted Contract should not be validated because it purports to confirm a
11 amount of water to Westlands which is unavailable and has not been a subject of an overall
12 water availability analysis to determine how much, if any, water is available for export from
13 the Delta after taking into account all competing uses including but not limited to senior water
14 right priorities, public trust needs, salinity control needs, needs for providing an adequate water
15 supply for Delta users, needs to satisfy ESA requirements and needs for meeting SWRCB
16 water quality standards.

17 **TENTH AFFIRMATIVE DEFENSE**

18 **(Contrary to the Delta Reform Act)**

19 40. The Converted Contract should not be validated because it purports to make
20 Westlands temporary allocation of CVP water permanent which is contrary to the Legislative
21 declaration in the Delta Reform Act of 2009 that “[t]he policy of the State of California is to
22 reduce reliance on the Delta in meeting California's future water supply needs through a
23 statewide strategy of investing in improved regional supplies, conservation, and water use
24 efficiency.” (Wat. Code § 85021.)

25 **ELEVENTH AFFIRMAITVE DEFENSE**

26 **(Term of Contract is Indefinite)**

27 41. Validation cannot occur because the term of the Converted Contract has no ending
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1 date. As such, the validation would improperly create the impression, both in fact and law, that
2 Westlands is permanently entitled to received up to 1,150,000 acre feet of water per year from
3 the Delta through the CVP. In fact, Westlands is entitled to only received water from the Delta
4 that is surplus to area of origin needs.

5 **TWETLTH AFFIRMATIVE DEFENSE**

6 **(Contrary to Requirement for a Drainage Solution)**

7 42. The Converted Contract cannot be validated to the extent it would in any way
8 alleviate Westlands or the United States' requirement to implement a permanent drainage
9 solution for the San Joaquin Unit pursuant to the San Luis Act of 1960.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 **(Contrary to Federal Law)**

12 43. Proposed validation is contrary to the Central Valley Project Improvement Act
13 (CVPIA) and other federal Statutes. Compliance with federal statutes, including CVPIA
14 requirements cannot be validated through a state validation action.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Improper Use of Percolating Groundwater)**

17 44. The allowed use of percolating groundwater from CVP deliveries could have a wide
18 range of adverse impacts beyond historical use. Validation of actions relating to the use of
19 percolating groundwater, and all other actions with uncertain impacts, is inappropriate and
20 further proceedings and challenges as to uncertainties must be excluded from any restraint.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 **(Failure to Comply With NEPA)**

23 45. The impacts of water deliveries in excess of the recent historical deliveries to
24 Westlands, and deliveries of water to different and/or additional lands, will have impacts not
25 within the scope of continued operations and require further analysis in compliance with
26 NEPA. The scope of the Converted Contract is not limited to transfer of facilities and
27 adjustment of repayment for such facilities.
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1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 **(Improper Attempt to Enjoin Future Legal Challenges)**

3 46. In requesting validation Westlands impermissibly seeks to enjoin all future legal
4 challenges in any way related to the subject matter of the Converted Contract and the
5 Complaint. Validation cannot be used to ban all such prospective and unknown challenges
6 including but not limited to third party impacts from the implementation of the Converted
7 Contract.

8 **SEVENTEETH AFFIRMATIVE DEFENSE**

9 **(Improper Attempt to Ratify Previous Actions)**

10 47. In requesting validation Westlands improperly seeks a determination that all of its
11 previous actions prior to the creation of the Converted Contract were legally permissibly, and,
12 therefore, beyond legal challenge.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 **(Exceeds Acreage Limitations)**

15 48. The Converted Contract cannot be validated because it exceeds the acreage
16 limitations authorized by Congress.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 **(Reservation of Defenses)**

19 49. Certain additions of defenses to the Complaint and to the purported causes of action
20 therein stated maybe available to the Delta Agencies. However, these additional defenses
21 require further discovery before they can be properly alleged. The Delta Agencies therefore
22 reserve the right to allege other separate and additional defenses, causes action and/or cross-
23 complaints if and when they become appropriate in this action.

24
25 **DELTA AGENCIES' PRAYER FOR RELIEF**

26 WHEREFORE, Delta Agencies respectfully request the Court enter judgment as
27 follows:

28 A. That Westlands take nothing by its Complaint.

1 B. That facts and law as alleged herein by the Delta Agencies be determined as
2 alleged in favor of the Delta Agencies.

3 C. If, and to the extent a judgment of validation is entered, the Delta Agencies
4 request that such Judgment be limited in scope, without validation of any uncertain or
5 ambiguous issues, issues related to federal statutes and with an affirmative
6 determination as to the legal and factual issues set forth herein, in favor of the Central
7 Delta Water Agency and South Delta Water Agency.

8 D. If, and to the extent a judgement of validation is entered, the Delta Agencies
9 request it not validate Westlands past actions prior to the making of the Converted
10 Contract or improperly and overbroadly prohibit future legal challenges of any and all
11 matters related to the subject of the Converted Contract.

12 E. That the Delta Agencies be awarded reasonable attorneys' fees pursuant to
13 Code of Civil Procedure section 1021.5 and/or to the extent otherwise allowed by any
14 provision of California statutory law or any common law doctrine recognized in
15 California.

16 F. For the Delta Agencies costs of suit herein.

17 G. For such other and further relief as the Court may deem just and proper.

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20 Respectfully submitted,

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22 DATED: December 16, 2019

MOHAN, HARRIS, RUIZ & RUBINO LLP

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25 By: 

S. Dean Ruiz

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of December, 2019, in Stockton, California.

ANSWER OF INTERESTED PERSONS CENTRAL DELTA WATER AGENCY AND SOUTH DELTA
WATER AGENCY TO COMPLAINT FOR VALIDATION

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On December 16, 2019 I served a true copy of the attached:

- Addressed to: **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 16, 2019, at Stockton, California.

Julie Smith

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