

1 Adam Keats (SBN 191157)
2 LAW OFFICE OF ADAM KEATS
3 303 Sacramento St., Second Floor
4 San Francisco, CA 94111
5 Tel: 415-845-2509
6 Email: adam@keatslaw.org
7 *Attorney for Defendants California Water Impact Network, AquAlliance, California Indian Water
8 Commission, and Planning and Conservation League*

9 John Buse (SBN 163156)
10 Ross Middlemiss (SBN 323737)
11 CENTER FOR BIOLOGICAL DIVERSITY
12 1212 Broadway, Suite 800
13 Oakland, CA 94612
14 Tel: 510-844-7100
15 Fax: 510-844-7150
16 Email: jbuse@biologicaldiversity.org
17 rmiddlemiss@biologicaldiversity.org
18 *Attorneys for Defendant Center for Biological Diversity*

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF FRESNO**

17 WESTLANDS WATER DISTRICT, a California
18 Water District,

19 Plaintiff,

20 vs.

21 ALL PERSONS INTERESTED IN THE
22 MATTER of the Contract Between the United
23 States and Westlands Water District Providing for
24 Project Water Service, San Luis Unit and Delta
25 Division and Facilities Repayment,

26 Defendants.

Case No.: 19CECG03887

**VERIFIED ANSWER OF PUBLIC
INTEREST GROUPS TO COMPLAINT FOR
VALIDATION JUDGMENT**

(Cal. Code Civ. Proc. §§ 860-870.5)

Action Filed: October 25, 2019

1 These answering Public Interest Groups, California Water Impact Network, AquAlliance,
2 California Indian Water Commission, Planning and Conservation League, and Center for Biological
3 Diversity (“Public Interest Groups”), respond to Westlands Water District’s Complaint for Validation
4 Judgment as follows:

5 **ANSWER TO COMPLAINT FOR VALIDATION**

6 **Introduction**

7 1. Public Interest Groups admit the allegations in Paragraph 1.

8 2. No response is required to Paragraph 2 because it calls for legal conclusions; to the
9 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
10 further respond that the referenced statutes speak for themselves.

11 3. No response is required to Paragraph 3 because it calls for legal conclusions; to the
12 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
13 further respond that the referenced statutes speak for themselves.

14 **The Parties**

15 4. Public Interest Groups admit the allegations in Paragraph 4.

16 5. Public Interest Groups admit the allegations in Paragraph 5.

17 6. Public Interest Groups admit the allegations in Paragraph 6. Public Interest Groups
18 further allege that they are all interested parties pursuant to California Code of Civil Procedure section
19 862. Public Interest Groups further allege the following facts:

20 a. Defendant CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is a California
21 non-profit public benefit organization with its principal place of business in Santa Barbara,
22 California. C-WIN’s organization purpose is the protection and restoration of fish and wildlife
23 resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural
24 environmental resources and uses of the rivers and streams of California, including the Bay-
25 Delta, its watershed and its underlying groundwater resources. C-WIN seeks to protect the 26
26 million urban ratepayers south of the Delta from paying for infrastructure that will give them
27 only paper water and little benefit. C-WIN has members who reside in, use, and enjoy the Bay-
28 Delta and inhabit and use its watershed. They use the rivers of the Central Valley and the Bay-

1 Delta for nature study, recreation, and aesthetic enjoyment.

2 b. Defendant AQUALLIANCE is a California public benefit corporation headquartered in
3 Chico, California. Its mission is to defend northern California waters and the ecosystems these
4 waters support and to challenge threats to the hydrologic health of the Sacramento River
5 watershed. This includes escalating attempts to divert and withdraw more water from the
6 hydrologic region. AquAlliance’s members include farmers, scientists, businesses, educators,
7 and residents all of whom have significant financial, recreational, scientific, aesthetic,
8 educational, and conservation interests in the aquatic and terrestrial environments that rely on
9 waters of the Sacramento River Watershed and Bay-Delta estuary. This hydrologic system
10 provides water for orchards, homes, gardens, businesses, wetlands, streams, rivers, terrestrial
11 habitat, and myriad species, which in turn allows AquAlliance members to live, fish, hunt,
12 cycle, photograph, camp, swim, and invest in northern California.

13 c. Defendant CALIFORNIA INDIAN WATER COMMISSION (“CIWC”), authorized by
14 tribal resolution through the Indian Self Determination and Education Act, PL 93-638, works to
15 protect, promote, and enhance the traditional ecological cultural knowledge and stewardship
16 practices of the Indigenous people of California for the future generations of its tribes and all
17 Californians.

18 d. Defendant PLANNING AND CONSERVATION LEAGUE (“PCL”), a non-profit
19 advocacy organization whose headquarters in is Sacramento, California, is empowered to
20 protect and restore California's natural environment and to promote and defend the public health
21 and safety of the people of California, through legislative, administrative, and judicial action.
22 PCL was founded in 1965 and since then has advocated in all branches of California
23 government for a body of laws that remains at the forefront of environmental policy in the
24 United States. PCL’s staff undertakes extensive research and works closely with legislators to
25 promote laws that protect and improve California's environment.

26 e. Defendant CENTER FOR BIOLOGICAL DIVERSITY (“The Center”) is a non-profit,
27 public interest organization with over 69,000 active members. The Center has offices in
28 Oakland, Los Angeles, and Joshua Tree, California, as well as offices in Arizona, Florida,

1 Oregon, Colorado, and Washington, D.C. The Center and its members are dedicated to
2 protecting diverse native species and habitats through science, policy, education, and
3 environmental law. The Center's members reside and own property throughout California as
4 well as those areas to be served by the Project, and use the waters and lands affected by the
5 proposed Project for wildlife observation, recreation, scientific research, environmental
6 education, and aesthetic enjoyment.

7 **Jurisdiction and Venue**

8 7. Public Interest Groups allege that Paragraph 7 contains legal conclusions and that the
9 law speaks for itself.

10 8. Public Interest Groups allege that Paragraph 8 contains legal conclusions and that the
11 law speaks for itself.

12 **Publication and Summons**

13 9. Public Interest Groups deny the first three sentences of Paragraph 9, specifically that
14 publication in just these two newspapers fully satisfies the requirements of Code of Civil Procedure
15 section 861. Public Interest Groups deny the fourth sentence of Paragraph 9, specifically that this is an
16 exhaustive list of reasonably practicable manners of providing service. Public Interest Groups deny the
17 fifth sentence of Paragraph 9, specifically that providing these methods of notice is sufficient to satisfy
18 the requirements of Code of Civil Procedure section 861.

19 **Factual Background**

20 10. Public Interest Groups admit the allegations in Paragraph 10.

21 11. Public Interest Groups admit the allegations in Paragraph 11.

22 12. Public Interest Groups admit the allegations in Paragraph 12.

23 13. Public Interest Groups admit the allegations in Paragraph 13, except to the extent that
24 Paragraph 13 contains legal conclusions, for which the law speaks for itself.

25 14. Public Interest Groups lack sufficient knowledge to admit or deny the allegations of the
26 first and second sentences of Paragraph 14 and, on that basis, deny the allegations of those sentences.
27 Public Interest Groups allege that the allegations in the third sentence of Paragraph 14 purport to
28 describe terms contained in the Converted Contract, and the document speaks for itself. Public Interest

1 Groups otherwise deny the allegations in the third sentence of Paragraph 14, specifically that the
2 Converted Contract continues water service to the District in the same scope and nature of the ongoing
3 CVP, as the terms of the contract seek to change the future delivery and payment obligations pursuant
4 to the contract.

5 15. Public Interest Groups allege that the terms of the Converted Contract speak for
6 themselves. Public Interest Groups deny all other allegations in Paragraph 15.

7 16. Public Interest Groups allege that the terms of the Converted Contract speak for
8 themselves. Public Interest Groups deny all other allegations in Paragraph 16.

9 17. No response is required to Paragraph 17 because it calls for legal conclusions; to the
10 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
11 further respond that the referenced statutes speak for themselves.

12 18. No response is required to Paragraph 18 because it calls for legal conclusions; to the
13 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
14 further respond that the referenced statutes speak for themselves.

15 19. No response is required to Paragraph 19 because it calls for legal conclusions; to the
16 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
17 further respond that the referenced statutes speak for themselves.

18 **First Cause of Action**

19 (Validation Action as to all Defendants)

20 20. Public Interest Groups incorporate their responses to paragraphs 1 through 19 above as
21 though fully set forth herein.

22 21. Public Interest Groups deny the allegations in Paragraph 21. Public Interest Groups
23 allege that the contract has not been signed or approved by the federal government.

24 22. No response is required to Paragraph 22 because it calls for legal conclusions; to the
25 extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein and
26 further respond that the referenced statute speaks for itself.

27 23. Public Interest Groups deny that Westlands is entitled to the relief described in
28 Paragraph 23. To the extent any facts are stated, Public Interest Groups deny the allegations contained

1 in Paragraph 23.

2 **Prayer for Relief**

3 24. No response is required to Prayer for Relief No. 1 because it calls for legal conclusions;
4 to the extent any facts are stated, Public Interest Groups deny each and every allegation set forth therein
5 and further respond that the referenced statutes speak for themselves.

6 25. Public Interest Groups admit that Westlands is a California public agency and water
7 district as set forth in Prayer for Relief No. 2. To the extent Prayer for Relief No. 2 seeks any relief,
8 Public Interest Groups deny each and every allegation, and deny that Westlands is entitled to any relief.

9 26. Public Interest Groups deny that Westlands is entitled to the relief prayed for in Prayer
10 for Relief No. 3 and deny the allegations contained in Prayer for Relief No. 3. Public Interest Groups
11 deny that Westlands complied with the publication order filed in this case.

12 27. Public Interest Groups deny that Westlands is entitled to the relief prayed for in
13 Paragraph 4. Public Interest Groups deny the allegations contained in Paragraph 4.

14 28. Public Interest Groups deny that Westlands is entitled to the relief prayed for in
15 Paragraph 5.

16 29. Public Interest Groups deny that Westlands is entitled to the relief prayed for in
17 Paragraph 6.

18 30. Public Interest Groups deny that Westlands is entitled to the relief prayed for in
19 Paragraph 7.

20 **AFFIRMATIVE DEFENSES**

21 **First Affirmative Defense**

22 (Violation of Delta Reform Act)

23 31. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set
24 forth in each of these Affirmative Defenses, as if fully set forth herein.

25 32. The Delta Reform Act establishes as State policy two co-equal goals for management of
26 the Delta ecosystem: providing a more reliable water supply for California and protecting, restoring,
27 and enhancing the Delta ecosystem. (Water Code §§ 85020, 85054.) The Converted Contract fails to
28 satisfy, and in fact hinders the satisfaction of, these co-equal goals.

1 33. The Delta Reform Act, Water Code section 85020, describes the following objectives to
2 achieve the two co-equal goals providing a more reliable water supply for California and protecting,
3 restoring, and enhancing the Delta ecosystem:

- 4 a. Manage the Delta's water and environmental resources and the water resources of the
5 state over the long term.
- 6 b. Protect and enhance the unique cultural, recreational, and agricultural values of the
7 California Delta as an evolving place.
- 8 c. Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy
9 estuary and wetland ecosystem.
- 10 d. Promote statewide water conservation, water use efficiency, and sustainable water use.
- 11 e. Improve water quality to protect human health and the environment consistent with
12 achieving water quality objectives in the Delta.
- 13 f. Improve the water conveyance system and expand statewide water storage.
- 14 g. Reduce risks to people, property, and state interests in the Delta by effective emergency
15 preparedness, appropriate land uses, and investments in flood protection.
- 16 h. Establish a new governance structure with the authority, responsibility, accountability,
17 scientific support, and adequate and secure funding to achieve these objectives.

18 34. The Converted Contract fails to satisfy, and in fact hinders and obstructs the satisfaction
19 of, almost all of the objectives described above, including the objectives related to the long-term
20 sustainable management of the Delta's water and environmental resources, the protection and
21 restoration of the Delta's cultural, recreational, agricultural, and ecosystem values, promoting statewide
22 water conservation goals, improving water quality and human and environmental health in the Delta,
23 and improving the statewide water conveyance system.

24 35. The Converted Contract violates the policy described in the Delta Reform Act, Water
25 Code section 85021, that establishes as State policy the reduction of reliance on the Delta for future
26 water supply needs:

27 The policy of the State of California is to reduce reliance on the Delta in meeting
28 California's future water supply needs through a statewide strategy of investing in
improved regional supplies, conservation, and water use efficiency. Each region that

1 depends on water from the Delta watershed shall improve its regional self-reliance for
2 water through investment in water use efficiency, water recycling, advanced water
3 technologies, local and regional water supply projects, and improved regional
4 coordination of local and regional water supply efforts.

4 **Second Affirmative Defense**

5 (Violation of Public Trust Doctrine)

6 36. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set
7 forth in each of these Affirmative Defenses, as if fully set forth herein.

8 37. California’s navigable waterways are owned and held in trust by the state for the benefit
9 of the people of the state, and “title to and property in the fish within the waters of the state are vested
10 in the state of California and held by it in trust for the people of the state....” (*People v. Monterey Fish*
11 *Products Co.* (1925) 195 Cal. 548, 563; *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) The
12 California Constitution guarantees that “[t]he people shall have the right to fish upon and from the
13 public lands of the State and in the waters thereof” (Art. I, sec. 25), and the Legislature has codified a
14 public trust protection requiring that “sufficient water at all times to pass . . . around, or through the
15 dam to keep in good condition any fish . . . below the dam” (Fish and Game Code § 5937).

16 38. Westlands has the affirmative duty to consider public trust resources when making
17 decisions regarding its management of and impacts on public trust resources, including the Delta, and
18 to preserve and protect public trust resources that are affected by its decisions, so far as consistent with
19 the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, 446-47.)
20 “Any action which will adversely affect traditional public rights in trust lands is a matter of general
21 public interest and should therefore be made only if there has been full consideration of the state’s
22 public interest in the matter.” (*San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242
23 Cal.App.4th 202, 234.)

24 39. A 2012 study by defendant C-WIN found that the total water rights claims in the Delta
25 watershed exceed by five times the flow conditions available in most years in those river systems.
26 (Stroshane 2012) A subsequent study by UC Davis confirmed these findings, showing that statewide
27 water users hold rights to water at a rate of approximately five times the state’s mean annual runoff,
28 with the greatest degree of appropriation in the Sacramento and San Joaquin basins. (Grantham and

1 Viers 2014.)

2 40. By making permanent the delivery of Delta water to Westlands through the Central
3 Valley Project, the Converted Contract places unreasonable pressure on the federal government to
4 provide water in perpetuity that the Central Valley Project cannot sustainably or responsibly deliver,
5 violating the Public Trust Doctrine.

6 41. Westlands did not properly consider impacts to public trust resources when approving
7 the Converted Contract.

8 **Third Affirmative Defense**

9 (Violation of Public Policy and Frustration of Public Interest)

10 42. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set
11 forth in each of these Affirmative Defenses, as if fully set forth herein.

12 43. The Converted Contract seeks to subvert and/or avoid the compliance and enforcement
13 of the Central Valley Project Improvement Act, PL 102-575, the Reclamation Reform Act of 1982, PL-
14 97-293, the Coordinated Operations Act of 1986, PL-99-546, and Article X, Section 2 of the California
15 Constitution.

16 44. The Converted Contract seeks to subvert and/or avoid the public review and comment
17 process required by the National Environmental Policy Act (NEPA) and the Administrative Procedures
18 Act (APA).

19 45. The Converted Contract is against public policy and frustrates the public interest as it
20 seeks deliver large quantities of water to Westlands without addressing the pollution caused by those
21 deliveries.

22 46. The Converted Contract is against public policy and frustrates the public interest as it
23 seeks to subvert and/or avoid obligations held by Westlands to implement drainage studies and
24 solutions for the pollution caused by its irrigating certain acreage within its service area.

25 47. The Converted Contract omits terms found in the previous temporary contracts that
26 require Westlands to implement drainage studies and solutions for the pollution caused by its irrigating
27 certain acreage within its service area.

28 **Fourth Affirmative Defense**

(Prematurity / Ripeness)

48. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set forth in each of these Affirmative Defenses, as if fully set forth herein.

49. Westlands' claims are premature and not ripe for judicial resolution for the reasons including, but not limited to, that other pending administrative proceedings must be determined and fully resolved before the Converted Contract project may be validated.

50. The Converted Contract is incomplete as it references and relies on exhibits that are not included and/or are not final.

51. Westlands cannot obtain any relief in this action prior to the federal government approving and signing the Converted Contract.

52. Approval of the Converted Contract can only be given after due consideration of comments by the public pursuant to the public review and comment provisions in NEPA.

Fifth Affirmative Defense

(Ultra Vires)

53. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set forth in each of these Affirmative Defenses, as if fully set forth herein.

54. Neither Westlands nor the federal government possesses the authority to satisfy the terms of the Converted Contract.

55. The Converted Contract calls for the delivery of water to more acres than is permitted or authorized under the law, including the San Luis Act, Pub. Law No. 86-488, 75 Stat. 156.

56. The Converted Contract violates the provisions of the 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act), including that found in section 4012, that do not permit contract conversions like this one sought by Westlands to preempt or negate applicable state and federal law.

Sixth Affirmative Defense

(Unconscionability)

57. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set forth in each of these Affirmative Defenses, as if fully set forth herein.

1 58. The Contract Extension Amendments are unconscionable, as they require the federal
2 government to provide unreasonable, unsustainable, and unattainable amounts of water to Westlands.

3 **Seventh Affirmative Defense**

4 (Impossibility and/or Impracticability of Performance)

5 59. Public Interest Groups hereby incorporate all of the allegations in the paragraphs set
6 forth in each of these Affirmative Defenses, as if fully set forth herein.

7 60. The Reclamation Act of 1902 provides that the federal government must determine that
8 delivery of project water is practicable before contracting for that delivery. No such determination has
9 been or can be made for the water deliveries subject to the Converted Contract.

10 61. The federal government cannot reliably or sustainably deliver 1.15 million acre feet
11 (MAF) of water to Westlands.

12 62. Water cannot be delivered and used as irrigation by Westlands in the amounts
13 anticipated by the Converted Contract without causing significant environmental impacts due to the
14 drainage and pollution problems in Westlands' service area.

15 **Eighth Affirmative Defense**

16 (Failure to State a Claim)

17 63. The Complaint for Validation fails to state facts sufficient to state a cause of action.

18 **Ninth Affirmative Defense**

19 (Uncertainty, Ambiguity, and Vagueness)

20 64. The Complaint is uncertain, ambiguous, and vague in defining the nature of the actions
21 sought to be validated and the scope of the relief requested.

22 **Tenth Affirmative Defense**

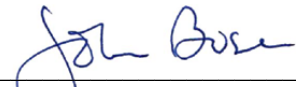
23 (Failure to Provide Proper Notice of Summons)

24 65. Westlands failed to satisfy the terms of the order for publication filed in this action and
25 improperly sought *post facto* relief from its obligation by seeking an amendment of that order.

26 66. Publication of the summons was improperly limited to two counties, when the impacts
27 of the Converted Contract extend throughout the Delta ecosystem and the entire State Water Project
28 and Central Valley Project systems.

1 DATED: December 16, 2019

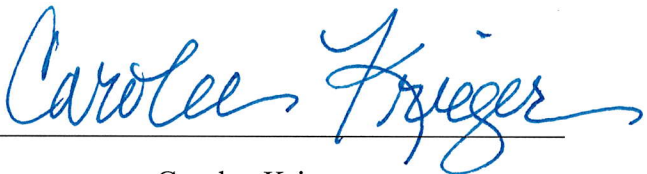
CENTER FOR BIOLOGICAL DIVERSITY

2
3 By: 
4 John Buse
5 Attorney for Center for Biological Diversity
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VERIFICATION

I, Carolee Krieger, am the Executive Director of California Water Impact Network and am authorized to execute this verification on its and other Defendants' behalf. I have read the foregoing Answer to Complaint in Validation and am familiar with its contents. The facts recited in the Answer are true to my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on December 16, 2019, in Montecito, California.



Carolee Krieger