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26 SUPERIOR COURT OF THE STATE OF CALIFORNIA

27 COUNTY OF FRESNO, CENTRAL DIVISION

28 **FILE BY FAX**

WESTLANDS WATER DISTRICT, a
California Water District,

Plaintiff,

v.

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
DICATION AND FACILITIES
REPAYMENT,

Defendants.

CASE NO.: 19CECG03887

**VERIFIED RESPONSE AND ANSWER
OF COUNTIES OF SAN JOAQUIN AND
TRINITY TO COMPLAINT FOR
VALIDATION**

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Attorney for Defendant County of Trinity

1 **INTRODUCTION**

2 To protect their interests and preserve their claims and rights, interested parties County of
3 San Joaquin and County of Trinity (“Counties”) respond to and answer the Complaint for
4 Validation Judgment (“Complaint”) of Plaintiff Westlands Water District (“Westlands”) as
5 follows:

6 **RESPONSE TO COMPLAINT FOR VALIDATION JUDGMENT**

7 1. In its direct validation action under Code of Civil Procedure section 860, et seq.,
8 Westlands seeks this Court’s determination that an incomplete, controversial document still
9 pending before the United States Bureau of Reclamation (“Bureau”), referenced in the
10 Complaint as the “Converted Contract” (Complaint, exh. B), is “in all respects legal and
11 valid....” (Complaint, Prayer for Relief, ¶ 4.)

12 2. Westlands, the largest Central Valley Project (CVP) contractor, seeks to lock in a
13 water supply contract through which it claims, but cannot assure delivery of, 1.15 million acre-
14 feet of annual water delivery obligations from the United States. (Complaint, exh. B, p. 1.)
15 Conversion from a water service contract to the proposed permanent repayment contract would
16 enable Westlands to have the obligations in its contract, currently subject to two-year interim
17 renewal periods, apply in perpetuity. Westlands seeks this extraordinarily broad relief despite
18 continued failure to address longstanding drainage problems affecting water uses in the district,
19 and unresolved uncertainties in the water baseline for Westlands’ current and future uses.
20 Prematurely validating the broad relief sought by Westlands in the face of these uncertainties
21 would create major risks for other water users and uses far beyond Westlands’ own service area,
22 including the Counties, served by the Delta and the Trinity River.

23 3. The sole authority in Westlands’ summons and complaint authorizing CVP
24 contract conversion is section 4011(a)(1) of the 2016 Water Infrastructure Improvements for the
25 Nation Act, commonly known as the “WIIN Act.” (Summons, p. 1, Complaint, ¶ 13.) However,
26 rather than limiting the Complaint to the authority of a Central Valley Project contractor to
27 request conversion from the United States under section 4011(a)(1), Westlands seeks to
28 foreclose future challenges to “each and every provision” of the Converted Contract and “all of
the proceedings” leading up to its approval. (Complaint, Prayer for Relief, ¶¶ 4-6.)

1 4. Neither section 4011(a)(1) nor any other provision of law offers Westlands
2 impunity to prospectively dictate the outcome of its proposed contract conversion, or to use
3 validation procedure to predetermine, presume or leverage the lawfulness of extending its
4 historic and current uses in perpetuity. The relief Westlands seeks in this validation action flouts
5 and ignores important legal limitations on the scope and timing of section 4011 contract
6 conversions. The Act as finally adopted includes section 4012, a savings clause guarding against
7 overreaching interpretations that would preempt “applicable state law, including applicable state
8 water law,” or overriding or modifying obligations of state or federal law that include, but are
9 not limited to the Central Valley Project Improvement Act (Public Law 102-575, 106 Stat.
10 4706) and the Endangered Species Act (16 U.S.C. § 1531, et seq). The President’s signing
11 statement warned against such interpretations.

12 5. Protecting against Westlands’ overreaching attempt at validation is of special
13 importance here, because its proposed Converted Contract ranks among the most controversial
14 and criticized water contract proposals in recent California history. (See, e.g.,
15 <https://www.mercurynews.com/2019/11/15/editorial-westlands-water-deal-smells-of-politics/>;
16 [https://www.latimes.com/environment/story/2019-11-11/westlands-water-district-federal-water-](https://www.latimes.com/environment/story/2019-11-11/westlands-water-district-federal-water-contract)
17 [contract; https://www.usnews.com/news/politics/articles/2019-11-07/interior-proposes-coveted-](https://www.usnews.com/news/politics/articles/2019-11-07/interior-proposes-coveted-deal-to-ex-client-of-agency-head)
18 [deal-to-ex-client-of-agency-head](https://www.usnews.com/news/politics/articles/2019-11-07/interior-proposes-coveted-deal-to-ex-client-of-agency-head).) In brief, Westlands cannot impose its proposed contract
19 conversion to the detriment of the Counties and California’s other beneficial users of water. No
20 water district is too big to fail or above the law.

20 **Uncertainties in Contract Completion, Review, Approval and Financing**

21 6. On August 20, 2019, Bureau area chief Michael Jackson informed Westlands’
22 Board of Directors that he expected a draft Conversion Contract for Westlands to be available
23 within one day. At the Board’s September 10, 2019 meeting, Westlands General Manager Tom
24 Birmingham reported that negotiations with the Bureau were complete. He indicated the Bureau
25 expected its 60-day public review of the proposed contract to commence later in the month,
26 while also recognizing that the contract could change based on comments the Bureau received.
27 However, Westlands did not circulate the Converted Contract for public comment prior to the
28 Board’s adoption of Resolution No. 110-19 authorizing the contract (“Resolution”) on October

1 15, 2019.

2 7. The Resolution purports to determine legal and factual claims relating to past,
3 current and intended future uses of water. Portraying uses as reasonable and beneficial,
4 Westlands declares that it will “utilize fully” the quantity of water available under the Converted
5 Contract for “reasonable and beneficial use.” (Complaint, exh. B, p. 3.) The Resolution asserts
6 that “under the Converted Contract, ongoing receipt and delivery of water will continue with no
7 expansion of service and no new facilities constructed because the District will deliver the water
8 received under the Converted Contract: (1) to lands within the District's boundaries for
9 beneficial use and that have been in production, and (2) through existing facilities.” (Complaint,
10 Exh. A, p. 4.)

11 8. The Bureau has not completed review and decision-making on the Converted
12 Contract. In a notice posted on its website on November 8, 2019, the Bureau extended an initial
13 60-day comment period on Westlands’ “draft repayment contract” until January 8, 2020. The
14 Resolution nonetheless represented that multiple determinations of the United States had already
15 been made on the Converted Contract. (Complaint, Ex. A, pp. 2-4.)

16 9. The undated, unexecuted and unsigned Converted Contract (Complaint, Exh. B) is
17 materially incomplete. Timelines relating to Westlands’ payment obligations are missing, with
18 bracketed information containing staff instructions provided instead. (Complaint exh. B, pp. 32-
19 33.) The Converted Contract also relies on, but includes only placeholder references to, several
20 internal exhibits to the contract document. Those exhibits include Exhibit A (Map of
21 Contractors’ Service Area), Exhibit B (Rates and Charges), Exhibit C (Central Valley Project
22 Water Needs Assessment Purpose and Methodology), and Exhibit D (Repayment Obligation).

23 10. Website postings and press accounts suggest that Westlands and the Bureau have
24 offered differing views of the payment Westlands would owe under the Conversion Contract.
25 (See, e.g., [https://wwd.ca.gov/negotiated-conversion-contract-between-the-united-states-
26 westlands-water-district/](https://wwd.ca.gov/negotiated-conversion-contract-between-the-united-states-westlands-water-district/) (\$320 million);
27 <https://apnews.com/4527b2b31fcf452f8e6d35afcebc8cf2> (\$480.7 million).) Nonetheless, the
28 Conversion Contract proposed for validation solely contains placeholder references for Exhibit

1 B, which is to disclose rates and charges, and Exhibit D, which purports to include analysis of
2 Westlands' repayment obligation.

3 11. The Bureau must decide on "mutually agreeable terms and conditions" to proceed
4 with conversions under section 4011(a)(1). In its February 2018 power point presentation for the
5 Board of Directors of the San Luis and Delta Mendota Water Authority, Bureau staff confirmed
6 "environmental compliance" was part of the conversion contract process under section 4011 (Id.
7 at 9, 10.) The Bureau's May 2019 timeline for WIIN Act negotiations May 2019 also
8 anticipated compliance with the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321,
9 et seq.) (Id. at 1, 2.) However, the Bureau has not conducted NEPA review for Westlands'
10 Contract Conversion, and has also inconsistently suggested none will occur. The Bureau's
11 notices relating to the pending review period for the Contract Conversion do not mention NEPA
12 compliance. The Counties also believe that the Bureau has not yet fully responded to public
13 record requests relating to the Converted Contracts.

14 12. The Resolution represents that Westlands has fulfilled "all of its obligations"
15 under its "Existing Interim Renewal Contract." (Complaint, Exh. A, p. 3.) Westlands does not
16 address extensive public criticism of Westlands' and the Bureau's performance under its past
17 and present interim contracts, or litigation relating to interim contracts. (See, e.g., *Pacific Coast*
18 *Federation of Fishermen's Associations v. United States Department of Interior* (9th Cir. 2016)
19 655 Fed. Appx. 595 (Environmental Assessment for Westlands' interim contract renewal
20 violated NEPA by erroneously assuming continued renewal, and by failing to meaningfully
21 study an alternative of reducing maximum water quantities).)

22 13. The Resolution ignores the Bureau's proceedings on a proposed two-year
23 extension of Westlands' interim water supply contract beyond the current contract's expiration
24 date of February 28, 2019. San Joaquin County, Central Delta Water Agency, and others have
25 commented on the Bureau's November 2019 Draft Environmental Assessment (EA) for
26 Westlands' proposed 2020-2022 Interim Renewal Contract (EA-19-043), criticizing deficiencies
27 in the draft assessment and calling for additional analysis. The Bureau has not yet responded to
28 those criticisms. As San Joaquin County and others pointed out in comments, avoiding analysis

1 is of even greater concern for the proposed conversion to a repayment contract, which would
2 lock in obligations under Westlands' CVP contract for perpetuity.

3 14. Westlands' haste to approve and validate a converted contract appears to be
4 prompted, at least in part, to moot disputes over environmental review of its two-year interim
5 service contract (See, e.g., *North Coast Rivers Alliance v. United States Department of Interior*,
6 No. 1:16-CV-00307-LJO-SKO, ECF Nos. 104, 110.) However, Reclamation recognizes that
7 after it reviews public comments made during its notice period, it may still "make changes to the
8 contract as appropriate," and that whether it will finally approve the Conversion Contract
9 depends on whether "Reclamation and Westlands are still in agreement." (*Id.* at ECF 111, p. 2.)

10 **Uncertain Baseline for Converted Contract**

11 15. Without supporting assessment of present and future conditions and the risks of
12 supporting all of Westlands' current uses in perpetuity, the Resolution and Converted Contract
13 are predicated on the assumption that the United States is "obligated" to "make available to the
14 District on an annual basis 1.15 million acre-feet of CVP water." As in *PCFFA*, 655 Fed. App.
15 595, *7, that assumption, abstracted from institutional and hydrologic realities, unreasonably
16 relies on "stale water needs data." Historically, deliveries within the CVP have generally been
17 far lower, and the assumed allocation amounts in that system and others in California are
18 notoriously oversubscribed. (See, e.g., T. Grantham and J. Viers, *100 years of California's*
19 *water rights system: patterns, trends and uncertainty*, ENVIRON. RES. LETT. 9 (2014)
20 084012.)

21 16. The CVP's history rebuts the premise that the same general language in the
22 current contracts constraining deliveries, repurposed in the Converted Contract, can suffice to
23 constrain unreasonably and risky allocations. Without contemporaneous assessment of major
24 factors constraining the reliability of deliveries, it is likely that Westlands, like other suppliers
25 whose baselines incorporate "paper water" assumptions, would be more likely under its
26 Converted Contract to plant permanent crops, support water transfers, and support development
27 at unsustainable levels, with consequences for other uses and users that remain to be addressed.
28 Interference with other beneficial uses and damage to water quality, fish and wildlife are the
predictable results. Experience during recent drought years suggest some of these patterns have

1 already occurred in the Westlands district (Christian-Smith, M.C. Levy, P.H. Gleick,
2 *Maladaptation to drought: a case report from California, USA*, P.H. Sustain Sci (2015) 10: 491.
3 doi:10.1007/s11625-014-0269-1 (describing Westlands’ maladaptation to drought and climate
4 change, and compounding of environmental risks by making up for its reduced Central Valley
5 Project allocations with large increases in groundwater pumping).)

6 **Unresolved Drainage and Water Quality Issues**

7 17. A foundational problem with the broad relief sought by Westlands is that its
8 assumptions about the District’s continued uses are made without meaningful consideration of
9 an issue that has continuously vexed Westlands and the United States: how to address the
10 selenium migration caused by irrigation of the farms in the Westlands district. For lands in the
11 northern San Joaquin Valley, now served by the San Luis Unit of the federal CVP, the original
12 plan was to construct a drain (the San Luis Drain) that would collect the wastewater, discharging
13 it to the Delta or to the Pacific Ocean. Pursuant to the San Luis Act, Pub. L. 86-488, 74 Stat.
14 156 (1960), which authorized construction of the SLU, irrigation was conditioned upon
15 completion of that “master drain.” Deliveries of irrigation water to the SLU contractors began
16 in 1960. Construction of the San Luis Drain began in 1969.

17 18. Through a series of court battles, Westlands obtained a decision holding that the
18 U.S. has an obligation to provide a method for draining the agricultural run-off, including the
19 selenium. (See *Firebaugh Canal Co. v. United States* (9th Cir. 2000) 203 F.3d 568.) The
20 decision did not require the federal government to absorb the cost of drainage service. Under
21 standard reclamation law, contractors repay any capital expenditures over time, with no interest.

22 19. Construction of the San Luis Drain was started in 1969 but ran out of funding in
23 the 1970s, resulting in the drains emptying into Kesterson Reservoir and Kesterson National
24 Wildlife Refuge. In the 1980s, field biologists discovered that the levels of selenium were
25 causing severe birth defects among the migratory birds in Kesterson NWR. It was so
26 contaminated that in 1986 Kesterson was removed from the wildlife refuge list and handed over
27 to the Bureau of Reclamation as a contaminated site to be cleaned up. As part of the clean-up,
28 the Grasslands bypass project was created to direct the toxic water to avoid the refuge areas
through a series of sloughs and into the San Joaquin River.

1 20. A generation after toxic drainage to the now-closed Kesterson Reservoir caused
2 one of California’s most prominent ecological disasters, the State Water Resources Control
3 Board (State Board) still has not acted on 34 year-old observation that that if Kesterson were
4 closed and the CVP continued to supply irrigation water to Westlands without implementing an
5 adequate disposal option, "continued irrigation in the affected area of Westlands Water District
6 could constitute an unreasonable use of wastewater." (State Board Order WQ 85-1, at p. 43.)
7 The Resolution and Converted Contract’s numerous references to continuation of current and
8 assumed future beneficial uses are weakened by their avoidance of the proverbial elephant in the
9 room.

10 21. In March 2007, the Bureau of Reclamation released a final record of decision
11 [ROD] addressing drainage within the CVP’s San Luis Unit. The alternative chosen in the ROD
12 (“federal alternative”) required land retirement of 194,000 acres in Westlands, and construction
13 of three drainage systems in Westlands and one in the SLU’s northerly area. The ROD did not
14 select other alternatives that would have retired more land. The “maximum land retirement”
15 alternative would have retired approximately 300,000 acres, and was shown to be much more
16 cost effective than the preferred alternative eventually selected in the ROD. The Bureau also
17 declined to fully study another, even more comprehensive land retirement alternative. The US
18 Fish and Wildlife Service recommended a “full retirement” alternative, of all 379,000 acres. An
19 April 2017 Westlands Engineer Study, using data from 1988 to 2016, identified 453,466 acres
20 eligible for CVP water.

21 22. More than a decade after the ROD, a drainage solution remains elusive. A
22 subsequent Settlement Agreement, which would have retired 100,000 acres rather than the larger
23 figures referenced in the 2007 ROD and its more ambitious alternatives, also was not finally
24 approved and implemented. According to the Bureau’s counsel in an October 1, 2019 litigation
25 update (Case 1:88-cv-00634-LJO-SKO, *supra*, ECF-1034), the “Westlands Settlement, as
26 amended, has by its own terms now become voidable because the necessary authorizing
27 legislation was never enacted.” (Id. at 3.)

28 23. The Counties do not dispute the general authority of CVP contractors to request
and secure contract conversion under section 4011 of the WIIN Act once legal requirements

1 have been met. They do, however, dispute the broad validation judgment Westlands seeks.
2 (Code Civ. Proc., §870.) A validation action forever resolves any dispute that could have been
3 raised in the matter and forecloses future litigation. Both the contract and the validation action
4 reference the obligation to provide drainage for the Westlands area. (*Id.*)

5 24. From the south, the Delta faces the continuing threat of the discharge of toxic
6 water into the San Joaquin River. From the north, the Delta is threatened by the proposed
7 isolated conveyance which, if built, will divert the Delta's cleanest water under the Delta rather
8 than allowing it to flow through the Delta. This combination is likely to result in increased harm
9 to the Delta because of the selenium build up without an adequate supply of clean water to help
10 dilute it. The Trinity River environment has already suffered significant degradation as a result
11 of CVP diversions, largely to facilitate deliveries to Westlands. The broad judgment proposed
12 by Westlands in the validation action could be construed to foreclose future challenges by the
13 Counties to actions by Westlands which will harm the Delta and the Trinity River watershed,
14 and, as a consequence, agriculture, recreation, fisheries, wildlife, water quality, and senior and
15 Tribal water rights in the Counties.

16 **ANSWER TO COMPLAINT FOR VALIDATION JUDGMENT**

17 1. Answering Paragraph 1 of the Complaint, the Counties admit that: (1) the
18 Complaint purports to commence a validation action under Code Civ. Proc. § 860 *et seq*, Water
19 Code section 35855, and Government Code section 53510; (2) Westlands seeks a judgment
20 confirming the validity of an unsigned document entitled "Contract Between the United States
21 and Westlands Water District Providing for Project Water Service, San Luis Unit and Delta
22 Division and Facilities Repayment"; and (3) Westlands' Resolution No. 119-19 and that
23 unsigned document are exhibits to its validation complaint. Other than as expressly admitted, the
24 Counties deny each and every allegation in Paragraph 1.

25 2. Answering Paragraph 2 of the Complaint, the Counties allege that Code of Civil
26 Procedure section 860 speaks for itself. Other than as expressly admitted, the Counties deny
27 each and every allegation in Paragraph 2.

28 3. Answering Paragraph 3 of the Complaint, the Counties deny each and every
allegation therein.

1 4. Answering Paragraph 4 of the Complaint, the Counties admit the allegations
2 therein.

3 5. Answering Paragraph 5 of the Complaint, the Counties admit the allegations
4 therein.

5 6. Answering Paragraph 6 of the Complaint, the Counties allege that Code of Civil
6 Procedure section 861 speaks for itself, and admit that they are interested in disputing the
7 validity of the document referenced herein as "THE CONTRACT BETWEEN THE UNITED
8 STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR PROJECT WATER
9 SERVICE, SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT."
10 Except as expressly so admitted, the Counties lack sufficient knowledge to admit or deny the
11 allegations of Paragraph 6, on that basis, deny each and every remaining allegation therein. The
12 Counties allege the following additional facts: COUNTY OF SAN JOAQUIN is a political
13 subdivision of the State of California. Two-thirds of the legal Delta is located within San
14 Joaquin County, and the Delta comprises over one-third of San Joaquin County's total area.
15 Approximately 167,000 people live in the San Joaquin County portion of the Delta, and those
16 cities and communities rely in significant part on the Delta for their water supplies. The Delta
17 supports a \$5.2 billion annual agricultural industry, and approximately forty percent (40%) of
18 those farms are located in San Joaquin County. A large portion of the Delta's \$750 million
19 recreational economy is centered in San Joaquin County, encompassing, among other
20 enterprises and activities, innumerable privately-owned marinas, public and private boat launch
21 facilities, recreational facilities for fishing, tent camping, RV camping, hiking and picnicking,
22 and many lodging establishments and restaurants that contribute to the Delta's recreational
23 economy. The judgment proposed by Westlands--which would make the Westlands contract
24 obligations apply in perpetuity without addressing foundational issues such as the water baseline
25 and the drainage problem—would harm the people and species of the Delta, other beneficial
26 uses, and protection of public trust resources. The judgment Westlands proposes would harm
27 agriculture, recreation, and water quality in San Joaquin County, as well as other water users and
28 uses. TRINITY COUNTY is a political subdivision of the State of California, and one of
California's original counties. The County's namesake, the Trinity River, a national and
California Wild and Scenic River which serves multiple uses, is also a keystone of the County's

1 fisheries, recreation, economy and environment. The Trinity River is a critical watershed of
2 origin for the Central Valley Project. The river's, and the County's, history have been drastically
3 affected by damming and water diversions for the Central Valley Project, largely to facilitate
4 deliveries to Westlands. Construction and operation of the CVP's Trinity River
5 Division "radically altered" the Trinity River environment, "destroying or degrading river
6 habitats that supported once-abundant fish populations." (*Westlands Water Dist. v. U.S. Dept. of*
7 *Interior*, 376 F.3d 853, 862 (9th Cir. 2004).) Largely due to the scope of CVP diversions, the
8 Trinity River already faces major difficulties with oversubscribed water claims. The judgment
9 Westlands seeks, making Westlands' contract requirements permanent while avoiding these
10 long-term problems, would harm the county's beneficial uses of water and protection of its
11 natural resources.

11 7. Answering Paragraph 7 of the Complaint, the Counties allege that Paragraph 7 sets
12 forth legal conclusions, statements of law, or both, to which no response is required. The
13 Counties allege that the provisions of Code of Civil Procedure section 860, Water Code sections
14 35407, 35408, and 35855, and Government Code sections 53510, et seq., speak for themselves.
15 To the extent that Paragraph 7 may be deemed to contain statements of fact, the Counties deny
16 all such allegations.

17 8. Answering Paragraph 8, the Counties admit the allegations therein.

18 9. Answering Paragraph 9 of the Complaint, the Counties allege that Paragraph 9 sets
19 forth legal conclusions, statements of law, or both, to which no response is required. To the
20 extent that Paragraph 9 may be deemed to contain statements of fact, the Counties deny all such
21 allegations.

22 10. Answering Paragraph 10 of the Complaint, the Counties admit that the United
23 States constructed and operated the Central Valley Project, and that the Project serves multiple
24 purposes. The Counties allege that, to the extent that Paragraph 10 calls for legal conclusions,
25 statements of law, or both, no response is required.

26 11. Answering Paragraph 11 of the Complaint, the Counties admit that on or about
27 June 5, 1963, the District entered into a contract for water service with the United States,
28 Contract No. 14-06-200-495-A ("1963 Contract"), and allege that this document speaks for

1 itself.

2 12. Answering Paragraph 12 of the Complaint, the Counties admit that the District and
3 the United States entered into Interim Renewal Contracts 14-06-200-495A-IR2 through 14-06-
4 200- 495A-IR6, and allege that these documents speak for themselves. Except as expressly
5 admitted, the Counties lack sufficient knowledge to admit or deny the allegations of Paragraph
6 12 and, on that basis, deny each and every remaining allegation of Paragraph 12.

7 13. Answering Paragraph 13 of the Complaint, the Counties admit that on December
8 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure
9 Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) ("WIIN Act"). The Counties
10 further allege that the provisions of the WIIN Act, including Section 4011(a)(1), and the
11 President's signing statement for the WIIN Act, speak for themselves.

12 14. Answering Paragraph 14 of the Complaint, the Counties admit that the District
13 requested that the United States convert the District's Existing Interim Renewal Contract to a
14 repayment contract, and subsequently engaged in negotiations of terms and conditions therein.
15 The Counties allege that, to the extent that Paragraph 10 calls for legal conclusions, statements
16 of law, or both, no response is required. The Counties deny that the "Converted Contract"
17 referenced in Paragraph 14 and attached as Exhibit B is executed, complete, and approved by
18 the United States. Except as expressly admitted, the Counties deny each and every remaining
19 allegation of Paragraph 14.

20 15. Answering Paragraph 15 of the Complaint, the Counties allege that the "Converted
21 Contract" referenced therein and attached to Exhibit B, speaks for itself. The Counties allege
22 that, to the extent that Paragraph 15 calls for legal conclusions, statements of law, or both, no
23 response is required. Except as expressly alleged, the Counties deny each and every remaining
24 allegation of Paragraph 15.

25 16. Answering Paragraph 16 of the Complaint, the Counties allege that the "Converted
26 Contract" referenced therein and attached to Exhibit B, speaks for itself. The Counties allege
27 that, to the extent that Paragraph 16 calls for legal conclusions, statements of law, or both, no
28 response is required. Except as expressly alleged, the Counties deny each and every remaining
allegation of Paragraph 16.

1 **FIRST AFFIRMATIVE DEFENSE**

2 (Failure to State a Claim)

3 24. The Complaint, including each purported cause of action and remedy sought
4 therein, fails to allege facts sufficient to constitute a cause of action.

5 **SECOND AFFIRMATIVE DEFENSE**

6 (Prematurity/Ripeness)

7 25. Westlands seeks to establish valid, legal and binding obligations, the validity of
8 which all others would be enjoined and restrained from challenging in the future.

9 26. The validation sought by DWR would be highly premature under Code of Civil
10 Procedure section 860, *et seq.* The determination of validity sought for the Exhibit A
11 Amendments is inextricably intertwined with the disposition of other pending judicial and
12 administrative proceedings, for at least the following reasons: (1) the Converted Contract sought
13 for validation, unsigned and unexecuted, is incomplete and contains material omissions
14 rendering it incapable of supporting a determination of validity; (2) the Converted Contract is
15 closely related to pending administrative and judicial proceedings whose outcome may thwart or
16 change the outcome or contents of the matter sought for validation; (3) the Resolution's
17 provisions, including its statements relating to the relationship between the Converted Contract
18 and Westland's uses, are not capable of final judicial resolution within this proceeding; (4) the
19 Converted Contract remains subject to revision or revision following by the United States
20 Bureau of Reclamation; and (5) conditions precedent to a final determination of validity have
21 yet to occur.

22 **THIRD AFFIRMATIVE DEFENSE**

23 (Validation Would Violate Laws Protecting the Delta and Areas of Origin)

24 27. The Resolution and Converted Contracts, if validated as proposed by Westlands,
25 would prejudicially make permanent Westlands' interim obligations without first accounting for
26 major, unresolved baseline and drainage problems bearing directly on Westlands' current and
27 future uses referenced in these documents, and without analyzing the continued need to
28 implement numerous existing laws protecting the Sacramento-San Joaquin Delta and areas of
origin. Validation under these circumstances would prejudicially harm the Counties and water

1 users in other regions of California, while thwarting or impairing effective enforcement of at
2 least the following laws:

3 A. 1959 Delta Protection Act (Wat. Code, §§ 12200, *et seq.*)

- 4 • The Legislative declaration that:

5 an adequate water supply in the Delta sufficient to maintain and expand
6 agriculture, industry, urban, and recreational development in the Delta . . . *and to*
7 *provide a common source of fresh water for export to areas of water deficiency* is
8 necessary to the peace, health, safety and welfare of the people of the State

(Wat. Code, § 12201, emphasis added.)

- 9 • The requirement of Water Code section 12205 that:

10 It is the policy of the State that the operation and management of releases from
11 storage into the Sacramento-San Joaquin Delta of water for use outside the area in
12 which such water originates *shall be integrated to the maximum extent possible in*
13 *order to permit the fulfillment of the objectives of this part.*

- 14 • The duty to integrate “releases from storage into the [Delta] of water for use
15 outside the area in which such water originates . . . to the maximum extent possible in order to
16 permit the fulfillment of [that] objective.” (Wat. Code, §§ 12201, 12205.)

- 17 • The duty for “the provision of salinity control and an adequate water supply for
18 the users of water in the [Delta].” (Wat. Code, § 12202; see also, Wat. Code, § 12201.)

- 19 • The duty to integrate “releases from storage into the [Delta] of water for use
20 outside the area in which such water originates . . . to the maximum extent possible in order to
21 permit the fulfillment of the objectives” of providing that “salinity control and an adequate water
22 supply for the users of water in the [Delta].” (Wat. Code, § 12202.)

- 23 • The duty under Water Code section 12204, which provides:

24 In determining the availability of water for export from the Sacramento-San
25 Joaquin Delta no water shall be exported which is necessary to meet the
26 requirements of Sections 12202 and 12203 of this chapter.

27 B. 1992 Delta Protection Act (Pub. Res. Code, §§ 29700, *et seq.*), and related
28 provisions.

- The declaration in in Public Resources Code sections 29701 and 29702,
respectively, that

1 “[T]he Sacramento-San Joaquin Delta is a natural resource of statewide, national,
2 and international significance, containing irreplaceable resources, and it is the
3 policy of the state to recognize, *preserve, and protect* those resources of the delta
4 for the use and enjoyment of current and future generations.” (Wat. Code, §
5 29701, emphasis added.)

6 “[T]he basic goals of the state for the delta are the following: (b) *Protect,*
7 *maintain, and, where possible, enhance and restore* the overall quality of the delta
8 environment, including, but not limited to, agriculture, wildlife habitat, and
9 recreational activities.” (Wat. Code, § 29702, emphasis added.)

10 • The co-equal goals set forth in Public Resources Code section 29702,
11 subdivision (a) (also set forth in Water Code Provisions of the 2009 Delta Reform
12 Act), which provides:

13 The Legislature further finds and declares that the basic goals of the state for the
14 Delta are the following: (a) Achieve the two coequal goals of providing a more
15 reliable water supply for California and protecting, restoring, and enhancing the
16 Delta ecosystem. The coequal goals shall be achieved in a manner that protects
17 and enhances the unique cultural, recreational, natural resource, and agricultural
18 values of the Delta as an evolving place.

19 • The duty to ensure that efforts to provide a more reliable water supply are
20 “in a manner that protects and enhances the unique cultural, recreational, natural
21 resource, and agricultural values of the Delta as an evolving place.” (Pub.
22 Resources Code, § 29702.)

23 C. Watershed Protection Act (Wat. Code, §§ 11460, et seq.)

24 • The duty to ensure that in its “construction and operation” of “any project under
25 the provisions of this part a watershed or area wherein water originates, or an area immediately
26 adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived
27 by the department directly or indirectly of the prior right to all of the water reasonably required
28 to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or
property owners therein.”

D. 2009 Delta Reform Act (Pub. Res. Code, §§ 29700, et seq.)

1 • The duty to ensure that “the coequal goals of Delta water management” as “the
2 two goals of providing a more reliable water supply for California and protecting, restoring, and
3 enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects
4 and enhances the unique cultural, recreational, natural resource, and agricultural values of the
5 Delta as an evolving place.” (Wat. Code, § 85054.)

6 • The duty to follow “[t]he policy of the State of California” to “reduce reliance on
7 the Delta in meeting California’s future water supply needs through a statewide strategy of
8 investing in improved regional supplies, conservation, and water use efficiency.” (Wat. Code, §
9 85021; see also Cal. Code Regs., tit. 23, § 5003) (Delta Reform Act regulations requiring
10 reduced reliance on the Delta).

11 • The duty to ensure, consistently with the Delta Reform Act of 2009, that no
12 project implemented in the Delta may impair future potential for implementation of habitat
13 restorations. (Cal. Code Regs., tit. 23, § 5007.)

14 **FOURTH AFFIRMATIVE DEFENSE**

15 (Lack of Legislative Authority)

16 28. The Resolution and Converted Contracts cannot be validated as proposed by
17 Westlands because they lack statutory authorization and have failed to secure compliance with
18 numerous other requirements of state and federal statutory law, including but not limited to: (1)
19 the San Luis Act, Pub. Law No. 86-488, 75 Stat. 156; (2) the Central Valley Project
20 Improvement Act, Public Law 102-575, 106 Stat. 4706; (3) the WIIN Act, including the savings
21 clause provisions in sections 4011 and 4012 and the President’s signing statement; (4) the
22 Brown Act (Gov. Code, § 54950, et seq.); (5) the federal Clean Water Act and state Porter-
23 Cologne Act; (6) the Endangered Species Act (16 U.S.C. § 1531, et seq.); (7) the California
24 Endangered Species Act (Fish and Game Code, § 2050, et seq.); and (8) the National
25 Environmental Policy Act (42 U.S.C. § 4321, et seq.).

26 **FIFTH AFFIRMATIVE DEFENSE**

27 (Lack of Constitutional Authority)

28 29. The Resolution and Converted Contracts, if validated as proposed by Westlands
and construed to predetermine or leverage the reasonableness of Westlands’ referenced water

1 uses in perpetuity, would violate California's constitutional prohibition of unreasonable uses of
2 water (Article X, section 2) and the related California doctrine protecting the public trust.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 (Notice/Due Process)

5 30. The Resolution and Converted Contracts cannot be validated as proposed by
6 Westlands due to its failure to provide legally adequate notice of its summons and violated
7 rights of procedural due process. The summons failed to publish or provide notice and
8 publication of its summons, and to lawfully describe foreseeable consequences of the project,
9 outside the county of filings and Westlands. In doing so, it failed to make reasonably practicable
10 efforts to provide notice to those interested in the action and violated their procedural rights,
11 including but not limited to those in San Joaquin County and Trinity County.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Unclean Hands)

14 31. The relief sought by Westlands in this action cannot be granted due to unclean
15 hands.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 (Reservation of Defenses)

18 32. Certain additional defenses to the Complaint and to the purported cause of action
19 therein stated may be available to the Counties. However, these additional defenses require
20 further discovery before they can be properly alleged. The Counties therefore reserve the right
21 to assert other separate and additional defenses, causes of action, and/or cross-complaints if and
22 when they become appropriate in this action.

23 **PRAYER FOR RELIEF**

24 1. Answering Paragraph 1 of the prayer for relief, the Counties admit that the District
25 prays for the relief requested. The Counties allege that Code of Civil Procedure sections 860, et
26 seq., Water Code sections 35407, 35408, and 35855, and Government Code sections 53510, et
27 seq., speak for themselves. Except as expressly admitted, the Counties deny each and every
28 remaining allegation of Paragraph 1.

2. Answering Paragraph 2 of the prayer for relief, the Counties admit that the District

1 prays for the relief requested and is a California water district and public agency located within
2 Fresno County and Kings County. The Counties allege that Division 13 of the California Water
3 Code speaks for itself. Except as expressly admitted, the Counties deny each and every
4 remaining allegation of Paragraph 2.

5 3. Answering Paragraph 3 of the prayer for relief, the Counties admit that the District
6 prays for the relief requested. The Counties allege that Code of Civil Procedure section 861 and
7 Government Code 6063 speak for themselves. Except as expressly admitted, the Counties deny
8 each and every remaining allegation of Paragraph 3. The Counties deny that the District is
9 entitled to the relief sought, or to any relief whatsoever.

10 4. Answering Paragraph 4 of the prayer for relief, the Counties admit that the District
11 prays for the relief requested. The Counties alleges that Water Code sections 35851 and 35875
12 speak for themselves. Except as expressly admitted, the Counties deny each and every
13 remaining allegation of Paragraph 4. The Counties deny that the District is entitled to the relief
14 sought, or to any relief whatsoever.

15 5. Answering Paragraph 5 of the prayer for relief, the Counties admit that the District
16 prays for the relief requested. Except as expressly admitted, the Counties deny each and every
17 remaining allegation of Paragraph 5. The Counties deny that the District is entitled to the relief
18 sought, or to any relief whatsoever.

19 6. Answering Paragraph 6 of the prayer for relief, the Counties admit that the District
20 prays for the relief requested. Except as expressly admitted, the Counties deny each and every
21 remaining allegation of Paragraph 6. The Counties deny that the District is entitled to the relief
22 sought, or to any relief whatsoever.

23 7. Answering Paragraph 7 of the prayer for relief, the Counties admit that the District
24 prays for the relief requested. Except as expressly admitted, the Counties deny each and every
25 remaining allegation of Paragraph 7. The Counties deny that the District is entitled to the relief
26 sought, or to any relief whatsoever.

27 8. The Counties respectfully request the Court enter judgment as follows:

28 A. For a determination that it is premature for Westlands to request, or for this Court
to adjudge, validation of the Converted Contracts and Resolution.

1 B. That Westlands take nothing by its Complaint.

2 C. That facts and law as alleged herein by the Counties be determined as alleged in
3 their favor.

4 D. If, and to the extent a judgment of validation is entered, the Counties request
5 judgment be limited in scope, and against validation, with an affirmative determination as to the
6 legal and factual issues set forth herein, in favor of these answering Counties.

7 E. That Counties be awarded reasonable attorneys' fees pursuant to Code of Civil
8 Procedure section 1021.5 and/or to the extent otherwise allowed by any provision of California
9 statutory law or any common law doctrine recognized in California.


10 F. For Counties' costs of suit herein.

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

12 Respectfully submitted,

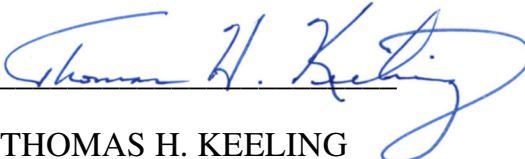
13
14 Dated: December 16, 2019

LAW OFFICE OF ROGER B. MOORE

15
16 By: 
17 _____
18 ROGER B. MOORE
19 Attorney for Counties

20
21 Dated: December 16, 2019


FREEMAN FIRM, A PLC

22 By: 
23 _____
24 THOMAS H. KEELING
25 Attorney for Counties
26
27
28

VERIFICATION

I, Roger B. Moore, am counsel of record for County of San Joaquin and County of Trinity (“Counties”), parties to the foregoing Response and Answer of Counties of San Joaquin and Trinity to Complaint for Validation (“Response and Answer”). I sign for the Counties absent from the county and/or because facts contained in the Response and Answer are within the knowledge of counsel. I have read the foregoing Response and Answer and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

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 Oakland, California.



ROGER B. MOORE

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PROOF OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is 1818 Grand Canal Boulevard, Suite 4, Stockton, California 95207. I served the foregoing document entitled:

VERIFIED RESPONSE AND ANSWER OF COUNTIES OF SAN JOAQUIN AND TRINITY TO COMPLAINT FOR VALIDATION

Service by United States Mail:

✓ by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, FREEMAN FIRM, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service at San Joaquin County, California, the same day in the ordinary course of business.

Attorneys for Westlands Water District:

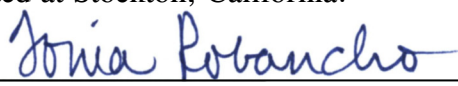
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Sacramento, CA 95814

The acts described above were undertaken and completed in San Joaquin County on December 16, 2019.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Stockton, California.



TONIA M. ROBANCHO