SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: **Westlands Water District vs. All Persons Interested in the Matter of the Contract Between the United States and Westlands Water Disctrict Providing for Project Water Service, San Luis Unit and Delta Division and Facilities Repayment**	
LAW AND MOTION MINUTE ORDER	Case Number: **19CECG03887**

Hearing Date: **October 27, 2021** From Chambers Re: **Status Conference/ Motion Entry of Judgment**

Department: **501** Judge: **Tharpe, D. Tyler**

Court Clerk: **Nunez, Sonia** Reporter : **Victoria Sanchez**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel: No Appearances	Counsel: No Appearances

[ ] Off Calendar

[X] Continued to December 2, 2021 at 3:30 p.m. Dept. 501 for Status Conference.

[ ] Submitted on points and authorities with/without argument. [ ] Matter is argued and submitted.

[ ] Upon filing of points and authorities.

[ ] Motion is granted [ ] in part and denied in part. [ ] Motion is denied [ ] with/without prejudice.

[ ] Taken under advisement

[ ] Demurrer [ ] overruled [ ] sustained with __ days to [ ] answer [ ] amend

[X] Tentative ruling becomes the order of the court. No further order is necessary.

[X] Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

[X] Service by the clerk will constitute notice of the order.

[X] See attached copy of the Tentative Ruling.

[ ] Judgment debtor __ sworn and examined.

[ ] Judgment debtor __ failed to appear.
Bench warrant issued in the amount of $ __

JUDGMENT:
[ ] Money damages [ ] Default [ ] Other __ entered in the amount of:
Principal $__ Interest $__ Costs $__ Attorney fees $__ Total $__
[ ] Claim of exemption [ ] granted [ ] denied. Court orders withholdings modified to $__ per __

FURTHER, COURT ORDERS:
[X] Other: The matter having been under advisement, the court now rules as follows: Tentative Ruling is adopted. As a result of the ruling on plaintiff's motion heard October 27, 2021, the court envisions dismissing the case. Today's Status Conference is continued to December 2, 2021, at 3:30 p.m. in Department 501 for any party to show cause why the case should not be dismissed.

(03)

Tentative Ruling

Re: ***Westlands Water District v. All Persons Interested in the Matter***
Case No. 19CECG03887

Hearing Date: October 27, 2021 (Dept. 501)

Motion: by Plaintiff's for Validation Judgment

Tentative Ruling:

To deny plaintiff's renewed motion for a validation judgment, for failure to show any new or different facts, circumstances, or law that would justify renewal of its prior motion. (Code Civ. Proc. § 1008, subd. (b).)

If a timely request for oral argument is made, such argument will be conducted on October 27, 2021, at 1:30 p.m., in Department 501.

Explanation:

Plaintiff has brought its renewed motion under Code of Civil Procedure section 1008, subdivision (b), (hereafter "Section 1008(b)") which provides:

> A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

Defendants object to the renewed motion on the ground that it was not brought within 10 days of the service of the order denying the original motion for validation judgment, and that it was not brought before the same judge as the prior motion. However, since plaintiff is moving for renewal under Section 1008(b), rather than reconsideration under Code of Civil Procedure section 1008, subdivision (a), there is no 10-day time limit for bringing the motion. Also, Section 1008(b) does not require the party moving for renewal to bring the motion before the same judge that heard the last motion.

In any event, Judge Simpson heard the last motion for a validation judgment, and Judge Simpson is now retired. Therefore, even assuming that plaintiff needs to bring the motion before the same judge that heard the last motion, Judge Simpson is unavailable and as a result it would be impossible for plaintiff to seek reconsideration or renewal before him. Under the circumstances, it is not improper for plaintiff to bring the motion before a different judge.

Nevertheless, plaintiff has failed to show that it is entitled to renew its prior motion for a validation motion, since it has not pointed to any new or different facts, circumstances, or law that would lead to a different result. As plaintiff has not shown that

any new facts, circumstances, or law support its motion, the court lacks jurisdiction to grant the requested relief. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688.)

Plaintiff points to three separate allegedly new or different facts or circumstances that supposedly justify renewal of the motion. First, Westlands and the Bureau of Reclamation executed the final converted repayment contract on February 28, 2020, the day after the original motion for validation judgment was heard. Second, Westlands' Board adopted a resolution in June 2021 that confirmed that the executed contract conformed to the authority granted by the Board in its original resolution. Third, Westlands has now submitted additional evidence regarding its compliance with the Brown Act's requirements prior to the adoption of the original resolution, which addresses Judge Simpson's concerns expressed in his order that the Board had not given adequate notice of the action it intended to take before the Board meeting.

However, none of plaintiff's purportedly new facts support the motion for renewal. The fact that Westlands and the Bureau entered into a final version of the repayment contract after the hearing on the motion for validation judgment does not affect the issues pointed out in Judge Simpson's order denying the judgment. As Judge Simpson held, the contract considered by the Board in October 2019 was only a proposed, incomplete contract, because it lacked key terms like the final repayment price and the dates on which repayments would be due. (See March 16, 2020 Order, p. 5, § 4.) It was also uncertain and incomplete because the resolution adopted by the Board allowed the President of the Board, its General Manager, and its General Counsel to modify the agreement's terms after it had been approved by the Board. (*Ibid.*) Although the contract was later finalized and executed by the parties, the issue before the court was whether the Board acted properly when it approved the contract in October 2019, not whether the contract was later executed by the parties. Thus, the fact that the contract was eventually executed by the parties does not constitute the kind of "new fact or circumstance" that would justify renewal of Judge Simpson's order denying the motion for a validation judgment.

Likewise, the fact that the Board approved a resolution in June 2021 stating that the executed contract conformed to the authority granted by the Board's prior resolution does not affect Judge Simpson's conclusion that the contract considered by the Board in October of 2019 was not a complete contract. Again, Judge Simpson found that the contract considered by the Board in October 2019 was incomplete and uncertain because it lacked key terms like the price of the repayments and when they had to be made, and it was subject to later revision. The Board's subsequent resolution that the final contract was consistent with its earlier resolution does not cure these deficiencies, and does not create the type of new facts or circumstances that would justify renewal or reconsideration of the prior order. The issue before the court is whether the Board's decision to approve the contract in October of 2019 was valid, not whether it later made subsequent resolutions that attempted to cure earlier deficiencies in the draft contract.

Furthermore, while Westlands claims that it has now provided additional evidence to show it complied with the Brown Act's notice requirements before the October 2019 meeting, it has not shown that it was diligent in presenting this evidence. A party moving for reconsideration or renewal must not only show that new facts exist, but it must also explain why it could not have presented those facts earlier. (*Garcia v. Hejmadi, supra,*

58 Cal.App.4th at pp. 688-689.) Here, the "new facts" that Westlands submits in relation to its Brown Act compliance were all events that occurred in October 2019, long before the hearing on the first motion for validation. Westlands fails to explain why it could not have presented these facts at the time of the original hearing, and it appears that it could have done so, since the evidence was apparently in its possession at that time.

While Westlands seems to argue that it could not have provided the evidence sooner because Judge Simpson raised the Brown Act issues *sua sponte* in his tentative ruling the day before the hearing, this argument is somewhat misleading. Westlands itself alleged in its Complaint and in its original moving papers that it had complied with the Brown Act's requirements prior to the Board meeting, so the issue had been raised by Westlands itself before the hearing. (Complaint, ¶ 18, Memo of Points and Authorities in Support of Validation Judgment, pp. 12-13.) Also, defendants raised affirmative defenses based on the Brown Act, and argued in their oppositions that Westlands had failed to give proper notice under the Brown Act. (See e.g. North Coast Rivers Alliances' Answer, Second Affirmative Defense, and its Opposition, pp. 14-15.) Thus, Westlands cannot claim that it was not on notice that the issue of Brown Act compliance might be raised, and in fact it had affirmatively requested that the court rule that it complied with the Brown Act. Judge Simpson therefore properly addressed the issue of Brown Act compliance in his ruling.

Consequently, Westlands has failed to satisfy the diligence requirement of Section 1008(b) with regard to the new evidence it has attempted to submit with regard to its compliance with the Brown Act. Since Westlands has failed to point to any new facts, circumstances, or law that would justify renewal of its motion for validation judgment, the court intends to deny the motion for failure to comply with the requirements of Section 1008(b).

Westlands has also made the alternative request that the court reconsider its prior ruling *sua sponte* under its inherent authority to reconsider its own rulings, citing *LeFrancois v. Goel* (2005) 35 Cal.4th 1094. However, for the same reasons discussed above, it does not appear that there is any basis for the court to reconsider Judge Simpson's decision *sua sponte*. The "new facts or circumstances" that Westlands cites in support of its motion do not appear to undermine the basis for the prior order denying the validation judgment, as the contract that the Board purported to approve in October 2019 was incomplete and subject to revision. The fact that the parties later executed a different version of the contract and that the Board adopted a resolution to approve the final executed contract does not mean that the Board's initial decision to approve the incomplete, proposed draft contract in October 2019 was valid. Therefore, the court declines to exercise its inherent power to reconsider the prior order denying the validation motion.

Finally, to the extent that Westlands requests that the court grant a validation judgment as to the parts of the contract that Judge Simpson found were properly the subject of a validation motion, the court intends to deny the request. Westlands appears to have misread Judge Simpson's order. The order did not find that some portions of the contract could be validated. Indeed, it does not appear that it would even be proper to validate only parts of the contract, or the Board's decision to approve those portions. The order instead found that, while some portions of the contract related to repayment

of an indebtedness, and thus were potentially subject to being validated, the Board's decision nevertheless could not be properly validated because it had sought to validate an incomplete, uncertain proposed contract. (March 16, 2020 Order, pp. 4-5.) Judge Simpson also found that the Board had failed to meet its burden of showing that it complied with the Brown Act before it adopted the resolution to approve the contract. (*Id.* at pp. 5-6.) As discussed above, Westlands has failed to show that the court should reconsider or reject Judge Simpson's reasoning here.

Therefore, as the court has already found that the Board's decision to approve and execute the contract was not the proper subject of a validation action, it cannot now grant validation as to any portion of the Board's decision. As a result, the court intends to deny the renewed motion for a validation judgment, in its entirety.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: **DTT** (Judge's initials) **on** **10/26/2021** (Date).

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	*FOR COURT USE ONLY*
TITLE OF CASE: Westlands Water District vs. All Persons Interested in the Matter of the Contract Between the United States and Westlands Water Disctrict Providing for Project Water Service, San Luis Unit and Delta Division and Facilities Repayment	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: **19CECG03887**

I certify that I am not a party to this cause and that a true copy of the:

[Minute order from chambers with tentative ruling]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **10/27/2021** Clerk, by S. Nunez, Deputy

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