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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

WESTERN VALUES PROJECT,

Petitioner,

v.

WESTLANDS WATER DISTRICT,

Respondent.

CASE NO. _____

VERIFIED PETITION FOR WRIT OF MANDATE

[Cal. Public Records Act, Gov. Code §§6250-70, Cal. Const., Art. I, §3]

1 INTRODUCTION

2 1. This petition on behalf of the Western Values Project seeks a writ of mandate
3 compelling Westlands Water District to make available for inspection public records in its
4 possession, as required by the California Public Records Act (“PRA”), Gov’t Code §§6250-70.
5 For almost two years after the Western Values Project submitted a number of public records
6 requests, the Westlands Water District has refused to produce responsive public records, or to
7 identify any basis for withholding such records. The requested public records concern
8 communications between senior staff at the District and certain lobbyists, as well as
9 communications concerning the District’s compliance with its reporting obligations. These
10 records are of heightened interest now, and timely disclosure is especially important, because
11 Westlands’ former lobbyist is now the Secretary of the United States Department of the Interior
12 and has been the subject of numerous reports alleging ethics violations, including preferential
13 treatment of his former clients. The need for transparency in the conduct of the public’s business
14 is recognized by both the PRA and the California Constitution, *see* Cal. Const. Art. I, Sec. 3, and
15 it has become apparent that only issuance of a writ from this Court pursuant to C.C.P. §1085 *et*
16 *seq.* will induce Westlands Water District to comply with its obligations under California law.

17 PARTIES

18 2. Petitioner WESTERN VALUES PROJECT (“WVP”) is a non-profit, tax-exempt
19 501(c)(3) advocacy organization dedicated to bringing transparency to policy debates concerning
20 public lands and national parks. WVP aims to provide members of the media, policy makers and
21 the public with an honest and accurate source of information about energy development on public
22 lands. To this end, WVP investigates connections between powerful special interests and the
23 politicians they seek to influence, with the goal of holding public lands decision-makers at every
24 level of government accountable. WVP is based in Montana.

25 3. Respondent WESTLANDS WATER DISTRICT (“Westlands” or the “District”) is
26 a state-chartered agricultural water district headquartered in Fresno, California. Westlands is a
27 water district organized pursuant to California Water Code §34000 *et seq.* According to
28 Westlands, its mission is to provide water services to landowners and water users in western

1 Fresno and Kings Counties. Among other things, Westlands advocates for policy changes
2 benefiting farmers in the District. Westlands is a public agency subject to the Public Records Act.

3 JURISDICTION AND VENUE

4 4. This court has jurisdiction under Government Code §§6258, 6259, Code of Civil
5 Procedure §1085, and Article VI, section 10 of the California Constitution.

6 5. Venue is proper in this Court. The records in question, or some portion of them,
7 are situated in the County of Fresno. Gov't Code §6259. Also, Respondent resides in, and some
8 of the acts and omissions complained of herein occurred in, the County of Fresno. C.C.P.
9 §394(a).

10 FACTUAL BACKGROUND

11 6. According to its website, Westlands is the largest agricultural water district in the
12 United States, covering more than 1,000 square miles of farmland in Fresno and Kings Counties
13 in California's central valley. Westlands receives a water allocation pursuant to an agreement
14 with the federal government as part of the Central Valley Project ("CVP"), a federal water project
15 that stores water in large reservoirs in northern and central California for use by cities and farms
16 in California. The District has federal contracts to provide water to several hundred farms.
17 According to the District, the growers to whom it supplies water produce an average of more than
18 \$1 billion worth of crops annually, and generate approximately \$3.5 billion in farm-related
19 economic activities.

20 7. According to its 2018 audited financial statement, as of February 28, 2018,
21 Westlands held more than \$480 million in assets, and had more than \$250 million in operating
22 revenue during the prior fiscal year. The vast majority of Westlands' revenue comes from sale of
23 water to farmers for irrigation purposes. Of Westlands' approximately \$250 million in operating
24 revenues for fiscal year 2017-18, more than \$228 million was from "irrigation water sales."

25 8. In addition to managing the water currently allocated from the Central Valley
26 Project, Westlands also seeks to acquire additional access to water in order to increase the amount
27 of water available for delivery to land owners and water users within the District. In particular,
28 over the past decade Westlands has hired lawyers and lobbyists to pursue legal and regulatory

1 changes, including changes that would weaken Endangered Species Act (“ESA”), 16 U.S.C.
2 §1531 *et seq.*, protections, resulting in the diversion and delivery of more water to Central Valley
3 farmers.

4 9. On information and belief, one of the primary goals of Westlands is to loosen or
5 otherwise modify ESA protections for the delta smelt, a species of fish designated as “threatened”
6 under the ESA, and the winter-run Chinook salmon, federally designated as “endangered.”
7 Weakening protections for these species would allow more water to be removed from California’s
8 rivers and estuaries for agricultural and other purposes, to the benefit of Westlands and the
9 farmers to whom it provides water. According to a recent article published by the New York
10 Times, if ESA protections on these particular fish were weakened, although other water districts
11 in the State would also benefit, under California’s and the CVP’s system for allocating water,
12 Westlands would be the largest beneficiary.

13 10. One of the lobbyists hired by Westlands to work on its behalf was David
14 Bernhardt, a lawyer and partner at the lobbying firm Brownstein Hyatt Farber Schreck LLP, and
15 previously a political appointee at the United States Department of the Interior (“DOI”).
16 According to a New York Times report, from 2011 to 2016, Westlands paid Mr. Bernhardt’s firm
17 at least \$1.3 million in lobbying fees. Bernhardt worked as both a lobbyist and lawyer, including
18 on weakening or lifting ESA protections for the delta smelt and winter-run Chinook salmon. In
19 particular, according to news reports, Bernhardt lobbied on a provision of a broad water
20 infrastructure bill that would weaken smelt and salmon protections to increase deliveries of water
21 to Central Valley farmers, including farmers within the District.

22 11. According to a New York Times report, in November 2016, Bernhardt de-
23 registered as a lobbyist for Westlands. Upon information and belief, around the same time,
24 Bernhardt began working with the Transition Team set up by President-elect Donald Trump, with
25 particular focus on the Interior Department. After President Trump was inaugurated, in April
26 2017, the President nominated Bernhardt to be Deputy Secretary of the Department of the Interior.
27 Bernhardt was confirmed as Deputy Secretary in July 2017 and, according to news reports, within
28 months had directed Department officials to begin the process of weakening ESA protections for

1 the delta smelt and winter-run Chinook salmon. According to news reports, in November 2017
2 Bernhardt held a series of phone calls with the Interior Department official with legal authority to
3 begin the process of revising ESA protections for the two species of fish and directed that official
4 to begin the process and to finish as quickly as possible. According to news reports, shortly
5 thereafter, that process was begun and earlier this year a formal proposal for diverting additional
6 water for agricultural use was presented.

7 12. In March 2019, then-Deputy Secretary Bernhardt was nominated to be Secretary of
8 the United States Department of the Interior and, in April 2019, Bernhardt was confirmed by the
9 Senate as Secretary of the DOI.

10 13. According to news reports and pending complaints to ethics officials, upon joining
11 the Administration, Bernhardt made a series of ethics pledges. First, he pledged to refrain from
12 “participat[ing] personally and substantially in any particular matter involving specific parties in
13 which [he] know[s] a former employer or client of [his] is a party or represents a party for a
14 period of one year” after he last represented that client. Second, Bernhardt also pledged to “not
15 participate personally and substantially, for two years after appointment, in any particular matter
16 involving specific parties in which a former employer or client of [his] is or represents a party, if
17 [he] served that employer or client during the two years prior to [his] appointment.” According to
18 reports, Bernhardt may seek exceptions from both of these pledges.

19 14. According to news reports, in connection with both of these ethics pledges,
20 Bernhardt compiled a list of entities from whose matters he is recused and one of those entities
21 was Westlands. The documents WVP now seeks from Westlands relate to the District’s
22 relationship with Bernhardt and his firm, which may be relevant to many of the ethical and
23 conflict of interest questions surrounding Bernhardt.

24 15. On March 26, 2019, the Deputy Inspector General of the Interior Department
25 confirmed that the Office of Inspector General is currently reviewing certain complaints it has
26 received regarding Secretary Bernhardt and his relationship with Westlands Water District.
27 Additionally, according to an April 12, 2019 news report, the National Archives and Records
28 Administration (“NARA”) has launched an investigation into whether the DOI is complying with

1 the federal Freedom of Information Act by properly maintaining records of Secretary Bernhardt's
2 meetings, including those with representatives from industries on whose behalf he previously
3 lobbied. The same news report indicates that the NARA investigation was requested after
4 Bernhardt acknowledged that he does not keep a daily calendar and failed to disclose meetings
5 with industry groups.

6 WVP's Requests to Westlands Water District

7 16. On May 4, 2017, shortly after Bernhardt was nominated to be Deputy Secretary of
8 DOI, staff of the Western Values Project sent an email to Dan Pope, Chief Operating Officer of
9 Westlands, on behalf of Chris Saeger, executive director of WVP, attaching three letters from
10 Saeger. Each of the three letters, also dated May 4, 2017, made a separate request for particular
11 public records pursuant to the California Public Records Act. A true and correct copy of this
12 email is attached hereto as Exhibit A.

13 17. The first letter requested access to correspondence between high-level employees
14 of the District and David Bernhardt. The letter also identified particular enterprise systems used
15 by Westlands that Saeger requested be searched for responsive records. A true and correct copy
16 of this letter is attached hereto as Exhibit B.

17 18. The second letter requested specific correspondence between employees of
18 Westlands and employees or representatives of Brownstein, Hyatt, Farber, Schreck, LLP. The
19 second letter specified that Saeger sought only correspondence containing particular search terms
20 or phrases. These terms were tailored to seek records relating to Bernhardt's work for the District
21 and Westlands' reporting and audit obligations. This letter also identified particular enterprise
22 systems used by Westlands that Saeger requested be searched for responsive records. A true and
23 correct copy of this letter is attached hereto as Exhibit C.

24 19. The third letter requested specific correspondence between and among Westlands'
25 employees, including any representatives thereof. This letter also specified that Saeger sought
26 only correspondence containing particular search terms or phrases, tailored to seek records
27 relating to Bernhardt's work for the District and Westlands' reporting and audit obligations. This
28 letter also identified particular enterprise systems used by Westlands that Saeger requested be

1 searched for responsive records. A true and correct copy of this letter is attached hereto as Exhibit
2 D.

3 20. Each of Saeger's three May 4, 2017 letters also noted that Mr. Bernhardt "has been
4 nominated by the President of the United States to the role of Deputy Secretary of the Interior. As
5 such, I request expedited processing for this request so the public may understand" Bernhardt's
6 "role and activities with the Westlands Water District in order to better advise their elected
7 representatives regarding Mr. Bernhardt's nomination."

8 21. On May 12, 2017, Dan Pope of Westlands responded via email to the email and
9 letters that Saeger had submitted eight days prior. Pope acknowledged that he had received
10 Saeger's three public records requests. Pope stated that he had determined that some records
11 would "require research and review of documents that may be stored off site and need to be
12 retrieved," a circumstance that, under Gov't Code §6253(c)(1), permits a public agency an extra
13 14 days to respond to a public records request. Pope also indicated that because of the District's
14 "records retention policy," Saeger's request "may" produce limited results. Pope further stated,
15 that some documents "may" be exempt under Gov't Code §6254, but did not identify which of the
16 exceptions provided by that section "may" apply. Finally, Pope "estimate[d]" that the information
17 requested would be compiled and "available for review by June 2, 2017." Attached hereto as
18 Exhibit E is a true and correct copy of Pope's May 12, 2017 email.

19 22. Contrary to the estimate provided in Pope's email, the District did not make the
20 requested records available for review by June 2, 2017.

21 23. On July 18, 2017, having received no further communication from Westlands,
22 WVP Staff again emailed Pope on Saeger's behalf, stating: "Wanted to follow up on these
23 records. Please let me know what the timeframe looks like for getting these back." A true and
24 correct copy of the July 18, 2017 email is attached hereto as Exhibit F.

25 24. WVP did not receive a response to this July 18, 2017 email. For the next many
26 months, WVP staff made repeated attempts to reach Pope and Westlands to inquire about the
27 status of the PRA requests and the lack of a response to those requests.
28

1 25. For example, on August 21 and 22, 2018, Brad Hennessy, an employee of the
2 Western Values Project, left two voicemail messages with Pope, inquiring about the status of the
3 May 4, 2017 PRA requests.

4 26. On August 24, 2018, Pope called Hennessy in response to Hennessy's voicemail
5 messages. Pope stated that Westlands was still working on locating the May 4, 2017 PRA
6 requests and that he would be in touch after he had an opportunity to review the requests.

7 27. After waiting for several months without receiving additional information or a
8 response from Pope, on December 6 and 7, 2018, Hennessy again called Pope to inquire about the
9 status of WVP's PRA requests.

10 28. On March 12, 2019, Pope emailed a password-protected document to Saeger,
11 perhaps inadvertently, but did not provide a password. WVP staff were unable to open the
12 document and the document was subsequently deleted by Westlands. On March 13, 2019, on
13 behalf of Saeger, WVP staff emailed Pope to inquire whether the document was a response to
14 WVP's public records requests. As of the date of this Petition, WVP has received no response to
15 this email and none of the documents requested under PRA. Attached hereto as Exhibit G is a
16 true and correct copy of the March 12 and 13, 2019 email correspondence.

17 29. As of the date of this Petition, the District has not provided to WVP any of the
18 records requested in WVP's May 4, 2017 PRA requests, nor has the District identified any
19 exemption under the PRA that would warrant withholding the requested records.

20 The California Public Records Act

21 30. Under the California Public Records Act, Government Code §6250 *et seq.*, all
22 records that are prepared, owned, used, or retained by any public agency, and that are not subject
23 to the PRA's statutory exemptions to disclosure, must be made publicly available for inspection
24 and copying upon request. Gov't Code §6253; *see also id.* §6252(e) (definition of "public
25 records").

26 31. In enacting the PRA the legislature recognized that:

27 a requester, having no access to agency files, may be unable to precisely identify the
28 documents sought. Thus, writings may be described by their content. The agency must
 then determine whether it has such writings under its control and the applicability of any

1 exemption. An agency is thus obliged to search for records based on criteria set forth in
2 the search request.

3 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal. App. 4th 159, 165-66; *see*
4 *also* Gov't Code §6253(b).

5 32. The PRA also requires the government to “assist the member of the public make a
6 focused and effective request that reasonably describes an identifiable record or records” by
7 taking steps to assist the member of the public to identify records and information that are
8 responsive to the request or to the purpose of the request, if stated. Gov't Code §6253.1(a). An
9 agency that receives a request must also “[p]rovide suggestions for overcoming any practical basis
10 for denying access to the records or information sought.” *Id.*

11 33. If the public agency refuses to make responsive public records available, the PRA
12 provides that “[t]he agency shall justify withholding any record by demonstrating that the record
13 in question is exempt under express provisions of this chapter or that . . . the public interest served
14 by not disclosing the record clearly outweighs the public interest served by disclosure of the
15 record.” *Id.* §6255(a). Such a response must be in writing. *Id.* §6255(b).

16 34. Whenever it is made to appear by verified petition to the superior court of the
17 county where the records or some part thereof are situated that certain public records are being
18 improperly withheld from a member of the public, the court shall order the officer or person
19 charged with withholding the records to disclose the public record or show cause why he or she
20 should not do so. The court shall decide the case after examining the record in camera (if
21 permitted by the Evidence Code), papers filed by the parties and any oral argument and additional
22 evidence as the court may allow. *Id.* §6259(a).

23 35. If the Court finds that the failure to disclose is not justified, it shall order the public
24 official to make the record public. *Id.* §6259(b).

25 36. To ensure that access to the public's information is not delayed or obstructed, the
26 PRA requires that “times for responsive pleadings and for hearings in these proceedings shall
27 be set by the judge of the court with the object of securing a decision as to these matters at the
28 earliest possible time.” Gov't Code §6258.

- 1 1. That the Court issue a peremptory writ of mandate directing Respondent
2 immediately to provide Petitioner with all requested records except those records that the Court
3 determines may be lawfully withheld;
- 4 2. That Petitioner be awarded attorney's fees and costs pursuant to Government Code
5 §6259 and/or C.C.P. §1021.5; and
- 6 3. For such other and further relief as the Court deems equitable, just, and proper.

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8 Dated: April 16, 2019

Respectfully submitted,

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VERIFICATION

I, Chris Saeger, do hereby declare:

I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The allegations in the Petition are true to my own knowledge, except where they are made on information and belief, in which case I am informed and believe them to be true. I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2019, in Whitefish, Montana.



Chris Saeger, Director
Western Values Project