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FRESNO COUNTY SUPERIOR COURT
By: C. Prendergast, Deputy

6 Attorney for: TURK STATION, LLC

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF FRESNO, UNLIMITED CIVIL DIVISION

10
11 TURK STATION, LLC,)

Case No. 17CECG01601

12 Plaintiff,)

13 v.)

14 WESTLANDS WATER District and DOES 1)
through 20, inclusive,)

15 Defendants.)
16 _____)

**VERIFIED PETITION FOR
PEREMPTORY AND ALTERNATIVE
WRIT OF MANDATE (CCP SECTION
1085 AND/OR 1094.5); FOR
DECLARATORY RELIEF; AND FOR
PRELIMINARY AND PERMANENT
INJUNCTION**

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20 Plaintiff and Petitioner TURK STATION, LLC (“Plaintiff”) hereby petitions this
21 court for a peremptory writ of mandate and/or an alternative writ of mandate under Code of Civil
22 Procedure Section 1085, directed to Respondent/Defendant WESTLANDS WATER District
23 (“WESTLANDS” or “District”); alternatively, Plaintiff seeks a writ of mandate, if applicable,
24 under Code of Civil Procedure Section 1094.5. Plaintiff hereby alleges:

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1 I.

2 **PARTIES AND JURISDICTION.**

3 1. Plaintiff TURK STATION, LLC (“Plaintiff”) is a California limited liability
4 company in the farming business. Plaintiff owns and farms agricultural property situated within
5 the WESTLANDS Water District. At all relevant times, Plaintiff has purchased water from
6 WESTLANDS to irrigate its crops.

7 2. WESTLANDS is a California Water District duly formed and operating under the
8 California Water District Law, Water Code Sections 3400, et seq, servicing lands located in,
9 Fresno County, California.

10 3. The true names and capacities of the Defendants named herein as DOES 1
11 through 20, inclusive, whether an individual, corporation or otherwise, are unknown to the
12 Plaintiffs who, therefore, sue such Defendants by fictitious names pursuant to Code of Civil
13 Procedure §474. Alternatively, such DOE Defendants are persons whose identities are known to
14 Plaintiffs, but about whom sufficient facts are not known that would support the assertion by
15 Plaintiffs of a civil claim at this time. When Plaintiff obtains information supporting a claim
16 against any DOE Defendant, Plaintiff will seek leave to amend this Complaint and will allege
17 appropriate charging allegations.

18 4. Plaintiff is informed and believe, and thereon allege, that the Defendants
19 (including the Doe Defendants), and each of them, are agents and/or employees and/or parents,
20 subsidiaries or sister corporations of each other, and are responsible for the acts complained of
21 herein, unless otherwise alleged in this Complaint.

22 II.

23 **BACKGROUND ALLEGATIONS.**

24 5. Every two years, WESTLANDS holds elections to elect members to its nine-
25 member public-entity board. Only WESTLANDS’ landowners, such as Plaintiff, may cast a
26 vote.

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1 6. Under WESTLANDS existing rules, while all landowners may vote, not all
2 landowner's votes' count the same. WESTLANDS' current voting methodology dilutes the vote
3 of certain Priority Area Number Two landowners, of which Plaintiff is one. In contrast, Priority
4 Area Number One landowners receive over five times as many votes per acre as do Plaintiff and
5 other similarly-situated Priority Area Number Two landowners. Plaintiff, and other similarly-
6 situated landowners, are negatively impacted by this inequitable voting system which is based
7 upon an admittedly flawed and antiquated "assessment benefits-bestowed" methodology instead
8 of based upon a one vote per acre system. Consequently, certain landowners falling in the
9 impacted Priority Area Number Two category are only permitted to cast 18 votes per acre while
10 those in Priority Area Number One are permitted to cast 100 votes per acre. Despite the fact that
11 WESTLANDS acknowledges that the "assessment book benefits bestowed voting" methodology
12 it employs is unfair and flawed, it has decided to continue to employ this unfair voting method.

13 7. By way of background, the Water Code allows WESTLANDS to create a special
14 assessment book for projects that provide special benefits to some landowners more than others.
15 For example, WESTLANDS might build a new pipeline that only benefits landowners in a
16 certain region while not impacting others. The Water Code, in that instance, allows a water
17 district to adopt a special assessment book that values land according to the benefit created by a
18 particular project. (Water Code, § 36579.) In that way, the landowners who derive a special
19 benefit can be asked to pay more of the cost for a particular project. As claimed by
20 WESTLANDS in its 2012 Water Management Plan, the assessment book is used to "collect[]
21 funds to repay the United States for construction of the District's distribution and drainage
22 collector systems." To reflect the benefits bestowed by that contract, "lands served by the
23 District's distribution systems are assessed at a higher rate than the 12 percent of lands not yet
24 served."

25 8. Although it may have made sense in the past to allocate the obligation to repay the
26 1965 federal contract on the basis of different rates reflected in the assessment book, it does not
27 make sense now. Due to various changes in the District over the last two decades, including the
28 2002 Sagouspe, et al. v. WESTLANDS Water District et. al. lawsuit settlement, employing the

1 assessment-book methodology now under these changed circumstances clearly violates the equal
2 protection clause under the California and U.S. Constitutions. WESTLANDS' Water
3 Management Plan itself concedes that the assessment book method does not correctly allocate
4 among its owners the costs based on the benefits bestowed. As the plan explains, "From 1984 to
5 1989, [the contract] obligation was collected entirely through direct landowner assessment. To
6 make the assessment process more equitable, in 1990, the District began to collect 50 percent of
7 the repayment obligation through landowner assessments and 50 percent as a component of the
8 water rates." The District concedes that the assessment book alone is not an equitable method of
9 allocating the obligation to repay the federal contract. That inequity is even more pronounced
10 because the assessment book does not reflect the general benefits bestowed on all District
11 owners' properties from WESTLANDS' water storage and delivery operations.

12 9. The impacted Priority Area Number Two owners, who own approximately 12
13 percent of the lands in the District, are assessed at a lower valuation rate because the assessment
14 book is theoretically only meant to reflect the benefits bestowed by the federal contract and not
15 the many other factors impacting those Priority Area Number Two owners' properties.

16 10. On February 28, 2017 at a duly noticed board meeting, WESTLANDS' General
17 Manager, Thomas Birmingham, reported that, for several meetings over the course of many
18 months, the board had discussed the District's voting process and assessment methodology. Mr.
19 Birmingham acknowledged that certain ag lands have a District assessed value of \$100 per acre,
20 and others that have a District assessed value of \$18 per acre. Based on this assessment, every
21 landowner receives one vote per dollar of assessed value. Mr. Birmingham acknowledged that
22 some landowners felt that method was inequitable and that, in fact, assessment-based voting does
23 not truly reflect the benefits received by the two classes of landowners in the District.

24 11. At the February 28, 2017 WESTLANDS' board meeting, Mr. Birmingham also
25 stated that, after considerable discussion during previous meetings, District staff would review
26 the District's obligations and costs and then recommend to the finance and administration
27 committee which obligations and costs were appropriate to use to allocate voting rights among
28 the owners. When pressed as to whether the approach would delay the board vote for the

1 upcoming election, Mr. Birmingham replied that certain procedures had to be followed but that
2 staff was looking into the possibility of delaying the board election until the process was
3 completed.

4 12. On February 28, 2017, upon motion duly made and seconded, the board directed
5 staff to review the District's obligations and costs to identify which of those obligations and costs
6 are appropriate to consider for a new or revised assessment.

7 13. At the March 21, 2017 duly-noticed District board meeting, item 8.a. on the
8 agenda concerned the voting process and the assessment methodology. The four options
9 considered by the District for conducting its elections were: 1) The District would switch from
10 the current assessment-benefit-bestowed methodology to a one acre/one vote methodology; 2)
11 The District would alter its current assessment-benefits-bestowed methodology to do either of the
12 following: (A) Alter the current approach but continue to fund only the repayment of the
13 distribution system or (B) Alter the current approach to fund obligations currently funded through
14 some other vehicle; and 3) The District would do nothing and leave the current voting method in
15 place. Following discussion, the action taken by the board was to take no action and to leave in
16 place the inequitable voting method.

17 14. Prior to the duly-noticed April 18, 2017 District board meeting, Petitioner,
18 through counsel, supplied a draft of this lawsuit to WESTLANDS and its general counsel. In
19 conjunction with supplying the draft lawsuit, Petitioner demanded that WESTLANDS take
20 prompt and corrective action to resolve the aforementioned voting problems in advance of the
21 upcoming election. In response, at the April 18, 2017 board meeting, WESTLANDS discussed
22 the problem again, discussed options to address it again, but again took action not to resolve the
23 problem. The Board did take action, however, to direct its consultant, CH2M Hill, to provide a
24 revised benefit assessment methodology so that staff may (or may not) develop a new assessment
25 book that may (or may not) be brought to the Board upon which a new voting methodology may
26 (or may not) be based. At this same meeting, the board postponed its election from August 29,
27 2017 to October 24, 2017. To date, the problem remains unresolved and there is no guarantee
28 that it will be resolved in advance of the October 24, 2017 election.

1 **FIRST CAUSE OF ACTION**

2 **(WRIT OF MANDATE - CODE OF CIVIL PROCEDURE SECTION 1085)**

3 15. Plaintiff incorporates by reference each and every allegation contained in
4 paragraphs 1 through 14, inclusive, as though fully set forth herein.

5 16. WESTLANDS, by and through its Board, has a legal duty not to dilute landowner
6 votes in a manner that unjustifiably grants Priority Area Number One owners five times as many
7 votes than impacted Priority Area Number Two landowners are permitted to cast.

8 17. WESTLANDS, by and through its Board, has violated Plaintiff's equal protection
9 rights under the U.S. and California constitutions. Plaintiff has a pecuniary interest in the
10 outcome of this dispute and the issuance by this Court of a writ of mandate, apart from the public
11 at large, in that, if this petition is granted, Plaintiff's landownership rights, including voting
12 rights, will be enhanced and/or restored.

13 18. Plaintiff does not have a plain, speedy and adequate remedy at law. Plaintiff is
14 informed and believes that there are no available legal remedies to redress the harm that Plaintiff
15 and other similarly-situated Priority Area Number Two landowners will suffer if this petition is
16 denied.

17 19. If this Court allows the WESTLANDS' board's action to postpone resolution of
18 the obvious inequity in their voting methodology to stand, without resolving the problem prior to
19 the October 2017 election, Plaintiff and other similarly-situated landowners will be irreparably
20 harmed because Plaintiff and other similarly-situated Priority Area Number Two owners will be
21 denied their equal protection rights to vote in the election, and there is no legal remedy that
22 would allow Plaintiff to recover damages from WESTLANDS to compensate for such a loss.
23 Accordingly, this Court should issue a writ of mandate to adopt a constitutional voting method,
24 i.e. one that affords WESTLANDS' landowners one vote per one acre.

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SECOND CAUSE OF ACTION
(WRIT OF MANDATE - CODE OF CIVIL PROCEDURE SECTION 1094.5 -
PLED IN THE ALTERNATIVE)

20. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 19, inclusive, as though fully set forth herein.

21. WESTLANDS, by and through its Board, has a legal duty not to dilute landowner votes in the manner which occurred when the WESTLANDS Board decided, on March 21, 2017, after deliberating and considering the evidence presented, to continue with the obviously inequitable voting system.

22. WESTLANDS, by and through its Board, has violated Plaintiff's and other similarly-situated Priority Area Number two owner's equal protection rights under the U.S. and California Constitutions. Plaintiff has a pecuniary interest in the issuance of a writ of mandate, apart from the public at large, in that if this petition is granted Plaintiff's ownership rights, including its voting rights, will be restored and/or enhanced.

23. Plaintiff does not have a plain, speedy and adequate remedy at law. Plaintiff is informed and believes that there are no available legal procedures to redress the harm that Plaintiff and other similarly-situated landowners will suffer if the requested relief is denied.

24. If the Court allows the WESTLANDS' Board's action to stand and allows WESTLANDS to continue its refusal to resolve the problem prior to the October 2017 election, Plaintiff and other similarly-situated landowners will be irreparably harmed because they will be denied equal protection in connection with the election and there is no legal remedy that would allow Plaintiff to recover damages from WESTLANDS to compensate for its loss. Accordingly, this Court should issue a writ of mandate to adopt a constitutional voting method, i.e. one that affords WESTLANDS' landowners one vote per one acre.

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1 **THIRD CAUSE OF ACTION**

2 **(INJUNCTIVE RELIEF CODE OF CIVIL PROC. Section 526(a))**

3 25. Plaintiff incorporates by reference each and every allegation contained in
4 paragraphs 1 through 24, inclusive, as though fully set forth herein.

5 26. Pursuant to Code of Civil Procedure §526, Plaintiff seeks preliminary and
6 permanent injunctions directed at WESTLANDS to enjoin WESTLANDS from depriving
7 Plaintiff and other similarly-situated landowners in WESTLANDS from equal protection under
8 the law, which will continue to happen unless a one vote per acre method is instituted.

9 27. Further, and as described above, the conduct on the part of WESTLANDS
10 currently interferes with or threatens to interfere with the real property rights of Plaintiff and all
11 of those similarly-situated Priority Area Number Two landowners within WESTLANDS
12 affected by the dilution of their votes and has and will continue to lead to damages for which
13 there is no legal remedy.

14 28. This Court’s determination is necessary and proper because WESTLANDS, by
15 and through its board, is refusing to follow the law.

16 29. Accordingly, Plaintiff requests that this Court enter preliminary and permanent
17 injunctions barring WESTLANDS from continued use of any voting methodology that violates
18 the equal protection clauses of the California and United States Constitutions, and, instead, that
19 this Court enjoin WESTLANDS to institute a one vote per acre voting method.

20 **FOURTH CAUSE OF ACTION**

21 **(DECLARATORY RELIEF)**

22 30. Plaintiff incorporates by reference each and every allegation contained in
23 paragraphs 1 through 29, inclusive, as though fully set forth herein.

24 31. An actual controversy exists between Plaintiff and WESTLANDS over the
25 validity of WESTLANDS’ current voting methodology for its board elections. Plaintiff contends
26 that its current voting methodology is unlawful because it violates equal protection guarantees
27 under the California and United States Constitutions. Plaintiff further contends that an
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1 appropriate and lawful alternate voting methodology is one that would be based on one vote per
2 acre.

3 32. Plaintiff is informed and believes, and thereon alleges, that WESTLANDS
4 disputes Plaintiff's contention and, instead, contends that its current voting methodology is
5 lawful.

6 33. Plaintiff is further informed and believes and thereon alleges that WESTLANDS
7 contends that a one vote per one acre voting methodology is inappropriate and/or unlawful.

8 34. Plaintiff desires a judicial determination:

9 A) That WESTLANDS' existing voting methodology is unlawful because it violates
10 the state and federal constitutions; and

11 B) That a one vote per one acre voting methodology is an appropriate and lawful
12 replacement voting methodology.

13 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

14 1. For a Peremptory Writ of Mandate to be issued under either Code of Civil
15 Procedure Section 1085 or 1094.5, ordering:

16 a. WESTLANDS, by and through its board, to adopt a voting methodology
17 that does not deprive any of its owner members of their equal protection rights;

18 b. A stay on the October 2017 election until such time as WESTLANDS has
19 adopted a voting methodology that does not deprive any of its owner members of their equal
20 protection rights (as long as a vote occurs within the 2017 calendar year);

21 2. For an alternative Writ of Mandate to be issued under either Code of Civil
22 Procedure Section 1085 or 1094.5, ordering: WESTLANDS to show cause before this court, by
23 June 29, 2017, or as soon thereafter as possible, at a time and place specified by this Court, why
24 WESTLANDS has not adopted a voting methodology that protects all of its owners' equal
25 protection rights, and that does not violate the law;

26 3. On return of the alternative writ and hearing on the order to show cause,
27 for a peremptory writ of mandate to be issued ordering:

28 a. WESTLANDS, by and through its board, to adopt a voting

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methodology that does not deprive any of its owner members of their equal protection rights;

b. That a one vote per one acre method be adopted immediately;

4. For preliminary and permanent injunctions enjoining WESTLANDS from continuing with an assessment-based voting methodology that violates the law, and, instead, enjoining WESTLANDS to adopt a one vote per one acre methodology immediately;

5. For a declaration, under Code of Civil Procedure Section 526(a), that WESTLANDS' current assessment-based voting methodology is unlawful and unconstitutional and that a one vote per one acre methodology is lawful and appropriate;

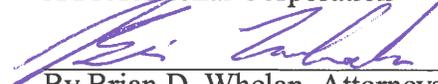
6. For costs of suit incurred herein;

7. For attorneys' fees as permitted by law;

8. For any and all other relief as the Court may deem proper.

Dated: May 8, 2017

WHELAN LAW GROUP,
A Professional Corporation



By Brian D. Whelan, Attorneys for
Plaintiff TURK STATION, LLC

VERIFICATION

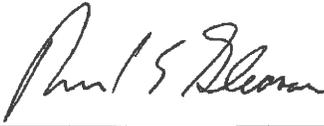
I have read the foregoing **VERIFIED PETITION FOR PEREMPTORY AND ALTERNATIVE WRIT OF MANDATE (CCP SECTION 1085 AND/OR 1094.5); FOR DECLARATORY RELIEF; AND FOR PRELIMINARY AND PERMANENT INJUNCTION**. The statement following the box checked is applicable.

X I am a member of Turk Station, LLC, who is a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

_____ I am one of the attorneys for _____, who are parties to this action. Such party(ies) is absent from the county aforesaid where such attorneys have their offices, and I am making this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

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

Executed on May 8, 2017, at Fresno, California.

By: 
Brad Gleason