SAN JOAQUIN COUNTY
Greatness grows here.

Board of Supervisors

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Rachél DeBord, *Clerk of the Board of Supervisors*

June 24, 2020

Ernest Conant, Regional Director
United States Bureau of Reclamation
California Great Basin Regional Office
Federal Office Building, 2800 Cottage Way, MP-100
Sacramento, CA 95825-1898
Email: EConant@USBR.gov
Via email and U.S. mail

Re: Westlands Water District's Serious Misrepresentations in Its May 26, 2020 Letter to the Bureau of Reclamation, Requesting that it Disregard the Requirement that it Obtain a Court Order Validating its Converted Contract Before it Becomes Effective

Dear Mr. Conant:

On behalf of San Joaquin County, I am writing to alert you to misrepresentations made by Westlands Water District (Westlands) in the May 26, 2020 letter to you from its General Manager, Thomas Birmingham (**Ex. 1**, "Westlands letter"). That letter contains materially false and misleading statements about the challenged agreement to convert Westlands' time-limited water contract into a permanent repayment contract (Contract No. 14-06-200-495A-IR1-P, "Converted Contract"). In its letter, Westlands requested the Bureau of Reclamation to treat its Converted Contract as controlling as of its intended "effective date" of June 1, 2020, despite Westlands' failure to obtain a "decree of the court" confirming the validity of its proceedings, required under law for such contracts under 43 U.S.C. § 511. The Bureau relied upon these misrepresentations in its May 28, 2020 letter, which addresses Westlands' request. (**Ex. 2**, "Bureau letter").

First, referring to Westlands' court action seeking to validate the Converted Contract (*Westlands Water District v. All Persons*, Fresno Superior Court No. 19CEG03887), the Westlands letter asserts that "the Court was not able to validate the District's proceedings

prior to the Court's closing for judicial business in response to the COVID-19 pandemic and the proclamations of emergency by Governor Gavin Newsom" (Ex. 1, p. 1 (emphasis added).) The responsive Bureau letter also mentions the COVID crisis (Ex. 2.)

The Bureau should know that Westlands' reference to the COVID-related court closing misrepresents why it could not validate the Converted Contract. **On March 16, 2020, *before* its now-concluded temporary closing, the Fresno Superior Court finalized its order *denying Westlands' motion to validate its Converted Contract*** (Ex. 3, "Order"). That ruling was on the merits of the validation request; it was in no way affected by any Covid-19 related orders. Westlands' failure to mention the March 16 Order speaks volumes. Although the County, among others, has appealed another non-merits portion of the March 16 Order, the Order remains in effect, and it clearly states the Court's findings of material substantive deficiencies in the contract. (*Id.*, p. 4.) It is far from clear that Westlands, even given more time, can overcome the defects the Court analyzed in the Order. Even if it could, numerous other procedural and substantive objections to this Converted Contract remain to be adjudicated.

Second, Westlands claims in its letter to the Bureau that it complied with the Brown Act and can no longer be challenged on that ground. (Ex. 1, pp. 1-2.) In fact, Westlands' validation action sought, and failed, to show Brown Act compliance. The Court found that Westlands violated the Brown Act in its proceedings to authorize the Converted Contract. (See Ex. 3, pp. 4-5, referencing Gov. Code, §§54940, 54954.1, 54954.2, and 54954.2(a)(2).) Again, Westlands' letter to the Bureau, and its request for a waiver of the validation order requirement, rests on a material omission.

Third, Westlands asserts that any "*reverse validation*" challenge to the Converted Contract would be time-barred. (Ex. 1, p. 2 (emphasis added).) But reverse validation only arises when "no proceedings have been brought" by the agency directly seeking validation, as Westlands did. (Code Civ. Proc., § 863.) This inapplicable reference distracts from many legal problems raised in Westlands' action, and in other parties' letters to the Bureau. We are also unaware of any response to San Joaquin County's January 8, 2020 letter (Ex. 4), identifying further legal and practical concerns with this contract.

Fourth, Westlands asks the Bureau to disregard its failure to validate the Converted Contract on the ground that its contract history with the United States reflects an "ability and commitment" to meet its obligations. Ex. 1, p. 2.) This self-serving claim cannot substitute for the "decree of a court" required by law, 43 U.S.C. § 511, and Article 47 of Westlands' executed contract, which Westlands has never obtained. Should the Bureau nonetheless take into account Westlands' "ability and commitment" to meet its obligations, it should also consider the attached 2016 order of the Securities and Exchange Commission, which imposed penalties on Westlands, and Mr. Birmingham, for misrepresenting Westlands' indebtedness. (Ex. 5.)

Fifth, Westlands argues no court order is needed, citing *Concerned Irrigators v. Belle Fourche Irr. Dist.*, 235 F.3d 1139 (8th Cir. 2001) (Ex. 1, p. 2.) But that case confirms that without the required court decree, the contract is not "binding on the United States." (*Id.* at 1144.) The court allowed a private district to invoke a contract term in a separate dispute with landowners only after that contract had avoided challenge for many years. But Westlands' Converted Contract is already mired in controversy over compliance with state and federal laws. Even if willing now to abide a contract that can later be escaped, the government may later view its obligations differently, or may be compelled to do so. It is remarkable that either contracting party would consider basing "rights and obligations" on the fragile distinction between a void and a voidable contract.

Lastly, Westlands fails to disclose the immense risks from premature transition to its unvalidated Converted Contract. Westlands' resolution approving its proposed conversion was extraordinarily broad, including sweeping statements about water uses that bring immense potential for conflict. Lacking in Westlands' letter is any credible basis for setting the parties' "rights and obligations" with a contract that is at best unenforceable against the government, and likely invalid and unlawful. Westlands does not mention that earlier this year it finalized a two-year interim contract for the same water allocation. Moreover, by the Bureau's own recognition, the period for contract conversions under the federal WIIN Act, Pub. Law 114-322, § 4011, extends until December 16, 2021. (https://www.usbr.gov/mp/wiin-act/docs/faqs.pdf.) More than ample time is available to finally determine whether the Converted Contract is unlawful and incapable of securing the court order required by law and Westlands' own water contract.

Westlands' contract is the largest in the Central Valley Project. Its heavily criticized proposal for contract conversion is of great concern to water users throughout California, especially in the Delta region and the Trinity River watershed. We trust that the Bureau will take this matter seriously, and decline to enable Westlands to evade the court order requirement in view of the material misrepresentations and omissions in its May 26 letter.

Respectfully,

Supervisor Chuck Winn
San Joaquin County
Board of Supervisors, District 4

Supervisor Katherine M. Miller
San Joaquin County
Board of Supervisors, District 2

cc: Thomas Birmingham
[General Manager, Westlands Water District]

Jon Rubin
[General Counsel, Westlands Water District]

William Chisum
[Kronick, Mosovitz, Tiedemann & Girard]

EXHIBIT 1

Westlands Water District
3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

May 26, 2020

VIA ELECTRONIC MAIL ONLY

Ernest Conant, Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation
2800 Cottage Way, MP-100
Sacramento CA 95825
E-Mail: EConant@USBR.Gov

Re: Contract Between the United States and Westlands Water District San Luis Unit and Delta Division and Facilities Repayment, Contract No. 14-06-200-495A-IR1-P

Dear Mr. Conant:

On October 15, 2019, at a regular meeting, the Board of Directors ("Board") of Westlands Water District ("District") adopted Resolution No. 119-19, through which the Board authorized the District's President to execute the Contract Between the United States and Westlands Water District San Luis Unit and Delta Division and Facilities Repayment, Contract No. 14-06-200-495A-IR1-P ("Repayment Contract"). As you are aware, Article 46 of the Repayment Contract provides that the Repayment Contract shall not be binding on the United States until the District secures a final decree confirming the proceedings on the part of the District for the authorization of the execution of the Repayment Contract.

The District filed an action to obtain this decree on October 25, 2019, but for multiple reasons, the Court was not able to validate the District's proceedings prior to the Court closing for judicial business in response to the COVID-19 pandemic and the proclamations of emergency by Governor Gavin Newsom. The Court has announced it will remain closed until May 29, 2020; therefore, the District will not be able to obtain a validation judgment prior to the Repayment Contract's effective date, June 1, 2020.

The proceedings on the part of the District to authorize execution of the Repayment Contract complied with the law, and no one has initiated legal action to challenge the lawfulness of those proceedings. The meeting of the District's Board – the proceedings – at which the Board authorized execution of the Repayment Contract were properly noticed, open to the public, and afforded the public an opportunity to comment, in full compliance with the Brown Act, California Government Code sections 54950 *et seq.* No member of the public complained about the District's compliance with the Brown Act, either prior to or at the October 15, 2019, meeting at which the Board adopted Resolution No. 119-19. Nor has anyone requested that the District take

action to correct an asserted violation of the Brown Act, and therefore, a Brown Act challenge would be generally barred at this time. (California Government Code § 54960.1).

Through Resolution No. 119-19, the District Board found that execution of the Repayment Contract was statutorily and categorically exempt from compliance with the California Environmental Quality Act ("CEQA"), and no member of the public commented on these findings prior to adoption of Resolution No. 119-19. On October 17, 2019, the District filed notices of exemption with the State Clearinghouse. No person or entity filed a CEQA action against the District within the statute of limitations, which expired on November 21, 2020. (Public Resources Code § 21167).

Under California's "reverse validation" statute, any action seeking to challenge the District's proceedings to authorize execution of the Repayment Contract would be barred by the 60-day statute of limitations in California Code of Civil Procedure sections 860 and 863. (*California Commerce Casino, Inc. v. Schwarzenegger*, 146 Cal.App.4t h 1406, 1420 (2007)). Moreover, there is a history of nearly 60 years between the United States and the District, which reflects the District's ability and commitment to satisfy its contractual obligations to the United States. For these reasons it appears that the United States' interest served by the requirement for a validation judgment have largely been satisfied.

The purpose of this letter is to request that you confirm the District's understanding that its inability to obtain a validation judgment does not render the Repayment Contract void. Indeed, the United States Court of Appeals for the Eighth Circuit addressed this issue in *Concerned Irrigators v. Belle Fourche Irrigation Dist.*, 235 F.3d 1139 (8th Cir., 2001):

> Federal law gives the United States authority to enter into repayment contracts with irrigation districts, but specifies that these contracts are not "binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid." 43 U.S.C. § 511 (1994). Even if the United States is not bound by the ... contract because it was not judicially confirmed, the contract is not necessarily invalid. Cf. Restatement (Second) of Contracts § 7 & cmt. a (1979) (where a party has the power to avoid the legal relations created by a contract, that contract is voidable but not void). There is no evidence that the United States has ever attempted to escape any obligation created by the contract. The lack of judicial confirmation does not invalidate the ... contract.

(*Id.* at 1144.)

The District intends to diligently prosecute its validation action upon the reopening of the California courts, and the District is confident it will obtain a final decree confirming the proceedings on its part for the authorization of the execution of the Repayment Contract. However, like the circumstances considered by the Court of Appeals in *Concerned Irrigators*, it is the District's understanding the Repayment Contract will control the rights and obligations of the United States

and the District after its effective date, June 1, 2020, notwithstanding the District inability to obtain a final decree confirming its proceedings to authorize the execution of this Repayment Contract.

In addition, because many other Central Valley Project contractors that converted their agricultural water service contracts to repayment contracts are likely facing the same challenges in obtaining a final decree confirming their proceedings to authorize the execution of their repayment contracts, Reclamation may want to confirm that their repayment contracts will control the rights and obligations of the United States and the contractors notwithstanding their failure to obtain a validation judgment.

If you have questions concerning this request, please contact me at your convenience.

Very truly yours,

Thomas W. Birmingam
General Manager

cc: Amy Aufdemberge, Assistant Regional Solicitor

EXHIBIT 2

United States Department of the Interior

BUREAU OF RECLAMATION
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO:
CGB-100
2.2.4.22

MAY 28 2020

VIA ELECTRONIC MAIL

Thomas W. Birmingham
General Manager
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056

Subject: Contract Between the United States and Westlands Water District San Luis Unit and Delta Division and Facilities Repayment, Contract NO. 14-06-200-495A-IR1-P (Repayment Contract)

Dear Mr. Birmingham:

This letter responds to your letter of May 26, 2020. In that letter, you indicated that Westlands Water District ("District") filed a judicial action on October 25, 2019 to obtain a decree of validation of the subject contract referenced above. However, for various reasons, the court was not able to validate the District's proceedings prior to the court closing for business in response to the COVID-19 pandemic and emergency proclamations by California Governor Newsom. Additionally, because the court has announced it will remain closed until May 29, 2020, the District will not be able to obtain a validation judgment prior to the Repayment Contract's effective date of June 1, 2020.

By this letter, the Bureau of Reclamation ("Reclamation") confirms its understanding that the District's inability to obtain a validation judgment does not render the Repayment Contract void. More specifically, Reclamation confirms its understanding that the Repayment Contract will govern the rights and obligations of the United States and the District after the Repayment Contract's effective date, June 1, 2020, notwithstanding the District's inability to obtain a final decree confirming its proceedings to authorize the execution of this Repayment Contract. *See*, 43 USC § 511.

Please let me know if you have any questions. Thank you.

Sincerely,

Ernest A. Conant

Digitally signed by Ernest A. Conant
Date: 2020.05.28 12:39:28 -07'00'

Ernest A. Conant
Regional Director

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division	Entered by:
TITLE OF CASE: **Westlands Water District vs All Persons Interested**	
MINUTE ORDER	Case Number: **19CECG03887**

Date: March 16, 2020 **Re: Decision**

Department: **502** Judge/Temporary Judge: **Alan Simpson**

Court Clerk: **N. Capalare** Reporter/Tape: **N/A** ☐ Contested

Appearing Parties:

Plaintiff: ☐ appearing on behalf of Plaintiff

Defendant: ☐ appearing on behalf of Defendant

☐ Off Calendar

☐ Set for at Dept for

The Court having taken the February 27, 2020 motion for Validation of "Converted Contract" under submission, now takes the matter out from under submission and adopts the 2/27/20 tentative ruling as the final order. (see attached tentative ruling)

Document received by the CA 5th District Court of Appeal.

(19) **Tentative Ruling**

Re: ***Westlands Water District v. All Persons Interested***
Superior Court Case No. 19CECG03887

Hearing Date: February 27, 2020 (Department 502)

Motion: by Westlands Water District for Validation of "Converted Contract"

Tentative Ruling:

To deny.

Explanation:

1. Untimely Answers

> "We view the time limit established by section 862 like a statute of limitations. Put differently, if any interested party appears in a validation action after the time period permitted by the applicable summons, the government would have a valid defense, preventing that interested party from further challenging the government's proposed action."
>
> *San Diego v. San Diegans for Open Government* (2016) 3 Cal. App. 5th 568, 579.

"The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action." *McLeod v. Vista USD* (2008) 158 Cal. App. 4th 1156, 1166 (*rev. denied*). In construction of Code of Civil Procedure section 862, "[o]ur primary goal is to implement the legislative purpose." *Lateef v. City of Madera* (2020) 2020 WL 746176, *4, Case No. F076227. Interpreting the statute to bar late filing honors the plain language of the statute as well as its purpose.

The answers of all but Central Delta Water Agency and South Delta Water Agency were filed after the December 16, 2019 deadline set forth in the Summons, and are therefore untimely.

2. Validation Actions Generally

> "Validation proceedings are a procedural vehicle for obtaining an expedited but definitive ruling regarding the validity or invalidity of certain actions taken by public agencies. (Code Civ. Proc., § 860 et seq.) They are expedited because they require validation proceedings to be filed within 60 days of the public agency's action (Code Civ. Proc., §§ 860 & 863); they are

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> given preference over all other civil actions (*id.*, § 867) . . . They are definitive because they are in rem proceedings that, once proper constructive notice is given (*id.*, §§ 861, 862), result in a judgment that is binding ... against the world, and cannot be collaterally attacked, even on constitutional grounds. By providing a protocol for obtaining a prompt settlement of all questions about the validity of its action . . . validation proceedings provide much-needed certainty to the agency itself as well as to all third parties who would be hesitant to contract with or provide financing to the agency absent that certainty."

Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency (2016) 1 Cal. App. 4th 1684, 1096 (internal quotes and case citations omitted).

"Of course, not all actions of a public agency are subject to validation. The statutes defining validation proceedings do not specify the types of public agency action to which they apply; instead, they establish a uniform system that other statutory schemes must activate by reference." (*Id.* at 1097, internal quotes and citations omitted.)

3. Availability of Validation Proceeding for the Converted Contract

a. Not Under Water Code Section 35855

The specific statute for validation proceeding on this type of contract is stated by Westlands to be Water Code section 35855. The comments to the 1961 amendment of Water Code section 35855 noted the prior version expressly allowed a validation action for a "proposed contract." The amendment took out "proposed." It is a tenet of statutory construction that where the Legislature has chosen to delete a provision, the Court cannot interpret the statute to put it back in. "The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision." *Gikas v. Zolin* (1993) 6 Cal. 4th 841, 861. The Legislature did not intend that Courts make such advisory opinions on proposed contracts after 1961. This contract does not qualify for validation under that statute. But it is not the only one cited.

b. General Validation Statutes for Debt Obligations

> "Government Code section 53511 makes validation proceedings available 'to determine the validity of [a local agency's] bonds, warrants, *contracts*, obligations or evidences of indebtedness.' (Government Code section 53511(a)), italics added.) Although 'contracts' could be read to reach *all* contracts, the courts have defined it by reference to the clause in which it has been used, and thus to reach only those contracts 'that are in the nature of, or directly relate to a public agency's bonds, warrants or other evidences of indebtedness.' (*Kaatz , supra,* 143 Cal. App. 4th at pp.

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> 40, 42 . . . *Friedland, supra,* 62 Cal. App. 4th at p. 843 . . . 'contracts' in this statute do not refer generally to all public agency contracts, but rather to contracts involving financing and financial obligations."

Purchase contracts are not subject to validation under this statute. See *Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency, supra,* 1 Cal. App. 5th at 1099. There, the plaintiff sought invalidation of a contract to purchase stock by a water agency from a retail water purveyor. The Court found such action was not properly subject to validation. See also *San Diego County Water Authority v. Metropolitan Water Dist. Of Southern California* (2017) 12 Cal. App. 5th 1124, finding an agency's action challenging rates was not a proper validation action. In *Phillips v. Seely* (1974) 43 Cal. App. 3d 104, the Court found that a contract obligation the County to pay $12,500 a month for legal services to indigent defendants was not the type of contract subject to validation proceedings. In *Smith v. Mt. Diablo USD* (1976) 56 Cal. App. 3d 412, the Court found that a purchase contract by a school district did not fall under Code of Civil Procedure section 864.

Code of Civil Procedure section 864 does permit validation of proposed contracts: "For purposes of this chapter, bonds, warrants, contracts, obligations, and evidences of indebtedness shall be deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance approving the contract and authorizing its execution." *City of Ontario v. Superior Court* (1970) 2 Cal. 3d 335, 343-344, confirmed general validation was available for contracts of indebtedness.

Unless the Converted Contract can be considered a contract for indebtedness, it does not yet qualify for a validation action.

c. The Converted Contract Has Some Provisions Subject to Validation

Para. 1.(i)(1) defines "Existing Capital Obligation" as the "remaining amount of construction costs or other capitalized costs allocable to the Contractor . . ." "Repayment Obligation" is defined in para. 1.(x) as that "for water delivered as irrigation water shall mean the Existing Capital Obligation discounted by ½ of the treasury rate, which shall be the amount due and payable to the United States . . ." under the WIIN Act.

"Water Infrastructure Improvements for the Nation (WIIN) Act: Bureau of Reclamation and California Water Provisions," updated December 14, 2018,[1] discusses numerous provisions of the WIIN Act, but of particular interest for this case is Section 4011: "Accelerated Repayment and Surface Water Storage Account," starting on page 22. These publications are cited by California appellate courts. See, e.g., *In re A.A.* (2016) 243 Cal. App. 4th 765, 773; *Legal Services for Prisoners with Children v. Bowen*

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[1] See https://crsreports.congress.gov/product/pdf/R/R44986

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(2009) 170 Cal. App. 4th 447, 456-457, *People v. Salcido* (2019) 42 Cal. App. 5th 529, 539, fnt. 3.

This shows that the contract at issue in this case is, in part, one for faster repayment of debts incurred to the Bureau of Reclamation for infrastructure used to store and move water around California. Thus the contract at issue meets the requirements, at least in part, for a validation action under Government Code section 53511 and Code of Civil Procedure section 864.

The Converted Contract does not meet such requirements for provisions unrelated to debt because it is a proposed contract, not an executed contract.

4. The Converted Contract Lacks Material Terms.

In the Appendix of Evidence submitted by Westlands ("AOE") Vol. II, page 108, paragraph 8, the draft resolution states: "The President of the District is hereby authorized to execute and deliver the Converted Contract in substantially the form attached hereto, with such additional changes and/or modifications as are approved by the President of the District, its General Manager, and its General Counsel." The resolution itself has that language as well. AOE, Vol. II, page 144. Exhibits A, B, C, and D to the Converted Contract are missing from all materials submitted to the Court. Exhibit D is the repayment page.

The proposed judgment seeks a ruling that "the Converted Contract is in all respects valid under applicable California Law and binding upon Westlands." Given that the contract terms, including repayment terms, are not certain, and that the contract may be changed or modified, validation is not appropriate. It is not possible to make the determinations sought where no final contract is presented for validation.

Westlands' Declarant Gutierrez states he does not anticipate any major changes, but the validation statutes do not encompass judicial approval of incomplete contracts. Given the estimate for the repayment amount is over $362,000,000 (Ex. 12 to Westlands' Exhibits), the absence of the actual final amount and payment schedule render the proposed contract lacking in material terms and incomplete.

5. Brown Act Issues

> "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on

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remaining informed so that they may retain control over the instruments they have created."

Government Code section 54950.

"As a remedial statute, the Brown Act must be construed liberally in favor of openness so as to accomplish its purpose." 9 Witkin, California Procedure (5th Ed. March 2019 Update), "Administrative Procedure, section 18.

Brown Act issues are raised by Westlands' request for a judgment that "all of the proceedings related to the Westlands' approval of the Converted Contract were in all responses legal and valid . . ." (Prop. Judgment, para. 4.) Government Code sections 54954.1 and 54954.2 set forth certain requirements for public meetings and public notice of such meetings.

The Declaration of Ms. Ormone states that the Agenda was posted on the District's Website on October 10, 2019 for the October 15, 2019 meeting. But the document itself, which states it is a copy, lists October 9, 2019 as the posting date (See AOE 11 at the bottom). She also states that a revised Agenda was posted on October 10, 2019. But Exhibit 6 states that the revised agenda was posted earlier, on October 8, 2019. (AOE 17.) Each document states it is a copy only, and that the original is signed by the secretary, but the original is not provided for either one. The conflicts render the evidence of posting unreliable, and fail to prove posting was correctly done.

For meetings occurring after January 1, 2019, Government Code section 54954.2(a)(2) also requires that such agenda be posted "on the primary Internet Web site homepage . . . through a prominent, direct link . . ." The declaration offered says only that the agenda was posted on the website, but not the specific weblink, and provides no copies of the webpage where it was posted.

No agenda packet is provided, so it is not possible to determine if the packet provided the information necessary to support the meeting. Agenda packets must be available to the public. Government Code sections 54954.1 and 54957.5(a). As the particular packet is not provided to the Court, the requested finding of compliance with the Brown Act cannot be made.

Pursuant to 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: _____ (Judge's initials) **on** 2/26/20 (Date).

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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, a California Water District vs. All Persons Interested in the Matter of the Contract Between the United States and Westlands Water Discrict Providing for Project Water Service, San Luis Unit and Delta Division and Facilities Repayment

CASE NUMBER:
19CECG03887

CLERK'S CERTIFICATE OF MAILING

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

Minutes/Order

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: 03/16/2020

Clerk, by _____, Deputy
N. Capalare

David C. Palmer
Stradling Yocca Carlson & Rauth, P.C.
660 Newport Center Drive, Suite 1600
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S. Dean Ruiz
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Adam Keats
Center For Food Safety
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2nd floor
San Francisco, CA 94111

☐ Clerk's Certificate of Mailing Additional Address Page Attached

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EXHIBIT 4

SOLURI MESERVE
a law corporation

tel: 916.455.7300 · fax: 916.244.7300
510 8th Street · Sacramento, CA 95814

January 8, 2020

SENT VIA U.S.P.S FIRST-CLASS MAIL & EMAIL (eleal@usbr.gov)

Erma Leal
Repayment Specialist - SCCAO-445
Department of Interior | Bureau of Reclamation
Interior Region 10 - California - Great Basin
South-Central California Area Office
1243 N Street, Fresno, California 93721

RE: Comments Westlands WD Conversion Contract for 1.15 MAF & Exhibits under the WIIN Act § 4011

Dear Ms. Leal:

These comments are submitted on behalf of the Local Agencies of North Delta ("LAND") and San Joaquin County regarding the above-referenced draft Prepayment Contract ("draft contract") recently negotiated between the United States and Westlands Water District ("WWD"). LAND is a coalition of reclamation, levee and water districts in the northern Delta covering about 120.000 acres. Two-thirds of the legal Delta is located within San Joaquin County, and the Delta comprises over one-third of San Joaquin County's ("County") total area. Approximately 167,000 people live in the San Joaquin County portion of the Delta, and those cities and communities rely in significant part on the Delta for their water supplies. The Delta supports a $5.2 billion annual agricultural industry, and approximately forty percent (40%) of those farms are located in San Joaquin County. A large portion of the Delta's recreational activities are also centered in San Joaquin County.

LAND and the County note that requests to extend the comment period on the Draft EIR were denied, even though the Bureau of Reclamation ("Bureau") designated the review period to occur during months with major holidays and planned vacations. This timing inhibited the public's ability to meaningfully comment on the contract. In addition, access to the contract exhibits was delayed, further hindering public review. Moreover, the Bureau's notice for the current comment period fails to mention compliance with the National Environmental Policy Act ("NEPA"). Before making a decision, the Bureau must complete review of the contract under NEPA.

LAND and the County are concerned that a permanent contract for WWD would create and compound misplaced reliance on the dependability of the CVP water supply. Already, extensive planting of permanent crops, water transfers and other development

has resulted in significant unmet demand, overdrafting of the groundwater basins, violation of water quality standards, degradation of water quality, damage to fish and wildlife and failure to meet requirements for protection of endangered species. In addition, WWD is relying on imported water from the Delta to meet the requirements under the Sustainable Groundwater Management Act ("SGMA"). For instance, WWD's draft Groundwater Sustainability Plan indicates WWD will receive an additional 90,000 acre-feet to 218,000 acre-feet on an average annual basis, depending on the district's allocation.[1] This increased pressure to export yet more water from the Delta does not bode well for Delta water quality and negatively impacts local land uses in the Delta that rely on availability of high quality water.

The contract also fails to ensure that drainage from lands within WWD will actually be provided as required by the San Luis Act of 1960 PL 86-488. Selenium in the drainage from west side lands has been identified as the cause of deformations in waterfowl resulting in the closure of Kesterson Reservoir, which was to be part of the San Luis Drain. Without a drainage outlet from the San Joaquin Valley, continuing to import water from the Delta to irrigate west side lands overloads the valley with salt, making much of the land unfarmable and the San Joaquin River unacceptably contaminated. Despite this, the contract does not ensure that these serious drainage issues are addressed by the responsible parties, and appears to instead foist that obligation on the general public.

Approval of the requested permanent contract is also inconsistent with state policy to reduce reliance on the Delta. (Cal. Wat. Code, § 85021.) Rather than reduce reliance on the Delta, the contract doubles down on increased reliance to meet WWD demand, as well as demands of those to whom WWD may ultimately sell Delta water. While WWD avoided the need to find consistency with the Delta Plan by exempting its approval of the contract from the California Environmental Quality Act, WWD should take steps to reduce reliance on the Delta consistent with state law. In addition, exports from the Delta of water necessary to provide water to which the Delta users are entitled and water needed for salinity control and an adequate supply for Delta users are prohibited. (*United States v. State Water Resources Control Board* (1986)182 Cal. App. 3d. 82, 139, citing Cal. Water Code, §§ 12202, 12203, 12204.) A permanent contract also threatens to violate these vital protections for Delta water users.

* * *

Thank you for considering these comments and feel free to contact my office with any questions.

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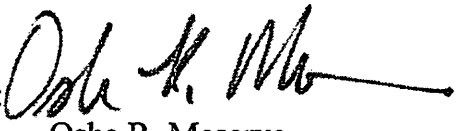
[1] See Westlands Water District, Westside Subbasin Draft Groundwater Sustainability Plan, p. 4-6, available at: https://wwd.ca.gov/draft-gsp/.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

ORM/mre

EXHIBIT 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10053 / March 9, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3752 / March 9, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17162

In the Matter of **WESTLANDS WATER DISTRICT, THOMAS W. BIRMINGHAM, and LOUIE DAVID CIAPPONI** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Westlands Water District ("Westlands"), Thomas W. Birmingham, and Louie David Ciapponi (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of $77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.[2] For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

Respondents

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of $120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

7. **Louie David Ciapponi** age 64, of Fresno, California, was the Assistant General Manager of Westlands from June 1995 to June 2012. Since June 2012 Ciapponi has been employed as the General Manager of a neighboring water district that had previously been annexed by Westlands. While employed at the other water district, Ciapponi continued to perform many of the same functions for Westlands that he had previously performed. He is also presently serving as Westlands' Secretary, a position he has held since 1995, and was Westlands' Treasurer from 1995 to December 16, 2015.

Facts

Westlands' Rate Covenant

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

9. In prior debt offerings, Westlands had covenanted, to the fullest extent permitted by law, to fix and prescribe, and collect customers' water rates and charges at least sufficient during each fiscal year to yield net revenues equal to 125% of the debt service payable in that fiscal year. The purpose of this covenant is to assure investors and others, including ratings agencies, that Westlands will have sufficient ability to meet its debt service obligations on the

bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately $10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.

14. Some of the reclassified assets came from "payable" accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands' Board. Westlands decided to reclassify $8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record $1.46 million of revenue in 2010 by means of a "return of equity" to landowners in the district. The "equity" came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in $9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in "a little Enron accounting." Birmingham went on to state: "We're not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we're doing is we're taking money and saying we are reclassifying it from an account payable to income. And I'm told by Mr. Ciapponi that that satisfies – and he's vetted it – that that satisfies our debt coverage with the bonds."

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands' customers were not made aware that their "equity" had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers' water rates.

The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11– less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading." Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland's net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland's net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

Legal Discussion

Respondents' Violations

26. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the "knew or should have known" standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at *16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff'd, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at *102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff'd, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

Cooperation and Remedial Efforts

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of $125,000 and Birmingham shall pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of $20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: $10,000 due ten (10) days from the date of the Order, and $10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary