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9 of California

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF YUBA**

13 CHARLES SHARP

14 Petitioner/Plaintiff,

15 v.

16 THE NORTH YUBA WATER
17 DISTRICT; THE NORTH YUBA
18 WATER DISTRICT BOARD OF
19 DIRECTORS, DOUG NEILSON,
20 TERRY BROWN, GARY
21 HAWTHORNE and ERIC HANSARD
22 in their individual and their official
23 capacities; THE YUBA COUNTY
24 DEPARTMENT OF ELECTIONS;
25 TERRY A. HANSEN, the YUBA
26 COUNTY CLERK-RECORDER/
27 ELECTIONS in her official and
28 individual capacity; and DOES 1
THROUGH 100, INCLUSIVE

Respondents/Defendants

NORTHSTAR

Real Party in Interest

Case No.

VERIFIED COMPLAINT FOR:

(1) WRIT OF MANDATE;
(2) INJUNCTIVE RELIEF;
(3) DECLARATORY RELIEF; and
(4) RESTITUTION

Request for Jury Trial

1 Plaintiff CHARLES SHARP hereby brings this lawsuit to restrain, prevent and
2 remedy via restitution and other equitable relief, the illegal expenditure of, waste of, or
3 injury to, the estate, funds, or other property of the North Yuba Water District, to enforce
4 the Cortese-Knox Act, to enforce the equal protection of the laws, and hereby alleges:

5 ***THE PARTIES***

6 1. Plaintiff CHARLES SHARP (“Plaintiff”) is a California Citizen and a
7 resident of Yuba County. Plaintiff is one of Defendant’s customers for agricultural water.
8 Plaintiff resides, works and owns property within Defendant’s geographical service
9 boundaries. Within one year prior to the commencement of this action, Plaintiff has paid
10 taxes that directly and indirectly funds Defendant NORTH YUBA WATER DISTRICT
11 (“NYWD”), to Yuba County and to the State of California.

12 2. Defendant NYWD is a public agency located in Yuba County subject to the
13 laws of the State of California.

14 3. Defendants DOUG NEILSON, TERRY BROWN, GARY HAWTHORNE
15 AND ERIC HANSARD are named both in their individual capacities (“Individual
16 Defendants”) and as members of the NORTH YUBA WATER DISTRICT BOARD OF
17 DIRECTORS (“Defendant Board of Directors”). All of the Individual Defendants/Board
18 of Directors reside in Yuba County.

19 4. THE YUBA COUNTY DEPARTMENT OF ELECTIONS (“Defendant
20 Dept. of Elections”) is a division of Yuba County and is subject to California law.

21 5. TERRY A. HANSEN is the YUBA COUNTY CLERK-
22 RECORDER/ELECTIONS (“Defendant County Clerk”) is an official of Yuba County and
23 is responsible for organizing and carrying out elections.

24 6. Real Party in Interest, NORTHSTAR, is a contractor who has incurred fees
25 and costs associated with the pipeline projects that this Complaint seeks to enjoin.

26 7. The true names and capacities of Defendants named herein as Does 1 through
27 100, inclusive, whether individual, corporate, associate or otherwise are unknown to
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1 Plaintiff, who therefore sues said Defendants by fictitious names pursuant to California
2 Code of Civil Procedure section 474. Plaintiff will amend this Complaint to show such
3 true names and capacities of Does 1 through 100, inclusive, when they have been
4 determined.

5 ***JURISDICTION***

6 8. Plaintiff realleges Paragraphs 1 through 7 as though fully incorporated
7 herein. Plaintiff seeks relief pursuant to Code of Civil Procedure §§ 525, 526a, 1060 and
8 1085.

9 ***VENUE***

10 9. Plaintiff realleges Paragraphs 1 through 8 as though fully incorporated
11 herein.

12 10. The property, valuable assets, action, which are the subject of this action, and
13 all Defendants are all located within Yuba County.

14 ***CONTROLLING LAW***

15 11. Plaintiff realleges Paragraphs 1 through 10 as though fully incorporated
16 herein.

17 12. Code of Civil Procedure § 526a(a) states in pertinent part:

18 An action to obtain a judgment, restraining and preventing
19 any illegal expenditure of, waste of, or injury to, the estate,
20 funds, or other property of a local agency, may be
21 maintained against any officer thereof, or any agent, or
22 other person, acting in its behalf, either by a resident
23 therein, or by a corporation, who is assessed for and is liable
24 to pay, or, within one year before the commencement of the
25 action, has paid, a tax that funds the defendant local
26 agency...

27 13. Code of Civil Procedure § 1060 provides the public the right to seek a
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1 determination of the parties' statutory and/or contractual rights.

2 14. Code of Civil Procedure § 525 et al. provides the public with the right to
3 injunctive relief to prevent or address irreparable injury.

4 15. Code of Civil Procedure § 1085 et al. provides the public with the right to
5 enforce, via court order, the performance of ministerial duties and/or the right to correct
6 abuses concerning discretionary duties.

7 16. Government Code § 56100 et seq. provides the exclusive mechanism for
8 NYWD to change its geographical boundaries and/or sphere of influence.

9 17. Elections Code §§ 22000 and 22001 provide the sole means by which
10 NYWD can change its director division boundaries.

11 ***GENERAL ALLEGATIONS***

12 18. Plaintiff realleges Paragraphs 1 through 17 as though fully incorporated
13 herein.

14 19. As a California citizen, a Yuba County resident, a person who is a customer
15 of NYWD, pays taxes to NYWD, Yuba County and California, as registered voter and a
16 holder of fundamental constitutional rights of equal protection under the law, Plaintiff has
17 a present beneficial interest in the outcome of these proceedings and has a clear, present
18 and substantial right to the relief sought herein. The community he is part of, including
19 being an NYWD irrigation water customer, shares his interest in this litigation.

20 20. Defendants have failed to fulfil their regulatory, statutory and constitutional
21 duties to Plaintiff, as described herein.

22 21. Plaintiff and those who live within and are current and potential customers
23 of NYWD will suffer irreparable harm if their regulatory, statutory and constitutional rights
24 are not protected and the relief they request is not obtained.

25 22. As described herein, actual and existing controversies exists between the
26 parties. Based on the concrete, non-hypothetical facts that currently exist, a judicial
27 determination of the issues pertaining to the actual controversies between the Parties is
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1 appropriate at this time under the circumstances and is necessary to clarify the respective
2 rights and duties of the Parties and to guide them to preserve their legal rights.

3 ***FACTS***

4 **DEFENDANT WATER DISTRICT FORMATION HISTORY:**

5 23. Plaintiff realleges Paragraphs 1 through 22 as though fully incorporated
6 herein.

7 24. NYWD was initially formed as an irrigation district, but later expanded its
8 service to provide water to residential customers.

9 25. NYWD is a multi-county agency, as a portion of its northern boundary extends into
10 Butte County. Yuba is the principal county, and the Yuba County Local Agency Formation
11 Commission (“LAFCo”) has claimed jurisdiction over NYWD. NYWD must obtain
12 LAFCo approval to change its geographical boundaries.

13 **NYWD ASSETS:**

14 **The Forbestown Ditch:**

15 26. NYWD owns and operates a water conveyance canal known as the
16 “Forbestown Ditch” (the “FTD”) - a waterway excavated by gold miners in the 1800’s.
17 The FTD is one of NYWD’s most valuable assets. When maintained, the FTD has the
18 carrying capacity of over 60 cubic feet per second.

19 27. The waters flowing down the FTD are part of the riparian wetlands and
20 waters of the State of California.

21 28. When maintained, the water conveyed by the FTD serves existing customers
22 and could, if claimed, serve the water need for new irrigation and residential customers,
23 support enhanced fire protection, and would provide future opportunities for sales of excess
24 water.

25 29. NYWD customers who live along the FTD appreciate the FTD for its scenic,
26 aesthetic and natural value, as a barrier to wildlife and as a source of water for “green belt”
27 fire prevention and desiccating the FTD and depriving NYWD taxpayers and ratepayers of
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1 the inherent values described above of the historic watered earthen ditch.

2 30. The FTD is a NYWD asset worthy of protection from waste, injury and/or
3 illegal spending in connection with the asset.

4 **Water Permits:**

5 31. NYWD holds two water permits that, combined, provide NYWD with the
6 right to take 23,700 acre feet per year from water that flows through Forebstown Ditch.

7 32. These water permits are a valuable NYWD asset worthy of protection from
8 waste, injury and/or illegal spending in connection with the asset.

9 **Revenues:**

10 33. Non taxpayer funded revenues derived from customer payments, taxpayer
11 funded revenues and taxpayer funded grant awards are a valuable NYWD asset worthy of
12 protection from waste, injury and/or illegal spending.

13 **FIRST CAUSE OF ACTION**

14 **Waste of Water: Forbestown Ditch Pipeline Project**

15 **(Against NYWD, Defendant Board of Directors, the Individual Defendants)**

16 **[Code of Civil Procedure § 526a]**

17 34. Plaintiff realleges Paragraphs 1 through 33 as though fully incorporated
18 herein.

19 35. In or around April 2017, NYWD hired real party in interest NORTHSTAR,
20 to design a pipeline to be placed in the Forbestown ditch. The pipeline design is completed,
21 and:

- 22 a. builds the pipeline out of HDPE ADS N-12 Pipe similar to the failed
23 piping in the Dobbins/Oregon House Irrigation Canal pipeline;
24 b. places the pipeline above ground in the Forbestown Ditch;
25 c. carries a maximum of 24 cubic feet per second;
26 d. denies NYWD residents living near the Forbestown Ditch the ability
27 to use water to protect their homes and land from fires;
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- 1 e. unlike a concrete or steel pipe, cannot be pressurized to carry more
2 water or deliver it farther; and
3 f. in the event of a fire, the plastic pipe itself will melt, resulting in a
4 cascade failure.

5 36. When maintained, the FTD has the carrying capacity of more than 60 cubic
6 feet per second.

7 37. The FTD pipeline is designed to carry a maximum 24 cubic feet per second,
8 which is 15 to 20 percent lower than the capacity NYWD is permitted to take per the two
9 permits described herein and lower than the FTD's capacity (FTD has the potential carrying
10 capacity of 60 to 100 cubic feet per second).

11 38. If the pipeline is built, it will prevent the FTD from carrying any water
12 beyond 24 cubic feet per second.

13 39. Failing to take the water allowed by the two permits described herein and
14 preventing the FTD from conveying water up to its capacity will result in the loss of
15 NYWD's right to take all permitted water, thereby damaging, injuring and wasting
16 NYWD's property, estate and funds.

17 40. Plaintiff seeks the relief detailed in his Prayer for Relief, below.

18 **SECOND CAUSE OF ACTION**

19 **Waste of Money: Money Spent on Forbestown Ditch Pipeline Project**
20 **(Against NYWD, Defendant Board of Directors, the Individual Defendants)**

21 **[Code of Civil Procedure § 526a]**

22 41. Plaintiff realleges Paragraphs 1 through 40 as though fully incorporated
23 herein.

24 42. NYWD have expressed its intention to actually build the FTD pipeline but,
25 other than hiring a consultant to design a pipeline, the NYWD Board has taken no other
26 steps to carry out this plan.

27 43. The money Defendants have paid for pipeline plans has been wasted and any
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1 money they spend in the future because no pipeline – regardless of its design – can be built
2 in the Forbestown Ditch as NYWD currently envisions and because additional design
3 modifications will be required due to required CEQA review.

4 44. Before any intention to build a pipeline manifests, NYWD must comply with
5 CEQA (Public Resource Code §§ 21000 – 21189). The basic purposes of CEQA are (1) to
6 inform governmental decision makers and the public about the potential, significant
7 environmental effects of proposed activities; (2) identify ways that environmental damage
8 can be avoided or significantly reduced; (3) prevent significant, avoidable damage to the
9 environment by requiring changes in projects through the use of alternatives or mitigation
10 measures when the governmental agency finds the changes to be feasible; and (4) Disclose
11 to the public the reasons why a governmental agency approved the project in the manner
12 the agency chose if significant environmental effects are involved. (14 CCR 15002(a).)
13 The purpose of CEQA is to compel government at all levels to make decisions with
14 environmental consequences in mind. (14 CCR 15003(g).)

15 45. NYWD must satisfy all of CEQA’s procedural requirements prior to any
16 actual construction. (14 CCR 15004(a) and (b).) These procedural steps require NYWD to
17 perform essential official acts, include but are not limited to:

- 18 a. a formal determination of whether the activity is a “project” as CEQA
19 defines the term. (Government Code § 21065.)
- 20 b. obtain and formally adopt a final project description that includes
21 resolving issues of easement and property owner clearances or
22 successful acquisition of property via eminent domain, and
23 construction crew access points (the project description may change
24 as the CEQA compliance process goes forward);
- 25 c. prepare a CEQA checklist that provides NYWD with a description of
26 all the things NYWD needs to look at and evaluate in order to be
27 CEQA compliant, including performing studies the checklist
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- indicates;
- d. conducting and formally adopting a “preliminary review” in order to determine if a project is subject to CEQA.
 - e. conduct and formally adopt an “initial study” - a preliminary assessment of the potential environmental impacts of the proposed project. The purpose of the Initial Study is to determine whether a Negative Declaration or Environmental Impact Report (EIR) must be prepared.
 - f. If the Initial Study determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an EIR must be prepared. If the Initial Study determines that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment, then a Negative Declaration should be prepared.
 - g. If the project does not qualify for a negative declaration, NYWD must prepare and formally adopt an “environmental impact report” (EIR) for projects that may have significant environmental effects. (Public Resource Code §§ 21100, subd. (a), 21151, subd. (a)). “Environmental effects” is broadly defined to include noise, traffic, air quality, aesthetics, and cultural impacts.
 - h. If, as the CEQA compliance process moves forward, the project changes, then NYWD must prepare and formally adopt a supplemental EIR.
 - i. If the EIR identifies cultural and/or environmental impacts connected to the project, then NYWD must prepare and adopt a “mitigation

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monitoring and reporting plan” (“MMRP”) and, for cultural impacts, retain a Cultural Resource Monitor, and, for environmental impacts, retain one or more Biological Resource Monitor, all of which will implement and monitor the MMRP and perform a compliance survey every year for 10 years;

- j. the project MMRP will change depending on what is found during construction. If human remains are found, a new and different MMRP is required. Different impacted species of plants and animals require different MMRPs.
- k. NYWD must submit all CEQA documents and studies to the California State Water Resource Control Board (SWRCB) for review and comment;
- l. All CEQA related documents are then revised to comply with SWRCB directives/comments.
- m. NYWD must file a “notice of determination” with the State Office of Planning and Research and with the County Clerk.
- n. NYWD must release CEQA documents to the public for comment and conduct public hearings during the CEQA compliance process. (14 CCR 15002(j).)

46. All of the foregoing steps, and more, are required before any construction begins on any FTD pipeline project because the FTD pipeline project, as currently envisioned, is not CEQA exempt. It will have significant direct or indirect environmental effects. As currently envisioned, the pipeline will carry a maximum 24 cubic feet per second, which is 15 to 20 percent lower than the permitted capacity. No water other than the water carried by the pipeline will flow through the FTD, drying out the FTD and denying water to the plants and animals that live in the FTD and depend on its water, including but not limited to the protected Foothill yellow-legged frog, Ringtail Cat; and

1 freshwater shrimp.

2 47. Additionally, the ditch and the land bordering the ditch were inhabited first
3 by Native Americans and then gold miners. Cultural and historical artifacts have been
4 found in and around the FTD, which means an archeological study will be required prior
5 to any construction activities.

6 48. Per CEQA, the public has the right to challenge all steps taken to advance
7 the pipeline project.

8 49. NYWD cannot afford the costs associated with CEQA compliance, and that
9 means the pipeline will never be built. NYWD does not have the financial resources
10 required to build the pipeline per the final designs NORTHSTAR has provided. Because
11 NYWD chose to pay for a final design *before* engaging in the CEQA compliance process,
12 it is highly likely that the design of the pipe will change (14 CCR 15002(h)(1)) at great
13 additional cost, to address significant direct or indirect environmental, cultural and
14 historical impacts the CEQA compliance process reveals. It is likely that the CEQA
15 process will result in an alternative means of providing water that prevents significant,
16 avoidable damage to the environment (14 CCR 15002(h)(4); 14 CCR 15021(a)(2)), such
17 as repair and maintenance of the FTD.

18 50. CEQA mandates public agencies to integrate the CEQA compliance process
19 with project design because the CEQA compliance process can affect the final design. (14
20 CCR 15004(b)(1) and (4); 14 CCR 15004(c); 14 CCR 15006(a)). NYWD chose to pay
21 substantial monies drawing final plans for the pipeline without integrating the CEQA
22 compliance process with those efforts.

23 51. Paying any money to design the pipeline without integrating that process
24 with CEQA means that NYWD has, essentially, bought tires for a car it cannot afford. The
25 money spent to design a pipeline has been wasted and should be recovered.

26 52. And, for the same reasons, any money spent in the future connected with a
27 project that will never be completed will be wasted and should be enjoined.
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1 NYWD was considering implementing was not provided to the public or board members
2 until the proposed map was put on display on two blow-ups facing the audience during the
3 hearing.

4 59. During the “hearing” the NYWD Board imposed the same time constraints
5 on upon speakers as NYWD imposes on members of the public commenting during non-
6 hearing matters.

7 60. During this hearing, Mr. Maupin stated:

- 8 a. NYWD’s action to redraw director divisions was forced upon NYWD
9 by changes in NYWD’s geographical boundary due to BVID’s
10 annexation of parcels three years earlier.
- 11 b. When asked which parcels had been annexed and which NYWD had
12 annexed, Mr. Maupin stated that he didn’t know.
- 13 c. Mr. Maupin didn’t know if more parts of NYWD would be de-
14 annexed in the future.

15 61. At NYWD’s March 11, 2011, meeting, Defendant Board passed Resolution
16 No. 27 -743 that stated in part:

17 WHEREAS, on January 23, 2020, the District authorized the General
18 Manager to submit a request to Yuba Local Agency Formation Commission
19 ("LAFCo") to modify the District's boundaries, detaching territory that is
20 within the Browns Valley Irrigation District from the District; and

21 WHEREAS, following LAFCo's review and approval of the District's
22 request to modify its boundaries, each of the District's divisions are no longer
23 of equal size;

24 62. NYWD’s geographical boundary line change, including but not limited to
25 detachments/de-annexations – intertwined with NYWD’s change of its director divisions
26 –are actions that are within Yuba County Local Agency Formation Commission (LAFCo)
27 “sole and exclusive authority” (Government Code § 56100) and only after complex due
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1 process including LAFCo public hearings and appeals (Government Code § 56100 et seq.)

2 63. The due process protections detailed in Government Code § 56100 et seq.
3 were not exhausted. Consequently, any geographical line changes NYWD had
4 promulgated and adopted - and consequently, any changes to director division boundaries
5 - are unlawful until the process described in Government Code § 56100 *et seq.* is exhausted.

6 64. Plaintiff seeks orders from this Court invalidating any change in NYWD's
7 geographical boundaries until the LAFCo approval process has been completed and until
8 LAFCo approves any boundary change.

9 65. Plaintiff seeks additional relief as detailed in his Prayer for Relief, below.

10 **FOURTH CAUSE OF ACTION**

11 **Challenge to NYWD Director Division Changes**

12 **(Against NYWD, Defendant Board of Directors, THE YUBA COUNTY**

13 **DEPARTMENT OF ELECTIONS; TERRY A. HANSEN, the YUBA COUNTY**

14 **CLERK-RECORDER/ELECTIONS)**

15 **[Cal Const, Art. I § 7; the Equal Protection Clause of the Fourteenth Amendment]**

16 66. Plaintiff realleges Paragraphs 1 through 65 as though fully incorporated
17 herein.

18 67. After NYWD's aforementioned February 27, 2020, meeting, the next
19 meeting of the NYWD board took place on March 11, 2020 - a special meeting requiring
20 a minimum of 24 hours notice. The agenda for this meeting did not notify the public of a
21 second public hearing to discuss the proposal, but, instead stated:

22 C. ADOPTION OF RESOLUTION #20-743:

23 Establishing Director Boundaries and Identification

24 Number of Each Division.

25 68. Prior to and during this agenda item, NYWD did not provide the public with
26 a copy of the "Board Packet" provided to all NYWD board members prior to the March
27 11th meeting. The Board Packet contained many documents pertaining to the proposal to
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1 revise NYWD’s director’s divisions, including a map showing the proposed changes.
2 Neither the Board Packet or any other materials or information pertaining to the proposal
3 were posted on NYWD’s website prior to the March 11th meeting. Nor were Board Packets
4 provided to the public at the March 11th meeting.

5 69. After taking public comment on the agenda item, the NYWD board approved
6 the proposal, adopting a map that (1) changed NYWD’s geographical boundaries and
7 sphere of influence by removing inhabited parcels (“detachment” or “de-annexation”) from
8 NYWD’s territory; and (2) based on those de-annexations, changed the voting divisions
9 within the new District boundaries.

10 70. At NYWD’s March 11, 2020, meeting, the presiding officer of Defendant
11 Board announced “this is the time and place for a public hearing” prior to the adoption of
12 Resolution No. 27 -743. After this impromptu, unnoticed hearing, Defendant Board voted
13 to approve Resolution No. 27-743, which stated in part:

14 SECTION I: Establishment of Divisions. Subject to the
15 completion of LAFCo's review and approval of the District's
16 boundary modification request, the District hereby establishes
17 five Director divisions within the District's jurisdiction with the
18 boundaries and identifying number of each division set forth in
19 "Exhibit A," attached hereto and incorporated by this reference.
20 Upon LAFCo's review and approval of the District's boundary
21 modification request, the divisions established in Exhibit A
22 shall become operative.

23 71. Mr. Maupin has stated an intention to submit the revised map to Defendants
24 Dept. of Elections and County Clerk for the purpose of updating election materials to
25 prepare for the November elections.

26 72. Donna Hillegass, Yuba County Deputy County Clerk/Reorder has stated that
27 Defendant YUBA COUNTY CLERK-RECORDER will accept any map that NYWD
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1 certifies and that Defendant YUBA COUNTY CLERK-RECORDER does not consider
2 whether or not a certified map is accurate.

3 **UNLAWFUL CRITERIA:**

4 73. The NYWD board of directors must comply with “Chapter 8 (commencing
5 with Section 22000) of Division 21 of the Elections Code” to change the boundaries of
6 director divisions within NYWD.

7 74. Elections Code § 22000 states that the NYWD board of directors may “after
8 each federal decennial census, and using that census as a basis, adjust the boundaries of
9 any divisions so that the divisions are, as far as practicable, equal in population.” Elections
10 Code § 22000 also provides a list of specific factors a local agency is allowed to consider
11 in addition to population when deciding where to draw division lines.

12 75. During NYWD’s February 27th meeting, General Manager Jim Maupin
13 stated that data taken from the 2010 federal census, assessor records and county voter
14 records to identify registered/eligible voters, and that the final boundary lines equalized the
15 number of registered/eligible voters in each division.

16 76. Total population – not eligible voters – is the measure used to rebalance
17 divisions. Total population, as determined by the most recent federal census.
18 Consequently, the changes to director division boundaries NYWD made using data from
19 assessor records and county voter records to identify registered/eligible voters, with the
20 final boundary lines equalized - not according to population, but by the number of
21 registered/eligible voters in each division - is unlawful and invalid.

22 **STALE CENSUS DATA:**

23 77. NYWD relied, in part, on stale population data from the 2010 federal census.

24 78. The 2020 decennial federal census is being completed with up-to-date
25 population data for the population NYWD serves.

26 79. NYWD is basing its decision to change its director division boundaries on
27 data from the 2010 federal census. This data is 9 years old and is therefore
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1 constitutionally suspect. Consequently, the division boundary lines NYWD has adopted
2 are inaccurate.

3 80. NYWD has a need for stability and continuity in the organization of the
4 legislative system. Once the 2020 federal census is completed, the new census data will
5 require NYWD to redraw its director division boundaries again, causing electoral
6 confusion and disruption at significant unnecessary public expense.

7 **INSUFFICIENT NUMBER OF HEARINGS:**

8 81. Before changing the boundaries of director divisions, public agencies are
9 required to hold two public hearings. Elections Code § 22001 states that, prior to adjusting
10 the boundaries of a district “the governing body of the district shall hold at least one *public*
11 *hearing on the proposal* to adjust the boundaries of the division *prior to the public hearing*
12 at which the governing body votes to approve or defeat the proposal.

13 82. NYWD published only one meeting agenda (February 27, 2020) that noticed
14 a hearing connected to NYWD’s planned change to NYWD’s director division boundaries.

15 **PACKING AND CRACKING:**

16 83. NYWD was initially created as an irrigation district providing water for
17 agricultural water users.

18 84. Prior to the changes NYWD made to its director division boundaries,
19 irrigation water customers were spread out within three of five NYWD director divisions.

20 85. The new director division boundaries NYWD adopted on March 11th
21 concentrates – i.e., “packing” - the vast majority of NYWD irrigation water customers into
22 one division, thereby diluting their votes and their ability to influence the NYWD board in
23 favor of their interests in NYWD protecting and enhancing the supply of irrigation waters.

24 86. At the same time, the new director division boundaries NYWD adopted on
25 March 11th reduces the numbers of irrigation water customers in two other NYWD director
26 divisions – i.e., “cracking” - thereby diluting their votes and their ability to influence the
27 NYWD board in favor of their interests in NYWD protecting and enhancing the supply of
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1 irrigation waters.

2 87. The packing and cracking described above means that the changes NYWD
3 has made to director division boundaries results in irrigation customer voters having less
4 opportunity than did residential water users who compete for water resources to participate
5 in the political processes and to elect legislators of their choice, denying NYWD irrigation
6 water customers the rights guaranteed by the Equal Protection Clause of the Fourteenth
7 Amendment of the US Constitution embodied in California law, including but not limited
8 to Cal Const, Art. I § 7.

9 **DISINFRANCHISING VOTERS:**

10 88. The map NYWD adopted on March 11th excludes current NYWD voters who
11 live on property that NYWD imagines has been or will be de-annexed. However, the
12 property of these voters cannot de-annexed without LAFCo approval of the map NYWD
13 adopted on March 11th,

14 89. The map NYWD adopted on March 11th, disenfranchises present voters in
15 violation of the rights guaranteed to them by the Equal Protection Clause of the Fourteenth
16 Amendment of the US Constitution embodied in California law, including but not limited
17 to Cal Const, Art. I § 7.

18 90. Plaintiff seeks the relief detailed in his Prayer for Relief, below.

19 **FIFTH CAUSE OF ACTION**

20 **Waste of Money: Money Spent in Reliance on the March 11, 2020, Map**
21 **(Against THE YUBA COUNTY DEPARTMENT OF ELECTIONS; TERRY A.**
22 **HANSEN, the YUBA COUNTY CLERK-RECORDER/ELECTIONS)**

23 **[Code of Civil Procedure § 526a]**

24 91. Plaintiff realleges Paragraphs 1 through 90 as though fully incorporated
25 herein.

26 92. As demonstrated above, NYWD cannot revise its geographical boundary
27 map - and, consequently, cannot alter its director division boundaries until and unless
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1 LAFCo approved of the de-annexing of parcels currently within NYWD’s geographical
2 boundary.

3 93. Any money Defendants Dept. of Elections and County Clerk spend to
4 prepare for the November election based on geographical and director division boundary
5 changes NYWD proposes prior to LAFCo approval would be a premature, unlawful, waste
6 of money.

7 94. Plaintiff seeks orders enjoining Defendants Dept of Elections and County
8 Clerk from receiving and/or acting upon the geographical and division changes and
9 ordering same Defendants to utilize the prior director divisions when making preparations
10 for any pending election until such time as Defendant NYWD demonstrates to this Court
11 that it has lawfully revised its geographical and director division boundaries.

12 95. Plaintiff seeks additional relief detailed in his Prayer for Relief, below.

13 **SIXTH CAUSE OF ACTION**

14 **Waste of Money Spent Revising Director Division Boundaries**

15 **(Against NYWD, Defendant Board of Directors, the Individual Defendants**

16 **[Code of Civil Procedure § 526a]**

17 96. Plaintiff realleges Paragraphs 1 through 95 as though fully incorporated
18 herein.

19 97. NYWD based its decision to redraw director division boundaries per
20 Elections Code § 22000, which mandates that any new boundaries will be based on “federal
21 decennial census” data to assure that each new division is “equal in population.”

22 98. NYWD is relying on population data from the 2010 decennial federal census.

23 99. The 2020 decennial federal census is being completed with up-to-date
24 population data for the population NYWD serves.

25 100. Any funds NYWD has spent revising its director division boundaries based
26 on data that is 10 years old is wasted money because the result will be inaccurate, will
27 require an additional update after the 2020 census is complete, and further expenditures
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1 based on the inaccurate map should be enjoined.

2 101. Plaintiff seeks the relief detailed in his Prayer for Relief, below.

3 **SEVENTH CAUSE OF ACTION**

4 **Breach of Fiduciary duty**

5 **(Against NYWD and Defendant Board of Directors)**

6 **[The Public Trust Doctrine; California Constitution, Article X, section 2;**

7 **Code of Civil Procedure § 526a]**

8 102. Plaintiff realleges Paragraphs 1 through 101 as though fully incorporated
9 herein.

10 103. The Public Trust Doctrine imposes a fiduciary duty upon NYWD and its
11 directors in favor of NYWD's residents and customers to manage the beneficial use of the
12 FTD to the fullest extent of which they are capable, and to prevent the waste of the FTD's
13 water carrying capacity, to maintain resident enjoyment of living near the FTD, and
14 resident expectations of using FTD waters for fire suppression purposes.

15 104. NYWD and its directors have violated their fiduciary duty by failing to
16 prevent damage to the FTD by failing to maintain and repair the FTD, resulting in a drop
17 in water carrying capacity, damaging NYWD resident enjoyment of living near the FTD
18 by building a pipeline that will compromise resident enjoyment of the FTD as described
19 herein, and preventing the use of water from the FTD for fire suppression purposes.

20 105. Plaintiff seeks the relief detailed in his Prayer for Relief, below.

21 **EIGHTH CAUSE OF ACTION**

22 **Unlawful Gift of Public Funds**

23 **(Against NYWD, Defendant Board of Directors, the Individual Defendants)**

24 **[California Constitution, Article XVI §6]**

25 106. Plaintiff realleges Paragraphs 1 through 105 as though fully incorporated
26 herein.

27 107. On or about mid-January, 2020, Defendants caused to be published – both in
28

1 print and mailed out to all NYWD water customers and posted online a newsletter (the
2 “Publication”) that included criticism of NYWD customers who, because of NYWD’s lack
3 of transparency, have exercised their fundamental right to access government-held records
4 by making formal, written requests for records maintained and used by NYWD.

5 108. The Publication “called out” Plaintiff, naming him personally, criticizing his
6 records requests, making it appear as if Plaintiff was doing something wrong for exercising
7 his rights, and damaging his reputation.

8 109. NYWD appropriated \$40,000 to Smart Marketing for the creation of the
9 Publication.

10 110. The part of the Publication that publicly “called out” and criticized Plaintiff
11 for exercising his rights to access records did not promote a valid and substantial public
12 purpose within NYWD’s authorized mission.

13 111. Therefore, the part of the \$40,000 that compensated Smart Marketing for the
14 section of the Publication that “called out” Plaintiff was an unlawful gift of public funds.

15 112. Plaintiff seeks the relief detailed in his Prayer for Relief, below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for the following relief:
18

19 **As to Plaintiff’s First Cause of Action:**

- 20
- 21 1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants
22 NYWD and Defendant Board of Directors to take all actions necessary to avoid
23 and prevent any waste of, or injury to, NYWD’s estate – including but not limited
24 to actual and potential water - funds or property pertaining to the Forbestown
25 Ditch Pipeline project as described herein.
 - 26 2. Injunctive Relief: Plaintiff requests that Defendants NYWD and Defendant Board
27 of Directors be enjoined from wasting, injuring NYWD’s estate, funds or property
28 pertaining to the Forbestown Ditch Pipeline project as described herein.

- 1 3. Restitution: Plaintiff requests an order requiring the Individually Named Directors
2 to reimburse NYWD for the tax money and revenue wasted on the Forbestown
3 Ditch Pipeline project.
- 4
- 5 4. Any other relief the Court deems appropriate.

6 **As to Plaintiff's Second Cause of Action:**

- 7 1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants
8 NYWD and Defendant Board of Directors to take all actions necessary to avoid
9 and prevent any waste of, or injury to, NYWD's estate, funds or property
10 pertaining to the Forbestown Ditch Pipeline project as described herein due to the
11 failure to integrate the CEQA process into the pipeline design.
- 12
- 13 2. Injunctive Relief: Plaintiff requests that Defendants NYWD and Defendant Board
14 of Directors be enjoined from wasting, injuring NYWD's estate, funds or property
15 pertaining to the Forbestown Ditch Pipeline project as described herein due to the
16 failure to integrate the CEQA process into the pipeline design.
- 17
- 18 3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective
19 parties' rights and duties regarding the duty to prevent waste by integrating the
20 CEQA compliance process into pipeline design process.
- 21
- 22 4. Restitution: Plaintiff requests an order requiring the Individually Named Directors
23 to reimburse NYWD for the tax money and revenue wasted on the Forbestown
24 Ditch Pipeline project due to the failure to integrate the CEQA compliance process
25 into the Forbestown Ditch pipeline design process.
- 26
- 27 5. Any other relief the Court deems appropriate.

28 **As to Plaintiff's Third Cause of Action:**

- 1 1. Mandate: Plaintiff requests that a writ of mandate issue voiding NYWD and
2 Defendant Board of Directors actions adopting the Map and further ordering
3 Defendants NYWD and Defendant Board of Directors to comply with the Cortese-
4 Knox Act, obtaining LAFCo approval for de-annexations, before taking any
5 actions based on the NYWD boundary map Defendant Board of Directors
6 approved on March 11, 2020 (the “Map”) including but not limited to revising
7 NYWD’s director division boundaries and any transmittal of the Map to any
8 public agency or division/department of any public agency other than LAFCo until
9 NYWD and Defendant Board of Directors demonstrate to the Court that LAFCo
10 authorizes the de-annexations and has approved the Map.
- 11 2. Injunctive Relief: Plaintiff requests that Defendants NYWD and Defendant Board
12 of Directors be enjoined from taking any actions based on the Map, including but
13 not limited to revising NYWD’s director division boundaries and/or transmitting
14 the Map to any public agency or division/department of any public agency –
15 unless and until NYWD and Defendant Board of Directors demonstrate to the
16 Court that LAFCo authorizes the de-annexations and has approved the Map.
- 17 3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective
18 parties’ rights and duties regarding NYWD and Defendant Board of Directors’
19 duty to exhaust the process for boundary revision and de-annexation mandated in
20 the Cortese-Knox Act before taking any action based on the Map.
- 21 4. Any other relief the Court deems appropriate.
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- 23

24 **As to Plaintiff’s Fourth Cause of Action:**

- 25 1. Mandate: Plaintiff requests that a writ of mandate issue voiding NYWD and
26 Defendant Board of Directors actions adopting the Map and further ordering
27 Defendants NYWD and Defendant Board of Directors to comply with the
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Elections Code and Equal Protection Clause of the United States Constitution before revising NYWD’s director division boundaries.

5. Injunctive Relief: Plaintiff requests that Defendants NYWD and Defendant Board of Directors be enjoined from taking any actions based on the Map, including but not limited to revising NYWD’s director division boundaries and/or transmitting the Map to any public agency or division/department of any public agency – unless and until NYWD and Defendant Board of Directors demonstrate to the Court that they have complied with the Elections Code and Equal Protection Clause of the United States Constitution before taking any action that revises NYWD’s director division boundaries.

6. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective parties’ rights and duties regarding NYWD and Defendant Board of Directors’ duty to comply with the Elections Code and Equal Protection Clause of the United States Constitution before taking any action that revises NYWD’s director division boundaries.

2. Any other relief the Court deems appropriate.

As to Plaintiff’s Fifth Cause of Action:

1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants YUBA COUNTY DEPARTMENT OF ELECTIONS; TERRY A. HANSEN, the YUBA COUNTY CLERK-RECORDER/ELECTIONS to take all actions necessary to avoid and prevent any waste of, or injury to, Yuba County funds spent to prepare for any pending election due to the receipt of the Map until Defendants NYWD and Board of Directors demonstrate to the Court that LAFCo authorizes the de-annexations and has approved the Map and that Defendants NYWD and Board of Directors have complied with the Elections Code and Equal

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Protection Clause of the United States Constitution.

2. Injunctive Relief: Plaintiff requests that Defendants YUBA COUNTY DEPARTMENT OF ELECTIONS; TERRY A. HANSEN, the YUBA COUNTY CLERK-RECORDER/ELECTIONS be enjoined from take any action in reliance upon the map to prepare for any pending election until Defendants NYWD and Board of Directors demonstrate to the Court that LAFCo authorizes the de-annexations and has approved the Map and that Defendants NYWD and Board of Directors have complied with the Elections Code and Equal Protection Clause of the United States Constitution.

3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective parties' rights and duties regarding the duty to prevent waste of funds by taking no action in reliance on the Map until Defendants NYWD and Board of Directors comply with the Elections Code and Equal Protection Clause of the United States Constitution.

7. Restitution: Plaintiff requests an order requiring TERRY A. HANSEN, the YUBA COUNTY CLERK-RECORDER/ELECTIONS to reimburse Yuba County for any tax money and revenue spent taking any action in reliance upon the Map unless and until Defendants NYWD and Board of Directors demonstrate to the Court that they have complied with the Elections Code and Equal Protection Clause of the United States Constitution before they take any action that revises NYWD's director division boundaries.

4. Any other relief the Court deems appropriate.

As to Plaintiff's Sixth Cause of Action:

1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants NYWD and Defendant Board of Directors to take all actions necessary to avoid

1 and prevent any waste of, or injury to, NYWD's estate, funds or property
2 pertaining to redrawing NYWD's director divisions as described herein due to the
3 failure to comply with the Elections Code and the Equal Protection Clause of the
4 United States Constitution.

- 5
- 6 2. Injunctive Relief: Plaintiff requests that an order issue enjoining Defendants
7 NYWD and Defendant Board of Directors to wasting NYWD funds by taking any
8 action based on the Map until these Defendants demonstrate to the Court that they
9 have complied with the Elections Code and the Equal Protection Clause of the
10 United States Constitution.
- 11 3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective
12 parties' rights and duties regarding the duty to prevent waste by complying with
13 the Elections Code and the Equal Protection Clause of the United States
14 Constitution prior to taking action to revise NYWD's director division boundaries.
- 15
- 16 4. Restitution: Plaintiff requests an order requiring Individually Named Directors to
17 reimburse NYWD for the tax money and revenue wasted taking any action in
18 reliance upon the Map unless and until Defendants NYWD and Board of Directors
19 demonstrate to the Court that they have complied with the Elections Code and
20 Equal Protection Clause of the United States Constitution before they take any
21 action that revises NYWD's director division boundaries.
- 22 5. Any other relief the Court deems appropriate.

23 **As to Plaintiff's Seventh Cause of Action:**

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- 25 1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants to
26 fulfil their fiduciary duties owed to NYWD's residents and customers and manage
27 the beneficial use of the Forbestown Ditch to the fullest extent of which they are
28 capable, and to prevent the waste of the Forbestown Ditch's water carrying

1 capacity, to maintain resident enjoyment of living near the Forbestown Ditch, and
2 the use of water in the Forbestown Ditch for fire suppression purposes.

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4 2. Injunctive Relief: Plaintiff requests that the Court enjoin Defendants NYWD and
5 Board of Directors from taking any action that compromises the beneficial uses of
6 the Forbestown Ditch, including but not limited to compromising water carrying
7 capacity, the enjoyment of the residents living near the Forbestown Ditch, and
8 their opportunities to use water in the Forbestown Ditch for fire suppression
9 purposes.

10 3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the respective
11 parties' rights and duties regarding Defendant Board of Directors' fiduciary duty
12 to prevent the waste of the FTD's water carrying capacity, to maintain resident
13 enjoyment of living near the FTD, and resident expectations of using FTD waters
14 for fire suppression purposes.

15 4. Any other relief the Court deems appropriate.

16
17 **As to Plaintiff's Eighth Cause of Action:**

18 1. Mandate: Plaintiff requests that a writ of mandate issue ordering Defendants
19 NYWD and Board of Directors to spend public funds only for purposes that promote a
20 valid and substantial public purpose within NYWD's authorized mission.

21 2. Injunctive Relief: Plaintiff requests the Court enjoin Defendants NYWD and
22 Board of Directors from spending funds for the purpose of chilling the statutory and
23 constitutional rights of citizens and to avoid transparency obligations.

24 3. Declaratory Relief: Plaintiff asks the Court to issue a declaration of the
25 respective parties' rights and duties regarding whether or not Defendants NYWD and
26 Board of Directors' expenditure of public funds for the purpose of called out" Plaintiff,
27 naming him personally and criticizing his records requests promoted a valid and substantial
28 public purpose within NYWD's authorized mission or was a gift of public funds because

1 the expenditure did not promote a valid and substantial public purpose within NYWD's
2 authorized mission

3 4. Any other relief the Court deems appropriate.

4 Dated: April 28, 2020

PAUL NICHOLAS BOYLAN, ESQ.

7 Paul Nicholas Boylan, Attorney for Petitioner,
8 CHARLES SHARP

9
10 **VERIFICATION**

11 I, CHARLES SHARP, declare:

12 1. I am the Plaintiff in this action. I make this verification of my own
13 knowledge. I hereby verify that the factual matters stated in this Petition/Complaint are
14 known to me personally and that they are true or that I believe them to be true.

15 I declare under penalty of perjury under the laws of California that the foregoing is
16 true and that this verification was executed in Oregon House California, on April 28 2019.

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19 CHARLES SHARP

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21 Charles Sharp
22 4/28/2020
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