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Paul Nicholas Boylan SBN 140098
PAUL NICHOLAS BOYLAN, ESQ.
POB 719
Davis CA 95617

Telephone: 530 400 1653
Facsimile: 877 400 1693
Email: pnboylan@gmail.com

Attorney for GIDEON BEINSTOCK, MARIEKE FURNEE, ISRAEL PERLA, JEANETTE CAVALIERI and the People of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YUBA

GIDEON BEINSTOCK, MARIEKE
FURNEE, ISRAEL PERLA, JEANETTE
CAVALIERI

Plaintiff/Petitioner

v.

THE NORTH YUBA WATER AGENCY

Defendant/Respondent

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF FOR
VIOLATIONS OF THE RALPH M.
BROWN ACT**

1 This action seeks relief from the failure of THE NORTH YUBA WATER AGENCY
2 (“Respondent”) to comply with the Ralph M. Brown Act (Government Code § 54950 *et*
3 *seq.*; “Brown Act), thereby denying the public’s right to the protections afforded by our
4 State’s open government laws and the California Constitution.

5 Petitioners/Plaintiffs GIDEON BEINSTOCK, MARIEKE FURNEE, ISRAEL PERLA,
6 and JEANETTE CAVALIERI (“Petitioners”) seek a writ of mandate and declaratory relief
7 under Government Code §§ 54960, 54950.1 and 54960.2 In this Verified Petition,
8 Petitioners alleges:

9 **THE PARTIES**

10 1. Petitioners are, and at all times mentioned in this petition has been, residents of
11 Yuba County within Respondent’s geographical boundaries, and Respondent’s irrigation
12 water recipients, and, as such, have a beneficial interest in Respondent’s performance of
13 its legal duties and its exercise of discretion so as to fulfill the purposes of the Brown Act .

14 2. Respondent is defined as a “local agency” by Government Code §§ 54951.

15 **FACTS**

16 3. The Brown Act requires all meetings and all actions of a public agency provide the
17 public with notice that an agency may take an action – including but not limited to
18 meeting and votes conducted by the legislative governing body of the agency – before an
19 action is taken. (Government Code § 54954 [72 hours notice for regular meetings] and
20 Government Code § 54955 [24 hours notice for special meetings].

21 4. On or about March 26, 2021, three NYWD Directors met at the Dry Creek
22 Diversion Dam to decide irrigation water issues. This meeting of the NYWD board was
23 held without notice to the public.

24 5. On March 26, 2021, at a Board meeting, NYWD Board of Directors voted to
25 approve and did approve a motion not to release water for irrigation use (the “Motion”).
26 Respondent failed to notify the public that Respondent would discuss and/or act upon the
27 Motion.

1 **FIRST CAUSE OF ACTION**

2 (RELIEF PURSUANT TO GOVERNMENT CODE SECTIONS 54960, 54960.2)
3 [CEASE AND DESIST]

4 6. Petitioners hereby reallege and incorporates herein by this reference Paragraphs 1
5 thorough 5 of this Petition as though set forth herein in full.

6 7. The People of California have elevated the right to transparent government
7 accountable to the people to a right protected by their State Constitution. California
8 Constitution, Article 1, Section 3 (a), states: “[t]he people have the right to instruct their
9 representatives, petition government for redress of grievances, and assemble freely to
10 consult for the common good.”

11 8. California Constitution, Article 1, Section 3(b)(1), states: “The people have the
12 right of access to information concerning the conduct of the people's business, and,
13 therefore, the meetings of public bodies... shall be open to public scrutiny.”

14 9. The right of citizens to instruct their representatives, petition government for
15 redress of grievances, and assemble freely to consult for the common good is dependent
16 on opportunities to access information pertaining to how local government conducts the
17 public's business. Without those opportunities, the public rights to instruct
18 representatives, petition government for redress of grievances, and assemble freely to
19 consult for the common good are meaningless.

20 10. The purpose of the Ralph M. Brown Act is to provide notice and opportunity for
21 members of the public to participate in the decision-making process of local agencies. The
22 failure to comply with the Brown Act as described herein deprives the public of notice
23 and the opportunity to be heard regarding matters of great public interest and importance.

24 11. Government Code § 54954.2(a)(1) states in pertinent part:

25 “(a)(1) **At least 72 hours before a regular meeting**, the legislative body of
26 the local agency, or its designee, shall post an agenda containing a brief
27 general description of each item of business to be transacted or discussed
28 at the meeting, including items to be discussed in closed session....

1 **(c) This section is necessary to implement and reasonably within the**
2 **scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the**
3 **California Constitution.”** (Emphasis added.)

4 12. Government Code § 54954.3(a) states in pertinent part:

5 “... Every agenda for regular meetings shall provide an opportunity for
6 members of the public to directly address the legislative body on any
7 item of interest to the public, before or during the legislative body's
8 consideration of the item, that is within the subject matter jurisdiction of
9 the legislative body, provided that ***no action shall be taken on any item***
10 ***not appearing on the agenda...***” (Emphasis added.)

11 13. On April 23, 2021, Petitioners demanded that Respondent cease and desist the
12 aforementioned Brown Act notice violations per Government Code §§ 54960 and
13 54950.2.

14 14. On May 13, 2021, Respondent refused to cease and desist as Petitioners demanded
15 in their April 23, 2021, letter.

16 15. Respondent’s secret, unnoticed meeting at the Dry Creek Diversion Dam and its
17 failure to provide an unconditional assurance that it will cease and desist as Petitioners
18 demanded manifests the likelihood of continuing to violate the Brown Act.

19 16. Government Code Section 54960(a) provides that any interested persons, such as
20 the Petitioners:

21 “...may commence an action by mandamus, injunction, or declaratory
22 relief for the purpose of stopping or preventing violations or threatened
23 violations of this chapter by members of the legislative body of a local
24 agency or to determine the applicability of this chapter to actions or
25 threatened future action of the legislative body, or to determine whether
26 any rule or action by the legislative body to penalize or otherwise
27 discourage the expression of one or more of its members is valid or invalid
28 under the laws of this state or of the United States, or to compel the
 legislative body to audio record its closed sessions as hereinafter
 provided.”

 17. Without a writ of mandate, as provided for by the Brown Act, Petitioners and
 other interested persons, citizens, and taxpayers will be irreparably harmed because they

1 will be denied notice of and the opportunity to participate in Respondent's meetings and
2 decisions, rights which is guaranteed by law, including but not limited to the
3 constitutional right to petition government.

4 18. Petitioners have complied with all notice and demand requirements set forth in
5 Government Code section 54960.2.

6 19. Respondent has failed to make an unconditional commitment to refrain from
7 similar behavior in the future, as required by Petitioner's Demand and Government Code
8 section 54960.2.

9 20. Therefore, Government Code section 54960.2 specifically authorizes Petitioners to
10 file a lawsuit to determine the applicability of this chapter to any past action if the
11 legislative body fails or refuses to make the unconditional commitment as described in
12 Petitioner's Demand and Government Code section 54960.2.

13
14 **SECOND CAUSE OF ACTION**

15 (RELIEF PURSUANT TO GOVERNMENT CODE SECTION 54960.1)
16 [CURE AND CORRECT]

17 21. Petitioners hereby reallege and incorporates herein by this reference Paragraphs 1
18 thorough 20 of this Petition as though set forth herein in full.

19 22. Respondent has failed to cure and correct the failure to effectively notice its secret
20 March 26, 2021, meeting at the Dry Creek Diversion Dam.

21 23. Government Code section 54960.1 specifically authorizes Petitioners to file a
22 lawsuit to void the Motion.

23 **THIRD CAUSE OF ACTION**

24 (RELIEF PURSUANT TO CODE OF CODE SECTION 54960)
25 [DECLARATORY REIEF]

26 24. Petitioners hereby reallege and incorporates herein by this reference Paragraphs 1
27 thorough 23 of this Petition as though set forth herein in full.

1 25. Code of Civil Procedure § 1060 provides:

2 “Any person ... who desires a declaration of his or her rights or duties with
3 respect to another ... may, in cases of actual controversy relating to the
4 legal rights and duties of the respective parties, bring an original action or
5 cross-complaint in the superior court for a declaration of his or her rights
6 and duties in the premises, including a determination of any question of
7 construction or validity arising under the instrument or contract. He or she
8 may ask for a declaration of rights or duties, either alone or with other
9 relief; and the court may make a binding declaration of these rights or
10 duties, whether or not further relief is or could be claimed at the time....”

11 26. There presently exists, between the Petitioners and Respondent, an actual
12 controversy relating to: (1) the legal rights of Petitioners and other members of the public
13 under the Brown Act; and (2) the ministerial duties imposed upon Respondent by the
14 Brown Act.

15 27. Petitioners request a judicial determination that Respondent has violated and is
16 likely to continue to violate the Brown Act.

17 28. This determination is necessary and proper because Respondent refuses to
18 conform to the requirements of the Brown Act.

19 29. Respondent has a ministerial duty to perform according to the laws of the State of
20 California, including the Brown Act.

21 30. Respondent has failed and refused to perform its ministerial duties as required by
22 the Brown Act.

23 31. Petitioners have a clear, present, and legal right to Respondent's performance of its
24 ministerial duties, as required by the Brown Act.

25 32. Respondent has a present legal duty and present ability to perform its ministerial
26 duties set forth in the Brown Act.

27 33. Petitioners have an interest in having the laws executed and public duties enforced
28 and, therefore, has a beneficial interest in the outcome of the proceedings.

1 34. Petitioners have exhausted their administrative remedies and have no plain,
2 speedy, and adequate remedy for the aforementioned Brown Act violations other than the
3 relief provided by Government Code sections 54960, 54960.1 and 54960.2.

4 35. The violations of the Brown Act described herein were intentionally committed,
5 with Respondent and/or its agents authorized to act on Respondent's behalf, knowing that
6 the Motion violated the public's right to at least 72 hours notice of a potential
7 Respondent's action to stop providing irrigation water to Respondent's irrigation
8 customers, as the Motion effectuated.

9 **WHEREFORE, PETITIONER PRAYS AS FOLLOWS:**

10 1. For a declaration that Respondent violated the California Constitution and the
11 Ralph M. Brown Act.

12 2. For an order directing Respondent to perform as required by the California
13 Constitution and the Brown Act.

14 3. That the Petitioner/Plaintiff recover attorneys' fees incurred in this action.

15 4. For an award of costs incurred in this action.

16 5. For such other and further relief as the court deems just and proper.

17 Dated: May 28, 2021

PAUL NICHOLAS BOYLAN, ESQ.

18 

19 Paul Nicholas Boylan, Attorney for
20 Petitioners/Plaintiffs

21 **VERIFICATION**

22 I, GIDEON BEINSTOCK, declare:

23 I am a Petitioner in this action. I make this verification of my own knowledge. I
24 hereby verify that the factual matters stated in this Petition/Complaint are known to me
25 personally and that they are true.

26 I declare under penalty of perjury under the laws of California that the foregoing is
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1 true and that this verification was executed in Oregon House, California on May 28, 2021.

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