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11 CAVALIERE; DONNA CORSON; ISRAEL PERLA; and CHARLES SHARP

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF YUBA**

14 MARIEKE FURNEE, GIDEON BEINSTOCK;
15 JEANETTE CAVALIERE; DONNA CORSON;
16 ISRAEL PERLA; and CHARLES SHARP

17 Petitioners/Plaintiffs,

18 v.

19 THE NORTH YUBA WATER DISTRICT, and
20 DOES 1 through 100, inclusive,

21 Respondents/Defendants.

22 YOUNG LIFE, INC. a/k/a YOUNG LIFE
23 CAMPAIGN, INC., a Texas Corporation,

24 Real Party in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Date: May 5, 2021

Time: 8:30 a.m.

Dept: 4

Judge: Honorable Stephen W. Berrier

1 Petitioners/Plaintiffs MARIEKE FURNEE, GIDEON BEINSTOCK; JEANETTE
2 CAVALIERE; DONNA CORSON; ISRAEL PERLA; and CHARLES SHARP (“Plaintiffs”) hereby
3 bring this lawsuit to restrain, prevent, and remedy the illegal distribution and waste of water by the
4 Defendant/Respondent North Yuba Water District (“Defendant” or “NYWD”) and hereby allege:

5 **INTRODUCTION**

6 1. This action challenges NYWD’s decision to curtail water deliveries to irrigation
7 customers and approval of an agreement to distribute water from the Forebestown Ditch to Woodleaf
8 Young Life Camp (the “Woodleaf Contract”) in violation of the Water Code, the Reasonable Use
9 Doctrine, NYWD’s own policies and regulations, and without conducting any environmental review
10 under the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.* (“CEQA”).

11 2. Plaintiffs thus seek: (1) a writ of mandate pursuant to CEQA and Sections 1085 and
12 1094.5 of the Code of Civil Procedure setting aside NYWD’s decision to curtail water deliveries to
13 irrigation customers and approval of the Woodleaf Contract for failure to abide by CEQA’s
14 environmental review requirements; (2) a writ of mandate pursuant to Sections 1085 and 1094.5 of the
15 Code of Civil Procedure setting aside NYWD’s approval of the Woodleaf Contract for violations of
16 the Water Code and Reasonable Use Doctrine; (3) a writ of mandate pursuant to Sections 1085 and
17 1094.5 of the Code of Civil Procedure setting aside NYWD’s decision to deny delivery of irrigation
18 water to its customers for the 2021 irrigation season for violations of the Water Code, the Reasonable
19 Use Doctrine, and NYWD’s Irrigation Water Policy and Regulations; (4) declaratory judgment
20 pursuant to Section 1060 of the Code of Civil Procedure; and (5) injunctive relief pursuant to Sections
21 525-526 of the Code of Civil Procedure.

22 **PARTIES, JURISDICTION, VENUE**

23 **Parties**

24 3. Plaintiffs are California Citizens and residents of Yuba County. Plaintiffs are
25 Defendant’s customers for agricultural water. Plaintiffs reside, works, and/or own property within
26 Defendant’s geographical service boundaries. Within one year prior to the commencement of this
27 action, Plaintiffs have paid taxes that directly and indirectly fund Defendant, to Yuba County and to
28 the State of California.

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

3 5. Plaintiffs are informed and believe, and thereupon allege, that Real Party in Interest,
4 YOUNG LIFE, INC. a/k/a YOUNG LIFE CAMPAIGN, INC. (“Younglife”) is, and at all times
5 mentioned herein was, a corporation incorporated under the laws of Texas doing regular business in
6 Yuba County.

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

12 Jurisdiction

13 7. Plaintiffs reallege Paragraphs 1 through 6 as though fully set forth herein. Plaintiffs
14 seek relief pursuant to the U.S. Constitution, the California State Constitution, Water Code section
15 35420, Code of Civil Procedure sections 525, *et seq.*, 1060, 1085, and 1094.5, and Public Resources
16 Code section 21000, *et seq.*

17 8. Plaintiffs have performed any and all conditions precedent to the filing of this Petition.
18 Plaintiffs exhausted any and all administrative remedies required by law by, *inter alia*, participating in
19 the administrative and environmental review process both in writing and orally at the public hearing
20 held on April 23, 2021 approving the water transfer which is the subject of this action (the “Project”).

21 9. Plaintiffs have complied with Public Resources Code § 21167.5 by mailing written
22 notice to Defendant, and proof of service of the letter is attached hereto as **Exhibit “A.”**

23 10. Plaintiffs have complied with Public Resources Code § 21167.6 by filing a request
24 concerning the preparation of the record of administrative proceedings relating to this action
25 concurrently with this Petition, a copy of which is attached hereto as **Exhibit “B.”** Plaintiffs have no
26 plain, speedy, or adequate remedy in the course of ordinary law unless this Court grants the requested
27 writ of mandate to require Defendant to set aside their agreement to transfer water to Real Party in
28 Interest. In the absence of such remedies, Defendant’s approval will remain in effect in violation of

1 state law, causing irreparable harm to Plaintiffs, other nearby property owners and residents, and the
2 environment.

3 11. Sections 21168 and 21168.5 of the Public Resources Code and sections 1085 and
4 1094.5 of the Code of Civil Procedure provide for review in this Court of actions by state agencies and
5 officers to determine whether those actions comply with CEQA. Sections 525-526 of the Code of
6 Civil Procedure provide for an injunction when it appears that Petitioners are entitled to the relief
7 sought, and section 1060 of the Code of Civil Procedure provides for a judicial declaration of
8 Petitioners' rights and Respondents' duties. Accordingly, and based on the facts stated in this Petition,
9 this Court has jurisdiction to grant declaratory and injunctive relief and to issue a writ of mandate on
10 the claims presented here.

11 **Venue**

12 12. Plaintiffs reallege Paragraphs 1 through 11 as though fully set forth herein.

13 13. Defendants, and the acts, which are the subject of this action, are located and took
14 place, respectively, within Yuba County.

15 14. Pursuant to Section 394 of the Code of Civil Procedure, an action against a local
16 agency may be tried in the county where that agency is situated.

17 **CONTROLLING LAW**

18 15. Plaintiffs reallege Paragraphs 1 through 14 as though fully incorporated herein.

19 16. Water Code section 35420 states:

20 All water distributed for irrigation purposes, except as otherwise provided in this article, shall
21 be apportioned ratably to each holder of title to land upon the basis of the ratio which the last
22 assessment against his land for district purposes bears to the whole sum assessed in the district for
23 district purposes.

24 17. Code of Civil Procedure § 1060 provides the public the right to seek a determination of
25 the parties' statutory and/or contractual rights.

26 18. Code of Civil Procedure section 525–526 provide the public with the right to injunctive
27 relief to prevent or address irreparable injury when it appears petitioners are entitled to the relief they
28 seek.

1 19. Code of Civil Procedure section 1085 provides the public with the right to enforce, via
2 court order, the performance of ministerial duties and/or the right to correct abuses concerning
3 discretionary duties.

4 20. Sections 1085 and 1094.5 provide for review in this Court of actions by local agencies
5 and officers to determine whether those actions comply with CEQA.

6 21. Sections 1085 and 1094.5 further provide for review in this Court of actions by local
7 agencies that are not supported by substantial evidence and are a prejudicial abuse of discretion due to
8 the agency's failure to proceed in a manner required by law, respectively.

9 22. Public Resources Code section 21000, *et seq.*, sets forth environmental review
10 requirements for public agencies that undertake public projects that have a potential to cause a direct,
11 or a reasonably foreseeable indirect, effect on the environment.

12 **GENERAL ALLEGATIONS**

13 23. Plaintiffs reallege Paragraphs 1 through 22 as though fully set forth herein.

14 24. As California citizens, Yuba County residents, people who are customers of NYWD,
15 pays taxes to NYWD, Yuba County, and California, and as registered voters and a holders of
16 fundamental constitutional rights of equal protection under the law, Plaintiffs have a present beneficial
17 interest in the outcome of these proceedings and has a clear, present, and substantial right to the relief
18 sought herein. The community she is part of, including being an NYWD irrigation water customer,
19 shares her interest in this litigation.

20 25. Defendant has failed to fulfill its regulatory, statutory, and constitutional duties to
21 Plaintiffs, as described herein.

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

25 27. As described herein, an actual and existing controversy exists between the parties.
26 Based on the concrete, non-hypothetical facts that currently exist, a judicial determination of the issues
27 pertaining to the actual controversies between the Parties is appropriate at this time under the
28

1 circumstances and is necessary to clarify the respective rights and duties of the Parties and to guide
2 them to preserve their legal rights.

3 FACTUAL ALLEGATIONS

4 28. Plaintiffs reallege Paragraphs 1 through 27 as though fully set forth herein.

5 29. NYWD was formed in 1952 under Section 30321 of the Water Code, after which it
6 changed its name from “Yuba County Water District” to “North Yuba Water District.” NYWD
7 encompasses the northeastern portion of Yuba County, and has approximately 2,500 taxpaying parcels
8 and approximately 866 water users—115 irrigation customers and 741 service connections—
9 throughout its service area.

10 30. NYWD’s domestic service connections are served treated water from the Forbestown
11 Treatment Facility (the “FTTF”), which is located near the community of Forbestown. The FTTF
12 receives its water from the Forbestown Ditch and has a maximum capacity of 1.6 cubic feet per
13 second. However, the average flow used by the FTTF is actually approximately 0.5 cfs.

14 31. The southern portion of NYWD’s service area is dominated by NYWD customers who
15 use NYWD’s water supplies for irrigation and fire suppression (the “Irrigators”). Water is conveyed
16 to the Irrigators through the Oregon House Dobbins Canal (“OHDC”) from Dry Creek.

17 **Summary of Relevant NYWD Water Rights**

18 32. NYWD has two primary water rights at issue in this proceeding:

19 a. **Dry Creek.** NYWD has the right to divert up to 21.4 cfs/6,060 AFY from Dry
20 Creek, subject to maintaining at least 4 cfs of flows for “the protection of fish and wildlife. Water
21 conveyed by the FTD can be diverted into Costa Creek, which conveys water into Dry Creek. At a
22 point south of the community of Brownsville, a diversion dam on Dry Creek can divert water into the
23 OHDC for use by the Irrigators.

24 b. **Slate Creek, Lost Creek, and South Fork Feather River.** NYWD has the right
25 to use up to 23,700 acre-feet per year (“AFY”) from Slate Creek (a tributary to the North Fork of the
26 Yuba River), Lost Creek, and South Fork Feather River for consumptive uses within NYWD’s service
27 area. These water supplies originate in Lost Creek, South Fork Feather River, and Slate Creek, and
28 are then diverted by South Feather Water & Power Authority (“SFWPA”) into the Sly Creek

1 Reservoir. From the Sly Creek Reservoir, the collected waters can be released to run through the
2 Woodleaf Power Tunnel and into a diversion facility called SF14-Woodleaf Penstock (“SF14”), both
3 of which are owned and operated by SFWPA. At SF14, the water can be sent (i) west to the Woodleaf
4 Powerhouse or (ii) south into the FTD, which converges with Costa Creek, and then to Dry Creek near
5 Brownsville. From there, NYWD has the capability of diverting these water supplies into the OHDC
6 the Irrigators.

7 33. The Lost Creek, South Fork Feather River, and Slate Creek water supplies are affected
8 by a 2005 agreement between SFWPA and NYWD. Under the 2005 Agreement, NYWD is required
9 to release water from the FTD at up to 11 cfs to SFWPA, for irrigation purposes, at a turnout located
10 downstream from OHDC called “WD6.” According to NYWD, FTD experiences up to 35% losses.
11 As such, when SFWPA demands 11 cfs, approximately 16.92 cfs must be released from SF14 (11 cfs
12 / 0.65 = 16.92 cfs). NYWD also asserts the capacity of the FTD is 22 cfs, but USGS data show the
13 flows through the FTD have regularly been up to 24 cfs in the recent past.

14 34. Under the 2005 Agreement, NYWD can divert up to 3,700 AFY of its water through
15 the FTD, free of charge. The water received by SFWPA at WD6 is not counted against the 3,700 AFY
16 that NYWD receives for free; however, the 3,700 AFY is reduced by the 35% losses in the FTD.
17 NYWD also has the capability of using more than the 3,700 AFY; however, because the diversions
18 into FTD do not go through SFWPA’s hydroelectric facility, to use amounts in excess of 3,700 AFY,
19 NYWD must pay SFWPA a fee based on SFWPA’s loss of hydroelectric revenues.

20 **NYWD’s March 26, 2021, Vote to Curtail Water Deliveries to the Irrigators**

21 35. The Irrigators rely on regular irrigation deliveries from NYWD for fire suppression,
22 crops and grazing land, and for domestic uses. The need for water is particularly acute due to the
23 increased frequency of wildfires in the area. Nearly all of NYWD is located within the highest level
24 Fire Hazard Severity Zone (FHSZ), according to the State of California.¹ CalFire regularly uses water
25 from the Irrigators’ ponds to fight fires. In addition, the delivery of water reduces wildfire impacts by
26 reducing the amount of dry brush that can accelerate wildfires.

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28 _____
¹ *California Fire Hazard Severity Zone Viewer, available at*
<https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414>

1 36. On March 26, 2021, NYWD held a public meeting. The agenda did not include any
2 proposed action to curtail deliveries to the Irrigators. Despite this, at the public meeting, Director Eric
3 Hansard made “a motion that [NYWD] forego the irrigation season altogether.” The motion was
4 approved on a 4-1 vote.

5 37. During the course of the discussion on Director Hansard’s motion, the NYWD Board
6 and General Manager made several unsubstantiated and conflicting statements as to why the water
7 supplies could not be delivered to the Irrigators. NYWD’s rationale can be boiled down to the
8 following points, none of which are based on confirmed, actual conditions:

- 9 • The flows in Dry Creek are only 5.8 cfs, and NYWD needs to allow 4 cfs of
10 bypass flows for fish, leaving only 1.8 cfs for the Irrigators
- 11 • NYWD cannot operate the OHDC unless it can divert 12 cfs; and
- 12 • NYWD is unable to supplement its water supplies from the FTD because the
13 capacity of the FTD is only 22 cfs, and there is no water left after (i) the 11.0 cfs
14 requested by SFWPA, (ii) the 1.6 cfs for the FTTF, and (iii) 35% losses.

15 38. These rationalizations are demonstrably inaccurate. And during the course of the
16 meeting, it quickly became clear the decision to curtail irrigation deliveries was being made in
17 response to the Irrigator’s opposition to NYWD’s proposed piping of the FTD. For example, Director
18 Hansard—who made the motion—blamed “a small group” that had been “constantly [trying] to stop
19 our pipeline project going forward” for NYWD’s decision to curtail water deliveries to the Irrigators.
20 During the meeting, Director Hansard was plainly agitated by the Irrigators’ opposition to the FTD,
21 asserting it was their opposition that caused NYWD to curtail deliveries. Director Hansard was also
22 agitated that the Irrigators had campaigned against the sitting NYWD board. Noting the fact that, after
23 the 2020 election, the downstream Irrigators won two of the five NYWD seats (which was one seat
24 shy of a majority), Director Hansard stated, “I would say the voters spoke in the last election” before
25 yelling four times, “You guys lost!”

26 39. At least one Director expressed concern that NYWD did not have any concrete data to
27 support its decision to curtail water deliveries to the Irrigators. He suggested amending the motion to
28 suggest that NYWD first put “out the feelers and the measuring instruments” to see if sufficient water

1 had or would materialize. While the Directors suggested they may reconsider their decision if there
2 were further storms, they declined to use such data for the initial determination to curtail irrigation
3 deliveries. Nor did NYWD consider any lesser remedies, such as those required under Section 2,
4 subd. H of NYWD’s Irrigation Water Policy and Regulations, which contemplates gradual cutbacks to
5 ensure NYWD customers receive at least *some* water supplies.

6 **Woodleaf Contract**

7 40. Although on the one hand NYWD claimed no water is available to deliver to Irrigators,
8 NYWD is at the same time seeking to convey its water supplies to third-parties. For example, on
9 April 23, 2021, NYWD’s board considered a water supply agreement to deliver 0.2 cfs of water to
10 Woodleaf Young Life Camp for “irrigation purposes” (the “Woodleaf Contract”). When it considered
11 the Woodleaf Contract, NYWD did not consider the impact of the agreement on the Irrigators, or the
12 potential environmental impacts under CEQA. A true and correct copy of the Woodleaf Contract is
13 attached hereto as **Exhibit “C.”**

14 41. Several Irrigators, including Furnee, objected to the Woodleaf Contract. The Irrigators
15 rightly asserted NYWD lacked any basis to sell its water supplies while at the same time denying
16 water deliveries to the Irrigators. The Irrigators also pointed out that NYWD may not consider the
17 Woodleaf Contract without performing any environmental review under CEQA. The Irrigators
18 likewise asserted NYWD’s decision violated Section 35420 of the Water Code by delivering water
19 without apportioning water ratably to each landowner. Despite these objections, NYWD approved the
20 Woodleaf Contract.

21 **The Project Is Cognizable Under CEQA**

22 42. CEQA requires environmental review of “discretionary projects proposed to be carried
23 out or approved by public agencies.” (Public Resources Code § 21080, subd. (a).)

24 43. Public Resources Code Section 21065 defines a “project” as an “activity which may
25 cause either a direct physical change in the environment, or a reasonably foreseeable indirect change
26 in the environment, and which is any of the following: an activity directly undertaken by any public
27 agency; an activity undertaken by a person which is supported, in whole or in part, through contracts,
28 grants, subsidies, loans, or other forms of assistance from one or more public agencies; or an activity

1 that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use
2 by one or more public agencies.”

3 44. The NYWD’s approval of the Woodleaf Contract is a “discretionary” act because
4 NYWD is under no obligation to provide water to Younglife.

5 45. The decision to curtail irrigation water deliveries to irrigation customers is likewise a
6 “discretionary” act.

7 46. The Woodleaf Contract and the decision to forego irrigation deliveries constitute a
8 “project” under CEQA because it is an “activity [which] may cause either a direct physical change in
9 the environment, or a reasonably foreseeable indirect change in the environment.”

10 NYWD’s Irrigation Water Policies and Regulations

11 47. Plaintiffs are informed and believe, and thereupon allege that NYWD’s policies and
12 practices are governed by officially adopted policies and regulations. A true and correct copy of
13 NYWD’s Irrigation Water Policies and Regulations (the “Regulations”) is attached hereto, as **Exhibit**
14 **“D.”**

15 48. The General Manager of NYWD is required to enforce the Regulations, which take
16 precedence over other policies of NYWD as to the delivery and sale of irrigation water within the
17 district.

18 49. The Regulations contemplate certain procedures for application during times of
19 shortage. These procedures are meant to assist in allocating water in a way that serves the needs of
20 NYWD as a whole. The Regulations further require that cutbacks to water allocations be made in
21 stages, as set forth within the Regulations.

22 50. The Regulations provide a tiered cutback structure, with three (3) stages of cutbacks
23 prior to a final stage of total cutbacks once all irrigation water has been depleted.

24 51. The first stage of cutbacks required the General Manager to solicit voluntary reductions
25 in use of water.

26 52. The second stage of cutbacks allows NYWD to cut back all deliveries in excess of three
27 (3) miner’s inches (mi), subject to “beneficial use” as defined by the Regulations.

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1 53. Beneficial use, as defined in the Regulations, expressly contemplates cutbacks to filling
2 ponds used for aesthetics and recreation. Beneficial use does not include domestic uses or vegetation,
3 but does include crops and vegetable gardens.

4 54. If the secondary cutbacks are unsuccessful, all deliveries in excess of one (1) mi will be
5 cut back to one (1) mi for the remainder of the season, until irrigation water is depleted.

6 55. The General Manager is not provided any discretion by the Regulations as to whether
7 to use the staged cutback provisions in response to water shortages.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **Writ of Mandate – Violation of CEQA**

11 **(NYWD, and DOES 1-100)**

12 56. Plaintiffs reallege and incorporates by reference the preceding paragraphs 1 through 55
13 in their entirety, as though fully set forth herein.

14 57. CEQA was enacted to require public agencies and decision-makers to document and
15 consider the environmental implications of their actions before formal decisions are made, (Pub.
16 Resources Code, § 21002), and to “[e]nsure that the long-term protection of the environment shall be
17 the guiding criterion in public decisions.” (Pub. Resources Code, § 21001, subd. (d).) “CEQA was
18 intended to be interpreted in such a manner as to afford the fullest possible protection to the
19 environment within the reasonable scope of statutory authority.” (CEQA Guidelines, § 15003, subd.
20 (f).) The overriding purpose of CEQA is to ensure agencies regulating activities that may affect the
21 environment give primary consideration to preventing environmental damage. CEQA is the
22 Legislature’s declaration of policy that all necessary action be taken to protect, rehabilitate and
23 enhance the environmental quality of the state. (*Save Our Peninsula v. Monterey County Board of*
24 *Supers.* (2001) 87 Cal.App.4th 99, 177 [citing *Laurel Heights Improvement Ass’n v. Regents of Univ.*
25 *of Calif.* (1988) 47 Cal.3d 373, 392].)

26 58. Where the CEQA environmental process was procedurally or substantively defective,
27 reviewing courts may find prejudicial abuse of discretion even if proper adherence to CEQA mandates
28 may not have resulted in a different outcome. (Pub. Resources Code, § 21005, subd. (a).) For

1 example, the Court in *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421,
2 428, held that the certification of an EIR that had not adequately discussed the environmental impacts
3 of the project constituted a prejudicial abuse of discretion even if strict compliance with the mandates
4 of CEQA would not have altered the outcome. The Court in *Resource Defense Fund v. LAFCo* (1987)
5 191 Cal.App.3d 886, 897–98 [*disapproved on other grounds, Voice of the Wetlands v. State Water*
6 *Resources Control Bd.* (2011) 52 Cal 4th 499, 528-29], went so far as to declare that failure to comply
7 with CEQA procedural requirements was *per se* prejudicial. The court in *Kings County Farm Bureau*
8 *v. City of Hanford* (1990) 221 Cal.App.3d 692, 712, in turn, explained that an agency commits
9 prejudicial error if “the failure to include relevant information precludes informed decision making
10 and informed public participation, thereby thwarting the statutory goals of the EIR process.”

11 59. NYWD performed a discretionary action in deciding to forego the irrigation season
12 water deliveries to its irrigation customers, including Plaintiffs. NYWD also performed a
13 discretionary action in approving the Woodleaf Contract. Yet, prior to deciding to forego the
14 irrigation season and approving the Woodleaf Contract, NYWD was required to comply with CEQA,
15 **at a minimum**, performing an Initial Study to determine if the curtailment of water deliveries and/or
16 the Woodleaf Contract was a “project” under CEQA. Contrary to the law, NYWD did not do so.

17 60. Pursuant to Public Resources Code section 21080.5, Plaintiffs are entitled to petition
18 this Court for a writ of mandate requiring NYWD to comply with CEQA.

19 61. Plaintiffs also have a clear, present, and beneficial right to performance by NYWD of
20 its duties under CEQA, and NYWD has the duty and capacity to perform their duties under CEQA.
21 NYWD’s decision to curtail water deliveries and approval of the Woodleaf Contract furthers NYWD’s
22 efforts to deprive Plaintiffs, and other irrigation customers, of irrigation water, with complete
23 disregard for multiple environmental impacts this will case. NYWD’s failure to perform their duties
24 requires this Court to issue a writ of mandate directing them to discharge their duties under Code of
25 Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21080.5, 21168, and
26 21168.5.

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1 **SECOND CAUSE OF ACTION**

2 **Writ of Mandate – Fair Argument of Significant Impacts in Violation of CEQA**
3 **(NYWD, and DOES 1-100)**

4 62. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 61
5 in their entirety, as though fully set forth herein.

6 63. CEQA was adopted by the California Legislature to prevent environmental harm while
7 providing a decent home and satisfying living for every Californian. The policies and legislative
8 intent behind CEQA are intended to be an integral party of any public agency’s decision-making
9 process. CEQA applies to discretionary projects approved by public agencies.

10 64. NYWD is eligible to be a “lead agency” responsible for evaluating the Woodleaf
11 Contract’s environmental impacts under CEQA. As a part of this duty, NYWD was required to
12 prepare an Environmental Impact Report (EIR) if substantial evidence in the record supports a “fair
13 argument” that the curtailment of water deliveries to irrigation customers and/or the Woodleaf
14 Contract may have a significant impact on the environment.

15 65. CEQA also required NYWD to adopt feasible mitigation measures to reduce or avoid
16 any significant environmental impacts. If substantial evidence in the record supports a “fair
17 argument” that a project’s significant environmental impacts could not be mitigated to a less than
18 significant level, NYWD is likewise required to prepare a full environmental impact report instead of a
19 mitigated negative declaration.

20 66. NYWD’s approval of the Woodleaf Contract constitutes a discretionary act that triggers
21 its obligation to comply with CEQA.

22 67. NYWD’s decision to forego the irrigation season constitutes a discretionary act that
23 likewise triggers CEQA obligations.

24 68. As noted above, NYWD violated CEQA by approving the curtailment of water
25 deliveries and in approving the Woodleaf Contract because, based on the record, NYWD failed to
26 adequately evaluate and mitigate the environmental impacts that may be significant, including, but not
27 limited to:

28 ///

1 A. ***Aesthetics.*** Substantial evidence of a fair argument exists that the repeated
2 deprivation of water which the District has imposed on the residents of the area has resulted in the loss
3 of substantial amounts of trees and the inability to fill ponds on their properties. These impacts
4 collectively reduce the scenic character of the area and degrade the existing visual character of the
5 public views.

6 B. ***Agricultural and Forestry Resources.*** Substantial evidence of a fair argument
7 exists that the irrigation customers will suffer new, continuing, and devastating impacts to their crops,
8 livestock, and soil quality as a result of the District's irresponsible and retaliatory management of
9 water.

10 C. ***Biological Resources.*** A fair argument exists that the ditches and canals
11 deprived of water by the District's actions are home to the protected Foothill yellow-legged frog, the
12 Ringtail Cat, and freshwater shrimp. The presence of sensitive species requires further review before
13 exercising District discretion to deprive these species' habitat of necessary water.

14 D. ***Geology and Soils.*** A fair argument also exists that the repeated and ongoing
15 refusal to convey water to the irrigators leaves the land exposed and vulnerable to erosion. Burrowing
16 animals are also able to access parts of the canal that would otherwise be submerged, and can cause
17 significant structural damage to the canal. In addition, the irrigators' resulting increased reliance on
18 groundwater to irrigate crops and water animals in the area may lead to subsidence, due to massive
19 depletion in groundwater reserves as a direct result of the District's actions.

20 E. ***Hydrology and Water Quality.*** Substantial evidence of a fair argument also
21 exists that the increased reliance on groundwater will affect the water quality of the remaining
22 reserves. Dissolved solids in groundwater are dispersed throughout the reserves stored underground,
23 and, as those reserves are quickly and substantially depleted, the proportion of dissolved solids in the
24 remaining water is necessarily higher. Further, the deprivation of flow to the canal reduces recharge,
25 and exacerbates an already catastrophic lack of groundwater in California for agricultural purposes.

26 F. ***Wildfire.*** A fair argument exists that the aforementioned loss of trees, and a
27 lack of available water for landscaping will contribute to the continued drying of an area already
28 historically plagued by wildfires. Further, the lack of water directly impacts fire crews' and residents'

1 ability and capacity to combat wildfires when the do occur, which grows increasingly likely year after
2 year.

3 69. NYWD violated CEQA by failing to prepare an EIR for the decision to forego the
4 irrigation season deliveries to its irrigation customers and/or for the Woodleaf Contract when the
5 record demonstrates that these acts may cause the potentially significant environmental impacts
6 described above, among others, which have not been adequately disclosed, analyzed, or mitigated to a
7 less than significant level.

8 70. NYWD prejudicially abused their discretion, and failed to proceed in a manner required
9 by law, by failing to conduct any environmental analysis whatsoever despite the presence of a fair
10 argument that the curtailment of water deliveries and/or the Woodleaf Contract would have significant
11 environmental effects. Thus, NYWD abused its discretion by failing to prepare an environmental
12 impact report to address the significant environmental impacts.

13 71. Plaintiffs have a clear, present and beneficial right to performance by NYWD of its
14 duties under CEQA, and NYWD has the duty and capacity to perform their duties under CEQA as the
15 lead agency of the Project. Plaintiffs also have a clear, present, and beneficial interest in the issuance
16 of a writ of mandate as they are and will be adversely affected by NYWD's violations of CEQA. The
17 failure of NYWD to perform their duties under the law requires this Court to issue a writ of mandate
18 directing them to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5 of the
19 Public Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

20 **THIRD CAUSE OF ACTION**

21 **Writ of Mandate – Violation of Water Code**

22 **(NYWD, and DOES 1-100)**

23 72. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 71
24 in their entirety, as though fully set forth herein.

25 73. As a California Water District, NYWD is subject to the provisions contained in
26 Division 13 of the California Water Code. (Wat. Code § 34013, *et seq.*)

27 74. Division 13, section 35420, of the Water Code specifically requires that “[a]ll water
28 distributed for irrigation purposes, except as otherwise provided in this article, shall be apportioned

1 ratably to each holder of title to land upon the basis of the ratio which the last assessment against his
2 land for district purposes bears to the whole sum assessed in the district for district purposes.”

3 75. Even assuming that Woodleaf is an existing irrigation customer of NYWD—which is
4 inaccurate—the Woodleaf Contract does not provide that Woodleaf’s ownership of property within
5 NYWD has increased, or other owner’s property has decreased, such that Woodleaf is entitled to more
6 irrigation water per Water Code section 35420.

7 76. Further, in refusing to deliver any irrigation water to its irrigation customers, NYWD
8 violated Water Code section 35420 by failing to distribute water on a ratably basis.

9 77. As a result of the foregoing, NYWD has abused its discretion by acting in a manner
10 that is arbitrary and capricious, and without evidentiary support.

11 78. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.

12 79. Plaintiffs therefore request that the Court issue a writ of mandate, pursuant to Sections
13 1085 and 1094.5 of the Code of Civil Procedure, and the Court’s inherent equitable powers, to compel
14 NYWD to set aside its approval of the Woodleaf Contract pursuant to the Water Code.

15 **FOURTH CAUSE OF ACTION**

16 **Writ of Mandate – Violation of Reasonable Use Doctrine**

17 **(NYWD, and DOES 1-100)**

18 80. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 79
19 in their entirety, as though fully set forth herein.

20 81. The Water Code provides that “[w]ater is a public resource that the California
21 Constitution protects against waste and unreasonable use.” (Wat. Code § 10608, subd. (a).) “All uses
22 of water . . . must conform to the standard of reasonable use.” (*National Audubon Society v. Superior*
23 *Court* (1983) 33 Cal.3d 419, 442.) “What constitutes reasonable water use is dependent upon not
24 only the entire circumstances presented but varies as the current situation changes.” (*Environmental*
25 *Defense Fund, Inc. v. East Bay Min. Utility Dist.* (1980) 26 Cal.3d 183, 194; see *In re Matter of*
26 *Applications 23865 and 23943*, (1973) Cal.St.Wat.Res.Bd. 1973 WL 19665 [Storage of water for
27 purely aesthetic purposes to afford recreation for a few was not reasonable or in the public interest].)

28 ///

1 82. Plaintiffs are informed and believe, and thereupon allege, that Woodleaf Young Life
2 Camp intends to use the water distributed by the Woodleaf Contract for, at best, the recreation and
3 aesthetic purpose of filling up ponds on its property. NYWD intends to provide Woodleaf Young
4 Life Camp with water for these purposes, in excess of what Woodleaf Young Life Camp already
5 receives, while threatening to deny water to irrigators who produce foodstuffs and other resources for
6 public consumption. In promoting the storage of water for plainly aesthetic purposes rather than
7 convey that water to irrigation customers, who need the water to sustain life, NYWD is in direct
8 violation of its obligation to make reasonable use of water.

9 83. Furthermore, by curtailing irrigation water deliveries and refusing to put water to
10 irrigation use, NYWD likewise violated its obligation to make reasonable use of water.

11 84. As a result of the foregoing, NYWD has abused its discretion by acting in a manner
12 that is arbitrary and capricious, and without evidentiary support.

13 85. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.

14 86. Plaintiffs therefore request that the Court issue a writ of mandate, pursuant to Sections
15 1085 and 1094.5 of the Code of Civil Procedure, and the Court's inherent equitable powers, to compel
16 NYWD to set aside its decision to forego the irrigation season and its approval of the Woodleaf
17 Contract pursuant to the Reasonable Use Doctrine.

18 87. Plaintiffs further request that the Court issue a writ of mandate, pursuant to Sections
19 1085 and 1094.5 of the Code of Civil Procedure, and the Court's inherent equitable powers, to compel
20 NYWD to set aside its refusal to provide water to the irrigators for the 2021 irrigation season pursuant
21 to the Reasonable use Doctrine.

22 **FIFTH CAUSE OF ACTION**

23 **Writ of Mandate – Refusal to Release Water**

24 **(NYWD, and DOES 1-100)**

25 88. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 87
26 in their entirety, as though fully set forth herein.

27 89. NYWD holds its water rights in trust for the beneficial use of its customers.

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1 90. NYWD is required to provide equitable service to all beneficial users within its service
2 area. Plaintiffs and the other irrigators in the NYWD service area put water delivered to them by
3 NYWD to beneficial use for agricultural and fire protection purposes. Therefore, Plaintiffs and the
4 other irrigators have a vested right to an equitable portion of the water rights and permits held by
5 NYWD.

6 91. Woodleaf's purported need for additional water is subordinate to NYWD's duty to
7 serve all of its users.

8 92. The Woodleaf Contract guarantees Woodleaf an additional apportionment of NYWD's
9 water, in essence giving Woodleaf absolute priority over the irrigators in the district. Thus, in a
10 shortage, the irrigators will bear the entirety of the burden and suffer the entirety of the impacts.

11 93. As previously described herein, this absolute prioritization of an aesthetic use over
12 every irrigator, each of whom are owners of a vested right to water service by NYWD, is in violation
13 of express provisions of the Water Code, the Reasonable Use Doctrine, and the California
14 Constitution.

15 94. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.
16 Plaintiffs therefore request that the Court issue a writ of mandate, pursuant to Sections 1085 and
17 1094.5 of the Code of Civil Procedure, and the Court's inherent equitable powers, to compel NYWD
18 to set aside its refusal to release water to Plaintiffs and the other irrigators in an amount proportional to
19 the land owned by the irrigators in the NYWD service area, or to institute cutbacks pursuant to the
20 procedures and in accordance with the quantities set for in the policies and regulations.

21 **SIXTH CAUSE OF ACTION**

22 **Writ of Mandate – Failure to Comply with NYWD Irrigation Water Policies and Regulations**

23 **(NYWD, and DOES 1-100)**

24 95. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 94
25 in their entirety, as though fully set forth herein.

26 96. The NYWD General Manager is required to institute cutbacks in water deliveries in
27 response to a water shortage in accordance with the policies and regulations adopted by NYWD for
28 the purpose of governing such cutbacks.

1 97. The General Manager is required to, first, seek voluntary cutbacks in response to a
2 shortage.

3 98. The General Manager may, then, institute cutbacks to deliveries in two successive
4 stages, pursuant to prescribed procedures and quantity limitations as set forth in the irrigation water
5 policies and regulations, and as further set forth in this Complaint.

6 99. NYWD, nor any of its officers, directors, agents, or employees ever sought any
7 voluntary cutbacks of water deliveries prior to deciding to forego the entire irrigation season for all
8 irrigators, including Plaintiffs.

9 100. NYWD, nor any of its officers, directors, agents, or employees ever instituted either the
10 secondary or tertiary tier of the mandatory cutback system, nor provided any explanation as to why
11 that system was not being utilized.

12 101. This violation of NYWD's own irrigation water policies and regulations was not
13 supported by substantial evidence, and was a prejudicial abuse of discretion because of NYWD's
14 failure to proceed in a manner required by law.

15 102. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.
16 Plaintiffs therefore requests that the Court issue a writ of mandate, pursuant to Sections 1085 and
17 1094.5 of the Code of Civil Procedure, and the Court's inherent equitable powers, to compel NYWD
18 to set aside its refusal to release water to Plaintiffs and the other irrigators in an amount proportional to
19 the land owned by the irrigators in the NYWD service area, or to institute cutbacks pursuant to the
20 procedures and in accordance with the quantities set for in the policies and regulations.

21 **SEVENTH CAUSE OF ACTION**

22 **Writ of Mandate – Bias and Violation of Substantive Due Process**

23 **(NYWD, and DOES 1-100)**

24 103. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 102
25 in their entirety, as though fully set forth herein.

26 104. California common law requires that public officers act with “disinterested skill, zeal
27 and diligence primarily for the benefit of the public.” (*Noble v. City of Palo Alto* (1928) 89
28 Cal.App.47, 51.) As a result, project proponents enjoy the right to a fair and unbiased decision-maker.

1 (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 557; see also *City of Fairfield v.*
2 *Superior Court* (1975) 14 Cal.3d 768, 772.) Thus, a decisionmaker is disqualified from participating
3 in a matter if that decisionmaker is biased in favor or against a party involved in that decision. (*Nasha*
4 *v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 486; *Clark v. City of Hermosa Beach* (1996) 48
5 Cal.App.4th 1152.)

6 105. Throughout the proceedings relating to the decisions to curtail water deliveries to its
7 irrigation customers, NYWD Directors evidenced clear bias against irrigation customers. Specifically,
8 NYWD Director Hansard blamed the lack of water for irrigation on irrigator's opposition to NYWD's
9 piping project on the Forbestown Ditch. Director Hansard, speaking on behalf of the Board,
10 specifically identified irrigators, by name, as persons responsible for the decision to forego the
11 irrigation district, and further, demanded an apology from said irrigators.

12 106. At these same proceedings, Director Hawthorne likewise indicated that the decision to
13 forego the irrigation season was a result of irrigator's opposition to the Forbestown Ditch project.

14 107. As a result of the foregoing, NYWD also abused its discretion by acting in a manner
15 that was arbitrary and capricious, and lacking evidentiary support.

16 108. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.

17 109. Plaintiffs therefore request that the Court issue a writ of mandate, pursuant to Sections
18 1085 and 1094.5 of the Code of Civil Procedure, and the Court's inherent equitable powers, to
19 invalidate NYWD's decision to curtail water deliveries to irrigation customers this irrigation season on
20 the basis of unlawful bias.

21 **EIGHTH CAUSE OF ACTION**

22 **Declaratory Relief - CEQA**

23 **(NYWD, and DOES 1-100)**

24 110. Plaintiffs reallege, and incorporate by reference, the precedent paragraphs 1 through
25 110 in their entirety, as though fully set forth therein.

26 111. A clear and actual controversy exists between Plaintiffs and Defendant regarding
27 Defendant's failures to comply with CEQA. Plaintiffs contend that Defendant has not complied with
28 CEQA, while Defendant contends that they are not required to. This controversy between the Parties

1 not only creates substantial danger that Plaintiffs' rights will be damaged, but also that CEQA will be
2 ignored. As such, a judicial determination as to the Parties' rights and obligations under CEQA is
3 necessary.

4 112. This declaration is further required under Code of Civil Procedure sections 1060, 1085,
5 and 1094.5 and under Government Code section 11350, to prevent violation of the Government Code,
6 which requires that all valid regulations shall be made "in accordance with standards prescribed by
7 other provisions of law," including CEQA and the CEQA Guidelines.

8 113. There is no other adequate legal remedy available to resolve this controversy.

9 114. To remedy these violations of law, Plaintiffs request a declaration of the duties of
10 Defendant under CEQA and the CEQA guidelines, a declaration that Defendant has not complied with
11 CEQA, and a declaration invalidating the Woodleaf Contract.

12 **NINTH CAUSE OF ACTION**

13 **Declaratory Relief – Water Code**

14 **(NYWD, and DOES 1-100)**

15 115. Plaintiffs reallege, and incorporates by reference, the precedent paragraphs 1 through
16 114 in their entirety, as though fully set forth therein.

17 116. A clear and actual controversy exists between Plaintiffs and Defendant regarding
18 Defendant's failures to comply with the Water Code. Plaintiffs contend that Defendant has not
19 complied with the Water Code, including Water Code section 35420, while Defendant contends that
20 they have complied. This controversy between the Parties creates substantial danger that Plaintiffs'
21 rights will be damaged. As such, a judicial determination as to the Parties' rights and obligations
22 under the Water Code is necessary.

23 117. There is no other adequate legal remedy available to resolve this controversy.

24 118. To remedy these violations of law, Plaintiffs request a declaration of the duties of
25 Defendant under the Water Code, a declaration that Defendant has not complied with the Water Code,
26 and a declaration invalidating the Woodleaf Contract.

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1 **TENTH CAUSE OF ACTION**

2 **Declaratory Relief – Reasonable Use Doctrine**

3 **(NYWD, and DOES 1-100)**

4 119. Plaintiffs reallege, and incorporates by reference, the precedent paragraphs 1 through
5 118 in their entirety, as though fully set forth therein.

6 120. A clear and actual controversy exists between Plaintiffs and Defendant regarding
7 Defendant's failures to comply with the Reasonable Use Doctrine. Plaintiffs contend that Defendant
8 has violated the Reasonable Use Doctrine by prioritizing a lesser aesthetic/recreational use of water
9 over irrigation use, while Defendant contends that they have not. This controversy between the Parties
10 creates substantial danger that Plaintiffs' rights will be damaged. As such, a judicial determination as
11 to the Parties' rights and obligations under the Reasonable Use Doctrine is necessary.

12 121. There is no other adequate legal remedy available to resolve this controversy.

13 122. To remedy these violations of law, Plaintiffs request a declaration of the duties of
14 Defendant under the Reasonable Use Doctrine, a declaration that Defendant has not complied with the
15 Reasonable Use Doctrine, and a declaration invalidating the Woodleaf Contract.

16 **ELEVENTH CAUSE OF ACTION**

17 **Injunctive Relief**

18 **(NYWD, and DOES 1-100)**

19 123. Plaintiffs reallege and incorporate by reference the preceding paragraphs 1 through 122
20 in their entirety, as though fully set forth herein.

21 124. Unless or until this Court issues an order immediately enjoining and restraining NYWD
22 from performing on the Woodleaf Contract and furthering the denial of water to Plaintiffs, Plaintiffs
23 will suffer irreparable harm. The harm complained of is irreparable because Plaintiffs will be
24 permanently deprived of irrigation water that they are entitled to, and further, will be made to suffer
25 from the environmental effects the deprivation of water will cause to their land.

26 125. Furthermore, NYWD's actions not only harm Plaintiffs, but also the other irrigation
27 customers still waiting for irrigation water owed to them. NYWD's actions threaten to deprive a
28

1 whole community of Plaintiffs' neighbors water which is rightfully theirs, with no regard for the
2 consequences, including any resulting impacts on the environment.

3 126. Therefore, Plaintiffs seek a temporary restraining order, preliminary injunction, and
4 permanent injunction enjoining and restraining NYWD their agents, servants, employees, independent
5 contractors, and/or any other firm, agency, entity, person or party acting in concert with or under
6 control their control, from taking any action in furtherance of the Woodleaf Contract.

7 **PRAYER FOR RELIEF**

8 **As to Plaintiffs' First Cause of Action:**

9 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to engage in
10 environmental review pursuant to CEQA.

11 2. Injunctive Relief: Plaintiffs request that NYWD be ordered to refrain from performing
12 on the Woodleaf Contract or on the curtailment of water deliveries to irrigation customers until CEQA
13 review is completed.

14 3. Any other relief the Court deems appropriate.

15 **As to Plaintiffs' Second Cause of Action:**

16 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to engage in
17 environmental review pursuant to CEQA.

18 2. Injunctive Relief: Plaintiffs request that NYWD be ordered to refrain from performing
19 on the Woodleaf Contract or on the curtailment of water deliveries to irrigation customers until CEQA
20 review is completed.

21 3. Any other relief the Court deems appropriate.

22 **As to Plaintiffs' Third Cause of Action:**

23 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to refrain
24 from performing on the Woodleaf Contract.

25 2. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to rescind its
26 refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit NYWD from
27 instituting cutbacks without following the procedures in its irrigation water policies and regulations.

1 3. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
2 refrain from performing on the Woodleaf Contract.

3 4. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
4 rescind its refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit
5 NYWD from instituting cutbacks without following the procedures in its irrigation water policies and
6 regulations.

7 5. Any other relief the Court deems appropriate.

8 **As to Plaintiffs' Fourth Cause of Action:**

9 6. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to refrain
10 from performing on the Woodleaf Contract.

11 7. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to rescind its
12 refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit NYWD from
13 instituting cutbacks without following the procedures in its irrigation water policies and regulations.

14 8. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
15 refrain from performing on the Woodleaf Contract.

16 9. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
17 rescind its refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit
18 NYWD from instituting cutbacks without following the procedures in its irrigation water policies and
19 regulations.

20 10. Any other relief the Court deems appropriate.

21 **As to Plaintiffs' Fifth Cause of Action:**

22 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to rescind its
23 refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit NYWD from
24 instituting cutbacks without following the procedures in its irrigation water policies and regulations.

25 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
26 rescind its refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit
27 NYWD from instituting cutbacks without following the procedures in its irrigation water policies and
28 regulations.

1 3. Any other relief the Court deems appropriate.

2 **As to Plaintiffs' Sixth Cause of Action:**

3 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to rescind its
4 refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit NYWD from
5 instituting cutbacks without following the procedures in its irrigation water policies and regulations.

6 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
7 rescind its refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit
8 NYWD from instituting cutbacks without following the procedures in its irrigation water policies and
9 regulations.

10 3. Any other relief the Court deems appropriate.

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

12 1. Mandate: Plaintiffs request that a writ of mandate issue ordering NYWD to rescind its
13 refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit NYWD from
14 instituting cutbacks without following the procedures in its irrigation water policies and regulations.

15 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
16 rescind its refusal to provide water to the irrigators for the 2021 irrigation season and to prohibit
17 NYWD from instituting cutbacks without following the procedures in its irrigation water policies and
18 regulations.

19 3. Any other relief the Court deems appropriate.

20 **As to Plaintiffs' Eighth Cause of Action:**

21 1. Declaratory Relief: Plaintiffs request a declaration of the duties of Defendant under
22 CEQA and the CEQA guidelines, a declaration that Defendant has not complied with CEQA, and a
23 declaration invalidating the Woodleaf Contract

24 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
25 refrain from performing on the Woodleaf Contract.

26 3. Any other relief this Court deems appropriate.

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1 **As to Plaintiffs' Ninth Cause of Action:**

2 1. Declaratory Relief: Plaintiffs request a declaration of the duties of Defendant under
3 Water Code, a declaration that Defendant has not complied with the Water Code, and a declaration
4 invalidating the Woodleaf Contract.

5 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
6 refrain from performing on the Woodleaf Contract.

7 3. Any other relief this Court deems appropriate.

8 **As to Plaintiffs' Tenth Cause of Action:**

9 1. Declaratory Relief: Plaintiffs request a declaration of the duties of Defendant under the
10 Reasonable Use Doctrine, a declaration that Defendant has not complied with the Reasonable Use
11 Doctrine, and a declaration invalidating the Woodleaf Contract.

12 2. Injunctive Relief: Plaintiffs request that a writ of mandate issue ordering NYWD to
13 refrain from performing on the Woodleaf Contract.

14 3. Any other relief this Court deems appropriate.

15 **As to Plaintiffs' Eleventh Cause of Action:**

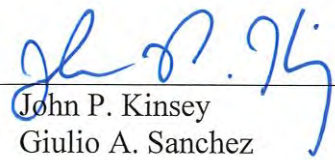
16 1. Injunctive Relief: Plaintiffs request a temporary restraining order, preliminary
17 injunction, and permanent injunction enjoining and restraining NYWD their agents, servants,
18 employees, independent contractors, and/or any other firm, agency, entity, person or party acting in
19 concert with or under control their control, from taking any action in furtherance of the Woodleaf
20 Contract.

21 2. Any other relief this Court deems appropriate.

22 Dated: May 3, 2021

WANGER JONES HELSLEY PC

23
24 By: _____

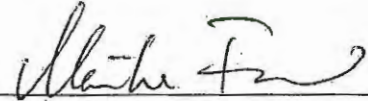

John P. Kinsey
Giulio A. Sanchez
Attorneys for Plaintiff,
Petitioner/Plaintiff Marieke Furnee

VERIFICATION

I, Marieke Furnee, declare:

1. I am the Plaintiff in this action. I make this verification of my own knowledge. I hereby verify that the factual matters stated in this VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF are known to me personally and that they are true or that I believe them to be true.

2. I declare under penalty of perjury under the laws of California that the foregoing is true and that this verification was executed in Oregon House, California, on April , 2020.
 May 2nd,

By: 
Marieke Furnee

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VERIFICATION
[CCP §§ 446, 1096]

I, Gideon Bevisdale am a petitioner and plaintiff in this action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 3rd Day of May 2021, in Oregon House, California.

G. Bevisdale

VERIFICATION
[CCP §§ 446, 1096]

I, Jeanette L. Cavaliere, am a petitioner and plaintiff in this action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 3rd Day of May 2021, in Oregon House California.

Jeanette L. Cavaliere

VERIFICATION
[CCP §§ 446, 1096]

I, Alma Carson, am a petitioner and plaintiff in this action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 3rd Day of May 2021, in Rollins, California.

Alma Carson

VERIFICATION
[CCP §§ 446, 1096]

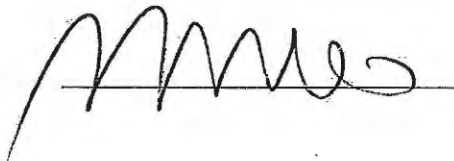
I, Israel Perla, am a petitioner and plaintiff in this action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 3rd Day of May 2021, in Oregon
House, California.

A handwritten signature in black ink, appearing to read 'Israel Perla', is written over a horizontal line.

VERIFICATION
[CCP §§ 446, 1096]

Charles Sharp am a petitioner and plaintiff in this action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Gregory House

Executed this 3rd Day of May 2021, in _____, California.

Charles Sharp

EXHIBIT A

WANGER JONES HELSLEY PC
ATTORNEYS

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** Also admitted in Idaho
*** Also admitted in Virginia
†† Also admitted in Utah
‡ Of Counsel
‡ Provisionally licensed per
California State Bar

May 3, 2021

VIA EMAIL jmaupin@nywd.org

**BOARD OF DIRECTORS
NORTH YUBA WATER DISTRICT**
c/o Jeff Maupin, General Manager
8691 La Porte Road
Brownsville, CA 95919

**Re: Notice of Intent to Sue: Curtailment of Irrigation
Water Deliveries; Woodleaf Younglife Camp
Special Use Agreement**

Dear Mr. Maupin:

PLEASE TAKE NOTICE that, pursuant to Section 21167.5 of the Public Resources Code, on or about May 3, 2021, Petitioner and Plaintiff Marieke Furnee ("Furnee") will file a Petition for Writ of Mandate and Complaint (the "Petition") in Yuba County Superior Court challenging the actions of Respondent and Defendant North Yuba Water District pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA").

Petitioner's allegations are in regards to (i) North Yuba Water District's decision to curtail water deliveries to its irrigation customers this irrigation season, and (ii) the approval of the Special Use Agreement with Woodleaf Younglife Camp, whereby North Yuba Water District

WANGER JONES HELSLEY PC

May 3, 2021

Page 2

agrees to transfer irrigation water to Woodleaf for the duration of this irrigation season. Respondent violated CEQA by, *inter alia*, failing to perform any environmental review under CEQA. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



John P. Kinsey

EXHIBIT B

1 John P. Kinsey #215916
Giulio A. Sanchez #317329
2 **WANGER JONES HELSLEY PC**
265 East River Park Circle, Suite 310
3 Fresno, California 93720
Telephone: (559) 233-4800
4 Facsimile: (559) 233-9330
Email: jkinsey@wjhattorneys.com
5 gsanchez@wjhattorneys.com

6 Attorneys for: Petitioner/Plaintiff Marieke Furnee

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF YUBA**

9
10 MARIEKE FURNEE,

11 Petitioner/Plaintiff,

12 v.

13 THE NORTH YUBA WATER DISTRICT, and
14 DOES 1 through 100, inclusive,

15 Respondents/Defendants.
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19 YOUNG LIFE, INC. a/k/a YOUNG LIFE
20 CAMPAIGN, INC., a Texas Corporation,

21 Real Party in Interest.
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Case No.

**NOTICE OF ELECTION TO
PREPARE RECORD OF
ADMINISTRATIVE PROCEEDINGS**

1 Pursuant to Section 21167.6 of the Public Resources Code, Petitioner MARIEKE FURNEE
2 hereby notifies the NORTH YUBA WATER DISTRICT of Petitioner's election to prepare the
3 administrative record of proceedings in this action.

4
5 Dated: May 3, 2021

WANGER JONES HELSLEY PC


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7 By: 
8 John P. Kinsey
9 Giulio A. Sanchez
10 Attorneys for Plaintiff,
11 Petitioner/Plaintiff Marieke Furnee
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EXHIBIT C

AGREEMENT FOR SPECIAL WATER USE

2021 - North Yuba Water District and Woodleaf Younglife

The North Yuba Water District, hereinafter referred to as "DISTRICT", and Woodleaf Younglife Campaign, hereinafter referred to as "APPLICANT", do hereby agree to the provisions established herein for the delivery of and payment for water furnished to APPLICANT.

Said delivery shall be subject to all rules, regulations, and policies of the DISTRICT pertaining to the delivery of irrigation water, except as otherwise specifically provided herein:

1. The point of delivery of water shall be at the end of the open canal otherwise known as the Forbestown Ditch, in the Northwest 1/4 of Section 9, T.19 N., R.7 E., MDB & M, at the point at which the canal enters the Woodleaf Siphon.
2. All conveyance facilities from said point of delivery to the actual place of use shall be considered to be the property of the APPLICANT, and all costs of installation, replacement, maintenance, and repair of such facilities shall be the responsibility of the APPLICANT.
3. Water is delivered hereunder through a miner's inch box which shall be set and adjusted as approved by DISTRICT.
4. The water contemplated to be delivered hereunder shall normally be available only during the regular irrigation season (April 15 through October 15 of each year) and will be limited to those periods when flows of water are present in the Forbestown Ditch as necessary to meet other purposes of the DISTRICT.

During periods when water is available as aforesaid, delivery shall be considered to be on a continuous flow basis at a flow not exceeding 4.0 miner's inches (.2 CFS) as requested by the APPLICANT, subject to terms of the District's IRRIGATION POLICY.

Refund(s) for periods when water is unavailable shall be made in accordance with **Section VI. C.9 of the IRRIGATION POLICY**.

5. Service Charges-
 - a. An Initial Service Charge of \$25.00 shall be required at the beginning of each season to cover the cost of checking and/or adjusting the measuring device.
 - b. The APPLICANT may request adjustments in flow or inspection of the measuring device at any time. However, each such occurrence shall be subject to a service charge of \$25.00.
6. In the event of adjustments in volume, the charges for the remainder of the season shall be adjusted by calculating the total volume projected to the end of the irrigation season, and applying the appropriate revised unit cost for the adjusted flow. If applicable, any refunds then due shall be made in accordance with Section VII B of the IRRIGATION POLICY.

7. The unit rate to be paid by the APPLICANT shall be 1.5 times the appropriate unit rate as determined in accordance with Section II of Appendix C #2 of the IRRIGATION POLICY.
8. Charges for delivery of water shall be due and payable at the time of making application.
9. All other charges shall be made in accordance with the IRRIGATION POLICY.
10. The APPLICANT shall assure ingress and egress to the DISTRICT for purposes of fulfilling its functions under this Agreement.
11. This Agreement is effective only until the end of the 2021 irrigation season.
12. This Agreement is intended to be an Amendment to the Irrigation Application.
13. The APPLICANT hereby certifies receipt of copy of the current IRRIGATION POLICY, and agrees to abide by all terms of such policy, notwithstanding any provisions contained herein.
14. The individual signing this Agreement on behalf of the APPLICANT hereby certifies authorization to do so.

FOR THE WOODLEAF YOUNGLIFE CAMPAIGN:

Property Manager

Date

FOR THE NORTH YUBA WATER DISTRICT:

Gary Hawthorne /Vice President of the Board

Date

Jeffrey Maupin
Secretary of Record / General Manager

Date

**2021 North Yuba Water District
Irrigation Application**

Account: Woodleaf Younglife Please make any necessary corrections to customer information shown.

1. Place of Delivery

Parcel # (s)	Gross Acreage	Legal Owner of Record
050-050-015	206	Younglife

2. Amount of water: Shown only in increments of one-half (1/2) miner's inch. (1 miner's inch equals a flow of approximately 10 gallons per minute).

4 Miner's Inches

3. Number of service connections One

4. Total Fees Required:

A. Any Previous Balance	0
B. Rate (\$356.00) x 1.5 = (\$534) x 4 Miner's Inches	\$ 2,136.00
C. Turn On Fee	\$ 25.00
D. Late Fee	<u>0</u>
Total Due	\$ 2,161.00

Applicant Signature

Date

Mailing Address

Telephone Number

Service Address (if different)

EXHIBIT D

**NORTH YUBA WATER DISTRICT
IRRIGATION WATER POLICY AND REGULATIONS
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NORTH YUBA WATER DISTRICT
IRRIGATION POLICY

SECTION I INTRODUCTION

A. PURPOSE OF REGULATIONS

These Regulations are adopted to provide for the efficient and useful distribution of irrigation water within the District.

B. MODIFICATIONS TO REGULATIONS

These Regulations may be modified, amended or supplemented at any time by Board action. Updates are available by contacting the District Office and are also available on the District's website: www.nywd.org.

C. ENFORCEMENT

The General Manager shall enforce the provisions of these regulations and will provide explanations and information to the Board and Customers as may be necessary and proper in connection with them. The District Board, General Manager and employees shall not be liable for any damages resulting from the proper enforcement of any or all of these Regulations.

D. PRIORITY OF POLICY

This policy shall take precedence over other policies of the District as to the sale, transportation, delivery, and use of irrigation water within the District.

SECTION II DELIVERY OF WATER

A. APPLICATION FOR SERVICE

Notifications will be sent to all Customers on March 1 st. Applications shall be made on forms prepared by the District. Delivery of water shall be made upon receipt of completed application and payment in full. Applicants with multiple parcels must file a separate application for each parcel requesting water service. Submission of an application shall constitute an agreement by the Customer to abide by the terms of this policy.

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B. INFORMATION REQUIRED ON APPLICATION

1. The inclusive parcel numbers of the intended place(s) of delivery, and the gross acreage and legal owner(s) of record of each parcel.
2. The names of all renters, lessors, or other authorized users of the premises who will utilize District water.
3. The identification, description, and location of the measuring device for the service.
4. The intended use(s) of District water, and the acreages or other measure of each such use.
5. The intended methods of irrigation.
6. The total volume (in acre feet) of water requested.
7. The number and types of service connections and volume (in acre feet) to each connection.
8. Crop type and acreage.
9. Copies of any necessary permits, authorizations, or other documentation demonstrating that the crop is grown in accordance with law.

C. APPLICATION PROCEDURE

1. DEADLINE

April 1st is the deadline for receipt of application and payment; no applications will be accepted after that date.

2. DELIVERY OF APPLICATION

a) IN PERSON: Applications can be delivered to the District Office

located at 8691 LaPorte Road, Brownsville, Monday through Friday, 8:00am - 4:30pm.

b) BY MAIL: Applications may be sent via mail to NYWD,

P.O Box 299, Brownsville, CA 95919. Must be received by April 1st, regardless of postmark date.

c) PAYMENT METHODS

1. A check may be mailed or delivered in person. Checks returned by a bank unpaid shall be returned to the water user and his or her Water User's District account will be debited for the amount of the check. The District also will impose a return check fee of \$20.00, which shall be added to the Water User's District account balance together with any other bank charges that may be assessed due to the returned check.

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2. Credit Cards may be used either online or over the telephone or at the office

D. PRIVATE FACILITIES

The District shall not approve or otherwise permit the development of any private mutual undertaking, community system, or other such system which would in any manner have the same or similar effect as the construction or extension of main canals and/or laterals.

E. SALE OR SUBDIVISION OF PROPERTY

1. SALE

In the event a parcel is sold, the water allocation shall transfer with the property.

2. SUBDIVISION

For purposes of determining availability of water in the event of subdivision, the amount and availability of water shall not increase nor be divided among subdivided parcels. Water allocation shall pass with the original parcel(s). Delivery shall not be made to newly created parcels, nor shall a Customer transport water to those parcels for use by another property owner.

F. SERVICE TO NON-CONTIGUOUS PARCELS

The District is not obligated to grant an application to any non-contiguous parcel. Nor is the District obligated to deliver water to any non-contiguous parcel. As set forth in this Policy, the District's obligation to deliver water to any customer is fulfilled when that volume of water is delivered to the measuring device named on the approved Application.

1. Service to non-contiguous parcels may continue if

a) such service is in place on the date this policy is adopted; and

b) the conveyance of water from the District's facility is not wasteful or detrimental to the property or rights of others

2. New services to non-contiguous parcels may be established only with approval of the Board, upon a showing that

a) such services will not negatively impact existing services; and

b) that water will be properly conveyed to the non-contiguous parcel in manner that is not wasteful or detrimental to the property or rights of others.

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G. SCHEDULE OF DELIVERY

1. CONTINUOUS FLOW BASIS

It is District policy that irrigation water is served on a continuous flow basis. Delivery on a continuous flow basis means that water is delivered

by the District at a uniform rate continually for twenty-four hours each day, 7 days per week during the irrigation season. Customers must accept delivery on this basis.

2. SEASON OF USE

The normal irrigation season commences on April 15th and terminates on October 15th. In order to assure that District facilities are protected from potential damage which might result from unfavorable weather conditions, the season may be shortened. The District shall assume no liability for damages or losses which may be occasioned by the shortening of such normal season of use. In non-emergency situations, the District will endeavor to provide advance notice of any changes to the delivery season.

H. LIMITATIONS ON WATER DELIVERY

The Board's policy is to make the full amount of water requested by each Water User available in each irrigation season to the extent possible. However, the District does not and cannot guarantee full delivery. Water shortages may be caused by drought, changes in state regulations, water system constraints and emergency conditions. The Board has legal authority, when warranted by the circumstances, to allocate the available water supply to District Water Users in the manner most likely to serve the needs of the District as a whole. Each District Customer accepts the possibility of limited delivery as a condition of being a Customer. The General Manager shall be authorized to institute cutbacks in order to respond to water shortages. Cutbacks in delivery shall be made in stages, as described below. The conditions which will authorize each stage shall be determined by the Board.

1. VOLUNTARY CUTBACKS

The General Manager will attempt to solicit voluntary reductions from Customers to mitigate an anticipated shortfall in delivery.

2. SECONDARY CUTBACKS

If voluntary cutbacks will not result in a supply of water sufficient to meet the remaining needs of the irrigation system, all deliveries in excess of 3 miner's inches may be cut back subject to beneficial use as stated in this Policy and verified by the District.

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3. TERTIARY CUTBACKS

All Customers receiving one (1) miner's inch ("mi") or more will be allocated 1 mi for the remainder of the season until the water allocated for irrigation has been depleted.

4. FINAL CUTBACKS

Once irrigation water has been depleted, no allocation is made or guaranteed.

I. NON-LIABILITY OF DISTRICT

The District will exercise reasonable care and diligence to deliver a reliable supply of water to its irrigation Customers. However, the District is not, and will not be, liable for any loss, injury, damage, or inconvenience to any Irrigation Water User caused by shortage, insufficiency, suspension, or discontinuance of water service due to water shortage, storage or distribution facility malfunction, or any other cause whatsoever. All Customers and water users acknowledge that reliance on District water supply and delivery for any purpose, whether commercial or non-commercial, is at the Customer's own risk. Each Irrigation Customer agrees to hold the District and its Directors, Officers, Employees, and Agents free and harmless from liability and damages to any water user caused by such loss, damage, or inconvenience.

SECTION III RATES

The District shall set rates for irrigation water service by separate ordinance or resolution.

SECTION IV WATER SERVICE

A. CUSTOMER COMPLIANCE

Each Customer, by applying for or receiving Water Service from the District, agrees to be bound by and to comply with all Regulations of the District, as adopted or amended from time to time by the Board.

B. CONTROL OF SYSTEM

Subject to the policies, rules, and regulations established by the Board, the maintenance and operation of the irrigation system is under the exclusive control of the District Manager, and no other persons, except his assistants or designated employees, shall have any right to interfere in any manner with any canals, conduits, measuring devices or other appurtenances of the irrigation system.

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C. POINT OF RESPONSIBILITY

The full responsibility and risk for the carriage, handling, use and disposal of District Water shall transfer from the District to the Customer at the downstream side of the service outlet.

D. SERVICE EQUIPMENT AND DEVICES

1. INSTALLATION BY DISTRICT

Service installations and measuring devices shall be installed only by the District. There shall be no exceptions whatsoever to this provision.

2. LOCATION

All service connections and measuring devices shall be installed only adjacent to District facilities, and within the right-of-way thereof.

3. RESPONSIBILITY FOR PAYMENT

The applicant shall be responsible for payment of all costs and charges associated with the installation of service connections and measuring devices. Applicant will pay the estimated costs of installation to the District prior to installation. Upon completion of installation an audit will be performed. If the cost exceeded the estimate, the applicant will be billed for the balance due. If the cost is less than estimated, the surplus money will be refunded.

E. MAINTENANCE AND REPLACEMENT

1. CLEANING

District personnel shall at the beginning of each season and periodically thereafter, assure that all measuring devices are cleaned sufficiently to ensure an unobstructed and accurately measured flow of water.

2. REPAIRS

Whenever any service connection or measuring device requires repairs of any manner whatsoever or becomes worn, damaged, or otherwise unserviceable, District personnel will make such repairs as necessary. If damage was due to tampering, vandalism, or any other unauthorized action, the party causing the damage will be responsible for repaying the District for the cost of repair.

F. INSTALLATION OF CUSTOMER FACILITIES

1. IRRIGATION SYSTEMS

Each Customer, at its own risk and expense, shall furnish, install and operate in good and safe operating condition all facilities

121367.7 downstream of the service outlet that may be required for receiving, controlling and using water on the Customer's premises.

2. LIABILITY FOR CUSTOMER FACILITIES

The District shall not be responsible for any loss, injury or damage caused by the improper installation of any Customer-owned equipment and facilities, or the negligence or wrongful conduct of the Customer or of any of the Customer's tenants, agents, employees, contractors, licensees, permittees, or invitees related to the installing, operating, maintaining, or repairing of such equipment and facilities. The Customer shall be liable for any damage to District Facilities when such damage is caused by an act of the Customer or any of the Customer's tenants, agents, employees, contractors, licensees, permittees, or invitees. Upon the District's presentation of a bill for such damage, the Customer shall reimburse the District for the costs to repair or replace damaged District Facilities. Failure to pay such a bill shall be grounds for termination of water service and disconnection from the District water system.

3. PUMPS

All pumps which are installed into and draft water directly from District facilities shall be removed. All such systems shall be replaced at the Customer's expense with approved service connections or measuring devices and private facilities conforming to these regulations. The use of pumps to directly access District conveyances is forbidden. If pumps are to be used by the

Customer, they must be installed after the service box.

G. ADJUSTMENTS TO DISTRICT FACILITIES

1. DISTRICT POLICY

Adjustments or alterations in District service connections, measuring devices, canals, or other facilities shall be made only by District personnel.

2. UNAUTHORIZED ADJUSTMENTS OR TAMPERING

No person shall in any manner adjust, change, disturb or otherwise interfere with any District service connection, measuring device, gate, weir, conduit or other facility, nor shall any person construct any dam or otherwise impede or obstruct the flow of any District waterway.

Whenever such unauthorized adjustments or tampering are caused by a Customer or other bonafide users of water on the affected premises, the District will terminate service to all parcels owned or occupied by the person causing the unauthorized adjustment or tampering.

H. RIGHTS TO USE DISTRICT WATER

The District expressly reserves the right to retain, recapture, reuse and resell all waters in District ditches, canals, pipelines, tanks and other facilities, and all return flows from waters 121367.7 delivered by District to its customers. No user of water delivered by District acquires any

proprietary right to such water by reason of such use.

I. TAKING OF DISTRICT WATER

Any person or entity who takes any water from any District ditch, canal, pipeline, tank or other facility shall be subject to prosecution pursuant to Penal Code Section 592.

J. WATER QUALITY

Irrigation water travels through open canals ditches, and the District cannot guarantee that various foreign objects and substances do not fall into the water from time to time. In addition, all water supplied from canals and conduits is untreated. Untreated water is not intended nor offered for domestic uses, human or livestock consumption, or for raising aquatic life in any form. The District applies herbicides within the District's water system and right-of-ways to control both aquatic and terrestrial vegetation. The District applies only herbicides approved by the state and federal authorities for vegetation control purposes in the manner prescribed on the label. The District does not represent that any water delivered is potable or of a quality suitable for human or animal consumption.

SECTION V GENERAL

A. COMPLAINTS

All complaints relating to the District's services should be made by contacting the District in writing addressed to the District's Office, or by telephone (530-692-1463 or 530-675-2567). If you desire to address the Board, you may do so at any public meeting. However, if you wish the Board to discuss your issue or take action, you must request the item be added to an upcoming agenda.

B. ACCESS TO LAND

The authorized ditchtenders and other agents of the District shall have free access to the canal system and to all conduits for the purpose of inspection, measurements, surveys, or other necessary purposes of the District, with the right to install, maintain, control and regulate all meters or other measuring devices, gates, turnouts, or other structures necessary or proper for the measurement and distribution of water.

C. DAMAGE TO WORKS

Any person who shall cause or permit any damage to any works of the District, or who shall dump any foreign substances, or unauthorized crossings or erect fences on District rights-of-way, shall be liable to the District for all expenses the District incurs in the replacement or repair of District property, or in the removal of unauthorized substances or fences. In addition, any person causing damage to the District's property may be subject to criminal prosecution. 121367.7

D. PENALTY FOR VIOLATION

A refusal to comply with any of these regulations or interference with the proper discharge of duties under them shall be considered good cause by the District for terminating water service to any Customer who commits such a violation. Before taking any action for a violation of these regulations, the District will serve on the Customer a written violation and the action requested by the District to correct it, and permit the Customer a reasonable opportunity to correct the violation.

E. DELINQUENT CHARGES

If water charges should become delinquent, the District may at its discretion, do any or all of the following:

1. SUSPENSION OF SERVICE

The District may suspend the service of water until the charges are paid. This includes the right to suspend the service of water regardless of the type of crop being irrigated or the use to which the water is being put, and regardless of whether the user thereof is a landowner, tenant or other user. In the event any water charges are unpaid at the end of an irrigation season on any particular land, the District may, at its discretion, refuse to serve water to that land in the following or subsequent seasons, until all such unpaid water charges are paid in full. This shall include the right to refuse service of water although the user of the water for which charges remain unpaid was not the owner of the land, and although the ownership of the land may have changed since the water for which the charges remain unpaid was used.

2. COLLECTION BY TAX LIEN

Pursuant to Sections 31701 and 31701.5 of the California Water Code, all delinquent and unpaid charges for water and other services requested in writing by the owner of the property shall be added to, and become a part of, the annual taxes next levied upon the property upon which the water for which the charges are unpaid was used and upon the property subject to the charges for any other District services, and shall constitute a lien on that property as of the same time and in the same manner as does the tax lien securing such annual taxes.

F. FIRE PROTECTION

District water is not intended for fire protection purposes. The District cannot guarantee that District water will be available at a quantity, quality, or pressure suitable for fire protection.

G. REFUNDS

Partial refunds for paid water charges may be issued if full delivery was not made by reason of: 121367.7

1. Voluntary cutbacks

2. Rationing, or

3. Termination or suspension of service through no fault of the Customer Charges shall not be refundable for:

1. failure on the part of the Customer to take the full amount of water approved in the application

2. service interruptions of less than 15 days for emergencies or maintenance,

or

3. termination or suspension of service due to non-payment or any violation of District policies or regulations The District shall not pay interest for any deposit accounts. The district shall pay no interest on refunds, credit balances carried forward, or for any other reason whatsoever.

SECTION VI WATER USE

A. BENEFICIAL USE

All irrigation water shall be put to beneficial use. Beneficial use includes the production of crops and vegetable gardens. For purposes of this Irrigation Policy, "beneficial use" does not include unintended or unauthorized uses, such as domestic or industrial uses, human or animal consumption, or the raising of fish or other aquatic animals or vegetation. During periods of water shortages, the District may its sole discretion curtail the delivery of water to any ponds, and particularly to those ponds which are used primarily for aesthetic or recreational purposes.

B. SERVICE RESTRICTED TO DESIGNATED PLACE OF USE

Except with the prior written authorization of the district, no Customer shall use, or permit the use of any water furnished by the District on any premises, or for any purpose other than that specified in the application for the service, nor shall any Customer resell or otherwise provide any water furnished by the District to other parcels or property owners. All water supplied by the District must be used on parcels named in the application.

C. WASTE OF WATER

It shall be the responsibility of the Customer to assure that all water furnished by the District is used for beneficial purposes, and in a reasonable and efficient manner. The Customer must make every effort to avoid waste, including construction or installation of a reasonably efficient irrigation system which will minimize waste of water. All such systems shall be installed, maintained, and kept clean by the users at no cost to the District. The District may, from time to time, examine such systems, and in the event that such systems are found to be in 10 121367.7 disrepair to the extent that waste of water is imminent, delivery of water may be suspended until such conditions are corrected.

SECTION VII DEFINITIONS

ACRE-FOOT / ACRE-FEET: Term used in water measurement. By California statute, one acre-foot equals 43,560 cubic feet, 325,851 gallons or the volume of water that will cover one acre to a depth of one foot.

APPLICANT: Any person applying for any service provided by the District.

BOARD : The elected Board of Director of North Yuba Water District.

CHARGES: Includes rates, fees and any charges for services rendered by District.

CONDUIT: Includes canals, laterals, ditches, flumes, pipes and appurtenances.

CONTIGUOUS: A parcel is "contiguous" with District facilities if it shares a border with District facilities or if District facilities run through the parcel.

CUSTOMER: Any Person supplied or entitled to be supplied with water service by the District in accordance with its Regulations and a properly completed application, timely submitted and accepted. Also referred to as "District Customer."

DISTRICT: The North Yuba Water District, a special district formed under the laws of the State of California.

DISTRICT APPROVAL: Approved by the Board, or delegated employee, such as the General Manager.

DISTRICT FACILITY: Any facility which is owned by the District, including any device or structure used for the storage, transmission, distribution, treatment, or measurement of water.

GENERAL MANAGER: An employee and Officer appointed by the Board to direct and oversee the day-to-day operations of the District, or the General Manager's authorized representative.

LANDOWNER: A holder of title to land located within District.

OPERATE / OPERATIONS: The activities of NYWD necessary to provide water service, including construction, operation, maintenance, repair and replacement. 11 121367.7

PARCEL: Shall mean each separate lot or unit of land denominated by the Yuba County Assessor as processing and holding a separate parcel number, under the mapping and numbering systems of the Assessor.

PERSON: Any person(s), firm, association, organization, partnership, business trust, corporation, company, or other entity.

PHYSICAL ENCROACHMENT: Includes, but is not limited to, structures such as buildings, bridges, culverts, fences, pipelines, underground or overhead wires, roads, landscaping, which either cross, or lie within District property, easements or rights-of-ways, or which are located so close or near to District property, easements or right-of-ways, as to the unreasonably interfere or potentially interfere with District's operation of its facilities or with necessary improvements or reconstruction of its Facilities.

PREMISES: Integrated land area including improvements operated under the same ownership and management.

PRIVATE FACILITY: Any facility not owned by the District.

PRIVATE ROAD: Any road that does not fall under the jurisdiction of a public entity or that is not considered a dedicated public right-of-way.

REGULATIONS: Refers to these "Rules and Regulations" and all related ordinances, resolutions and policies adopted by the Board governing the equitable distribution and use of water within District and all other authorized services and actions of the District.

ROAD MAINTENANCE: Any work which entails the improvement of the drainage system and/or improvements in the traveling surface of the road.

SERVICE OUTLET: The point at which a customer's private pipeline, conveyance system, or irrigation system joins the District's measuring device.

TIME AND MATERIAL CHARGES: The term Time and Material Charges, as used in these Regulations, shall indicate a determination of costs based on the actual amount of labor, equipment and materials utilized to perform a specified task, including applicable overhead factors.

WATER SERVICE: Includes the availability of water to a premises through District Facilities and any water supplied through such facilities.

WATER USER: Any Person who uses water supplied by the District. Also referred to as "District Water User." 12 121367.7

WITHIN DISTRICT: All lands lying within the District's boundaries.

SECTION VIII EXHIBITS

A. Application
B. Rate Structure
REVISED 1/16/2014
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121367.7

End