MAY 1 4 2021

ENDORSED FILED
YUBA COUNTY SUPERIOR COURT
BONNIE SLOAN
SUPERIOR COURT CLERK
BY_____L. SPARKS

COURT CLERK

. .

SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

MARIEKE FURNEE; GIDEON BEINSTOCK;)
JEANETTE CAVALIERE; DONNA
CORSON; ISRAEL PERLA; AND CHARLES)
SHARP.

Petitioners,

VS.

THE NORTH YUBA WATER DISTRICT,

Respondents.

Case No.: CV PT 21-0000436

RULING

Petitioners' application for a temporary restraining order and order to show cause for a preliminary injunction came on for hearing before the undersigned on May 12, 2021. Counsel appeared for the parties as reflected in the minutes. The court, having read the papers, heard oral arguments and took the matter under submission.

The Governor of the State of California just recently declared a drought emergency in many Counties including Butte County, in which the district is partially located. The fire season is upon us. Petitioners' lives, livelihoods, livestock, properties and possessions are at increased risk of harm and loss. The district controls a complicated delivery system which enhances, conserves and prolongs the availability of water during the dry months. There are limits on the system given its sources, its design and construction characteristics and its legal and contractual obligations. The district decides each year whether to have a water season. In several of the last 10 years there has been no season and in some years a reduced season. Petitioners cannot deny that this is a drought year. Obviously, the district did not cause it. Petitioners argue that while water is scarce this year, the district has some water available and

3 4 5

6 7

13 14 15

12

16 17

18 19

20 21

22 23

24

25 26

27

28

a good faith effort has not been made to deliver it.

Petitioners argue that in spite of the Board's decision to forgo the season, a small amount of water is being preferentially delivered to Real Party in Interest, Young Life, Inc. at its Woodleaf site and this decision/approval violates CEQA. The underlying facts are contested and the applicable law is unsettled. Petitioners have not met their burden to show a probable violation of CEQA.

Petitioners argue that the Board's decision to forgo the season is an abuse of discretion and not based on substantial evidence. The district argues that there is insufficient water available in the system to start the season. Both sides contest the exact amount available but it is undisputed that the available water is minimal. While substantial water is available from the Sly Creek Reservoir, there is a dispute as to how much is deliverable through the Forbestown ditch. Substantial loss occurs delivering water through that ditch. There is currently an effort underway to lessen those losses but it is disputed how to do that (piping or maintenance). There is a dispute as to the actual contracted needs of lower Forbestown ditch users. There is a dispute as to available water in Dry Creek and how much water is available from the Forbestown ditch through Costa Creek. There is a dispute as to losses along the Dobbins-Oregon House Canal which services petitioners. The parties do agree about the minimum flows needed for fish in Dry Creek which limits water that can be taken from the creek. The parties dispute how much water currently is in Dry Creek. Petitioners contend that the Woodleaf preferential delivery is in violation of the Water Code and the reasonable use doctrine. The district contends that the Woodleaf delivery this year is minimal, pulls water from the top of the Forbestown ditch before substantial losses occur, does not substantially affect potential deliveries to Petitioners and is to a regular customer in the district for potential fire protection. In conclusion, there is substantial evidence to support the district's decision to deliver a small amount of water to Woodleaf and, yet, forgo the season this year. That does not mean Petitioners' arguments have no merit. Reasonable minds can differ on the facts and the many variables that must be considered. Reasonable minds can disagree as to the ultimate decision. However, the law does not allow this court to substitute its decision in place of the districts.

Petitioners argue that there is evidence of bad-faith animus by certain Board members against petitioners because they and others have opposed the district's efforts to pipe the Forbestown ditch and comments have been made suggesting that the real reason the decision was made to forgo the season is political. These facts can reasonably cause concerned persons to question motivations. However, they could also simply represent strongly held contrary views on how best to solve the problems facing the district or be examples of rivalries for power. They are not sufficient to undermine the other facts noted above regarding the drought and the complex considerations and ultimate decision made by the district.

The law imposes a further important limitation on this court in deciding whether to grant a temporary/preliminary injunction against the district. There is a general rule against enjoining public agencies from performing their duties unless there is a showing of significant irreparable harm. In this case there has been an allegation that the risk of harm from fire will increase and that the harm may be catastrophic and irreparable if no water deliveries are made. There is significant speculation in this allegation. There has been no showing that the baseline risk of harm from fire in a drought year is increased if the district doesn't deliver the admittedly small amount petitioners contend is available. Common sense says some water is better than no water. But in this case there has been no showing that the absence of some water, whatever that unknown small amount is contended to be, will likely result in irremediable harm, not already as likely due to the drought.

Accordingly, for all of the forgoing reasons and as set forth in Respondent's opposition papers, the petition is DENIED.

DATED: May / , 2021

STEPHEN W. BERRIER

STEPHEN W. BERRIER
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

I, the undersigned, hereby declare that I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am employed at Yuba County Superior Court and my business address is 215 Fifth Street, Marysville, California.

On May $\bigcup_{i=1}^{n}$, 2021 I served the within RULING on the named parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the central depository for mail collection for Yuba County, located at 215 Fifth Street, Marysville, California, addressed as follows:

WANGER JONES HELSLEY JOHN KINSEY 265 EAST RIVER PARK CIRCLE SUITE 310 FRESNO CA 93720

BARBARA BRENNER ATTORNEY AT LAW 1414 K STREET 3RD FLR SACRAMENTO CA 95814

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

Executed on May 🚺 , 2021 at Marysville, California.

Bonnie Sloan Clerk of the Superior Court

| By: | L. SPARKS |
|-----|-------------|
| - | Court Clerk |