

MAY 14 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,**

Case No.: CV PT 21-0000436

RULING

**Petitioners,**

**vs.**

**THE NORTH YUBA WATER DISTRICT,**

**Respondents.**

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

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

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

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



1 **PROOF OF SERVICE**

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

5 On May 14, 2021 I served the within RULING on the named parties by placing a true  
6 copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the central  
7 depository for mail collection for Yuba County, located at 215 Fifth Street, Marysville,  
8 California, addressed as follows:

9 WANGER JONES HELSLEY  
10 JOHN KINSEY  
11 265 EAST RIVER PARK CIRCLE SUITE 310  
12 FRESNO CA 93720

13 BARBARA BRENNER  
14 ATTORNEY AT LAW  
15 1414 K STREET 3<sup>RD</sup> FLR  
16 SACRAMENTO CA 95814

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

18 Executed on May 14, 2021 at Marysville, California.

19 Bonnie Sloan  
20 Clerk of the Superior Court

21 By: L. SPARKS  
22 Court Clerk  
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