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7 Attorneys for Respondents NORTH YUBA
WATER DISTRICT, NORTH YUBA
WATER DISTRICT BOARD OF
8 DIRECTORS, DOUG NEILSON, FRED
MITCHELL, GARY HAWTHORNE,
9 GRETCHEN FLOHR and ERIC HANSARD
in their official capacities
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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SUTTER

14
15 SOUTH FEATHER WATER AND POWER
AGENCY,

16 Petitioner,

17 v.

18 NORTH YUBA WATER DISTRICT,
19 NORTH YUBA WATER DISTRICT BOARD
OF DIRECTORS, DOUG NEILSON, FRED
20 MITCHELL, GARY HAWTHORNE,
GRETCHEN FLOHR and ERIC HANSARD
21 in their official capacities; and DOES 1 to 20,
inclusive,
22

23 Respondents.
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CASE NO. CVCS21-0002073

Filed Under Cal. Environmental Quality Act
(CEQA)

NORTH YUBA WATER DISTRICT,
ET AL.'S NOTICE OF DEMURRER AND
DEMURRER

Hearing Date: January 3, 2021
Time: 9:00 a.m.

Assigned to Hon. Perry Parker

Date Action Filed: April 2, 2021

1 NOTICE OF DEMURRER

2 ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on January 3, 2022, at 9:00 a.m., or as soon thereafter as
4 counsel may be heard, in the courtroom of the Honorable Perry Parker of this Court, located at
5 1175 Civic Center Boulevard, Yuba City, California 95993, Respondents North Yuba Water
6 District, et al. (District) shall bring for hearing its Demurrer to the Verified First Amended
7 Petition for Writ of Mandate (Amended Petition) filed by South Feather Water and Power
8 Agency (Agency).

9 District’s Demurrer is and will be based on this Notice, the Demurrer, the Memorandum
10 of Points and Authorities Supporting the Demurrer, the Declaration of Kelley M. Taber in
11 Support of the Demurrer, the accompanying Request for Judicial Notice, the pleadings and papers
12 on file in this action, and such other matters as may be presented prior to or at the hearing on the
13 Demurrer.

14 In compliance with Code of Civil Procedure section 430.41, and as set forth in the
15 accompanying Declaration of Kelley M. Taber, counsel for District and Agency exchanged
16 correspondence and met and conferred by teleconference on September 10, 2021 regarding
17 District’s intent to demur to the Verified Petition.

18 This Court does not issue Tentative Rulings at this time and appearances are required.

19 DEMURRER

20 Demurrer to First Cause of Action
21 (Writ of Mandate – Failure to Provide Notices
22 Required by the California Environmental Quality Act (CEQA))

23 District demurs to the First Cause of Action because the California Environmental Quality
24 Act (CEQA) does not provide a remedy for failure to provide notifications pursuant to Public
25 Resources Code section 21092.2 and Agency had actual and constructive notice of the Oroleve
26 Pipe Line project (Project). District further demurs to the First Cause of Action because it is
27 barred by the requirement to exhaust administrative remedies set forth in California Public
28 Resources Code section 21177, and is time-barred pursuant to California Public Resources Code
section 21167, subdivision (d).

1 Demurrer to Second and Third Causes of Action
2 (Writ of Mandate –Improper Use of CEQA Exemption,
3 Improper Piecemealing of a Single Project)

4 District demurs to the Second and Third Causes of Action because they are barred by the
5 requirement to exhaust administrative remedies set forth in California Public Resources Code
6 section 21177, and are time-barred pursuant to California Public Resources Code section 21167,
7 subdivision (d).

8 Demurrer to Fourth Cause of Action
9 (Declaratory Relief)

10 District demurs to the Fourth Cause of Action because there is no ongoing controversy
11 regarding the District’s obligation to provide CEQA notices to Agency.

12 WHEREFORE, District prays that the Court sustain its demurrer as to the First, Second,
13 Third, and Fourth Causes of Action stated in the Amended Petition, without leave to amend, and
14 order dismissal of the Verified Petition in its entirety.

15 PLEASE TAKE FURTHER NOTICE THAT District has concurrently filed a Request for
16 Judicial Notice (RJN) with this Demurrer pursuant to Code of Civil Procedure sections 430.30
17 and 430.70. The RJN asks this Court to take judicial notice of the following documents:

- 18 A. Petitioner’s Verified First Amended Petition for Writ of Mandate and Complaint for
19 Declaratory Relief filed August 16, 2021;
- 20 B. February 27, 2020 Agenda for the Regular Meeting of the Board of Directors of the
21 North Yuba Water District, posted by the District on its website;
- 22 C. February 27, 2020 Board Packet for the Regular Meeting of the Board of Directors of
23 the North Yuba Water District, posted by the District on its website;
- 24 D. February 25, 2020 Minutes from the Regular Meeting of the Board of Directors of the
25 South Feather Water and Power Agency, posted by Agency on its website;
- 26 E. Certified Transcript of excerpts from the February 25, 2020 Regular Meeting of the
27 Board of Directors of the South Feather Water and Power Agency, prepared using the
28 audio recording posted by Agency on its website;
- F. February 27, 2020 Minutes for the Regular Meeting of the Board of Directors of the

- 1 North Yuba Water District, posted by District on its website;
- 2 G. Certified Transcript of an excerpt of the February 27, 2020 Regular Meeting of the
- 3 Board of Directors of the North Yuba Water District;
- 4 H. April 17, 2020 Letter issued by the South Feather Water and Power Agency to the
- 5 North Yuba Water District;
- 6 I. April 28, 2020 Minutes from the Regular Meeting of the Board of Directors of the
- 7 South Feather Water and Power Agency, posted by Agency on its website;
- 8 J. Certified Transcript of excerpts from the April 28, 2020 Regular Meeting of the
- 9 Board of Directors of the South Feather Water and Power Agency, prepared using the
- 10 audio recording posted by Agency on its website;
- 11 K. Notice of Termination filed with the State Water Resources Control Board by North
- 12 Yuba Water District on May 5, 2021;
- 13 L. Circulating Order Memorandum issued by the Judicial Council of California on
- 14 May 29, 2020.
- 15 M. Bid proposal from Hansen Bros. Enterprises for the Oroleve Ditch Pipe Line Project,
- 16 provided to North Yuba Water District by South Feather Water and Power Agency on
- 17 August 24, 2021, dated April 17, 2020;
- 18 N. Email from Charles Sharp to Tod Hickman dated May 14, 2020, forwarding Bid
- 19 Proposals to South Feather Water and Power Agency, provided by North Yuba Water
- 20 District to South Feather Water and Power Agency in response to a Public Records
- 21 Act request on August 24, 2021.

22 Judicial notice of these documents is proper pursuant to Evidence Code sections 452
23 and 453.

24
25 Dated: December 7, 2021

SOMACH SIMMONS & DUNN
A Professional Corporation

By: 

Michael E. Vergara
Kelley M. Taber

Attorneys for Respondents

NORTH YUBA WATER DISTRICT, ET AL.

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PROOF OF SERVICE
(State of California)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On December 7, 2021, I served the following document(s):

NORTH YUBA WATER DISTRICT, ET AL.'S
NOTICE OF DEMURRER AND DEMURRER

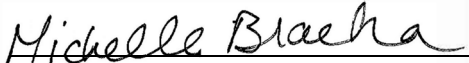
XX (by personal delivery) I caused to be personally delivered a true copy of the above-referenced document to the person(s) and at the address(es) set forth below:

Dustin C. Cooper Jackson Minasian Aidan Wallace MINASIAN, MEITH, SOARES, SEXTON & COOPER LLP 1681 Bird Street, P.O. Box 1679 Oroville, CA 95965 dcooper@minasianlaw.com jminasian@minasianlaw.com awallace@Minasianlaw.com atoohay@Minasianlaw.com ljanowski@minasianlaw.com	<i>Attorneys for SOUTH FEATHER WATER AND POWER AGENCY</i>
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XX Via electronic service to the electronic mail addresses set forth below:

Mark A. Habib PETERS, HABIB, MCKENNA, JUHL- RHODES & CARDOZA 414 Salem Street P.O. Box 3509 Chico, CA 95927 mhabib@peterslawchico.com	<i>Attorneys for NORTHSTAR ENGINEERING</i>
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I declare under penalty of perjury that the foregoing is true and correct. Executed on December 7, 2021, at Sacramento, California.


Michelle Bracha