

GARY HAWTHORNE
Division 3

Alton Wright
Division 1

Steve Ronneburg
Director
Division 2



Marieke Furnee
President
Division 4

Ann Plumb
Vice President
Division 5

[VACANT]
General Manager

AGENDA

**SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE NORTH
YUBA WATER DISTRICT**

5:30 PM ♦ TUESDAY ♦ DECEMBER 20, 2022

NOTICE: THIS MEETING WILL BE PHYSICALLY OPEN TO THE PUBLIC AT THE DISTRICT OFFICE LOCATED AT 8691 LA PORTE RD, BROWNSVILLE, CA 95919. HOWEVER, THE MEETING WILL ALSO TAKE PLACE VIA ZOOM, HELD IN ACCORDANCE WITH EXECUTIVE ORDER N-29-20, ISSUED BY CALIFORNIA GOVERNOR GAVIN NEWSOM ON MARCH 17, 2020, THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950 ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT.

ANY MEMBERS OF THE PUBLIC MAY PARTICIPATE IN THE MEETING VIA VIDEOCONFERENCE AT:

Join Zoom Meeting

<https://us02web.zoom.us/j/86194791293?pwd=ZVRRN3NmalpwdlU1anBsUk1UZGI3QT09>

Meeting ID: 861 9479 1293

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One tap mobile

+16699009128,,86194791293# US (San Jose)

+16694449171,,86194791293# US

Dial by your location

+1 669 900 9128 US (San Jose)

Meeting ID: 861 9479 1293

Find your local number: <https://us02web.zoom.us/u/kd3UfiTLfi>

**COMMENCEMENT OF
MEETING**

- A. CALL TO ORDER/ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. OPPORTUNITY FOR PUBLIC COMMENT ON AGENDIZED ITEMS

As provided under Government Code section 54954.3, subdivision (a), during a Special Meeting any member of the public may address the Board concerning any item on the agenda. No other comments will be allowed. Any member of the public wishing to make comment shall identify the agenda item they intend to address, and they will be provided an opportunity to make comment on that item only. Public comment is limited to no more than two (4) minutes per person, twenty (20) minutes total for all speakers.

**DISCUSSION/OPEN SESSION
ACTION CALENDAR**

- D. ***Board Meetings:*** an existing Board Resolution requires meetings to take place at 10:30 AM and requires a regular meeting to take place the last Thursday of December. The Board will meet and possibly act upon a resolution allowing more flexibility in meeting scheduling and postponing December's regular meeting during the pending holiday season (*see attached proposed resolution*).

- E. ***Special Meeting Agenda Preamble:*** the Board will meet to discuss, and possibly act to add a preamble to special meeting agendas explaining to the public why a special meeting is required in lieu of noticing a regular meeting.

- F. ***Staff Reports and Recommendations:***
 - 1. ***Capital Outlay:*** the Board will meet to receive information, discuss, and possibly act to obtain: information technology infrastructure; water metering equipment; and professional services needed to retrieve inaccessible information.

 - 2. ***Forbestown Ditch and Drinking Water Treatment Plant Repair:*** the Board will discuss and possibly act to invoke the mutual aid agreement between the North Yuba Water District and the South Feather Water and Power Agency - including obtaining necessary insurance coverage - to begin repairs on the Forbestown Ditch and the District's drinking water treatment plant as soon as possible.

 - 3. ***Interim General Counsel:*** the District's Interim General Legal Counsel will report on legal issues involving the District.

CLOSED SESSION

- G. The Board will meeting in closed session to consider and possibly act upon appointment/employment to fill the public officials/employee positions of Interim General Manager, Interim Administrative Assistant, Information technology officer, and Custodian.

H. Conference with Legal Counsel —existing litigation (4 Cases) – pursuant to Government Code section 54956.9, subdivision (d), paragraph (1):

- 1. Fellowship of Friends, Inc. v. North Yuba Water District, et al., Yuba County Superior Court Case No. CVPT22-00246;**
- 2. Marieka Furnee, Gideon Bienstock, Jeanette Cavaliere, Donna Corson, Israel Perla, and Charles Sharp v. North Yuba Water District, Yuba County Superior Court Case No. CVPT21-00436;**
- 3. Charles Sharp v. North Yuba Water District, et al., Yuba County Superior Court Case No. CVPT20-00386.**
- 4. North Yuba Water District v. South Feather Water and Power District, Yuba County Superior Court Case No. Case No. CVCS21-0001857**

I. Conference with Legal Counsel — existing litigation (4 cases) – pursuant to Government Code section 54956.9, subdivision (d), paragraph (3):

Significant exposure to litigation pursuant to paragraph (3) of subdivision (d) of Section 54956.9: (6 potential cases)

The Board will meet in closed session to evaluate whether facts and circumstances pertaining to six potential cases that might result in litigation against the District, but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, justify a closed session discussion with District Legal Counsel pertaining to one or more of these six potential cases.

J. Conference with Legal Counsel —pending litigation (2 cases) – pursuant to Government Code section 54956.9, subdivision (e), paragraph (3):

- 1. Letter from Dustin Cooper, representing South Feather Water and Power District, demanding the Board cure and correct alleged Brown Act violations.**
- 2. Letter from John Kinsey, representing Charles Sharp, demanding the Board cure and correct alleged Brown Act violations, declare the director’s chair for Election District 3 vacant, to fill the vacancy, and to remove defamatory content posted on the District’s webpage.**

K. PUBLIC REPORT OF ACTIONS TAKEN IN CLOSED SESSION.

CLOSING PUBLIC COMMENT

L. OPPORTUNITY FOR PUBLIC COMMENT ON AGENDIZED ITEMS

As provided by Board Resolution, any member of the public wishing to make comment on matters discussed during the meeting will be provided an opportunity to make comments, limited to no more than two (3) minutes total per person, twenty (10) minutes total for all speakers.

ADJOURNMENT

**MUTUAL AID, COOPERATION AND WATER SUPPLY
PROCUREMENT AGREEMENT BETWEEN
YUBA COUNTY WATER DISTRICT AND
OROVILLE-WYANDOTTE IRRIGATION DISTRICT
(MASTER AGREEMENT)**

This Agreement is made and entered into on this 23rd day of July, 1996, between YUBA COUNTY WATER DISTRICT ("YCWD") and OROVILLE-WYANDOTTE IRRIGATION DISTRICT ("OWID") to provide for a master agreement governing inter-district cooperation on matters of resource allocation, personnel, mutual aid, and interconnection, and other matters within the authorities of districts upon which they may successfully cooperate for the mutual benefit of their respective customers.

RECITALS

- A. YCWD is a county water district formed and existing in accordance with the provisions of Division 12 of the Water Code of the State of California. It has the authority to enter into agreements with districts such as OWID which its Board of Directors finds to be beneficial to the needs and requirements of its customers and in the best interest of YCWD in accordance with law.
- B. OWID is a California irrigation district formed and existing in accordance with Division 11 of the Water Code. It possesses the power to enter into agreements such as this Agreement with YCWD for the mutual benefit of both districts if its Board finds it is in the best interest of its customers and consistent with the purposes of OWID in accordance with law.
- C. OWID and YCWD desire to enter into a Master Agreement providing a framework for future contractual relationships on various matters of interest to both districts which they find to be in their mutual beneficial best interests. Districts do not wish to form a joint powers authority

or independent agency for purposes of carrying out said functions, but wish to enter into said agreements in order to cooperatively and comprehensively take action for the mutual benefit of their respective districts. This Agreement shall not constitute a joint powers agreement, joint venture, or otherwise considered to be an establishment of an independent agency.

OUTLINE OF PURPOSES OF MASTER AGREEMENT

1. YCWD and OWID may wish to enter into an agreement whereby OWID will provide for the provision of labor, on a part-time basis, to YCWD for purposes of operating its treatment plant in the community of Forbestown, wherein OWID has its South Fork Project headquarters and, on a limited basis, providing operation and maintenance and emergency services to the customers served by said treatment plant within the Forbestown area.

2. OWID and YCWD may wish to enter into an agreement or agreements, providing for the interties of their water system at various points in order to secure the most cost effective water service for their respective customers and to increase the reliability of supply.

3. OWID and YCWD may wish to enter cooperative agreements for the development of additional water supplies, maintenance of existing facilities, and/or improvements and/or reconstruction of existing facilities in order to enhance and improve the economics of delivering water to their respective customers.

4. Administration of Individual Agreements. Should the Districts enter into agreements in order to carry out the purposes set forth above, then said districts will prepare a specific sub-agreement hereunder which agreement will set forth the specific terms and conditions under which the particular services will be provided. In the event of any conflict between the terms of this general agreement and the terms of this specific sub-agreement, then the terms of

the sub-agreement will control.

5. Insurance and Indemnification. As long as the Master Agreement is in effect, both OWID and YCWD shall maintain insurance from reputable commercial insurance providers, including self insurance funds, providing for general liability in an amount of not less than \$2 million, combined single limit. Each district will be responsible for providing all necessary labor related insurance, including Workers Compensation Insurance, for its employees engaged in any cooperative venture.

6. OWID and YCWD shall make their books and accounts accessible to the other district at all reasonable times and place during normal business hours in order to ensure costs and expenses incurred in connection with any such agreement can be reasonably audited and reviewed and approved by the other district.

7. Arbitration. In the event of any dispute over this Agreement and/or any sub-agreements entered into hereunder, then prior to the initiation of any litigation in civil court related to such dispute, the matter shall be subject to arbitration before a neutral arbitrator selected by the Districts. If the Districts are unable to agree on a single arbitrator, then the Districts shall request that an arbitrator be appointed by the Superior Court of the county which is the locus of the particular items which are subject to dispute. In other words, if the dispute involves actions occurred or alleged to have occurred, or failure to comply with agreements which failure occurred or was alleged to have occurred in Butte County, then the Butte County Superior Court will be responsible to the appointment of an arbitrator. The Districts agree that arbitration will be carried out in accordance with the rules and regulations established by the applicable court in accordance with its judicial arbitration rules. The parties agree that all arbitration will be subject to the rules

of Civil Procedure applicable thereto, including the rules of Civil Discovery.

8. Indemnification. Each district shall indemnify and defend the other district from all claims, demands and damages arising from the indemnifying district's negligent acts and omissions occurring under the agreement, unless otherwise provided by Sub-agreement.

Agreed to this 23rd day of July, 1996, at Oroville, California.

OROVILLE-WYANDOTTE IRRIGATION DISTRICT



YUBA COUNTY WATER DISTRICT



**SUB AGREEMENT NO. 2 TO THE
MUTUAL AID, COOPERATION AND WATER SUPPLY
PROCUREMENT AGREEMENT BETWEEN
YUBA COUNTY WATER DISTRICT AND
SOUTH FEATHER WATER AND POWER**

**Provision by SFWP of Labor to YCWD
For Distribution System Operation, Maintenance, Repair
And Backflow Device Testing and Maintenance**

RECITALS

WHEREAS, YCWD owns and operates a water distribution system in the community of Forbestown, Challenge, Brownsville and Rackerby providing treated and untreated water service to the area described in Exhibit A; and

WHEREAS, SFWP has personnel qualified and skilled in the operation, maintenance and repair of said distribution system and backflow devices; and

WHEREAS, due to the proximity of said distribution system and backflow devices to SFWP's boundaries, SFWP is able to provide labor on an emergency and limited time basis to said distribution system and backflow devices; and,

WHEREAS, YCWD has authority in accordance with the provisions of 31004 of the Water Code Contract to contract with SFWP for labor for the provision of services; and,

WHEREAS, the provision of such services of SFWP is consistent with the applicable labor ordinances, rules and regulations and MOU's of SFWP; and,

WHEREAS, YCWD and SFWP have previously entered into a General Agreement governing mutual aid and cooperation (Master Agreement).

NOW, THEREFORE, it is agreed as follows:

1. This Agreement will be subject to the Master Agreement referred to hereinabove.
2. SFWP will provide SFWP employees to operate, maintain, repair and/or test the distribution system and backflow devices with in the YCWD domestic system area as necessary to complete the agreed upon work, plus one hour of commute time required for said response between the SFWP Water Division Yard and the YCWD distribution system area and/or backflow devices.
3. Said employees will be available to provide all services necessary for the operation, maintenance, and repair of said distribution system and backflow devices as may be required.
4. YCWD will be responsible for all emergency communication equipment and facilities necessary to ensure call-out of the employees at its expense.
5. YCWD will defend and indemnify SFWP, and hold it harmless, from all claims, demands, damages, of whatsoever kind in nature, arising from the actions or inactions, errors or omissions, of SFWP employees employed on any call-out for YCWD purposes. This indemnification will apply even in the event it is alleged that the cause of said claims, damages or demands is the negligent act or omission of the SFWP employee or employees providing services by YCWD.
6. YCWD will compensate SFWP at the applicable hourly rate of said employees, plus all applicable overhead and charges otherwise payable by the District for call-out, plus charges, established by the District, for use of

District equipment. A schedule of such rates and charges shall be provided to YCWD annually, on or before January 1 of each year. Billings will be submitted monthly and will include a District administrative charge of ten (10%) percent of the direct costs billed. It is understood that the District's labor rate is subject to change based on modification of its applicable employment agreements with its employees and/or MOU's. Any standby or overtime incurred by SFWP will also be chargeable to and paid by YCWD.

7. All invoices submitted by the District will be paid by YCWD within 30 days of the date of said invoice.
8. Termination. This agreement may be terminated at any time by either party without cause or further obligation on six months prior written notice or such earlier notification as will not cause undue expense or burden to the non-terminating district.
9. It is understood that SFWP's employees must be made available on a priority basis for any emergencies on SFWP's system that may affect the public health. SFWP will require the personnel to respond to emergencies on its system in those circumstances where the emergency constitutes a threat to public health and no other employees of the District are available therefore prior to their dispatched services to YCWD. SFWP will endeavor to give YCWD notice when its employees are not available due to such circumstances.
10. YCWD will provide that its policy or policies of insurance shall name SFWP, and its agents, officers and employees, as an additional named

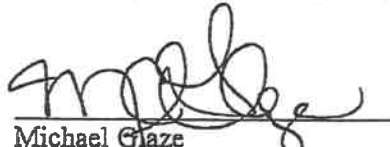
ensured on its policy of liability insurance for the purposes of this Agreement for all actions undertaken by SFWP personnel in connection with the provision of service hereunder.

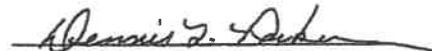
11. This Agreement and the parties hereto shall be subject to all the terms and conditions of the Master Agreement unless the terms hereof conflict with said Master Agreement, in which case this Sub Agreement shall govern.

Agreed to this 17th day of ~~NOVEMBER~~, 2003 at Oroville, California.

**SOUTH FEATHER WATER
AND POWER**

**YUBA COUNTY WATER
DISTRICT**


Michael Glaze
General Manager


Dennis L. Parker
General Manager

**SUB AGREEMENT NO. 3 TO THE
MUTUAL AID, COOPERATION AND WATER SUPPLY
PROCUREMENT AGREEMENT BETWEEN
YUBA COUNTY WATER DISTRICT AND
SOUTH FEATHER WATER AND POWER AGENCY**

**Provision by SFWPA of Labor to YCWD
For Irrigation System Operation, Maintenance, Repair
And Capital Improvements**

RECITALS

WHEREAS, YCWD owns and operates an irrigation-water distribution system in the communities of Dobbins and Oregon House providing untreated water service to the area described in Exhibit A; and,

WHEREAS, SFWPA has personnel qualified and skilled in the operation, maintenance and repair of said distribution system; and,

WHEREAS, due to the proximity of said distribution system to SFWPA's boundaries, SFWPA is able to provide labor on an emergency and limited time basis to said distribution system; and,

WHEREAS, YCWD has authority in accordance with the provisions of 31004 of the Water Code to contract with SFWPA for labor for the provision of services; and,

WHEREAS, the provision of such services of SFWPA is consistent with the applicable labor ordinances, rules, regulations, and MOUs of SFWPA; and,

WHEREAS, YCWD and SFWPA have previously entered into a General Agreement governing mutual aid and cooperation (Master Agreement).

NOW, THEREFORE, it is agreed as follows:

1. This Agreement will be subject to the Master Agreement referred to hereinabove.
2. SFWPA will provide SFWPA employees to operate, maintain, and/or repair the distribution system within the YCWD irrigation system area as necessary to complete the agreed upon work, plus one hour of commute time required for said response between the SFWPA Water Division Yard and the YCWD distribution system area.
3. Said employees will be available to provide all services necessary for the operation, maintenance, and repair of said distribution system as may be required.
4. YCWD will be responsible for all emergency communication equipment and facilities necessary to ensure call-out of the employees at its expense.
5. YCWD will defend and indemnify SFWP, and hold it harmless, from all claims, demands, damages, of whatsoever kind in nature, arising from the actions or inactions, errors or omissions, of SFWP employees employed on any call-out for YCWD purposes. This indemnification will apply even in the event it is alleged that the cause of said claims, damages or demands is the negligent act or omission of the SFWP employee or employees providing services by YCWD.
6. YCWD will compensate SFWPA at the applicable hourly rate of said employees, plus all applicable overhead and charges otherwise payable by the Agency for call-out, plus charges, established by the Agency, for use of Agency equipment. A schedule of such rates and charges shall be provided to YCWD annually, on or before January 1 of each year. Billings will be submitted monthly and will include an Agency

administrative charge of ten percent (10%) of the direct costs billed. It is understood that the Agency's labor rate is subject to change based on modification of its applicable employment agreements with its employees and/or MOUs. Any standby or overtime incurred by SFWPA will also be chargeable to and paid by YCWD.

7. All invoices submitted by the District will be paid by YCWD within 30 days of the date of said invoice.

8. Termination. This agreement may be terminated at any time by either party without cause or further obligation on six months prior written notice or such earlier notification as will not cause undue expense or burden to the non-terminating party.

9. It is understood that SFWPA's employees must be made available on a priority basis for any emergencies on SFWPA's system that may affect the public health. SFWPA will require the personnel to respond to emergencies on its system in those circumstances where the emergency constitutes a threat to public health and no other employees of the Agency are available therefore prior to their dispatched services to YCWD. SFWPA will endeavor to give YCWD notice when its employees are not available due to such circumstances.

10. YCWD will provide that its policy or policies of insurance shall name SFWPA, and its agents, officers, and employees as an additional named insured on its policy of liability insurance for the purposes of this Agreement for all actions undertaken by SFWPA personnel in connection with the provision of service hereunder.

11. This Agreement and the parties hereto shall be subject to all the terms and conditions of the Master Agreement unless the terms hereof conflict with said Master Agreement, in which case this Sub Agreement shall govern.

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NORTH YUBA WATER DISTRICT**

RESOLUTION NO. 22 - 775

THE BOARD OF DIRECTORS OF NORTH YUBA WATER DISTRICT HEREBY RESOLVES that:

Resolution No. 22-771, adopted by the District Board on July 22, 2022, is hereby rescinded.

Consistent with District past practice, the December 2022 regular meeting is continued to January 2023.

All future regular Board meetings will occur on the fourth Wednesday of each month.

The time for regular meetings will ordinarily be 5:30 PM, but that the time is flexible, per the Board President's discretion.

District Directors, and staff that is not required/requested to be physically present, may attend any Board meeting via Zoom, or its equivalent.

Although physical meetings are favored, the Board may hold meetings exclusively via zoom or its equivalent, if, in the Board President's discretion, circumstances warrant it, including but not limited to conditions that impact the health and safety of the community, such as pandemic or dangerous conditions due to weather or fire.

PASSED, APPROVED, AND ADOPTED by the Board of Directors of the North Yuba Water District at a special meeting held this Tuesday, December 20, 2022, by the following vote, and verified by the following signatures:

AYES:

NOES:

ABSTAIN:

ABSENT:

By: _____
Board President

By: _____
Board Director

By: _____
Board Director

By: _____
Board Director

By: _____
Board Director

**MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP**

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WILLIAM H. SPRUANCE,
Retired

MICHAEL V. SEXTON,
Retired

December 12, 2022

Via Email and U.S. Mail

Paul Boylan
General Counsel, North Yuba Water District
8691 Quincy La Porte Road
Brownsville, California 95919

RE: NYWD's Brown Act Violations

Dear Mr. Boylan:

This firm serves as general counsel to South Feather Water & Power Agency. The purpose of this letter is to notify you of substantial violations of provisions of the Ralph M. Brown Act by North Yuba Water District's (NYWD) at its November 18, 2022 and November 29, 2022 special meetings. These violations invalidate the actions taken by NYWD on November 18, 2022 to agree to a new 4-year term on NYWD's General Manager's employment contract and adopt a 18-month severance for the General Manager. These violations also invalidate the actions taken by NYWD on November 29, 2022 to terminate NYWD's General Manager, triggering the 18-month severance payment by NYWD (in excess of \$330,000).

NYWD should cure and correct these flagrant Brown Act violations.

1. NYWD's November 18, 2022 Special Meeting.

NYWD's agenda is attached. Two actions by NYWD create a series of Brown Act violations.

A. Action 1: NYWD's Approval of Resolution 22-774.

The Board ratified the Seventh Amendment to the General Manager Jeff Maupin's

(Maupin) employment agreement. The agenda description states that the Resolution would amend the employment contract to include changes “amending paragraphs 3 and 13 and adding paragraph 14 to the employment contract.”

The Amendment to Paragraph 3 and 13, when read together, affect the compensation of a local agency executive. Specifically, paragraph 3 established a four-year term of Maupin’s employment agreement. The Agency’s review of documents provided indicates that prior to this Seventh Amendment, Maupin’s the term of employment contract had expired.

The amendment to paragraph 13 changed the manner in which severance compensation was to be paid and restated a provision of the Agreement which established the amount of that severance payment: “Employee shall receive a severance package in an amount equal to Employee’s monthly salary at the time of termination multiplied by 18 months.”

NYWD’s approval of Resolution Number 22-774 amending the employment agreement of Maupin violates two provisions in the Brown Act:

i. California Government Code section 54956(b)

Section 54956 states, in pertinent part: “Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1.”

California law treats severance pay as wages. (See, e.g., *Battista v. F.D.I.C.*, C.A.9 (Cal, 1999, 195 F.3d 1113.) NYWD violated section 54956(b) when it approved the Resolution authorizing and amending language regarding severance payment during a special board meeting.

ii. California Government Code section 53260

Pursuant to Government Code section 53260, the maximum severance payment an employee may receive is the monthly salary for the months remaining in the term of agreement not to exceed 18 months’ salary. NYWD’s approval of new paragraph 13 makes no reference limiting the severance payment to the length of the term remaining on Maupin’s contract. The Amendment to paragraph 13 in and of itself violates section 53260.

B. Action 2: NYWD’s Action to Increase Maupin’s Salary to \$18,339 Per Month Retroactive to November 1, 2022.

During its November 18, 2022, special board meeting, NYWD directors entered into closed session. The closed session agenda language stated:

“PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov. Code, §54957, subd. (b)(1)): General Manager

POST-CLOSED SESSION REPORT OF ACTION TAKEN”

NYWD returned from closed session to open session and the President announced that the Board had taken action to increase General Manager Maupin’s salary to \$18,339 per month^[1].

This action by NYWD violated numerous provisions of the Brown Act as set forth below:

i. California Government Code section 54956(b)

As discussed, California Government Code section 54956(b) prohibits a legislative body from taking action on local agency executive salaries at a special board meeting. Increasing the General Manager’s salary by approximately \$8,339.00 per month clearly violates section 54956(b).

ii. California Government Code section 54957.6

Even if action on salary were permitted at a special meeting, salary of a local agency executive such as Maupin may not be discussed in closed session unless that discussion is to provide direction to the local agency representative for purposes of negotiations action on salary may not be taken in closed session. (Gov. Code Section 54956.6.) The closed session agenda heading indicated a discussion was to be held for evaluation purposes. NYWD failed to use the safe harbor language for negotiations. (Gov. Code § 54954.5.)

Furthermore, pursuant to section 54957.6, closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees. NYWD is prohibited from taking final action on the compensation of an unrepresented employee in closed session.

iii. California Government Code section 54953(c)(3)

Section 54953(c)(3) requires an oral summary of the recommendation for approval of the salary and fringe benefits provided to a local agency executive. This recommendation is to be made in open session prior to taking public comment on the agenda item so that the public is fully informed and has the opportunity to comment. NYWD failed to provide the oral summary of the recommended approval of salary and failed to provide the public with an opportunity to comment on the proposed salary increase prior to taking action.

[1] South Feather Water & Power Agency has requested recordings of the November 18 and November 29, 2022 special board meetings under the California Public Records Act. NYWD has yet to provide the records.

iv. California Government Code section 54953(c)(2)

Section 54953(c)(2) requires the legislative body of a local agency to publicly report any action taken and the vote or abstention on that action of each member present for the action. NYWD failed to report the vote of each member regarding the unlawful closed session decision to increase salary.

v. California Government Code section 54954.2

Section 54954.2(a) requires an agenda contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A salary increase for General Manager Maupin is not described in any way on the November 18, 2022, special board meeting agenda. NYWD failed to provide adequate notice to the public of its intent to consider the salary of a local agency executive.

2. NYWD's November 29, 2022 Special Meeting.

NYWD's agenda is attached. Two actions by NYWD create a series of Brown Act violations.

A. NYWD Failed to Provide At Least 24-Hours' Notice Prior to the Special Board Meeting.

The November 29, 2022, special board meeting was scheduled to begin at 3:30 p.m. Pursuant to California Government Code section 54956(a), the notice must be delivered and posted on the local agency's internet website at least 24 hours before the time of the meeting specified in the notice.

Rath Moseley, General Manager of South Feather Water & Power Agency, is a percipient witness to this Brown Act violation. Mr. Moseley checked NYWD's website at approximately 3:30 p.m. on November 28, 2022, and no special board meeting agenda had been posted. Mr. Moseley then checked again at 6:30 p.m., and a special board meeting agenda had been posted. Upon examination of document properties of the agenda posted on NYWD's website, the metadata indicates that the document was modified at 4:35:43 p.m. on November 28, 2022 (copy attached depicting these document properties). This is less than 24 hours prior to 3:30 p.m. start time for the November 29, 2022 special board meeting. As such, NYWD failed to provide sufficient notice of its special board meeting and all actions taken at that meeting are in violation of the Brown Act.

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B. NYWD's Termination of General Manager Jeff Maupin Violated the Brown Act.

After its closed session discussions, Board President Gary Hawthorne announced in open session that the Board had taken action in closed session to terminate Jeff Maupin. In a prepared statement President Hawthorne stated that the current board believed that Maupin would face a "very hostile new board" and that the new board would attempt to fire Maupin and deny him severance. The action to terminate Maupin violated several Brown Act provisions:

i. Government Code section 54954.2(a)

Section 54954.2(a) requires an agenda contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. The November 29, 2022, agenda does not include a brief general description that NYWD intended to consider the termination of General Manager Maupin. Rather, the decision was made under the closed session agenda heading of:

"PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov. Code, §54957, subd. (b)(1)): General Manager"

This description failed to provide sufficient notice to the public of the NYWD's intent to consider termination. The Brown Act provides a specific safe harbor heading should NYWD wish to consider termination of an employee: "PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE". (Government Code section 54954.5.) Using the "evaluation" safe harbor provision on the agenda was misleading. Just eleven (11) days earlier, NYWD's Board of Directors authorized an unlawful salary increase at a special meeting (discussed above) citing Maupin's excellent service to NYWD as the basis for the raise. The public had no reason to suspect that a little over a week later, under that same agenda heading, the Board would terminate Maupin and supposedly invoke an 18-month severance payment of over \$330,000.

Furthermore, Government Code section 54956(a) expressly states that "no other business shall be considered at these meetings by the legislative body". The failure to appropriately agendaize the termination of Maupin denied the public the opportunity to comment on the subject of termination prior to NYWD taking that action.

ii. California Government Code section 54953(c)(2)

Section 54953(c)(2) requires the legislative body of a local agency to publicly report any action taken and the vote or abstention on that action of each member present for the action. NYWD failed to report the vote of each member regarding the unlawful closed session decision to terminate Maupin.

C. The Brown Act Requires NYWD to Cure and Correct these Violations.

NYWD must immediately cease and desist from these flagrant, purposeful violations of the Brown Act. The Brown Act allows the legal remedy of judicial invalidation of illegally taken actions. Pursuant to Government Code Section 54960.1, South Feather Water & Power Agency demands that the North Yuba Water District cure and correct the illegally taken actions.

For the November 18, 2022 meeting:

1. Invalidate and revoke Resolution Number 22-774 Authorizing the Amendment of General Manager Maupin's Employment Agreement.
2. Rescind the unlawful closed session action to increase Maupin's salary and reinstate the salary amount in place prior to the November 18, 2022, special board meeting.
3. Recover any salary erroneously paid to Maupin since the November 18, 2022 action to increase Maupin's salary.
4. Provide the public with notice and opportunity to comment on these matters of which it was previously deprived.

For the November 29, 2022 meeting:

1. Invalidate all actions taken at the November 29, 2022 board meeting as it was improperly noticed.
2. Rescind the unlawful termination of Maupin, and if the Board so desires, agendize consideration of Maupin's termination under the appropriate heading.
3. Recover any salary erroneously paid in severance to Maupin on or after November 29, 2022.
4. Provide the public with notice and opportunity to comment on these matters of which it was previously deprived.

As provided by Government Code section 54960.1, NYWD has 30 days from the receipt of this demand to either cure or correct the challenged actions, or inform South Feather Water & Power Agency of NYWD's decision not to do so. If you fail to cure or correct as demanded, the Agency is entitled to seek judicial invalidation of the action pursuant to Government Code section 54960.1, in which case the Agency would seek the award of court costs and reasonable attorney fees pursuant to Government Code section 54960.5.

Mr. Paul Boylan
RE: Brown Act Violations
December 12, 2022
Page 7

Sincerely,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

DUSTIN COOPER

DCC/dkb
cc: Rath Moseley, General Manager
SOUTH FEATHER WATER & POWER AGENCY

GARY HAWTHORNE
President
Division 3

DOUG NEILSON
Vice President
Division 1

CHRIS CROSS
Director
Division 2



DONALD FORGUSON
Director
Division 4

GINGER HUGHES
Director
Division 5

JEFF MAUPIN
General Manager

AGENDA

SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE NORTH YUBA WATER DISTRICT

3:30 PM ♦ TUESDAY ♦ NOVEMBER 29, 2022

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH EXECUTIVE ORDER N-29-20, ISSUED BY CALIFORNIA GOVERNOR GAVIN NEWSOM ON MARCH 17, 2020, THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950 ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT. THE BOARD MAY ACT ON ANY OF THE ITEMS LISTED ON THIS AGENDA REGARDLESS OF WHETHER AN ITEM IS DESCRIBED AS AN ACTION ITEM, A REPORT, OR AN INFORMATIONAL OR DISCUSSION ITEM.

THIS MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC MAY PARTICIPATE IN THE MEETING VIA VIDEOCONFERENCE AT

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Passcode: 520898

One tap mobile

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AND WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT.

NOTE: ALL PUBLIC PARTICIPANTS WILL BE MUTED UPON ENTRY INTO THE MEETING AND WILL ONLY BE UNMUTED TO ALLOW THEIR COMMENT. TO PROVIDE PUBLIC COMMENT VIA VIDEO CONFERENCING CLICK ON THE "RAISE HAND." TO PROVIDE PUBLIC COMMENT BY TELECONFERENCE PRESS *9.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact North Yuba Water District office staff at 530-675-2567 or fax 530-675-0462. Requests must be made as early as possible and at least one-full business day before the start of the meeting.

COMMENCEMENT OF MEETING

- A. **CALL TO ORDER/ROLL CALL**
- B. **PLEDGE OF ALLEGIANCE**
- C. **OPPORTUNITY FOR PUBLIC COMMENT ON AGENDIZED ITEMS**

As provided under Government Code section 54954.3, subdivision (a), during a Special Meeting any member of the public may address the Board concerning any item on the agenda. No other comments will be allowed. Any member of the public wishing to make comment shall identify the agenda item they intend to address, and they will be provided an opportunity to make comment on that item only. Public comment is limited to no more than two (2) minutes per person, twenty (20) minutes total for all speakers.

CLOSED SESSION

- D. **Conference with Legal Counsel —existing litigation (4 Cases) – pursuant to Government Code section 54956.9, subdivision (d), paragraph (1).**

Names of cases:

1. *Gideon Beinstock, Marieke Furnee, Israel Perla, and Jeanette Cavaliere v. North Yuba Water Agency [sic]*, Yuba County Superior Court Case No. CVPT21-00515;
2. *Fellowship of Friends, Inc. v. North Yuba Water District, et al.*, Yuba County Superior Court Case No. CVPT22-00246;
3. *Marieka Furnee, Gideon Bienstock, Jeanette Cavaliere, Donna Corson, Israel Perla, and Charles Sharp v. North Yuba Water District*, Yuba County Superior Court Case No. CVPT21-00436;
4. *Charles Sharp v. North Yuba Water District, et al.*, Yuba County Superior Court Case No. CVPT20-00386;

- E. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov. Code, §54957, subd. (b)(1): General Manager)**
- F. **POST-CLOSED SESSION REPORT OF ACTION TAKEN**

The Board President or his designee will provide a report on any reportable action taken during closed session, should any such action occur.

ADJOURNMENT

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
RILEY C. WALTER
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
AMANDA G. HEBESHA**
PETER M. JONES†
STEVEN M. CRASS†
JEFFREY B. PAPE†
LAWRENCE M. ARTENIAN†
DEBORAH K. BOYETT
STEVEN K. VOTE
NICOLAS R. CARDELLA
GIULIO A. SANCHEZ
CHRISTOPHER A. LISIESKI***
BENJAMIN C. WEST
HUNTER C. CASTRO
STEPHANIE M. HOSMAN
RACHEL L. POMBO
NATHAN J. MARTIN

* Also admitted in Washington
** Also admitted in Idaho
*** Also admitted in Virginia
† Of Counsel

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OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

Writer's E-Mail Address:
jkinsey@wjhattorneys.com

Website:
www.wjhattorneys.com

December 13, 2022

VIA US MAIL & EMAIL

Board of Directors
c/o Clerk of the Board of Directors
NORTH YUBA WATER DISTRICT
8691 La Porte Road
Brownsville, CA 95919
E-mail: email@nywd.org

**Re: Demand to Correct Brown Act Violations &
Related Actions Concerning Maupin Employment
Agreement; and Demand to Declare NYWD
Division 3 Vacancy**

Dear Board of Directors:

I am writing on behalf of my client Charles Sharp. Pursuant to Section 54960.1 of the Government Code, and on behalf of Mr. Sharp, I submit this demand that North Yuba Water District ("NYWD") correct violations of the Brown Act, Government Code, § 54950, *et seq.* ("Brown Act") and other violations of law that occurred at the NYWD Board's November 18, 2022, Special Meeting. Section 54960.1 of the Government Code provides that any interested person may commence a legal action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency violated the Brown

WANGER JONES HELSLEY PC

December 13, 2022

Page 2

Act's open meeting laws and is null and void. As a prerequisite to filing any such action, however, the interested person is required to make a demand to the Board to correct its action.

A. Grounds for Cure and Correct Letter

At the November 18, 2022, Special Meeting, Item F on the agenda included modifications to the employment agreement of former General Manager Jeff Maupin. This modification included amendments to provisions concerning Mr. Maupin's term of employment, severance compensation (including the timing of such compensation), and an attorneys' fee provision that relates to any potential challenges to Mr. Maupin's compensation.

The Brown Act provides that "a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive." (Govt. Code § 54956, subd. (b).) "'Local agency executive' [in this context] means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act . . . [and] is the chief executive officer, a deputy chief executive officer, or an assistant chief executive officer of the local agency[, or where] [t]he person's position within the local agency is held by an employment contract between the local agency and that person." (*Id.* § 3511.1, subd. (d).)

As of November 18, 2022, Mr. Maupin was serving as the chief executive of the District. (See *id.*, § 61002 ["'General manager' means the highest level management appointee who is directly responsible to the board of directors for the implementation of the policies established by the board of directors."]; *id.*, § 61051 [listing duties prescribed to General Manager of a community services district].) Mr. Maupin was also a person whose position is held by contract with NYWD. And the item clearly concerned Mr. Maupin's compensation package and benefits, including the timing and manner of that compensation.

There is no exception for the prohibition outlined above. As such, NYWD was prohibited by law from taking action on the General Manager's salary or benefits in the November 18, 2022, special meeting. As a result, pursuant to Section 54960.1 of the Government Code, NYWD has 30-days from the receipt of this letter to cure the violations stated above. If no action is taken during the 30-day period, or NYWD provides written notice that it does not intend to cure, Mr. Sharp will be required to file a legal action. Mr. Sharp also intends to seek costs and reasonable attorneys' fees. If NYWD determines to cure the above-stated violations, please notify me prior to the expiration of the 30-day period.¹

¹ Mr. Sharp also contends Section 13(C) of the Employment Agreement violates Sections 3511.2 and 53260(a)(1) of the Government Code because provided for an 18-month cash settlement at any point during the life of the contract, and not just in those instances where the unexpired term of the contract was greater than 18 months.

Mr. Sharp likewise contends the amendments to the Employment Agreement constitute an unlawful waste of taxpayer funds because they modified the terms of Mr. Maupin's

WANGER JONES HELSLEY PC

December 13, 2022

Page 3

B. NYWD Should Declare a Vacancy in the Division 3 Seat

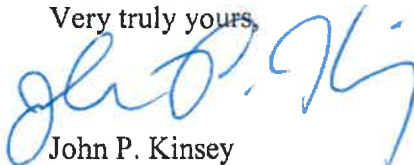
As you are aware, Mr. Gary Hawthorne purports to sit as the Director representing Division 3 of NYWD. Mr. Hawthorne, however, no longer lives in Division 3, but rather Division 4. Mr. Sharp believes this has been the case for longer than 180 days. Because Mr. Hawthorne has moved outside his division boundary for longer than 180 days, NYWD *must* declare a vacancy. (Govt. Code, § 30508.) The remaining members of the NYWD Board should also fill the vacancy pursuant to Section 1780 of the Government Code. (*Id.*, § 30507.)

C. Portions of the NYWD Website Disparaging Mr. Sharp Should Be Removed

Finally, I was reviewing the North Yuba Water District website earlier today. As part of that review, the website continues to have several pages that disparage Mr. Sharp. For example, the web page located at <https://www.nywd.org/legal> disparages Mr. Sharp for exercising his constitutional and statutory right to seek public information from NYWD. We understand these statements were the work of the outgoing board of directors, general manager, and third-party contractors. As a result, I respectfully request that NYWD update its website to remove such statements about Mr. Sharp at the first reasonable opportunity.

Thank you for your immediate attention to these important issues. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



John P. Kinsey

cc: Paul Boylan, Esq. (*via email*)

compensation during a lame duck session as a preemptive measure to ensure those funds would be used for the benefit of Mr. Maupin prior to the swearing in of a new board.

GARY HAWTHORNE
President
Division 3

DOUG NEILSON
Vice President
Division 1

CHRIS CROSS
Director
Division 2



DONALD FORGUSON
Director
Division 4

GINGER HUGHES
Director
Division 5

JEFF MAUPIN
General Manager

AGENDA

SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE NORTH YUBA WATER DISTRICT

10:30AM ♦ FRIDAY ♦ NOVEMBER 18, 2022

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH EXECUTIVE ORDER N-29-20, ISSUED BY CALIFORNIA GOVERNOR GAVIN NEWSOM ON MARCH 17, 2020, THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950 ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT. THE BOARD MAY ACT ON ANY OF THE ITEMS LISTED ON THIS AGENDA REGARDLESS OF WHETHER AN ITEM IS DESCRIBED AS AN ACTION ITEM, A REPORT, OR AN INFORMATIONAL OR DISCUSSION ITEM.

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AND WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT.

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CLOSED SESSION

- D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov. Code, §54957, subd. (b)(1)): General Manager
- E. POST-CLOSED SESSION REPORT OF ACTION TAKEN

The Board President or his designee will provide a report on any reportable action taken during closed session, should any such action occur.

DISCUSSION/ACTION CALENDAR

- F. RESOLUTION No. 22-774

Authorizing Seventh Amendment to the General Manager’s employment contract amending paragraphs 3 and 13, and adding paragraph 14 to the employment contract.

- G. RESOLUTION NO. 22-768J

Authorizing remote teleconference meetings in accordance with California Government Code section 54953(e), as amended by AB 361.

ADJOURNMENT