

1 Eric J. Benink, Esq. (SBN 187434)
eric@kkbs-law.com
2 Vincent D. Slavens, Esq. (SBN 217132)
vslavens@kkbs-law.com
3 **KRAUSE KALFAYAN BENINK & SLAVENS, LLP**
550 West C Street, Suite 530
4 San Diego, CA 92101
Tel: 619-232-0331
5 Fax: 619-232-4019

6 Attorneys for Petitioners/Plaintiffs

FILED
YOLO SUPERIOR COURT

OCT 04 2018

BY N. PLOWMAN
DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF YOLO

10 BONNIE WOLSTONCROFT, an individual;)
WILLIAM C. UNKEL, an individual; and)
11 MICHAEL WILKES, an individual;)

12 Petitioners and Plaintiffs,)

13 v.)

14 COUNTY OF YOLO, a general law county;)
15 ALL PERSONS INTERESTED IN THE)
16 MATTER OF THE VALIDITY OF THE)
17 MARCH 20, 2018 RESOLUTION OF THE)
18 BOARD OF SUPERVISORS OF THE)
19 COUNTY OF YOLO APPROVING AN)
20 INCREASE IN THE FEE FOR WATER)
21 SERVICES IN THE NORTH DAVIS)
MEADOWS COUNTY SERVICE AREA)
(CSA) IN SUPPORT OF THE WATER)
22 CONSOLIDATION PROJECT)
[RESOLUTION NO. 18-28] AND)
23 RELATED MATTERS; and DOES 1)
through 10,)

24 Respondents and Defendants.)

Case No.: PT-18-1854

**VERIFIED PETITION FOR WRIT OF
MANDATE;**

and

**COMPLAINT FOR REVERSE
VALIDATION (C.C.P. § 863) AND
DECLARATORY RELIEF**

1 Petitioner Bonnie Wolstoncroft, William C. Unkel, and Michael Wilkes (“Petitioners” or
2 “Plaintiffs”) allege as follows:

3 INTRODUCTION

4 1. Petitioners bring this action to invalidate certain actions of Respondent and
5 Defendant County of Yolo (“Respondent” or “Defendant”) pursuant to California Code of
6 Civil Procedure section 863 and Government Code section 25210.6. Specifically, Petitioners
7 challenge Resolution No. 18-28 that Respondent adopted on March 20, 2018 which increased
8 and imposed fees for so-called “water services” in the North Davis Meadows County Service
9 Area (“CSA”), which Respondent governs and controls.

10 2. Respondent, through Resolution No. 18-28, imposed and increased water fees
11 and charges for the construction of a new expensive water system designed to import water
12 from the neighboring City of Davis, which is expected to sell water to North Davis Meadows
13 CSA at substantially higher rates than ratepayers currently pay. Respondent refused to
14 reconsider the proposed new system despite substantial cost concerns raised by Petitioners and
15 other ratepayers.

16 3. The increased water fees and charges enacted through Resolution No. 18-28
17 violate Proposition 218 (Cal. Const., art. XIII D, section 6, subdivision (b)(1)(3)(4) & (5).
18 Specifically, the fees and charges exceed the amounts required to provide water service; exceed
19 the proportional cost of the service attributable to each parcel; are imposed for a so-called
20 service that is not immediately available to those ratepayers being charged and are based on
21 potential or future use of a service; and are imposed for general government services, including
22 fire protection service.

23 4. Respondent further violated article XIII D, section 6, subdivision (a)(2) by
24 enacting the fee increase despite an actual majority protest. Respondent failed to count two
25 protests that were timely mailed in compliance with the instructions provided to affected parcel
26 owners. Had Respondent counted these two protests, it would have been required to decline to
27 adopt the fees and charges.

28 5. Petitioners seek a judgment invalidating Resolution No. 18-28 and further seek

1 the issuance of a writ directing Respondent to rescind or repeal the resolution and halt the
2 collection or cease further collection of the increased water fees and charges imposed thereby.

3 **PARTIES**

4 6. Petitioners and Plaintiffs Bonnie Wolstoncroft, William C. Unkel, and Michael
5 Wilkes are the owners of real property located in the North Davis Meadows CSA and are
6 registered voters in the County of Yolo. Petitioners and their property are subject to the water
7 fees and charges at issue herein.

8 7. Respondent and Defendant County of Yolo is a general law county, with a
9 government structure determined by the California Constitution and California's general laws.
10 The Board of Supervisors of the County of Yolo ("Board") is the legislative and executive
11 governing body of the County of Yolo with powers to enact resolutions and ordinances, among
12 other things. The Board is also the government body empowered by County Service Area
13 Law, Government Code sections 25210, *et. seq.* to manage and control North Davis Meadows
14 CSA, including the enactment of fees and charges imposed upon ratepayers for the provision of
15 water service.

16 8. Petitioners are unaware of the true names and capacities of
17 Respondents/Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue those
18 Respondents/Defendants by such fictitious names. Petitioners are informed and believe, and
19 thereon allege, that each of said fictitiously-named Respondents/Defendants is in some manner
20 responsible for the acts, violations, and injuries alleged herein. They will amend this petition
21 and complaint to allege the true names and capacities of said fictitiously-named
22 Respondents/Defendants when the same have been ascertained.

23 9. Petitioners are informed and believe, and thereon allege, that at all times herein
24 mentioned, each of the Respondents/Defendants was the agent, employee, representative,
25 partner, joint venturer, and/or alter ego of each of the other Respondents/Defendants and, in
26 doing the things alleged herein, was acting within the course and scope of such agency,
27 employment, representation, on behalf of such partnership or joint venture, and/or as such alter
28 ego, with the authority, permission, consent, and/or ratification of each of the other

1 Respondents/Defendants.

2 **GENERAL ALLEGATIONS**

3 10. The County of Yolo established the North Davis Meadows CSA on May 12,
4 1987. The CSA exists in an unincorporated subdivision of Yolo County consisting of 314
5 people residing in 94 single-family residences. It also includes a vacant residential parcel and
6 common use community areas.

7 11. Respondent provides sewer, water, drainage, street lighting and landscaping
8 services to parcels in the North Davis Meadows CSA. Respondent imposes an annual fee for
9 such services which is collected in the same manner as the County collects property taxes. In
10 Fiscal Year 2017-2018, the annual fee for these services was \$2,118.

11 12. The current water system in the North Davis Meadows CSA consists of two
12 wells, a water tank, and a system for delivery of water to each parcel. The wells are regularly
13 tested for compliance with health and safety standards. In or around 2009, the wells tested for
14 nitrates above the allowable maximum contaminant levels. In 2016, the wells tested for iron
15 and aluminum at levels above the allowable maximum contaminant level. In 2009 and 2016,
16 the Yolo County Health Department issued orders to the North Davis Meadows CSA to
17 address these issues.

18 13. In light of the County Health Department orders, Respondent endeavored to find
19 a solution. Alternatives were considered, including drilling two new deep wells beyond nitrate
20 contamination depth; on site community treatment; and connecting to the neighboring City of
21 Davis' water system for some or all water.

22 14. In 2016, a consensus arose for a "dual connection" system, which entailed the
23 continued use of North Davis Meadows CSA's existing wells for irrigation of large parcels and
24 the development of a piping system to connect to the City of Davis to supply water solely for
25 domestic (interior) service. Each residential parcel would have two water supply connections,
26 one to supply water for residential interior use and the other for exterior irrigation use. In
27 2017-2018, Respondent incurred \$473,000 in expenses to develop a formal engineering plan
28 for the dual connection system. It was Respondent's intention to recover those expenses

1 through a future fee increase. Those costs became part of the fees at issue herein.

2 15. Unfortunately, Respondent's initial plan evolved. In a September 2017
3 community meeting, the County fire marshal recommended that, in the interest of fire
4 protection, the County should construct and implement a single source water system connected
5 to the City of Davis, as opposed to a dual system as originally contemplated. The cost to
6 construct such a system was estimated to be \$7.1 million. Respondent proposed that it be
7 funded with a loan to be repaid by parcel owners through loan payments over 30 years.

8 16. Thereafter, parcel owners began reviewing the details of the proposed single-
9 source water system and the implications of solely relying upon the City of Davis to provide
10 water. What they discovered was disconcerting. First, capital construction costs increased,
11 ballooning to \$8.25 million (\$86,842 per parcel) by the time notice was given to residents.
12 Second, Respondent significantly underestimated the fees the City of Davis was expected to
13 charge North Davis Meadows CSA for water. In fact, parcel owners concluded that the City of
14 Davis' fee for water would be much more expensive than the cost of water pumped from North
15 Davis Meadows CSA's existing wells. This was a significant concern given that all water,
16 including irrigation water, would be purchased from the City of Davis under Respondent's new
17 single-source plan.

18 17. The proposed loan payment was calculated at \$4,157 per residential non-vacant
19 parcel per year over the 30-year loan period. In light of the size of some residential parcels,
20 which are not less than $\frac{3}{4}$ acre and use substantial amounts of irrigation water, residents
21 estimated that the annual cost of water alone could dramatically increase for some residents to
22 \$6,000 per parcel. In other words, the total annual fees and charges for so-called water service
23 for many residential parcels could be over \$10,000. Upon careful review of the proposed
24 single source water system and actual anticipated costs, opposition from parcel owners
25 significantly increased. A large number of parcel owners believed there was a less expensive
26 option.

27 18. Despite these concerns, Respondent refused to revisit less expensive alternatives.
28 It instead elected to move forward with the fire marshal's recommended single-source water

1 system. But to ensure passage, instead of properly proposing a special assessment to finance
2 the proposed project pursuant to the procedures set forth in article XIII D, section 4,
3 subdivision (e), which would have required approval by a majority vote of voting parcel
4 owners in an election, Respondent elected to finance the project by increasing fees for water
5 service pursuant to article XIII D, section 6. In doing so, the fee increase would pass unless a
6 majority of all parcel owners subject to the fee submitted written protests, a process that
7 heavily favored Respondent in their effort to fund the project.

8 19. Respondent retained an engineering firm to prepare a report detailing a “Loan
9 Repayment Fee Evaluation for Water System Consolidation Project” for North Davis Meadows
10 CSA which was completed on January 25, 2018 (the “Report”). The Report explained the
11 background leading up to the proposed project, outlined the proposed water system
12 consolidation project (“Project”) and financing plan, described the “special benefits” expected
13 to be conferred upon parcels by the proposed project, and proposed new increased water fees
14 and charges. The term “special benefit” is associated with special assessments under article
15 XIII D, section 4, and is not a concept applicable to property-related fees and charges under
16 article XIII D, section 6.

17 20. The Report identified an increase in the loan repayment fee from \$298 to \$4,157
18 (per parcel on an annual basis) to fund the new single source water system. Other components
19 of the fee described in the Report, including the cost of water, were presented as increasing
20 only by the consumer price index. The Report did not acknowledge any increase due to the
21 expected higher cost of water to be purchased from the City of Davis.

22 21. The Project, which is the primary basis for the proposed increase in water fees, is
23 a long-term capital project which should be funded with special assessments or taxes that
24 require majority voter approval. Unlike some capital projects that are designed to provide
25 incremental or improved water service to an existing water system, the proposed Project is a
26 new water system that will replace the existing well system and will not be constructed for at
27 least twelve to eighteen months. Thus, the \$4,157 per parcel charge for this new water system
28 is not a fee charged for water service that is immediately available to ratepayers and instead, is

1 based on potential or future use of a service in violation of article XIII D, section 6, subdivision
2 (b)(4). Respondent has also imposed an annual water service fee on a vacant parcel with no
3 water service connection. Because the service is not immediately available to that parcel, the
4 fee imposed upon that parcel violates article XIII D, section 6, subdivision (b)(4).

5 22. Resolution No. 18-28 further violated Proposition 218 as follows:

6 a. Fire Flow: A significant cost included in the Project and incorporated
7 into the fees and charges was for the general government service of fire flow and protection,
8 including oversized pipes more than twice the size needed for residential service (6” pipe
9 compared with 14” pipe). The Report also listed significant expenses for the assembly and
10 connection of new fire hydrants and the removal and capping of existing fire hydrants. Thus,
11 the fees and charges violate section 6 subdivision (b)(5).

12 b. Well Abandonment: A cost included in the Project and incorporated into
13 the fees and charges are costs for the abandonment, demolition and decommissioning of
14 existing wells which is totally unnecessary to the provision of water services. The Report fails
15 to explain how such activity is necessary or related to the provision of domestic water service.

16 c. Failure to Apportion Costs: Respondents seek to impose a flat fee
17 increase of \$4,157 per parcel to fund the new water system, despite varying lot sizes and levels
18 of consumption that impact the proposed system cost in varying ways. Article XIII D, section
19 6 subdivision (b)(3) requires Respondent to impose fees in proportion to the cost of providing
20 the service to *each* parcel. The fees and charges violate section 6 subdivision (b)(3) because
21 each parcel, depending on water use, disparately impacts the required system capacity and
22 therefore, the cost of the Project.

23 23. Before the end of January 2018, the Respondent mailed notice of the proposed
24 fee increase to each owner of the 95 eligible parcels in the North Davis Meadows CSA
25 (“Notice”). The Notice informed parcel owners that a public hearing would be held on March
26 20, 2018 at 9:00 a.m. in the County Administration Building, 625 Court Street, Room 206,
27 Woodland, CA 95695 to accept public comment and receive written protests regarding the
28 proposed water fee increase. It identified the amount of the proposed water fee increase and

1 explained that the reason for the proposed water fee increase was to finance to construction of
2 the Project. It further explained that the Project “will provide each non-vacant parcel in the
3 CSA with a water meter for potable water, irrigation, and fire flow needs.” Although it does
4 not give a time estimate for completion of the proposed Project, it is likely to take between
5 twelve to eighteen months to complete.

6 24. The Notice did not meet the requirements under article XIII D, section 6,
7 subdivision (a)(1) because it omitted to notify parcel owners that beyond the new fees that the
8 County sought to impose, the City of Davis would also be imposing water service fees that
9 exceed the current service fees. Thus, parcel owners were not provided all of the relevant
10 information pertaining to the proposed fee increase.

11 25. The Notice also explained that “[a]ny property owner may submit a written
12 protest of the proposed increase. Only one protest per parcel will be counted. If a majority of
13 parcels submit protests, the County cannot adopt the proposed rates.” The Notice also
14 informed property owners that their protest must identify their parcel by address or parcel
15 number and include the name and signature of the parcel owner. It also required parcel owners
16 to mail their protests to the Clerk of the Board of Supervisors at 625 Court Street, Room 204,
17 Woodland, CA 95695. The Notice further advised that the Clerk would tabulate all written
18 protests received immediately following the close of the scheduled public hearing and report
19 the results directly to the Board. The Notice provided a protest form for parcel owners to use
20 at their option.

21 26. On March 20, 2018 the Board conducted a public hearing to consider the
22 proposed fee increase, as specified in the Notice. Petitioners attended the public hearing to
23 oppose the increase and also submitted a timely written protest by mail to the Board in
24 compliance with the protest procedures. Of the 95 notices sent out, the City Clerk tabulated a
25 total of 46 written protests timely received before the close of the hearing, representing 48.4%
26 of the eligible parcels. For a majority protest, the Clerk would have had to receive 48 written
27 protests prior to the close of the public hearing. One written protest was presented by an
28 elderly resident and received by the Clerk just five minutes after the close of the hearing and

1 was not counted by the Clerk. The Clerk received two additional untimely written protests by
2 mail following the close of the meeting. But beyond these “untimely” written protests, two
3 parcel owners timely mailed proper written protests to the Clerk that were not counted in
4 protest. Had the Clerk done so, the proposed water rate increase would not have passed.

5 27. Upon the conclusion of the hearing and in reliance upon the Clerk’s tabulation of
6 the number of protests, on March 20, 2018, Respondent, through its Board of Supervisors,
7 unanimately approved Resolution No. 18-28.

8 28. Petitioner Wolstoncroft (and two other parcel owners) and Respondent entered
9 into tolling agreements to toll the statute of limitations pertaining to the claims raised herein for
10 a period May 8, 2018 through September 30, 2018. During that period, Petitioners and other
11 parcel owners met with individual county supervisors in an attempt to convince them to change
12 course and consider alternative plans. The Board of Supervisors decline to take any action to
13 change course.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **Reverse Validation**

17 **C.C.P. § 863**

18 **(Against All Defendants)**

19 29. Plaintiffs hereby incorporates by reference each of the preceding allegations as
20 though fully set forth herein.

21 30. Plaintiffs are informed and believe, and thereon allege, that no public agency has
22 brought suit pursuant to this action to validate the proceedings at issue herein.

23 31. Plaintiffs are interested persons pursuant to and in accordance with Code of Civil
24 Procedure section 863.

25 32. All proceedings, findings, and declarations, by and for Defendants in connection
26 with the adoption of fees for water service by Resolution No. 18-28 on March 20, 2018 are
27 illegal and invalid because Resolution 18-28 was imposed in violation of article XIII D, section
28 6, subdivision (a)(1) & (2) and subdivision (b)(1)(3)(4) & (5) as described more fully above.

33. The validity of Defendants’ proceedings, findings, resolutions and declarations

1 are subject to a validation proceeding. (Gov't. Code § 25210.6). Plaintiffs, as interested
2 parties, are entitled a judgment declaring such proceedings, findings, and declarations invalid.
3 (C.C.P. § 863).

4 **SECOND CAUSE OF ACTION**
5 **Petition for Writ of Mandate**
6 **C.C.P. § 1085**
7 **(Against All Respondents)**

8 34. Petitioners hereby incorporate by reference each of the preceding allegations as
9 though fully set forth herein.

10 35. Respondents have by Resolution No. 18-28 imposed and intend to impose in the
11 future, fees and charges for water service upon ratepayers in North Davis Meadows CSA that
12 were imposed in violation of article XIII D, section 6, subdivision (a)(1) & (2) and subdivision
13 (b)(1)(2)(4) & (5).

14 36. There is a clear, present and ministerial duty upon the part of Respondents to
15 comply with our state constitution by invalidating, rescinding, vacating or otherwise not
16 enforcing by Resolution No. 18-28.

17 37. Petitioners have a clear, present and beneficial right to the performance of that
18 duty.

19 38. Petitioners do not have an adequate remedy at law.

20 39. Accordingly, Petitioners are entitled to a writ of mandate pursuant to Code of
21 Civil Procedure section 1085 as specified more fully below.

22 **THIRD CAUSE OF ACTION**
23 **Declaratory Relief**
24 **C.C.P § 1060**
25 **(Against All Defendants)**

26 40. Petitioners hereby incorporate by reference each of the preceding allegations as
27 though fully set forth herein.

28 41. An actual, present, and substantial controversy exists between Plaintiffs and
Defendants. Plaintiffs contend that Defendants' Resolution No. 18-28 adopted on March 20,
2018 is illegal and invalid because it was imposed in violation of article XIII D, section 6

1 subdivision (a)(1) & (2) and subdivision (b)(1)(2)(4) & (5). Defendants contend that they have
2 not violated these constitutional provisions or any other law.

3 42. A declaration as to the respective rights and duties of the parties is necessary and
4 appropriate pursuant to Code of Civil Procedure section 1060.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioners/Plaintiffs pray as follows:

7 **ON THE FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS**

8 1. For a judgment that this action was properly brought under California Code of
9 Civil Procedure section 860, et. seq. in the Superior Court of California for the County of Yolo.

10 2. For a judgment that Resolution No. 18-28 is invalid, void, and unenforceable.

11 **ON THE SECOND CAUSE OF ACTION AS TO ALL RESPONDENTS**

12 1. For the issuance of a writ of mandate directing Respondents to invalidate, vacate,
13 rescind and/or otherwise not enforce Resolution No. 18-28 or further impose or collect the fees
14 for water service and fire protection service enacted thereby.

15 **ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS**

16 1. For a declaratory judgment declaring Resolution No. 18-28 invalid and declaring
17 that Defendants' practices have violated article XIII D, section 6 subdivision (a)(1) & (2) and
18 subdivision (b)(1)(2)(4) & (5).

19 **ON ALL CAUSES OF ACTION AS TO ALL RESPONDENTS / DEFENDANTS**

20 1. For attorney's fees and costs, including those recoverable pursuant to California
21 Code of Civil Procedure section 1021.5; and

22 2. For such other relief as the Court deems necessary and proper.

23 DATED: October 4, 2018

KRAUSE, KALFAYAN, BENINK, &
SLAVENS, LLP.

24
25 
26 Eric J. Benink, Esq.
27 Attorneys for Petitioners/Plaintiffs
28

VERIFICATION

1 I am one of the Petitioners and Plaintiffs. I have read the foregoing Verified Petition for
2 Writ of Mandate and Complaint for Reverse Validation (CCP § 863) and Declaratory Relief and
3 know the contents thereof. The matters stated therein are true and correct based on my
4 personal knowledge and belief and/or based on the investigation of my attorneys.

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

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8 Executed on 4/3, 2018 in Davis, CA.

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10 Bonnie Wolstoncroft
11 Bonnie Wolstoncroft
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4 personal knowledge and belief and/or based on the investigation of my attorneys.

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

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8 Executed on 10-3, 2018 in Davis, CA.

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12 William C. Unkel
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VERIFICATION

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2 of Mandate and Complaint for Reverse Validation (CCP § 863) and Declaratory Relief and
3 know the contents thereof. The matters stated therein are true and correct based on my
4 personal knowledge and belief and/or based on the investigation of my attorneys.

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

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8 Executed on 10/3, 2018 in Davis, CA.

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10 
11 Michael Wilkes