

**Board of Directors
San Simeon Community Services District**



**SPECIAL BOARD MEETING
PACKET
CLOSED SESSION
Monday January 31, 2022
Meeting Start Time 5:00 pm**

Virtual Board Meeting via Zoom Webinar

Prepared by:



AGENDA
SAN SIMEON COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS SPECIAL BOARD MEETING
Monday, January 31, 2022
5:00 pm

Pursuant to San Simeon CSD Resolution 22-439 and incompliance with AB 361 this meeting shall occur as a virtual teleconference using the Zoom app.

Internet Meeting Location – Via ZOOM

Join Zoom for Special Board Session:

<https://us02web.zoom.us/j/89334961643?pwd=NWx2V3lKaUdTTml2RmVVaGpBYk5hQT09>

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128

The following commands can be entered via DTMF tones using your **phone's** dial pad while in a **Zoom meeting**: *6 - Toggle mute/unmute. *9 - **Raise hand**.

Meeting ID: 893 3496 1643

Passcode: 972125

NOTE: On the day of the meeting, the virtual meeting room will be open 30 minutes prior to the meeting start time. If you wish to submit public comment in the written format you can email Cortney Murguia at admin@sansimeoncsd.org. Members of the public can also contact the District office at (805) 927-4778 or (805) 400-7399 with any questions or concerns related to this agenda or accessing the meeting.

1. OPEN SESSION: 5:00 PM

A. Roll Call

2. CLOSED SESSION:

This public comment period provides an opportunity for members of the public to address the Board on Closed Session Agenda Items. Public Comment is limited to three (3) minutes.

The Board will adjourn to Closed Session to address the following items:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code section §54956.9(d)(1)

Number of Cases – Two (2): *Robert Hather v. San Simeon Community Services District, et al.*, U.S. District Court, Central District of California, Western Division, Case No. 2:21-cv-04711-VAP-SK; *Robert Hather v. San Simeon Community Services District, et al.*, SLO Superior Court, Paso Robles Branch, Case No. 22CVP-0008.

******Report on Closed Session will occur at the 6 PM Special Meeting******

3. ADJOURNMENT –

All staff reports or other written documentation, including any supplemental material distributed to a majority of the Board within 24 hours of a special meeting relating to each item of business on the agenda are available for public inspection during regular business hours in the District office, 111 Pico Avenue, San Simeon. If requested, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by the Americans with Disabilities Act. To make a request for a disability-related modification or accommodation, contact the District Administrator at 805-927-4778 as soon as possible and at least 48 hours prior to the meeting date. This agenda was prepared and posted pursuant to Government Code Section 54954.2.

Closed Session Materials

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ROBERT HATHER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

ROBERT HATHER,

Petitioner and plaintiff,

vs.

SAN SIMEON COMMUNITY SERVICES
DISTRICT; BOARD OF DIRECTORS OF
THE SAN SIMEON COMMUNITY
SERVICES DISTRICT; DOES 1 to 10,
inclusive,

Respondents and defendants,

Case No.:

PETITION FOR PEREMPTORY WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Code Civ. Proc. §§ 1085, 1094.5, & 1021.5;
Wat. Code § 350, *et seq.*

Petitioner and plaintiff ROBERT HATHER hereby alleges as follows:

INTRODUCTION

1. This Petition challenges the San Simeon Community Services District’s (the “District”) failure to lift or modify a water shortage moratorium and related regulations which the District has used for the past thirty years to effectively prevent all growth and development in San Simeon. The evidence, including the District’s own studies and reports, conclusively

1 demonstrates that there is no rational justification for maintaining a strict ban on new
2 development because the District has ample supplies to at least enable some new development at
3 this time.

4 2. The Petition also challenges the District’s denial of Petitioner’s Hardship
5 Application on the grounds that rather than relying on the factors enumerated in the District’s
6 own Ordinance, the District Board members denied the Application in order to advance their
7 own anti-growth and development agenda.

8 **THE PARTIES**

9 3. Petitioner and plaintiff ROBERT HATHER (“Petitioner”) owns a 1.1-acre vacant
10 lot in the unincorporated San Simeon area of San Luis Obispo County, California. Mr. Hather is
11 prevented from developing his property with much-needed “affordable by design” multi-family
12 housing—or from making any other economically beneficial use of his property—by the San
13 Simeon Community Services District’s decades long water moratorium.

14 4. Respondent and defendant SAN SIMEON COMMUNITY SERVICES
15 DISTRICT (the “District” or “Respondent”) is an “independent special district” (Cal. Gov’t
16 Code § 61007 (c)) authorized by California’s Community Services District Law (Cal. Gov’t
17 Code § 61000, *et seq.*) to serve the community of San Simeon, an unincorporated area of San
18 Luis Obispo County. As required by State law, the District is governed by a five-member elected
19 Board of Directors (collectively the “Board”). Cal. Gov’t Code § 61040.

20 5. Respondent and defendant BOARD OF DIRECTORS OF SAN SIMEON
21 COMMUNITY SERVICES DISTRICT (the “Board or “Respondent”) is the legislative body and
22 highest administrative body in the District. The Board has the authority to declare water shortage
23 emergencies, enact ordinances and resolutions, and approve or deny applications for relief.

24 6. Petitioner does not know the identity of DOES 1 to 10 but will amend the Petition
25 as required to specifically identify each such person or entity as a respondent and defendant if the
26 identity, interest, and capacity of such party, if any, becomes known.

27 **JURISDICTION AND VENUE**

28 7. This Court has jurisdiction over this action pursuant to California Code of Civil
Procedure sections 1085 and 1094.5. This Court has the authority to issue a writ of mandate
directing Respondents to vacate and set aside their denial of Petitioner’s Hardship Application
under Code of Civil Procedure section 1094.5 and/or to repeal the District’s water moratorium

1 under Code of Civil Procedure section 1085. This Court also has authority to award attorney's
2 fees and costs under Code of Civil Procedure section 1021.5 where, as here, Petitioner seeks to
3 enforce important rights affecting the public interest.

4 8. Venue for this action properly lies in the San Luis Obispo County Superior Court
5 because Respondents are and/or represent a Community Services District whose geographical
6 area is located within San Luis Obispo County and because the action concerns real property
7 located in San Luis Obispo County.

8 PROCEDURAL ALLEGATIONS

9 9. Petitioner has exhausted all available administrative remedies by, *inter alia*,
10 making repeated requests to the District to repeal its Water Moratorium; providing an opinion
11 letter from attorney William S. Walter regarding the application of Water Code section 355 to
12 the Water Moratorium; and participating in numerous public meetings of the District's Board
13 where the Water Moratorium was discussed. Petitioner also sought exemption from the Water
14 Moratorium as to his particular property by making requests to the District's Board and by
15 submitting a Hardship Application pursuant to the procedures provided in District Ordinance No.
16 102. Any further attempts to convince the District to repeal the moratorium or to grant
17 Petitioner's Hardship Application would be futile.

18 10. On June 9, 2021, Petitioner filed a federal complaint in California Central District
19 court alleging, *inter alia*, that the District's Water Moratorium effected an unconstitutional
20 taking of his property. Petitioner's first amended complaint included a claim for relief that
21 sought a writ of mandate to set aside the District's denial of his Hardship Application pursuant to
22 California Code of Civil Procedure section 1094.5 under supplemental jurisdiction. On October
23 27, 2021, Respondents filed a motion to dismiss Petitioner's federal complaint. On December 15,
24 2021, Honorable Virginia A. Philips granted Respondents' motion in part; Petitioner's claim for
25 writ of mandate was dismissed with leave to refile in California Superior Court.

26 11. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law
27 unless this Court grants the requested writs of mandate to require Respondents to comply with
28 their duties and set aside the District's unlawful denial of Petitioner's Hardship Application and
repeal their unjustified water moratorium. In the absence of such remedies, Respondents' water
moratorium will remain in place and Petitioner will be denied his right to adequate consideration
of his request for relief from the water moratorium as to his San Simeon property.

1 18. The District’s purview is limited by California law to the provision of various
2 services including water, sewer, trash, traffic control, and street maintenance; it has no land use
3 authority. Yet for more than 35 years, the District has, in effect, wielded its power to restrict
4 virtually all residential and commercial development within its boundaries by maintaining a strict
5 moratorium on new connections to water and sewer service. As explained below, the District’s
6 Water Moratorium was initially predicated on a water quality concerns that, as described below,
7 have now been fully mitigated.

8 19. On January 15, 1986, the District Board passed District Ordinance No. 61
9 “Establishing a Temporary Moratorium on the Issuance of Water and Sewer Connections Within
10 the Boundaries of the District.” The then-Directors found that “[t]he granting of additional water
11 and sewer connections within the District would result in an immediate threat to the public health
12 and safety” due to “a serious water quality problem” in the district; there was no mention of
13 water quantity problems. Ordinance No. 61 was set to be automatically repealed by its own terms
14 on August 15, 1986 unless extended or replaced.

15 20. On August 13, 1986, District Ordinance No. 62 extended the temporary
16 moratorium for another eight months, until April 1, 1987. On April 1, 1987, the District Board
17 passed Ordinance No. 63, extending the moratorium for a full year. On March 9, 1988,
18 Ordinance No. 66 extended the moratorium indefinitely, leaving its provisions “in effect until
19 repealed.”

20 21. A related ordinance, District Ordinance No. 65, adopted February 10, 1988,
21 established a waiting list for water service: “any property owner may deposit the then current
22 connection fees and be placed on the District’s waiting list for service.” The waiting list is
23 published as a series of Resolutions¹ and has been the subject of additional related ordinances: on
24 July 12, 2006, Ordinance No. 101, establishing a program to transfer existing water and sewer
25 service allocations among parcels, identified “Waiting List Commitments” as an “Existing
26 Commitment” for water service, along with active and non-active service commitments.
27 Ordinance No. 108 amended Ordinance No. 101 on May 12, 2010; Ordinance No. 115 amended
28 Ordinance No. 108 on October 8, 2014.

¹ The most recent waiting list is codified in CSD Resolution No. 20-426, passed and adopted by the CSD on October 14, 2020.

1 22. On October 11, 2006, the District’s Board passed Ordinance No. 102 to “keep in
2 effect said water connection moratorium” as “originally established by Ordinance No. 61 and
3 extended by Ordinance No. 63 and Ordinance No. 66.” Like its immediate predecessor,
4 Ordinance No. 102 also remains in effect “until repealed.” In addition to carrying forward the
5 other terms of its predecessors, Ordinance No. 102 expanded and established procedures for
6 Hardship Applications (first introduced by Ordinance No. 77 in 1992), permitting “any person
7 aggrieved by this moratorium law” to petition the Board for a public hearing on the merits of
8 their claim for an exemption from the moratorium. By adopting Ordinance No. 102, the CSD
9 board essentially admitted that the ongoing operation of the moratorium is capable of causing a
hardship and that sufficient supplies exist to safely provide water service to such individuals.

10 **B. Alleviation of any potential Water Shortage**

11 23. Since District Ordinance No. 102 was passed in 2006, significant infrastructure
12 improvements have drastically reduced or eliminated any potential water shortage that may have
13 justified the imposition of the moratorium. In 2012, the Water Reuse Project was completed. A
14 Reverse Osmosis Unit (“ROU”) was installed in 2016 to “treat brackish and mineral heavy
15 community water from the existing well field.” In September 2019, the District completed
16 environmental review for the installation of two new water storage tanks that will hold more than
17 800,000 gallons for fire suppression.

18 24. In addition, the overall water use in the District has been drastically reduced at
19 least in part because of a series of conservation ordinances adopted by District beginning with
20 Ordinance No. 64 in 1987. Ordinances No. 71 and 72 established standards for “Installation of
21 Water Conserving Devices and Plumbing” and civil liability for failure to comply with retrofit
22 requirements, respectively. On June 10, 2009, District Ordinance No. 104 established a three-
23 stage water conservation plan, last amended and restated by Ordinance No. 177 on December 14,
2016.

24 25. Consistent with the evidence in the record, the District itself has repeatedly
25 admitted that sufficient water exists at least to serve all its existing Waiting List Commitments.
26 The 2014 update to the Pico Creek Valley Groundwater Basin Availability Study, for example,
27 identified a sustainable yield of 120-acre feet per year, prior to the installation of the District’s
28 ROU which further mitigates the effects of seawater intrusion when water levels fall during dry
periods. The District’s 2018 Water Master Plan estimated an average daily demand of 76,500

1 gallons (based on data gathered between January 2014 and December 2016), which amounts to
2 roughly 103 acre feet per year. Accordingly, substantial evidence supports the conclusion that
3 the conditions that arguably gave rise to the moratorium are no longer present.

4 26. At the District Board meeting on September 9, 2020, Petitioner's request to repeal
5 the Water Moratorium and the opinion letter from attorney William Walter regarding the effect
6 of Water Code section 355 were discussed. Then-District manager Charles Grace stated that
7 there was enough water to serve each member of the waiting list and still have a water surplus.

8 27. The evidence in the record, including the District's own internal documents and
9 public discussions, demonstrates that the considerations that arguably justified the original Water
10 Moratorium in 1986 now no longer exist, yet the Water Moratorium endures without any
11 reasonable justification, at great cost to the public in general, and Petitioner in particular.

11 **C. The District's Persistent Refusal to Lift or Modify the Water Moratorium**

12 28. At their regular meeting on November 13, 2019, the District's Board discussed
13 lifting the water moratorium. Instead of voting to lift or modify the moratorium to allow at least
14 some new water connections, they directed staff to pursue proposals for an environmental review
15 document after a newly appointed consultant claimed repeal of the moratorium could be subject
16 to the provisions of the California Environmental Quality Act ("CEQA"). The hiring of the
17 consultant was delayed. As set forth more fully below, because the District has no land use
18 authority, its decision to lift or modify the moratorium is not subject to CEQA.

19 29. The moratorium was again discussed at the regular meeting of the Board on
20 September 9, 2020. The Board considered the implications of either lifting the moratorium or
21 serving those on the waiting list without further environmental review. Board members were
22 encouraged to do their own research and staff was directed to develop a process to move forward
23 with the repeal of Ordinance No. 102.

24 30. At the October 14, 2020, District Board meeting, an ad hoc committee was
25 established to review the process of issuing Will-Serve letters to potential new water
26 connections. On October 28, 2020, the Board discussed policies and procedures for reviewing
27 proposals from environmental consultants to conduct the environmental analysis regarding repeal
28 of the Water Moratorium. In November 2020, the Board hired consultant Paavo Ogren, recently
retired from the Oceano Community Services District, to help guide the process of lifting the
Moratorium.

1 31. At the January 14, 2021, District Board meeting, the Water Moratorium was
2 discussed incidentally to the Board’s discussion of Plaintiff’s Hardship Application under
3 Section V of Ordinance No. 102. A special public meeting was set for February 9, 2021,
4 immediately preceding the regular meeting of the Board, for a presentation by consultant Paavo
5 Ogren and District attorney Jeffrey Minnery regarding the ongoing efforts to remove or amend
6 the Water Moratorium.

7 32. At the special meeting on February 9, 2021, consultant Paavo Ogren outlined his
8 recommendations for a three-phase plan to repeal or modify the District’s Water Moratorium.
9 First, all discretionary decisions regarding water use would be addressed in an update to the
10 District’s Water System Master Plan, last updated in 2018 without an Environmental Impact
11 Report (“EIR”). Petitioner contends that the lifting of the moratorium is not a “project” within the
12 meaning of the California Environmental Quality Act (“CEQA”) (Pub. Res. Code § 21000, *et*
13 *seq.*) and does not involve exercise of discretion as the District is not a planning agency and has
14 no authority to approve or deny land-use projects. The District, moreover, is not able to act as a
15 lead agency in order to conduct environmental review as required by CEQA. However, because,
16 according to Mr. Ogren, the approval of a Water System Master Plan is categorically exempt
17 from environmental review under CEQA, Ogren claims the District may thus be able to avoid the
18 costly and time consuming environmental review that its legal advisors believe would otherwise
19 be required to repeal or modify the moratorium. Petitioner contends that even if the District’s
20 decision to lift or modify the moratorium was the kind of decision that requires CEQA review,
21 the District would not be able to avoid the legal requirement (if any exists) to conduct
22 environmental review merely by preparing a revised Water System Master Plan.

23 33. According to the Ogren plan, after completing a revised Water System Master
24 Plan, the District would still need to determine whether there are any remaining discretionary
25 actions involved in the lifting of the Moratorium that could trigger an environmental review
26 requirement under CEQA. Finally, the District would develop a process for issuing will-serve
27 letters, including setting fees and guidelines to help this essentially ministerial process comply
28 with CEQA. However, ministerial decisions are exempt from CEQA. At the close of the special
meeting, the Board approved a motion directing staff to update the District’s Master Plan based
on the guidelines for Urban Water Management Plans contained in the California Water Code.

1 34. The August 20, 2021, District Board meeting agenda sought authorization to
2 “solicit/advertise a RFP to update the Water Master Plan and to solicit/advertise a RFP for an
3 Instream Flow Study.” Based on information and belief, Petitioner contends that the District has
4 hired a consultant to prepare an Instream Flow Management Plan.

5 **D. Petitioner’s San Simeon Property**

6 35. The real property that is the subject of this petition is located in San Simeon, an
7 unincorporated area of San Luis Obispo County, California. It is a vacant lot, San Luis Obispo
8 County Assessor’s Parcel Number 013-071-009, comprising 1.1 acres of the Arbuckle Tract
9 along the northeast side of Avonne Avenue. The property is bordered on the southeast by an
10 apartment complex and on the northwest by single and multi-family residences. The lot directly
11 across Avonne Avenue is also vacant. Beyond that, along Cabrillo Highway, Motel 6 is
12 interposed between the property and the view from the Pacific Ocean.

13 36. The Property is zoned Residential Multi-Family. Because San Simeon is an
14 unincorporated area, the County of San Luis Obispo is the agency responsible for issuing
15 development permits for the Property. The Property falls within the California Coastal Zone and
16 so is subject to the additional planning controls of San Luis Obispo County’s Local Coastal
17 Program.² The lot currently sits empty, devoid even of trees; its only vegetation is seasonal grass
18 which Petitioner is required to keep mowed no higher than six inches.

19 37. Ppetitioner purchased the Property in July 2004 for \$207,000 as a retirement
20 investment. He relied in part on the reasonable belief that water for new development would
21 soon be freed by the proposed Hearst Ranch conservation easement. But instead of loosening
22 restrictions on new connections, the District passed Ordinance No. 102 in 2006, again extending
23 the moratorium on water and sewer service and preventing any economic use of the Property.

24 38. Realizing that it could be years before sufficient water supplies were developed
25 by the District, Petitioner agreed to sell the property for \$50,000 in 2008-2009, an astonishing
26 loss of nearly 75% of its value less than half a decade prior. But escrow fell through and he has
27

28 ² The San Luis Obispo County Local Coastal Program (Cal. Pub. Res. Code § 30500) was certified by the Coastal Commission in 1986 and its policies are implemented in San Luis Obispo County Code Title 23, Coastal Zone Land Use Ordinance.

1 since been unable to resell the property at any price while water service remains unavailable due
2 to the water moratorium.

3 39. On October 8, 2014, Petitioner paid \$2,280 to join the District’s Wait List for
4 Water, Sewer, and Service Allocations.³ He reserved service for ten residences.

5 40. In September 2019, Petitioner paid \$500 for a pre-application planning meeting
6 with the County of San Luis Obispo Department of Planning and Building to discuss plans for a
7 fifteen-unit residential development on the Property. The County informed Petitioner that he
8 must first obtain a “Will-Serve Letter” from the District confirming the availability of water and
9 sewer service to the Property before applying for any permits related to the proposed
10 development project. The County also informed Petitioner, however, that his proposed
11 development is consistent with all applicable zoning and land use regulations and would
12 therefore be expected to sail through the development process once the District issues a Will
13 Serve letter.

14 41. In November 2019, Petitioner paid an additional \$1,140 to add five more units to
15 his reservation on the CSD Wait List for a total of fifteen EDUs, or equivalent dwelling units.⁴

16 42. A Will-Serve letter does not generally result in immediate activation of water
17 service; any new development proposal must also go through San Luis Obispo County’s rigorous
18 permit approval process including applicable environmental review—a process that can take
19 years. Yet even the issuance of will-serve letters is currently prevented by the District’s water
20 moratorium, allowing the District Board to exert control over any new development despite their
21 lack of land use authority.

22 43. The Property was assessed by San Luis Obispo County for 2020/2021 property
23 taxes and its value was set at \$86,593. However, the practical value of the Property is currently a
24 net-loss; Petitioner has no viable economic use for the property without water service but is still
25 paying property taxes and various maintenance costs, including the cost of weed abatement
26 which is specifically required by District Ordinance No. 119. Because the Property consists of a
27 small, one-acre vacant lot set amidst other multi-family residential developments, there is no
28 conceivable use without water and sewer services.

³ District Resolution No. 14-369, passed and adopted on November 12, 2014.

⁴ District Resolution No. 20-426, passed and adopted on October 14, 2020.

1 **E. Petitioner’s Exhaustion of Administrative Remedies**

2 44. Following his pre-permit meeting with the San Luis Obispo County Department
3 of Planning and Building on September 10, 2019, Petitioner wrote to the District Board on
4 October 30, 2019, to request a Will-Serve Letter for the Property. In his letter, Petitioner pointed
5 out that the issues of water quality and quantity that originally justified the Water Moratorium no
6 longer existed.

7 45. Petitioner attended the November 13, 2019 District Board meeting where the
8 Water Moratorium was discussed and made public comment, identifying himself as a property
9 owner and Waiting List member. As explained above, the Board passed a motion directing its
10 staff to solicit proposals for environmental consultants to “move forward with the CEQA
11 process.”

12 46. On July 27, 2020, Petitioner wrote to the District Board to renew his request for a
13 Will Serve Letter for the Property. Petitioner advised the Board that he had no beneficial use of
14 the Property without the Will Serve Letter and that he had asked attorney William S. Walter, an
15 attorney specializing in land use and water rights, to review the legal issues posed by the ongoing
16 Water Moratorium. Petitioner enclosed a letter from Mr. Walter dated July 24, 2020, which the
17 CSD distributed to its Directors and also made available to the general public.

18 47. In October 2020, Petitioner engaged attorney Jeffery Stulberg to represent him in
19 the ongoing effort to obtain relief from the Water Moratorium in relation to his San Simeon
20 property. After initial discussions with the District regarding their timeline for lifting the Water
21 Moratorium, Petitioner submitted a Hardship Application pursuant to Section V of Ordinance
22 No. 102 and requested an up or down vote on the issue at the December 9, 2020, District Board
23 meeting. The item was listed on the agenda as Business Action Item D. “Consideration of
24 request from Robert Hather for an intent to serve letter.”

25 48. Instead of the anticipated consideration and final decision on the Hardship
26 application, Petitioner learned that the item had not been properly noticed as a public hearing and
27 there was “no formal timeline associated with the District having to respond to this request.”
28 Despite protests from Director Carson who felt that Petitioner’s application should be granted,
the Board voted “to table this item until the January Board meeting.” Based on the
representations of the District’s counsel, it appears that the District did not believe it was under

1 any legal obligation to take action on the Hardship Application within any reasonable amount of
2 time.

3 49. At the January 14, 2021, meeting, the District Board again discussed Petitioner’s
4 Hardship Application but again voted “to continue this matter to the Regular [sic] meeting in
5 February.” Again, the item had not been noticed or agendized for a public hearing and again,
6 Director Carson opined that Plaintiff “was following the process laid out in the Ordinance” and
7 “the Board should consider [his] request.”

8 50. To inform their discussion of Petitioner’s Hardship Application and learn more
9 about the evolving plans to repeal or amend the Water Moratorium, the Board scheduled a
10 special meeting immediately prior to their regular February meeting.

11 51. Believing that his Hardship Application would finally be given a public hearing
12 and an up or down vote at the February meeting, Petitioner submitted to the District for its
13 consideration a short supplemental letter on January 25, 2021. In that letter, Petitioner requested
14 that his Hardship Application be considered on its own merits, as required by Ordinance No.
15 102, section V, rather than linked to the larger discussion of repealing or amending the Water
16 Moratorium. Petitioner also asked the Board to consider whether provisions of the Water
17 Moratorium were affecting an unconstitutional taking of his property, which would trigger the
18 requirements under Ordinance No. 102 Section VI that all such provisions “be disregarded to the
19 extent necessary to avoid such unconstitutional taking.”

20 52. At the special meeting on February 9, 2021, discussed supra, Mr. Ogren and
21 attorney Minnery laid out a plan to avoid the expense and effort of what they characterized as a
22 potentially mandatory environmental review by frontloading all discretionary decisions
23 regarding the Water Moratorium into a CEQA-exempt master plan update. At the regular
24 meeting on February 11, 2021, Plaintiff was chagrined to discover yet again that without any
25 explanation or excuse, his Hardship Application had not been noticed for a public hearing and
26 consideration by the Board, which voted “to continue this item for a future board meeting based
27 on the inability to provide findings.”

28 53. Following a public comment by Petitioner’s attorney, the District’s counsel
declared that there was a threat of litigation and advised the Board to schedule a closed-session
meeting to “discuss the pros and cons of Robert Hather’s intent to serve letter before voting on
approval.” Director Carson made a motion that the Board schedule an up or down vote on

1 Plaintiff's Hardship Application before the closed session but it did not receive a second so no
2 action was taken. The closed session took place during the regular Board meeting on March 11,
3 2021.

4 54. The Hardship Application was not agendized or considered in the March or April
5 meetings of the District. Representatives of the District participated in a facilitated mediation
6 with Plaintiff and his attorneys on June 8, 2021, however the parties failed to reach a settlement.

7 55. Petitioner filed an initial complaint for damages in California Central District
8 Court on June 9, 2021. The following day, on June 10, 2021, the District at last held a public
9 hearing on his Hardship Application. During the hearing, a staff presentation to the Directors
10 asked them to consider Petitioner's request in light of the nine elements laid out in Ordinance
11 No. 102, section V, which, as explained above, allows the District to grant exemptions from its
12 water moratorium pursuant to a hardship application.

13 56. In arbitrarily and capriciously denying Petitioner's Hardship Application, the
14 District Board did not apply any of the nine factors⁵ enumerated in section V to the facts
15 presented by Petitioner and failed to make any findings regarding any of the nine elements.
16 Instead, the District Board denied the hardship application based on consideration of a number of
17 subjective and irrelevant factors, including, for example, the Board's erroneous belief that it
18 could engage in land use planning and limit development in San Simeon by denying the hardship
19 application.

20 57. Directors expressed concern that members of the Waiting List needed to be served
21 in order, regardless of whether their proposed water use was imminent, even though no other
22 member of the list has so far sought a hardship exemption.
23

24 ⁵ The nine elements considered by a hardship application are (1) nature and extent of the
25 hardship, (2) extent of proposed water usage, (3) existence of suspected environmental problems
26 in the vicinity, (4) vegetation removal, (5) traffic impacts, (6) magnitude of potential
27 environmental impacts, (7) potential storm water generation, (8) potential for re-zoning of
28 subject property, and (9) other factors relevant to the particular circumstances. District Ordinance
No. 102, section V. Admittedly, some of these elements are not appropriate considerations for
the District to the extent that the District has no land use authority, and therefore should not
reasonably base its decision to grant a hardship application on such factors as the magnitude of
environmental impacts.

1 58. The District also found that despite Petitioner’s detailed application materials and
2 follow up letters, it lacked information sufficient to grant this—or presumably any—hardship
3 application without first completing its own determination regarding the general availability of
4 water to the overall district. As discussed above, the District’s process of determining district-
5 wide water availability has now been ongoing for a number of years, with no clear end in sight.
6 The District, moreover, has no legitimate need for additional information because based on the
7 District’s own studies and reports, the District General Manager has concluded that sufficient
8 water exists at least to provide service to everyone on the wait list.

9 CALIFORNIA WATER CODE EMERGENCY MORATORIA

10 59. Water Code Section 350 “authorizes the governing body of a distributor of a
11 public water supply to declare “a water shortage emergency condition” within its service area
12 “whenever it finds and determines that the ordinary demands and requirements of water
13 consumers cannot be satisfied without depleting the water supply ... to the extent that there
14 would be insufficient water for human consumption, sanitation, and fire protection.” Building
15 Industry Assn. v. Marin Mun. Water Dist. (1991) 235 Cal.App.3d 1641, 1646.

16 60. Water Code section 353 in turn directs requires the governing body to adopt
17 regulations and restrictions on the delivery and consumption of water within its jurisdiction in
18 order to conserve the water supply for the greatest public benefit “with particular regard to
19 domestic use, sanitation, and fire protection.”

20 61. “After allocating and setting aside the amount of water which in the opinion of the
21 governing body will be necessary to supply water needed for domestic use, sanitation, and fire
22 protection, the regulations may establish priorities in the use of water for other purposes and
23 provide for the allocation, distribution, and delivery of water for such other purposes, without
24 discrimination between consumers using water for the same purpose or purposes.” Wat. Code, §
25 354. The regulations may include denial of applications for new or additional service
26 connections. Wat. Code, § 356.

27 62. The restrictive regulations so imposed are to be maintained only “until the supply
28 of water available for distribution within such area has been replenished or augmented.” Wat.
Code, § 355.

 63. The governing body’s decision to impose or maintain a water moratorium is a
legislative act that is reviewable” by means of ordinary mandate (Code Civ. Proc. § 1085) where

1 the court is limited to a determination of whether District's actions were arbitrary, capricious or
2 entirely lacking in evidentiary support, or whether it failed to follow the procedure and give the
3 notices required by law.” Swanson v. Marin Mun. Water Dist. (1976) 56 Cal.App.3d 512, 519.

4 5 **FIRST CAUSE OF ACTION**

6 **(Abuse of Discretion: Denial of Plaintiff's Hardship Application)**

7
8 64. Petitioner incorporates by reference each and every allegation contained in the
9 preceding paragraphs of this Petition as though fully set forth herein.

10 65. The CSD Board abused its discretion and failed to proceed in the manner required
11 by law because its denial of the Petitioner's hardship application was not based any legitimate or
12 lawful factors, including any of the 9 factors enumerated in Section V of Ordinance No, 102.

13 66. The District Board members made statements during the hearing shows that the
14 Board's denial of the hardship application was in whole or in part based on the District Board
15 members' impermissible intent to prevent any growth or commercial and/or residential
16 development in San Simeon. By so doing, the District Board improperly assumed the role of and
17 acted as a planning agency when in fact, the District has no land use authority.

18 67. To the extent that the District Board's denial of Plaintiff's Hardship Application
19 was purportedly based on a lack of adequate information about the District's water supplies, the
20 District abused its discretion because any lack of information about water supplies and demand is
21 a direct result of the District's own actions and inactions. The Board's findings that there was
22 insufficient information to grant Plaintiff's Hardship Application until water-availability is
23 determined for the entire district would essentially permit the District never to grant any hardship
24 applications under Section V because the District can decide to remain deliberately ignorant of
25 information it purportedly needs to grant a hardship application.

26 68. In any event, Petitioner specifically denies that the District lacked sufficient
27 information to grant its hardship application.

28 69. The Board's unlawful denial of the Hardship damages was prejudicial to Mr.
Hather as he continues to suffer damages as a result of his inability to proceed with his plans to
develop his property.

1 70. Moreover, as a direct and proximate result of District’s acts and omissions, as
 2 described hereinabove, Petitioner has and will continue to sustain violation of his procedural due
 3 process rights under the United States and California constitutions unless the denial of his
 4 hardship application is set aside.

5 71. Plaintiff has no adequate remedy at law and will suffer serious and irreparable
 6 damages and harm to his constitutional rights unless the District is directed to perform its duty
 7 under Ordinance No. 102, section V by adjudicating Plaintiff’s Hardship Application based on
 8 one or more of the factors enumerated in the District’s ordinance.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF DISTRICT ORDINANCE NO. 102**

11 **(Abuse of Discretion: Failure to Proceed in the Manner Required by Law**
 12 **by Maintaining the Moratorium)**

13 72. Petitioner incorporates by reference each and every allegation contained in the
 14 preceding paragraphs of this Petition as though fully set forth herein.

15 73. As set forth above, the evidence in the record, including reports and studies
 16 prepared by the District demonstrate that the conditions that arguably justified the imposition of
 17 the current moratorium and continued denial of water and sewer connection to new customers
 18 (particularly those on the so-called wait list) are no longer present. The alleged water shortage
 19 that the District cited as the basis for imposing the restriction on new connection is no longer
 20 present because, *inter alia*, the ROU deployed by the District is capable of addressing the
 21 occasional seawater intrusion issue and the District’s overall water consumption has been
 22 substantially decreased through conservation measures. This evidence is reflected in the
 23 District’s General Manager’s admission that the District currently has sufficient water supplies to
 24 provide water to every property on the waitlist.

25 74. The evidence in the record shows, moreover, that the District and District Board
 26 members have in the past and continue to improperly use the moratorium as a means to regulate
 27 growth and suppress development in San Simeon. The District has no authority to regulate land
 28 use, and as such, cannot lawfully use its authority to impose restrictive regulation to preserve the
 District’s water supplies as a bulwark against growth and much needed residential development.

1 75. Accordingly, the District’s unconscionable decision to continue to maintain the
2 moratorium and related restrictive regulations, particularly the ban on new water connections, is
3 arbitrary, entirely lacking in evidentiary support.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF WATER CODE § 355**

6 **(Abuse of Discretion: Failure to Proceed in the Manner Required by Law)**

7 76. Petitioner incorporates by reference each and every allegation contained in the
8 preceding paragraphs of this Petition as though fully set forth herein.

9 77. Pursuant to Water Code section 355, the District is authorized to maintain
10 necessary restrictive regulations, including denial of new connections pursuant to Water Code
11 section 356, only “until the supply of water available for distribution within such area has been
12 replenished or augmented.” Wat. Code § 355.

13 78. As set forth hereinabove, the District’s water supplies have been “replenished or
14 augmented” within the meaning of the statute to such an extent that the restriction on new
15 connections, particularly if limited to Petitioner (by virtue of his hardship application) or the
16 land-owners on the wait list, can no longer be reasonably maintained by the District.
17 Accordingly, the District’s failure to lift or modify the moratorium as justified by the current
18 information available concerning the adequacy of the District’s water supplies is unreasonable.

19 79. The District’s refusal to lift or modify the moratorium or ease the restrictions on
20 new connections, including the new water connection sought by Petitioner constitutes an abuse
21 of discretion to the extent that it is arbitrary, capricious and lacking in evidentiary basis, and
22 constitutes a failure to proceed in the manner required by law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, ROBERT HATHER prays for judgement against SAN SIMEON
25 COMMUNITY SERVICES DISTRICT and the BOARD OF DIRECTORS OF SAN SIMEON
26 COMMUNITY SERVICES DISTRICT, as set forth below:

- 27 (1) That the Court issue an alternative and peremptory writ of mandate
28 commanding Respondents to set aside, invalidate, and void the June 10, 2021, denial

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of Petitioner’s Hardship Application for relief from the District’s water moratorium as to his San Simeon property;

(2) That the Court issue an alternative and peremptory writ of mandate commanding Respondents to repeal or at least modify the water moratorium and associated restrictions;

(3) For declaratory judgment, stating that the SAN SIMEON COMMUNITY SERVICES DISTRICT’S water moratorium is hereby repealed by operation of law;

(4) For an order directing the District to grant Petitioner a will serve letter;

(5) For an award of costs and attorney’s fees; and

(6) For such other and further relief as the Court deems just and proper.

Dated this 12th day of January, 2022.

LAW OFFICE OF BABAK NAFICY

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Babak Naficy
Attorney for ROBERT HATHER

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VERIFICATION

My name is Robert Hather. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated therein are true of my knowledge except as to those matters which are stated on information and belief, and as to those matters those matters, I believe them to be true.

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

Executed this 12th day of January, 2022 in San Luis Obispo County, California.



ROBERT HATHER