

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

| | | |
|---|---|-----------------------------|
| BROWNS VALLEY |) | |
| IRRIGATION DISTRICT, |) | |
| a political subdivision of the State of |) | |
| California, in Yuba County, |) | |
| 9370 Browns Valley School Rd., |) | |
| P.O. Box 6 |) | |
| Browns Valley, CA 95918 |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| ERIC HOLDER, |) | |
| Attorney General of the |) | Civil Action No. _____ |
| United States of America; |) | |
| THOMAS E. PEREZ, |) | |
| Assistant Attorney General, |) | |
| Civil Rights Division, United States |) | |
| Department of Justice, Washington, DC, |) | Three-Judge Court Requested |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMPLAINT FOR DECLARATORY RELIEF
UNDER THE VOTING RIGHTS ACT

The Plaintiff Browns Valley Irrigation District alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Browns Valley Irrigation District ("District") is a political subdivision of the State of California. The District covers approximately 55,000 acres and is located northeast of Marysville in Yuba County. Yuba County is also a political subdivision of the State of California and a covered jurisdiction subject to the special provisions of the

Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. 42 U.S.C. §1973b(a)(1).

3. The primary function of the District is to deliver surface water to agricultural lands and administer a groundwater management program. The District also sells water for domestic use and generates hydro-electrical power which is wholesaled to the local electric utility.

4. The District was established on September 19, 1888, pursuant to the Wright Act of 1887, a California statute that permitted farm owners in agricultural regions to form and bond irrigation districts. The District is one of the oldest continually-operating irrigation districts in California. The Wright Act has since been superseded by the California Irrigation District Law.

5. There are approximately 2874 registered voters in the District.

6. Pursuant to Sections 20500 through 22978 of the Irrigation District Law contained in the California Water Code, the District is governed by a Board of Directors consisting of five members who are each elected to a term of four years. Each Board member represents one of five electoral divisions and is elected by qualified voters residing within the entire District.

7. Since its inception in 1965, the Voting Rights Act has allowed States that are subject to the special remedial provisions of the Act to seek a judicial decree exempting them from coverage under the special provisions if they can satisfy standards established in the Voting Rights Act. This exemption process is known as “bailout”. The Board of Directors for the District voted to seek bailout on Sept. 8, 2011.

8. In 1982, Congress made changes in the exemption standards of the Voting Rights Act. As amended in 1982, Section 4 of the Voting Rights Act provides that political subdivisions within jurisdictions that are covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

- A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
- B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
- C) no Federal examiners have been assigned to the political subdivision;
- D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c; and
- E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

9. As described herein, plaintiff District has fully complied with the provisions of Section 4 of the Act.

10. As a political subdivision within a covered jurisdiction, Plaintiff District has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the 'preclearance' provisions, covered jurisdictions, including the Plaintiff District, are

required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

11. The District has made preclearance submissions to the United States Department of Justice pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. No submission by the District has ever received an objection from the Attorney General. The District has never sought judicial preclearance of any voting changes in this Court.

12. The most recent preclearance submissions were made after the Attorney General reviewed the elections records of the District in the course of considering the State's bailout request and determined that these matters were not reflected in their previous submissions to the Attorney General over the preceding ten years. The failure to make such submissions prior to implementation was inadvertent and not the product of any discriminatory purpose or an intent to evade the Act. Upon notice from the Attorney General, these matters promptly were submitted for review under Section 5.

13. Voter registration opportunities in Yuba County for District elections are readily and equally available to all citizens. The District itself does not conduct voter registration.

14. No person in District has been denied the right to vote on account of race, color, or membership in a language minority group for at least the preceding ten years.

15. The District has not used a "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) as a prerequisite to either registering or voting for at least the preceding ten years.

16. No final judgment of any court of the United States has determined that denials or abridgments of the right to vote on account of race or color have occurred in the District, nor has the District entered into any consent decree, settlement or agreement resulting in any abandonment of a voting practice challenged on such grounds. There are no pending actions against District alleging such denials or abridgments of the right to vote.

17. No voting practices or procedures have been abandoned by the District or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color.

18. The Plaintiff District has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the District. Minority voters in District are not being denied an equal opportunity to elect candidates of their choice to any office in the District.

19. Federal examiners have never been appointed or assigned to District under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

20. Because there has not been any known intimidation or harassment of persons exercising rights protected under the Voting Rights Act in the District within the last ten years, the District has not had any occasion to take any action eliminating such activity.

21. Pursuant to 42 U.S.C. §1973b, the District has “publicize[d] the intended commencement ... of [this] action in the media serving [the District] and in the appropriate United States post offices.”

22. The allegations set forth in paragraphs 11 through 21, above, if established, entitle Plaintiff District to a declaratory judgment under Section 4 of the Voting Rights

Act, 42 U.S.C. §1973b, exempting the District from the special remedial provisions of the Voting Rights Act.

WHEREFORE, plaintiff District respectfully prays that this Court:

- A. Convene a three-judge court, pursuant to 28 U.S.C. §2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;
- B. Enter a declaratory judgment that plaintiff District is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and
- C. Grant such other relief as may be necessary and proper as the needs of justice may require.

Respectfully submitted,

**FOR THE PLAINTIFF BROWNS VALLEY
IRRIGATION DISTRICT:**

/s/ J. Gerald Hebert
J. GERALD HEBERT
DC Bar No. 447676
Attorney at Law
191 Somerville Street, #405
Alexandria, Va. 22304
Tel (703) 628-4673
Email: hebert@voterlaw.com
Email: jghebert@comcast.net

JOSHUA M. HOROWITZ
California State Bar No. 186866
Bartkiewicz, Kronick & Shanahan
1011 Twenty-Second Street
Sacramento, CA 95816-4907
Tel (916) 446-4254
Email: jmh@bkslawfirm.com