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13 MICHELE COOPER, SARAH STAFFORD, and
14 CHICO STEWARDS FOR PARKS AND WATERWAYS

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17 SACRAMENTO DIVISION

18 BOBBY WARREN; ANDY LAMBACH;
19 JONATHON WILLIAMS; MICHAEL
20 SAMUELSON; TRACY MILLER; TONA
21 PETERSEN; CAROL BETH THOMPSON;
22 CHRISTA STEVENS,

23 Plaintiffs,

24 vs.

25 CITY OF CHICO;
26 CITY OF CHICO POLICE DEPARTMENT;
27 and DOES 1 through 100 Inclusive

28 Defendants.

Case No. 2:21-cv-00640-MCE-DMC

**COMPLAINT IN INTERVENTION,
Rule 24, AND FOR DECLARATORY
JUDGMENT, 28 U.S.C §§2201(a) &
2202**

-- SUBMITTED BY APPLICANTS FOR
INTERVENTION: MICHELE COOPER,
SARAH STAFFORD, AND
CHICO STEWARDS FOR PARKS AND
WATERWAYS

MOTION FOR INTERVENTION:

Date: DECEMBER 2, 2021

Time: 2:00 PM

Courtroom: 7

Judge: Hon. Morrison C. England, Jr.

I. INTRODUCTION

1
2 1. “Chico residents have identified the maintenance and enhancement of the City’s parks,
3 greenways, recreation and open space resources as a key component in quality of life and
4 overall community wellness.”¹ The City of Chico is extraordinary for the size and scope of its
5 parks and open space areas, fed by a network of creeks and waterways. Chico has “37 existing
6 sites that are parks, open space or recreation centers totaling 4,176 acres.”² However over the
7 last ten years the burgeoning growth of the homeless encampments in Chico’s parks and
8 waterways has deprived Chico’s residents of the use and enjoyment of these essential public
9 amenities. Those with a special interest in the preservation and enhancement of these resources
10 –Intervenors herein, are particularly harmed and distressed by the degradation of the parks and
11 waterways: the garbage, litter and refuse strewn across the parks and deposited in the
12 waterways; thousands of discarded hypodermic needles that pose a serious bio-hazard from
13 needle sticks; tents, make-shift shelters, cardboard structures, tarps, and random coverings from
14 the elements occupy what used to be the public spaces; dangerous dogs that bark and threaten
15 passers-by; open defecation and urination, much of it in the waterways; hazardous pollutants in
16 the waterways; *E.coli* contamination of the public Sycamore Pool (fed by Big Chico Creek
17 running through Bidwell Park) at 2 to 3 times public health and safety levels; *E.coli*
18 contamination of Comanche Creek impacting water users downstream as well as in the
19 Comanche Creek Preserve; criminal activity –especially property crimes and car break-ins—
20 adjacent to the parks; wildfires escaped from homeless camp fires; and the list goes on.

21 2. In a case with complex disputed issues there is no serious disagreement on the simple
22 fact that Chico’s parks and waterways have suffered disastrous environmental harm, and the
23 degradation gets worse as the occupation by homeless encampments continues. The
24 consequence in Chico ... obvious but deserving of emphasis, is the loss of “quality of life and
25 overall community wellness.” This loss is specially and directly acute for Intervenor Chico
26 Stewards for Parks and Waterways -- a “special interest group” devoted to the preservation and
27 enhancement of the parks and waterways.

28 ¹ Chico General Plan, Land Use Element, Section 9 “Parks, Public Facilities, and Services” p. 9-2.

² Id. At p. 9-11.

1 3. Intervenor's do not seek or propose a solution to homelessness. Intervenor's purpose is
2 to save the City's parks and waterways, which can only be accomplished by removing the
3 homeless encampments there. Intervenor's allege that there are many "places to go" for the
4 homeless in Chico outside of the parks and waterways, but the other parties before the court
5 have falsely denied or concealed the existence of those places. Intervenor's further allege that
6 the exclusion of the homeless encampments from the parks and waterways is a reasonable
7 time/place/manner restriction that is compliant with the precedent from *Martin v. City of Boise*
8 20 F.3d 584, 617, fn.8, (9th Cir. 2019).

9 4. Intervenor's allege that: (a) the City has a policy and practice of "warehousing" the
10 homeless in the parks, not out of necessity but from political expediency, to avoid relocating the
11 homeless to viable City properties anywhere in the 7 City Council Districts of the City where
12 the individual Council Members would face political controversy from any area designated for
13 usage by the homeless. The City deliberately sequesters the homeless in the parks/waterways
14 while it fails in repeated inept and hostile attempts to push the homeless out of the City
15 altogether. Further: (b) the City's revision of its Municipal Codes (effective on October 7,
16 2021) in a manner that continues to violate the Eighth Amendment rights of the City's
17 homeless, has the effect of locking in the justification of the homeless Plaintiffs for refusing to
18 leave the parks; (c) the City's designation and use of the municipal airport facility as a "shelter
19 facility" for the homeless was a violation of the City's own laws, is an illegal land use, is a
20 dangerous condition for homeless occupants, and is not "realistically available" under *Martin v.*
21 *City of Boise*, 20 F.3d 584, 617, fn.8, (9th Cir. 2019); (d) the City's decision to close the Airport
22 facility and move infrastructure to the Comanche Creek greenway preserve will create an
23 imprisoning warehouse for homeless, that fully deprives the Intervenor's and public of any use
24 of that park land, and that will destroy a \$1.5 million investment in the restoration of that park;
25 (e) the City's explicit administrative policy – by mere discretion of the City Manager-- to
26 selectively refuse to enforce its own legislatively enacted ordinances for parks, waterways,
27 camping and shelter laws (to the Airport facility among other places) is unlawful under the
28 City's own charter, a violation of State law, and a violation of the separation of powers

1 doctrine; (f) the City’s codification in the modified ordinances of a non-enforcement clause in
2 its parks, waterways, camping and shelter laws exclusively for the benefit of “unsheltered
3 individuals” --while the same laws would be enforced against the (“sheltered”) Intervenors--
4 denies Intervenors equal protection of the laws under the 14th Amendment to the U.S.
5 Constitution; (f) the City has failed and refuses to enforce CA Fish & Game Code §5652 in and
6 around the City’s waterways such as Comanche Creek, Big Chico Creek, Little Chico Creek,
7 and more, (all of which are “waters of the state” per F&G §5652), despite the nondiscretionary
8 mandate of §5652 that it “shall be enforced by all law enforcement officers of this state” so as
9 to prohibit within 150 feet of the high water mark the deposition of “cans, bottles, garbage, ..
10 rubbish, litter, refuse, waste, debris” of virtually all kinds; (g) the City has a mandatory
11 ministerial duty to enforce ordinances in the parks and waterways relating to sanitation,
12 destruction of property, access, pollution and garbage/rubbish, which it is refusing to enforce,
13 and based upon said failure and refusal may be compelled by private action to enforce by the
14 equitable powers of this court; and (h) through past and ongoing policies and practices the City
15 has committed “waste” of public funds and resources that shall be remedied as to the past and
16 enjoined for the future.

17 5. Critical decisions and deliberations by the City, acting through and by its City Council,
18 have occurred illegally outside of public meetings in violation of the CA “Brown Act” (CA
19 Government Code §54950 *et seq.* – “open meetings law”). Under the false cover of “pending
20 litigation,” the City has failed to put on the agenda, unlawfully secretly deliberated, unlawfully
21 made secret decisions or taken secret actions, and failed to report decisions and actions taken,
22 on such matters as: rescission of the April 6, 2021 minute order to refrain from pursuing the
23 BMX site for homeless shelter (June 8, 2021 closed session), construction and operation of the
24 Airport “temporary shelter” facility (June 8, 2021 closed session), closure of the Airport facility
25 (September 7, 2021 closed session), and impending removal of infrastructure from the Airport
26 to the Comanche Creek park to secure it with fencing and protect nearby businesses (September
27 7, 2021 closed session). These actions have deprived Intervenors and the public of their rights
28 to have these matters aired, discussed and decided in a public forum (CA Government Code

1 §54960). The City has been served with demand letters by Intervenors to Cease & Desist these
2 practices, to Correct the most recent actions in relation to Comanche Creek and decide them in
3 a public forum, and for the protection of the public to audio-record all further closed session
4 meetings. Subject to the City’s statutory rights to affirm cessation of illegal practices and to
5 undertake corrections as demanded, Intervenors will amend these pleadings as necessary to
6 further allege any unabated violations of the Brown Act.

7 6. The City’s failure to acknowledge a large inventory of City owned properties that are
8 open space or greenway as alternatives to the actual parks, the policy of the City to warehouse
9 the homeless in the parks until a homeless “solution” is found, the City’s failure to clear and
10 clean the parks and waterways without criminal action against the homeless, and the City’s
11 persistence in pursuing ordinances and policies that unconstitutionally “criminalize
12 homelessness” ensure (through litigation) that the homeless are secure in staying in the parks,
13 the City’s acceptance and use of falsely inflated data for the magnitude of homelessness, and
14 the City’s misrepresentations to the Court as to the lack of “places to go” for the homeless who
15 may be forced out of the parks, the secret deliberations and decisions/actions out of public view
16 (in violation of the Brown Act) that impact the viability of the parks and waterways – all
17 guaranty that the City cannot adequately or competently represent the interests of the
18 Intervenors who seek nothing more and nothing less than the preservation and protection of the
19 parks and waterways.

20 7. Intervenors allege that the homeless Plaintiffs and their advocates are at the same time
21 holding the parks and waterways as improper leverage to demand homeless shelter facilities
22 and amenities above and beyond that which may be required by law; and that the homeless
23 Plaintiffs, by use of false and unreliable data pertaining to homelessness, and data not
24 recognized by federal law for reporting to HUD, perpetuate their occupation of the parks until
25 their excessive demands are met; and that the homeless Plaintiffs, by their relentless occupation
26 of the parks, continue to degrade and damage the parks and waterways, causing irreparable
27 harm to those facilities and to the interests of Intervenors.

1 8. Intervenors have been placed in a position of witnessing the parks and waterways they
2 hold so dear become “warehouses” for homeless encampments, while meritless contentions by
3 the principal parties are played out as if on a stage instead of a forum for rational action, in
4 litigation that may go on for years while the parks and waterways of Chico are destroyed. The
5 most recent events that require prompt initiation of this intervention litigation are twofold: (1)
6 the City adopted revised parks and waterway ordinances (effective October 7, 2021) which
7 again criminalize the status of “homelessness”; which place reliance on an illegal “airport
8 shelter” only for the City to turn around and announce intended closure of that facility before
9 the ordinance revisions were effective; which unlawfully discriminate against the “sheltered”
10 citizens like Intervenors by enforcing exclusionary and other parks/waterways ordinances
11 against them while suspending the ordinances for the “unsheltered individuals”; and which put
12 a suspension provision in the anti-camping ordinances that negate enforcement for so long as
13 the City cannot meet a vague and moving target of shelter accommodations – virtually
14 guarantying perpetual “warehousing” of the homeless in the parks and waterways for the future.
15 And (2) the City has engaged on an improperly conceived and illegally designed intensive-use
16 BMX facility shelter project, that will founder and waste public funds (much like the airport
17 facility), producing few shelter spaces at enormous cost, while the City ignores the availability
18 of viable City owned parcels scattered among the electoral districts of the City Councilors,
19 falsely pretending this option does not exist for political rather than rational reasons. The Chico
20 Stewards for Parks and Waterways cannot watch the parks and waterways degrade further and
21 do nothing, nor stand on the sidelines in this litigation any longer.

22 **II. JURISDICTION AND VENUE**

24 9. This action involves claims arising under 42 U.S.C. §1983, the Fourth, Eighth, and
25 Fourteenth Amendments to the United States Constitution. Jurisdiction exists pursuant to 28
26 U.S.C. §§1131 and 1343. Jurisdiction also exists under the Declaratory Judgment Act, 28
27 U.S.C. §§2201(a) and 2202.

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10. This court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. §1367 because those claims are part of the same case or controversy as the federal claims and resolving the federal and state claims in a single action serves the interests of judicial economy, convenience, consistency, and fairness to the parties.

11. All causes of action brought under California law are for equitable and injunctive relief only. Therefore, no tort claim was necessary prior to filing this suit. Cal. Gov. Code §905; *Quest Commc'ns Corp. v. City of Berkeley*, 146 F. Supp. 2d 1081 (N.D. Cal. 2001); *Hart v. county of Alameda*, 76 Cal.app. 4th 766 (1999).

12. Venue is proper in the Sacramento Division of the Eastern District in that all facts, events, conduct, and location of the parties, are in the City of Chico, in Butte County, California.

III. PARTIES

13. Intervenor Chico Stewards for Parks and Waterways is made up of over 180 residents, taxpayers and citizens in the City of Chico dedicated to bringing about the return of the parks and waterways of Chico to a pristine, safe, clean and beautiful condition, through legal action if or as necessary. Articles of Association under the California Corporations Code, Title 3 Unincorporated Associations, et al., for Chico Stewards for Parks and Waterways (hereafter “CSPW”) were entered on February 14, 2021. CSPW is the first, the only, and active entity of wide representation dedicated to the mission of restoring the parks and waterways of Chico, which will fairly and adequately represent the interests of the association, its members, and those interested in its mission in this court. (Rule 23.2 Fed. Rules of Civ. Proc.) The members of CSPW possess their own private overnight sleeping accommodations and would not be defined as “unsheltered individuals” under revised Chico Municipal Code §9.20.020(J).

14. Intervenor Michele Cooper is a resident, taxpayer and citizen in the City of Chico dedicated to the restoration of the parks and waterways to their prior safe, clean, and beautiful condition. Intervenor Cooper is the President of the CSPW. Intervenor Cooper possesses her

1 own private overnight sleeping accommodations and would not be defined as an “unsheltered
2 individual” under revised Chico Municipal Code §9.20.020(J).

3 15. Intervenor Sarah Stafford is a resident, taxpayer and citizen in the City of Chico
4 dedicated to the restoration of the parks and waterways to their prior safe, clean, and beautiful
5 condition. Intervenor Stafford is the Secretary of the CSPW. Intervenor Stafford possesses her
6 own private overnight sleeping accommodations and would not be defined as an “unsheltered
7 individual” under revised Chico Municipal Code §9.20.020(J).

8 16. Plaintiffs Bobby Warren, et al., in the within action, are alleged on information and
9 belief to be homeless individuals residing in Chico, California, with the capacity to sue and be
10 sued, and to do all acts complained of herein.

11 17. Defendant City of Chico is a government entity, charter city and “local agency”
12 within the State of California with the capacity to sue and be sued, and to do all acts
13 complained of herein. Defendant City of Chico Police Department is a department of the City
14 of Chico, and it is alleged on information and belief that said department has no legal identity
15 separate or apart from that of Defendant City of Chico.

16 18. Defendants sued herein as Does 1 through 100 inclusive are unknown to Intervenor
17 Plaintiffs as to their true names and capacities, and therefore said Defendants are sued by such
18 fictitious names. Intervenor will amend these pleadings to allege the true names and capacities
19 of said Defendants when ascertained. Intervenor is informed and believe, and thereon allege,
20 that each of such fictitiously named Defendants is responsible in some manner for each of the
21 acts and/or omissions alleged herein.

22 19. At all times herein mentioned, each of the Defendants were the agents and/or
23 employees, representatives, joint venturers, and/or representative public officials (employed,
24 appointed, or elected), acting in such capacity in concert with each of the remaining
25 Defendants, and in doing the things hereinafter alleged, were acting within the course and
26 scope of such agency or capacity.

27
28 **IV. GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

1 **CHRONOLOGY**

2 20. Following is a chronology of materially significant events and factual circumstances
3 that support the claims alleged herein.

4 **21. 2017, January 25 – Completion of the 2017 Homeless Point In Time [“PIT”]**

5 **Census & Survey Report.** The Report is prepared by the Butte County “Continuum Of Care”
6 [“COC”] – a compendium of nonprofit organizations and county agencies that provide services
7 to the homeless and compete for state/federal and other source grant allocations to fund their
8 operations. The larger the numbers reported for “homeless” the greater the capacity to attract
9 grant funds. Relevant pages of the 2017 PIT are attached as Exhibit A (xp 001)³. The PIT
10 generates a federally required HUD PIT Report (xp 010) using federal definitions of
11 “homeless” and “unsheltered homeless” (xp 012). However, as explained in the 2017 PIT
12 Report (xp 003) the data reported in the Butte Co. COC PIT Report (other than the HUD PIT
13 data attached only as an appendix) uses a locally created “broader definition of homelessness”
14 devised by the COC to “address local assumptions, policies, needs, and concerns.” The HUD
15 defined total number of homeless persons in all of Butte County is 1,195 (xp 010). The COC
16 PIT report defined the total number of homeless persons in Butte County as 1,983 (xp 005) – an
17 increase purely by re-definition of terms amounting to 66%. ••• Further, the 2017 PIT identifies
18 531 individuals as “chronically homeless” under the federal HUD definitions, but 929
19 individuals would be “chronically homeless” under the broader local COC definitions (xp 007).
20 ••• And per this 2017 PIT report there were 433 unsheltered homeless in the City of Chico (xp
21 006). [Compare to 2019 PIT report data below.]

22 **22. 2017, November 25 – Completion of Butte County Airport Land Use**

23 **Compatibility Plan by the Butte County Airport Land Use Commission.** Attached as Ex. B
24 is the website access *url* for the Butte County Airport Land Use Compatibility Plan (“ALUC
25 Plan”); followed by (xp 015) the “City Graphic of Rest Area at Airport and Footprint of
26 Facility” (a facility constructed by the City in June of 2021) attached to the Declaration of Erik
27 Gustafson, Public Works Director of Operations and Maintenance for the City of Chico, filed in

28 ³ The Exhibits to this Complaint are Bates numbered, and “xp” [exhibit page] is a reference to the sequential Bates page number in the Exhibits that corresponds to the text reference.

1 this court on 6/221/21, document 90-1; followed by (xp 016) relevant pages from the ALUC
2 Plan for juxtaposition with the “Footprint of Facility” identified by the City. The Declaration
3 submitted by Mr. Gustafson states in ¶4, p.2 that “Neither the Chico Municipal Airport nor the
4 Federal Aviation Administration (“FAA”) had any restrictions prohibiting the property
5 development” – omitting any reference to the ALUC Plan. Title 19, Chapter 19.52, Sections
6 19.52.020 and 19.52.030 of the Chico Municipal Code create Airport overlay zones that adopt
7 and implement the ALUC Plan. The ALUC Plan is created by State law (CA Public Utilities
8 Code §21675) to protect not only the Airport and safety of the aviation traveling public, but
9 also to “safeguard the inhabitants within the vicinity of the airport and the public in general.”
10 Major land use actions on or adjacent to the Airport (xp 017) --such as the “Airport shelter”
11 established by the City—are required to obtain prior approval from the Airport Land Use
12 Commission, but that was not done here. Land use zones to ensure compatibility with airport
13 operations and public safety are depicted on the General Plan Land Use map [Exhibit 5-9] in
14 the ALUC Plan (xp 021). An enlargement of the ALUC map with an overlay of the location of
15 the “Footprint of Facility” location is shown at xp 022 of Ex. B. The “Airport shelter” is in the
16 “B1” zone of the ALUC Plan. The B1 zone prohibits “Camping, campgrounds, recreational
17 vehicle/motor home parks” (xp 023) [“Use should not be permitted under any circumstances.”
18 xp 024.] ••• The ALUC Plan map labeled “Compatibility Factors Map: Noise” (xp 025) shows
19 CNEL contours, and a close-up of that map with an overlay of the Airport shelter footprint
20 shows the City shelter to be on top of the 60 CNEL contour (xp 026); the noise compatibility
21 policies of the Plan allow a maximum of 60 CNEL for residential uses (violated here), with the
22 assumption that residential structures will provide noise attenuation to 45 CNEL (xp 028) –not
23 present here where homeless are either in the open air or in tents. ••• The ALUC Plan map
24 labeled “Compatibility Factors Map: Overflight” shows the flight paths of aircraft to assess the
25 compatibility of land uses underneath them (xp 029). A close-up of that map with an overlay of
26 the Airport shelter footprint shows the City shelter to be underneath the flight path of fire attack
27 aircraft departure tracks when those aircraft depart southward from the runway and loop around
28 to head in a westerly direction (xp 030). The City Airport shelter is in violation of the Airport

1 Land Use Compatibility Plan that has been in place since November of 2017, and is an illegal
2 and dangerous land use in violation of Chico Municipal Code §§19.52.020 and 19.52.030.

3 **23. 2018, September 25 – Butte County adopts a “Resolution Declaring A Shelter**
4 **Crisis in Butte County” pursuant to Government Code §8698 *et seq.*** The Resolution sets an
5 automatic expiration date on the Shelter Crisis Declaration of June 30, 2021. A true copy of that
6 Resolution is attached hereto as Exhibit C (xp 032).

7 **24. 2018, October 2 – The City of Chico adopts a “Resolution Of the City Of Chico**
8 **Declaring A Shelter Crisis In The City Of Chico” pursuant to Government Code §8698 *et***
9 ***seq.*** The Resolution sets an automatic expiration date on the Shelter Crisis Declaration of June
10 30, 2021. A true copy of that Resolution is attached hereto as Exhibit D (xp 035).

11 **25. 2019, March 28 -- Completion of the 2019 Point In Time (“PIT”) Survey by the**
12 **Butte County “Continuum Of Care.”** A copy of the relevant pages of the 2019 PIT is
13 attached as Exhibit E (xp 039). The 2019 PIT was anomalous as a source of data on
14 homelessness in Butte County generally and Chico in particular. PIT surveys in Butte County
15 are carried out in the month of January on a 2-year cycle. On this cycle the “Camp fire” disaster
16 that destroyed the City of Paradise had previously occurred on November 8, 2018, resulting in
17 the displacement of 52,000 former residents of the Paradise Ridge area to surrounding areas in
18 a 75 mile radius, many/most of them in the Chico environs. (xp 041) As described in the PIT
19 survey itself, the agencies normally engaged in conducting the PIT were also engaged in efforts
20 assisting the refugees, and were overwhelmed by these conditions and the enormity of the work
21 at hand. The PIT was delayed for 2 months to March of 2019, and even then, the agencies were
22 “stretched” to adequately carry out the survey. Additionally, the PIT survey notes that poor
23 weather and thunderstorms on the day of the survey “most likely had some impact on the
24 quality of the results of the event.” (xp 042) Though a PIT survey was produced, Intervenor
25 allege that it is not a competent source of data. The PIT survey which was published states that
26 it was “Revised: July 17, 2019” without explanation of the reasons or nature of the revisions.
27 As it is, this version of the PIT survey data states that there were 2,304 homeless persons
28 counted in Butte County, and of those there were “993 people sheltered with FEMA support.”

1 (xp 042) In regards to the City of Chico, the PIT states that the count of unsheltered homeless in
2 Chico is 389. “As shown, Chico has seen a slight decrease in their unsheltered population” (xp
3 043) [This compares to the 2017 PIT that showed 433 unsheltered homeless in Chico. (xp 006)]

4 **26. 2019, September 19 – The federally required HUD report of homeless data was**
5 **produced with a date of September 19, 2019**, attached hereto as Exhibit F (xp 046). The
6 HUD report shows only 1,266 total homeless persons – in contrast to the comparatively 82%
7 greater amount of 2,304 homeless persons shown in the COC PIT report.

8 **27. 2019, October 2 & 16 – Demand letters under the California Voting Rights Act.**
9 The City of Chico received two demand letters under the California Voting Rights Act,
10 complaining that the City’s at large City-wide elections for its 7-member City Council
11 unlawfully diluted minority (Hispanic) representation on the Council. Exhibit G attached
12 (ZZ23). The letters demanded that the City abolish its existing system for Council elections and
13 adopt a geographical district-based election system. The City began the process of drawing
14 districts to adopt a district-based system.

15 **28. 2019, December 31 – 2019 PIT *redux*.** For reasons unknown and unexplained, the
16 Butte County COC revisited the 2019 PIT survey again at the end of 2019. The COC produced
17 4 glossy 2-page pamphlets for 4 regions comprising the survey area for Butte County: Chico,
18 Oroville, Gridley/Biggs, and “The Ridge” (Paradise and the surrounding communities). See
19 attached Exhibit H (xp 055). If the numbers of the homeless persons indicated in these 4
20 regions are totaled the result is now 1,323 – indicating that the COC decided to no longer
21 consider homeless persons supported by FEMA housing. However, at the same time the COC
22 substantially revised the distribution among regions and specifically the numbers shown for
23 “unsheltered homeless” for the City of Chico from 389 shown in the March 28, 2019 PIT
24 [revised July 17, 2019] to 571 in its December 31, 2019 revised count for Chico. This is the
25 origin of the number of “unsheltered homeless” that the City of Chico has credulously accepted
26 as true in the current action.

27 **29. 2019, December 31 – 2019 PIT *redux* COC supporting tables.** The COC also
28 created data tables to go with the summaries of revised homeless data. Attached as Exhibit I (xp

1 064) are the relevant pages from the tables for the City of Chico. The first page explains that
2 “tally” sheets had been compiled during the PIT survey, in which volunteers had “counted” a
3 homeless person “when they observe someone who appears to be homeless, but do not engage
4 the individual in the completion of a survey.” In essence these are “drive-by” counts of people
5 who might be homeless based on their looks, coupled with an assumption that they must be
6 “unsheltered,” without any follow-up questions or verification. The “final tables” were revised
7 to fold in these counts. The City of Chico total of 571 “unsheltered” is explained in part on the
8 next page (xp 065) showing the subtotals of “Unsheltered Homeless Survey” at 454, plus the
9 “Homeless Observation Tally” (drive-by homeless counting) at 117, which equals exactly 571.
10 The inflation of the 389 unsheltered homeless found in the March 28, 2019 PIT to the 454
11 shown in these tables is owing to the usage of the COC definition of “homeless,” as indicated
12 subsequently in the tables where one sees included in the “unsheltered” numbers individuals
13 who spent the night “with a friend or family in their house/apartment” [54] and “other” [15] and
14 motel/hotel [4]. (xp 069)

15 **30. 2020 and beyond – There is no credible or competent data upon which to**
16 **accurately gauge the current numbers of unsheltered homeless individuals.** The 2021 PIT
17 survey was cancelled due to COVID. The 2019 PIT survey was not prepared by competent
18 standards or under conditions that permit accuracy, does not apply federal standards, and is now
19 out of date. Numerous homeless encampments are in the parks and waterways. However,
20 mathematical comparisons of purported numbers of unsheltered homeless individuals to
21 available “shelter” space or capacity is impossible under current circumstances. In the course of
22 this action to date neither the homeless Plaintiffs nor the defendant City have undertaken any
23 attempt at competent current data collection. There is no data, even if the Airport facility is
24 excluded, for either of the original parties to support a contention that the numbers of
25 unsheltered homeless are either more or less than the available shelter space or capacity. The
26 only certain consequence from the void of credible data is stalemate and the continued
27 warehousing of the homeless encampments in the City’s parks and waterways.
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31. **2020, February 10 – Creation of a district-based Chico City Council.** At its regular meeting of February 10, 2020, the Chico City Council adopted Ordinance No. 2547 amending the Chico Municipal Code relating to “City Elections,” so as to create a system of district-based elections in the City using 7 defined council member districts. A true copy of the new map of the 7 council member districts is attached hereto as Exhibit J (xp 073). The new district-based system was adopted so that the first election under the system would occur at the general election scheduled for November 3, 2020.

32. **2020, April 7 – Policy to allow homeless camping in the parks.** The at-large elected members of the Chico City Council on April 7, 2020, at a regular council meeting, by a bare majority of the Council voted to “provide direction to the City Manager to eliminate evictions from homeless encampments under 10 people” in the City’s “parks, streamways and waterways” as distinct from anywhere else in the City. See relevant portions of the minutes of the April 7, 2020 Council meeting, attached hereto as Exhibit K (xp 076). At that point a *de facto* policy of allowing homeless encampments in the parks and waterways became an official policy of warehousing the homeless in the parks and waterways. Thereafter the number of homeless encampments in the parks and waterways expanded greatly, as did the open brazenness of occupation of the parks whereas homeless had previously camped in more obscure or out-of-sight locations.

33. **2020, September 8 – Demand Letter by Chico Stewards for Parks and Waterways to the Chico City Council.** The City of Chico utterly failed to enforce any of its ordinances designed to protect the parks and waterways, much less state and federal laws enforceable by the City. Rapidly worsening degradation of the parks and waterways prompted the Chico Stewards for Parks and Waterways to serve the Chico City Council with a demand letter to enforce its ordinances for protection of the parks and waterways, along with enforcement of Ca. Fish & Game Code §5650-§5652, and the Federal Clean Water Act in respect to trash pollution violation of the City’s Phase II MS4 Permit for discharge of storm water (NPDES). A true copy of the demand letter is attached hereto as Exhibit HH (xp 248).

1 The City did not respond to the demand letter. Litigation was not filed at that time due in large
2 part to the imminent City Council election and uncertainty as to whether the City Council after
3 the election, regardless of composition, would be responsive not only to the demands of the
4 Chico Stewards but also the widespread concerns of Chico’s electorate that the parks and
5 waterways were severely deteriorating.

6 **34. 2020, November 3 – Election of a district-based Chico City Council.** This was the
7 date of the first district-based election in the history of Chico. Intervenors allege that there were
8 2 important outcomes: (1) Each and all of the members of the Council, despite their duties to
9 the City as a whole, were now beholden specifically to the voters in their individual districts;
10 this would become a vital complication in answering a question that arises later in 2021 as to
11 whether there are “places for the homeless to go” if they don’t stay in the parks and waterways;
12 no City councilor wants to provide a “place to go” in their own district. (2) Four of the seven
13 district Council seats were up for election and taken over by new City councilors that
14 campaigned on opposition to the presence of homeless encampments in the parks.

15 **35. 2020, December 15 – A return to *de facto* warehousing of the homeless.** The
16 newly comprised City Council moved swiftly by adopting Ordinance No. 2557 amending Title
17 12 of the Chico Municipal Code, incorporating the Park Rules into the ordinance codes so that
18 they could be enforced as misdemeanors rather than their former enforcement mechanism by
19 warnings or infraction citations. This effectively criminalized the presence of the homeless in
20 the City parks and waterways, with no thought as to where in the City the homeless would go;
21 by inference the intended effect would be for the homeless to utilize whatever place or
22 established shelter facility that may be available if they could, or leave the City, or otherwise
23 suffer criminal prosecution. The disregard for whether there was a place for the homeless to go,
24 much less providing or directing the homeless to a place to go, emphasized expulsion of the
25 homeless but with the practical effect of either driving the homeless into hiding into more
26 obscure locations in the expansive acreages of the City parks or forcing them to move from one
27 park to another. The homeless and their encampments were not expelled from the city, but
28 rather moved around while being criminalized, yet always within the parks and waterways.

1 **36. 2021, January 26 – Inventory count of shelter beds completed.** Though the PIT
2 survey of homeless was cancelled due to COVID, the COC did carry out the Housing Inventory
3 Count (“HIC”) function of homeless related reporting. A true copy of the 2021 HIC Report is
4 attached as Exhibit L (xp 081). The HIC survey counts the number of beds in all the various
5 established homeless shelter facilities in Butte County, categorizes them by types, and
6 determines the utilization rates for the beds. In 2021 the HIC Report determined that there are
7 493 “emergency shelter” beds, and that the utilization rate for emergency shelter beds is 65%.
8 The HIC report is generally reliable, in that it merely involves counting beds in established
9 “brick-and-mortar” facilities, with utilization statistics reported by the managers of the
10 homeless services agencies overseeing the facilities. The HIC report does not have a breakdown
11 specific to the City of Chico municipal boundaries, nor analysis of the proximity and
12 accessibility of shelter beds outside of the City boundaries close enough to be practically
13 available to the homeless inside Chico boundary lines.

14 **37. 2021, late March – Aborted investigation of BMX shelter facility.** The City
15 investigated behind the scenes --but rejected due to costs-- the concept of constructing a
16 homeless shelter development comprised of individual pallet shelters, tiny homes, or similar
17 modules. In late March of 2021 City representatives and County representatives met to discuss
18 options for a cooperative venture to create such a shelter development. The then “homeless
19 services coordinator” (since resigned but not replaced) for the City was tasked with doing a cost
20 projection for placing a 60 unit development at what is known as the “BMX site”⁴ A labeled
21 copy of that cost projection is attached hereto as Exhibit M (xp 086). The total cost projection
22 to set up the development of 60 units and operate it for 275 days came in at \$4,310,913, or
23 \$71,848/unit. This unit cost was higher than placing such a development on pre-owned bare
24 ground, as it included leasehold costs and relocation costs for the BMX operation (see entries
25 under heading of “Capital Cost”). But reviews of per unit costs at other similar public agency

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27 ⁴ The “BMX site” is 3.56 acres of City owned property at AP No. 005-560-032, 2300 Martin Luther King
28 Drive in the City – currently home to a popular BMX track facility and operations that remain there
month-to-month after an expired City lease, and subject to multiple public pronouncements (though not
legally binding) by City management and Council members to assist the BMX business in relocating to
another site should the City decide on using that property for some other purpose.

1 developments throughout California reveal that these unit costs are in a “typical” range for
2 homeless unit developments. Collected as Exhibit N (xp 088) are articles documenting costs of
3 homeless unit developments at Los Guilicos village in Sonoma County (\$54,308/unit), San
4 Francisco (\$60,000/unit-tents), and Los Angeles (\$138,461/unit).

5 **38. 2021, April forward – “Cooperation” between County and City is complicated**
6 **by unequal statutory responsibility, lack of funding, and demands of homeless advocates.**

7 Butte County has affirmative statutory responsibility pursuant to CA Welfare & Institutions
8 Code §17000 to “relieve and support all incompetent, poor, indigent persons, and those
9 incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not
10 supported and relieved by their relatives or friends, by their own means, or by state hospitals or
11 other state or private institutions”; as well as a duty under CA Welfare & Institutions Code
12 §5681 “that when funds are made available, counties should assure the delivery of long-range
13 services and community support assistance to homeless mentally disabled persons and those at
14 risk of becoming homeless.” The County of Butte limits its cooperation to what it can do with
15 the funding provided by the State of California earmarked to these statutory obligations –
16 meaning it can’t afford to fund individualized unit homeless shelter development. The City of
17 Chico has no such statutory obligations, but it does have a duty under the Eighth Amendment to
18 the U.S. Constitution to not criminalize the status of being homeless; avoidance of that liability
19 may require doing something, though construction of individualized unit homeless shelter
20 developments is not mandated by *Martin v. City of Boise*, 20 F.3d 584 (9th Cir. 2019). The
21 homeless in Chico and their advocates have given full expression to their desire for just such
22 homeless shelter developments⁵, along with amenities/services; but framed as a condition for
23 leaving the parks and waterways so that the public resources can be restored to the public, the
24 homeless desires translate into demands that cannot be fulfilled by either the City or County or
25 both. This stalemate perpetuates the status quo of warehousing the homeless in the parks and
26 waterways, with the inevitable degradation of those precious public resources.

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⁵ Following commencement of this action the Mayor of Chico conducted a series of extensive Zoom meetings that provided full participation to all interests in the homeless issues.

1 **39. 2021, April forward – Construction of more “affordable” homeless unit**
2 **developments is hindered by California State regulations.** In the “Shelter Crisis” chapter of
3 the CA Gov. Code, §§8698-8698.4, the State offers local agencies relaxed residential building
4 standards and a liability shield against negligence claims if the agencies submit to regulatory
5 requirements of the chapter when constructing emergency shelter facilities for the homeless. A
6 public “Declaration of a shelter crisis” is required to invoke these regulations (Gov. Code §§
7 8698(d), 8698.1, 8698.2; see Exhibits C and D). Given the high potential liabilities associated
8 with a multi-million dollar shelter unit development, few local agencies –including the City of
9 Chico—would be willing to risk the undertaking of a multi-million dollar project without the
10 liability shield of Gov. Code §8698.1(a): “The political subdivision shall be immune from
11 liability for ordinary negligence in the provision of emergency housing pursuant to Section
12 8698.2. ...” The strings attached are that the local agency must, among other things: comply
13 with the building standards for emergency housing in California Building Code Appendix O
14 (Gov. Code §8698.4(a)(2)(A); see Exhibit O attached hereto [xp 096]); create publicly available
15 plans to develop homeless shelters, develop permanent supportive housing, create “onsite
16 supportive services,”; transition residents from homeless shelters to permanent housing; and
17 engage in detailed data collection and reporting to the State. It is a violation of State residential
18 construction laws for a local agency to develop anything structural that falls below full
19 residential standards (pallet shelters, tiny homes, etc. are otherwise substandard housing)
20 without entering this regulatory scheme. And even the relaxed Building Standards virtually
21 prohibit cost-saving alternatives like tents, especially in non-coastal northern California. (See
22 Exhibit V attached hereto.⁶) The regulatory regime cannot be adopted piecemeal. The
23 regulatory criteria combined with required supportive services and infrastructure drive the
24 average unit costs for individualized shelter development into the range of \$50,000 to \$130,000
25 per unit. The massive financial commitment of participation in the State scheme creates a
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⁶ Appendix O essentially prohibits tents when night-time temperatures dip below 50°. Exhibit V charts the annual high/low temperatures in Chico, with a reference line at 50°, below which tents are infeasible for 6 months of the year under the State emergency shelter housing laws.

1 binary in-or-out choice for local agencies like Chico to either jump into the State program or
2 refrain from building structures for the homeless at all.

3 **40. 2021, April 6 – Shelter Crisis Declaration rescinded.** At the regular meeting of the
4 Chico City Council on April 6, 2021, by motion and majority vote (Exhibit P; xp 105) the
5 Council rescinded the existing Shelter Crisis Declaration (Exhibit D; xp 107-108). In
6 subsequent weeks there was some discussion about whether the rescission of the Shelter Crisis
7 Declaration was effective, insofar as a formal resolution was not voted upon for the rescission.
8 That question became moot when the Shelter Crisis Declaration expired by its own terms at the
9 end of June 30, 2021, without being renewed. In order for the City of Chico to participate in the
10 State “Shelter Crisis” regulatory program (Government Code §8698 *et seq.*), should it desire to
11 do so now or in the future, the City would have to adopt a new “Shelter Crisis Declaration.”

12 **41. 2021, April 6 – BMX site rejected by minute order.** At the regular meeting of the
13 Chico City Council on April 6, 2021, in conjunction with rescission of the Shelter Crisis
14 Declaration and as part of the same motion, the Council voted “to direct staff to stop working
15 on the BMX Shelter concept, revisit other uses of the CDBG funds [funds considered for use in
16 developing the BMX for potential homeless shelter].” (See minutes of meeting and screenshot
17 of vote tally at Exhibit P; xp 107-108.) This legally binding action and minute order of the
18 Council has never been rescinded or reversed by any official action of the Council taken in
19 public, nor has it ever been announced as rescinded following any properly noticed closed
20 session meeting of the Council.

21 **42. 2021, April 8 – This case was commenced by the filing of Plaintiffs’ Complaint.**

22 **43. 2021, April 11 – A Temporary Restraining Order was issued by the court,**
23 restraining enforcement by Defendants of certain of their Notifications and Ordinances
24 pertaining to prohibition of camping or staying in City parks and waterways, and seizure or
25 destruction of personal property, pending disposition of a hearing on a preliminary injunction.

26 **44. 2021, April 21 – Minute Order query to Defendants.** The court issued a Minute
27 Order directed specifically to Defendants, asking for supplemental briefing not later than 4:00
28 p.m. on Thursday, April 22 (prior to the court’s scheduled hearing on preliminary injunction

1 scheduled for the following morning of April 23, 2021), asking the Defendants to explain
2 “exactly where and during what times during each twenty-four hour period homeless
3 individuals are permitted to sit, sleep, and perform other life-sustaining activities, without
4 running the risk of being arrested or cited simply based on their presence.” In essence, if
5 criminal enforcement of the City ordinances forces the homeless out of the parks and
6 waterways where they are now camped, then where can the homeless go?

7 **45. 2021, April 22 – Rejection of information offered by Intervenors.** At this point in
8 time the Chico Stewards for Parks and Waterways (“CSPW”) were interested in the case and
9 research into the issues had begun. The question “Where can the homeless go?” had been
10 anticipated (though the timing was not). The City of Chico maintains a web page entitled “City
11 Property Information” with a tab that displays a file of over 280 parcels of City owned property
12 that are not currently being used. See Exhibit Q attached hereto (xp 111). The properties are
13 displayed as advertising for potential economic development, in case a business or even a non-
14 profit might have a use for a City property that could generate jobs, economic activity, or other
15 benefits to the community. CSPW became aware of the court’s April 21, 2021 minute order
16 directive to Defendants early in the morning of April 22, 2021. CSPW was already aware from
17 preliminary review of the City property inventory that there were at least 2 parcels⁷ that would
18 be suitable for “a place to go” for the homeless, and it was clear that a closer examination of the
19 inventory would yield many more such parcels. That morning of April 22 counsel for
20 Intervenors Robert Berry placed a phone call to the Vice Mayor of the City, advising her of the
21 nature of the City property inventory, identifying the 2 parcels that were believed to be suitable
22 as “places to go” for the homeless, informing her that the inventory could be expected to yield
23 many more such suitable parcels, and suggested that this information be conveyed to the City
24 Attorney specifically and to other City management officials that were to be in attendance at a
25 meeting the Vice Mayor was just about to attend. On information and belief CSPW alleges that
26 this message was fully conveyed by the Vice Mayor to the City Attorney and other City
27 management officials in a meeting at about noon on April 22, 2021, with sufficient lead time

28 ⁷ The first two parcels identified were AP No. 002-110-007-000 (7.75 acres) and No. 005-142-050-000 (3.81 acres). See Exhibit Q which follows.

1 for the City Attorney to advise the court before 4:00 p.m. that there are in fact unused City
2 owned parcels in the City of Chico that are “places for the homeless to go.” The City Attorney
3 did not advise the court of this information, and in fact the City Attorney did not respond to the
4 court’s minute order at all.

5 46. **2021, April 23** – At the April 23, 2021 court hearing the City Attorney attempted to
6 explain his failure to respond to the court’s minute order by claiming that “the information you
7 requested did not exist.” When asked by the court directly if there are any places for them to go,
8 his response was “You’re absolutely correct, there are no places you can go.” CSPW alleges on
9 information and belief that Defendant City had decided then, and continues through this day as
10 its policy and strategy to deliberately refuse consideration of use of any vacant City property in
11 any Council district, where the location of a homeless destination might cause political
12 controversy or resistance by neighbors. That policy and strategy rules out virtually all
13 potentially usable vacant City properties, except for the most remote locations like the Airport,
14 purely on political grounds without rational or legal basis.

15 47. **2021, May 3** – On or about May 3, 2021, counsel for CSPW conducted a deeper
16 investigation of parcels listed in the City property inventory (Exhibit P) and identified about 12
17 parcels of unused vacant City owned property that appear to be suitable for use as areas “where
18 the homeless can go.” See Exhibit R attached hereto (ZZ34). CSPW alleges on information and
19 belief that an even more thorough investigation of the City’s 280+ parcel inventory by City
20 staff would yield many additional suitable parcels. The parcels identified on this Exhibit are
21 labeled “rest areas” because they are bare land, almost all of them in a natural state with grass
22 and trees. In this regard they are as good as (if not better than) the parkland currently occupied
23 by the Plaintiffs.

24 48. CSPW alleges that there is no legal requirement arising from *Martin v. City of Boise*,
25 *supra*, or other federal law, that entitles homeless individuals occupying public park land to an
26 upgrade of land or shelter facilities if they relocate to other accessible public land. It is feasible
27 for the homeless in Chico that are occupying the parks and waterways to move to other City
28 owned parcels. It is not for CSPW to choose which parcels should be made available to the

1 homeless. Nor is it a decision for CSPW to determine whether the City should do anything to
2 provide structures, services, or any other improvements to the parcels which may be chosen.
3 Those decisions may be made by the City in the exercise of its discretion, subject to the
4 oversight of this court. If or to the extent a City ordinance impedes the use of otherwise usable
5 vacant City land for an alternative “place to go” for the homeless, the City holds the keys in its
6 own hands to remove any obstacle. The allegations by CSPW and the relief sought here is an
7 equitable remedy for the City’s failure to exercise its discretion pursuant to its duty to make the
8 parks and waterways available to the public again, and an order from this court compelling the
9 City to so exercise its discretion.

10 49. Due to the immediate and irreparable degradation of the parks and waterways,
11 coupled with homeless occupation of parks that excludes use by Intervenor and enjoyment by
12 the public, preliminary equitable and injunctive relief will be sought (similar to that ordered in
13 the homeless case of *LA All. for Human Rights v. City of Los Angeles*, 2021 U.S. Dist. LEXIS
14 76053, 2021 WL 1546235 (C.D. Cal., April 20, 2021)⁸; see Exhibit FF [xp 242]; overruled on
15 other grounds: *LA Alliance For Human Rights v. City of L.A.*, 2021 U.S. App. LEXIS 28824,
16 2021 WL 4314791 (9TH Cir., September 23, 2021) to: order the City Manager of the City of
17 Chico to inventory and report on all parcels of City owned land potentially available as sites for
18 the homeless; order the cessation of sales, transfers by lease or covenant, of any and all
19 undeveloped parcels of City owned property pending completion and court review of the report
20 prepared by the City Manager.

21 50. **2021, June 8 – Decisions in violation of Brown Act to pursue Airport facility and**
22 **BMX site for homeless shelter space.** In papers filed with this action (see Declaration Of
23 Mark Orme [City Manager] In Support Of Defendants’ Supplemental Brief Regarding
24 Plaintiffs’ Motion For Preliminary Injunction,” Document 90-4, filed 6.21/21, at p. 2:11-12) the
25 City admits decisions and action to pursue construction of the Airport facility and the BMX site
26 for homeless shelter space. Such could only have been accomplished through a violation of the
27 Brown Act –(CA Government Code §54950 *et seq.*, also known as the California Open &

28 ⁸ “The homeless have been left no other place to turn to but our beaches, parks, libraries, and sidewalks,
and it is pivotal that they no longer rely on spaces that enhance quality of life for all citizens.” [at p.107]

1 Public Meetings law)-- under cover of the “pending litigation” (this case) closed session that
2 occurred on June 8, 2021; Government Code §54956.9 permits a “closed session” to “confer
3 with, or receive advice from, its legal counsel” but does not allow non-public substantive
4 decisions to pursue public works projects as described in Mr. Orme’s admission that “the City
5 Council instructed me to proceed with developing a temporary shelter site at the Airport
6 Location and commence preparing the BMX Location for a shelter site.” Violations of the
7 Brown Act law may be a criminal misdemeanor, and actions/decisions which violate the law
8 are *ultra vires* and void subject to a prior statutory right of correction/compliance by City.
9 Intervenors do not seek criminal prosecution, but absent correction/compliance by the City the
10 Intervenors will seek invalidation of recent actions/decisions and improper “deliberations” in
11 violation of the Brown Act impacting the parks and waterways, as well as injunctive relief to
12 cease and prohibit the City’s ongoing pattern and practice of Brown Act violations, with
13 monitoring and record keeping of future City Council closed sessions for possible *in camera*
14 review to ensure compliance.

15 **51. 2021, June 21 – The City of Chico establishes and opens an Airport facility**
16 **which it contends is a “place to go” for the homeless.** Despite the absence of any prior public
17 decision in a public meeting, the City rapidly constructed a huge homeless shelter facility at the
18 Airport which the City contends can accommodate 571 homeless individuals as valid “shelter.”
19 Intervenors allege that the Airport facility cannot legally accommodate any homeless
20 individuals.

21 **52. 2021, July 8 – Hearing and Order on preliminary injunction.** The court granted
22 the motion by Plaintiffs for a preliminary injunction. The terms of the preliminary injunction
23 are congruent with the terms of the prior temporary restraining order that suspend operation and
24 enforcement of a broad array of City ordinances. Under cover of the preliminary injunction
25 there is nothing to prevent the homeless from using the alternative sites of vacant City property
26 identified in the City property inventory, and the City is disabled from preventing use of those
27 properties to no less extent than the City is prevented from evicting the homeless from the parks
28 and waterways.

1 53. 2021, August 3 – **The City Council heard and approved for first reading a set of**
2 **revised ordinances amending Titles 9, 12 and 12R of the Chico Municipal Code.** Initially
3 City staff had recommended adopting simultaneous “urgency” and standard versions of the
4 Ordinance containing identical language but having immediate effect from the “urgency”
5 version. During the meeting the Council went into closed session, came out and announced it
6 had addressed the “urgency” aspect and found it unnecessary, and then proceeded with
7 approval of the ordinance revisions as a standard ordinance to take effect after approval on
8 second introduction to occur on the meeting of September 7, 2021. The only staff report for the
9 ordinance revisions was prepared for the August 3 meeting, and that report is attached hereto as
10 Exhibit S (xp 165). The text of the ordinance revisions is attached hereto as Exhibit T (xp 171),
11 in the form presented to the Council first as a mark-up to show changes then a clean version.
12 And to go with the ordinance revisions is a statement of Administrative Policy which declares
13 that the City Manager will not enforce the City ordinances in question against the Airport
14 “temporary shelter facility” – Exhibit U attached hereto (xp 192).

15 54. 2021, September 7 – **At its regular meeting of September 7, 2021, the Chico City**
16 **Council gave final approval to the ordinance revisions introduced at its August 3 meeting.**

17 **A. Staff Report (Exhibit S):** A new staff report was not prepared beyond or in addition
18 to the report prepared for the previous August 3 meeting. That staff report contains the
19 following admission on p.1 (xp 165), contrary to the position taken by the City in this action up
20 to this time: “The City’s current anti-camping ordinances do not comply with Martin due to a
21 lack of specificity as to the conditions upon which the ordinances will be enforced against
22 unsheltered individuals.” With that said the Report states on p. 5 (xp 169) that the proposed
23 revisions, which rely heavily on prospective use of the City’s Airport facility, will cure the legal
24 infirmities of the City’s ordinance structure: “The City has recently constructed a temporary
25 shelter facility within its jurisdiction with availability for each of the City’s 571 unsheltered
26 individuals, as counted in the last available Point-in-Time Count. **The proposed changes to**
27 **the Code will allow the City to enforce its anti-camping ordinances, including against**
28 **unsheltered individuals, so long as shelter space, such as the newly-constructed shelter**

1 **facility, remains available to unsheltered individuals and they have refused the space.”**

2 (emphasis added) This is an explicit statement of the purpose of the ordinance revisions which
3 otherwise might have to be inferred from just the structure of the revised ordinances. Having (in
4 its own mind) cleaned up the “specificity” of the ordinance definitions, the City will now go into
5 enforcement mode for the anti-camping ordinances in reliance on space available at the airport
6 facility.

7 **B. Ordinance revision language:** The revisions to the ordinances, taken globally as the
8 sum of their parts, do nothing to cure the constitutional infirmities previously identified in the
9 unrevised ordinances, and in some respects are more self-conflicted, vague, and erroneous than
10 before. The following are exemplary:

11 • **Recital (third “WHEREAS”):** “the City’s most recent Point-in-Time count identifies 571
12 unsheltered individuals within the City of Chico.” (xp 171) The City has never conducted a
13 “Point-in-Time count” and the number 571 is fallacious. The March 28, 2019 PIT count found
14 389 unsheltered homeless (xp 043), using an unreliable and falsely inflated definition of
15 “homeless” invented by the local “Continuum Of Care” rather than the federally recognized
16 HUD numbers; which count was then revised (no longer “point-in-time”) by the COC on
17 December 31, 2019 to shift an additional 65 unsheltered homeless to Chico without explanation
18 to bring it to 454 (xp 065) coupled with adding in 117 drive-by “tally” observations of
19 unverified people who look like they are homeless (xp 065) in a City swamped by people who
20 had fled the Paradise “Camp Fire”(xp 041-042). The City’s gullible adoption of the Plaintiffs’
21 false data for homeless numbers puts the City in the self-defeating position of reaching for
22 unrealistically high numbers (beds or otherwise) for shelter to offset the false “571” metric to
23 avoid a *Martin* violation.

24 • **§9.20.020(A)** -- The revision of the definition of “Camp” tries to make a metaphysical
25 distinction between “sleeping” and “camping,” while at the same time describing the indicia of
26 “camping” as “apparent overnight occupancy”—a phrase further defined as including “sleeping
27 activities or making preparation to sleep.” The subsection concludes by stating “sleeping on its
28 own does not constitute camping,” but there is no explanation as to how one is to “sleep”

1 without engaging in the “apparent overnight occupancy” indicated by “sleeping activities or
2 making preparation to sleep.” (xp 172)

3 • **§9.20.020(B)** – This subsection remains unrevised, but it is noteworthy for having been
4 singled out in the preliminary injunction (p.5, fn.3) as making “temporary shelters” such as the
5 City’s own Airport facility illegal by ordinance. The City Manager’s newly minted
6 “Administrative Policy” (Exhibit U) states that the City Manager will refuse to enforce this
7 ordinance against the Airport facility. (xp 172) The doctrine of separation of powers applies
8 even at the local level, and the City Manager as an executive (not legislative) official is required
9 to follow the ministerial duty plainly imposed by the dictates of the ordinance, having no
10 authority to disregard it (regardless even if he may believe following it would be
11 unconstitutional). *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1067-
12 1069.

13 • **§9.20.020(G)** – Shelter space considered “unavailable” if the individual would be disqualified
14 from accessing the shelter space due to any “restrictions, rules or covenants beyond their use or
15 control.” This exemption from availability of shelter space is impossible to interpret or apply.
16 For example a shelter space is potentially “unavailable” if a dog owning homeless individual
17 cannot have his pet accommodated at a “shelter” facility; or, a shelter that prohibits on-site
18 consumption of alcohol may be deemed “unavailable” for an alcoholic homeless individual
19 who asserts that his alcoholism is beyond his control. (xp 173)

20 • **§9.20.020(H)** – “Unsheltered individual” definition. This presents a third definition for
21 “homeless person,” in addition to the federal definition of homeless used by HUD for the
22 federally reported PIT counts, and in addition to the overbroad COC definition of “homeless”.
23 There can only be one federal definition cognizable for application of federal law – the HUD
24 definition. (xp 174)

25 • **§9.20.060, 9.50.030, 12.18.430, and 12R.04.340** (xp 177, 178, 178,179) – in each section:
26 “This ••• is not applicable to unsheltered individuals when there is no available shelter space, as
27 defined in Section 9.20.020, for the unsheltered individual otherwise in violation of this
28 Chapter /subsection/ Section.” In effect, if the City determines there is a shortage of available

1 shelter space the “unsheltered individual” is allowed to camp in the parks, camp and stay in the
2 waterways, stay overnight and store personal property in the parks, and remain during night
3 time hours in the parks, but “sheltered persons” (such as those who comprise Intervenor) are
4 not excused from the ordinances and may be fully criminally prosecuted for violations of same.

5 Not only is this a special privilege afforded the unsheltered individuals, it is directly actionable
6 by Intervenor as a denial of equal protection of the laws under the 14th Amendment to the U.S.
7 Constitution. This returns the City to an official policy of warehousing the homeless in the
8 City’s parks and waterways, giving the “unsheltered” access to these public lands and resources
9 while criminally excluding the “sheltered” public.

10 **C. “Administrative Policy”** (Exhibit U): It is patently unlawful to create an
11 unconstitutional framework of ordinances, while simultaneously depending upon the City
12 Manager’s illegal refusal to enforce selected portions of the ministerial ordinances as a sort of
13 “patch” to save the foundering constitutionality of the entire package. The policies listed as
14 II.A.B.C.D.E., and all other instances of the City Manager’s random practice of refusing
15 enforcement of ministerial City ordinances, are illegal and void. Under the City Charter §609
16 the entirety of legislative authority is conferred solely upon the City Council, and the absolute
17 duty of the City Manager as the City’s chief administrative officer per §701 is to enforce the
18 city’s laws. The City Manager’s refusal to enforce ordinances invades the province of the
19 legislative body and fundamentally abrogates the doctrine of “separation of powers.” (*Lockyer*
20 *v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1067-1069, *supra*.)

21 • **Airport facility as primary source for determining shelter availability.** (xp 193) The
22 airport facility, in addition to its fundamental failure to meet the “realistically available”
23 requirement of *Martin v. City of Boise*, 20 F.3d 584, 617, fn.8, (9th Cir. 2019), is an illegal land
24 use per the ALUC Plan and the City’s own Municipal Code (CMC §§19.52.020 and 19.52.030),
25 and a dangerous condition for the visitors/inhabitants who might utilize it. As long as the City
26 relies on the Airport facility as the linchpin of shelter availability, and refuses consideration of
27 other alternatives, there will not be adequate shelter availability in the City of Chico. This again
28

1 serves only to perpetuate homeless occupation of the parks and waterways, to the exclusion of
2 Intervenor, and to the continuing degradation of these public resources.

3 **55. 2021, September 7 and September 9 – Decisions by the City –in violation of the**
4 **Brown Act-- to close the Airport facility, move the infrastructure and fence-in Comanche**
5 **Creek greenway preserve, and accelerate acquisition of the BMX site without first moving**
6 **the BMX operation to a new location.** The September 7, 2021 Council meeting had another
7 “closed session” to discuss pending litigation (this case)⁹, at which the Council made decisions
8 that go beyond the scope of merely conferring and receiving advice from their City Attorney.
9 These non-public decisions were revealed in a radio interview by one of the Council members
10 on September 9, 2021. Council member Sean Morgan then revealed that for the City’s decision
11 on the Airport facility “we are going to shut it down”; then “We are going to take the resources
12 there and put them into Comanche Creek” and “move the fencing down there” along with other
13 items from the Airport. The stated purpose is not to benefit the Comanche Creek greenway or
14 the current homeless residents, but rather to “protect the business owners ... that contribute to
15 society” by fencing the homeless into the Comanche Creek greenway. In addition, the directive
16 to the BMX operation at the BMX site will be “you guys gotta get out of here pretty fast,”
17 despite past pledges that the City would help them move, because the City is going to “race to
18 get to that number, that bed number 571.” None of these actions /decisions were discussed or
19 decided publicly, and if not for the radio interview (and a subsequent public confirmation by
20 the BMX operators that the City had just given them an eviction notice) these decisions would
21 have remained secret.

22 **56. 2021, September>October – Reconnaissance reveals re-intrusion of homeless**
23 **encampments in previously cleared parks.** On information and belief, Intervenor allege that
24 an informal reconnaissance team led by City personnel surveyed parks areas that had been
25 cleared of homeless encampments in the early spring of 2021. That this survey revealed that
26 over 117 homeless encampments had returned to parks areas such as Lower Bidwell Park, and
27 additional encampments had returned to the other parks locations within the urban areas of

28 ⁹ Closed sessions at City Council meetings for this ostensible specific purpose are now a regular recurring
feature of City Council meetings.

1 Chico. This information coincides with the anecdotal observations of members of CSPW that
2 the parks and waterways are returning to the breadth of intrusion by homeless encampments
3 that existed a year previously, and in some cases the intensity of the intrusion is exacerbated (as
4 in Comanche Creek Greenway).

5 **57. 2021, September>October – Secretive planning proceeds for high intensity**
6 **homeless shelter at the BMX site.** Intervenors allege that: the Chico City Council has engaged
7 and continues to engage in secret deliberations –which violate the California Brown Act for
8 open meetings—to develop a high intensity homeless shelter at the BMX site. That the City has
9 entered into a secret “partnership” and/or “joint venture” agreement with the County of Butte,
10 through secret negotiations between the City Council and legal/administrative City staff on one
11 hand and the administrative staff of the County on the other, in violation of the Brown Act by
12 the City. That the results of the illegal secret agreements are illegal decisions and commitments
13 of public resources made out of public view, that if carried out will tie the City to construction
14 and operation of a facility that could cost in excess of \$10 million, given the pro forma
15 projections done by City staff for a much less intense facility in April of 2021 (see Ex. M). That
16 the planned high-intensity BMX facility will be illegal --in violation of California laws for
17 shelter facilities—and inadequate for its intended purposes, resulting in waste of millions of
18 dollars of public funds (including money contributed by the County of Butte). That such a
19 facility would be dangerous to the homeless occupants, would violate “best practices” for
20 homeless shelters in addition to violations of explicit mandatory standards, would be
21 underutilized, would be inadequate to address the larger and overall scope of necessary safe
22 space for the homeless population, and would again serve only to perpetuate the homeless
23 occupancy of the parks and waterways. That the City Council and City staff, both currently as
24 to secret deliberations and prospectively as to the approval of secret public works projects,
25 falsely blame this Court and its orders and directives for confidentiality of settlement
26 negotiations, as the compulsion for their violations of state open meetings laws. Because the
27 City’s default position is to continue warehousing the homeless in the parks when inept
28 “solutions” are unlawful and inadequate or just fail, the shortfall of capacity of the BMX

1 facility and its failure as a shelter facility will only exacerbate the existing warehousing of the
2 homeless in the parks and waterways, and the CSPW has a direct interest in ensuring that the
3 City undertakes such projects as are lawful and actually effective in providing the pathway for
4 restoration of the parks and waterways.

5 **58. 2021, September 24 – Appropriation of \$1,600,000 of City General Funds to**
6 **Unexplained/Undefined “interagency” public project category.** The Chico City Council
7 conducted an irregular “special meeting” on short notice by Zoom conference on September 24,
8 2021, at 6:00 pm, with an item on the “consent agenda” for appropriation of \$1.600,000 of
9 General Fund money to a unique and new expenditure designation for an “intergovernmental
10 project.” Placement on the “consent calendar” meant that it could be and was passed without
11 any further public identification or discussion. The public “staff report” for the item has no
12 explanation for the mystery purposes of expenditure. A true copy of the Agenda and staff report
13 for this appropriation of funds is attached hereto as Exhibit II (xp 252). The meeting was
14 carried out in haphazard fashion, with less than a full Council, Council members Zoom calling
15 in from their cars and kitchens on cell phones, and zero discussion of this item. Intervenors
16 allege on information and belief (with hindsight), that the undefined appropriation was a down
17 payment on pursuit of the prospective high-intensity BMX project already agreed to as a joint-
18 venture with the County of Butte.

19 **59. 2021, October 5 -- Shelter Crisis Declaration adopted by the City of Chico.** The
20 Chico City Council, at its regular meeting of October 5, 2021, adopted a resolution declaring a
21 ‘Shelter Crisis’ per Cal. Government Code §8698 *et seq.*. A true copy of the resolution as
22 presented and adopted is attached hereto as Exhibit GG (xp 245).

23 **60. 2021, October 7, 2021 -- Effective date of revised City ordinances.** Pursuant to
24 Cal. Government Code §36937, the revised City ordinances adopted by the City Council on
25 September 7, 2021 (described as alleged *supra*) became effective after the passage of 30
26 calendar days from their adoption.

27 **61. 2021, October 11, 2021 – City of Chico issues Request For Proposals (RFP) for**
28 **management of predetermined high-intensity and illegally conceived BMX facility.** The

1 City issued an RFP on October 11, 2021 which seeks proposals for management of the high-
2 intensity BMX facility – now presented to the public as a *fait accompli* rather than a public
3 works project legally deserving public scrutiny of the City’s decision-making. The first 12
4 pages of the RFP are attached hereto as Ex. JJ (xp 256). The consequence of the City’s
5 illegally secret process is a committed project that is illegal by design, in violation of the State
6 laws and regulations for homeless shelters, and a prospectively massive waste of public funds.
7 The schematic diagram for the BMX project is an Attachment to the RFP (xp 268), where it
8 shows 177 double occupancy shelters (see also RFP at Ex. JJ, xp 259: “177 Micro shelters
9 equating to 354 beds”) with dimensions of 8.5’x7.5’ (= 63.75 sq. ft. of floor space per unit).
10 The California Building Standards applicable to shelter housing, Appendix “O,” at §103.3 for
11 “Occupant Load” requires that “the interior floor area shall not be less than 70 square feet
12 (6.5m²) for one occupant ... Where more than one person occupies the building/structure, the
13 required floor area shall be increased at the rate of 50 square feet (4.65m²) for each occupant in
14 excess of one.” (Ex. O, xp 098.) Thus the legal minimum size for the 177 double occupancy
15 shelters is 120 sq. ft. per shelter unit, whereas the City plans to install 177 units at about half
16 (63.75 sq. ft.) the legally required size. As the schematic shows quite clearly (xp 268), the half-
17 adequate shelter units are already overcrowded on the BMX site, and it is impossible to either
18 expand the units to adequate size or add additional units on this site. Other obvious legal
19 deficiencies designed into this project are: (•) inadequate numbers of toilets and bathing
20 facilities per Appendix “O” §110.3 [one per 15 occupants of each gender, which for example
21 results in at least 24 showers for 354 people; and there is no “finding” that fewer facilities are
22 adequate] (xp 102); (•) no “common use kitchen” area per “O” §110.2 (xp 102); and, non-
23 compliance with Government Code §8698.4(c)(1) that “A ‘homeless shelter’ shall include a
24 parking lot owned or leased by a city, county, or city and county specifically identified as one
25 allowed for safe parking by homeless and unstable housed individuals.” The high-intensity
26 BMX shelter design is illegal, unfixable, and incapable of delivering even half of the shelter
27 spaces sought by the City of Chico.

1 **62. 2021, October 12, 2021 – County of Butte commits \$1.7M to “Partnership” with**
2 **City for high-intensity BMX facility.** Attached as Ex. KK are true copies of the CA Butte
3 County Board of Supervisors collected: agenda item for its meeting on October 12, 2021,
4 power point, and staff report for the “Partnership” with the City of Chico under which the
5 County is contributing \$1,700,000 of federal funds (distributed out by the State) for the
6 purchase of pallet shelters as a one-time expenditure. Noteworthy in the staff report is the
7 alleged time urgency of making the expenditures and development of the shelters as quickly as
8 possible.

9 **63. 2021, forward – Destruction of Comanche Creek Greenway preserve, and waste**
10 **of over \$1.5 million of public funds and investments.** The Comanche Creek Greenway has
11 been decimated by the intrusion in 2021 of homeless encampments, garbage, human feces and
12 urination, water pollution, hypodermic needle litter, multiple fires, and violent crime. The
13 degradation of Comanche Creek has been extraordinarily intense, as it was almost the last stop
14 in the City park system during the City’s spring-time campaign to roust the homeless out of the
15 encampments in other parks, causing the homeless to concentrate in Comanche Creek as a last
16 refuge. Now the imminent relocation of the smattering of homeless individuals from the Airport
17 facility, and the fencing in of all the homeless at Comanche Creek, will only exacerbate the
18 degradation and destroy what is left of the improvements and investments of public funds made
19 as recently as 2020 to restore/upgrade Comanche Creek to a beautiful park. Attached hereto as
20 Exhibit W is a true copy of the news summary by the Chico television station (“Action News
21 Now”) and the City’s “project presentation” describing in detail the work done a little over a
22 year ago under the “Urban Greening Grant Program” to spend about \$1,530,929 in public funds
23 for the “Comanche Creek Greenway Improvement Project.” When improvements were
24 completed in 2020 the Comanche Creek Greenway was a pristine and beautiful environment
25 enjoyed by Intervenor and the general public. But the condition of the park today, as a direct
26 consequence of the concentrated infusion of homeless encampments driven by the City, can be
27 accurately described as “squalor.” Intervenor seek relief from the court to salvage what is left
28

1 of the Comanche Creek Greenway improvements, prevent further waste of public funds and
2 investments, and require the City to restore the park to what it was in 2020.

3 **OVERBROAD AND OVERLAPPING LAND USE ORDINANCES IN CHICO:**
4 **(A) HARM THE PARKS AND WATERWAYS BY MAKING IT IMPOSSIBLE**
5 **TO ADEQUATELY PROTECT THE RESOURCES THAT MATTER; AND**
6 **SIMULTANEOUSLY (B) HARM THE HOMELESS BY UNDULY**
7 **RESTRICTING THEIR ABILITY TO MOVE AND FUNCTION.**

8 64. The City of Chico has created a series of overbroad and overlapping land use
9 ordinances that regulate all the undeveloped City lands that are accessible to foot traffic –which
10 means they are of primary impact on people like Intervenors who seek out and enjoy use of the
11 parks and waterways, and the unsheltered homeless who are (lawfully or not) looking for “a
12 place to go” or rest, sleep, etc.

13 65. The ordinances in question regulate and restrict the uses of: (a) Parks, (b) Greenways,
14 (c) Waterway “Regulated areas,” (d) Open Space, and (e) City owned lands generally. The
15 overlap and overbreadth of these ordinances goes far beyond the geographic scope of the actual
16 parks and riparian waterways that need to be protected for beneficial use by Intervenors and the
17 general public, and at the same time apply compounding restrictions to almost all of the
18 pedestrian-accessible public land that (if there is no alternative shelter or place for the
19 unsheltered homeless to go) unduly restricts the ability of the homeless to move and function.

20 66. **Parks.** The “Parks” in Chico are defined in CMC §12.04.010, §12.18.020.N, and
21 §12R.04.020.N. The three definitions are the same in describing the “Parks” as certain named
22 parks together with “**all greenways** or parklands **adjoining**” [emphasis added] the major
23 watercourses in Chico or “any other stream or watercourse.” The inclusion of all greenways
24 adjoining any watercourse in the definition of “Park” vastly expands the size and scope of
25 “Parks” to include numerous parcels of land throughout the City that are merely undeveloped
26 parcels of land touching or “adjoining” a watercourse. CMC §§12.04.010 and §12.18.020.N
27 reference a map (See Exhibit X hereto [xp 210], labeled Exhibit “K” in attachments to the
28

1 Municipal Code) which is illustrative and would give way to the definition of “Park” at the
2 scale of individual parcels; without explanation the “Park” map exhibit includes “open space.”

3 67. The Parks that are named and specifically reserved for public use and enjoyment are
4 distinct from the vast acreage of lands that fall into the “Parks” definition. Generally they are
5 likely to have recreational improvements, have better access to residential neighborhoods, and
6 may be groomed in appearance though still natural vegetated land; these are the parks the
7 general public would recognize as parks. These are the parks that Intervenors seek to protect
8 and defend. The names of these parks, corresponding to the maps attached hereto for reference
9 as Exhibit Y (xp 212), are: Bidwell Park, City Plaza, Children’s Park, Emerson Park, One-Mile
10 Park, Caper Acres, Depot Park, 20th Street & Notre Dame, Nob Hill Husa Ranch Park, Five-
11 Mile Recreational Area, Humboldt Park, Verbena Fields Park, Ringel Park, Teichart Ponds,
12 Little Chico Creek Greenway – Hazel, and Comanche Creek Greenway. There are extensive
13 regulatory restrictions for use and management of the “Parks” in Title 12 of the Chico
14 Municipal Code. Intervenors allege that the restrictions and protections for these named parks
15 are entirely necessary, but inappropriate as applied to vast acreages of undeveloped land
16 “adjoining” any watercourse that is included under the “Parks” definition.

17 68. Greenway. The term “Greenway” is defined in CMC §12.18.020.I. and
18 §12R.04.020.I. as including “all areas adjoining” the major waterways (Big Chico Creek, Little
19 Chico Creek, Lindo Channel, Comanche Creek, Edgar Slough) or “any other stream or
20 watercourse” acquired for use by the City by fee title or easement. Attached as Exhibit Z (xp
21 221) is a copy of the Chico General Plan map depicting the extensive network of waterways in
22 Chico, as a general reference for all of the lands that would be taken in as “areas adjoining
23 waterways.” The Municipal Code makes reference to Exhibit “G” (copy attached hereto as
24 Exhibit AA [xp 223]) that is illustrative of the larger sections of Greenway, but which would
25 give way to the ordinance definition at the parcel level scale. The Chico Municipal Code uses
26 the definition of Greenway as a reference term that is inserted into --and substantially expands
27 the scope of coverage of both the Parks definition and the Waterway “Regulated areas”
28

1 definition. Beyond that usage, though, “Greenway” is not a zoning district or General Plan
2 designation, and there are no Greenway regulations *per se*.

3 69. **Waterway “Regulated areas.”** The City’s waterways (see Exhibit Z) are regulated
4 by Chapter 9.50 of the Municipal Code, with the coverage of those ordinances defined in
5 §9.50.020 “Regulated areas.” The Regulated areas in §9.50.020 are described in 3 parts: (1)
6 “All greenways or parklands adjoining” the major waterways or “any other stream, manmade
7 channel constructed to facilitate the use of water or convey storm water or watercourse ...”;
8 (2) tributaries and “water of the United States,” all surface watercourses and waterbodies,”
9 seasonal channels, drainages, ..., and (3) “Riparian areas – which is “the area between a stream
10 or other body of water and the adjacent upland identified by soil characteristics and distinctive
11 vegetation and wetlands and those portions of floodplains and valley bottoms that support
12 riparian vegetation ...”.

13 70. The first part of §9.50.020 is inclusive of the second and third parts, and nearly co-
14 extensive with the scope of the Parks ordinances, because there are few parks that don’t touch
15 on a waterway. §9.50.030 “Prohibited activities and conditions” applies stringent but necessary
16 regulations to protect the waterways and riparian corridor, including importing for local
17 enforcement State and Federal environmental laws (§9.50.030.N) applicable to watercourses.
18 However, there is no stated purpose in §9.50.020 or §9.50.030 for regulating the lands that
19 extend beyond the waterway and surrounding riparian habitat, to apply to generic land in parks
20 and/or undeveloped land characterized as greenway; and Intervenors are not aware facts or
21 circumstances to rationally connect waterway regulations to non-waterway lands.

22 71. **Open Space.** The definition and regulation of “Open Space” is primarily carried out
23 through the City General Plan and zoning districts, but there is also a definition in the Parks
24 ordinances at §12.18.020.N and §12R.04.020.N: “The term “Open Space: shall mean land that
25 is maintained in a primarily natural state, or primarily without structures other than facilities in
26 support of outdoor recreation.” The Land Use element of the City’s General Plan breaks “Open
27 Space” into two main designations: (1) Primary Open Space (POS) that essentially preserves
28 land in its natural state in perpetuity to protect sensitive areas – used for riparian corridors,

1 wetlands, creekside greenways, among others; and (2) Secondary Open Space (SOS) that
2 includes land used for both intensive and non-intensive recreational activities, such as parks,
3 trails, golf courses , resource management, etc.. The implementing zoning districts for these
4 designations are codified in CMC §19.50.010.C&D: the “OS1” zone district implements
5 Primary Open Space, and “OS2” zone district implements Secondary Open Space. The General
6 Plan land use designations and zoning districts are applied geographically to the City through
7 land use maps. As indicated by the representative land uses covered by the Open Space
8 regulations, the POS/OS1 regulations are typically applied to sensitive areas also covered by
9 the “Tributaries/watercourse channels” / “Riparian areas” (§9.50.020.B.&C.) portions of the
10 Waterways ordinances; and the SOS/OS2 regulations are typically applied to parks, also
11 covered by the Parks ordinances (the City General Plan Open Space element, p.10-4, states that
12 “the City’s open space assets include Bidwell Park, Foothill Park Preserve, Bidwell Ranch,
13 Teichert Ponds, Lindo Channel, and the Comanche Creek Greenway.”) See Exhibit BB (xp
14 225) – map of “Open Space Resources,” Figure OS-2 from the Open Space Element of the
15 Chico General Plan.

16 72. The Open Space ordinance regulations put in place a third layer of restrictions that
17 overlay the Parks ordinances and the Waterway “Regulated areas” ordinance. The Open Space
18 ordinances severely restrict the permissible use of the land, mainly to preserve the status quo of
19 the natural environment. The OS1 zone is a “non-use” zone to prevent damage to sensitive
20 environments. The OS2 zone allows only low intensity recreational uses. Both Open Space
21 zones prohibit erection of structures and buildings (see CMC §§19.04.020, 16.04.040 and
22 16.04.120), with the minor exception in the Parks ordinances for “facilities in support of
23 outdoor recreation” (§12.18.020.N) that would be consistent with the OS2 ordinance. The Open
24 Space ordinances do not allow camps or residential habitation of the land such as that
25 perpetually carried on by the homeless occupying the open spaces all across Chico right now;
26 this is a patent violation of the land use laws. The property owner is legally responsible for the
27 land use violation, whether instigated by the property owner or not, with a concomitant
28 responsibility to abate the violation. Because the City is unwilling to abate the violation, and as

1 the violator it is unwilling to prosecute itself, Intervenor's are prosecuting the City to compel the
2 City to comply with its own land use laws in the City's parks and waterways.

3 73. "**Any Public Property**" – Unlawful Camping. CMC §9.20.030 and companion anti-
4 camping ordinances, make it unlawful to camp on "any public property" (unless operated as an
5 official campground) along with related restrictions on accumulation of personal property etc.,
6 are applied here and throughout Chico. This is a fourth layer of regulation covering and adding
7 to the three for Parks, Waterway "Regulated areas," and Open Space.

8 74. The combined layers of regulation are overbroad geographically ("horizontally") and
9 excessive in their cumulative restrictive effect on human movement and activity ("vertically").
10 The geographic reach of ordinances intended to provide necessary protection to parks and
11 waterways instead blankets nearly the entirety of undeveloped property in Chico, with loosely
12 defined parameters that are unconstitutionally vague for enforcement, and consequently
13 ineffective for focused enforcement on the narrow specific geographic areas that need
14 protection – the true "parks" (Exhibit Y [xp 212]) and the waterways within their sensitive
15 riparian corridors (CMC §§9.50.020.B.&C.). Intervenor's seek invalidation of the
16 unconstitutional overbreadth of these ordinances, while also seeking focused enforcement in the
17 true parks and riparian corridors.

18 75. Outside of the true parks and riparian corridors, the cumulative restrictive effect of
19 the overlapping ordinances unduly restricts the movements and human activities of the
20 homeless Plaintiffs, creating uncertainty as to "where they may go" without their mere presence
21 being criminalized – raising the constitutional infirmity (Eighth Amendment to the U.S.
22 Constitution) alleged in the initiation of this action. The perverse effect of invalidating the
23 offending Chico ordinances in their entirety is that the true parks and riparian corridors are laid
24 vulnerable to the rapid degradation still occurring in Chico. Intervenor's seek invalidation of the
25 offending ordinances outside of the true parks and riparian corridors to the extent these
26 ordinances violate the constitutional rights of the homeless Plaintiffs. If the homeless have
27 "nowhere to go," they will choose to either stay put or go back into the true parks and riparian
28 corridors whether prohibited by restrictive ordinances or not. The special interest of Intervenor's

1 in protecting the true parks and waterways of Chico is promoted by rectifying this
2 constitutional violation.

3 76. Invalidation of both the unconstitutional geographic reach and cumulative impact of
4 the overlapping ordinances makes available numerous parcels of City owned property outside
5 of the true parks and riparian corridors, suitable as places for the homeless to exercise essential
6 human activities without being criminalized. (See Exhibit R.) The selection and optional
7 improvement of any such lands is for the City to decide subject to compliance with
8 constitutional standards.

9 **DEGRADATION OF THE WATERWAYS**
10 **DUE TO HOMELESS ENCAMPMENTS**

11 77. There is a persistent and pernicious proclivity for unsheltered homeless to camp on
12 the banks of sensitive waterways, in the middle of riparian habitat, inside a public park. There
13 could not be a worse location for deposition of garbage, trash, hypodermic needles, food waste,
14 urination, defecation, propane tanks, plastics, etc., to degrade and pollute the City’s waterways
15 – which are deemed both “waters of the state” of California [California Fish & Game Code
16 §5652] and waters of the United States per the Federal Water Pollution Control Act (“Clean
17 Water Act” – CWA). A key instance of the consequences is the contamination of Sycamore
18 Pool located on Big Chico Creek in Bidwell Park.

19 78. The Sycamore Pool is not a conventional “pool” at all, but rather a giant concrete
20 lined swimming hole (the size of 3 Olympic-size swimming pools put end-to-end) comprised of
21 a widening of Big Chico Creek. It is a popular attraction that in the past has attracted thousands
22 of Chico residents, visitors and their children to swim, especially in hot summer months.
23 Upstream from the Sycamore Pool the Big Chico Creek flows through areas of Bidwell Park
24 populated by homeless encampments, where the Creek is used as an outdoor bathroom for
25 defecation and urination. Water testing by the City Parks Department has shown that the *E. coli*
26 contamination in Sycamore Pool is consistently in violation of State of California health and
27
28

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1 safety standards¹⁰, and often the violations have been in excess of 3x to 5x the safety standards.
2 On June 1, 2021 Chico Stewards for Parks and Waterways demanded in a letter to the City that
3 “The Sycamore Pool should be closed immediately and remain closed until the source of the *E.*
4 *coli* contamination is removed and the water made swimmable again.” This demand was
5 ignored by the City, which kept the pool open and continued exposing swimmers to dangerous
6 levels of *E. coli* contamination until the fall closure of the pool on August 15, 2021.

7 79. There is a similar and ongoing problem with *E. coli* contamination that emanates
8 from Comanche Creek and the influx of homeless encampments on the waterway. A farmer,
9 Ken Mollison, has a large 40+ acre agricultural irrigation lake in Butte County fed with water
10 from Comanche Creek, about a mile downstream from the homeless encampments in the
11 Comanche Creek Greenway. This year he discovered that his lake had suddenly been almost
12 covered by a thick green algae bloom (“pond scum”). This had never occurred in years before,
13 and arose after the Comanche Creek Greenway became congested with homeless encampments
14 in the early summer of 2021. He had water tests done for *E. coli*, which would also be a marker
15 for nutrient loads in the water that generate an algae bloom. Test samples were taken from the
16 lake water, from Comanche Creek just before the intake to the lake, and to the east inside the
17 boundary of the Comanche Creek Greenway. A copy of his water test results are attached as
18 Exhibit CC (xp 227). The results show *E. coli* levels more than 2x the health and safety limits.
19 Of further note is that Comanche Creek ultimately flows to the Sacramento River; testing has
20 not yet been done at that end of the Creek. Mr. Mollison is forced to expend over \$2,000
21 monthly to apply chemical neutralizers to the water in his lake. He appeared personally at
22 Chico City Council meetings in July to demand action by the Council to address this pollution;
23 the City has made no response.

24 80. The association between homeless encampments and water pollution is so close that
25 as a practical matter they are conjoined.¹¹ The unsheltered homeless actively seek out the
26

27 ¹⁰ The State health and safety standards are adopted in conformance with federal EPA guidelines, and
28 reviewed and approved by the EPA.

¹¹ Anna Almendrala, *Fecal Bacteria in California Waterways Increases With Homelessness crisis*,
CaliforniaHealthline.org (Jan. 6, 2020), <https://californiahealthline.org/news/fecal-bacteria-in->

1 waterways as sources of water and shade for their camps. This was proven to be the case in
2 Chico as a result of detailed surveys by the Chico Public Works Department. In the spring of
3 2020 the City staff undertook efforts to locate and identify the homeless encampments, and
4 engage efforts with staff and volunteers to clean up waste from numerous abandoned homeless
5 camps that had become a source of blight and pollution. The Public Works Department put the
6 locations of homeless encampments in the City GIS system for mapping, and posted it on a web
7 page. Attached as Exhibit DD (xp 229) is a copy of the posted web page of the City’s homeless
8 camp inventory, as of June 12, 2020. This project was discontinued after several months, and
9 the web page was taken down, but it operated for sufficient time to produce a reliable
10 representation of the distribution of homeless camps. As shown on Exhibit DD, all of the
11 homeless encampments are clustered on the waterways: Comanche Creek, Little Chico Creek,
12 Big Chico Creek, Lindo Channel, and Sycamore Creek. When the unsheltered homeless are
13 allowed unfettered access to public lands, the choice for most convenient points of entry are the
14 parks, and the most favored destinations are the waterways – resulting in water pollution,
15 destruction of the riparian habitat, and degradation of the surrounding parkland.

16 **THE UNSHELTERED- DISABLED/SUD/SMI AND CHRONICALLY HOMELESS**

17 81. Moving the unsheltered homeless from the parks and waterways to alternative
18 constitutionally permissible space requires remedies that appropriately address the unsheltered
19 homeless who have: (1) Disabilities and/or (2) Substance Use Disorders (SUD) and/or (3)
20 Serious Mental Illness (SMI) and/or may be (4) “Chronically Homeless,” or any/all of the
21 foregoing at once. The federal definition of “homeless individual with a disability” would cover
22 the first three factors, and is found at 42 USCS §11360. The fourth factor “Chronically
23 Homeless” is a defined subset of the homeless population who are (in simple terms) persistently
24 unsheltered for a total of at least 12 months over the last three years and suffer from a disability.
25 A broader capsulized definition is shown on p.17 of the 2017 PIT Survey, along with Butte
26 County data on this group. (Exhibit A [xp 007]). The federal law definitions are at 42 USCS
27 §11360(2) and 24 CFR 578.3.

28 _____
californias-waterwaysincreaseswith-homeless-crisis/.

1 82. The unsheltered homeless in Chico’s parks and waterways are highly likely to have
2 one or more of the first three factors of Disability/SUD/SMI – about 80%. At the national level,
3 a broad-scale research study of the health conditions of over 64,000 unsheltered homeless was
4 done by the UCLA/California Policy Lab.¹² (Exhibit EE) In regards to morbidity factors among
5 the unsheltered homeless, it found that: 84% had a morbidity factor for *physical health*
6 *conditions*, 78% for *mental health conditions*, 75% for *substance abuse conditions*, and **50%**
7 **trimorbidity** (all three conditions concurrently). (xp 235) Local estimates are in the same
8 range. On April 6, 2021, at the regular meeting of the City Council, as Agenda Item 5.1, the
9 Director for Butte County Behavioral Health (BCBH), Scott Kennelly, gave a special
10 presentation to the Council regarding the various services the County provides to the homeless
11 in Chico and the County generally. Mr. Kennelly stated that, based on his experience “getting
12 people off the street” to actually evaluate them, the percentage of unsheltered homeless with
13 SUD is about 80%, and the percentage with mental illness is 60% to 80%.

14 83. The Chronically Homeless are monitored by the County COC, and the numbers are
15 reported to HUD as part of the results of the PIT survey. The 2017 PIT in Butte County
16 reported that about 47% of the overall homeless population at that time was Chronically
17 Homeless. [xp 007] Though the total number of homeless in Chico in 2021 is unclear, there is
18 no indication that the percentage of Chronically Homeless has changed. By definition the
19 homeless in this subgroup have a history of persistent homelessness, which also is a future
20 predictor of likely homelessness.

21 84. The City of Chico is responsible for the remedy in moving the unsheltered homeless
22 out of the parks and waterways. The remedy must be real and effective, not illusory. The
23 existence of “shelter space” or “shelter beds” (without putting a specific legal definition on
24 those terms) does not assure that the unsheltered homeless will be lured out of the parks and
25 waterways. The Butte County Housing Inventory Count (HIC) showed only a 65% occupancy
26 rate for existing beds in emergency shelters. (Exhibit L [xp 084]) The UCLA/California Policy
27 Lab (ibid., p.7) found that people who were assessed while unsheltered are not using shelter

28 ¹² “Health Conditions Among The Unsheltered Homeless,” UCLA/California Policy Lab, Policy Brief –
October 2019; <https://www.capolicylab.org/health-conditions-among-unsheltered-adults-in-the-u-s/>

1 with any significant frequency (for men the median shelter usage in the last two years was only
2 8 days). (xp 236) The UCLA study recommended that any effort to address unsheltered
3 homelessness must consider that “People with the longest experiences of homelessness, most
4 significant health concerns, and greatest vulnerabilities are not accessing or being served by
5 emergency shelters. As policy makers design interventions for unsheltered homelessness and
6 balance investments in emergency housing and permanent housing they will need to consider
7 whether emergency housing is adequate or appropriate for a highly vulnerable population, half
8 of whom are trimorbid.” (xp 238)

9 85. The traumatized chronically homeless in Chico’s parks and waterways are not
10 adequately accessing Chico’s shelter space and facilities that are available, as a substantial
11 consequence of the impediments of their disabilities, substance use disorders, and serious
12 mental illnesses. For a host of individualized reasons they have difficulty or discomfort with
13 congregate shelters, the confinement of four walls, proximity to other people, interaction with
14 other homeless, following rules/schedules, restrictions on drug/alcohol use, and so on. They opt
15 to stay in open space instead, and Chico’s parks are the open space they have taken.

16 86. The City owned land that is currently vacant and realistically accessible is a valid and
17 roughly equivalent substitute for the park land and waterways currently occupied by the
18 homeless. As open space it does not cause the difficulty or discomfort that may be a barrier for
19 the traumatized and trimorbid homeless that do not access the congregate shelter facilities. It is
20 not necessary to determine whether substitute land meets a legal definition of “shelter” for it to
21 replace the parks and waterways as a place for the homeless to go and the next step forward in
22 the action before the court. As a balance of equities, the homeless would be no worse off, and
23 the Intervenors and public would reclaim the use of their parks and waterways.

24 **V. CLAIMS FOR RELIEF**

25 **FIRST CAUSE OF ACTION**

26 **Declaratory Judgment and Further Relief**

27 **928 USCS 2201(a), 928 USCS 2202**

28 **(Against Plaintiffs and Defendants)**

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87. Intervenors re-allege and incorporate each and every allegation of the preceding paragraphs as if fully set forth herein.

88. Intervenors, and each of them, have a right to travel, assemble, and to the free use and enjoyment of the public parks of the City of Chico. The rights of Intervenors are equal to those of the Plaintiffs and those persons described as “homeless individuals.”

89. Intervenors allege that, as hereinbefore described, the actions and omissions of the Plaintiffs and the Defendants have operated to deny Intervenors access and the free use and enjoyment of the parks and waterways, by and through: the physical occupation of the parks and waterways by homeless encampments; accumulations of garbage, trash, junk and debris; human waste, open defecation and urination; usage of controlled substances and littering of used hypodermic needles; open fires and danger of wildfire outbreak; criminal activity, including assaults and murders; dangerous dogs that threaten passers-by; destruction and defacing of public improvements, benches, interpretive exhibits and signs, and trails; destruction of sensitive riparian habitat; pollution of the waterways far beyond health and safety standards; noxious odors, excessive night time noise, and activities that are indecent and offensive to the senses.

90. On information and belief it is alleged that Plaintiffs contend that homeless individuals are privileged to occupy the parks and waterways to the exclusion of Intervenors and the public, unless or until the homeless individuals are provided with structural housing and services that Plaintiffs deem adequate.

91. Defendant City has adopted and followed explicit policies and ordinances that operate to warehouse the homeless in the parks and waterways, both enabling the homeless occupation of the parks, and denying Intervenors due process and equal protection of the laws that otherwise would provide access to the parks and prevent wholesale destruction of parks and riparian habitat. Defendant City intentionally: (a) refuses to acknowledge or make use of numerous undeveloped City owned parcels that would serve as alternative sites for the homeless, for political but not for rational reasons; (b) refuses to enforce the conduct-based ordinances and State law in the parks that are necessary to protect the environment of the park

1 lands, the water quality, the riparian habitat, deal with garbage and refuse, human sanitation,
2 and public health and safety; and (c) adopted modified ordinances that give the homeless
3 superior rights to those of Intervenor and the public, for the homeless to occupy the parks
4 under conditions that exist now and for the foreseeable future, by incorporating clauses that
5 suspend enforcement of the Camping, Parks, and Waterways restrictions only for the benefit of
6 homeless individuals when potentially unattainable targets of “shelter” are not met.

7 92. Additionally Defendant City has enabled the homeless and harmed Intervenor and
8 the parks, by adopting and maintaining multiple layers of overbroad, vague, and cumulatively
9 over-restrictive ordinances that reach out to cover almost all of the open land in the City rather
10 than just the real parks and the riparian corridors that need these protections. Plaintiffs contend,
11 with some justification, that the City’s ordinances have criminalized their status as homeless.
12 Defendant City contends otherwise, especially as to the modified ordinances. Intervenor
13 contend that on one hand the City has overreached in its multi-layered restrictive ordinances,
14 but on the other hand the Plaintiffs have “weaponized” the City’s incompetence to claim
15 occupancy of the parks. Intervenor contend that the ordinances are necessary and appropriate
16 only in the parks that are actually recognized as “parks” (Exhibit Y) and the riparian corridors
17 containing the City waterways (CMC §§9.50.020.B.&C.), but outside of those boundaries there
18 is no rational basis to apply the definitions that extend the abstract reach of the ordinances
19 throughout the City.

20 93. Intervenor allege that the current practically available undeveloped City-owned
21 parcels are equivalent and acceptable as alternative sites as places for the homeless to go other
22 than the parks. On information and belief the Plaintiffs contend that land equivalent to the park
23 land now occupied is not legally adequate for their desires or needs. The City pretends that,
24 other than the Airport facility and the BMX facility, alternative sites don't exist. A declaratory
25 ruling on this dispute is needed.

26 94. The Airport facility has only recently (September 17, 2021) been closed by the City,
27 but the potential future use by the City has not necessarily been abandoned. Intervenor
28 contend, for all the reasons hereinbefore described, that the Airport facility is an illegal land use

1 that is inherently dangerous for human occupation, and therefore is not and never was a
2 potential alternative site. Pursuit of that site by the City was a waste of public funds and served
3 only to solidify the homeless occupation of the parks. Absent a firm commitment from the City
4 to abandon that site permanently, declaratory relief is needed to foreclose an untenable option.

5 95. Intervenors allege that any current estimates of the numbers of “unsheltered
6 homeless” are unreliable and lack foundation to establish an actual total number of “unsheltered
7 homeless” that could be used for determination or application of a judicial remedy. Intervenors
8 allege that the definition of “homeless” to be used for any such determination must be based on
9 the federal definition for reporting HUD statistics. On information and belief, the Plaintiffs
10 contend that a broader definition of “homeless” used by the local COC is appropriate, which
11 yields substantially higher numbers and would change the scope of judicial remedies. On
12 information and belief, the City does not know what the correct definition is and has by default
13 credulously acceded to the Plaintiffs allegations of the numbers of homeless. In addition,
14 regardless of the definition of “homeless,” the data as of 2021 is stale, dated and unreliable
15 without a new count. Intervenors seek declaratory relief as to a realistic and accurate definition
16 of “homeless” and “unsheltered homeless” for purposes of determining the legal issues in this
17 matter as well as the remedies required. Foundationally, Intervenors seek injunctive relief to
18 compel the City to conduct a count of the “unsheltered homeless” as per the court’s
19 determination of the definition of that term.

20 96. Intervenors allege on information and belief, through information gained by attorney-
21 client privilege and attorney work-product privilege, that the City of Chico intends to seek a
22 termination of this case by providing only 60% of the “shelter” that may be required for the
23 outstanding number of unsheltered homeless, while “warehousing” the remaining 40% of
24 unsheltered homeless in the parks and waterways. The 60% of “shelter” supplied by the City
25 would be primarily created through some form of development of the BMX facility with hard-
26 sided structures built under the State of California “shelter crisis” housing program (as
27 contrasted with the 60 units initially studied in April of 2021), in combination with small
28 incremental increases in shelter space from non-profit providers; leaving 40% of the

1 unsheltered homeless remaining in the parks and waterways. The purported basis of terminating
2 the case on provision of 60% shelter space is the existence (without any legal foundation as
3 binding precedent) of settlements of homeless sheltering federal cases in Orange County,
4 California, previously accomplished by agreements between certain homeless advocates and
5 local agencies in Orange County to meet a 60% threshold for provision of shelter. CSPW on the
6 other hand expects and demands that 100% of the homeless encampments be removed from the
7 parks and waterways, and that 100% of the unsheltered homeless be given a new location
8 insofar as that may require use of available City property that is not a named designated park or
9 waterway riparian corridor.

10 97. Intervenors allege that the current pursuit of a high-density shelter development at the
11 BMX facility is the commencement of a fiasco in which the City will be overcommitted
12 financially and at best will realize much less than one half of the targeted 354 beds as the
13 consequence of violation of State standards for construction, design and occupancy of homeless
14 shelter facilities, with the result that the City will use its own incompetence as an excuse to
15 continue and prolong the warehousing of the homeless in the City parks and waterways for the
16 indefinite future. The City will, as it has over the last year, falsely claimed that it can do nothing
17 to clear the parks and waterways until it builds additional free-standing shelter accommodations
18 of high but unknown and shifting quantities. And while the City fails to create shelter by
19 pursuing illegal and incompetently conceived projects like the failed Airport facility and now
20 the high-density BMX facility, the parks and waterways will degrade further under the pressure
21 of increasing homeless encampments. The damage and degradation of the parks and waterways
22 could be halted, and restoration begun, if the City Councilors were to overcome the political
23 fear of locating distributed sites for the homeless on City owned land at various places in their
24 respective districts. CSPW seeks the declaratory relief and equitable power of this court to
25 compel the parties to rational action that will save the parks and waterways from destruction.

26 98. Intervenors allege on information and belief, that the City's embarkation in the State-
27 regulated homeless sheltering program cannot be financially sustained by City and at the same
28 time pay to restore the waste that has occurred to Comanche Creek Greenway preserve or repair

1 the damages done to the other parks and waterways on account of the City’s policies of
2 warehousing the homeless in the parks and waterways. Intervenor allege that the legal duties
3 of the City to restore the parks and waterways require a course of action that will permit the
4 City to restore the parks and waterways and simultaneously desist from criminalizing the
5 unsheltered homeless. The City should be enjoined from disabling its own ability to repair the
6 parks and waterways, when it has the ability to both carry out repairs to these vital resources
7 and preserve the constitutional rights of the Plaintiffs.

8 99. As to all of the above-described material issues, and as to the material issues
9 described below in paragraphs 89 through 112 of the claims which follow, there is a present
10 dispute and controversy in which the Intervenor, the Plaintiffs, and the City each take differing
11 positions. The judicial determination of these disputed issues in controversy is essential to
12 resolution of this case and to the ultimate protection and preservation of the parks and
13 waterways that are the special interest of Intervenor. Therefore Intervenor seek a declaratory
14 judgment pursuant to 28 USCS §2201(a) declaring the rights and legal relations of the parties,
15 and further necessary and or proper relief based on such declaratory judgment pursuant to 28
16 USCS §2202.

17 **SECOND CAUSE OF ACTION**

18 **Violation of Equal Protection**

19 **42 U.S.C. §1983; U.S. Const. amend. XIV**

20 **(Against Defendants)**

21 100. Intervenor re-allege and incorporate each and every allegation of the preceding
22 paragraphs as if fully set forth herein.

23 101. On August 3, 2021, the City of Chico introduced revised ordinances for regulation
24 of Camping, the Waterways, and the Parks. (See Exhibits S and T); the revised ordinances were
25 subsequently formally adopted on September 7, 2021. As noted in the staff report (Exhibit S
26 [xp 167 at ¶8]), Sections 9.20.060 (Camping), 9.50.030 (Waterways), 18.430 (Parks) and
27 12R.04.340 (Parks) have a paragraph added to each of them which provides that the restrictive
28 ordinance “is not applicable to unsheltered individuals when there is no available shelter space

1 ...” The ordinances are suspended only for unsheltered individuals. In the present case a
2 preliminary injunction has already been issued based upon the preliminary finding that there is
3 just such a shortage of available shelter space. (Document 110, p.4:18-21, & fn.2) The
4 unsheltered individuals, and only the unsheltered individuals, are therefore legally allowed by
5 the revised ordinances to camp on any public property (§9.20.030.A.), enter into and remain all
6 day in the waterways and riparian corridor (§9.50.030.D.), enter into and remain within
7 property to which the public access is (otherwise) prohibited or restricted (§9.50.030.E.), camp
8 in the parks (§12.18.430), and store quantities of “personal property” in the parks at will
9 (§12R.04.340). Whereas the restrictions and prohibitions of the afore-described ordinance
10 sections still apply with full force to Intervenor – who do not qualify as “unsheltered
11 individuals.”

12 102. Intervenor, whose sole purpose is to protect and preserve the parks and waterways,
13 have been denied equal protection of the laws under the U.S Constitution Amendment XIV and
14 in violation of 42 U.S.C §1983.

15 **THIRD CAUSE OF ACTION**

16 **Violation of Equal Protection and Due Process of Law**

17 **42 U.S.C. §1983; U.S. Const. amend. XIV**

18 **(Against Defendants)**

19 103. Intervenor re-allege and incorporate each and every allegation of the preceding
20 paragraphs as if fully set forth herein.

21 104. The City of Chico has adopted an express policy and practice under which the City
22 Manager is allowed unfettered discretion to pick and choose whether or not he will enforce the
23 Ordinances of the City that have been duly adopted by the City Council. This policy and
24 practice is confirmed in the August 3, 2021 staff report by the City Attorney to the Council
25 (Exhibit S [xp 169]) and the Administrative Procedure and Policy Manual item (Exhibit U [xp
26 192]). The report by the City Attorney states that the “Administrative Policies and Procedures
27 may be implemented by the City Manager and no action is required by Council.” The new item
28 for Administrative Policies and Procedures has an “effective date” of August 3, 2021 per the

1 unilateral decision of the City Manager. The “policies” adopted by the City Manager are that
2 the City administration shall not enforce ordinances 12R.04.340, 12.18.340, 9.20.010 through
3 9.20.070, and 9.50.030(b)-(e) as they pertain to the Airport “temporary shelter facility.” No
4 Council action whatsoever was taken on these policies to refuse enforcement of these restrictive
5 ordinances at the Airport facility, because it is the City’s official policy and practice that the
6 City Manager may arbitrarily and without guidelines or restriction choose to refuse
7 enforcement of any City ordinance.

8 105. Further pursuant to the City Manager’s practice of choosing which ordinances to
9 enforce and which ordinances not to enforce, the City administration has chosen not to enforce
10 the plain ministerial ordinances adopted through the legislative functions of the City Council of
11 Chico, and which would serve to protect the parks and waterways from degradation and
12 environmental damage if they were enforced. These ordinances include: **Chapter 8.14**
13 **(§8.14.010, §8.14.020, §8.14.030, §8.14.040)** unlawful deposits of solid waste in City creeks
14 [including biohazardous waste – hypodermic syringes, sharps (§8.04.010)]; **§9.26.010** – public
15 urination and defecation prohibited; **§9.50.030** – prohibition in the waterways of: **I-** trash and
16 garbage, **K** – urination and defecation, **L** – excavation and encroachment, **M** – open fires, **N** –
17 incorporation of federal and state laws [California Fish & Game Code §5650-§5652; Clean
18 Water Act Section 303(c), 33 U.S.C. §1312, 40 C.F.R. §131, and 33 U.S.C. §1311(a)];
19 **§12.18.450 & §12R.04.370** – restricted hours in the Parks- 11:00 pm to 5:00 am, and closure of
20 parks, greenways and open spaces, even as to portions of areas or limited to environmentally
21 sensitive habitat and riparian areas; **§12.18.410 & §12R.04.320** – prohibition of pollution of
22 waterways and deposition of refuse, garbage, waste matter ...; **§12.18.250 & §12R.04.190** –
23 prohibition on dumping, placement or leaving rubbish, garbage, sewage or waste matter in any
24 public park; **§12.18.190 & §12R.04.050** – prohibition on destruction of natural condition of
25 landscape and improvements; **§12.18.050 & 12R.04.050** no consumption alcoholic beverages
26 in parks; **§12.18.230 & §12R.04.370** no fires in the parks; **§12.18.350 & §12R.04.260** –no use
27 of environmental restoration areas. Enforcement of these ordinances is not enjoined by the
28 pending preliminary injunction. Per Section 701 of the Chico City Charter the administrative

1 branch of City government, headed by the City Manager, has an affirmative duty and is
2 “charged with the preservation of the public peace, welfare, health, the safety of persons and
3 property, **the enforcement of law** and the development and utilization of the city’s resources.”
4 (emphasis added) The City has breached this duty by the City’s deliberate refusal to enforce
5 City ordinances as against the homeless on all public properties and all across the parks,
6 greenways and open spaces of the City, where homeless individuals and their encampments
7 have trashed and degraded these valuable City resources.

8 106. Intervenor, whose sole and special interest is protection and preservation of the
9 parks and waterways, have not been excluded from enforcement or threat of prosecution if any
10 one of Intervenor were to violate any of these ordinances. The refusal by the City to enforce
11 these ordinances against the homeless is arbitrary, capricious, unlawful, in furtherance of the
12 City policy to warehouse the homeless in the City parks, and has caused the parks and
13 waterways to be degraded and destroyed, while homeless encampments occupy the parks and
14 waterways to the exclusion of Intervenor, depriving the Intervenor of their right to use and
15 enjoyment of these resources.

16 107. The City’s arbitrary and selective non-enforcement of its ordinances has deprived
17 Intervenor of their rights without due process of law and denied Intervenor equal protection
18 under the law, in violation of the U.S Constitution Amendment XIV and federal law under 42
19 U.S.C §1983.

20 108. Further, the City’s mandatory nondiscretionary duties to apply and enforce the
21 ministerial requirements and restrictions of its ordinances may be compelled by the court under
22 its equitable powers by injunctive relief or other appropriate orders.

23 **FOURTH CAUSE OF ACTION**

24 **Violation of Cal. Civil Code §3479 et seq. – Public Nuisance**

25 **(Against Defendants)**

26 109. Intervenor re-allege and incorporate each and every allegation of the preceding
27 paragraphs as if fully set forth herein.

28 110. Under California law, a “nuisance” is defined as:

1 “Anything which is injurious to health, including, but not limited to, the illegal sale of
2 controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use
3 of property, so as to interfere with the comfortable enjoyment of life or property, or **unlawfully**
4 **obstructs the free passage or use, in the customary manner, of** any navigable lake, or river,
5 bay, stream, canal, or basin, or **any public park**, square, street, or highway, **is a nuisance.**”
6 California Civil Code §3479 (emphasis in bold added).

7 111. Defendants, by their intentional unlawful actions and omissions, as hereinbefore
8 alleged, have obstructed Intervenor’s free passage and use of the public parks and waterways in
9 the City of Chico, in violation of California Civil Code §3479 as well as the federal and
10 common law definitions of “public nuisance.”

11 112. Intervenor, whose sole and special interest is protection and preservation of the
12 parks and waterways, have been specially injured by the public nuisance created by the
13 intentional unlawful actions and omissions by the City, by the definite and particularized
14 injuries suffered by Intervenor through multiple and repeated incidents obstructive and
15 repugnant to their use in the customary manner of the public parks. Because of their special
16 interest and usage of the parks the Intervenor have suffered these injuries to a degree above
17 and a severity different/greater in kind than the general public.

18 113. Intervenor have no adequate administrative remedy or other substitute remedy
19 available to Intervenor, and any or all such remedies if ever extant have been fully exhausted.
20 Intervenor seek abatement of the public nuisance created and allowed by City, and such other
21 relief as the court deems proper to remedy the effects of the public nuisance.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of Cal. Fish & Game Code §5652**

24 **(Against Defendants)**

25 114. Intervenor re-allege and incorporate each and every allegation of the preceding
26 paragraphs as if fully set forth herein.

27 115. Cal Fish & Game Code §5652 provides in pertinent part:
28

1 (a) It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the
2 state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the
3 waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter,
4 refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead
5 bird.

6 (d) **This section shall be enforced by all law enforcement officers of this state.**

7 (emphasis added)

8 116. Further, Chico Municipal Code §9.50.030.N. provides that:

9 “N. Any act in a regulated area constituting a violation of any provision of the
10 California Endangered Species Act (CESA), the Endangered Species Act (ESA),
11 the California Public Resources Code, or **any regulation of the California**
12 **Department of Fish and Game**, or of any permit or approval issued by any
13 federal, state or local agency having jurisdiction over the regulated area **shall also**
14 **be a violation of this chapter.**” (emphasis added)

15 117. In violation of the mandatory duty imposed by California Department of Fish &
16 Game Code §5652(d), and Chico Municipal Code §9.50.030.N. the City of Chico has
17 intentionally failed and refused to employ its law enforcement officers to enforce the provisions
18 of §5652(a). The waterways of the City of Chico are “waters of the state,” surrounded by
19 corridors of sensitive riparian habitat, that have been degraded and irreparably damaged on
20 account of the City’s breach of this statutory duty and violation of law.

21 118. Intervenors have no adequate monetary remedy for these violations by the City on
22 Chico’s waterways; there is no administrative remedy or other substitute remedy available to
23 Intervenors, and any or all such remedies if ever extant have been fully exhausted; and
24 Intervenors therefore seek relief through the equitable power of the court to compel the City’s
25 mandatory duties to enforce Cal. Fish & Game Code §5652 and Chico Municipal Code
26 §9.50.030.N., along with such remedial measures to repair the damages to the waterways as the
27 court may deem necessary and proper.

28 **SIXTH CAUSE OF ACTION**

Waste of Public Funds and Resources

Cal. Civil Procedure code §526a

(Against Defendants)

119. Intervenor re-allege and incorporate each and every allegation of the preceding paragraphs as if fully set forth herein.

120. California Code of Civil Procedure §526a permits private individuals or entities to bring an action to “obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property or a local agency.”

121. Intervenor and their members, and each of them, are residents and taxpayers in the City of Chico, and therefore have standing to bring an action under §526a.

122. Taxpayer funds have been misused and wasted by the City of Chico, by: City actions and omissions allowing the damaging and destruction of improvements to the Comanche Creek Greenway restoration project, that was an investment of a total of \$1.5 million in public funds (see Exhibit W); City actions and omissions allowing the damaging and destruction of park facilities, waterways, and riparian habitat in the parks listed in Exhibit Y; the recently aborted construction and operation of the Airport temporary shelter facility at an operational cost of about \$35,000 per month and unknown construction and dismantling costs. Further waste is threatened by: the promise by a Council member that (per an unlawful decision made in closed session in violation of California open meeting laws- the “Brown Act”) the fences and other infrastructure at the airport facility will be moved and reinstalled at the Comanche Creek Greenway at unknown cost; the City Manager and the same Council member have disclosed plans (also per an unlawful decision made in closed session in violation of California open meeting laws- the “Brown Act”), to develop the BMX site for homeless facilities, and have already taken action to evict the current tenant; the plans for development of the BMX site at total costs in excess of \$5,000,000 are illegal in violation of State standards for construction, design and occupancy of homeless shelter facilities. The decisions to devote public resources and funds to moving the infrastructure to Comanche Creek and the undisclosed secretive commitments for development of the BMX facility may be invalidated if the City does not take corrective action in response to a cease and desist letter served on the City by CSPW to remedy the open meeting law violations. Expenditures of public funds based on

1 unlawful decisions that may be invalidated or voluntarily reversed, threaten additional waste of
2 public funds.

3 123. Intervenors have no adequate administrative remedy or other substitute remedy
4 available to Intervenors, and any or all such remedies if ever extant have been fully exhausted.
5 Intervenors seek only equitable and injunctive relief, with continuing oversight of the City’s
6 suspect plans for future potentially invalid and errant efforts to address homeless projects (like
7 the abortive Airport project, and the current illegal plans for development of the BMX site), to
8 prevent further waste of public funds, and where applicable to restore public facilities and parks
9 that have suffered waste as a result of the City’s actions.

10 **VI. PRAYER FOR RELIEF**

11 Intervenors pray for judgment as follows:

12 1. As against both Plaintiffs and Defendants, a Declaratory Judgment to determine the
13 relative rights and obligations of all of the parties pursuant to the allegations of the First Cause
14 of Action, and further relief thereon as the court may deem proper, pursuant to 928 USCS
15 2201(a) and 928 USCS 2202;

16 2. Invalidation of Sections 9.20.060 (Camping), 9.50.030 (Waterways), 18.430 (Parks)
17 and 12R.04.340 (Parks) of the revised City of Chico ordinances based on denial of equal
18 protection of the laws under the U.S Constitution Amendment XIV and violation of 42 U.S.C
19 §1983.

20 3. Equitable and injunctive relief to compel the City of Chico to enforce its ordinances to
21 protect the parks and waterways, including but not limited to Chapter 8.14 (§8.14.010,
22 §8.14.020, §8.14.030, §8.14.040) unlawful deposits of solid waste in City creeks [including
23 biohazardous waste – hypodermic syringes, sharps (§8.04.010)]; §9.26.010 – public urination
24 and defecation prohibited; §9.50.030 – prohibition in the waterways of: I.- trash and garbage, K
25 – urination and defecation, L – excavation and encroachment, M – open fires, N – incorporation
26 of federal and state laws [California Fish & Game Code §5650-§5652; Clean Water Act Section
27 303(c), 33 U.S.C. §1312, 40 C.F.R. §131, and 33 U.S.C. §1311(a)]; §12.18.450 & §12R.04.370
28 – restricted hours in the Parks- 11:00 pm to 5:00 am, and closure of parks, greenways and open

1 spaces, even as to portions of areas or limited to environmentally sensitive habitat and riparian
2 areas; §12.18.410 & §12R.04.320 – prohibition of pollution of waterways and deposition of
3 refuse, garbage, waste matter ...; §12.18.250 & §12R.04.190 – prohibition on dumping,
4 placement or leaving rubbish, garbage, sewage or waste matter in any public park; §12.18.190
5 & §12R.04.050 – prohibition on destruction of natural condition of landscape and
6 improvements; §12.18.050 & 12R.04.050 no consumption alcoholic beverages in parks;
7 §12.18.230 & §12R.04.370 no fires in the parks; §12.18.350 & §12R.04.260 –no use of
8 environmental restoration areas, and such other remedies as the court may allow based on the
9 denial of Intervenor’s rights to due process of law and denial of Intervenor’s rights to equal
10 protection under the law, in violation of the U.S Constitution Amendment XIV and federal law
11 under 42 U.S.C §1983;

12 4. For Judgment finding that Defendants are liable for creation of a public nuisance, that
13 Intervenor’s have been specially injured by the nuisance, and granting relief as necessary and
14 proper to abate the public nuisance and remedy the effects of the nuisance;

15 5. For a Judgment finding that Defendants have violated California Fish & Game Code
16 §5652, for equitable and injunctive relief to compel Defendants to enforce Fish & Game Code
17 §5652;

18 6. For a Judgment determining that Defendants have committed waste of public
19 resources and funds, and for equitable, injunctive and remedial relief, and for such orders and
20 relief as may prevent ongoing and future waste of public resources in Defendants’ pursuit of
21 errant, unlawful or wasteful cures for its liabilities in the initial dispute with Plaintiffs;

22 7. For costs of suit;

23 8. For attorneys fees as provided by law;

24 9. For such other relief and the Court deems just and proper.

25 Dated: October 13, 2021 MCNEILL LAW OFFICES

26
27 By: 
28 WALTER P. MCNEILL
ATTORNEY FOR PETITIONERS