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May 7, 2021

VIA EMAIL

Barbara Brenner
General Counsel, NYWD
Barbara@whitebrennerllp.com

John Kinsey
Counsel for Marieke Furnee, et al.
jkinsey@wjhattorneys.com

Re: Furnee et al. v. North Yuba Water District (NYWD)
Application for Temporary Restraining Order

Dear Counsel:

This Firm represents South Feather Water & Power Agency. Since the Agency's formation in 1919 and until 2011, the Agency owned, operated, repaired and maintained the Upper Forbestown Ditch (UFD). The Agency quitclaimed its interest in the UFD to North Yuba Water District on January 1, 2011, from which point NYWD became responsible for the UFD.

Despite transferring title, the Agency still maintains an interest in the UFD. For example, the Agency still serves customers directly from the UFD and receives up to 11 cfs at a point of delivery on the UFD, known as WD6, for eventual deliveries to Agency customers served via its Lower Forbestown Ditch. The Agency and its highly skilled staff have firsthand knowledge of the UFD and what it takes to operate and maintain the UFD to ensure reliable water deliveries.

Based on NYWD financial information available to the Agency¹, since 2011 NYWD has budgeted only \$50,000 in repair and maintenance of the UFD. As a result, the UFD has fallen into a state of disrepair, such that NYWD has in 3 of the last 10 years been unable to provide full delivery to its raw/untreated water customers. Such a draconian outcome was unprecedented during the Agency's tenure of ownership of the UFD.

¹ The Agency has a February 10, 2021 request under the California Public Records Act for a copy of NYWD's electronic financial records. However, to date, NYWD has not provided any responsive records.

To: Barbara Brenner and John Kinsey
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Date: May 7, 2021
Page 2

The Agency is becoming increasingly concerned that NYWD will be unable to perform and deliver to the Agency up to 11 cfs at WD6, given the state of disrepair of the UFD. Additionally, the Agency has experienced wildfire in and around its service area in each of the last 3 years. The Agency is very concerned about NYWD's decision to curtail water deliveries and high likelihood that this will exacerbate an already critical fire risk for NYWD's customers and neighboring Agency customers and facilities.

Despite drought conditions prevailing throughout the state, NYWD is fortunate in that it does not have a water supply shortage because it has available to it up to 23,700 acre-feet of water that is currently stored in Agency reservoirs. NYWD's only problem is related to a bottleneck in water distribution because of its disrepair of the UFD. This problem is entirely fixable. And, it can be fixed quickly to salvage NYWD's 2021 water season and provide water and related benefits, including reduction in wildfire risk, to NYWD's customers.

The Agency is willing to offer mutual aid pursuant to the existing NYWD/Agency Mutual Aid agreement, dated July 23, 1996. NYWD and the Agency have utilized this Agreement in the past on numerous occasions for the Agency to assist NYWD in maintenance and repairs of the UFD as well as other NYWD facilities, such as Dry Creek Canal and the NYWD water treatment plant. The Agency can quickly mobilize its crews to repair critical areas of the UFD and believes that such repairs can allow for the safe delivery of 30 cfs this irrigation season. This volume can more than cover Agency demands (up to 11 cfs), NYWD's treatment plant demands (around 1 cfs), NYWD's raw water demands (around 6 cfs) and estimated current system losses (around 35% or 10.5 cfs).

The Agency estimates emergency repair work will cost less than \$250,000. Consistent with prior mutual aid assistance to NYWD, the Agency would not charge more than its actual costs of employee time and equipment use (i.e., the Agency is only made whole and is not profiting). The Agency is willing to work with NYWD on payment arrangements to reimburse the Agency for this work, including defraying reimbursement and reducing future minimum quarterly payments (\$177,250) that the Agency contributes to NYWD pursuant the Agency/NYWD 2005 Agreement.

The foregoing is a win-win-win for our respective clients. We request your prompt response to this proposal and intend on sharing this concept with the Court at the TRO hearing next week.

Very truly yours,

MINASIAN, MEITH,
SOARES, SEXTON & COOPER, LLP

By: 

DUSTIN C. COOPER

DCC/ast

cc:

Rath Moseley, General Manager South Feather Water & Power Agency