

January 22, 2021

VIA EMAIL ONLY

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Re: North Yuba Water District (“NYWD”) / South Feather Water and Power Agency (“SFWPA”)

Dear Dustin:

I have been retained by NYWD in connection with the 2005 Agreement between NYWD (formally known as the “Yuba County Water District”) and SFWPA (“Agreement”). For over 3 years, NYWD has been formally requesting access to the system of accounts that SFWPA is required to maintain for the joint benefit of our clients. For the past couple years, SFWPA has treated these as formal California Public Records Act (“CPRA”) requests subject to the Government Code. In response to NYWD’s requests over the past couple years, SFWPA has only produced information that is publically available on its website along with certain employee time sheets. I am informed that, going back to 2010, SFWPA has failed to provide all information to NYWD that is required by the Agreement.

SFWPA has consistently denied NYWD access to the subject accounting records while intentionally and illegitimately using the CPRA as a shield. Only after NYWD recently threatened litigation under the CPRA, which carries with it the threat of an attorneys’ fees award in NYWD’s favor, did SFWPA concede that NYWD did not need to make a CPRA request in order to obtain access to the records. While that seemed like some progress, SFWPA then threw up another roadblock by requiring NYWD to enter into a protracted and unworkable memorandum of understanding as yet another condition to having access to the accounting records.

Under the Agreement, SFWPA is responsible for providing NYWD with various accountings related to the disposition of net SFPP power revenues. See Paragraphs IV.3 and IV.5, and the Second Amendment to the Agreement. NYWD is entitled to reasonable access to the records at all times. This is an absolute right that carries with it zero conditions.

Part IV of the Agreement sets forth the specific rights and duties of each party vis-à-vis net SFPP power revenues after 2010. In particular, the Agreement provides:

SFPP Joint Facilities operating expenses, reserve requirements, expenses to meet regulatory requirements . . . and administrative and general operational expenses . . . will be paid from the SFPP Joint Facilities Operating Account as payments for such expenses become due. . . . A system of accounts, consistent with the Uniform System of Accounts prescribed by the FERC for jurisdictional hydroelectric utilities will be maintained at all times by SFWPA, and [NYWD] and SFWPA **will at all times have reasonable access to the records of such accounts for purposes of verifying the accuracy and adequacy of said accounting under the terms of this Agreement and under the FERC Uniform System of Accounts.**

Paragraph IV.1 (emphasis added).

Per the clear language of the Agreement, NYWD is unambiguously entitled to access the records it is seeking. As the Agreement makes clear, these are not SFWPA's records alone; the records belong to both contracting parties and SFWPA is simply the party required to maintain them. NYWD does not need to justify its request for records, jump through hoops, or enter into separate agreements which impose new and different requirements not found in the Agreement simply to access the records which it jointly owns.

NYWD's general manager first formally requested that SFWPA supply him with the required accountings back in August of 2017. A copy of Mr. Maupin's August 22, 2017 email to Rath Moseley is attached as **Exhibit A**. That followed Mr. Maupin's many informal requests for SFWPA to provide access to the required accountings under the Agreement dating back to when he first became employed by NYWD in October of 2011. The prior SFWPA general manager, Michael Glaze, literally told Mr. Maupin that SFWPA had no intention of strictly following the Agreement's mandate to share detailed accounting information with NYWD.

Following Mr. Maupin's 2017 request for information, NYWD retained multiple auditors to obtain the required accountings from SFWPA. NYWD then made subsequent requests through counsel under the Agreement and the CPRA because SFWPA insisted that it would not comply with any other procedure or type of request. I have reviewed the entire history of correspondence between the parties and their attorneys going back to 2017. There is no justification that I can see for SFWPA dragging this process out as long as it has. Rather, NYWD is extremely concerned about SFWPA's persistent reluctance to provide full access to the parties' accounting records.

As my client has made clear on multiple occasions, under the Agreement and in accordance with the FERC Uniform System of Accounts, NYWD is entitled to the raw supporting data underlying the Joint Facilities payments. NYWD is allowed to satisfy for itself whether the

historical payments are accurate. The problem is, SFWPA has effectively stymied NYWD's ability to do this. Furthermore, SFWPA has separately long been in breach of the Agreement for failing to provide both the annual detailed accounting report and the monthly preliminary account reports required under Paragraph IV.3 of the Agreement. NYWD should not be left this much in the dark regarding the parties' Joint Facilities accounting.

On September 15, 2017, representatives from NYWD and SFWPA met in a good faith attempt to resolve the dispute regarding NYWD's access to the SFPP accounting records. Although SFWPA promised at that meeting that things would be different going forward, unfortunately the attempt was not successful. For years now, NYWD has invested considerable time and effort seeking to obtain the full SFPP accounting records, all to no avail.

By this letter, NYWD demands that SFWPA, within 7 days, provide full access, without conditions, to the system of accounts that SFWPA is required by the Agreement to maintain for the joint benefit of NYWD and SFWPA. I am enclosing another copy of Barbara Brenner's October 20, 2020 letter to SFWPA's General Manager as **Exhibit B**. In this letter, Ms. Brenner detailed the specific records that NYWD is presently seeking to review. SFWPA can either provide all these records directly to me or provide access for NYWD to review these records as they are maintained at SFWPA's facilities. NYWD will consider full and timely compliance with either method to be "reasonable access to the records..." within the meaning of the Agreement for present purposes.

In the unlikely event that NYWD encounters any truly attorney-client privileged information in the course of accessing the system of accounts, we obviously agree to return it without any intended waiver by SFWPA. Long ago, SFWPA already provided NYWD with a copy of the "confidential" PG&E Power Purchase Agreement. As it has done for years, NYWD agrees to keep this agreement and any related accountings confidential. These remote concerns are insufficient reasons to completely block NYWD's access, nor do they justify an entirely separate agreement (e.g. a memorandum of understanding) every time NYWD wishes to exercise its unfettered right to inspect the SFPP Joint Facilities books and records.

For far too long, SFWPA has taken advantage of NYWD's patience. That status quo will not continue. If SFWPA does not provide full access to the accounting records within 7 days, NYWD will file suit to enforce its rights under both the Agreement and the CPRA as well as to address SFWPA's other continuing breaches. NYWD would prefer to avoid litigation, but ultimately the choice is up to SFWPA.

This Letter is sent without waiver of any rights or remedies enjoyed by NYWD under the Agreement. All Rights are expressly reserved.

Regards,

BOUTIN JONES INC.



Daniel S. Stouder

cc: NYWD c/o Jeff Maupin
Barbara Brenner, Esq.

Exhibit A

FWD: Financial Accounting Under 2005 SFWPA/NYWD Agreement

jmaupin@nywd.org <jmaupin@nywd.org>

Thu 8/24/2017 9:12 AM

To: finance@nywd.org <finance@nywd.org>

----- Original Message -----

Subject: Financial Accounting Under 2005 SFWPA/NYWD Agreement

From: jmaupin@nywd.org

Date: 8/22/17 2:51 pm

To: "Rath T Moseley" <rmoseley@southfeather.com>

Cc: "Alan Lilly" <ABL@bkslawfirm.com>

Dear Rath:

Following our previous discussions, I am writing to you about SFWPA's accounting reports and implementation of financial accounting provisions of the 2005 agreement between SFWPA and North Yuba Water District ("NYWD").

Agreement Provisions

Paragraph IV.1 of the agreement provides that all power and water-transfer revenues that SFWPA receives from operations of South Feather Power Project ("SFPP") Joint Facilities will be paid into the SFPP Joint Facilities Operating Account. Paragraphs III.6 and III.8 provide that any NYWD payments to SFWPA under these paragraphs for water received at SF-14 above 3,700 af/yr will be paid into this account,

Paragraph IV.2 provides that money from the SFPP Joint Facilities Operating Account will be used to make payments for various types of operating and related expenses, payments to SFWPA for recovery of its capitalized FERC re-licensing expenses, payments to SFPP Contingent Reserve Account, and payments required by paragraph IV.9 for differences between 3,720 af/yr and amounts actually received each year by SFWPA at WD-6.

Paragraph IV.5 provides for SFWPA's recovery of its FERC re-licensing expenses and specifies the required accounting. The SFPP Contingent Reserve Account is described in paragraphs IV.6, IV.7 and IV.8

Paragraph IV.3 provides that, on or before March 31 of each year, SFWPA will provide NYWD with a detailed accounting of the prior calendar year's revenues, expenses and payments, for the purposes of determining net power revenues available for distribution. This paragraph also provides that SFWPA will provide NYWD each month with a preliminary accounting of SFPP Joint Facilities revenues and expenses, as actually received and incurred and compared to budgeted amounts.

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Financial Information Provided by SFWPA's Annual Audited Financial Reports and Unaudited Preliminary Monthly Reports

Soon after June 30, 2010, when the provisions of Part IV of the 2005 agreement went into effect, Mike Glaze, SFWPA's former General Manager, advised NYWD that SFWPA would not be providing any separate financial information to NYWD, and that NYWD instead could obtain this information through SFWPA's annual audited financial reports and the monthly financial reports that are included in the packages that SFWPA posts each month for its Board of Directors meetings.

There are some significant information gaps in SFWPA's audited annual financial reports, which are discussed here.

1. The "OPERATING REVENUE" section of each annual report does not contain any breakdown of the "Other services" category, and the total number listed for this category in each report may include several different types of revenue sources. We would like to receive separate listings of the amounts of each of the sources of revenues in the audited annual accounting.
2. The "OPERATING EXPENSES" section of each annual report just lists the total expenses in four general categories of expenses. We would like to receive detailed breakdowns of the expenses in each of these categories in the audited annual accounting of these expenses.
3. The "TRANSFERS" section of each annual report just lists total transfers out of the SFPP Joint Facilities Operating Account. Our understanding is that these transfers may include several different categories, including, among others: (a) transfers to SFWPA's general account under paragraph IV.9; (b) transfers to SFWPA's general account for recovery of FERC re-licensing expenses; (c) transfers to the SFPP Contingent Reserve Account; (d) transfers of net power revenues to SFWPA; and (e) transfers of net power revenues to NYWD. We would like to receive separate listings of each of these amounts in the audited annual accounting.

The preliminary accounting reports that are included in SFWPA's monthly packages that SFWPA provides to its Board of Directors provide some additional details. However, these preliminary reports are not audited and we cannot tell if corrections are made to them after they are posted and before the annual audited reports are prepared. Also, these monthly reports just list the "year to date" totals, so it is difficult for us to determine the monthly amounts in the various categories that are included in these reports.

Neither the audited annual financial reports nor the unaudited monthly preliminary reports provides any breakdowns of the general categories of expenses and neither type of report has any separate entries for SFPWA's transfers from the SFPP Joint Facilities Operating Account to SFWPA's general account for the paragraph IV.9 payments.

Finally, we never have received the accountings of SFWPA's FERC re-licensing expenses required by paragraph IV.5.

Followup

We would like to meet with you and Steve Wong, SFWPA's Finance Manager, to develop a process under which SFWPA will provide the information we need to independently review SFWPA's calculations of the net power revenue payments to SFWPA's general account and to NYWD. We do not want to create any unnecessary burdens on SFWPA, but we do believe that SFWPA needs to provide more information to NYWD for us to be able to independently review these calculations.

Sincerely,

Jeffrey Maupin
General Manager

Hard copy to follow

Exhibit B

October 20, 2020

VIA U.S. MAIL & EMAIL

South Feather Water and Power Agency
Attn: Rath Moseley, General Manager
2310 Oro Quincy Highway
Oroville, CA 95966
rmoseley@southfeather.com

Re: North Yuba Water District Public Records Act Request, dated August 10, 2020

Dear Mr. Moseley:

Pursuant to the Public Records Act, Government Code section 6250 et seq. (“CPRA”), the North Yuba Water District (“District”) requested copies of certain accounting records on August 10, 2020. In addition to the CPRA, the District is entitled to these documents from the South Feather Water and Power Agency (“SFWPA”) pursuant to the 2005 Agreement Between NYWD and SFWPA (the “Joint Agreement”). All records were requested for the period of July 1, 2015 through June 30, 2020, unless otherwise noted.

The District requested that all records maintained by SFWPA in electronic form be provided in that same form, to avoid unnecessary expenses. On September 25, 2020, the District disclosed 855 pages of records in hard copy form, all of which are readily available in electronic form on SFWPA’s web site and, as such, were already in the possession of the District. SFWPA wrongfully charged the District \$85.50 for hard copies of records maintained by SFWPA in electronic format. The District demands a refund of the \$85.50 paid to SFWPA.

The records that were disclosed by SFWPA lack the level of detail requested by the District and required to be disclosed upon request under the Joint Agreement. The District requests that SFWPA review its records and provide the detailed accounting described in the District’s outstanding requests outlined below, no later than November 3, 2020. Should any of the responsive records be maintained in hard copy only, not available in electronic format on any platform, SFWPA may apply a portion or all of the \$85.50 it was previously paid.

- 1. Pursuant to Paragraph IV.3 of the Joint Agreement, please provide a detailed accounting of the South Feather Power Project (“SFPP”) Joint Facilities gross revenues and operating, general, and other expenses and payments, for purposes of determining the net revenues from SFPP Joint Facilities that are available for distribution to NYWD.**

In response to the District’s Request No. 1, SFWPA disclosed audited financial statements for 2014-2019. The District expects to receive detailed accounting records, including, but not limited to general ledger detail, invoices for all expenses, canceled check copies for all expenses, check registers, and bank statements for the SFPP Joint Facilities

- 3. Pursuant to Paragraph IV.4 of the Joint Agreement, please provide an accounting of all net revenues paid to NYWD.**

In response to the District’s Request No. 3, SFWPA disclosed audited financial statements for 2014-2019. The District expects to receive detailed accounting records, including, but not limited to calculations for and a listing of amounts paid to the District for the SFPP Joint Facilities

- 4. Pursuant to Paragraph IV.5 of the Joint Agreement, please provide quarterly accountings of all Federal Energy Regulatory Commission (“FERC”) re-licensing expenses of the SFPP, including a listing of the amounts of any withdrawals from SFWPA's reserve that were necessary to fund the FERC re-licensing, the applicable interest rates that SFWPA 's reserves earned during the period of the FERC re-licensing, and the 10.8-percent reductions for the costs of re-licensing the Sly Creek Powerhouse.**

SFWPA did not disclose any records in response to the District’s Request No. 4, nor did it provide any explanation for not responding to this request. The District expects to receive detailed accounting records, including, but not limited to, a listing of withdrawals from SFWPA’s reserve that were necessary to fund the FERC re-licensing, a list of applicable interest rates that SFWPA’s reserves earned during the period of the FERC relicensing, and calculations for the 10.8 percent reductions for the costs of re-licensing the Sly Creek Powerhouse.

- 5. Pursuant to Paragraph IV.7 of the Joint Agreement, please provide an accounting of all deposits to and withdrawals from the SFPP Contingent Reserve.**

SFWPA did not disclose any records in response to the District’s Request No. 5, nor did it provide any explanation for not responding to this request. The District expects to receive detailed accounting records, including, but not limited to, all deposits and withdrawals from the SFPP Contingent Reserve.

6. Pursuant to Paragraph IV.8 of the Joint Agreement, please provide any and all documentation for any short-term loans obtained by SFWPA to pay SFPP expenses.

SFWPA did not disclose any records in response to the District's Request No. 6, nor did it provide any explanation for not responding to this request. The District expects to receive detailed accounting records, including, but not limited to, documentation for any short-term loans obtained by SFWPA to pay SFPP expenses.

7. Pursuant to Paragraph IV.9 of the Joint Agreement, please provide an accounting of any payments made from the SFPP Joint Facilities Operating Account from May through December to SFWPA's general account for the value of any hydroelectric power that actually was generated during the previous month at the Woodleaf, Forbestown, or Kelly Ridge Powerhouse.

SFWPA did not disclose any records in response to the District's Request No. 7, nor did it provide any explanation for not responding to this request. The District expects to receive detailed accounting records, including, but not limited to, a list of any and all payments made from the SFPP Joint Facilities Operating Account from May through December of each year between 2014 and the present to SFWPA's general account for the value of any hydroelectric power that actually was generated during the provision month at the Woodleaf Forbestown or Kelly Ridge Powerhouse.

SFWPA is in violation of the CPRA with regard to Request Nos. 4 through 7, as it has not provided any records or any explanation for the lack of response. For all records detailed above, the District requests receipt in the native format in which the records are maintained by SFWPA. Please provide the detail of what is to be disclosed and the format in which such disclosures are to be provided so that the District can confirm that it has the software capabilities to review the native files or meet and confer on the best format to receive them in.

Best regards,

Churchwell White LLP

/s/ Barbara A. Brenner

Barbara A. Brenner
CRP/apm

Cc: Dustin Cooper, SFWPA General Counsel
Arthur Martinez, SFWPA Manager of Information Services
Jeff Maupin, NYWD General Manager