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April 20, 2021

VIA U.S. MAIL AND EMAIL

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

Dear Dustin:

In your letters dated March 3 and March 17, 2021, you requested that NYWD provide its “supporting documentation or analysis” regarding its demand that SFWPA distribute the excess funds that it holds in the JFOF. That is the purpose of this letter. Although upon further analysis the precise amount of required distributions is higher today, this letter contains roughly the same analysis Tim Bryan shared with Mr. Moseley and Mr. Wong at his last meeting at SFWPA’s office; those gentlemen unqualifiedly agreed then that substantial additional distributions needed to be made, and we expect SFWPA to similarly abide by its obligations under the 2005 Agreement now. This letter also serves as a formal demand that SFWPA immediately distribute \$3,200,949.90 to NYWD, which represents NYWD’s share of the 2019 net profits that SFWPA has kept in the SFPP Joint Facilities Operating Account (“Joint Account”) in violation of the 2005 Agreement, plus accrued interest.

Section IV of the 2005 Agreement directs SFWPA to “distribute any net power revenues on a 50/50 basis to SFWPA and [NYWD] under Paragraph IV.4 after meeting the expenses that are described in Paragraphs IV.1, IV.2, IV.5 and IV.6 and after making the payments to SFWPA’s general account that are described in Paragraph IV.9.”

The 2005 Agreement directs that various SFPP Joint Facilities expenses

. . . will be paid from the SFPP Joint Facilities Operating Account as payments for such expenses become due. In the event of any dispute as to whether a particular expense is within the authorized operating expenses of the SFPP, the matter will be resolved by reference to FERC’s Uniform System of Accounts for jurisdictional hydroelectric projects. In accordance with the practice established by SFWPA for the payment of operation and maintenance expenses of the SFPP, SFWPA may maintain a minimum working capital balance of 15% of the

budgeted annual operation and maintenance expenses for SFPP Joint Facilities in the SFPP Joint Facilities Operating Account, to ensure that sufficient funds are available in this account to pay such expenses on a current basis. If FERC requires a different percentage, then the percentage in the preceding sentence will be adjusted to comply with FERC's requirement. . . .

(2005 Agreement, Paragraph IV.1).

SFWPA's own accounting records demonstrate that in 2019, SFWPA maintained more than the 15% working capital balance plus the contingency reserve requirement, without cause or explanation. Thereby, SFWPA failed to make the required net profit distribution for 2019.

SFWPA's Joint Facilities Operating Fund Financial Report for the January 28, 2020 Board Meeting indicates that the 2019 actual reserve accounts' ending balance was \$25,497,635 and the required working capital balance and contingency reserve balance totaled \$19,530,000. (2019 JFOF P&L.xlsx (enclosed)).

South Feather Water and Power Agency							
Joint Facilities Operating Fund Financial Report							
January 28, 2020 Board Meeting							
		2016	2017	2018	2019	2019	2019
ACCOUNT	DESCRIPTION	ACTUAL	ACTUAL	ACTUAL	BUDGET	ESTIMATED	ACTUAL
							Thru 12/31/2019
	Beginning Balance	22,560,754	19,928,038	17,358,092	17,055,497	17,745,105	17,745,105
	NYWD-Additional Payment	0	(2,214,644)	(1,393,737)	0	0	0
	General Fund-Additional Payment	0	(2,214,644)	(1,393,737)	0	0	0
	Loan Payable to PG&E	(8,585,545)	(3,880,140)	(3,000,000)	0	(308,910)	(308,910)
	Ending Balance	19,928,038	17,358,092	17,745,105	17,945,827	21,880,103	25,497,635.00
NOTE: Per NYWD agreement, 15% working capital reserve of \$1,530,000, and \$18,000,000 contingency reserve is required.							

In SFWPA's and NYWD's Additional Distributions spreadsheet, the required working capital balance and contingency reserve balance for 2019 are listed as totaling \$19,569,960, nearly \$40k higher than the balance listed on SFWPA's other document. (NYWD add distributions.xlsx (enclosed)).

	A	B	C	D	E
1	South Feather Water and Power Agency				
2	North Yuba Water District				
3	Additional Distributions				
4	2019				
5					
6					
7	Required Reserve Balance =				
8		Contingency			18,000,000
9		Working Capital			1,569,950
10					
11		Total			19,569,950
12					

Even ignoring the discrepancy in the required reserve balance for 2019, it appears that SFWPA has improperly withheld 2019 net revenue from NYWD. Pursuant to Section IV of the 2005 Agreement, any amount left after paying joint expenses and satisfying the required reserve balances must be distributed to SFWPA and NYWD on a 50/50 basis.

For 2019, SFWPA's records show: (a) all expenses paid; (b) a required reserve balance totaling \$19,569,950 (on the high end); and (c) an ending balance of \$25,497,635. Accordingly, the reserve balance for 2019 was overfunded by \$5,927,685 (\$25,497,635 minus \$19,569,950). As such, NYWD is entitled to \$2,963,842.50, half of the overfunded amount.

Throughout the 2005 Agreement, FERC requirements explicitly control over conflicting terms. Yet, NYWD is unaware of any – and SFWPA has pointed to no – FERC requirement that mandates SFWPA to withhold more than a 15% working capital balance. In fact, SFWPA's financial report for the January 28, 2020 Board Meeting states “[p]er NYWD agreement, 15% working capital reserve . . . is required.” (2019 JFOF P&L.xlsx (enclosed)).

Therefore, SFWPA must immediately distribute \$2,963,842.50 to NYWD, representing NYWD's share of the unallocated 2019 net profits. Interest is also accruing at the rate of 10% per annum. Civil Code §§ 3287; 3289. SFWPA was required to make the distribution no later than July 1, 2020, and therefore breached the 2005 Agreement as of July 2 last year. Through April 20, 2021, interest has accrued in the total amount of \$237,107.40. Therefore, NYWD demands that SFWPA pay **\$3,200,949.90**. Interest will continue to accrue at the daily rate of \$812.01.

Please respond in writing by no later than April 28, 2021 to confirm whether and when SFWA will make the required past due distribution. If SFWPA disputes that it must pay additional

distributions to NYWD or disputes the dollar amount of NYWD's demand, we will need you to articulate all reasons why in writing within that same timeframe.

Regards,

BOUTIN JONES INC.

A handwritten signature in blue ink, appearing to read "Dan Stouder", is written over a light blue horizontal line.

Daniel S. Stouder

Enclosures

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