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May 17, 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:

This letter responds to yours of May 11, 2021.

General response

As I reminded you in person on May 10, from our perspective the purpose of the meet and confer meeting was to a) finally receive SFWPA's response to NYWD's demand for additional distributions from 2019 and b) work through the outstanding issues related to NYWD's ongoing JFOF audit. You provided a power point presentation just before the meeting. At the meeting we heard Steve Wong's explanation regarding the slides and he answered some of our question. As you threatened to do before the meeting, you then arbitrarily cut off the discussion and refused to allow your client to answer any question regarding JFOF accounting that your side alone deemed to be unrelated to the 2019 year. Mr. Wong also was unable to respond to several of Tim Bryan's questions and he promised to follow up with us and/or provide additional documentation.

It is truly unfortunate that you and your client curtailed what could have been a much more productive meeting. We were prepared to go through all of our outstanding questions and I hoped that SFWPA would finally provide all requested documents and respond to all our questions relating to the JFOF.

Recall that Part IV, Para. 1 of the 2005 Agreement provides that "at all times" NYWD will have "reasonable access" to the JFOF "system of accounts" "for the purpose of verifying the accuracy and adequacy of said accounting." SFWPA does not alone get to decide what constitutes reasonable access. SFWPA also cannot draw arbitrary lines around what information it is willing to provide, in what forum it will provide it, or what questions it must answer related to the JFOF system of accounts. And yet, that is exactly how this dispute has played out over the past several months culminating in the truncated meeting on May 10.

Even today, we have many relevant questions that remain unanswered (see *e.g.* "Further questions" below). These are technical and/or legal in nature and you know they are best addressed adviser-to-adviser and/or principal-to-principal. Mr. Bryan, Mr. Maupin, and I serve at the pleasure and direction of NYWD's board of directors. If SFWPA would only reciprocate, we are more than capable of working with you and Mr. Moseley and Mr. Wong to fully address the necessary questions and obtain the required documentation to allow NYWD to verify the accuracy and adequacy of SFWPA's JFOF accounting.

We have no interest at this point in inviting uninitiated and unqualified spectators into the process of seeking SFWPA's compliance with the 2005 Agreement. Furthermore, why on earth would you only allow your client to answer technical accounting and legal questions in a public meeting but not in the very meeting that the 2005 Agreement requires in order to hopefully resolve disputes without the need for litigation? We will consider whether a public meeting makes sense if and when your client <u>first</u> a) allows us to complete our audit and b) agrees to comply with the 2005 agreement going forward by ensuring NYWD's ongoing reasonable access to the JFOF accounting records. But at this point, your request for a public meeting is an unnecessary, premature, and evasive distraction.

Significant disagreements

I will now address the material misrepresentations in your May 11, 2021 letter.

First, and most importantly, nothing in the 2019 audited financial statements supports the conclusion that the JFOF had a negative change in net position. The 2019 change in net position was actually a positive $9,714,537 as indicated on page 50 of the 2019 Audited Financial Statements. The negative $1,179,365 is a number calculated by SFWPA employing its own methodology which is unsupported by the 2005 Agreement in order to determine whether an annual distribution is due to NYWD. In fact, the independent auditors do not opine on the negative $1,179,365 anywhere in the audited financial statements.

Second, Tim Bryan absolutely did not adopt your client's explanation about the need for a distribution. Mr. Bryan denies that the "additional distribution" conversation he had with Mr. Wong and Mr. Moseley involved 2021 or any future distributions. The conversations were always backward looking and consistently revolved around the concept of an overfunded reserve. You will recall that the last thing Mr. Bryan said on this topic was the parties were going to have to "agree to disagree" about the competing recollections of the prior conversations. I respectfully ask that you not further misrepresent what Mr. Bryan said at the May 10 meeting.

Third, based on what we have seen to date, NYWD's distribution calculation is valid. We understand that slight modifications need to be made using updated/final numbers. But the 2005 Agreement does not support SFWPA's methodology to book the entirety of the PG&E loan as an accounting offset to foreclose an otherwise clear need to distribute significant funds. Pursuant to Part IV. Paragraph 8 of the Joint Agreement, "[i]f the balances in the SFPP Joint Facilities Operating Account and the SFPP Contingent Reserve Account together are not sufficient at any time to pay all SFPP Joint Facilities operating, maintenance, administrative and regulatory expenses as they become due, then SFWPA may obtain a short-term loan for sufficient money to pay such expenses, and may secure this short-term loan with future SFPP Joint Facilities gross power revenues." SFWPA has failed to explain the need either to obtain a short-term loan in the first place or why the balances in the Operating and Contingent Reserve accounts were ever inadequate. NYWD thus disagrees that this paragraph of the 2005 Agreement has any relevance in the distribution calculations.

Further questions

Having now had the chance to meaningfully review the power point presentation and to digest Mr. Wong's explanations, we raise the following additional questions.

- NYWD JFOF 2019 Meet and Confer Presentation - Slide 5
  - The content indicates that the 2019 budget included a $6,500,000 loan payable to PG&E.
    - Please provide all documentation related to notes payable to PG&E, including but not limited to, loan agreement, note payable and amortization schedule.
    - Please explain the original purpose of the loan.
    - Pursuant to Part IV. Paragraph 7 of the Joint Agreement, "[t]he SFPP Contingent Reserve Account will be used to pay for major repairs and replacements of SFPP Joint Facilities." Please explain why the reserve account was not used to pay for the PG&E debt acquired in 2019.
- NYWD JFOF 2019 Meet and Confer Presentation - Slide 6
  - The content purports to be an extract from the July 23, 2019 Board Meeting
  - The 2018 Actual Ending Balance reflects a balance of $19,845,708
  - The 2019 Budget Beginning Balance reflects a balance of $17,055,497
  - Please provide an explanation for the change in 2018 ending balance to 2019 beginning balance

- NYWD JFOF 2019 Meet and Confer Presentation - Slide 7

  - The content purports to be an extract from the August 27, 2019 Board Meeting
  - The 2018 Actual Ending Balance reflects a balance of $17,745,105
  - The 2019 Budget Beginning Balance reflects a balance of $17,055,497
  - The 2019 Estimated Beginning Balance and 2019 Actual thru 7/31/2019 reflects a balance of $17,745,105
  - Please provide an explanation for the changes in 2019 beginning balances

- NYWD JFOF 2019 Meet and Confer Presentation - Slide 12

  - During the meeting when discussing how the figures on slide 12 reconcile to the audited financials, Steve Wong indicated that he maintains a reconciliation spreadsheet for the numbers included in the Additional Distributions calculation to the audited financial statements. Please provide the reconciliation for all years governed by the Joint Agreement.
  - In addition to the capital assets schedule provided totaling the $3,500,770 of additions in 2019, please provide the payment sources for each capital asset addition (i.e. insurance proceeds, FEMA, OES, local, JFOF direct, etc.)
  - Please explain why SFWPA uses the Change in Net Position less the increase in capital assets less the entire outstanding debt to calculate what is due to be paid out under the Joint Agreement?
    - Please explain what sections of the Joint Agreement specify that this is the appropriate calculation.
  - It appears that the annual distribution calculation takes the Change in Net Position (calculated as 2019 net position less 2018 net position) less the increase in capital assets (calculated as 2019 capital assets less 2018 capital assets), but the debt is measured on the entirety of the debt outstanding.
    - Please explain why the debt number in the calculation does not reflect a consistent calculation of 2019 outstanding debt less 2018 outstanding debt.
    - What sections of the Joint Agreement support this calculation?
  - In 2019, the methodology used by SFWPA to calculate the annual distribution is different than the methodology used to calculate the 2017 additional distributions. In 2017, it appears that SFWPA did not reduce the Change in Net Position by either the increase in capital assets or the loans payable.
    - Please explain the rationale for using a different methodology in the 2019 calculation.

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- SFWPA 2019 Audited Financials
  - Pg. 11-12. The 2019 Audited Financial Statements indicate that SFWPA entered into a five-year Installment Purchase Agreement for the reimbursement of PG&E for the Lost Creek Dam Modification Project.
    - It appears that the reserve balance as of March 31, 2019 (from the April 30, 2019) Board Minutes was $22,717,806, which would have covered the $8,000,000 of debt that was acquired in May 2019 in order to cover the PG&E debt. Please explain why SFWPA deemed a short-term loan necessary instead of using the reserve balance to cover the debt.
  - Pg. 46. What does the "unrestricted net position" balance of $20,342,401 represent?
  - Pg. 46. During the meeting, Steve Wong indicated that the reserve ending balance was equivalent to available working capital. He further defined working capital as current assets minus current liabilities. By this logic, for 2019, the joint facilities reserve ending balance would be $29,375,355 ($32,912,661 - $3,537,306). Please confirm that this is the correct calculation of the reserve ending balance.
  - Pg. 46. During the meeting, it was explained that the $9,442,857 due from other funds balance is made up of the $2,666,634 due to other funds in the legacy projects fund and the remainder is related to commingled investments.
    - Please provide where in the Joint Agreement it allows general funds to be commingled with joint facilities funds.
    - Please provide the investment detail for the $8,587,288 investment balance in the general fund, including a breakdown of the portion that is related to joint facilities.

Conclusion

I will close by reminding you that the 2019 overfunded reserves are just one issue that remains in dispute. SFWPA remains in breach of the 2005 Agreement by not providing answers to questions and unredacted documents that NYWD needs in order to verify the "accuracy and adequacy" of the JFOF accountings. Part IV, Para. 1. All this information will be available to NYWD through written discovery and depositions in a lawsuit. Therefore, why not provide the information now and save the parties a lot of time and money? The 2005 Agreement requires it anyway. Because SFWPA alone maintains the explanations and documentation, your client literally controls whether there will be yet more litigation between these parties. But I can assure you that if SFWPA does not change course forthwith, NYWD will sue to enforce its rights.

We have been making requests for documentation and information for almost a year now. Unfortunately it appears that you and your client have effectively shut down the flow of information and the exchange of documentation. And, NYWD's patience is nearly exhausted.

That said, there is still time to avoid litigation if SFWPA finally agrees to provide the transparency that is required under the 2005 Agreement. Please let me know by the end of this week if your client has reconsidered its position on these matters.

Regards,

BOUTIN JONES INC.

Daniel S. Stouder

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