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June 3, 2021

VIA USPS & EMAIL

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Re: Response to NYWD's May 17, 2021 Letter

Dear Mr. Stouder:

We are growing increasingly confused by NYWD and your Firm's demands on NYWD's behalf. NYWD repeats a desire for South Feather Water & Power Agency to answer questions and generate (not duplicate) documents and analysis to assist NYWD in its audit of joint facilities operating fund (JFOF). Yet NYWD refuses – repeatedly – to discuss such matters in an open meeting at which there can be an open dialog, board-to-board, in a workshop setting. Why?

NYWD offered an overly simplistic analysis of 2019 net revenues and issued a “formal demand” for payment triggering meet and confer discussions related solely to 2019. Yet NYWD now recognizes its “formal demand” was wrong and was not in accord with either the 2005 Agreement or generally accepted accounting standards and good utility practice. NYWD's May 17, 2021 letter now moves the goal posts on this 2019 “dispute”, questioning the Agency's

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decision in May 2019 to secure a loan to reimburse a longstanding obligation to Pacific Gas & Electric Co. that originated in 2010. This longstanding obligation was discussed numerous times in Agency's open public meetings since legacy project discussions commenced with PG&E in approximately 2008. Why is NYWD moving the goal posts and now questioning this arrangement in 2021? If NYWD had questions, or concerns, it should have raised those in 2010 when contracts with PG&E were executed or in 2018 and 2019 when this subject was repeatedly discussed in public board meetings.

In sum, by all indications, NYWD is hellbent on litigation regardless of how baseless and ever-changing its claims. Why?

Agency Answer to "General Response"

The decision to confine meet and confer discussions to the subject of dispute – NYWD's 2019 "formal demand" – was not "arbitrary". To the extent NYWD persists in pursuing its now-modified demand as to 2019, the venue for that discussion under the 2005 Agreement is to meet and confer. To the extent NYWD has other questions about JFOF, the Agency's accounting standards and practices, good utility practice, or other topics related to the 2005 Agreement, the venue repeatedly offered by the Agency is a public workshop.

NYWD has been provided copies of all financial and accounting data it has requested from January 1, 2010 through 2021. As the Agency has stated in the past, NYWD was provided more access than what the 2005 Agreement requires. We caution you not to conflate access with understanding. The problem that NYWD is now encountering is that it does not understand and cannot interpret the voluminous data it has been provided. In good faith, the Agency has offered to have a discussion board-to-board to answer whatever foundational questions NYWD may have. We do not see board members as "uninitiated and unqualified spectators"; rather we see them as principals that would greatly benefit from listening to and understanding these matters. We see direct board member discussion as necessary to attempt to deescalate the "dispute" that you have unnecessarily escalated.

Agency Answer to "Significant Disagreements"

In response to your first point, the 2019 change in net position of \$9,714,517 was publicly stated and reported in the 2019 independently audited financial statements. The 2019 net revenue calculation of negative \$1,179,365 is also based on the 2019 independently audited financial statements and is supported by the 2005 Agreement. Increase in capital assets is necessary for funding capital assets as set forth in Part IV, paragraph 2 of the 2005 Agreement:

2. Portions of the gross revenues that are received from the sale of power generated by SFPP Joint Facilities will be required to pay the operating and administrative and general expenses of such facilities, to pay the costs of all other required long-term maintenance, deferred maintenance, capital upgrades, transmission, compliance and other fees and expenses for such facilities that are ordered by FERC or any other regulatory agency with jurisdiction over the SFPP, to pay SFWPA for the recovery of its capitalized FERC re-licensing expenses, to make any payments required to fund or maintain

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the SFPP Contingent Reserve Account, and to make the payments required by Paragraph IV.9.

(Emphasis added.) Like capital assets, loan proceeds and its subsequent obligations are not accounted for as operating revenues or expenses in the change of net position number because they are transactions that occur in balance sheet accounts. The 2005 Agreement is clear and unambiguous that distribution of JFOF net revenue is not allowed if a loan is outstanding:

8. If 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. **If SFWPA obtains such a loan, then, while this loan is outstanding, all SFPP Joint Facilities gross power revenues that are not needed for present SFPP Joint Facilities operating, maintenance, administrative and regulatory expenses will be used to repay this loan, and loan will be paid off before any distribution of SFPP Joint Facilities net power revenues is made to SFWPA or YCWD.**

(2005 Agreement, Part IV, paragraph 8, emphasis added.) Does NYWD believe that these universally accepted accounting standards and clear contract language do not apply? Please explain.

In response to your second point, we note that “agree to disagree” is far different from your prior statements attributed to Mr. Bryan that he heard an “admission” and that Agency representatives “unqualifiedly agreed” to NYWD’s now wholly incorrect and refuted 2019 “formal demand”. Thank you for confirming that those statements attributed to Agency staff did not occur.

In response to your third point, NYWD again moves the goal posts concerning the 2019 “dispute”, complaining that the Agency should not “book the entirety of the PG&E loan as an accounting offset”. Part IV, paragraph 8 of the 2005 Agreement refutes NYWD’s point (quoted and emphasized above). Additionally, it is the Agency, not NYWD, that is vested with the expertise and decisionmaking discretion to make these determinations. NYWD cannot second guess the Agency’s expertise in this matter, especially given that this expertise was reasonably exercised in accordance with the 2005 Agreement and good utility practice.

Finally, NYWD complains that the Agency “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.” Perhaps NYWD does not recall, but the Agency did discuss the background and need for a short-term loan as part of our May 10, 2021 meet and confer. (See, e.g., Slides 10, 14 and 15.) Additionally, this arrangement with PG&E began in approximately 2008, agreements were executed in 2010, and extensive public discussions about the loan occurred in the Agency’s public meetings in 2018 and 2019 leading up to the May 2019 decision to secure financing to reimburse PG&E. We doubt that the Agency “owes” NYWD an

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explanation about such decisionmaking, but even if it did, NYWD did not avail itself of opportunities to participate in decisionmaking concerning this topic. NYWD's refusal to engage in dialog with the Agency existed in 2018/2019 and unfortunately continues to this day.

Agency Answer to NYWD Further Questions – Slide 5

Given NYWD has moved the goal posts on the 2019 dispute, additional meet and confer is needed. Please give us NYWD's availability the week of June 28, 2021 to meet in person at the Agency's offices. We again request that two board members from each district attend. The Agency will provide documents responsive to NYWD's requests on June 18, 2021. Please respond, in writing, as to whether NYWD will also agree to provide responses to the below questions on June 18, 2021 so that we can be more efficient and effective in our ongoing meet and confer sessions.

Agency Answer to NYWD Further Questions – Slide 6

Given NYWD has moved the goal posts on the 2019 dispute, additional meet and confer is needed. Please give us NYWD's availability the week of June 28, 2021 to meet in person at the Agency's offices. We again request that two board members from each district attend. The Agency will provide documents responsive to NYWD's requests on June 18, 2021. Please respond, in writing, as to whether NYWD will also agree to provide responses to the below questions on June 18, 2021 so that we can be more efficient and effective in our ongoing meet and confer sessions.

Agency Answer to NYWD Further Questions – Slide 7

Given NYWD has moved the goal posts on the 2019 dispute, additional meet and confer is needed. Please give us NYWD's availability the week of June 28, 2021 to meet in person at the Agency's offices. We again request that two board members from each district attend. The Agency will provide documents responsive to NYWD's requests on June 18, 2021. Please respond, in writing, as to whether NYWD will also agree to provide responses to the below questions on June 18, 2021 so that we can be more efficient and effective in our ongoing meet and confer sessions.

Agency Answer to NYWD Further Questions – Slide 12

Given NYWD has moved the goal posts on the 2019 dispute, additional meet and confer is needed. Please give us NYWD's availability the week of June 28, 2021 to meet in person at the Agency's offices. We again request that two board members from each district attend. The Agency will provide documents responsive to NYWD's requests on June 18, 2021. Please respond, in writing, as to whether NYWD will also agree to provide responses to the below questions on June 18, 2021 so that we can be more efficient and effective in our ongoing meet and confer sessions.

Agency Answer to NYWD Further Questions – 2019 Audited Financials

Given NYWD has moved the goal posts on the 2019 dispute, additional meet and confer is needed. Please give us NYWD's availability the week of June 28, 2021 to meet in person at

the Agency's offices. We again request that two board members from each district attend. The Agency will provide documents responsive to NYWD's requests on June 18, 2021. Please respond, in writing, as to whether NYWD will also agree to provide responses to the below questions on June 18, 2021 so that we can be more efficient and effective in our ongoing meet and confer sessions.

Agency Questions and Formal Demand of NYWD Related to the 2019 Dispute

1. Pursuant to NYWD's now modified 2019 demand, if the Agency had depleted reserves in May 2019 to repay the PG&E loan, what, in NYWD's opinion, would have occurred through April 2021 to the following:
 - a. Reserve balances
 - b. The financial viability of the South Fork Power Project
 - c. The ability to distribute net revenue in years 2020 and 2021
 - d. The ability to distribute minimum distributions in 2020 and 2021
 - e. Please provide detailed financial accounting of this hypothetical scenario
2. Does NYWD contend that depleting reserves in May 2019 to repay the PG&E loan constitutes good utility practice?
3. Does NYWD contend that it is vested with decisionmaking under the 2005 Agreement concerning whether to secure a short-term loan, or not? Please explain with references to the 2005 Agreement.
4. In 2019, does NYWD contend that it has utilized its "best efforts to maintain in good working order the Upper Forbestown Ditch". (See 2005 Agreement, Part VI, paragraph 2.) If so, please explain.
 - a. How much did NYWD budget for maintenance, operation and repair of the Upper Forbestown Ditch in 2019?
 - b. How much did NYWD actually spend in maintenance, operation and repair of the Upper Forbestown Ditch in 2019?
 - c. Please provide supporting documentation to questions 4.a and 4.b
5. In NYWD's "Conclusion" to its May 17, 2021 letter, NYWD alleges that the Agency is in "breach" of the 2005 Agreement "by not providing answers to questions and unredacted documents"¹

¹ This allegation is specious and misleading. It concerns NYWD's February 2, 2021 letter requesting seventy-five (75) separate invoices. Agency promptly responded and provided seventy-one (71) unredacted invoices. Only the narrative portion of Hemming Morse, LLP invoices (totaling two) and narrative portion of this Firm's invoices (totaling two) were redacted. As we have already represented, all Hemming Morse work was done at the request of counsel and to assist counsel concerning litigation with Sierra Mountain Construction, Inc., a JFOF expense. No other work was performed by Hemming Morse. As for this Firm's August 2018 invoice (check no. 54434, journal no. 57200), \$14,548.77 was allocated to the Agency's General Fund and \$11,122.90 was allocated to JFOF (totaling \$25,671.67). As for this Firm's March 2019 invoice (check no. 55735, journal no. 57200) \$6,426.46 was allocated to the Agency's General Fund and \$23,282.00 was allocated to JFOF (totaling \$29,708.46). NYWD's allegations that all this Firm's invoices are allocated to JFOF is patently incorrect. NYWD's request for additional detail is totally unnecessary for its "audit" and simply reflects an attempt by NYWD to have the Agency waive its lawful right to privileged communications with its legal counsel.

- a. Provide the specific sections of the 2005 Agreement that NYWD alleges is being breached by the Agency.
 - b. Provide the specific sections of the 2005 Agreement that NYWD is relying upon to refuse public, board-to-board discussions and, instead, that the Agency is required to answer questions in secret session.
 - c. Provide the specific sections of the 2005 Agreement that NYWD is relying upon to allege it is entitled to unredacted privileged attorney/client and attorney work product.
 - i. Provide citations to law to make NYWD believe all this privileged "information will be available to NYWD through written discovery and depositions in a lawsuit".
6. Provide public records for the 2019 year responsive to the Agency's February 10, 2021 Public Records Act Request (courtesy copy attached).
 7. Provide an explanation for why NYWD refused the Agency's November 4, 2019 offer to jointly retain and utilize a qualified independent forensic auditor to offer an opinion as to the Agency's accounting standards and practices associated with the 2005 Agreement.
 8. Provide an explanation for why NYWD refused the Agency's May 29, 2019 offer to create an advisory committee of two Agency board members and two NYWD board members, the purpose of which would be to discuss JFOF and would be a venue to ask questions, receive information and understanding regarding JFOF and other issues of joint interest.
 9. It appears NYWD is questioning the use of change in net position in 2019 as a method to determine net revenue. If NYWD disagrees with its use in this manner, please explain a different methodology that NYWD believes would be better.
 - a. Please explain what sections of the 2005 Agreement support this alternate method
 10. It appears NYWD is questioning the commingling of investment funds.
 - a. Please explain NYWD's preferred approach to investing reserve funds
 - b. Please explain how NYWD's preferred approach would impact return on investment, safety and liquidity of the monies.
 - c. Please explain what sections of the 2005 Agreement support NYWD's preferred approach to investing funds

We will close by pointing out a troubling discrepancy in NYWD's correspondence. In NYWD's March 1, 2021 letter, it stated:

For most of 2020, SFWPA refused to provide accounting information to NYWD under the guise that doing so would require SFWPA to "run reports and manipulate accounting software." Mr. Moseley doubled down on this statement in his February 10 letter. We now know this was just a rouse. Mr. Bryan has been able to obtain most of what we requested and he can confirm that none of it required any manipulations of the accounting software. The spreadsheet titled "Additional Distributions" has been most helpful to understanding SFWPA's processes. SFWPA maintains this document in the ordinary course of business

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and it, along with everything else Mr. Bryan recently obtained, should have been provided long ago.

(NYWD March 1, 2021 letter, p. 3 of 3, section 7.) The facts are now known. NYWD is requesting creation, not duplication, of records so that it can understand the data that it has been presented. That is evident from NYWD's "Further Questions". Unlike NYWD, the Agency has, in fact, been completely transparent and forthright in its communications, including that the information, questions and analyses that NYWD desired would require the Agency to create documents and analyses. Neither the Public Records Act, nor the 2005 Agreement require that the Agency create content as part of providing "access" to NYWD for JFOF accounting records. Nonetheless, the Agency, again, is willing to accommodate NYWD's desire to better understand the 2005 Agreement through a public workshop.

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

**MINASIAN, MEITH,
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February 10, 2021

Via Email and USPS

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Re: Request Under the California Public Records Act

Ladies & Gentlemen:

This Firm represents South Feather Water & Power Agency (Agency). On behalf of the Agency and pursuant to the California Public Records Act, Government Code sections 6250, et seq., this letter requests copies of all records in the following categories within the control, custody, or possession of North Yuba Water District (NYWD):

1. An exact duplication of NYWD's accounting and billing software as it exists at the time NYWD duplicates the software onto an external storage device in response to this Request.
2. All records related or referring to NYWD water sales, exchanges, deliveries or transfers to any out-of-district third party from January 1, 2010 through present.

Jeff Maupin, General Manager, North Yuba Water District
Barbara Brenner, General Counsel, North Yuba Water District
Daniel Stouder, Special Counsel, North Yuba Water District
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3. All records related or referring to the volume or measurement of water diverted for use in NYWD or leaving NYWD's boundaries, including Oroleve Creek diversions into the Upper Forbestown Ditch, water diverted at Steppat Weir and tailwater leaving NYWD from January 1, 2010 through present.
4. All records related or referring to the Agency from January 1, 2017 to present.
5. All records related or referring to any current or former employee of the Agency from January 1, 2017 to present.
6. All records related or referring to any current or former consultant of the Agency from January 1, 2017 to present.
7. All records related or referring to any current or former Board Member of the Agency from January 1, 2017 to present.
8. All records of correspondence between NYWD and Browns Valley Irrigation District, including records related or referring to Browns Valley Irrigation District from January 1, 2017 to present.
9. All records of correspondence between NYWD and Yuba Water Agency, including records related or referring to Yuba Water Agency from January 1, 2017 to present.
10. All records produced or to be produced in response to the Public Records Act request of NYWD Director Gretchen Flohr.
11. All records on Jeff Maupin's personal devices and accounts, including email, text messages, records of meetings and records of phone conversations that in any way substantively relate to NYWD business or potential NYWD business from January 1, 2017 to present.
12. All records of correspondence between Jeff Maupin and any current or former Board Member of NYWD from January 1, 2017 to present.

Jeff Maupin, General Manager, North Yuba Water District
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Daniel Stouder, Special Counsel, North Yuba Water District
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13. All records that in any way substantively relate to NYWD business or potential NYWD business, including email, text messages, records of meetings, and records of phone conversations, on the personal devices and accounts of current and former Board Members of NYWD from January 1, 2017 to present, except current NYWD Board Members Fred Mitchell and Andrew Hill.

A request for records or documents "referring", "relating" or that "relate" to a subject, requests all records that in any way mention the subject and are in any way relevant to the subject.

If your process in responding to any of the numbered Requests above, including numbers 11, 12 and 13 result in Mr. Maupin and NYWD's Directors executing declarations or affidavits, we request copies of those documents.

If you are unable to comply with this Request because you believe it is not focused or effective, Government Code section 6253.1(a) requires you to (1) assist us in identifying the records and information that are responsive to the request or to the purpose of the request; (2) describe the information technology and physical location in which the records exist; (3) provide us with suggestions for overcoming any practical basis for denying access to the records or information we are seeking.

Government Code section 6253(b) requires the prompt duplication of records upon the payment of fees covering the direct costs of duplication. Please contact us as to the amount due for copying the records.

If you believe that any records within the scope of this Request are exempt from disclosure, we request that, pursuant to Government Code section 6255, you notify us immediately, in writing, explaining the reasons for withholding the records. We further request that, pursuant to Government Code section 6253(d) that you identify the names and positions of each person responsible for such determinations.

Please feel free to contact me if you have any questions or would like to discuss this Request.

Jeff Maupin, General Manager, North Yuba Water District
Barbara Brenner, General Counsel, North Yuba Water District
Daniel Stouder, Special Counsel, North Yuba Water District
Re: Request Under the California Public Records Act
February 10, 2021
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Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By 

DUSTIN C. COOPER

cc: Rath Moseley, General Manager
South Feather Water & Power Agency