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June 11, 2021

VIA EMAIL

Michael Vergara
mvergara@somachlaw.com

Re: South Feather Water & Power Agency's Offer of Mutual Aid

Dear Mr. Vergara:

We appreciate your letter of June 8, 2021 on behalf of North Yuba Water District and NYWD's desire to ensure compliance with the California Environmental Quality Act. This is encouraging progress given NYWD's recent past and its cavalier – and improper – attitude towards CEQA compliance. In this instance, however, NYWD's zeal for CEQA compliance is misplaced.

NYWD claims, for the first time, that “the Agency approved a project under CEQA” in offering mutual aid assistance on May 7, 2021 and then having the Agency's Board of Directors ratify that offer on May 25, 2021. CEQA only applies when a public agency proposes to “approve” a “project”. Even assuming, *arguendo*, the offered maintenance or repair work is a “project” under CEQA, the Agency did not “approve” a project by making an offer of mutual aid. The term “approval” refers to a public agency decision that “commits the agency to a definite course of action in regard to a project”. (14 Cal. Code Regs. § 15352(a).) “Approval” does not include an agency's “mere interest” in a project, “or inclination to support” a project. (14 Cal. Code Regs. § 15004(b)(4).) Nor does an offer of mutual aid, which NYWD has neither considered nor accepted, create a legally binding contract under California law. (See, e.g., Civil Code §§ 1550, 1565.)

While you did not raise a CEQA concern, you will recall our email correspondence prior to the Agency's May 25, 2021 meeting. In that correspondence, you were counseled that “The action being brought to South Feather's board this afternoon is ratification of that offer. If that occurs, the offer is not self-implementing, meaning NYWD would then need to agree to the offer, which we would hope NYWD would do. I view this as positive for all sides.” (See email from Dustin C. Cooper to Michael Vergara, May 25, 2021 at 9:39AM.) Yet, to date, NYWD has not accepted, or even considered, the Agency's offer. Since the Agency's May 7, 2021 offer,

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NYWD has convened at least three public meetings to discuss other NYWD business, yet this item was not even agendaized for consideration. To our knowledge, NYWD board members do not even know about the Agency's offer. Why NYWD staff and consultants would withhold this information from elected officials responsible for the provision of water service is inexplicable, especially given it is a win-win-win for all parties and directly addresses and mitigates emergency drought conditions in NYWD.

Following the Agency's initial offer of mutual aid, on May 10, 2021 Governor Newsom issued a Proclamation of a State of Emergency for Drought for forty-one (41) counties in California, including Yuba and Butte Counties. Governor Newsom cited "extreme drought conditions" and the need to address "urgent challenges, including the risk of water shortages in communities, greatly increased wildfire activity, diminished water for agricultural production" and other challenges. Governor Newsom found that drought conditions "by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single government and require the combined forces of a mutual aid region or regions to appropriately respond". (Underlining added.) That is exactly what the Agency has offered and the assistance, if accepted by NYWD, would address and mitigate current emergency conditions existing in NYWD's service area. This is a unique situation in which, despite the drought, NYWD does not have a water supply problem; rather, NYWD has an entirely fixable water distribution problem.

NYWD has everything necessary and at its disposal to address and mitigate emergency conditions within NYWD. It has the financial means to fund the repair work. It has an existing mutual aid agreement with the Agency. The Agency has the equipment and experienced personnel to promptly undertake the work. The Agency has sufficient water currently in its storage facilities to deliver more than enough water to supply the needs of NYWD's customers. The only thing missing is NYWD's consideration and acceptance of this win-win-win offer. The Agency requests that this item be agendaized as soon as possible for consideration by the NYWD board of directors.

Very truly yours,

MINASIAN, MEITH,
SOARES, SEXTON & COOPER, LLP

By: 

DUSTIN C. COOPER

DCC/ast

cc:

John Kinsey, Counsel for NYWD Landowners

Rath Moseley, General Manager South Feather Water & Power Agency