

Water district sues partner agency

North Yuba Water District alleges breach of contract, fiduciary duty

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Jun 22, 2021

The North Yuba Water District recently filed a lawsuit against South Feather Water and Power Authority asserting a number of legal issues pertaining to a project agreement between the two agencies, including breach of contract and breach of fiduciary duty.

The two water agencies partner on the South Feather Power Project, which is a water supply and hydropower project located within Yuba, Butte and Plumas counties. The partnership was the result of an order by the California State Water Resources Control Board requiring the two agencies to establish an agreement for the project. An agreement was struck in 2005 that addressed issues pertaining to the South Feather Power Project's use of storage, diversion and conveyance systems.

NYWD states the agreement provides the district reasonable access to project records and requests, and requires SFWPA to provide the district with monthly and annual detailed accounting records.

In the lawsuit filed last week in Butte County Superior Court, NYWD filed claims against SFWPA including breach of contract, breach of implied covenant of good faith and fair dealing; accounting; conversion; breach of fiduciary duty; and declaratory relief.

"South Feather alone maintains the explanations and documents needed to ensure North Yuba is receiving their fair share of the proceeds," said North Yuba Water District Board President Gary Hawthorne in a press release. "For years they have denied North Yuba access to information, and for the better part of the past year, they have limited our formal, legal requests for records. This litigation was avoidable by South Feather if they had simply provided the transparency required under the 2005 Agreement."

According to NYWD, the lawsuit details how SFWPA has failed to provide the district required monthly and annual accounting; how SFWPA refused to allow NYWD reasonable access to the project's accounting records; how SFWPA is holding excess reserve funds in the amount of about \$4.5 million that should be immediately distributed to the parties on a 50/50 basis; and how NYWD is reasonably sure that once all accounting records are available, additional monies will be owed to it based on the terms and conditions of the 2005 Agreement.

SFWPA response

Prior to the filing of the lawsuit, legal representatives from both agencies had been reportedly working on a memorandum of understanding to allow NYWD access to SFWPA's financial records beyond what was required by law and the 2005 Agreement. Those talks broke down earlier this year before NYWD reportedly issued a letter threatening litigation if its demands were not met within seven days, according to SFWPA's legal team.

In a letter dated June 3, the firm representing SFWPA stated they were growing increasingly confused by NYWD and its law firm's demands. SFWPA stated they had repeatedly attempted to answer the foothill water district's questions and provide the requested documentation and analysis through an open meeting between the boards, which NYWD refused repeatedly.

SFWPA Attorney Dustin Cooper wrote that by all indications, NYWD is "hellbent on litigation regardless of how baseless and ever-changing" its claims were.

"NYWD has been provided copies of all financial and accounting data it has requested from January 1, 2010 through 2021," Cooper wrote in the June 3 letter. "...The problem that NYWD is now encountering is that it does not understand and cannot interpret the voluminous data it has been provided... We see direct board member discussion as necessary to attempt to deescalate the 'dispute' that you have unnecessarily escalated."

SFWPA contends that it has been completely transparent and forthright in its communications.

"SFWPA looks forward to a peaceful, professional and cooperative dispute resolution with NYWD," said Rath Moseley, general manager for SFWPA, in an email on Tuesday.

The lawsuit was filed on June 17.

The two parties are scheduled to return to Butte County Superior Court for a case management conference on Dec. 8.