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David L. Hobbs
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September 22, 2020

VIA ELECTRONIC AND U.S. MAIL

Mr. Robert E. Donlan, Esq.
Ellison Schneider Harris & Donlan
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
red@eslawfirm.com

Re: Angel's Crossing, LLC/Western Hills Water District – Assignment, Assumption and Release Agreement dated April 30, 2020

Dear Mr. Donlan:

Below is a response on behalf of the Western Hills Water District (“WHWD”) to your correspondence dated August 28, 2020. It is my understanding that despite the fact that WHWD has terminated water service to Angel’s Crossing, LLC (“AC”) due to their unpaid bills, AC or their agents have continued to pump water from ponds located at Diablo Grande, for use on the golf course. As you point out in your letter, WHWD had caused this water to be stored in those ponds for fire protection service, not for irrigation use. I ask that you request your client to refrain from such conduct and be advised they will be billed accordingly.

1. Unpaid Water Charges. WHWD requests clarification to your statement that AC “...cannot make payments for raw water invoices until the invoices can be explained and justified, and until there is a mutually acceptable plan to address WHWD’s revenue deficit for water and wastewater services.”

While WHWD is certainly willing to provide the available information so that your client may understand the basis of the raw water charges, including but not limited to the prior rate study and the Proposition 218 process which resulted in this charge, AC’s lack of understanding in this regard is not a valid basis to withhold payment. To the extent AC intends to challenge a water charge, payment of the underlying charges itself is the standard prerequisite. (See *California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) More importantly, I am unaware of any legal authority whereby a customer is able to withhold payment for water service it has already received until an agency provides a plan for reducing a “revenue deficit”. Similarly, I am unaware of

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any authority whereby a customer is able to withhold payment until a “comprehensive review and restructuring of WHWD’s water rates” has occurred.

Despite the fact that WHWD has previously communicated its plans for attempting to reduce the revenue shortfall, and reiterates them below, is it your client’s contention that it has no obligation to commence funding these shortfalls in light of its knowing and willful agreement to do so per its assumption of the Master Agreement obligations? I ask because to date, no funds have been provided by AC for water charges, no funds have been provided by AC for the payment the approximately \$515,061.00 AC agreed to pay WHWD, nor has any plan been presented to WHWD on how or when it intends to fulfill any of these obligations.

2. Proposition 218 Process. Several of your bullet points request information on WHWD’s plans with regards to current water and wastewater charges. As I am sure you are aware, the limitations surrounding rate increases subject to Proposition 218 are as much of a political issue as they are concerns about rate studies and cost of service models.

While it is understandable that AC would like to reduce its contractual financial obligations to the District as much as possible, Cal. Const., Art. XIID restricts WHWD from unilaterally increasing water and sewer rates without ratepayer consent. WHWD has attempted to increase water and sewer rates on several occasions since the last successful rate increase almost ten years ago. However, given the relatively small number of protests necessary to keep the District from enacting increased rates, the residents in Diablo Grande must be on board with the amount of the proposed increase.

In any event, WHWD has retained HF&H Consultants to conduct an updated water and wastewater rate study for purposes of a proposed water and sewer rate increase. The WHWD Board created a WHWD/Diablo Grande Resident Ad-Hoc Committee to obtain public input. It is expected that a draft rate study will be available within a few weeks. Absent significant changes, it is anticipated that a final rate study would be approved within the next sixty days, and the public hearing on the rates would take place at least forty-five days from that date.

3. Specific Operational/Technical Controls. WHWD is certainly willing to discuss these issues, but to the extent AC is demanding that facilities be constructed at WHWD’s expense, WHWD currently lacks the funds to do so, although this could be rectified at AC’s option as stated above. To my knowledge, WHWD has previously provided AC’s consultant with information requested on WHWD staffing and operational matters.

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4. Retirement of Loans. The Maser Agreement to Provide Water, Sewer and Storm Drainage Services, as amended, speaks for itself as to when and in what amount WHWD should commence the plan to “repay and retire the loans from Angel’s Crossing’s predecessors.” To the extent you or your client believe this obligation has been triggered, I invite you to provide a detailed explanation in light of your concurrent questions of WHWD as to how it plans to remedy its revenue gap.

Lastly, you requested information such that your client can understand “WHWD governance and board structure for consistency with the California Water District Act and WHWD Bylaws and to ensure the legality and durability of actions taken by the WHWD.” I am unaware of any reason or rationale as to why the WHWD governance and board structure would be inconsistent with the Cal. Water District Act, nor am I unaware of any reasons under which any prior actions taken by the WHWD Board or their predecessors would lack legality.

If you have a specific area of concern as to these matters I would be more than happy to entertain them. In any event, I look forward to speaking with you in order that we may address these critical matters.

Regards,

GRIFFITH, MASUDA & HOBBS

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

David L. Hobbs

Cc: WHWD Board of Directors