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Refer To File # 400128-0013

VIA EMAIL: dhobbs@calwaterlaw.com

May 14, 2021

David L. Hobbs
Griffith, Masuda & Hobbs
517 East Olive Street
Turlock, CA 95380

Re: KCWA/WHWD Transfer Contract Invoices – Notice of Default/Claim

Dear Mr. Hobbs:

This letter is in follow-up to the April 9, 2020 and December 1, 2020 correspondence from Kern County Water Agency (“Agency”) to Western Hills Water District (“WHWD”), as well as our subsequent discussions regarding WHWD’s default under the Contract to Transfer Water between the Agency and WHWD dated June 5, 2000 (“Contract”), and specifically the outstanding and long-overdue funds owed to the Agency under the Contract.

In light of WHWD’s uncured default, the Agency simply is not in a position to continue supplying water without adjustments, particularly as WHWD has not made any payments at all to the Agency since July 1, 2019. In the meantime, WHWD’s principal debt to the Agency continues to increase, along with interest. Based upon the information we have received to date regarding WHWD’s financial condition and its continuing disputes with funding source Angel’s Crossing, LLC, it appears to be very unlikely that WHWD will begin paying down its debt to the Agency in the near future.

As a result, the Agency must take measures to mitigate its losses and reduce WHWD’s accumulation of additional debt, pursuant to the Agency’s rights under Article 5 of the Contract. Article 5 provides, in relevant part:

In the event of any default by Western Hills in the payment of any money required to be paid to the Agency hereunder, or in any other obligations under this Agreement, the Agency in its discretion may suspend delivery of water to Western Hills during the period when Western Hills is delinquent in its payment for or obligations due to the Agency under the terms of this Agreement; provided, that (1) the Agency has given Western Hills not less than four months’ prior, written notice of any such default and provided Western Hills a reasonable time to cure such default, and (2) during any such period of delinquency or suspension Western Hills shall remain obligated to make all payments required under this Agreement.

The Agency provided such written notice to WHWD on April 9, 2020. At this time, over a year later, WHWD remains in uncured default.

Nonetheless, because WHWD has represented to the Agency that it is currently making good-faith efforts to generate additional funds for the purpose of paying down its debt to the Agency, the Agency is willing to provide a reasonable opportunity for WHWD to do so. Accordingly, rather than suspend water deliveries in their entirety, at this time the Agency will continue to supply WHWD 250 acre feet per year through December 31, 2022. However, the Agency reserves the right to impose further water limitations at any time (including prior to December 31, 2022), while WHWD remains in uncured default.

This amount is based upon WHWD's representation that its annual projected residential water demand is 250 acre feet. Our hope and expectation is that the reduction in WHWD's water expenses as a result of this measure will allow WHWD to focus its efforts on generating funds to repay the debt owed to the Agency.

Further, and based upon WHWD's representations that it is making best efforts to generate funds to pay its debt to the Agency, the Agency is willing to hold off on litigation to collect the amounts due and owing under the Contract, in exchange for a reasonable tolling agreement extension. Accordingly, the Agency proposes that the parties extend their existing tolling agreement for a period of one year, provided that either party has the right to commence litigation after providing written notice of such intention at least 60 days in advance. Please contact me to confirm that WHWD is amenable to this proposal, and we will prepare a proposed extension agreement.

The Agency does not waive any of its rights, claims or defenses at law or in equity, and the Agency explicitly reserves all rights, claims and defenses, including but not limited to its right to seek full damages and/or equitable relief as a result of WHWD's default.

Sincerely,



Ilse C. Scott
Nossaman LLP

ICS:jm