



SOUTH FEATHER WATER & POWER AGENCY

TO: Board of Directors

FROM: Michael Glaze, General Manager

DATE: December 11, 2009

RE: 2005 Agreement Amendment – North Yuba Water District
Agenda Item for 12/22/09 Board of Directors Meeting

Attached is a proposed amendment to the 2005 Agreement between SFWPA and North Yuba Water District (NYWD, previously Yuba County Water District). It is needed to accommodate continuation of the long-term water sales by NYWD to Yuba City, and to relieve SFWPA of its responsibility (specified in the 2005 Agreement) to rebuild a portion of the Hell-for-Stout Flume on the Upper Forbestown Ditch.

NYWD has been selling 4,500 acre-feet of water to Yuba City for many years. This 4,500 acre-feet of water was allocated to NYWD in the original 1959 three-party agreement between OWID, PG&E and Yuba County Water District (YCWD) for delivery out of Miners Ranch Reservoir, down the Bangor Canal to storage or irrigation facilities that YCWD was supposed to construct but, ultimately, never did. Although contested by OWID for many years, YCWD ultimately prevailed before the State Water Resources Control Board (with OWID's support, eventually) in getting a permit for the transfer of this block of water to Yuba City. The water-sale agreement between YCWD (now NYWD) and Yuba City is about to expire and they are negotiating to extend it for an additional 30-year term.

The 2005 SFWPA/NYWD Agreement specifies that, after June 30, 2010, all proceeds from the transfer of water out of the South Feather Power Project will be considered Project revenue, just like revenue from the sale of electricity. Because the future sale of water to Yuba City will benefit NYWD and SFWPA equally as Project revenue, NYWD wants that quantity transferred to Yuba City not to be charged as if it were taking it for irrigation purposes, as the 2005 Agreement presently specifies. Recital "E" in the attached proposed amendment provides a more complete explanation of this issue, and Paragraph 1, thereafter, describes the proposed amendment in detail. Summarily, in the future, if NYWD needs to take more than its present 3,700 acre-feet allotment at SF-14 for consumptive purposes, the proposed amendment would allow it to take and pay for its second and third tier allotments as if the amount being transferred to Yuba City was not being transferred.

As a separate issue, but also under the 2005 Agreement, SFWPA is required to replace all non-pressure-treated wood in the Hell-for-Stout Flume with pressure-treated wood prior to January 1, 2011, when NYWD assumes ownership and maintenance responsibility for the Upper Forbestown Ditch (see Recitals "F" and

"G" for additional details). As was discussed at your last meeting, that flume still has many years of functional life remaining, and NYWD would like to relieve SFWPA of its responsibility to rebuild the flume in exchange for being able to apply SFWPA's 75% share of the estimated replacement cost (\$45,660) as a credit against NYWD's outstanding and future ditch maintenance costs. NYWD's present unpaid balance (as of 10/31/09) is \$29,691.

The requested action is:

"I move approval of and authorization for President Cecchi to execute the proposed amendment to the 2005 Agreement between South Feather Water and Power Agency and North Yuba Water District."

**AMENDMENT TO 2005 AGREEMENT BETWEEN
SOUTH FEATHER WATER AND POWER AGENCY
AND NORTH YUBA WATER DISTRICT**

RECITALS

A. On May 27, 2005 the South Feather Water and Power Agency (SFWPA) and the North Yuba Water District (NYWD), then known as the “Yuba County Water District,” executed an agreement regarding the distribution of water and power revenues from the South Feather Power Project (SFPP) and related matters. This 2005 agreement is referred to in this Amendment as the “2005 Agreement.”

B. In accordance with the 2005 Agreement, NYWD was assigned Water Rights Permit Nos.11516 and 11518.

C. On December 1, 1980, NYWD and Yuba City executed an agreement under which NYWD sells up to 4,500 acre-feet per year (“af/yr”) of water to Yuba City. This agreement will expire on December 31, 2010.

D. The entitlements to the net proceeds of the revenues derived from water sales using water that is developed, stored, and delivered by the facilities of the SFPP, including Permits 11516 and 11518, are described in Part III of the 2005 Agreement. The 2005 Agreement sets forth, in Paragraphs III.4, III.6, and III.8, the blocks of water to be made available to NYWD under Permits 11516 and 11518, and the costs to NYWD, if any, of receiving such water at Turnout SF-14.

E. Yuba City has asked NYWD to enter into a new agreement to follow the end of the term of the 1980 NYWD/Yuba City agreement and to go into effect on January 1, 2011. However, NYWD will not enter into such new agreement if it would increase the cost of water delivered to NYWD at Turnout SF-14 above that cost that NYWD otherwise would incur for such water, “but for” the sale of water to Yuba City. Such additional costs would be incurred if NYWD were required to order water for delivery to NYWD at Turnout SF-14 under Paragraph III.8 in lieu of receiving water under Paragraph III.6. Therefore, the cost to NYWD for the use of the water available under Paragraph III.8 of the 2005 Agreement must be adjusted to the extent the delivery of Paragraph III.8 water to NYWD at Turnout SF-14 would not have been

required “but for” the sale of water to Yuba City. SFWPA and NYWD are executing this Amendment to the 2005 Agreement to make these changes.

F. Under paragraph VI.6 of the 2005 Agreement, SFWPA is responsible for maintaining all reaches of the Upper Forbestown Ditch in good working order until January 1, 2011. As part of this maintenance work, following a joint inspection by NYWD and SFWPA officials, SFWPA agreed to replace all non-pressure-treated wood in the Hell-For-Stout Flume with pressure-treated wood. The estimated cost for this work is \$60,880. (SFWPA has removed the tree described in paragraph VI.6 that was in danger of falling on this flume.)

G. Until January 1, 2011, the costs of operations and maintenance of and repairs and improvements to the Upper Forbestown Ditch are divided 75% to SFWPA and 25% to NYWD. Accordingly, if SFWPA replaced all non-pressure-treated wood in the Hell-For-Stout Flume with pressure-treated wood, and if actual costs of this work equaled the estimated costs, then SFWPA’s share of the costs of this work would be \$45,660 and NYWD’s share would be \$15,220. SFWPA and NYWD have met and agreed that SFWPA will be relieved of the obligation to replace the non-pressure-treated wood in the Hell-For-Stout Flume with pressure-treated wood, in exchange for NYWD’s receiving a credit against costs that NYWD owes, or that it will owe, to SFWPA, as described hereafter.

H. SFWPA and NYWD now desire to amend the provisions regarding the replacement of wood in the Hell-For-Stout Flume in paragraph VI.6 of the 2005 Agreement, as provided for in this Amendment.

NOW, THEREFORE, in consideration of these premises and the mutual promises in this Amendment and the 2005 Agreement, SFWPA and YCWA agree as follows:

1. The 2005 Agreement is amended by adding the following new paragraph III.8a (to be consistent with the nomenclature in the 2005 Agreement, the following new paragraph III.8.a refers to NYWD as “YCWD”):

8.a. If YCWD sells all or a portion of the water available for delivery to YCWD at Turnout SF-14 under Paragraph III.6 to Yuba City pursuant to paragraph III.7, and if, due to demand within its service area, YCWD also receives delivery at Turnout SF-14 of a quantity of water pursuant to paragraph III.8 during the same calendar year, then the amounts that YCWD will pay into the SFPP Joint Facilities Operating Account pursuant to III.8 for the water received

by YCWD will be adjusted according to this paragraph III.8.a. During any year when YCWD sells water to Yuba City pursuant to paragraph III.7, and YCWD also receives water at Turnout SF-14, the water that YCWD receives at Turnout SF-14 will be allocated to three sources. The first 3,700 acre-feet will be considered water made available to NYWD under Paragraph III.4. The next 4,500 acre-feet will be considered water made available to NYWD under Paragraph III.6, and charged for and paid for under Paragraph III.6. The balance of the water that YCWD receives at Turnout SF-14, in excess of the sum from the first two sources, will be considered water delivered under Paragraph III.8, and charged for and paid for under Paragraph III.8. For example, if YCWD sells 4,500 acre-feet of water to Yuba City pursuant to paragraph III.7 during a particular year, and YCWD also receives 10,000 acre-feet of water at Turnout SF-14 during that same water year, then YCWD will pay nothing for the first 3,700 acre feet, YCWD will pay into the SFPP Joint Facilities Operating Account for the quantity of water delivered between 3,700 acre-feet and 8,200 acre feet (a total of 4,500 acre-feet) at the rates described in paragraph III.6, and YCWD will pay into the SFPP Joint Facilities Operating Account for the remaining 1,800 acre-feet of such water received at Turnout SF-14 at the rates described in paragraph III.8.

2. The 2005 Agreement is amended by adding the following paragraph VI.6.a (to be consistent with the nomenclature in the 2005 Agreement, the following new paragraph VI.6.a refers to NYWD as “YCWD”):

6.a. Notwithstanding paragraph VI.6, SFWPA is hereby relieved of the obligation to replace the non-pressure-treated wood in the Hell-For-Stout Flume with pressure-treated wood, and such responsibility is assumed by YCWD. In lieu of making this replacement, SFWPA will, effective January 1, 2010, give YCWD a non-interest-bearing credit of \$45,660, to be applied by SFWPA against the amounts, including accrued interest, owed to SFWPA by NYWD representing YCWD’s 25% share of the operation and maintenance costs incurred on the Upper Forbestown Ditch during 2009, and, to the extent of available funds, YCWD’s share of such costs incurred during 2010. After January 1, 2011, if there is any remaining balance of the \$45,660, then it will be applied as a credit against YCWD’s share of the FERC re-licensing expenses to be withdrawn by

SFWPA from the SFPP Joint Facilities Operating Account pursuant to Paragraph IV.5 .

3. The 2005 Agreement is amended only as expressly stated in the preceding paragraphs 1 and 2, and otherwise will remain in full force and effect.

Agreed to this 22nd day of December, 2009, at Oroville, California.

SOUTH FEATHER WATER AND POWER AGENCY

By: _____
Louis F. Cecchi, President

Attest:

Michael C. Glaze, Secretary

Agreed to this ____ day of December, 2009, at Brownsville, California

NORTH YUBA WATER DISTRICT

By: _____
President

Attest:

Secretary