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Marcus J. Lock
mlock@lawoftherockies.com
via email only

Re: PAWSD's consideration of a private party offer to purchase Running Iron Ranch

Dear Marcus:

I write on behalf of the Board of Directors of the San Juan Water Conservancy District ("SJWCD") concerning information discussed at the September 24 meeting between representatives of the SJWCD, PAWSD, and CWCB to discuss an offer to purchase Running Iron Ranch, as well as your letter to me dated September 27. Notwithstanding PAWSD's rushed, closed-door process and legal posturing to date, SJWCD remains committed to consulting with PAWSD and CWCB concerning PAWSD's ongoing desire to mitigate its expenses related to its ownership interest in Running Iron Ranch. That consultation, however, must be guided by the purpose and entirety of the 2015 Agreement, the community's decades of investment in Running Iron Ranch and water rights for the Project, and authoritative, reliable information concerning whether the Running Iron Ranch property remains the most cost-effective location for additional water storage to meet community water needs.

Contrary to PAWSD's position articulated in your letter, the 2015 Agreement must be construed in its entirety, "not merely from isolated phrases or clauses." *City of Boulder v. Stoffle*, 487 P.2d 601, 603 (Colo. App. 1971). When PAWSD points to Section 5.2.1 of the 2015 Agreement to assert that it has "sole discretion" to sell Running Iron Ranch, it ignores PAWSD's overarching promise - in that same provision - "to make **every effort** to retain the Running Iron Ranch during the Planning Period." (Emphasis added.) That provision also conditions any sale on PAWSD first having a "consultation with SJWCD and CWCB."

How would PAWSD substantiate that it has made every effort to retain Running Iron Ranch when it is proceeding based on one unsolicited offer and more than 10 years remain in the Planning Period? How would PAWSD substantiate that it has completed its consultation obligation to SJWCD and CWCB on the basis of one closed-door meeting in which little technical or financial information was discussed?

The 2015 Agreement makes clear that PAWSD committed to working with SJWCD and CWCB to plan the Project for the duration of the Planning Period. In return, PAWSD obtained a significant concession by the State to provide debt relief and from

SJWCD to lead Project planning. It appears, however, that PAWSD is attempting to renegotiate the 2015 Agreement to get what it could not then: a way to abandon the Project and the community's investment in Running Iron Ranch well before doing so could be justified.¹ This agenda is contrary to PAWSD's promises in the 2015 Agreement and the compromise the parties reached respecting CWCB's interest in protecting the State's financial commitment to the Project and SJWCD's interest in providing for future water needs of the community.

If PAWSD would like to engage in a meaningful consultation with CWCB and SJWCD concerning planning for the Project and its rights under Section 5.2.1, SJWCD suggests that, at minimum, the following matters be analyzed and discussed by the parties:

- a. Participation of PAWSD, with SJWCD and other stakeholders, in a comprehensive water needs assessment process. Participation with Archuleta County and the Town of Pagosa Springs in CSU's Polaris Land Use and Water Planning Tool could be an element of that effort.
- b. Engineering analysis of alternatives to constructing a water storage facility in Dry Gulch that can address water availability and water quality in a multi-year drought and wildfires of the magnitude of the 2001 and 2002 water years.
- c. PAWSD's implementation of such alternatives to date and whether PAWSD's water system has sufficient capacity and redundancy to prevent water service interruptions in years of severe drought.
- d. Economic analysis of whether the public benefits of the community's investment in the Running Iron Ranch should be jettisoned by sale to a private party.
- e. Efforts PAWSD has made to generate income or other public benefit from uses of Running Iron Ranch that are compatible with building a water storage facility (e.g., public access to the San Juan River; solar power generation).

Those matters and others, including any decision PAWSD considers involving the sale of Running Iron Ranch, should be made in open forums that promote public involvement.

SJWCD understands that it is PAWSD's ongoing desire for additional debt relief. SJWCD is willing to work with CWCB and other stakeholders to identify potential options to accomplish that while protecting each party's investment in Running Iron

¹ Section 4.2 expressly addresses the possibility that PAWSD may "abandon" the Project after the Planning Period (compare also Section 5.2.1 with Sections 5.3.1 and 5.4.1).

Ranch. But PAWSD is trying to place the burden for that effort on SJWCD and CWCB alone and threatening legal action rather than developing thoughtful, mutually beneficial solutions. The SJWCD directors, therefore, respectfully request that the PAWSD directors engage in cooperative efforts and meaningful deliberations that respect the interests of each party's constituents.

At the September 24 meeting, SJWCD's representatives made clear their conclusion that, as a technical and policy matter, Running Iron Ranch remains the best site for building water storage for municipal, recreational, and environmental needs of the community. That conclusion is based on decades of studies by professionals and experts, including a 2022 water supply and demand analysis. It is also based on the decades of local and State public investment in planning to meet the community's water needs, including purchasing the land and acquiring the water rights required to do so. While SJWCD will faithfully abide by the parties' agreements and other legal obligations, its directors expect the same commitment from PAWSD, including that it make every effort to retain the Running Iron Ranch.

Sincerely,
SOUTHWEST WATER AND PROPERTY LAW LLC


Jeffrey M. Kane

cc: Jennifer L. Mele, First Assistant Attorney General, Natural Resources and Environment
Section, Attorney for the Colorado Water Conservation Board (jen.mele@coag.gov)