SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. V-F**

FROM: Steve Mack, General Manager

MEETING DATE: June 6, 2013

Subject: DISCUSSION / ACTION RE PROPOSED AT&T CELL TOWER AT HIGHLAND TREATMENT FACILITY

RECOMMENDED ACTION: Receive a report on the progress with arriving at acceptable lease agreement for leasing a portion of the Highland Treatment Facility parcel for use as a cell tower and provide direction to staff.

FISCAL IMPACT: none

DISCUSSION:

District staff are in discussions with AT&T regarding a cell-tower lease at a portion of the parcel that contains Highland Treatment Facility on Sunset Avenue in Guerneville. Since the last meeting we have traded draft lease documents. Issues include:

- A disagreement on the extent of the lessee's (AT&T) authority over the entire parcel. In AT&T versions of the lease the term "property" which applies to the entire parcel, is used instead of "premises" which applies to the portion being rented by AT&T. AT&T is renting a portion of the District's parcel that contains our water treatment facility which AT&T people need to stay away from. We are not giving AT&T any access to the part of the parcel that is not being rented to AT&T (the "property"). AT&T has only access to the "premises". In our view AT&T will not have any guaranteed right to go onto the property that they are not renting to do anything and that should not be needed for the cell tower to work properly. AT&T apparently sees this differently.
- AT&T wants a clause that requires the District to pay AT&T taxes if the District does not forward tax notices within 30 days. I see AT&T's concern but we will not be responsible for paying AT&T's taxes whatever they may be on this parcel. We could consider paying penalties on taxes that may occur if we don't get tax bills to AT&T in a timely way (but not 30 days).
- 8. Indemnification looks problematical to me, but that's for District legal counsel attorney to decide.
- Termination is an issue – each draft we get it seems AT&T inserts language that broadens their ability to leave without paying us anything.

- Casualty looks to be a problem to me. AT&T is renting a vacant part of the parcel. There is nothing to rebuild other than possibly a fence. AT&T is insistent on sentences requiring the District to rebuild in the event of a catastrophic event or AT&T can terminate the lease. This seems to put an unneeded obligation on the District.

This has been a frustrating negotiation for me because we go to a certain point with a contact located in Sacramento and then the lease agreement went off somewhere and the communication has stopped – no back and forth, just trading of redlined documents without explanations. AT&T has tried to continue their studies of the site but I have refused entry permission in the past month – these are studies that should take place after an agreement has been reached and an option payment has been received.

I am in communication with the AT&T representative and will keep the Board apprised of new developments as they happen.