# SWEETWATER SPRINGS WATER DISTRICT

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

**FROM:** Steve Mack, General Manager

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**Meeting Date: September 7, 2017**

**SUBJECT: APPEAL OF WATER SERVICE TERMINATION AT 15967 LAUREL PLACE, GUERNEVILLE, CA**

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**RECOMMENDED ACTION:** Confirm District staff's decision to terminate water service at 15967 Laurel Place, Guerneville, CA because of non-payment of Capacity Charge and Annual Flat Charge for this parcel.

**FISCAL IMPACT:** Capacity Charge for FY 17-18 is $6,214

**DISCUSSION:**

This item appears on the Agenda at the request of the property owner, Leslie Bahr. She has provided packet materials of her own which is included in the agenda packet. Staff has a different view which is provided below.

District staff turned off water service to Ms. Bahr's property at 15967 Laurel Place, Guerneville, CA on July 1, 2017. This has been a long-running situation which requires some explanation which follows:

Ms. Bahr's issue is whether she should pay the Capacity Charge for her parcel. The District's Capacity Charge is governed by District Policies 3020.142-146 which was last revised in September 2009 by District Ordinance 40. Ordinance 40 provided that the Capacity Charge was set at $3,763.00 plus annual increases of $245 plus the total annual amount of the ensuing fiscal year Capital Debt Reduction Charge wich reflects revenues needed to repay outstanding District loans. The Capacity Charge for Fiscal Year 2017-2018 is $6214.00. Prior to Ordinance 40 the Capacity Charge was known as the accumulated or back Flat Charge and new customers who hadn't been paying the annual Flat Charges on their tax bill (or new owners of parcels that hadn't had these Flat Charges paid) had to pay the annual Flat Charges accumulated since the District's formation in 1992.

The water service in question is in the Schoenemann pressure zone which has 45 services, a small diameter water line (mostly 2"), and 10,000 gallons of storage. This pressure zone is near the limit of its capacity and can add only one additional service which could be Ms. Bahr's parcel.

This parcel and neighboring parcels which may or may not be owned by Ms. Bahr have a history which predates Ms. Bahr's participation. In 2006 District staff had discussions with Michael Romero who owned this property and apparently others in the vicinity about the possibility the Mr. Romero could improve the water supply situation in this pressure zone with the construction of a larger water tank. In return the District would give him water service for two parcels. The District agreed to give Mr. Romero a temporary water service for 90 days so that he could proceed with construction. Mr. Romero never "applied for, paid for, and received a new service connection". Apparently he became ill, lost interest in this project and he subsequently passed away. The billing account for the Romero temporary meter was closed in 2009; the account was never active, no water was ever used for that account, and the District never received any monthly charges or any other revenue for the inactive account.

In 2009 District staff was approached by Ms. Bahr with the stated hopes of resurrecting Mr. Romero's project. Ms Bahr presented herself and her brother-in-law, Mr. Bruce Cassem, as the owners of 3 parcels in need of water service and reiterated Mr. Romero's proposal and supplied the attached conceptual proposal. On the last page of the proposal is the clear offer to construct a water tank in return for water services to 3 parcels. We did not discuss the current situation of water service to any of these parcels in these discussions. In these discussions, I assumed Ms. Bahr understood the Capacity Charge issue - that was the purpose of the exchange of a water tank for three services; we did have a discussion of the monetary issues. The cost of the water tank was more than three capacity charges and connection fees, but Ms. Bahr would have more control over where the water tank would be located. In late 2009, this proposal was presented to the Board of Directors who gave conceptual approval and directed staff to work with Ms. Bahr to help make the proposal happen. The Board did not formally approve any agreement related to this situation at this or any other time.

After conceptual approval of the water tank for services proposal, Ms. Bahr apparently moved forward for other approvals of her development project. Apparently the parcel(s?) in question were not in the Russian River Wastewater Service area and Ms. Bahr went through a lengthy County process for a General Plan Amendment to get these parcels included in the Wastewater Service Area. The District sent letters of support to Supervisor Carrillo and Planning Commissioner Lynch upon request by Ms. Bahr but did not participate in or follow the process. The process went on for some time (years, I believe) and at some point Ms. Bahr's request was formally denied, timed out, or had some other negative ending, which apparently ended Ms. Bahr's attempt to develop these three parcels. The District was not informed when the process was ended. Ms. Bahr had a mobile home on one of the parcels in question and was getting water service. I thought it was a "temporary service" inherited from Mr. Romero and knew we would need to address the Capacity Charge requirement to make her service permanent and on an equal footing with other customers of the District.

In fact, the water service Ms. Bahr was paying for was not as management assumed. The true history of the water service Ms. Bahr was paying for was not fully understood by management until after Ms. Bahr asked to appeal the Board in June

2017. What we now know is that Ms. Bahr was using her neighbor's service, and we believe she was using it with his knowledge and consent until July 2016. Because Ms. Bahr was not using the billing account clearly flagged as "temporary" there were no alerts that her situation needed attention. Here is the history we uncovered:

In August 2011, Ms. Bahr's neighbor Gerrit (sp?) Drexhage called the District to ask that the billing address to his account be changed to Gerrit Drexhage, care of Leslie Bahr, and sent to her address in San Francisco. In September 2011, Mr. Drexhage called to say he had sold the property to Bruce Cassem (we understand Mr. Cassem is or was Ms. Bahr's brother-in-law). Ms. Bahr then called in September 2011 to take over Mr. Drexhage's account in her own name as the owner, assuming the bill back to the beginning of the billing period. From the District's perspective, this meant no site visit would be required to read the meter.

Much of this was not accurate -- Mr. Cassem (or Leslie Bahr) never purchased Mr. Drexhage's property, but our billing personnel didn't know this and wouldn't question it because the original call had come from Mr. Drexhage himself. From 2011 to 2016, Ms. Bahr paid Mr. Drexhage's parcel's water bill, and Mr. Drexhage paid the annual Flat Charge on his tax bill. The use of Mr. Drexhage's meter for Ms. Bahr's property was in violation of District Policy 3010.70 Each Living Unit to Have Meter, but was not discovered by the District when it was happening (not discovered until July 2017 because of this appeal. Neither party commented further on this arrangement to the District until July 2016.

In July 2016 Mr. Drexhage called the District to tell us he wanted his service turned on. The parcel he referenced was in our billing system as belonging to Ms. Bahr, who had opened the account as the owner. Mr. Drexhage came in with his property tax bill to show he had been paying the annual Flat Charge.

With receipt of this information, the District could have disconnected the illegal plumbing servicing Ms. Bahr on Mr. Drexhage's line. Instead, in light of the past relationship with Mr. Romero and Ms. Bahr, and not fully understanding what had happened with the temporary service, Ms. Bahr's service was left intact and the District plumbed a new service to Mr. Drexhage. Ms. Bahr was notified in July 2016 that her service was now temporary, and she needed to pay the Capacity Charge to make it a legal service complying with District policies. Emails passed back and forth between me and Ms Bahr with Ms. Bahr protesting the need for the Capacity Charge and me answering her questions regarding the situation which was since her project was not viable and a water tank was not being exchanged for 3 services, the Capacity Charge needed to be paid for the parcel for which she needed water service. Months passed with no word from Ms. Bahr. In April 2017 she was given a deadline to pay of June 30, 2017, at which time her "temporary" service would be disconnected.

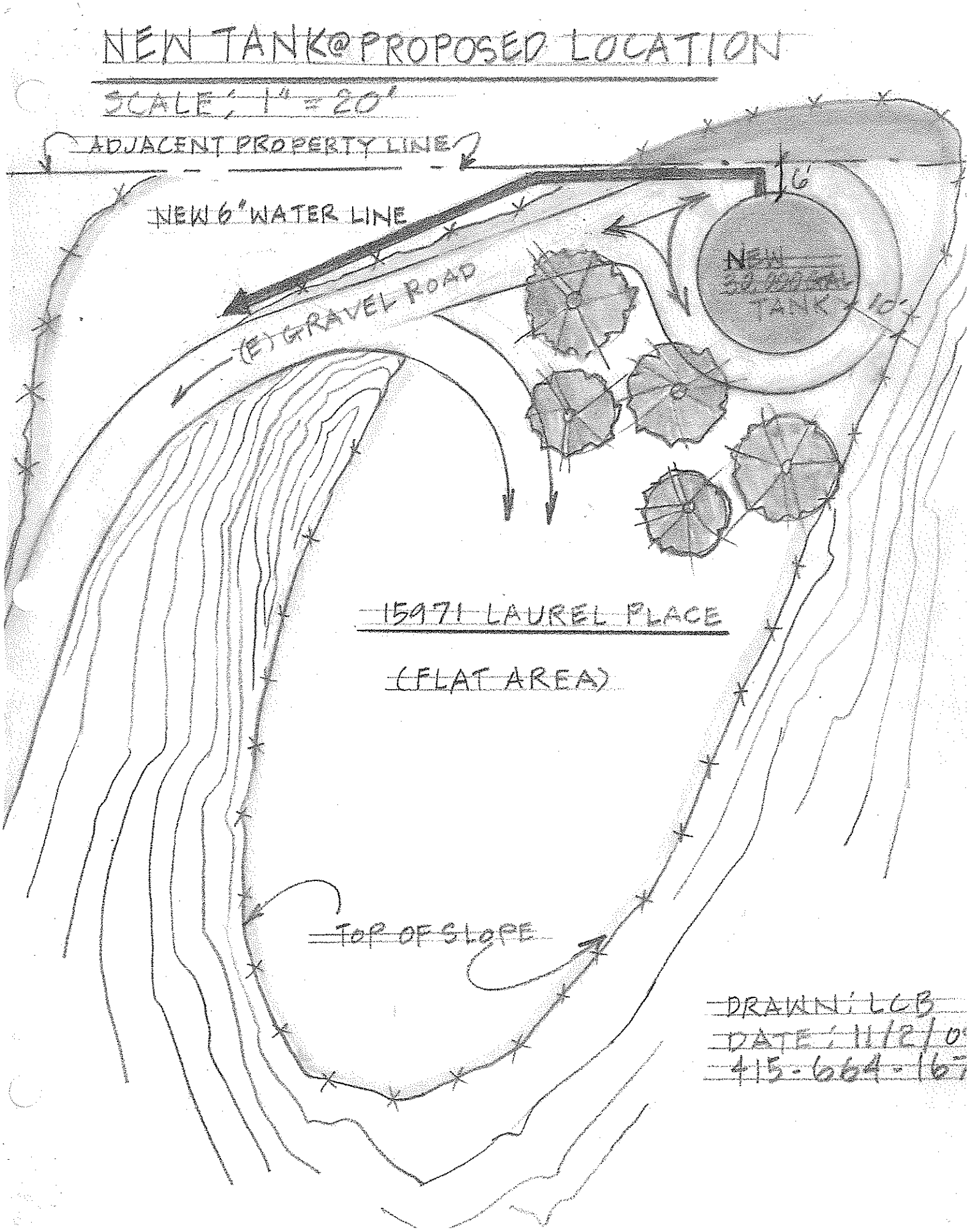
Staff received no further communication from Ms. Bahr on this issue until June 26, 2017, when she requested that her service not be turned off until she had an opportunity to appeal the turnoff to the Board. Because several Board meetings had happened since the notice to pay by June 30, staff denied her request and her service was disconnected on July 1, 2017.

It's clear from the record that:

- Ms. Bahr knew that payment (something like the Capacity Charge) was needed for District water service (three services for a water tank proposal in 2009).
- Ms. Bahr knew that the service she was using belonged to Mr. Drexhage.
- The first account Ms. Bahr had with the District was in September 2011 and it was for Mr. Drexhage's parcel for which he was paying the Flat Charge.
- Mr. Drexhage had directed the District that Ms. Bahr should be paying the water charges for that account, to which she agreed.
- The parcel for which Ms. Bahr has had service has never had a Capacity Charge paid nor is it on the tax roll for the annual Flat Charge.

Staff recommends that Ms. Bahr's appeal be denied.

Proposal by Ms. Bahr regarding construction of water tank in return for 3 services



November 2, 2009

Mr.'s. Steve Mack and Kevin Gillman
Sweetwater Springs Water District
17081 Hwy. 116, Suite B
Guerneville, CA 95446

Regarding: Water Tank Relocation Project

Dear Steve and Kevin,

Thank you both so much for meeting with me last August 4, 2009, in regards to this project, originally proposed by Michael Romero to the Sweetwater's prior General Manager, Mr. Chuck Howell. At our first meeting we reviewed, to a minor degree, the history of the proposal by Mr. Romero and discussed how we might continue to consider a relocation of the existing water tank, referred to as Shoenman Tank. You were very helpful at that time in providing me with copies of the correspondence and proposals between Michael Romero and Sweetwater Springs.

It is my understanding, based on our initial meeting and through my own research, that it is Sweetwater Spring's intention to replace the existing water tower, with its 10,000 gallon capacity, to a much greater capacity tank of a 30,000 gallons. This, according to your Capital Improvement Program outline, is scheduled for the year 2015, with a cost designation of $127,000 (based on a 2005 estimate by Brelje and Race).

Since our meeting, I have spent a great deal of time studying all the related documents in order to determine an appropriate means of forging ahead with an incentive to relocate the existing tank.

Here is a brief recap of the prior circumstances, beginning with the earliest documentation I have received:

+at some point in the summer of 2005, Michael Romero meets with Brelje and Race (hereafter referred to as B+R) engineer Jack Locey

feet vs. the existing usable square footage of about 1650 (a 1000 square foot increase.)

My own intentions are very straight-forward: my brother-in-law and I own three parcels we would like to build on as a family compound. I need water for construction purposes and, ultimately, for living purposes.

The existing tank sits directly adjacent to the location I would like to build out on one of the parcels. I understand that the relocation of the existing tank would add value to this parcel. However, this "value" is not without limits. The real estate market has changed dramatically since this project was first proposed. Additionally, Mr. Romero was relying on the services of an architect who, in my opinion, had a limited perspective in terms of building on the parcel. I, on the other hand, do not. I have already completed a schematic design for a house that would avoid the visual restrictions the tower (existing or new) presents. While it is certainly in my interest to relocate the tower, it is not worth an unreasonable amount of capital to do so.

Therefore, I am also including the rough outline of an agreement that I feel offers Sweetwater Springs a highly advantageous reason for relocating to the new proposed site. In essence, my offer is to give Sweetwater a new 30,000 gallon tower and a permanent easement on which to situate it. This holds an approximate value, according to the first estimate presented by Brelje and Race and equal to that you have in your future budget, of $127,000.

There will, of course, be items on this list that may require further discussion, but I'm hoping this will be sufficient enough for you to determine if it is a working solution for both parties and if it is something you would be willing to present to the Board of Directors at the next meeting.

Time is of the essence for me in regards to this offer. I would need to have construction access to water at the very latest by January of 2012. Kevin has already confirmed that the project could occur in phases—Sweetwater could change out the existing 2" water line at a future date when they obtain the funds to do so. Perhaps those funds originally designated in your budget for a new tower could be used.

+letter from Locey on 9/27/05 outlining potential locations for tank on (then) Landis property

+B+R provides Mr. Chuck Howell with first cost estimate for tank relocation on 12/6/05 (total=$127,000)

+Mr. Howell submits as a topic of discussion for the Meeting of the Board of Directors scheduled for May 4, 2006, the proposal for moving the tank in which he suggests a compromise has been met between the parties that would be beneficial to both, stating that "this move would not b3e done with any financial contribution from the District *other than for the actual upgrading of facilities.*" (ie. The tank itself)

+Mr. Romero sends a letter to Mr. Howell ("per your instructions"), summarizing their "recent discussions and mutual commitments regarding the water tank.." outlining the responsibilities of both parties. In this document, he outlines his own cost responsibility at $71,000.

+Brelje and Race submit a revised budget on 6/20/06 with a new total of $213,000.

+Mr. Romero, in an e-mail dated 8/10/06 to Chuck Howell, informs Mr. Howell of his decision to sell his property.

My intention as far as this history is concerned is merely to offer an unprejudiced outline of events as they occurred, so that we now can begin from a place that both incorporates the past and moves forward with an optimistic attitude towards a proposal that will be mutually beneficial. There is a strong indication from the file that Sweetwater Springs had intended to forge a working solution before—it is my hope that you will reconsider such a solution now.

With this letter, I am including a drawing of the proposed site for the new water tower—a site that offers many benefits to Sweetwater and the District in general. Because it is at a much higher elevation, the water pressure for all homes in the district will be greatly improved. The potential site is far more exclusive and removed from any public access. It has designated parking, unlike the current location. The square footage equals roughly 2650

I very much appreciate your taking the time to consider this matter. Once you have both had an opportunity to review, please give me a call and let me know your thoughts.

Sincerely,

Leslie C. Bahr

/vember 2, 2009

Mr.'s. Steve Mack and Kevin Gillman
Sweetwater Springs Water District
17081 Hwy. 116, Suite B
Guerneville, CA 95446

Regarding: Water Tank Relocation Project

ROUGH AGREEMENT

Leslie Bahr provides:

=cost of landwork/road
=cost of tank fabrication/installation
=cost of concrete pad/foundation
=cost of 6" line from new tank to old location
=cost of engineer hired by me
=easement docs—dwg and description (by B+R)
=landscaping-materials and installation

Sweetwater Springs provides:

=any required permits to construct tank
=cost of contractual agreement between parties
-this needs to show timeline
-agreement about exclusive permanent easement
-Quick claim deed
=SCADA
=solar
=water service hookups and hydrant hookups for up to three parcels at no cost
=cost of B+R to consult with engineer (minimal)
=cost of replacing existing 2" line with new 6" line

August 29, 2017

Dear Members of the Board of Directors,

The following is a discussion of the circumstances surrounding an existing water connection associated with a parcel of land herein described and referred to as 15967 Laurel Place, Guerneville, CA

## SUMMARY and RESOLUTION

SSWD's "Policy Regarding Capacity Charge Required for Meter" provides in Section 3020.144(a) that,

> "The entire capacity charge is to be paid within 30 days after the District approves an applicant's improvement plan for water service unless the District defers, waives or modifies this requirement pursuant to a written agreement and the applicant, approved by the Board of Directors."

At no time did I submit an "improvement plan for water service," and at no time did SSWD review or approve an "improvement plan for water service" for my property. Therefore, there was no reason why a capacity charge was or is due. The July 25, 2016 email demand by SSWD that I pay a capacity charge, and all subsequent requests and demands that I pay a capacity charge, were premature, inconsistent with, and unlawful under SSWD's own regulation. Further, the action taken by SSWD on or about June 30, 2017 in terminating its water service to my property at 15967 Laurel Place, Guerneville, CA, based upon my lawful refusal to pay the capacity charge (which, by the SSWD's own regulation, was not due) was arbitrary, capricious, discriminatory, inconsistent with SSWD's own rules, and unlawful. SSWD must comply with its own regulations. Therefore, SSWD should: (a) restore my water service, which it unlawfully terminated on the pretext that a capacity charge payment of $5,901,80 was due, and (b) not seek to collect any capacity charge from me until such time as it approves such "improvement plan for water service" as I elect to submit.

As a good faith offer to resolve this matter, when SSWD restores single family residential water service to my property, I will pay, even though no capacity charge is due and owing, the capacity charge at its rate of $2,930 (once this figure has been verified) in 2006, when SSWD established water service to my property.

## BACKGROUND

For the record, I would like to state that I, in conjunction with my brother-in-law, purchased 15967 Laurel Place from owner Michael Romero, closing the sale in February of 2009.The property was listed four separate times in a period dating from 2006-late 2008. All listing materials for the property presented it as including “electrical and water utilities.” There was nothing to contradict this information in any of the closing documents related to the sale.

Subsequently, I undertook a GPA (General Plan Amendment) project, as directed by PRMD, in an attempt to get my parcels connected with the sewer line. A necessary requirement of the GPA proposal included the provision of a public benefit. As SSWD’s Shoeneman tank, located in a small jigsaw puzzle piece of land amidst my parcels, was greatly in need of replacement due to its limit of 10,000 gallons, and because the tank partially disrupts a view from one of the parcels, I made an offer to Steve Mack and Kevin Gilman, managers of Sweetwater Springs Water District (hereafter referred to as SSWD) to provide a new 30,000 tank in a different location, one that would supply water to the entire service area. My proposal was warmly received and accepted by Mr. Mack, and he wrote a letter of support for the GPA proposal that was submitted to PRMD as part of my packet. The agreement included the provision that I would receive three metered water connections at no charge due to the great benefit of my providing expanded water capacity to the entire service area. Despite the fact that PRMD had outlined and directed this GPA to me, when it was completed and finally presented, after two years of effort and expense on my part, they refused to pass the amendment.

In his August 22, 2017 letter in response to my questions, Mr. Mack acknowledged that SSWD established “Single Family Residential” water service in my name for my property in September of 2011  Although I believe that such service was actually established by SSWD earlier, in 2009, after I had acquired the property, it is incontestable that SSWD did establish Single Family Residential service for my property in my name, and that it did so well before it first notified me, in 2016 (as also acknowledged in Mr. Mack’s letter), that the existing service was “temporary.” And from that time forward, through June 30, 2017 (when Mr. Mack had the service disconnected) I faithfully paid all water bills, despite the fact that the only time I spent on my land was in a small trailer for maintenance purposes, generally amounting to a maximum of 30 days per year.

Though Mr. Mack has claimed that my service was on a meter, I do not understand how this could have been the case, as the monthly flat rate never varied, which it would have done had the service been metered. Throughout its onset and the entirety of my service connection (a period of nearly ten years), no discussion or mention of the fact that SSWD considered the existing water connection to be “temporary” rather than “permanent” was ever made. I believed the existing connection to be fully associated with my property, and had no reason to believe otherwise since I was a paying customer of SSWD.

When Mr. Mack initially contacted me on July 15, 2016, and suddenly announced that I was required to pay what he referred to as a “capacity charge” fee, I was confused. I had no familiarity with the term, as at no prior time had SSWD broached the subject, and did not understand how such a fee was determined or the reason I was suddenly obligated to pay it. Mr. Mack offered very little by way of explanation, providing only the information that “someone else had asked about getting water service,” and that the service for which I had been making payments for nearly ten years was in fact only “temporary.”

Mr. Mack later acknowledged the confusion his sudden demand had caused, and proposed I pay the fee in installments. I responded by stating that I needed time to investigate the details of the land purchase and my closing documents, and wanted to better understand the circumstances under which an owner of unoccupied land was required to pay such a charge. No further information was put forward by Mr. Mack along those lines, despite his having offered to provide it.

Nine months later, on April 27, 2017, when Mr. Mack contacted me again, he acknowledged he had “dropped the ball” on the matter, but instead of providing any information that would clarify the situation, as I had anticipated, he merely demanded payment by June 30, 2017, with the threat of disconnecting my service should I not pay by that date. To this, I responded by asking highly specific questions of Mr. Mack, all of which, as a long-standing customer of the district, were reasonable, considering the nearly $6,000 fee he was demanding I pay. Again, he refused to offer any information or answers, until I was forced to undertake a lawyer’s assistance in obtaining them.

The District, under then managers Chuck Howell and Kevin Gilman, provided a water connection to original owner Michael Romero on or about February 14, 2006 under a “Construction Investigation Application,” that showed a termporary service installation for a period of ninety days (a copy of this document was not received by me until July 25, 2016). Mr. Romero had completed improvement plans for the property, with architectural documents detailing a home he intended to build on the site. SSWD policy requirement 3020.140, Charges for Installation of New Service Connection, states:

> “Upon approval of an application for a new service connection and payment by the applicant of the service installation charge and connection fees set forth herein, the District will make all necessary installations. All deposits made for such charges and fees shall be credited to the parcel of land to be served, and shall run with said parcel of land.”

In good faith, Mr. Romero applied for, paid for, and received a new service connection in February of 2006. Despite policy requirement 3020.144, dictating that “the entire capacity charge is to be paid within thirty (30) days after the District approves an applicant’s improvement plan for water service,” SSWD failed to charge him the capacity charge for a period of more than two years

while it was on the market, despite his having informed them he intended to sell the parcel. The existing water service remained in place, Mr. Romero marketed his property with it in place, and I purchased the property with an existing water connection that “ran with said parcel of land.”

Despite Mr. Mack’s insistence that “all other customers have paid the capacity charge” as a reason I should do so, SSWD has had *no other* long term customers paying for a ‘temporary” connection, and I do not believe they currently have *any other* customers who have paid this charge until they have submitted developmental documents such as architectural drawings and/or building permits. To date, I have not reached this stage of development, and though I intend to at some point in the future, I cannot verify exactly when that date may be. Nevertheless, I wish to state that I am willing to consider paying a “capacity charge,” but one that is commensurate with the date when SSWD, under the terms of their own ordinances, was obliged to charge Michael Romero (2006), rather than the current cost, which is nearly double.

## CONCLUSION

Prior to June 30, 2017, I made every effort to resolve these circumstances with SSWD so that they would not shut off my existing water connection until such a time that I might have an opportunity to present this matter to the Board of Directors. But all the requests I made of Mr. Mack to answer legitimate, reasonable questions based on my status as a long standing customer went unanswered until I retained an attorney to assist me in presenting these questions to him. I proposed that I make a payment towards the “capacity charge” until the Board had a chance to review the situation. Additionally, I offered to pay the cost of the “capacity charge” at the price it would have been when 15967 Laurel Place was originally purchased by Michael Romero. The management team—Mr. Steve Mack, Mr. Kevin Gilman, and Julie Kenny—refused to consider any of my offers and insisted I agree to the amount they demanded (which I could not agree to do) or have my water cut off. My water service was disconnected on June 30, 2017, despite my protests, and despite the fact that preserving the connection until a formal review was held did not affect the District in any way. Because my existing water connection is the last available connection in the area, I am currently gravely concerned that SSWD will not reinstate my service without demanding that I pay for a new water tower that would provide water NOT exclusively to 15967 Laurel Place, but to *every* customer in the entire service area. In fact, I question if whether this situation isn’t a deliberate attempt to unlawfully remove my service in order to provide it to another potential customer.By refusing to re-instate my service, SSWD would dramatically devalue my property and deprive me of any future potential to receive service.

I plead that the Board consider these circumstances in a fair and just manner. Though I do not believe I currently owe any capacity charge at all, I am willing to pay this cost at the rate that should have been charged to to Michael Romero when his 90 day contract was up in 2006 ($2,930), upon verification of this number.To summarize:

SSWD's demand that I pay a capacity charge was premature, inconsistent with its own regulations, and unlawful because I have never presented, and SSWD has never approved, an improvement plan for water service for my property. For the reasons stated above, SSWD should: (a) restore the single family residential water service to my property that it unlawfully terminated on June 30, 2017 on the pretext that a capacity charge payment was due and owing, when in fact it was not, and (b) not seek to collect any capacity charge from me until such time as it approves such "improvement plan for water service" as I elect to submit.

However, in the spirit of accommodation, and as a good faith effort to resolve this matter, if SSWD restores single family residential water service to my property as it existed prior to the termination of service on or about June 30, 2017, I will pay, even though no capacity charge is due and owing, the capacity charge of $2,930, which was the amount of the capacity charge in 2006 when SSWD established water service to the property. I feel my willingness to do so, considering the fact that the land is currently undeveloped and my water use is less than 30 days a year, is more than reasonable.

Thank you for the time and attention you have devoted to this matter.

Sincerely,

Leslie C. Bahr