# SWEETWATER SPRINGS WATER DISTRICT

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

**FROM:** Ed Fortner, General Manager

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**Meeting Date: October 1, 2020**

**SUBJECT: Proposed District Tax Lien Policy Changes**

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**RECOMMENDED ACTION:** Receive report and approve the Proposed District Tax Lien Policy Changes described in Resolution 20-21.

**FISCAL IMPACT:** N/A

**DISCUSSION:**

The Covid-19 Disaster has created a need to view many policies and procedures of the District differently. At the August 6 Board meeting, Resolution 20-19, that described the process for property liens to collect delinquent billing revenue, was approved. Direction was given to the GM to bring back a resolution amending the District's policies to reflect this right to lien property for this purpose. I have consulted with our legal counsel and with the County Tax Collections Department to confirm that the District is authorized to use this lien process. Sections 3020.120, 3070.50, and 3070.70 of the District's Policy and Procedures have been edited to reflect Resolution 20-19.

Section 3020.120 adds a reference to the new lien procedures. Section 3070.50 lays out in detail the lien procedures, as stated in Resolution 20-19. Section 30270.70 proposed changes to the District's Landlord/Tenant Policy include the following considerations:

**What we do now:** Many of our District accounts are rental properties. Currently, when a non-owner, such as a tenant, is the District's customer, we notify the Owner when the account is either closed or turned off for non-payment. We let the Owner know that their tenant is either seriously delinquent or has closed their account, and if their tenant fails to pay their bill, the Owner can either pay the bill in full or take responsibility for all future bills at this address. If they choose to leave the bill unpaid, the account is placed in "Owner Only" status, and the delinquent tenant is sent to Collections. Timely notification is important because many owners are able to take care of a delinquent water bill with the tenant's security deposit.
To be clear, under the current policy, the Owner is specifically <u>not required</u> to pay their tenant's delinquent water will, but many choose to do so to preserve the right to have future tenants put the water bill in their name. Further, District Policy

3070.70(G) limits the General Manager's authority to lien the Owner's property to collect unpaid water bills to those accounts where the Owner is the customer.

**What we propose to do:** The new lien policy allows the District to lien an Owner's tax bill whether they or their tenant is the District's customer. This expanded ability to lien Owner properties makes it a more efficient (and hopefully more effective) way of dealing with delinquent accounts than either the Owner-Only procedure or sending an account to collections. Accordingly, the District has removed all references to requiring accounts to be in an Owner's name from Section 3070.70 and revised that section to clarify that an Owner's property will be liened, even if the property's water account was not in their name. Notifications to the Owner would continue – they will continue to be important -- but revised to notify then that they can either pay their tenant's delinquent bill or be subject to having their property liened.

I recommend that the Board approve Resolution 20-21 that amends and clarifies District Policy on this lien process.

# Resolution 20-21

## A Resolution of the Board of Directors of the Sweetwater Springs Water District Amending the following Sections of the Sweetwater Springs Policies & Procedures:
## Section 3020.120 - Payment of Prior Charges or Liabilities
## Section 3070.50 - Collection
## Section 3070.70 - Collection of Charges on Properties where the Customer is Not the Owner

WHEREAS, Section 3000 et al. describes the District's Water Code of Operations; and

WHEREAS, pursuant to Water Code Sections 31007 and 31025, the District provides domestic water services to its residents and collects from such customers certain rates and charges to fund the operation and maintenance the District; and

WHEREAS, the District Board of Directors ("Board") is authorized by Water Code Section 31024 to establish rules and regulations for the sale, distribution, and use of water, which are codified in the Sweetwater Springs Water District Policies & Procedures ("SSWD Policies" or "SSWD Policy") and related actions by the Board; and

WHEREAS, pursuant to subdivision (e) of Water Code Section 31701, the District is authorized to submit to the county auditor, on an annual basis, a statement of delinquent and unpaid charges for water and other services that have been unpaid for sixty (60) days or more on July 1st; and

WHEREAS, pursuant to Water Code Section 31701.5, the delinquent charges listed on such statement shall be added to and become a part of the annual taxes next levied upon the property subject to such charges and will constitute a lien against the property; and

WHEREAS, pursuant to Water Code Section 31701.7, the District is authorized to secure unpaid water charges at any time by a certificate specifying the amount of such charges and the name and address of the person liable therefor in the county recorder's office; and

**NOW THEREFORE BE IT RESOLVED** by the Board of Directors of the Sweetwater Springs Water District, Sonoma County, California, that:

**Section 1.** Section 3000 et al. of the Sweetwater Springs Water District Policies & Procedures, is hereby amended as follows:

**Policy Number:** **3020.120**
**Policy Title:** **Payment of Prior Charges or Liabilities**

**3020.120** Payment of Prior Charges or Liabilities: The district reserves the right to lien properties on the tax rolls for unpaid water charges in a manner adopted by resolution of the board which will be periodically reviewed. Resolution 20-19 as described in Policy Number 3070.50 describes the collection procedure for liening property.

**Policy Number: 3070.50**
**Policy Title: Collection**

**3070.50** Collection. Delinquent water bills shall be referred to a collection agency ten (10) working days after termination of water service. Accounts deemed to be uncollectable may be written off by the General Manager. Notwithstanding the provisions of this section, the District reserves the right to seek any other remedy available to the District, including liening property, instituting court action, etc. to collect delinquent bills. Resolution 20-19, adopted August 6, 2020 describes the collection procedure for liening property as follows:

WHEREAS, the Board now desires to adopt a procedure impose a lien on properties with delinquent water service charges, penalties, and interest by recording a lien on the property with the Sonoma County Clerk-Recorder-Assessor or to have such delinquent charges, penalties, and interest collected on the county property tax roll by submitting a statement of such delinquencies to the Sonoma County Auditor-Controller-Treasurer-Tax Collector, or both.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Directors of the Sweetwater Springs Water District as follows:

**Section 1. Recitals.** The foregoing recitals are true and correct and made a part of this Resolution.

**Section 2. Procedure to record lien for unpaid water service charges and penalties.**

A. At any time, the General Manager or his or her designee may prepare a list of properties within the District that have unpaid charges for water services that have remained delinquent and unpaid for sixty (60) days or more.

B. At least fourteen (14) days prior to the date on which the Board will consider the list of delinquent properties, the General Manager shall deliver notice to the address of the delinquent property and the address of the property owner, if known, informing the property owner that the account is delinquent and that the unpaid charges and penalties could become a lien on the property if not paid. The notice shall include the date, time, and location of the meeting where the matter will be considered by the Board.

C. The General Manager shall present the list of delinquent properties to the Board at the regular or special meeting specified in the notice.

D. After receiving written and/or oral comment on the matter, the Board may approve, revise and approve, or disapprove the list of delinquent properties by resolution.

E. Upon approval by the Board, the General Manager or his or her designee shall record a certificate with the Sonoma County Clerk-Recorder-Assessor specifying the amount of such charges, penalties, and interest and the name and address of the person liable therefor.

F. If, after the filing of the lien certificate, the full amount of the delinquent charges, penalties, and interest are paid, the General Manager or his or her designee shall take such steps necessary to remove the lien.

**Section 3. Procedure for collection of unpaid water service charges and penalties on county property tax roll.**

A. Each year, the General Manager or his or her designee shall prepare a list of all properties within the District that have unpaid charges for water services that have remained delinquent and unpaid for sixty (60) days or more on July 1.

B. At least fourteen (14) days prior to the date on which the Board will consider the list of delinquent properties, the General Manager shall deliver notice to the address of the delinquent property and the address of the property owner, if known, informing the property owner that the account is delinquent and that the unpaid charges and penalties could become a lien on the property if not paid. The notice shall include the date, time, and location of the meeting where the matter will be considered by the Board.

C. Before August 1 of each year, the General Manager shall present the list of delinquent properties to the Board at the regular or special meeting specified in the notice.

D. After receiving written and/or oral comment on the matter, the Board may approve, revise and approve, or disapprove the list of delinquent properties.

E. Upon approval by the Board, the General Manager or his or her designee shall submit the statement of delinquencies to the Sonoma County Auditor-Controller-Treasurer-Tax Collector and, if necessary, the Sonoma County Board of Supervisors on or before August 1 and request such unpaid charges and penalties be collected with the annual property taxes..

**Section 4. General Authorization.** The General Manager is hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver any and all documents, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to effect the purposes of this Resolution, including

negotiating and executing an agreement with the county for the collection of charges on behalf of the District. All actions heretofore taken by officers, employees, and agents of the District that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

**Policy Number:** **3070.70**
**Policy Title:** **Collection of Charges on Properties where the Customer is Not the Owner**

**3070.70** **Collection of Charges on Properties where the Customer is Not the Owner:** Charges, fees, and penalties rendered to customers who do not own the property subject to the bill shall be subject to the following provisions:

A. **Definitions.** For purposes of this section,

"Owner" is defined as the person(s) named pursuant to the County of Sonoma property tax records, or such other records determined by the District as indicating ownership of the property.

"Non-Owner Customer" is defined as any person other than the Owner of the property that the District is billing for services for the convenience of the Owner.

"Designated Agent of Record" is defined as any person or firm, other than a tenant, legally or contractually responsible for the management and operation of a residential or commercial property, with such designation to be accepted or rejected by the General Manager at his sole discretion. Designation of an Agent of Record in no way shall relieve the property owner for responsibility of payment of charges, fees and/or penalties on the property.

B. Service to Non-Owner Customers shall be subject to all of the provisions contained in Section 3000, "District Water Code of Operations."

C. In the event water service to a Non-Owner Customer's property is **turned off for non-payment of charges, fees and/or penalties**, the District shall

(1) Notify in writing the Owner or the Owner's Designated Agent of Record that the Owner will be subject to the District's lien procedures as set forth in Policy Number 3070.50. ~~has the option to either~~

~~(a) Pay the bill in full within 10 days of the date the notice is mailed; or~~

~~(b) Place the bill in the Owner's name for subsequent charges, fees and/or penalties, with the water service to the property to remain disconnected unless and until such action is taken.~~

~~(2) If the Non-Owner Customer's bill remains unpaid more than 10 days after the date of turn-off, the Owner of the property shall thereafter be solely responsible for all subsequent charges, fees, and/or penalties on the property.~~

D. In the **event water service to a Non-Owner Customer's property is closed for reasons other than non-payment of the bill**, the District shall

(1) Notify the Owner in writing the same day the closing bill is sent that a closing bill has been rendered to a Non-Owner Customer

(2) Further notify the Owner that if the closing bill is not paid the owner will be subject to the District's lien procedures, as set forth in Policy Number 3070.50.

E. The General Manager is authorized to lien the property at his discretion in order to collect charges, fees and/or penalties owed the District either by the owner or a non-owner customer.

~~within 25 days from the date mailed the Owner shall thereafter either~~

~~(a) Become solely responsible for all subsequent water charges, fees and penalties on the property; or~~

~~(b) If a new Non-Owner Customer has already established an account with the District, the Owner shall become jointly responsible for all charges, fees and/or penalties until said Non-Owner Customer's service with the District is discontinued, at which time the Owner shall thereafter be solely responsible for all charges, fees and/or penalties.~~

~~E. In the event that a property in which the Owner is required to be responsible for the water bill changes Owners (i.e., the property is sold or otherwise legally transferred), the General Manager shall have the sole discretion to, on a one-time basis, waive the provisions of "C" and "D" above for the new owner. Such waiver shall require a request by the new Owner, along with sufficient documentation as may be required by the General Manager to prove that 100% of the property has been transferred to a new Owner and that the previous Owner no longer has any legal interest in the property.~~

~~F. The General Manager shall develop such procedures and/or requirements to implement and administer the provisions of this section.~~

~~G. On properties where the Owner is jointly or solely responsible for payment of a bill, the General Manager is authorized to lien the property at his discretion in order to collect charges, fees and/or penalties owed the District.~~

**Section 2.** Severance Clause. If any section, subsection, sentence, clause or phrase or word of this resolution is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Sweetwater Springs Water District Board of Directors hereby declares that it would have passed and adopted this resolution and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

**Section 3.** Effective Date. This Resolution shall become effective on October 1, 2020.

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted and passed by the Board of Directors of the SWEETWATER SPRINGS WATER DISTRICT, Sonoma County, California, at a meeting held on October 1, 2020, by the following vote.

| **Director** | **Aye** | **No** |
|---|---|---|
| Sukey Robb-Wilder | _____ | _____ |
| Tim Lipinski | _____ | _____ |
| Rich Holmer | _____ | _____ |
| Gaylord Schaap | _____ | _____ |
| Larry Spillane | _____ | _____ |

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Rich Holmer
President of the Board of Directors

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Attest: Julie A. Kenny
Clerk of the Board of Directors