SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

Meeting Date: October 5, 2017

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

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 June 30, 2017. This has been a long-running situation which was discussed at the September meeting:

Staff made statements at that meeting which were correct as far as we knew from the information we had at the time. Since then Ms. Bahr has responded to staff statements and we have done more investigation:

- Contrary to statements staff made at the September meeting, District staff called Ms. Bahr in August or September to pay Mr. Drexhage's account "in care of" Ms. Bahr, at the request of Mr. Drexhage who gave District staff her contact information. It is not clear from the record who called whom to have Ms. Bahr take over the account (instead of the account being in Mr. Drexhage's name "in care of" Ms. Bahr) at the end of September.

- The record clearly shows that no flat charges have ever been paid on any of the parcels currently owned by Ms. Bahr. Ms. Bahr apparently acknowledges that.

- District Policies require that a Capacity Charge is required for establishing a service and none has been paid nor have Flat Charges ever been paid for whichever parcel Ms. Bahr desires a water service.

We (District staff and Ms. Bahr) have not come to agreement on this matter. Ms. Bahr intends to come to the meeting to state her position.

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