

Staff Report

for the Administrative Practices Committee Meeting of September 1, 2020

TO: Administrative Practices Committee Members

FROM: Shannon Wood, Business Services Technician
Doug Roderick P.E., Engineering Manager

DATE: August 24, 2020

SUBJECT: Regulation 10.20 District Financed Waterline Extensions
Proposed Modifications

OPERATIONS

RECOMMENDATION: Review and consider District Financed Waterline Extension modifications and advance a recommendation to the Board of Directors or advise staff as appropriate.

BACKGROUND:

The existing District Water Service Regulations, Section 10.20.01 DFWLE Eligibility states "...To avoid delays in construction, once the District issues a Notice to Proceed to the Contractor constructing the DFWLE facilities, no further Funding Agreements will be accepted."

In consideration of requests from four property owners of the Table Meadow Road Phase 2 DFWLE project, the Board of Directors authorized staff to receive and execute Funding Agreements after the above-mentioned deadline. Based on discussion at both the Administrative Practice Committee and the Board of Directors meetings, staff has reviewed the regulation and is proposing modifications as redlined in the attachment.

BUDGETARY IMPACT: No budgetary impact.

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Attachments (2):

- NID Water Service Regulations - Section 10.20 District Financed Waterline Extensions – redline version with track changes
- NID Water Service Regulations – Section 4.02.01 Standby Charges, General

NID Water Service Regulations - Section 10.20 District Financed Waterline Extensions - redline version with track changes

SECTION 10

TREATED WATER SYSTEM EXTENSIONS

10.20 DISTRICT FINANCED WATERLINE EXTENSIONS

The goal of this Section is to permit expansions of residential water service to new customers by authorizing planning services and an advance of District funds to eligible neighborhood groups actively seeking the extension of treated water line(s) into their community. Assistance offered by this program includes informative group meetings, providing project design and construction services, providing advanced project funding, and providing a means for recovering project costs advanced by the District from the neighborhood over time. A project implemented through this Section shall be referred to as “District Financed Waterline Extension, or DFWLE.

10.20.01 DFWLE Eligibility

Neighborhood groups representing existing single-family residential dwellings, including duplex units, and to a limited extent, unimproved lots are eligible for the DFWLE program. The DFWLE program will not be used to finance treated water facilities for commercial or industrial land uses, or for lands under development through a use permit or for subdivisions, including planned unit or similar developments.

The intent of the DFWLE policy is to provide treated water to existing developed neighborhoods. Unless otherwise authorized, the number of unimproved parcels eligible for inclusion with any recognized neighborhood group will be limited to 20% of total potentially served parcels. A parcel shall be considered improved if a building permit has been issued for a residence on that parcel.

An eligible DFWLE must contain a minimum of 6 parcels, of which at least 5 must be improved, and a target maximum of 40 parcels. The minimum participation level will be

at least 50% of the total parcels that the District determines could potentially be served by the DFWLE, rounded to the nearest whole number. Participation will be implemented through the execution of a DFWLE Funding Agreement as described in Section 10.20.10. below. ~~A DFWLE Funding Agreement, fully executed by the interested landowner(s), must be delivered to the District and approved by the Board before it is effective. To avoid delays in construction, once the District issues a Notice to Proceed to the Contractor constructing the DFWLE facilities, no further Funding Agreements will be accepted by the District.~~

10.20.02 DFWLE Program Eligibility List

The District will maintain a list (Eligibility List) of neighborhoods requesting participation in the DFWLE program. To be placed on the Eligibility List, a neighborhood must submit its request in writing. The request must include 1) a contact person and telephone number, 2) parcel number of each participating parcel, 3) owner(s) name and address for each parcel, and 4) signatures from each owner.

Priority will be established based on the date of addition to the Eligibility List, and on active participation. As shown on the flowchart, the Engineering Committee will determine the next neighborhood group eligible for funding under the DFWLE program and the Administrative Practices Committee will evaluate funding. At that time, with a recommendation from both Committees, the Board of Directors will consider encumbering DFWLE allocated funds and assignment of a rate of interest representing interest foregone by the District had the funds allocated for the DFWLE project been otherwise invested. Upon determination of the interest rate, the Board of Directors will assign a surcharge modifier to the DFWLE project. (The surcharge modifier is calculated as determined elsewhere in this Section.) Funds encumbered for an individual DFWLE and funds allocated for all DFWLE projects shall be subject to the discretion of the Board and to limitations imposed by the Board of Directors as part of its budgeting authority, and may be reduced or restricted as the Board deems necessary given the other financial demands on the District.

Once a project is deemed eligible as a DFWLE project, the District will incorporate the general program provisions, complete a Water Service Study, establish the maximum charge for recovering project costs, and solicit neighborhood commitment through an informative group meeting.

10.20.03 General Program Provisions

Participation in the DFWLE program is voluntary. DFWLE project costs will be allocated equally among all parcels with potential service from the water line extension. The Board of Directors will determine the level of funding available for all DFWLE projects on the Eligibility List on at least a yearly basis.

The District will advance the funds necessary to meet the costs for eligible DFWLE project(s) approved by the Board of Directors, less the total amount of good-faith deposits received. The District will recover the funds advanced through the application of the Service Extension Charge (SEC).

District funds advanced to the DFWLE program for participating parcels which submit a good faith deposit will be recovered through the application of a Service Extension Charge (SEC). The maximum cost recovery time period will be 30 years. The SEC will be collected as part of the participating parcel's treated water bill. The SEC will include a surcharge modifier to compensate the District for the loss of interest earnings as a result of funding participating parcel's share of the DFWLE costs. DFWLE costs allocated to parcels without an executed funding agreement will be subject to the Districts Reimbursement Policy #3175.

Costs eligible for advance by District under the DFWLE program include preliminary design, compliance with CEQA, design, rights of ways, construction, construction management, and capacity and meter installation charges for a domestic meter. The

maximum amount of financeable project facility costs, including capacity and meter installation charges, is 90% of the total cost per participating parcel.

The applicant shall complete and submit an Application, Form 10-E, requesting to participate in the District Financed Waterline Extension Program, and the District will charge an administrative processing fee as shown on the application. The processing fee is non-refundable regardless of completion of the waterline extension project.

10.20.04 Service Extension Charge (SEC)

A Service Extension Charge (SEC) will be used to recover over time District funds advanced for DFWLE project costs from participating parcels that have paid a good faith deposit. The SEC will be added to, and become part of the water bill for each of the participating parcels. The maximum SEC required to support project costs allocated to each participating parcel (“Total Costs”) will be determined in the Water Service Study as defined in Section 10.20.06. The SEC will appear on the water bill and will be calculated following compilation of all project costs. The SEC will be calculated as 1) the total project costs, 2) divide by the number of potentially served parcels, 3) add the total capacity and meter installation charges, 4) subtract the total good-faith deposits received, 5) divide by the total number of anticipated billing periods within the cost recovery period, and 6) multiply by the surcharge modifier as determined elsewhere in this Section.

The SEC will be the same for all participating parcels within a particular DFWLE project and will not change once it first appears on the water bills.

10.20.05 Surcharge Modifier

A surcharge will be used to compensate the District for the loss of interest earnings as a result of lending on District projects. The modifier will be determined by the Finance Manager/Treasurer and based on the United States 5-Year Agency Bond Rates published by the District’s Investment Broker on April 1. The surcharge modifier will be calculated

as 1) the Capital Recovery Factor 2) multiplied by the number of billing periods within the project cost recovery period.

10.20.06 Water Service Study

The District will complete a Water Service Study for the next eligible DFWLE project as determined by the Engineering Committee. Prior to beginning the study, the District will investigate the area surrounding the core neighborhood group to map the parcels which could potentially receive water service from the DFWLE. Should the District determine that expansion of the project to other parcels is necessary for the orderly expansion of the distribution system; the District will add the parcels to the DFWLE group.

The Water Service Study will include at least:

- a. Project location map and preliminary facility layouts
- b. Delineation of potential parcels served from DFWLE
- c. Project costs; including preliminary design, compliance with CEQA, design, rights-of-ways, facilities construction, construction management, and contingencies.
- d. District participation in facility costs if appropriate, pursuant to District policy (including the Capacity Charge Study).
- e. Capacity and Meter Installation charges for a minimum-size water meter.
- f. Maximum Total Charge
- g. Maximum Service Extension Charge (SEC) required to amortize the Maximum Total Charge.

The cost estimates and SEC quoted in the Water Service Study will be honored for a minimum of 12 months, giving time to complete formation of the group, and execution of a Funding Agreement with each participating parcel.

The District will perform the Water Service Study without charge to the neighborhood group.

10.20.07 Initial Group Meeting

Upon completing the Water Service Study, the District will notify the group contact person and arrange for an initial group meeting. The District will present the findings of the study and answer questions.

10.20.08 Good-Faith Deposit

Should the neighborhood group demonstrate a willingness to proceed with the DFWLE project based on the maximum SEC quoted during the initial group meeting; the District will request an application and a good-faith deposit from each of the participating parcels. A good-faith deposit must be received from at least 50% of the benefitted parcels as calculated in accordance with Section 10.20.01 and will be applied against the total project cost so as to reduce the SEC for each participating parcel.

The deposit amount will be at least 10% of each participating parcel's share of the estimated project cost, including capacity and meter installation charges.

As established in the flowchart, after the District's request to all participating parcels to execute an application and make a good faith deposit, each participating parcel must sign and return a letter containing the terms and conditions of the deposit, and return the deposit with the letter. Should one or more prospective participating parcels fail to return the deposit amount and a countersigned deposit letter; the non-responsive parcel(s) will be removed from the neighborhood group list. If this process results in less than the minimum participation from the potentially served parcels as calculated in accordance with Section 10.20.01 within the allowed solicitation period, all deposits will be returned and the project will be removed from the eligibility list.

Once a good-faith deposit and executed letter have been collected from at least 50% of the potentially served parcels as calculated in accordance with Section 10.20.01, the District will request the owner(s) of each participating parcel to enter into a Funding Agreement. The District will also begin charging expenses against the project for

inclusion in the Total Charge. Retroactive charges, representing costs incurred to that date by the District will not be applied to the Total Charge to be recovered under the Funding Agreement.

If, during development, but after receipt of the requisite number of good faith deposits, the project fails due in whole or in part to the actions or inactions of the participating parcels, the DFWLE will be discontinued and the amount of good-faith deposit that remains unused at the time will be split equally among participating parcels and returned. If the project fails due solely to the actions or inactions by the District, the total amount of good-faith deposits will be returned.

10.20.09 Easements - Subordination of Agreement/Easements

Concurrent with the submission of the good faith deposit, owners of participating parcels must agree that before the commencement of construction by District, and in no event later than the date of execution of a Funding Agreement, they will, when requested, convey to the District easement(s), in the form prepared by the District, that the District determines are necessary for installation and maintenance of the waterline extension project. Owners must also agree to seek and obtain subordination from any mortgagor or holder of deed of trust or other lien holder of a security interest in the parcel, subordinating their security interest(s) to the District easement, the Funding Agreement, and the lien authorized under the Funding Agreement. For any necessary easements required for the waterline extension over property owned by other persons or entities, which are not participating parties but from whom an easement is required, the participating owner will seek to facilitate, in cooperation with other participating owners, the subordination of any mortgagors, trustors, or lien holders in favor of the District's easement. The Funding Agreement will specify that the District may refuse to execute the Funding Agreement, or if executed, cease the design and implementation of the pipeline extension financing project, with no further rights or obligations between the parties, in the event the District determines, at its sole discretion, that any failure to subordinate by a participating property owner's lender or the lender for a parcel owned

by another person or entity renders the project not in the best interest of the District. The District is not required to initiate proceedings in eminent domain to acquire any easement or subordination required for the DFWLE. All required right of way documentation, including subordinations necessary for a pipeline extension project must be executed and effective prior to the start of construction.

In the event that a prospective participating owner cannot obtain subordination, they may submit a written request for waiver to the General Manager. The General Manager may modify or waive the requirement to obtain subordination including title insurance, in those circumstances where it is determined that the value of the District's interest is so small as to render such documentation economically unreasonable; the risk of foreclosure is so small that it is not considered a realistic risk; and/or the lender or senior lienholder provides the District with alternative assurance satisfactory to the General Manager, that the District's easement will not be disturbed by a senior lienholder. The General Manager's determination can be appealed by written request to the Administrative Practices Committee (APC), who may by unanimous action grant the appeal, deny the appeal, or forward the appeal to the Board of Directors with or without recommendation. If the APC denies the appeal, the applicant may make a final appeal to the Board of Directors. The decision of the Board of Directors shall be made in its sole and unlimited discretion and will not be subject to appeal.

10.20.10 Funding Agreement

The owner(s) of each participating parcel must enter into a Funding Agreement, subject to approval by the Board of Directors, as found in Form 10-F attached to these regulations. Special provisions may be added to, or other revisions made to the Funding Agreement form as found necessary by the District under the circumstances of each transaction. A DFWLE Funding Agreement, fully executed by the interested landowner(s), must be delivered to the District and approved by the Board before it is effective. The Funding Agreement will be recorded against the participating parcel.

The Funding Agreement, once recorded, will authorize a lien by the District on the participating parcel for the purpose of collecting all delinquent water account charges, including the accumulated SEC.

Project design work will not begin until at least 50% of the potentially served parcels as calculated in accordance with Section 10.20.01 have executed a Funding Agreement, returned it to the District, and the agreement has been recorded with the County Clerk.

Fully executed DFWLE Funding Agreements and good faith deposits, as outlined in section 10.20.08, will be accepted up to 30 days from written notice of completion of a new treated water line as defined in Section 4.02.01. Funding Agreements received more than 30 days from the date of notice or without a good faith deposit shall be deemed invalid.

10.20.11 Project Cost Compilation and SEC Adjustment

Following completion of construction of the DFWLE facilities, project costs will be compiled and a final Total Charge will be calculated. The District will analyze the project costs and issue a project completion Cost Accounting Report. The report will recalculate, based on actual project costs, all program variables, including the SEC.

If the Cost Accounting Report indicates that the Total Charge requires an SEC greater than the maximum SEC appearing in the Funding Agreement, the SEC will remain unchanged and the District will pay the overrun. The District will not place further claim on participating parcels for the amount of the overrun.

If the Cost Accounting Report indicates that total project costs allow an SEC less than the maximum SEC appearing in the Funding Agreement, the District will adjust the SEC accordingly to the lower amount appearing in the report. The revised SEC and associated monthly payment will be included with the next water bill for each of the participating parcels.

10.20.12 Failure to Pay Treated Water Bill

Failure to pay a treated water bill as required in the Funding Agreement, including the SEC, will result in a delinquent account and, if not paid in accordance with District rules, a subsequent notice of turn-off, followed by turn-off. Upon issuance of a turn-off notice, whether or not the service is actually discontinued, all delinquent amounts will become due and payable. Treated water service will remain off and the SEC will continue to accrue, along with all other appropriate and customary charges, until the account has been paid in full. Unpaid balances shall constitute a lien against the participating parcel.

10.20.13 Pre-Payment of Project Costs and Charges

Upon completion of construction, compilation of project cost, and final SEC adjustment (if required), a participating parcel may pre-pay all or a portion of its Total Charge, including capacity and meter installation charges. Multiple pre-payments will be accepted without penalty from each participating parcel during the cost recovery period.

Upon receiving a pre-payment from a participating parcel, the time allocated for cost recovery will be reduced. The number of billing periods by which the cost recovery period will be reduced will be determined by 1) dividing the pre-payment amount by the SEC amount, 2) multiplying the results by the surcharge modifier declared by the Board of Directors, and rounding down to the nearest whole number. The fraction remaining, if present, will be 1) multiplied by the SEC, 2) divided by the surcharge modifier, and 3) the resulting dollar amount will be credited to the participating parcel's treated water account.

Upon any sale, conveyance, assignment, or other transfer of the parcel, excluding transfer to a spouse, immediate family member, or to a living trust for estate planning purposes established by the current property owners, the Funding Agreement will terminate and any unpaid portion of the Total Charge will be immediately due and payable in full.

10.20.14 Subdivision of a Participating Parcel

Upon the subdivision of a participating parcel, the District will assign the existing treated water service account (including the SEC) to one of the newly created parcels or units. All other parcels or units created by the subdivision will be subject to the District Installed Waterline Reimbursement Policy when applying for a new service.

10.20.15 Reimbursement

The District will collect the proportionate share of the DFWLE cost as reimbursement from any parcel that did not execute a Funding Agreement as a condition of connection to the DFWLE pipeline. These parcels will be subject to the District Installed Waterline Reimbursement Policy #3175. The District will not collect reimbursement from non-participating parcels that have been granted a temporary service location (TSL). (Reference is made to the District's TSL policy.)

NID Water Service Regulations - Section 4.02.01 Standby Charges

4.02

STANDBY CHARGES

4.02.01 General

There shall be a charge, as shown in Schedule 4-A, to each parcel located in the District, which parcel is adjacent to, and has direct access to, a District treated water main which can provide a minimum size service. A parcel which is located so that a connection may be made to a District water main without necessity of obtaining any additional “non-District” easements or rights of access from any party will be considered as having direct access. The necessity of obtaining an encroachment permit or equivalent permission from the state or county division of government designated as controlling a roadway or easement, shall not prevent the levy of a standby charge. A parcel will be considered adjacent to a District water main when a principal part of the parcel’s frontage has access to the water main as further discussed in Section 10.01.01(c) of these Regulations.

A court decree or proscription of the Department of Real Estate, Corporation Commission or other state or county body or official against using land for residential or commercial purposes shall not excuse such land from being subject to a standby charge as a parcel.

Upon the completion of a new treated water main, or acceptance of any treated water main by the District, the District will provide a written notice to owners of parcels having direct access to the new treated water main. Such notice will inform the parcel owner(s) of:

- (a) the opportunity to connect to the new treated water main for water service, and related cost for connection; and
- (b) the option to put off connection to the new treated water main, whereas, the parcel owner(s) will be subject to standby charges; and
- (c) the option to defer standby charges if the parcel has another source of water, in accordance with Section 4.02.04; and

If the parcel is connected to the new treated water main within six months following the notice, the parcel will not be subject to standby charges; alternatively, if the parcel has not been connected within six month, the parcel will be subject to standby charges.

If the parcel owner(s) postpone connection to the new treated water main more than six months following the notice, the District will issue a statement for payment of standby charges, in accordance with Section 6.01.03, and every six months thereafter until the parcel is connected to the main, unless a Standby Deferment Agreement is approved by the District.

rev. 03/04/12

4.02.02 Uncollected Standby

Prior to acceptance of an application for water service, any uncollected standby, whether or not billed, shall be collected. Standby charges are collectable from the date the parcel became adjacent to, and had direct access to, a District water main and as determined by past agreements and inception dates of the standby charge.

The standby charges paid by the owners of a parcel shall remain with and run with the parcel and may not be transferred or assigned except that the successor owner of the same parcel shall receive credit for all standby charges paid by predecessor of the same parcel.

4.02.03 Parcel Divisions

If a parcel shall be divided into two or more parcels adequately fronting a District water main, for the purpose of this provision, each division of the larger parcel shall be entitled to credit for its ratio of the total standby charges previously paid by the larger parcel. The ratio shall be the number one over the number representing the total number of parcels existing after the division. The standby charge shall be calculated as if the parcels formed by the division shall have existed on the date the pipeline was installed or accepted by the District.

If there is an existing metered service prior to the division of a parcel, there is no credit given to the new parcels created that have no water service.