

**REPORT TO THE BOARD OF DIRECTORS
BOARD MEETING OF JANUARY 10, 2023
AGENDA ITEM NO. 9**



AGENDA SECTION: ACTION ITEMS

SUBJECT: Second Reading Of Ordinance 2023-01, Amending And Replacing Ordinance 2015-02, Theft Of Water And Tampering With District Facilities, And Set For Public Hearing

PREPARED BY: Jessica Buckle, Office Finance Manager

APPROVED BY: Nicholas Schneider, General Manager

BACKGROUND

Pursuant to existing law, Ordinance 2015-02 of the Georgetown Divide Public Utility District was enacted on November 10, 2015, to create enforceable penalties for theft and tampering violations that the District could then prosecute either criminally or civilly, and recover monetary damages caused by the violations.

During the 2021-2022 Legislature, California Senate Bill 427 was introduced and authorized water service agencies the ability to adopt an ordinance setting administrative procedures for imposing, enforcing, collecting, and reviewing administrative fines or penalties for water theft and to establish a process for granting a hardship waiver to reduce the amount of the fine.

This bill became law in July of 2021 requiring the District to update Ordinance 2015-02.

DISCUSSION

This is the second reading of Ordinance 2023-01, amending and replacing Ordinance 2015-02.

FISCAL IMPACT

No cost to the district. Any future water theft and/or tampering violations will result in heftier fines.

CEQA ASSESSMENT

This is not a CEQA Project.

RECOMMENDED ACTION

It is recommended the Board of Directors of the Georgetown Divide Public Utility District adopt Ordinance 2023-01, Theft of Water and Tampering with District Facilities.

ALTERNATIVES

Request substantive changes to the Resolution for staff to implement, or reject the Resolution.

ATTACHMENTS

1. Ordinance 2023-01
2. Resolution 2023-XX

ORDINANCE NO. 2023-01
OF THE GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT
ESTABLISHING A DISTRICT ORDINANCE FOR THE THEFT OF WATER
AND TAMPERING WITH DISTRICT FACILITIES

Be it enacted by the Board of Directors of the Georgetown Divide Public Utility District (the "District") that:

WHEREAS, In 2021, California Senate Bill 427 added section 53069.45 to the Government Code, which updated the fine levels for theft of water services; and

WHEREAS, pursuant to California Government Code section 53069.45, the District Board of Directors may adopt an ordinance that prohibits water theft and that makes water theft violations subject to a civil administrative fine or penalty; and

WHEREAS, because water is a vital resource, the District has determined that it is appropriate to impose civil administrative fines for the theft of water to protect this vital resource; and

WHEREAS, California Penal Code section 498 prohibits the theft of utility services, including water; and

WHEREAS, California Penal Code section 624 prohibits every person from willfully damaging, tampering with, or digging up water pipes or waterworks; and

WHEREAS, California Penal Code section 625 prohibits every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any disconnected utility connection after having been notified that the same has been closed or shut for a specific cause, by order of competent authority; and

WHEREAS, any person who violates Penal Code sections 498, 624, or 625 is guilty of a misdemeanor; and

WHEREAS, California Civil Code section 1882 et seq. authorizes the District to bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

- a. Diverts, or causes to be diverted, utility services by any means whatsoever.

- b. Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
- c. Prevents any utility meter or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
- d. Tamper with any property owned or used by the utility to provide utility services.
- e. Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility; and

WHEREAS, the District Board of Directors finds that this Ordinance is in the best interest of the District to protect the health, safety, and welfare of the community; and

WHEREAS, the Board of Directors finds that this Ordinance is consistent with state law and the policies of the District.

NOW, THEREFORE, the Board of Directors of the Georgetown Divide Public Utility District does ordain as follows:

GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT THEFT OF SERVICE
AND TAMPERING VIOLATIONS

Section 1. Recitals. The District hereby finds and determines that the above recitals are true and correct and are incorporated herein.

Section 2. Violations.

- a. For the purposes of this Ordinance, “water theft” means and includes all of the following:
 - 1. the use, diversion, receipt, or taking of District water by any means from any public fire hydrant, blow-off valve, water main, water service lateral, or other District facility or connection to a District facility; and

2. the use, diversion, receipt, or taking of District water by any means without paying the full and lawful District charges for such water, or by tampering with District property or facilities.
 3. For the purposes of this ordinance, “unauthorized use” includes the use of water from a stationary service connection where lawful water service has been discontinued or from a public fire hydrant, regardless of whether payment is provided to the District for the water drawn from the public fire hydrant, or any use of a hydrant meter in violation of the terms and conditions of a hydrant meter permit.
- b. “Tampering” with District equipment or facilities is considered grounds for discontinuance of utility service. “Tampering” shall include, but not be limited to:
1. Opening valves at the Curb or meters that have been turned off by District personnel.
 2. Breaking, picking, or damaging cut-off locks.
 3. Bypassing meter in any way.
 4. Taking unmetered water from hydrants by anyone other than authorized officials of a recognized fire department, fire insurance company, or District employee for any purpose other than firefighting, testing, or flushing of hydrants.
 5. Use of fire sprinkler system water service for any purpose other than fire protection.
 6. Removing, disabling, or adjusting meter registers.
 7. Connecting to or intentionally damaging water lines, valves, or other appurtenances.
 8. Moving the meter or extending service without the permission of the District.
 9. Any intentional act of defacement, destruction, or vandalism to District property or an act that affects District property.
 10. Unauthorized use of a pump or device for removal of water from the ditch system.

11. Any intentional blockage or obstruction of District property.
- c. Water theft and tampering are prohibited. Each act of water theft or tampering constitutes a misdemeanor.
 - d. If any person takes water from a fire hydrant without authorization or otherwise tampers with District property, the District will submit a record of the vehicle license plate number or photo (if available) to El Dorado County Sheriff's Department for investigation.
 - e. The District may report any water theft to the appropriate prosecuting agency and press for prosecution of said activity pursuant to the Penal Code.
 - f. For the purposes of this Ordinance, any "Responsible Party" may be subject to an administrative penalty for water theft. "Responsible Party" means a person whom the District determines is responsible for causing or maintaining a violation of this Ordinance. The term "Responsible Party" includes, but is not limited to, the customer of record or the party having responsibility for the water account at the time of the water theft, the offender or perpetrator of this Ordinance, the water user or recipient, or a property owner, tenant, lessee, occupant, a person with a legal interest in the real property, or a person in possession of the real property wherein the water theft occurred or where the stolen water was used in violation of this Ordinance.

Section 3. Administrative Penalties. In addition to pursuing criminal penalties, the District, upon discovering water theft, may also pursue the following remedies or other remedies available at law or equity:

- a. Require the immediate removal of any equipment, connections, or tools used to accomplish the water theft that is attached to District property; and
- b. If the water theft is committed via meter tampering, it is punishable as follows:
 - 1. An administrative penalty of one hundred thirty dollars (\$130) for the first violation.
 - 2. An administrative penalty of seven hundred dollars (\$700) for the second violation within one year of the first violation.

3. An administrative penalty of one thousand three hundred dollars (\$1,300) for the third violation and each additional violation within one year of the first violation.
- c. All other forms of water theft violations not resulting from meter tampering are punishable as follows:
 1. one thousand dollars (\$1,000) for the first violation.
 2. Two thousand dollars (\$2,000) for the second violation within one year of the first violation.
 3. three thousand dollars (\$3,000) for the third violation and each additional violation within one year of the first violation.
- d. "Water theft" means an action to divert, tamper, or reconnect water utility services, as defined in Section 498 of the Penal Code.

Section 4. If the value of all utility services obtained in violation of this section totals more than nine hundred fifty dollars (\$950) or if the defendant has previously been convicted of an offense under this section or any former section which would be an offense under this section, or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in a county jail for not more than one year, or in the state prison.

Section 5. Other Remedies. In addition to any other remedies provided in this Ordinance or available under applicable law, the District may also seek injunctive relief in the Superior Court or take enforcement action. All remedies provided herein shall be cumulative and not exclusive. If a customer or any other person turns on water service without District authorization, tampers with any locked water meter, tampers with a service connection or District facilities, bypasses a meter, or otherwise makes an unauthorized connection to District facilities without District permission, or commits water theft, the District may:

- a. Turn off the water service and install a lock; and
- b. Estimate, if necessary, the water taken and charge the customer, offender, or water recipient three times the normal rate of the water taken from the District facility; and
- c. Charge the customer, offender, or water recipient for the damage to the District lock, meter, or other property; and

- d. Remove the meter and plug the service; and
- e. Terminate and remove the service from its connection to the water main.
- f. Charge a deposit of two times the amount of the average use to reestablish service.
- g. Require the return of any District hydrant meter; and
- h. Prohibit any person who has committed three violations of this Ordinance within a twelve-month period from obtaining a District hydrant meter permit for a period of three (3) years from the date of the third violation.

Section 6. Notice.

- a. A “Notice of Violation” will be mailed or delivered to the Responsible Party for the following:
 - 1. Evidence suggests the possibility of theft of service, including irrigation water, at a property within the District’s service area.
 - 2. If the violation does not constitute an immediate threat of safety or equipment integrity to the system, the Responsible Party will be ordered to immediately cease any unlawful practice.
- b. If the Responsible Party is a customer, a “Notice of Violation” will be mailed or delivered to the customer after service is cut-off for the following:
 - 1. In the opinion of the District’s General Manager, theft of service is clearly evident on the customer’s property and immediate action is necessary.
 - 2. In the opinion of the District’s General Manager, there is an immediate danger to public health or safety.

Section 7. Payment and Appeal Procedures. The District shall calculate the number of damages and penalty(ies) to be imposed. If the Responsible Party is a customer, the District shall send a bill to the customer. If the Responsible Party offender is not a customer of record, an invoice for payment of the damages or penalty(ies) shall be sent to the Responsible Party. The administrative penalties for any of the above provisions shall be due and payable to the District within thirty (30) days from the date of issuance of the administrative penalties.

- a. Hardship waiver. If within the 30-day payment period, the Responsible Party to the satisfaction of the General Manager or designee, by means of tax returns, pay stubs, or other similar documentary evidence, submits a declaration under penalty of perjury that payment of the full amount of the administrative fine would impose an undue financial burden on the Responsible party, the General Manager or designee may grant a reduction of the administrative fine required. The General Manager's determination is not appealable and shall be final as to the hardship waiver request.
- b. All costs relating to the District's processing and handling of the water theft, investigation and enforcement thereof, and potential charges for the re-establishment of service, shall be borne by the Responsible Party. These charges include but are not limited to, service call charges, water charges, turnoff of service, charges for damage to District facilities and equipment, and plug or termination fees. Before the meter will be replaced and service reestablished, the party requesting service, if in any way involved in or related to, or associated with, Responsible Party involved in the water theft, shall deposit twice the average bi-monthly water bill, plus the standard meter reinstallation fee, in addition to all service call charges, and an amount representing any damage to District property.
- c. All charges relating to the District's processing and handling of the water theft involving the taking of water from a public fire hydrant shall be borne by the Responsible Party including, but not limited to, the cost of any water, charges for any damage to District facilities and equipment, and costs of investigation and enforcement.
- d. Any person (an "appellant") who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Ordinance, or who wishes to appeal the imposition of a three-year prohibition on a hydrant meter permit pursuant to Section 4(h), shall comply with the following procedures:
 1. The appellant shall submit an appeal request to the District no later than fifteen (15) calendar days from the date of the bill or invoice sent to the customer or offender. A filing fee, if established by the District Board of Directors resolution, shall be charged.
 2. The appellant must pay a deposit to the District for the full amount of the administrative penalty or other fines on or before the appeal request is filed. Failure to deposit the full amount of all penalties or fines appealed within the 15-day filing period shall constitute the request for an appeal hearing incomplete and untimely and therefore not accepted.

If within the 15-day filing period, the Responsible Party to the satisfaction of the General Manager or designee, by means of tax returns, pay stubs, or other similar documentary evidence, submits a declaration under penalty of perjury that payment of the full amount of the administrative fine and/or filing fee would impose an undue financial burden on the Responsible party, the General Manager or designee may grant a reduction of the administrative fine required. The General Manager's determination is not appealable and shall be final as to the hardship waiver request.

3. Failure to timely file an appeal hearing request, along with the filing fee, if required, and the deposit shall constitute a waiver of the right to any appeal hearing, and the administrative penalty or fine shall be deemed confirmed and final.
4. A response to the appeal request shall be provided by the District within thirty (30) calendar days from receipt of the appeal request.
 - a. If an appeal request is denied, the appellant may resubmit the appeal request to the District Board of Directors no later than fifteen (15) calendar days from the date of the denial.
5. The appeal shall be heard by the District Board of Directors. The appeal hearing shall be set in accordance with the next regularly scheduled District Board of Directors meeting. The appeal hearing shall be set for a date no sooner than twenty (20) calendar days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least fifteen (15) calendar days before the date set for the hearing.
6. At the time set for the appeal hearing, the Board shall proceed to hear testimony from the District's representative, the appellant, and any other competent persons or witnesses. Administrative appeals hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The District bears the burden of proof to establish the existence of a violation of this Ordinance. The standard of proof to be used by the Board is by a preponderance of the evidence. Each party shall have the opportunity to present evidence in support of his or her case.
7. The decision by the Board shall be final.

8. Within ten (10) days after the denial of the appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.
9. The provisions of Section 1094.6 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.

Section 8. Effective Date. This Ordinance shall become effective and in full force thirty days after its passage.

I HEREBY CERTIFY that the foregoing Ordinance was duly INTRODUCED at a regularly held meeting of the Board of Directors of the GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT and was PASSED AND ADOPTED by the Board of Directors of the GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT on this 10th day of January 2023, by the following vote:

AYES:

NOES:

ABSENT:

Mitch MacDonald, President
Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

ATTEST:

Nicholas Schneider, Clerk and ex officio
Secretary, Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of Ordinance 2022-03 duly and regularly adopted by the Board of Directors of the Georgetown Divide Public Utility District, El Dorado County, California, at a meeting duly held on the 10th day of January 2023.

Nicholas Schneider, Clerk and ex officio
Secretary of the
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT



**PROOF OF PUBLICATION
(2015.5 C.C.P.)**

**Proof of Publication of:
NOTICE OF PUBLIC HEARING**

STATE OF CALIFORNIA
County of El Dorado

I am a citizen of the United States and a resident of the County aforesaid; I'm over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am a principal agent of and/or the publisher of the El Dorado Gazette, Georgetown Gazette & Town Crier, a newspaper of general circulation printed and published once each week in the town of Georgetown, Ponderosa Judicial District, County of El Dorado, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court to the County of El Dorado, State of California, under the date of April 3, 1970, Case Number 18589; that the notice, of which the attached is a printed copy (set in type no smaller than non-pareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

12/29

All in the year 2022

I certify (or declare) under penalty of perjury that the foregoing is true and correct.
Dated at Placerville, California, this 29th day of **DECEMBER, 2022**

Allison Rains

Signature

NOTICE OF PUBLIC HEARING
AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT ADDING ORDINANCE 2023-01 TO REPLACE ORDINANCE 2016-02, TO CREATE ENFORCEABLE PENALTIES FOR THEFT AND TAMPERING VIOLATIONS THAT THE DISTRICT COULD THEN PROSECUTE EITHER CRIMINALLY OR CIVILLY, AND RECOVER MONETARY DAMAGES CAUSED BY THE VIOLATIONS
NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Board of Directors of the Georgetown Divide Public Utility District (the "District") at its next regularly scheduled meeting of January 10, 2023 at 2:00 PM at the District Office located at 6425 Main Street, Georgetown, California, 95634 for a vote on the adoption of Ordinance 2023-01 (the "Ordinance") stating that pursuant to California Government Code section 53069.45, the District Board of Directors may adopt an ordinance that prohibits water theft and that makes water theft violations subject to a civil administrative fine or penalty; and because water is a vital resource, the District has determined that it is appropriate to impose civil administrative fines for the theft of water to protect this vital resource.
ALL INTERESTED PARTIES are invited to attend the January 10, 2023 Public Hearing at 2:00 PM to express opinions or submit evidence for or against the approval of the Ordinance. At the above-noted time and place, testimony from interested persons will be heard and considered by the District Board of Directors prior to taking action or asking any recommendation on the Ordinance. Upon request, the agenda and the documents in the hearing agenda packet can be made available to persons with disabilities. In compliance with the American Disabilities Act, the District encourages those with disabilities to participate fully in the public hearing process. Any person requiring special assistance to participate in the meeting should call (530) 333-4356 or email gm@gd-pud.org at least forty-eight (48) hours prior to the meeting.
Written comments are also accepted prior to the hearing by the District at P.O. Box 4240, Georgetown, California 95634. Information regarding the hearing is on file and may be viewed by interested individuals at the District Office located at 6425 Main Street, Georgetown, California, 95634. If a challenge to the above-purposed actions is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the District Board of Directors.
Copies of the proposed Ordinance are available for public review at the District Office located at 6425 Main Street, Georgetown, California, 95634.
If you have any questions, please call the District Office Finance Manager, Jessica Buckle, jbuckle@gd-pud.org, (530) 333-4356, or stop by the office at 6425 Main Street, Georgetown, California, 95634.
12/29 002059

RESOLUTION NO. 2023-XX
OF THE BOARD OF DIRECTORS OF THE
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT
APPROVING THE FIRST READING OF ORDINANCE 2023-01 AMENDING AND
REPLACING ORDINANCE 2015-02, THEFT OF WATER AND TAMPERING WITH
DISTRICT FACILITIES, AND SET FOR PUBLIC HEARING

WHEREAS, pursuant to existing law, Ordinance 2015-02 of the Georgetown Divide Public Utility District was enacted on November 10, 2015, to create enforceable penalties for theft and tampering violations that the District could then prosecute either criminally or civilly, and recover monetary damages caused by the violations and

WHEREAS, during the 2021-2022 Legislature, California Senate Bill 427 was introduced to authorize water service agencies to adopt an ordinance setting administrative procedures for imposing, enforcing, collecting, and reviewing administrative fines or penalties for water theft and to establish a process for granting a hardship waiver to reduce the amount of the fine

WHEREAS, this bill became law in July of 2021 requiring the District to update Ordinance 2015-02, and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT that this is the second reading of Ordinance 2023-01, amending, and replacing Ordinance 2015-02.

PASSED AND ADOPTED by the Board of Directors of the Georgetown Divide Public Utility District at a meeting of said Board held on the 10th day of January 2023, by the following vote:

AYES:

NOES:

ABSENT/ABSTAIN:

Mitch MacDonald, President, Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

Attest:

Nicholas Schneider, Clerk and Ex officio
Secretary, Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of Resolution 2022-XX duly and regularly adopted by the Board of Directors of the Georgetown Divide Public Utility District, County of El Dorado, State of California, on this 10th day of January 2023.

Nicholas Schneider, Clerk and Ex officio
Secretary, Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

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