



ORDINANCE NO. 2000-02

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY ESTABLISHING REGULATIONS FOR THE CLASSIFICATION AND OPERATION OF GROUNDWATER WELLS IN THE PVWMA LOCAL WATER SUPPLY PROJECT SERVICE AREA, TO PROTECT THE PAJARO VALLEY GROUNDWATER BASIN AGAINST FURTHER SEAWATER INTRUSION

SUMMARY

This ordinance provides for the management of all groundwater wells within the Local Water Supply Project service area following completion and start-up of the Harkins Slough. The ordinance restricts pumping from groundwater wells in the Project service area if Project water of satisfactory quality and adequate pressure can be delivered by the Pajaro Valley Water Management Agency (PVWMA) to water users in the Project service area. The ordinance provides for the classification of the various wells and for the maintenance and limited operation of standby wells in the event the PVWMA cannot deliver Project water of satisfactory quality and at adequate pressure. The ordinance establishes procedures for the issuance of variances, appeals, and penalties for violations of the ordinance.

The Board of Directors of the PVWMA makes the following findings:

A. Appropriate studies have been conducted by the PVWMA, and based upon those studies, the Board of Directors determines that the Pajaro Valley Groundwater Basin, including that portion underlying the Local Water Supply Project service area is threatened with the loss of a usable water supply as a result of groundwater overdraft and seawater intrusion.

B. Pursuant to the PVWMA Act, Sections 124-502 and 124-711, the Board finds that the public necessity requires that the PVWMA take this action, and the Board further finds that it is necessary to take steps to limit, control, prohibit and otherwise restrict the withdrawal of water from a portion of the Pajaro Valley Groundwater Basin, in order to reduce groundwater overdraft, deter the further intrusion of seawater into the Basin and protect the quality of the groundwater, by establishing and defining the area from which the further extraction of groundwater is prohibited.

C. The Board has conducted a public hearing upon the proposed determination, with notice of the hearing given in the manner prescribed in Government Code Sec. 6065. At the hearing, the Board accepted evidence showing the nature, extent and continuing threat of groundwater overdraft and seawater intrusion and describing the facilities proposed in order to provide to the area threatened a substitute supply of diverted surface water from Harkins Slough and the Pajaro River.

D. Said hearing having been concluded, the Board determines that a threat of seawater intrusion exists which will be aggravated by continued groundwater extraction from, and overdraft of, the Alluvium and Aromas Red Sand Formations and that the prohibitions and restrictions on the pumping of groundwater in these aquifers are necessary in order to alleviate the groundwater overdraft and seawater intrusion problem. The Board further determines that the PVWMA Local Water Supply Project will provide a substitute water supply that will be adequate to replace the water supply previously available from the wells that will be affected by the prohibition against pumping.

E. Property owners and growers in the Project service area have requested that additional wells be maintained as standby wells, as an additional assurance that an adequate water supply will be available at all times. The ultimate success of the project depends upon the reduction of groundwater pumping. However, the maintenance of standby wells at the expense of owners is an appropriate action and will not compromise the success of the project if such standby wells are maintained and operated under the limitations set forth in this ordinance.

F. The regulations set forth in this ordinance are designed as measures to protect the groundwater supply of the Pajaro Valley Groundwater Basin. They are not intended to effect any diminution in the basic groundwater rights held by overlying owners in the area subject to regulation but are put into effect in furtherance of the PVWMA duty to manage the Pajaro Valley Groundwater Basin and to protect the water supplies therein. By complying with these regulations and by participating in the Local Water Supply Project, the overlying owners do not waive or prejudice any water rights held by them, now or in the future. If at some time in the future these regulations or any successor regulations are no longer necessary to protect the groundwater basin and are then modified or removed, then the groundwater rights of the overlying owners will be exercisable in conformity with such laws as may then be in effect, and the overlying owners will suffer no prejudice in that regard because of the Local Water Supply Project, these regulations, or any successor regulations.

G. The PVWMA recognizes the importance of water quality to agricultural practices, and that water quality requirements for each water user can vary based on specific soil and crop type and cultural practices. As such, this ordinance provides for a one-year period for transition from existing on-site well systems to the water supplied by the PVWMA through the Local Water Supply Project to determine the appropriateness and make any necessary adjustments required to accept project water. Additionally, the ordinance provides for granting of variances from the terms of this ordinance, including variances that are based on the quality of the delivered water meeting the specific requirements of varying soil and crop types and cultural practices.

H. On May 19, 1999, in Resolution No. 99-05, the Board of Directors approved the Local Water Supply Project and certified that the Final EIR for the Project was complete and was prepared in compliance with the California Environmental Quality Act. As so described and approved, the Project included the proposed restriction of further pumping of groundwater. The present ordinance is proposed as part of the Local Water Supply Project and is within the scope of the project described in the EIR; it will cause no new environmental effects beyond those considered in the EIR and no new mitigation measures need be considered for this ordinance; and it does not require further environmental review.

NOW, THEREFORE, the Board of Directors of the Pajaro Valley Water Management Agency ordains as follows:

SECTION I. The following provisions are adopted:

PART I -- DEFINITIONS

1.01.01. GENERAL APPLICATION

As used in this ordinance, the following words shall have the meaning provided in this part.

1.01.02 COMMERCIAL OR INDUSTRIAL WELL

“Commercial or industrial well” means any well used to supply water for commercial or industrial purposes, excluding any well that is used in whole or in part to supply water for agricultural irrigation. A commercial or industrial well may also be classified as a domestic well, provided that it shall not also be classified as a standby well.

1.01.03 DOMESTIC WELL

“Domestic well” means a well used for the supply of groundwater for potable uses. A domestic well may also be classified as a standby well for agricultural use.

1.01.04 GENERAL MANAGER

“General Manager” means the PVWMA General Manager or his or her designee.

1.01.05 GENDER, NUMBER, AND TENSE

Words used in any gender include any other gender. The singular number includes the plural, and the plural the singular. Words used in the present tense include the future as well as the present.

1.01.06 GROUNDWATER OVERDRAFT

“Groundwater Overdraft” means average annual basin-wide groundwater extractions in excess of the amount of water that can be extracted without causing seawater intrusion or other water quality impacts.

1.01.07 LOCAL WATER SUPPLY PROJECT

“Local Water Supply Project” includes the PVWMA Harkins Slough Project.

1.01.08 MONITORING WELL

“Monitoring Well” means any artificial excavation constructed by any method for the purpose of monitoring fluctuations in groundwater levels, quality of groundwater, or the concentration of contaminants in groundwater.

1.01.09 PERSON

“Person” means any individual, organization, partnership, business, association, corporation or governmental agency.

1.01.10 PROJECT SERVICE AREA

“Project Service Area” means the area in the PVWMA service area that will receive project water from the Harkins Slough Project.

1.01.11 PROJECT START-UP

“Project Start-Up” means the date on which the General Manager declares that the project known as the Harkins Slough Project is operational after water is first delivered through the project pipeline in sufficient quantity and quality to customers in the project service area.

1.01.12 PROJECT WATER

“Project water” means water supplied to property in the project service area by the Harkins Slough Project for use in the irrigation of crops.

1.01.13 SEAWATER INTRUDED

An aquifer is “seawater intruded” at any particular location of measurement when, at the location of measurement, the chloride ion concentration in the aquifer exceeds 500 mg/liter, and the General Manager determines that the contamination is not a localized contamination.

1.01.14 SECTION HEADINGS

Section headings used in this ordinance shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section.

1.01.15 STANDBY WELL

“Standby Well” means a well not routinely operated but maintained, by the well-owner for purposes

of providing a water supply for agriculture to the well-owner's property under emergency conditions.

1.01.16 SUPPLEMENTAL WELL

"Supplemental Well" means any well maintained or operated by the PVWMA as a part of the Harkins Slough Project.

1.01.17 TEST WELL

"Test Well" means any artificial excavation used for water quality testing, electric logging, water quality testing and/or other tests to determine aquifer quality and quantity characteristics.

1.01.18 WELL

"Well" or "water well" means any artificial excavation constructed by any method for the purpose of extracting water from below the ground surface. "Well" or "water well" does not include wells used for the purpose of dewatering excavation during construction or for the purpose of stabilizing hillsides or earth embankments.

PART II -- BASIC RULES

1.02.01 COMPLIANCE WITH ORDINANCE

No person shall construct, own, operate, or maintain any water well located within the boundaries of the project service area, as those boundaries may exist from time to time, except in compliance with this ordinance.

1.02.02 OPERATION OF WELLS IN PROJECT SERVICE AREA

After the expiration of one year following the date on which project water becomes available in sufficient quantity and quality within the project service area no person shall operate any well within the project service area to provide water to such property for agricultural irrigation except when:

- A. The well is a supplemental well operated by the PVWMA, or
- B. The well is a standby well operated in conformity with this ordinance.

1.02.03 IMPORTING GROUNDWATER INTO THE PROJECT SERVICE AREA

After the startup of the Local Water Supply Project, no well located anywhere in the PVWMA service area shall be used to supply water for use in the irrigation of agricultural lands located within the project service area, and no person shall cause, suffer, or permit such use of such water, unless:

A. The well from which such water is obtained is a supplemental well operated by the PVWMA as part of the Local Water Supply Project or the well is operated by the PVWMA as part of another water supply project, or

B. The well from which such water is obtained is a standby well operated in conformity with this ordinance.

1.02.04 EXPORTING GROUNDWATER FROM PROJECT SERVICE AREA

After the start-up of the Local Water Supply Project, no well located within the external boundaries of the project service area shall be used to supply water for use outside of the external boundaries of the project service area, and no person shall cause, suffer, or permit such use of such water, except that water from wells within the coastal service area may be used outside the external boundaries of the project service area under the following circumstances:

A. The water is used for domestic purposes on parcels that are immediately adjacent to the external boundaries of the project service area; or

B. The water is used for domestic purposes on other parcels where the use has been established and water delivery pipelines are in place for such delivery on or before the effective date of this ordinance; or

C. As otherwise approved by the General Manager.

1.02.05 CONSTRUCTION OF WELLS

No person may construct a new well in the project service area without first obtaining a permit from the General Manager. The General Manager shall not issue a permit for construction of a well unless he or she finds that the construction will be consistent with the purposes of this ordinance. Replacement of existing wells shall be exempt from this requirement.

1.02.06 CLASSIFICATION OF WELLS

A. Prior to the start-up of the Local Water Supply Project, the General Manager shall classify all wells located in the project service area and notify all well owners of the classification of their well.

B. At any time, the owner of a well may apply to the General Manager for a change in classification, pursuant to this ordinance. Upon receipt of new information or upon evidence of changed conditions, the General Manager may, on his or her own initiative, change the classification of a well, upon giving 30 days' advance notice in writing to the owner thereof. Before making any reclassification, the General Manager must find that the well no longer qualifies for its existing classification, or that the existing classification was made in error. The General Manager may, and at the request of the well owner, shall hold a public hearing to determine the appropriate classification or reclassification of any well.

C. The well classifications are as follows:

1. Supplemental well.
2. Agricultural well.
3. Domestic well.
4. Commercial or industrial well.
5. Monitoring well.
6. Test well.
7. Standby well.
8. Other well.

D. When a well is classified or reclassified as a domestic well or as a commercial or industrial well the General Manager shall identify by parcel number and/or street address the place where water from such well may be used and may restrict the use of such water to a portion of the identified parcel.

1.02.07 WATER QUALITY/OPERATIONS COMMITTEE

The PVWMA shall establish a Water Quality and Operations Committee (Committee) that will provide input to the PVWMA's operations of the Local Water Supply Project. The Committee, which shall be a standing committee of the Board of the PVWMA, shall include at least two and not more than four grower members defined as individuals or representatives of organizations receiving Project Water. The PVWMA shall provide up to two members to the Committee. The Committee shall provide input to on-going operations and shall work with the PVWMA in

establishing a routine water quality monitoring and reporting program.

1.02.08 ANNUAL REVIEWS

This ordinance shall be subject to review by the PVWMA Board of Directors on an annual basis.

PART III -- STANDBY WELL CLASSIFICATION

1.03.01 CRITERIA FOR CLASSIFICATION AS STANDBY WELL

The General Manager shall classify a well as a standby well, whether on the initial classification or on a change in classification, if he or she makes the finding that the owner of the well will comply with all of the requirements of this ordinance applicable to standby wells.

PART IV -- STANDBY WELL REGULATIONS

1.04.01 GENERAL RULE

A well that has been classified as a standby well shall immediately thereupon be subject to the regulations set forth below.

1.04.02 FLOWMETER

A flowmeter shall be installed and maintained on all of the standby wells in accordance with PVWMA flowmeter requirements.

1.04.03 AUTHORIZED PURPOSES FOR OPERATION OF STAND BY WELLS

Standby wells may be operated only for the following purposes:

- A. To perform routine maintenance on the standby well, including periodic operation of the standby well for purposes of maintaining operation;
- B. To provide an irrigation water supply for property in the project service area in an emergency as described in section 1.04.04;
- C. To provide potable water when the standby well is used as a domestic well.

1.04.04 EMERGENCY JUSTIFYING OPERATION OF STANDBY WELL

An emergency exists and justifies use of standby well when all of the following circumstances occur:

- A. The grower has given advance notice of his or her need for project water and a schedule for delivery of water to the grower's property has been set, in conformity with procedures established by the PVWMA; and
- B. The PVWMA fails to deliver project water on schedule of sufficient quality or quantity; and
- C. The grower then makes contact with the PVWMA by telephone and the PVWMA confirms that the water will not be delivered on the day scheduled for delivery; or

D. The grower determines there is a need to protect crops against frost or other damage due to unusual or unexpected events; and

E. The grower then makes contact with the PVWMA by telephone.

1.04.05 OWNERSHIP

Standby wells shall remain under private ownership, and are not the property of the PVWMA.

1.04.06 COSTS OF MAINTENANCE AND OPERATION

All costs associated with maintenance and operation of standby wells shall be borne by the owner or operator of said well, or by such other person as may agree to assume such costs.

PART V -- VARIANCES

1.05.01 APPLICATION

Any person may, at any time, apply in writing for a variance from the strict application of this ordinance, including variances based on the acceptability of the quality of the delivered water and its impact upon the unique soil and crop type and cultural practices of each growing operation. The application for the variance shall be filed with the PVWMA. An Applicant may submit any additional written and documentary evidence as may be relevant to the consideration of an application. The General Manager may dispense with the requirement of a written application upon finding that an emergency condition requires immediate action on the variance request.

1.05.02 PLAN FOR COMPLIANCE

The applicant shall, as part of the variance application, submit a plan describing how and when the applicant will comply with this ordinance without the need for a variance. Compliance with this plan, as presented by the applicant or as modified by the General Manager, shall be a condition of granting the variance. The General Manager may waive the requirement for such a plan if he or she finds that compliance would not be feasible.

1.05.03 FINDINGS FOR GRANT OF VARIANCE

The General Manager may grant a variance from the terms of this ordinance upon making the finding that the strict application of the ordinance would create an undue hardship, or that an emergency condition requires that the variance be granted.

1.05.04 CONDITIONS ON GRANT OF VARIANCE

In granting a variance, the General Manager may impose any conditions in order to ensure that the variance is consistent with the overall goals of this ordinance. Variances may be granted for a limited period of time. The variance and all time limits and other conditions attached to the variance shall be set forth in writing, and a copy of the written variance shall be provided to the applicant.

1.05.05 COMPLIANCE WITH TERMS OF VARIANCE

No person shall operate or maintain a groundwater well for which a variance has been granted hereunder, or use water therefrom, in violation of any of the terms or conditions of the variance.

PART VI -- APPEALS

1.06.01 RIGHT OF APPEAL

Any applicant or interested party may appeal to the PVWMA any decision by which the General Manager (a) grants or denies a variance, permit, classification, or reclassification under this ordinance; (b) gives or withholds any consent when such consent is established by this ordinance as a prerequisite to further actions or (c) imposes conditions on any such variance, permit, classification, reclassification, or consent. No person may file an appeal of a decision made after a public meeting or hearing on the issue unless that person attended the meeting or hearing upon which the appealable decision was based and expressed his or her concerns orally or in writing at that meeting or hearing, or unless such person filed papers with the PVWMA setting forth such person's concerns prior to such meeting or hearing.

1.06.02 PUBLIC HEARING RIGHTS OF APPLICANTS AND INTERESTED PARTIES

An applicant, or any interested person, other than an applicant, may attend any public meetings or public hearings at which the PVWMA considers an appealable decision and may submit such written and documentary evidence as may be relevant to the consideration of a said appeal. Any party other than the applicant who submits written or documentary evidence to the PVWMA with regard to an appeal shall simultaneously submit copies of all such information to the applicant and shall show proof of such submittal to the PVWMA along with the written information provided to the PVWMA. Any person may, in writing, request a copy of the PVWMA's written decision.

1.06.03 PROCEDURE ON APPEAL

A. Any appeal authorized by this ordinance shall be filed and processed as provided in this ordinance, as now in effect or as subsequently amended or superseded. Any appeal must be in writing and must state the grounds upon which the appeal is made.

B. Any appeal must be filed with the PVWMA no later than 30 days after the date the General Manager issues an appealable decision. A decision is issued when the decision is set forth in writing and personally delivered to the applicant, or on the fifth day after mailing said decision to the applicant, to the address provided by the applicant for such mailing. As to an interested person (other than an applicant) who has requested a copy of the written decision, the General Manager's written decision is issued when it is personally delivered to such person or on the fifth day after mailing said decision to such person, to the address provided by such person for such mailing.

C. The appeal of any decision made by the General Manager following a public meeting or public hearing shall be limited to the issues raised at the public meeting or hearing and thereafter specified in the written appeal. The appeal of any decision made by the General Manager without a public meeting or public hearing may consider any issue that might have been raised at a public hearing or meeting, provided that such issue must be specified in the written appeal.

D. At the hearing on appeal, the Board of Directors of the PVWMA will consider the issues that are before the board on the appeal as if they were being considered for the first time. The findings on the appeal shall be final and conclusive in the matter.

E. Any interested person seeking judicial review pursuant to Code of Civil Procedure (CCP) section 1094.5 of any final decision, as defined in CCP Section 1094.6(e), of the PVWMA, or any boards, commissions, officers, agents or employees of the PVWMA empowered to make such decisions may do so only if the petition for writ of mandate pursuant to CCP Section 1094.5 is filed within the time limits specified in CCP Section 1094.6.

PART VII - PENALTIES

1.07.01 INFRACTION

Any person who violates any provision of this ordinance is guilty of an infraction.

1.07.02 PUBLIC NUISANCE

Any violation of this ordinance is hereby declared to be a public nuisance.

1.07.03 CONTINUING VIOLATIONS

Any violation which occurs or continues to occur from one day to the next shall be deemed a separate violation for each day during which such violation occurs or continues to occur.

1.07.04 FINE

A. Any person who violates any provision of this ordinance which prohibits or restricts the pumping of groundwater shall be assessed a fine of \$250 for each acre-foot (or portion thereof) of water pumped in violation of this ordinance.

B. Any person who violates any other provision of this ordinance shall be assessed a fine of \$1,000 for each violation.

1.07.05 LIABILITY FOR COSTS OF ENFORCEMENT

Any person who violates this ordinance shall be liable for the cost of enforcement, which may include but need not be limited to the following:

- A. Cost of investigation,
- B. Court costs,
- C. Attorney fees, and
- D. Cost of monitoring compliance.

PART VIII - CONCLUDING PROVISIONS

1.08.01 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, it shall not affect the validity of the remaining portion of this ordinance, including any other section, subsection, sentence, clause, or phrase therein.

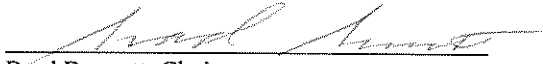
SECTION II. EFFECTIVE DATE This ordinance shall take effect 30 days after its final adoption by the Board of Directors.

PASSED AND ADOPTED this 15th day of March, 2000, by the following vote:

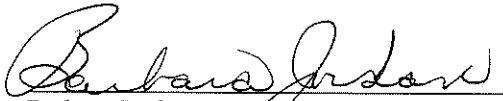
AYES: Directors: Bennett, Capurro, Carroll, Imazio, Koenig, Mauthe, Roediger

NOES: Directors: None

ABSENT: Directors: None


Brad Bennett, Chair

ATTEST:


Barbara Jordan, Secretary