



ORDINANCE NO. 2003-01

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY INCREASING THE AUGMENTATION CHARGE

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The Board of Directors of the Pajaro Valley Water Management Agency makes the following findings:

1. The Pajaro Valley Water Management Agency ("PVWMA" or "Agency") was formed, among other reasons, to provide integrated management of the ground and surface water resources within the Pajaro Basin. As the sole local agency responsible for the integrated management of water resources for the Pajaro Basin, the Agency bears responsibility for the management and augmentation of water supplies for domestic, agricultural, municipal and industrial purposes. The purpose and functions of the Agency are set forth in PVWMA enabling Act, California Water Code Appendix, Chapter 124 ("PVWMA Act").
2. On May 31, 2002, the Agency adopted Ordinance 2002-02 which established and levied a groundwater augmentation charge for the purposes enumerated in the PVWMA Act.
3. Pursuant to the PVWMA Act, Sections 124-502, the Board finds that the protection and augmentation of groundwater supplies is necessary for the public health, welfare and safety of all people residing within the Agency, and further that the public necessity requires that the PVWMA take this action, in order to reduce groundwater overdraft, deter the further intrusion of seawater into the Basin and protect the quality of the groundwater, by providing a source of supplemental water that is an alternative to the extraction of groundwater.
4. By adopting these findings, the Agency Board of Directors makes each of the following determinations as required by Section 124-1002 of the PVWMA Act and Water Code Section 75574, and which are further defined and discussed in the Revised BMP, on the basis of the record of public hearings held for purposes of consideration of this Ordinance, relevant reports and the Agency's engineering investigations.

The determinations set forth in this Finding 4 are based upon Pajaro Valley Integrated Ground and Surface Water Model (PVIIGSM) results, technical reports and other technical analyses used in preparing the Revised BMP. The Agency is currently evaluating metered water use data as part of its Water Use Accounting Project (WUAP). When complete, this WUAP evaluation may necessitate reexamination of the determinations made in this Finding 4.

For purposes of this Finding 4, the following definitions, as contained in Water Code Section 75500, and following, shall govern these determinations.

"Accumulated overdraft" means the amount of water necessary to be replaced in the intake areas of the ground water basins within the district or any zone or zones

thereof to prevent the landward movement of salt water into the fresh ground water body, or to prevent subsidence of the land within the district or any zone or zones thereof, as determined by the board from time to time.

"Annual overdraft" means the amount, determined by the board, by which the production of water from ground water supplies within the district or any zone or zones thereof during the water year exceeds the natural replenishment of such ground water supplies in such water year.

"Water year" means July 1st of one calendar year to June 30th of the following calendar year.

For purposes of this Finding 4, the following definition, derived from the PVWMA State of the Basin Report, dated February 2001, shall govern these determinations.

‘Safe yield of basin’ is the maximum quantity of water which can be withdrawn annually from a ground water supply without causing depressed water levels to elevations below sea level, which would cause salt water intrusion, or declining ground water levels over time.

The calculated safe yield of the basin directly influences the amount of water which is necessary for replenishment of groundwater supplies, as set forth in the Revised BMP Recommended Alternative.

- (a) The average annual exceedance of safe yield of the basin for the immediate past 10 water years is approximately 44,000 acre feet per year (“afy”). The average annual overdraft for the immediate past 10 water years is approximately 9,000 acre feet per year (“afy”).
- (b) The estimated annual exceedance of safe yield of the basin for the current water year is approximately 45,000 af. The estimated annual overdraft for the current water year is approximately 9,000 af.
- (c) The estimated annual exceedance of safe yield of the basin for the ensuing water year is approximately 45,500 af. The estimated annual overdraft for the ensuing water year is approximately 9,000 af.
- (d) The accumulated exceedance of safe yield of the basin as of the last day of the preceding water year is approximately 1,400,000 af (estimated since 1964). (For purposes of this Finding 4.d., the accumulated exceedance of safe yield of the basin as defined herein is the simple addition of the annual exceedances since 1964.) The accumulated overdraft as of the last day of the preceding water year is approximately 345,000 af.
- (e) The estimated accumulated exceedance of safe yield of the basin as of the last day of the current water year is approximately 1,445,000 af (estimated since 1964). (For

purposes of this Finding 4.e., the accumulated exceedance of safe yield of the basin as defined herein is the simple addition of the annual exceedances since 1964.) The estimated accumulated overdraft as of the last day of the current water year is approximately 354,000 af.

- (f) The estimated amount of agricultural water to be withdrawn from the groundwater supplies of the Agency for the ensuing water year is approximately 58,000 af.
 - (g) The amount of water other than agricultural water to be drawn from the groundwater supplies of the Agency for the ensuing water year is approximately 11,000 af.
 - (h) The estimated amount of water to be diverted from surface supplies in the ensuing water year, including Corralitos Creek and Harkins Slough, is approximately 2,000 af. The estimated amount of water necessary for surface distribution through the Harkins Slough Project for the ensuing water year is approximately 500 af.
 - (i) The amount of water which is necessary for the replenishment of the groundwater supplies of the Agency is approximately 18,500 afy with implementation of the Recommended Alternative identified in the Revised BMP dated 2002.
 - (j) The amount of water the Agency is obligated by contract to purchase is 0 afy.
5. Based upon the findings and determinations contained in the Revised BMP, its supporting and implementing documentation, and the information presented during the public hearings on this Ordinance, the Agency Board of Directors does hereby determine that groundwater Augmentation Charges shall be levied within the entire boundary of the Agency.
6. In order to distribute the necessary increase in Augmentation Charges in a manner which will have the most moderate economic impact on Agency groundwater users, the Board has determined that the Augmentation Charge should be increased incrementally. This Ordinance provides for an incremental increase above the current augmentation charge of Eighty Dollars (\$80.00) per acre foot. The Board finds that this initial increase alone is significantly less than the cost of providing the service, and is thus insufficient to fund all the projects within the Revised BMP Recommended Alternative that are eligible for Augmentation Charge expenditures. It is therefore anticipated that later incremental increases will be approved by the Board, up to the necessary amounts described in the Revised BMP. In addition, while it is not possible to foresee the exact expenditures to be made in any one year in implementing the Revised BMP, the Agency Board of Directors determines that the Augmentation Charge increase set forth in this Ordinance is less than the reasonable estimate of the actual costs of providing the services included in the Revised BMP. Any amounts collected in any one year that may exceed the actual costs incurred for that year will be set aside as reasonable reserves for capital and operations and maintenance expenditures in connection with implementation of the Revised BMP. All amounts collected shall be used for implementation of the Revised BMP projects, which are the proper subject of expenditure of Augmentation Charges pursuant to Section 124-1001 of the PVWMA Act.

7. The Agency Board of Directors does hereby find and determine that the sum which will be raised by the groundwater Augmentation Charge levied by the Agency will not produce funds that exceed the amount necessary for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within the boundaries of the Agency. Should the charge authorized by this Ordinance generate revenue in excess of the cost of providing the services for which it has been imposed, such excess revenue shall be used to reduce the future charge as required by Government Code Section 66013 and 66016.
8. On May 19, 1999, by 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 ("CEQA"). On February 6, 2002, by Resolution Nos. 2002-04 and 2002-05, the Board of Directors adopted the Revised BMP, including the Recommended Alternative, and certified that the Final EIR for the Revised BMP was complete and was prepared in compliance with the CEQA. As so described and approved, the Revised BMP included the proposed construction of water supply projects and implementation of management strategies to reduce seawater intrusion and increase the safe yield of the groundwater basin. The present ordinance is proposed as part of the Revised BMP Recommended Alternative 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.
9. The Agency Board of Directors does hereby find and determine that, unless the Agency amends or repeals this Ordinance, the augmentation charge for each year through 2040 shall be based on the calculated need to fund the activities specifically enumerated in Ordinance 2002-02.
10. The Board has conducted public hearings on this Ordinance on April 30, 2003 and May 14, 2003, with notice of the hearing given in the manner prescribed in Government Code Section 6066.
11. As provided in Government Code Section 66022, any judicial action or proceeding to attack, review, set aside, void, or annul this ordinance shall be commenced within 120 days of the Effective Date of the ordinance, and any action by the Agency or interested person under Section 66022 shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

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

SECTION 1. STATEMENT OF PURPOSE

PVWMA enacts this Ordinance as legal authority to increase the Augmentation Charge for all groundwater extractions within the Agency boundaries. The Agency proposes to use the Augmentation Charge revenues to pay for the activities and projects identified in the Revised BMP related to purchasing, capturing, storing and distributing supplemental water.

SECTION 2. DEFINITIONS

All definitions are as stated in Ordinance 2002-02, except as amended in this Section 2. As used in this ordinance, the following words shall have the meaning provided in this part. Section 2.13 of Ordinance 2002-02 is hereby amended to read as follows:

2.13 SUPPLEMENTAL WATER

“Supplemental Water” shall have the same meaning as that in Section 124-316 of the PVWMA Act, which is: surface water or groundwater imported from outside the watershed or watersheds of the groundwater basin, ~~and~~ flood waters that are conserved and saved within the watershed or watersheds which would otherwise have been lost or would not have reached the groundwater basin, **and recycled water.**

SECTION 3. PRIOR ORDINANCES

3.01 AUGMENTATION CHARGES

The PVWMA Augmentation Charge was originally established by Ordinance 93-1. Ordinance 93-1 has been amended and/or supplemented by Ordinances 93-2, 96-2, 96-3, 95-1, 98-2, 2002-01 and 2002-02 (collectively, the “Prior Ordinances.”)

The Prior Ordinances are amended, supplemented and revised as stated in this Ordinance 2003-01. To the extent that any provision of the Prior Ordinances conflicts with the provisions of this Ordinance 2003-01, the provisions of this Ordinance 2003-01 shall control and be operative to amend, revise and replace the conflicting provisions of the Prior Ordinances. All other provisions in the Prior Ordinances shall remain in full force and effect

3.02 PROJECT WATER DELIVERY CHARGES

PVWMA Ordinance 2001-01 established charges for the cost of water delivered from the Harkins Slough Local Water Supply Project (the “Project Water Charge.”) ‘Component 1’ of the Project Water Charge is set at the same rate as the PVWMA Augmentation Charge. Section 5 of Ordinance 2001-01 states that the portion comprising Component 1 of the Project Water Charge shall be adjusted to be equal to the change, if any, in the Augmentation Charge at any time, whether that Charge is increased or decreased. Upon the Effective Date of this Ordinance 2003-01, Component 1 of the Project Water Charge established by Ordinance 2001-01 will be equal to the schedule of charges in Section 5 of this Ordinance.

This Section 3.02 serves only to explain, not amend, Ordinance 2001-01.

SECTION 4. SCHEDULE OF CHARGES

The groundwater Augmentation Charges authorized by Section 124-1003 of the Agency's Act are hereby increased as follows:

Beginning July 1, 2003, the Augmentation Charge shall be increased Forty Dollars (\$40.00) beyond the Eighty Dollars (\$80.00) per acre-foot established by Ordinance 2002-02. This Ordinance 2003-01 pertains solely to the increase in the Augmentation Charge, and does not alter the existing Augmentation Charge of Eighty Dollars currently charged and collected pursuant to Ordinance 2002-02.

SECTION 5. REQUIREMENT FOR PERIODIC METER READINGS

"Section Seven" of Ordinance 96-3 shall be amended as follows:

*SECTION SEVEN: REQUIREMENTS FOR ~~SEMI-ANNUAL~~ **PERIODIC** METER READINGS*

A. The flow meter for each water production facility equipped with an Agency flow meter shall be read, ~~semi-annually~~ **periodically, but no less than semi-annually nor more frequently than monthly**, by a representative of the Agency who shall also read the electric power meter, or hour clock, if any, for such water production facility for purposes of verification. ~~Semi-annual meter billing periods are: January-June and July-December.~~ The Agency representative shall read each meter, compute the ground water augmentation charge ~~assessment~~ **to be levied** and bill the Landowner ~~within thirty (30) days after~~ **following** the end of the billing period. Payment shall be due ~~sixty (60)~~ **thirty (30)** days after the end of the billing period **date of the bill**.

B. Each major water purveyor facility exempted from the requirement to use an Agency flow meter under the provisions of Paragraph A(2) of Section Four hereof, shall file a semi-annual Meter Report using a form provided by the Agency. **Semi-annual meter billing periods are: January-June and July-December.** The January-June report shall be delivered to the Agency office no later than 5:00 p.m. on July 20th of each year and the July-December report shall be delivered to the Agency office no later than 5:00 p.m. on January 20th of the following calendar year.

SECTION 6. COLLECTION OF CHARGES

- 6.01 **Method of Collection.** Augmentation Charges shall be billed to the Owner of the Parcel on which the Extraction Facility is located. PVWMA shall provide a duplicate copy of a bill for Augmentation Charges to any person, upon written consent of the Owner. Any delinquent Augmentation Charge obligations shall be charged interest at the rate of one and one-half percent (1.5%) per month in accordance with Section 124-1004 of the Agency's Act.
- 6.02 **Appeal of Charges.** The Agency Board of Directors does hereby find and determine that any Owner of a Parcel who believes that a billed Augmentation Charge is inaccurate or incorrect calculated shall have the right to an administrative appeal for up to sixty (60) days after the receipt of such bill. Any credit determined to be owed by the Agency as a

result of an appeal shall be refunded to the Owner within sixty (60) days of such determination.

6.03 Enforcement. In the event of delinquency of payment of any Augmentation Charge obligation, the Agency may avail itself of any or all of the following methods of enforcement, as well as any other remedy available at law:

6.03.1 Court Action. Upon the violation of any provision of this Ordinance the Agency may, as established in Section 1104 of the Agency Act, petition the superior court of the county of jurisdiction to recover sums due to the Agency.

6.03.2 Temporary Restraining Order. Upon the violation of any provision of this Ordinance the Agency may, as established in Section 1101 of the Agency Act, petition the superior court of the county of jurisdiction for a temporary restraining order or preliminary or permanent injunction prohibiting the person from operating an extraction facility or for such other injunctive relief as may be appropriate.

6.03.3 Civil Penalties. Upon the intentional violation of any provision of this Ordinance, the Agency may, as provided in section 1108 of the Agency Act, seek civil penalties of up to One Thousand Dollars (\$1,000) per day for each day of violation, in addition to any other penalties that may be prescribed by law.

6.03.4 Attorneys Fees. The Agency is authorized to recover any and all legal expenses incurred, including costs of suit and attorney's fees, as the prevailing party in any action filed in a court of law by the Agency to collect delinquent Augmentation Charges or any action filed in a court of law by persons challenging the Agency's authority to impose or collect Augmentation Charges, or the validity or amount of such charges.

SECTION 7. APPLICATION OF ORDINANCE

The provisions of this ordinance shall be administered in conjunction with and complement all other Agency ordinances and resolutions, including the Prior Ordinances. 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. 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.

SECTION 8. 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 9. EFFECTIVE DATE

This ordinance shall take effect 30 days after it is adopted by the Board of Directors.

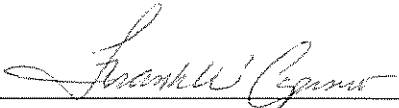
PASSED AND ADOPTED this 28th day of May, 2003, by the following vote:

AYES: Directors: Capurro, Carroll, Gallino, Imazio, Miljanich

NOES: Directors: Dobler, Eiskamp

ABSENT: Directors: **None**

ABSTAIN: Directors: **None**



Frank W. Capurro, Chair

ATTEST:



Linda Contreras, Secretary