



ORDINANCE NO. 2002-02

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY ESTABLISHING THE FIRST INCREMENTAL INCREASE IN A SCHEDULE FOR AUGMENTATION CHARGES

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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.
2. The purpose and functions of the Agency are set forth in PVWMA enabling Act, California Water Code Appendix, Chapter 124 ("PVWMA Act").
3. The Board has conducted numerous engineering, economic and other technical and legal analyses to determine the most feasible means by which to carry out the purposes of the PVWMA Act.
4. 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.
5. All water users within the Agency benefit substantially from the Agency's activities and regional planning for the reduction of overdraft in the groundwater basin, deterring the further intrusion of seawater and augmentation of existing water supplies for use within the Agency.
6. Groundwater Augmentation Charge revenues shall be used only for the purposes listed in Section 124-1001 of the Agency's Act. Pursuant to Section 124-1001 of the PVWMA Act, the Agency may levy groundwater Augmentation Charges on the extraction of groundwater from all Extraction Facilities within the Agency for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within the boundaries of the Agency.
7. 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. For purposes of this Finding 7, 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.

- (a) The average annual overdraft for the immediate past 10 water years is approximately 44,000 acre feet per year ("afy"). (This amount is based on the amount pumped on an annual basis that is greater than the sustainable yield of the basin. For purposes of this Section 7.a., "sustainable yield of the basin" means a status of the basin which does not cause seawater intrusion, falling groundwater levels, or ground surface subsidence.)
- (b) The estimated annual overdraft for the current water year is approximately 45,000 acre feet ("af").
- (c) The estimated annual overdraft for the ensuing water year is approximately 45,500 af.
- (d) The accumulated overdraft as of the last day of the preceding water year is approximately 1,370,000 af (estimated since 1964). (For purposes of this Finding 7.d., the accumulated overdraft as defined herein is the simple addition of the annual overdrafts since 1964.)
- (e) The estimated accumulated overdraft as of the last day of the current water year is approximately 1,420,000 af (estimated since 1964). (For purposes of this Finding 7.e., the accumulated overdraft as defined herein is the simple addition of the annual overdrafts since 1964.)
- (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.
- 8. 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 established and levied within the entire boundary of the Agency.
- 9. The Agency Board of Directors does hereby find and determine that all costs of implementing the Revised BMP shall be paid from a) groundwater Augmentation Charges charged during the period of 2002 through 2004; b) Project Water Sales charged during the period of 2002 through 2040 and 3) grants received during that period. A reasonable estimate of the total costs for implementing the Revised BMP includes (i) debt funding of approximately \$130.6 million for capital projects, (ii) additional costs associated with project operations and maintenance, and (iii) administration and overhead. A reasonable estimate of the costs of the Revised BMP projects and programs which may be properly funded by Augmentation Charges includes (i) debt funding of approximately \$93.7 million for capital projects, (ii) additional costs associated with project operations and maintenance, and (iii) administration and overhead. Further details and fiscal analysis are contained in the Revised BMP and Exhibit A, which are attached to this Ordinance and incorporated herein.
- 10. The Agency Board of Directors does hereby find and determine that according to the Revised BMP, by the year 2007, the Augmentation Charge will need to be the equivalent of \$158.00 per acre-foot, expressed in 2001 dollars, in order to adequately fund the costs listed in Finding 9 above. The actual amount of the Augmentation Charge is expected to increase from \$158 per acre-foot due to inflation.
- 11. 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 the first incremental increase. 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 Finding 9 above. 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.

12. 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.
13. 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"). 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.
14. 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.
15. The Board has conducted public hearings on this Ordinance, on May 1, 2002, May 15, 2002 and May 31, 2002, with notice of the hearing given in the manner prescribed in Government Code Sec. 6066.

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 establish an 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

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

2.01 AUGMENTATION CHARGE

“Augmentation Charge” means the amount charged to the owner of an extraction facility by the PVWMA for the extraction of each acre-foot (or fraction thereof) of groundwater pursuant to Section 124-1001, et seq., of the PVWMA Act and PVMWA Ordinance 93-1, as amended.

2.02 BOARD OF DIRECTORS

“Board of Directors” means the Board of Directors of the PVWMA.

2.03 EXTRACTION FACILITY

“Extraction Facility” means a water well or other facility used for the extraction of groundwater.

2.04 OWNER

“Owner” means the person or persons recorded by the County Assessor as the legal owner of a parcel upon which an extraction facility is located.

2.05 PARCEL

“Parcel” means a unit of real property identified by a unique Assessor Parcel Number.

2.06 PERSON

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

2.07 PROJECT WATER

“Project Water” means water supplied by PVWMA through the Import Water Supply Project or the Local Water Supply Projects.

2.08 **PVWMA**

“PVMWA” means the Pajaro Valley Water Management Agency

2.09 **PVWMA ACT**

“PVWMA Act” means the PVWMA enabling act, set forth in California Water Code Appendix, Chapter 124, Sections 124-1, et seq.

2.10 **PVWMA SERVICE AREA**

“PVWMA Service Area” means the area within the jurisdictional boundaries of the PVWMA, as described in Section 124-201 of the PVWMA Act.

2.11 **RECOMMENDED ALTERNATIVE**

“Recommended Alternative” means that set of projects and management measures described in the Revised BMP and adopted by the Board of Directors on February 6, 2002 by Resolution 2002-05, which consists of the Harkins Slough Local Water Supply Project, the Integrated Coastal Distribution System., the Import Water Supply Project, the Recycled Water Facility and certain Conservation Measures.

2.12 **REVISED BMP**

“Revised BMP” means that document titled Revised Basin Management Plan adopted by the Board of Directors on February 6, 2002 by Resolution 2002-05.

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.

Effective January 1, 2003, the definition of “Supplemental Water” shall be changed pursuant to Assembly Bill 1864 to read as follows:

“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, 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 and 2002-01 (collectively, the “Prior Ordinances.”)

The Prior Ordinances are amended, supplemented and revised as stated in this Ordinance 2002-02. To the extent that any provision of the Prior Ordinances conflicts with the provisions of this Ordinance 2002-02, the provisions of this Ordinance 2002-02 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 2002-02, 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 4 serves only to explain, not amend, Ordinance 2001-01.

SECTION 4 - BASIS OF CHARGE

The Augmentation Charge is comprised of the costs necessary to fund the following components, as further described in Exhibit A, attached to this Ordinance and incorporated herein:

- Import Water Facilities
- CVP Water Supply
- Recycled Water Facilities
- Distribution System Facilities
- Includes costs associated with: design and construction of capital facilities; operations and maintenance of the capital facilities, including electricity; administration of the capital facilities; capital reserve; operations and maintenance reserve
- Any and all services provided by the Agency which are reasonably related to the successful implementation and operation of Revised BMP projects, for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within the boundaries of the Agency, as permitted under Section 124-1001 of the Agency Act.

Because Augmentation Charges can not be expended for the purposes of paying the costs of purchasing, capturing, storing, and distributing recycled water for use within the boundaries of the Agency until January 1, 2003, none of the Augmentation Charges imposed pursuant to this Ordinance shall be collected or used for these purposes until January 1, 2003.

SECTION 5. SCHEDULE OF CHARGES

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

Beginning July 1, 2002, the Augmentation Charge shall be Eighty Dollars (\$80.00) per acre-foot.

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 prior 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 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 applied as a credit to the account of the Parcel Owner to lessen the Augmentation Charge in the billing period or periods immediately following the inaccurate or incorrect bill.
- 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

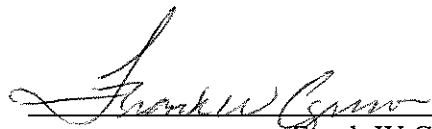
If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, it shall not affect the validity of the remaining portion of this ordinance, including any other section, subsection, 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 31st day of May, 2002, by the following vote:

AYES: Directors: Capurro, Carroll, Dobler, Imazio
NOES: Directors: Eiskamp
ABSENT: Directors: Gallino, Koenig
ABSTAIN: Directors: None



Frank W. Capurro, Chair

ATTEST:



Linda Contreras, Secretary

EXHIBIT A

Subject:	Basis of Charge
Date:	May 9, 2002
Prepared by :	Steve Clary, RMC Inc.

This Exhibit describes the basis of charge referenced in Section 4 of the PVWMA Ordinance 2002-02.

As stated in Section 8.4 of the Revised BMP dated February 2002, the basis for establishing the cost of service for augmented groundwater and for delivered project water is:

1. Recipients of delivered project water will pay the incremental cost of providing delivered project water to their properties as established by the incremental cost of constructing, operating, and maintaining the Distribution System.
2. All water users, including recipients of delivered project water, will pay a proportionate share of all remaining costs associated with the project, herein referred to as the Import Pipeline/Water Supply Component.

1 Capital Cost of Import Pipeline/Water Supply Component

Table 1 presents the estimated costs of the Distribution System and the Import Pipeline/Water Supply components. The table presents the capital costs, annualized capital costs, annual operation and maintenance costs, and the total annualized costs for each component. These costs derive from the costs shown in the Revised BMP dated February 2002 and from the detailed costs estimates used in developing the alternatives discussed therein. As shown in Table 1, the Import Pipeline/Water Supply component has an estimated capital cost of \$93.7 million and an estimated annual operation and maintenance cost of \$3.7 million. Assuming 30 year bond financing at 6 percent per year, the total annualized cost of this component is \$10.5 million.

2. Basis of Augmentation Charge

The Augmentation Charge is to pay for the Import Pipeline/Water Supply Component of the project, and is to be paid for by all water users based on the amount of water used by each user. Therefore, the charge per acre-foot of water will be the total annualized cost of \$10.5 million for the Import Pipeline/Water Supply Component, divided by the total average annual water sales.

The annual average water use in the Agency's service area is approximately 69,400 acre-feet. However, it is assumed that the metered and estimated water sales will be approximately 96 percent of this value, when meter accuracy is taken into account.

Therefore, it is estimated that average annual water sales (metered and estimated) will be 66,600 acre-ft (0.96 X 69,400).

Based on water sales of 66,600 acre-feet per year, the Augmentation Charge will be \$158 per acre-foot (\$10.5 million ÷ 66,600 acre-feet). [See Table 1, next page.]

