

**ORDINANCE NO. 2004-03**

**AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT  
AGENCY ESTABLISHING CHARGES FOR THE COST OF  
SUPPLEMENTAL WATER DELIVERED PURSUANT TO  
REVISED BASIN MANAGEMENT PLAN PROGRAMS**

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The Board of Directors of the Pajaro Valley Water Management Agency does hereby find and determine as follows:

1. The Pajaro Valley Water Management Agency was formed, among other reasons, to provide integrated management of the ground and surface water resources within the Pajaro Basin ("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 purposes and functions of the Agency are set forth in the PVWMA enabling Act, California Water Code Appendix, Chapter 124 (the "Act").
2. On May 19, 1999, by Resolution No. 99-05, the Board of Directors approved the Harkins Slough 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 Basin Management Plan ("Revised BMP"), including the Recommended Alternative, and certified that the Final EIR for the Revised BMP was complete and was prepared in compliance with CEQA. As so described and approved, the Revised BMP proposes, in addition to the Harkins Slough Local Water Supply Project, construction of supplemental water supply projects including furnishing supplemental water via an import pipeline, a reclaimed water project, supplemental wells, expanding the coastal distribution system to include coastal areas within Agency boundaries north of the existing Harkins Slough Local Water Supply Project Service Area as well as south of the Pajaro River (the "Coastal Distribution System"), expanding distribution of supplemental water into areas inland of the Coastal Distribution System, and implementation of management strategies (collectively the "Project") to reduce seawater intrusion and increase the safe yield of the groundwater basin.
3. On June 20, 2001, the Board of Directors adopted Ordinance No. 2001-01 establishing charges for the cost of water delivered from the Harkins Slough Local Water Supply Project to the Harkins Slough Local Water Supply Project Service Area. By this Ordinance, the Board of Directors is amending Ordinance No. 2002-01 to establish charges for the cost of water delivered to the entire Coastal Distribution System and other PVWMA distribution systems.

4. Pursuant to the Act, Section 124-502, the Board finds that the protection and augmentation of groundwater supplies is necessary for the public health, welfare and safety of the people of this State and of all people residing within the Agency, and further finds that the public necessity requires that the Agency take this action, in order to reduce groundwater overdraft, deter further seawater intrusion into the Basin and protect the quality of groundwater, by providing an additional source of funding for implementation of the Project.

5. The owners of all parcels within the Agency benefit substantially from the Agency's water conservation activities and from the Agency's activities and regional planning for the reduction of overdraft in the groundwater basin and augmentation of existing water supplies for use within the Agency.

6. The Agency charges extraction facility owners a Groundwater Augmentation Charge, pursuant to Article 10 of the Act, and implementing ordinances, for each acre-foot of water extracted within the jurisdictional boundaries of the Agency. This Groundwater Augmentation Charge, coupled with the cost of pumping the water incurred by the extraction facility owner, represents the total cost for each acre-foot of water extracted from the groundwater basin. It is the Board's intention to provide an economically feasible alternative to groundwater extraction for agricultural uses in the Coastal Distribution System Service Area.

7. The Agency has conducted numerous engineering and economic analyses to determine the cost of delivering Project water, which includes components for a) construction of capital facilities and b) operations and maintenance of the facilities; and costs of administering the Project. Based on these analyses, it has been determined that the cost of delivered water to agricultural users would be substantially higher than the current cost of pumping groundwater. The Board recognizes that imposition of a Project water rate in the amount of the full cost of delivering Project water would be economically burdensome and could be detrimental to the successful implementation of the Project. As such the Board finds that it is in the public interest to provide the persons receiving Project water with a water supply that is substantially similar in cost to the cost of pumping groundwater at this time. This charge is based on a technical analysis of the cost of pumping groundwater, and based upon the cost to operate, maintain, and provide electric power to the average groundwater extraction facility. (Memoranda summarizing this analysis are attached as Exhibit A to this Ordinance, which consists of Technical Memoranda prepared by Raines, Melton & Carella, Inc. dated May 9, 2001 and October 28, 2004, respectively, and are incorporated herein.)

7. The cost of electric power is a substantial component of the charge for delivery of Project Water. The Board recognizes that due to circumstances beyond its control, the cost of electric power frequently fluctuates. It is the intent of the Board to pass the cost for electric power to deliver Project Water directly on to those receiving it through the charge established by this Ordinance. This component of the charge shall be calculated in accordance with the methodology described in Exhibit A, which is incorporated herein.

8. Project Water Charge revenues shall be used for capital costs and operations and maintenance related to the Project and any and all services provided by the Agency which are reasonably related to the successful implementation and operation of the Project.

9. 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 CEQA. The present ordinance is proposed as part of the Revised BMP, 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. Accordingly, the Board of Directors has determined that this ordinance is categorically exempt from the requirements of CEQA.

10. The Board has conducted a public hearing upon the proposed determination, with notice of the hearing given in the manner prescribed in Government Code Section 6066.

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

SECTION ONE. 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 GROUNDWATER AUGMENTATION CHARGE

The amount charged by the Agency for the extraction of groundwater pursuant to Article 10 of the Act and various implementing ordinances.

1.01.03 OWNER OF AN EXTRACTION FACILITY

The person who owns the real property upon which an extraction facility is located.

1.01.04 PERSON

Any individual, organization, partnership, business, association, corporation or governmental agency.

1.01.05 PROJECT SERVICE AREA

The area that will receive Project water via the Coastal Distribution System or other PVWMA distribution systems.

1.01.06 PROJECT WATER

Water supplied to property in the Project Service Area by the Project.

1.01.07 TURNOUT

A pipeline connection from the main water line for delivery of Project water.

SECTION TWO. RATES

The rate per acre-foot for Project Water is hereby established as the sum of Components 1 and 2, where Component 1 is amount of the Groundwater Augmentation Charge, and Component 2 is an amount that represents the avoided cost of pumping groundwater, including energy costs, capital costs for wells, pumps and related appurtenances, and operation and maintenance expenses.

Beginning on the Effective Date of this Ordinance, the Project Water rate shall be \$262 for each acre-foot of Project Water delivered.<sup>1</sup> Thereafter, the Project Water rate shall be adjusted from time to time by Resolution of the Board of Directors in accordance with Section Five.

SECTION THREE. MEASUREMENT OF PROJECT WATER DELIVERED

The amount of water delivered to each person shall be measured by a flow meter or flow meters installed at each Turnout.

SECTION FOUR. COLLECTION OF CHARGES

4.01. METER READING AND BILLING. All Turnout flow meters shall be read periodically, but no less than semi-annually nor more frequently than monthly, by a PVWMA representative. Thereafter, bills shall be rendered and mailed to each customer account following the end of the billing period. All bills shall be due and payable on or before thirty (30) days of the date of mailing (the "Delinquent Date") in order to avoid delinquent charges.

4.02. DELINQUENT CHARGES. Any amount of Project water charges that is not paid in full by the Delinquent Date shall be deemed delinquent and shall thereafter be charged interest at the rate of 1.5% per month, accruing on the first day after the Delinquent Date and each month thereafter until paid in full.

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<sup>1</sup> The initial rate set forth herein is based upon the assumption that Ordinance 2004-02 is adopted by the Board of Directors with an effective date of January 1, 2005 establishing a \$40/af increase in the Augmentation Charge.

4.02. ENFORCEMENT. In the event of delinquency of payment of any Project Water 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:

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

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

4.02.03. 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 (\$1,000.00) per day for each day of violation, in addition to any other penalties that may be prescribed by law.

4.02.04. Disconnection. Without the necessity of seeking court authorization, the Agency may discontinue providing Project water to any person who fails or refuses to pay the charges for Project water established herein. Discontinuance of service shall not relieve any person within the Project Service Area from the requirements of any ordinance adopted by the Agency that limits, restricts or prohibits the use of water wells within the Project Service Area as part of the programs and policies deemed necessary by the Board for implementation of the Project.

4.02.04. 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 Project Water Charges or any action filed in a court of law by persons challenging the Agency's authority to impose or collect Project Water Charges, or the validity of the amount of such charges.

4.03 METER ERROR. The Board hereby finds and determines that any person who receives Project water and believes that a billed Project Water Charge is inaccurate or incorrect shall have the right to an administrative appeal for up to sixty days after the date of mailing of such bill. Upon receipt of such an appeal, the General Manager shall order the inspection and testing of the meter in question. If the General Manager determines that the meter registers at least two percent more water than actually passes through it, then the meter shall be properly adjusted or replaced and the Project water charge shall be adjusted proportionately.

## SECTION FIVE. REVIEW AND ADJUSTMENT OF RATES

The portion of Component 2 consisting of capital facilities and operation and maintenance costs shall be reviewed and adjusted annually by the Board. Any change in the Project Water

rate as a result of this annual process shall become effective on January 1 of the following calendar year. Additional adjustments for energy costs may be made quarterly, if necessary. Any adjustments shall be by resolution of the Board of Directors.

The portion comprising Component 1 shall be automatically adjusted to be equal to the change, if any, in the Groundwater Augmentation Charge at any time, whether that Fee is increased or decreased.

SECTION SIX. APPLICATION OF ORDINANCE

The provision of this ordinance shall be administered in conjunction with and complement all other Agency ordinances and resolutions, and these provisions shall apply to all parcels within the Project Service Area.

SECTION SEVEN. 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 EIGHT. ORDINANCE 2001-01 SUPERSEDED. On and after its Effective Date, this Ordinance supersedes and repeals Ordinance No. 2001-01 establishing charges for the cost of water delivered from the Harkins Slough Local Water Supply Project.

SECTION NINE. EFFECTIVE DATE


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

**PASSED AND ADOPTED** this 17<sup>th</sup> day of November, 2004, by the following votes:

<b>AYES:</b>	Directors:	Capurro, Carroll, Imazio, Miljanich
<b>NOES:</b>	Directors:	Dobler, Eiskamp
<b>ABSENT:</b>	Directors:	Gallino
<b>ABSTAIN:</b>	Directors:	None

  
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Frank W. Capurro, Chair

**ATTEST:**

  
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Linda Contreras, Secretary