

## **ORDINANCE 96-3**

### ***An Ordinance of the Board of Directors of the Pajaro Valley Water Management Agency Amending Requirements for Semi-Annual Meter Readings and Assigning Responsibility for Augmentation Charge Assessments***

#### **FINDINGS**

1. The Pajaro Valley Water Management Agency (Agency) was formed, among other reasons, to provide integrated management of the ground and surface water resources within the Pajaro Basin. As provided in the Pajaro Valley Water Management Agency Act (Chapter 257, State Statutes of 1984), the Agency bears sole responsibility for the integrated management and augmentation of water supplies for domestic, agricultural, municipal and industrial purposes for the Pajaro Basin.
2. Article 6, section 601 of the Agency Act authorizes the Agency to, by ordinance, adopt requirements for the registration of ground water extraction facilities within the Agency area and for the use of flow meters at such ground water extraction facilities. The Agency Act provides that the required flow meters may be installed and calibrated by the Agency or, at the Agency's option, by the extraction facility operator.
3. Article 6, sections 602 and 603 of the Agency Act authorize the Agency to, by ordinance, require the ground water extraction facility's owner or operator to provide the Agency with certain information including, but not limited to, the location of the extraction facility; the owner of the land upon which the extraction facility is located; the operator of the facility; a physical description of the extraction facility equipment; and notice of the extraction facility's abandonment, should it occur.
4. Article 11, section 1101 authorizes the Agency to enforce its ordinances, including those requiring the installation and use of flow meters at ground water extraction facilities, by seeking appropriate injunctive relief in the superior court of the County of jurisdiction. Article 11, section 1108 confers additional enforcement authority, providing that an intentional violation of any agency ordinance may cause substantial civil liability to the Agency.
5. In June, 1993, the Agency adopted Ordinance 93-1 establishing a ground water augmentation charge to be assessed equitably among all ground water users in the Agency area of jurisdiction. Within the definitions of this Ordinance, a distinction is made between the Operator and the Owner of an Extraction Facility.
6. In August, 1993, the Agency adopted Ordinance 93-2 requiring the installation and use of flow meters at water production facilities, and which established requirements and responsibility for semi-annual meter readings and for the assessment and collection of augmentation charges. Within the definitions of this Ordinance, a distinction is made between the Operator and the Owner of an Extraction Facility.

7. Ordinance 93-1 and Ordinance 93-2 do not clearly address owner/operator responsibility for augmentation charge assessments and/or penalties.

8. The Agency's present policies of owner/operator meter reading responsibility and optional tenant billing have created confusion regarding ultimate landlord-tenant liability, and inefficiencies in the Agency's billing process. The Board has studied the issue and determined that the Agency and the public would be better served if Agency representatives were responsible for meter reading operations; optional tenant billing were eliminated, and the owner made responsible for ensuring that payment is made.

The Agency Board of Directors does adopt these findings in accord with section 502 of the Pajaro Valley Water Management Agency Act, and declares that this Ordinance is required by public necessity.

***NOW THEREFORE*** be it ordained as follows:

## ***ORDINANCE***

### ***Section One: Short Title***

This Ordinance shall be known as the *Meter Reading and Augmentation Charge Payment Responsibility Ordinance*.

### ***Section Two: Statement of Purpose***

A. The purpose of this Ordinance is to clarify meter reading responsibility and to assign responsibility for assessed augmentation charges to the landowner of the extraction facility.

B. This *Meter Reading and Augmentation Charge Payment Responsibility Ordinance* accomplishes this change by amending "Section Three: Definitions" of the Agency's Ground Water Augmentation Charge Ordinance (Ordinance 93-1) and the following sections of the Agency's Water Meter Ordinance (Ordinance 93-2): "Section Three: Definitions", "Section Nine: Requirement for Semi-Annual Meter Readings", "Section Ten: Assessment and Collection of Augmentation Charges" and "Section Twelve: Fees and Enforcement". All other provisions of the original Ordinance 93-1 and Ordinance 93-2 shall continue to remain in effect.

### ***Section Three: Definitions***

As used in this ordinance, the following terms shall have the meanings stated below:

A. Agency - The Pajaro Valley Water Management Agency.

B. Board and Board of Directors - The governing Board of Directors of the Pajaro Valley Water Management Agency.

- C. Ground Water Augmentation Charge and Augmentation Charge - A charge assessed to well owners by the Agency for each acre-foot (or fraction thereof) of ground water produced within the boundaries of the Agency.
- D. Hour Clock - A device for recording cumulative hours of operation of a water production facility.

#### ***Section Four: Amendment of Section Three-S of Ordinance 93-1***

"Section Three-S" of Ordinance 93-1, is hereby amended to read as follows:

- ~~S. Operator of an Extraction Facility—The extraction facility owner, or, if there is a lease of the parcel upon which the facility is located, the person who holds the lease:~~
- S. Operator of an Extraction Facility - Same as owner of an extraction facility.

#### ***Section Five: Amendment of Section Three-HH of Ordinance 93-2***

"Section Three-HH" of Ordinance 93-2 is hereby amended to read as follows:

- ~~HH. —Meter Contract—a contract between the Agency, the facility owners, and the facility operator (if different than the facility owner) specifying the terms of meter ownership, meter maintenance and repair responsibilities, augmentation charge billing and accounting, and other obligations:~~
- HH. Meter Contract - A contract between the Agency and the extraction facility owner specifying the terms of meter ownership, meter maintenance and repair responsibilities, augmentation charge billing and accounting and other obligations.

#### ***Section Six: Amendment of Section Three-JJ of Ordinance 93-2***

"Section Three-JJ" of Ordinance 93-2 is hereby amended to read as follows:

- ~~JJ. —Operator of a Water Production Facility —The water production facility owner, the owner's designated representative, the parcel leaseholder, or any other person in whose name the Augmentation Charge Account is established:~~
- JJ. Operator of a Water Production Facility - Same as owner of a water production facility.

**Section Seven: Amendment of Section Nine of Ordinance 93-2**

"Section Nine" of Ordinance 93-2 shall be replaced in its entirety. This section, no longer in effect, reads:

***SECTION NINE: REQUIREMENT FOR SEMI-ANNUAL METER REPORTS***

A. ~~———— Semi-annual Meter Reports shall be filed for each water production facility equipped with an Agency flow meter and for each major water purveyor facility excepted from the requirement to use an Agency flow meter under the provisions of Paragraph A(2) of Section Four hereof. The Meter Reports shall be filed by the facility operator using a form provided by the Agency. To be deemed complete, a Report form shall be signed and shall include all required information as follows:~~

- ~~(1) The name, address, and telephone number of the operator of the facility; and~~
- ~~(2) Whether there has occurred any change in ownership of the facility during the Meter Report period; and~~
- ~~(3) Whether, during the Meter Report period, there have been any modifications or adjustments to the facility pumps, piping, appurtenances, or other equipment which would affect the flow meter's capability to register total water production or which would affect the numerical correlation between the readings of the flow meter and its appurtenances; and~~
- ~~(4) Identification of the parcels served by the facility during the Meter Report period; and~~
- ~~(5) Recordings of the flow meter, the electric power meter, and any other flow meter appurtenance at the beginning and end of the Meter Report period; and~~
- ~~(6) A calculation of the total water production in acre-feet, derived from the difference in flow meter recordings at the beginning and end of the Report period.~~

B. ~~———— The Meter Report shall require a calculation of the current ground water augmentation charge assessment. The amount of this assessment shall be determined by multiplying total water production times the effective per-acre-foot charge established by the Board of Directors. A payment on this assessment, consistent with the terms established in the Meter Contract, shall be submitted together with the Meter Report.~~

C. ~~———— If a flow meter is known to be non-functional or if flow meter recordings are otherwise known to be inaccurate or incomplete, total water production shall be estimated using the recordings of the flow meter, the electric power meter, or another flow meter appurtenance; by using the Table of Average Annual Water Demand of Paragraph A of Section Five hereof; or using other appropriate means, whichever provides the greatest accuracy, so long as the method of estimation does not yield an estimate of total water production that would exceed accurate flow meter recordings.~~

D. ~~———— Meter Reports shall be filed twice each year, for the periods January through June and July through December. The January-June Report shall be delivered to the Agency office no later than 5~~

~~p.m. on July 20. The July-December report shall be delivered to the Agency office no later than 5 p.m. on January 20 of the following calendar year.~~

~~E. If there occurs a change in the water production facility operator during a reporting period, the terminating operator shall file a Meter Report within twenty calendar (20) days of the change. Any terminating operator who fails to meet this requirement may be held liable for augmentation charge assessments on water production for the benefit of the new operator after the date of the change.~~

The new Section Nine shall read:

*SECTION NINE: REQUIREMENTS FOR SEMI-ANNUAL METER READINGS*

A. The flow meter for each water production facility equipped with an Agency flow meter shall be read, semi-annually, 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 and bill the Landowner within thirty (30) days after the end of the billing period. Payment shall be due sixty (60) days after the end of the billing period.

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. 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 Eight: Amendment of Section Ten of Ordinance 93-2***

"Section Ten-A(2)" of Ordinance 93-2, is hereby amended to read as follows:

- ~~(2) Residential parcels served exclusively by a public water system. Such residential parcels shall be assessed indirectly through the public water system. As required under Section Nine hereof, if the public water system's extractions are metered, the public water system shall file semi-annual Meter Reports and shall calculate and pay augmentation charge assessments on the basis of these Reports. If the public water system's extractions are not metered, the Agency shall bill the public water system semi-annually based on an estimated annual water demand of 0.6 acre-foot per dwelling unit, consistent with Paragraph A(1) of Section Five hereof.~~
- (2) Residential parcels served exclusively by a public water system Such residential parcels shall be assessed directly through the readings by Agency representatives of the flow meters serving the extraction facilities on such parcels. If the public water system's extractions are not metered, the Agency shall bill the public water system semi-annually based on an estimated annual water demand of 0.6 acre-foot per dwelling unit, consistent with Paragraph A(1) of Section Five hereof.

"Section Ten-A(4)" of Ordinance 93-2, is hereby amended to read as follows:

~~(4) Commercial parcels served exclusively by one or more metered ground water extraction facilities. Such commercial parcels shall be assessed indirectly through the Meter Report filed by the extraction facility operator, as required under Section Nine hereof.~~

(4) Commercial parcels served exclusively by one or more metered ground water extraction facilities. Such commercial parcels shall be assessed directly through the readings by Agency representatives of the flow meters serving the extraction facilities on such parcels.

### ***Section Nine: Amendment of Section Twelve of Ordinance 93-2***

"Section Twelve" shall be amended to eliminate Paragraph "C"; and to amend Paragraphs "A-1", "A-2", "B", "D" and "E" as follows:

#### **SECTION TWELVE: FEES AND ENFORCEMENT**

A. If any water production facility within the Agency's boundaries is used to produce water after December 31, 1995, without an Agency flow meter, when none of the exception categories of Section Four hereof applies, the Agency shall assess a Non-Metered Water Use Fee against the water production facility owner. The Non-Metered Water Use Fee shall be assessed in addition to the augmentation charge. It shall be assessed during each meter billing period until the first full meter billing period after the Agency meter is installed. The amount of the fee shall be calculated as follows:

(1) Ground water extraction facilities. The fee shall be equal to the dollar amount of the ground water augmentation charge assessment for the facility and it shall be levied in addition to the ground water augmentation assessment. In effect, an assessment of this fee would double the augmentation charge.

(2) Surface water diversion facilities. The fee shall be calculated as the product of the effective per-acre-foot charge established by the Board of Directors and the estimated water production of the non-metered diversion facility, where the facility's estimated water production is based on the Table of Average Annual Water Demand set forth in Section Five hereof. In effect, an assessment of this fee would be equivalent to an assessment of the augmentation charge. ***The fee shall be equal to the dollar amount of the groundwater augmentation charge assessment that would apply if this facility were an extraction facility.***

~~B. Any water production facility operator delinquent in the filing of a Meter Report shall be subject to assessment of augmentation charges based on metered use or the Table of Average Annual Water Demand, whichever is greater, plus a ten (10) per cent penalty; plus a Late Report Fee of \$200; plus a Meter Reading Fee of \$200. Interest on all delinquent payments shall be charged at the rate of 1.5% per month. Any operator who cannot file a timely Meter Report may request an Agency Meter Reading prior to the deadline for submitting the Meter Report. Such~~

operator shall be assessed the \$200 Meter Reading Fee and any applicable interest for delinquent payment.

***B. Any delinquent augmentation charge obligations shall be charged interest at the rate of 1.5% per month.***

~~C. Any water production facility operator who files an incorrect Meter Report shall be subject to assessment of a Non-Metered Water Use Fee, as set forth in Paragraph A of this Section. This fee shall be assessed in addition to the correct augmentation charge. For the purposes of this paragraph, an incorrect Report shall be defined as one in which the reported water use is less than ninety (90) per cent of the actual water use.~~

~~D. C.~~ Upon the violation of any provision of this Ordinance, except for those violations described under Paragraph A, ~~B, and C~~ and B of this Section, 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 the facility or for such other injunctive relief as may be appropriate.

E. ~~D.~~ Upon the intentional violation of any provision of this Ordinance subject to Paragraph ~~D- C~~ of this Section, the Agency may, as provided in section 1108 of the Agency Act, seek civil penalties of up to one thousand (\$1,000) per day for each day of violation, in addition to any other penalties that may be prescribed by law.

***Section Ten: Publication and Application***

The provisions of this ordinance shall be administered in conjunction with and complement all other Agency ordinances and resolutions, including Ordinance 93-1 and Ordinance 93-2, and these provisions shall apply to all parcels within the boundaries of the Agency.

***Section Eleven: Effective Date***

This ordinance shall have an effective date of 1 October 1996.

***Section Twelve: Severability***

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Agency's ordinances and resolutions.

It is the Agency's express intent that each remaining provision of this ordinance would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director Edsberg and seconded by Director Bennett, the foregoing ordinance is adopted this 25th day of September, 1996, by the following vote:

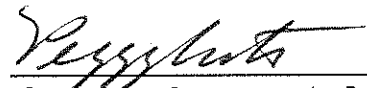
AYES: Directors Bennett, Edsberg, Garrett, Jensen

NAYS:

ABSENT: Directors Carroll, Mauthe

I, Peggy Coats, Secretary to the Board of Directors of the Pajaro Valley Water Management Agency, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted this 25th day of September, 1996.

Witness my hand and seal of the Board of Directors this 25th day of September, 1996.

  
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Peggy Coats, Secretary to the Board