



PAJARO VALLEY WATER MANAGEMENT AGENCY

36 BRENNAN STREET • WATSONVILLE, CA 95076
TEL: (831) 722-9292 • FAX: (831) 722-3139
email: info@pvwma.dst.ca.us • http://www.pvwma.dst.ca.us

Board of Directors Meeting
Old City Council Chambers

August 27, 2008 7:00 p.m.
250 Main Street, Watsonville, CA

MEETING AGENDA

Agenda Item

Page #

Note: The Board may take action on any item listed on the agenda unless it is identified as "Discussion Only."

1. **Call to Order, Roll Call of the PVWMA Directors:** Dennis Osmer (Chair), Marc Cervantes (Vice Chair), John Eiskamp, Dave Kegebein, Rosemarie Imazio, Mike Dobler, Warren Koenig
2. **Pledge of Allegiance**
3. **Oral Communications.** Audience Members may speak on any item pertaining to the PVWMA's jurisdiction that is not on the agenda. Not to exceed three (3) minutes.
4. **Director Comments**
5. **Counsel Report**
6. **Interim General Manager Report**
7. **Report of Chair on Ad Hoc Funding Committee**
8. **Discussion and/or Action Items**
 - A. Review and Approve Augmentation Charge Refund Claim Form 1-18
 - B. Consider Recommendation for Sunset Provision on \$80 Augmentation Charge 19-22
9. **Written Communication/Correspondence** 23-24
10. **Future Meetings and Agenda Items**
 - A. Administrative/Finance Committee – September 2, 2008, 4:00 pm, PVWMA Conference Room
 - B. Board Meeting – September 10, 2008, 7:00 pm, "Old" City of Watsonville Council Chambers
 - C. Water Quality and Project Operations Committee- September 24, 2008, 2:00 pm-4:00 pm, Watsonville Waste Water Treatment Facility
11. **Closed Session**
 - A. **Conference with Legal Counsel- Pending Litigation**

Pursuant to Government Code Section 54956.9(a):
Name of Case: Pajaro Sunny Mesa CSD v. PVWMA – SCSC Case No. CV 159506
 - B. **Conference with Legal Counsel: Liability Claims**

Claimants: Mendoza Berry Farms
Claim Against: PVWMA
12. **Adjournment**

This agenda is subject to revision and may be amended prior to the scheduled meeting. If amended, a Final Agenda will be posted at the PVWMA offices at 36 Brennan Street, Watsonville, 72 hours prior to the meeting. Copies of the Final Agenda will be available at the Board Meeting. This Agenda shall be made available upon request in alternative formats to persons with a disability, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the Ralph M. Brown Act (Cal. Govt. Code Sec. 54954.2). Persons requesting a disability-related modification or accommodation should contact PVWMA's Administrative Division Manager at (831) 722-9292 during regular business hours, at least 24 hours prior to the time of the meeting.

MEMORANDUM

DATE: August 22, 2008
MEETING OF: August 27, 2008
TO: Board of Directors
FROM: Interim General Manager
RE: **ACTION ITEM 8A:** Review and Approve Augmentation Charge Refund Claim Form

BACKGROUND/ DISCUSSION

Pursuant to the stipulated settlement and Ordinance 2008-01 a claim form must be made available to those seeking refunds. There is currently a claim form available on the Agency's web page and in the office for those who do not wish to wait for the detailed claim form we will be sending out soon based on payment data entered from checks received and reconciled to account data. Mark Diaz started the work on this form and much of it was cut and pasted from other work. Lidia Gutierrez and Chairman Osmer finished it with input from Rocio and Veronica (since they take the calls). Chairman Osmer accepted the task from the Ad Hoc Executive Committee in my absence and finished it. Tony Condotti reviewed it before it was published. Director Dobler reviewed it. Director Kegebein was out of town. There was a review of the last draft at the 7/8/08 Strategic Planning and Public Outreach meeting. Director Eiskamp wrote a letter August 11, 2008 detailing his concerns. Chair Osmer requested that the form be brought to the full Board in an effort to address those concerns. Director Eiskamp has been requested to provide changes.

STAFF RECOMMENDATION

Staff recommends that the Board review the current and drafts presented and direct staff accordingly.

ALTERNATIVES:

Leave the current form as is.

ATTACHMENTS

- Exhibit A Ordinance 2008-01
- Exhibit B Original posted claim form (Rev 2 7/31/08)
- Exhibit C Current posted claim form (Rev 3 8/12/2008)
- Exhibit D Draft claim form suggested by General Counsel
- Exhibit E August 11, 2008 letter from Harold Griffith
- Exhibit F August 11, 2008 letter from Director Eiskamp

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Exhibit A

ORDINANCE NO. 2008-01

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY
ESTABLISHING PROCEDURES AND LIMITATIONS PERIOD FOR FILING REFUND
CLAIMS

* * *

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

SECTION 1: This ordinance shall be known as the PAJARO VALLEY WATER MANAGEMENT AGENCY REFUND CLAIMS ORDINANCE.

SECTION 2: Authority. This ordinance is enacted pursuant to California Government Code Section 935.

SECTION 3: Claims required. All claims against the Agency for money, damages or refunds, not otherwise governed by the Tort Claims Act, California Government Code Sections 900, et seq., or any other law of the State of California (hereinafter "claims"), including all claims for refunds of management fees, augmentation charges or delivery charges shall be governed by the provisions of this Ordinance.

SECTION 4: Time limit for presentment of claims. Any claim specified in this ordinance shall be presented within one (1) year after the accrual of the claim pursuant to California Government Code Section 911.2. All claims for refunds shall be deemed to have accrued as follows:

- A. As of the effective date of this ordinance: All claims for refunds of augmentation charges paid pursuant to Section 4 of Ordinance 2003-01 or Section 4 of Ordinance 2004-02, and made pursuant to the stipulation for entry of judgment in the consolidated actions entitled James P. Scurich et al. v. PVWMA (SCSC Case No. CV 144843; 6th Civil No. H025776); PVWMA v. All Persons Interested (Case No. CV 146754; 6th Civil No. H027817); Harold W. Griffith v. PVWMA (SCSC Case No. 150716); San Andreas Mutual Water Company v. PVWMA (SCSC Case No. 150923).
- B. As of the date of payment of the fee or charge. All other claims for refunds of management fees, augmentation charges or delivery charges.

SECTION 5: Form of claim. All claims shall be made in writing and verified by a claimant or by the claimant's guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of the class. In addition, all

ORDINANCE NO. 2008-01

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY ESTABLISHING
PROCEDURES AND LIMITATIONS PERIOD FOR FILING REFUND CLAIMS

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claims shall contain the information required by California Government Code Section 910. Claims shall be made on a form provided by the Agency and shall be filed with the General Manager.

SECTION 6: Claim prerequisite to suit. All claims shall be presented as provided in this chapter and acted upon by the Board of Directors prior to the filing of any lawsuit or action on such claim, and no lawsuit or action shall be maintained by a person or entity that has not complied with this ordinance.

SECTION 7: Agency action on claim. The Board of Directors shall act to approve or deny a claim within forty-five days of its presentment as required under this Ordinance. Failure of the Board of Directors to act within the time required shall be deemed a denial of the claim.

SECTION 8: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 9: Effective date. This ordinance shall be in full force and effect sixty (60) days after entry of judgment in the consolidated actions referenced in Section 4.A., above, and after judgment in said actions has become final. The Ad Hoc Executive Committee of the Agency is hereby directed to publish a copy of this ordinance in accordance with the requirements of California Government Code Section 6063 in a newspaper of general circulation within the Agency boundaries.


PASSED AND ADOPTED this 20th day of February 2008, by the following votes:

AYES: Directors: Osmer, Cervantes, Eiskamp, Kegebein, Imazio, Dobler, Koenig
NOES: Directors: None
ABSENT: Directors: None
ABSTAIN: Directors: None



Marc Cervantes, Vice Chair

ATTEST:

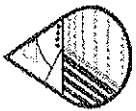


Secretary

ORDINANCE NO. 2008-01
AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY ESTABLISHING
PROCEDURES AND LIMITATIONS PERIOD FOR FILING REFUND CLAIMS

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Exhibit B

REFUND CLAIM FORM (MANUAL) & INSTRUCTIONS

Date Claim Form Completed:

Claimant Name:	Claimant City/State/Zip:	Claimant Business Phone:
Claimant Address:	Claimant e mail:	Claimant Other Phone:
Claimant Mobile Phone:	Name on PVWMA Account:	
PVWMA Account Number:		
Claimant Social Security Number or Fed Tax ID:		

Account Number	Assessor's Parcel Number	Well Number	PVWMA Bill Date	Amount Billed by PVWMA	Date Paid by Claimant	Check Num	Amount Paid by Claimant	Amount of Claim	
1				\$			\$	\$	
2				\$			\$	\$	
3				\$			\$	\$	
4				\$			\$	\$	
5				\$			\$	\$	
6				\$			\$	\$	
Claims detail may be continued on attached pages. Please indicate the number of pages submitted for this claim: <input type="text"/>							Total Amount Claimed:		
Copies of cancelled checks or original receipts issued by the PVWMA should be attached to this claim. <input type="text"/>									

ACKNOWLEDGEMENT AND SIGNATURE: By signing below I hereby: (1) acknowledge that I have reviewed and accept the claim process as explained on this form and accompanying instructions; (2) state under the penalty of perjury that I am either the claimant or have been legally authorized to represent the claimant and am entitled to receive the refund specified herein; (3) agree to indemnify and hold harmless the Pajaro Valley Water Management Agency, its officers, employees and agents, against any claim brought by another party claiming entitlement to said payment; (4) except for the refund payments I am entitled to pursuant to this claim process, release the Pajaro Valley Water Management Agency, its officers, employees and agents, from any and all claims, demands, obligations or liability arising out of or relating to augmentation charge payments made for the above-referenced periods pursuant to Ordinance Nos. 2002-02, 2003-01 and 2004-02.

Date: _____ PRINT NAME: _____ SIGNATURE: _____

REFUND PROCESS- I request that the refund be processed as indicated below (*check one*): Mailed to the claimant as per above, or credited to the account indicated above

This is a 2 page form. Please read page 2 (Instructions) carefully before you sign and submit your claim.

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REFUND CLAIM FORM (MANUAL) & INSTRUCTIONS PAGE 2

1 Background: PVWMA's Augmentation charge was increased to \$80 per acre-foot in 2002 by Ordinance No. 2002-02, then again by Ordinance No. 2003-01 to \$120 per acre-foot and by Ordinance 2004-02 to \$160 per acre-foot. On May 21, 2007, Sixth District Court of Appeal issued its decision in *PVWMA v. Amrhein* (2007) 150 Cal.App.4th 1364, declaring Ordinance No. 2003-01 invalid. Subsequently, several related pending lawsuits were concluded by a Superior Court judgment entered on February 22, 2008 by stipulation of the Agency and several interested parties. Under the Judgment, all augmentation charges collected pursuant to Ordinances Nos. 2003-01 and 2004-02, which were repealed by the PVWMA Board in October, 2007, will be refunded to those who submit valid claims. All refund payments will be made in one of two forms: (a) a credit to the Augmentation Charge payer for future payments; or (b) a direct payment. Under the terms of the Judgment, Ordinance No. 2002-02 (establishing the \$80 per acre-foot augmentation charge) remains in full force and effect (subject to possible future Agency Board action to modify or repeal the charge).

2 Refund Claim Process: Refund claims will be accepted for processing commencing July 31, 2008, and payments will commence within the following weeks in the order in which fully executed claims are submitted. To avoid a multiplicity of claims and to ensure that refunds are received by the party entitled thereto, PVWMA has established an automated claim processing database that cross-references paper payment records (primarily cancelled checks) with each separate augmentation charge account. **Any party that paid augmentation charges pursuant to Ordinance Nos. 2003-01 and 2004-02 will, within the next few weeks, receive completed claim forms with all information necessary to process the claim included. Signing and returning the completed claim form will ensure payment of a full refund.** Alternatively, any party that wishes to independently furnish supporting documentation and manually complete and submit a claim and fill out and execute this form and return it, along with all supporting documentation, to the Agency office at the address noted above. Manually submitted claims will be processed in the order in which they are received commencing July 31, 2008. **To expedite processing, parties are encouraged to utilize the automated claims process. Please see pvwma.org for a the full ordinance.**

3 Automated Claim

The Agency will furnish all necessary information based on the Agency's automated claim processing database. **These forms will be mailed out starting in August, 2008.** If you do not receive this form, or if you disagree with the details on the form you receive, you should process your claim manually. Please read the instructions carefully and fill in all blanks and submit the fully completed and executed form to the Agency at the address above. For the large majority of claims the Agency will be able to determine the claim amount based upon records of the actual amount billed and paid.

4 Manual Claim Detail Worksheet:

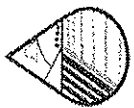
The Agency will furnish all necessary information to complete the worksheet below based on the Agency's automated claim processing database. If you choose to process your claim manually, please fill in all blanks and submit the fully completed and executed form to the Agency at the address above. For the large majority of claims the Agency will be able to determine the claim amount based upon records of the actual amount billed and paid. It is best to attach copies of cancelled checks or original receipts issued by the PVWMA, but you may attach any relevant supplemental information at your discretion. The claim form is designed so that a claimant with more than one account, or with more than APN or Well number may submit only one claim for processing. If you have only one account it is only necessary to fill out the top account number space.

Account Number	Assessor's Parcel Number	Well Number	PVWMA Bill Date	Amount Billed by PVWMA	Date Paid by Claimant	Check Num	Amount Paid by Claimant	Amount of Claim
7				\$			\$	\$
8				\$			\$	\$
9				\$			\$	\$
							Total:	

Claims detail may be continued on attached pages. Please indicate the number of pages submitted for this claim; Copies of cancelled checks or original receipts issued by the PVWMA should be attached to this claim.

This is a 2 page form. Please read page 2 (Instructions) carefully before you sign and submit your claim.

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REFUND CLAIM FORM (MANUAL) & INSTRUCTIONS

Date Claim Form Completed:

Claimant Name:	Claimant City/State/Zip:	Claimant Business Phone:
Claimant Address:	Claimant e mail:	Claimant Other Phone:
Claimant Mobile Phone:	Name on PVWMA Account:	
PVWMA Account Number:	Claimant Social Security Number or Fed Tax ID (Optional):	

Account Number	Assessor's Parcel Number	Well Number	PVWMA Bill Date	Amount Billed by PVWMA	Date Paid by Claimant	Check Num	Amount Paid by Claimant	Amount of Claim	
1				\$			\$	\$	
2				\$			\$	\$	
3				\$			\$	\$	
4				\$			\$	\$	
5				\$			\$	\$	
6				\$			\$	\$	
Claims detail may be continued on attached pages. Please indicate the number of pages submitted for this claim; Copies of cancelled checks or original receipts issued by the PVWMA should be attached to this claim.							Total Amount Claimed:		

ACKNOWLEDGEMENT AND SIGNATURE: By signing below I hereby: (1) acknowledge that I have reviewed and accept the claim process as explained on this form and accompanying instructions; (2) state under the penalty of perjury that I am either the claimant or have been legally authorized to represent the claimant and am entitled to receive the refund specified herein; (3) agree to indemnify and hold harmless the Pajaro Valley Water Management Agency, its officers, employees and agents, against any claim brought by another party claiming entitlement to said payment; (4) except for the refund payments I am entitled to pursuant to this claim process, release the Pajaro Valley Water Management Agency, its officers, employees and agents, from any and all claims, demands, obligations or liability arising out of or relating to augmentation charge payments made for the above-referenced periods pursuant to Ordinance Nos. 2002-02, 2003-01 and 2004-02.

Date: _____ PRINT NAME: _____ SIGNATURE: _____

REFUND PROCESS- I request that the refund be processed as indicated below (*check one*): Mailed to the claimant as per above, **or** credited to the account indicated above

This is a 3 page form. Please read page 2 (Instructions) carefully before you sign and submit your claim. Rev 3 8/12/2008

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REFUND CLAIM FORM (MANUAL) INSTRUCTIONS PAGE 2

1 Background: PVWMA's Augmentation charge was increased to \$80 per acre-foot in 2002 by Ordinance No. 2002-02, then again by Ordinance No. 2003-01 to \$120 per acre-foot and by Ordinance 2004-02 to \$160 per acre-foot. On May 21, 2007, Sixth District Court of Appeal issued its decision in *PVWMA v. Amrhein* (2007) 150 Cal.App.4th 1364, declaring Ordinance No. 2003-01 invalid. Subsequently, several related pending lawsuits were concluded by a Superior Court judgment entered on February 22, 2008 by stipulation of the Agency and several interested parties. Under the Judgment, all augmentation charges collected pursuant to Ordinances Nos. 2003-01 and 2004-02, which were repealed by the PVWMA Board in October, 2007, will be refunded to those who submit valid claims. All refund payments will may be made in one of two forms: (a) a credit to the Augmentation Charge payer for future payments; or (b) a direct payment.

2 Refund Claim Process: Refund claims will be accepted for processing commencing July 31, 2008, and payments will commence within the following weeks in the order in which fully executed claims are submitted. To avoid a multiplicity of claims and to ensure that refunds are received by the party entitled thereto, PVWMA has established an automated claim processing database that cross-references paper payment records (primarily cancelled checks) with each separate augmentation charge account. **Any party that paid augmentation charges pursuant to Ordinance Nos. 2003-01 and 2004-02 will, within the next few weeks, receive completed claim forms with all information necessary to process the claim included. Signing and returning the completed claim form will ensure payment of a full refund.** Alternatively, any party that wishes to independently furnish supporting documentation and manually complete and submit a claim and fill out and execute this form and return it, along with all supporting documentation, to the Agency office at the address noted above. Manually submitted claims will be processed in the order in which they are received commencing July 31, 2008. **To expedite processing, parties are encouraged to utilize the automated claims process. Please see pvwma.org for a the full ordinance.**

3 Automated Claim

The Agency will furnish all necessary information based on the Agency's automated claim processing database. **These forms will be mailed out starting in August, 2008.** If you do not receive this form, or if you disagree with the details on the form you receive, you should process your claim manually. Please read the instructions carefully and fill in all blanks and submit the fully completed and executed form to the Agency at the address above. For the large majority of claims the Agency will be able to determine the claim amount based upon records of the actual amount billed and paid.

4 Manual Claim Detail Worksheet:

The Agency will furnish all necessary information to complete the worksheet below based on the Agency's automated claim processing database. If you choose to process your claim manually, please fill in all blanks and submit the fully completed and executed form to the Agency at the address above. For the large majority of claims the Agency will be able to determine the claim amount based upon records of the actual amount billed and paid. It is best to attach copies of cancelled checks or original receipts issued by the PVWMA, but you may attach any relevant supplemental information at your discretion. The claim form is designed so that a claimant with more than one account, or with more than APN or Well number may submit only one claim for processing. If you have only one account it is only necessary to fill out the top account number space.

LEGAL DISCLOSURE

All refund claims will be processed in accordance with the California Tort Claims Act (Cal. Govt. Code Section 900, et seq.) and PVWMA Ordinance No. 2008-01. To be considered valid, all claims must be received by the Agency on or before April 22, 2009. Claims submitted after that date may be rejected. By submitting a refund claim, the claimant is acknowledging that he or she: (1) has reviewed and accepted the claim process as established by PVWMA; (2) states under the penalty of perjury that he or she is legally authorized to receive a refund; (3) agrees to indemnify and hold harmless the Pajaro Valley Water Management Agency, its officers, employees and agents, against any claim brought by another party claiming entitlement to said refund; (4) releases the Pajaro Valley Water Management Agency, its officers, employees and agents, from any and all claims, demands, obligations or liability arising out of or relating to any prior augmentation charge payments.

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REFUND CLAIM FORM (MANUAL) CONTINUATION Page 3

Claimant Name: _____

Account Number	Assessor's Parcel Number	Well Number	PVWMA Bill Date	Amount Billed by PVWMA	Date Paid by Claimant	Check Num	Amount Paid by Claimant	Amount of Claim
7				\$			\$	\$
8				\$			\$	\$
9				\$			\$	\$
10				\$			\$	\$
11				\$			\$	\$
9				\$			\$	\$
9				\$			\$	\$
9				\$			\$	\$
9				\$			\$	\$
							Total:	

Claims detail may be continued on attached pages. Please indicate the number of pages submitted for this claim:
 Copies of cancelled checks or original receipts issued by the PVWMA should be attached to this claim.

schedule

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Exhibit D



PAJARO VALLEY WATER MANAGEMENT AGENCY

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TEL: (831) 722-9292 FAX: (831) 722-3139

email: info@pvwma.dst.ca.us • http://www.pvwma.dst.ca.us

AUTOMATED REFUND CLAIM PROCESSING FORM
Pursuant to Cal. Govt. Code Section 900, et seq., and PVWMA Ordinance No. 2008-01

1 Background: PVWMA's Augmentation charge was increased to \$80 per acre-foot in 2002 by Ordinance No. 2002-02, then again by Ordinance No. 2003-01 to \$120 per acre-foot and by Ordinance 2004-02 to \$160 per acre-foot. On May 21, 2007, Sixth District Court of Appeal issued its decision in *PVWMA v. Amrhein* (2007) 150 Cal.App.4th 1364, declaring Ordinance No. 2003-01 invalid. Subsequently, several related pending lawsuits (the "Augmentation Charge Lawsuits") were concluded by a Superior Court judgment entered on February 22, 2008 by stipulation of the Agency and several interested parties. Under the Judgment (1); all augmentation charges collected pursuant to Ordinances Nos. 2003-01 and 2004-02, which were repealed by the PVWMA Board in October, 2007, will be refunded to those who submit valid claims; (2) refund claims. Refund payments may be made in six semi-annual installments commencing July 31, 2008. All refund payments will be made in one of two forms: (a) a credit to the Augmentation Charge payer for future payments; or (b) a direct payment; and (3) payment. Under the terms of the Judgment, Ordinance No. 2002-02 (establishing the \$80 per acre-foot augmentation charge) remains in full force and effect (subject to possible future Agency Board action to modify or repeal the charge).

2 Refund Claim Process: Refund claims will be accepted for processing commencing July 31, 2008, and payments will commence within the following weeks in the order in which fully executed claims are submitted. To avoid a multiplicity of claims and to ensure that refunds are received by the party entitled thereto, PVWMA has established an automated claim processing database that cross-references paper payment records (primarily cancelled checks) with each separate augmentation charge account. **Any party that paid augmentation charges pursuant to Ordinance Nos. 2003-01 and 2004-02 will, within the next few weeks, receive completed claim forms with all information necessary to process the claim included. Signing and returning the completed claim form will ensure payment of a full refund.** Alternatively, any party that wishes to independently furnish supporting documentation and manually complete and submit a claim and fill out and execute this form and return it, along with all supporting documentation, to the Agency office at the address noted above. Manually submitted claims will be processed in the order in which they are received commencing July 31, 2008. **To expedite processing, parties are encouraged to utilize the automated claims process. NOTICE: All claims for refunds of augmentation charges paid pursuant to Ordinance Nos. 2003-01 and 2004-02 must be received on or before April 22, 2009. Any claim not receive by that date may be rejected as time-barred.**

3 Automated Claim Detail Worksheet:

The Agency will furnish all necessary information to complete the worksheet below based on the Agency's automated claim processing database. If you choose to process your claim manually, please fill in all blanks and submit the fully completed and executed form to the Agency at the address above. For the large majority of claims the Agency will be able to determine the claim amount based upon records of the actual amount billed and paid. You may attach any relevant supplemental information at your discretion.

ASSESSOR'S PARCEL NUMBER:

PVWMA WELL NUMBER:

3 CLAIMANT INFORMATION	<u>Date Paid</u>	<u>Number</u>	<u>Well Augmentation Period</u>	<u>Amt. Pd.</u>	<u>Refund Due</u>
NAME:					
ADDRESS:					
CITY:					
STATE:					
ZIP:					
PHONE:					
EMAIL:					
		Totals Payments:			
		Offset for outstanding charges:			
		Amount of Payment or Credit:			

5 ACKNOWLEDGEMENT AND SIGNATURE: By signing below I hereby: (1) acknowledge that I have reviewed and accept the claim process as explained on this form; (2) state under the penalty of perjury that I am either the claimant or have been legally authorized to represent the claimant and am entitled to receive the refund specified herein; (3) agree to indemnify and hold harmless the Pajaro Valley Water Management Agency, its officers, employees and agents, against any claim brought by another party claiming entitlement to said payment; (4) payment of a refund pursuant to this claim by the Agency extinguishes any and all claims arising out of the Augmentation Charge Lawsuits and all issues, transactions and/or related claims or actions including all claims that I have made or could have made with respect to the validity of any Augmentation Charge or Management Fee ordinances currently in effect, but excluding any future increase in the amount of said charges or fees, and I agree to refrain and forebear from commencing, instituting or participating as a party in any lawsuit, action or other proceeding against the Agency, whether brought by myself or by others based on or arising out of any of

~~the facts or circumstances described in Paragraph 1, above, or otherwise pertaining to the Augmentation Charge Lawsuits, except for the refund payments I am entitled to pursuant to this claim process, release the Pajaro Valley Water Management Agency, its officers, employees and agents, from any and all claims, demands, obligations or liability arising out of or relating to augmentation charge payments made for the above referenced periods pursuant to Ordinance Nos. 2002-02, 2003-01 and 2004-02.~~

Formatted: Font: Not Bold, Font color: Auto

Date: _____ PRINT NAME: _____ SIGNATURE: _____

REFUND PROCESS- I request that the refund be processed as indicated below (*check one*): Mailed to the claimant as per box 3 above, or credited to the account for this well number

0000010

Exhibit E

**Harold Griffith
P.O. Box 96
Freedom, CA 95019
(831)763-0607**

August 11, 2008

PVWMA
Board of Directors
36 Brennan Street
Watsonville, CA 95076

RE: Board of Director's meeting, August 13, 2008

Board of Directors,

In July 2008, I received a "WATER BILLING STATEMENT" from the Agency. I understand it to be an "augmentation charge" levied by Ordinance 2002-02.

The decision in *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364 was final on September 14, 2007 - the date of the REMITTITUR. The *Amrhein* case is now a "precedent" and an authority for all identical or similar cases to be decided in the future on the issue of *augmentation charges* and the requirement that the levy of an augmentation charge must conform to the requirements of Proposition 218. The effect of *Amrhein* (Ordinance 2003-01) on the *Scurich* case (Ordinance 2002-02) is that since most of the *augmentation charge* is not a *capacity charge** (charge for physical facilities built or to be built) then most of the *augmentation charge* has already been declared to be invalid by the required retroactivity of "precedents" in federal constitutional law. Collection of any part of the *augmentation charge* that has already been declared invalid is a violation of the 14th Amendment to the US Constitution.

I have read the "Claim Form" recently made public by the Agency. It states that:

"Under the terms of the Judgment, Ordinance 2002-02
(establishing the \$80 per acre-foot augmentation charge
remains in full force and effect. ...)"

I have just reread my copy of the STIPULATED AGREEMENT and I have found no wording establishing that the \$80 per acre-foot augmentation charge remains in full force and effect as stated in your claim for refund. Your claim form statement is simply a fraud, a deceit and a lie.

In *Amrhein* at page 1393 the Appellate Court stated:

“We thus conclude that the groundwater augmentation charge is indeed imposed as an incident of property ownership, that it is subject to the restrictions imposed on such charges by Article XIII D, and that since the Agency did not conform to those restrictions the ordinance under review must be declared invalid.”

The Federal Court of Appeal in *Patel v. City of San Bernardino* (2002) 3190 F.3d 1138 stated on page 1142 when discussing the local transient occupancy tax levied by the City that:

“ ‘There is no dispute that once a state tax has been finally declared unconstitutional the state may not continue to collect it.’ ”

Therefore, since all the *augmentation charges ordinances* have been declared unconstitutional then collection of any part of the *augmentation charge* after September 14, 2007 is a violation of constitutional rights and a lawsuit for civil rights violations can be filed against the agency, against individual board members and against employees of the Agency who participate in the conspiracy to violated the DUE PROCESS RIGHTS of the citizens by the collection of an *augmentation charge that has already been declared unconstitutional* in a final ruling of the Appellate Court and denial of Review by the Supreme Court.

The general rule is that judicial decisions are given retroactive effect in tax matters as explained in *Harper v. Virginia Dept. of Taxation* (1993) 509U.S. 86. The U.S. Supreme Court explains, on page 96 that once a decision is made it must be given full retroactive effect by all courts adjudicating federal law. And on page 100, the same Court states that, “Whatever freedom state courts may enjoy to limit the retroactivity operation of their own interpretations of state laws [citations] cannot extend to their interpretations of federal law.” Since PVWMA was not relying on any established case law that was explicitly overruled when adopting the *augmentation charge* then the *Amrhein* decision is fully retroactive back to the date of adoption of any and all augmentation charges.

The U.S. Supreme Court said in *McKesson v. Division of Alc. Bev* (1990) 496 U.S. 18 at page 37 that:

“Florida requires taxpayers to raise their objections

to the tax in a postdeprivation refund action. To satisfy the requirements of the Due Process Clause, therefore, in this refund action the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and the legal validity of the tax obligation, [citation] but also a 'clear and certain remedy,' [citation] for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.

Had the Florida courts declared the Liquor Tax invalid either because (other than its discriminatory nature) it was beyond the State's power to impose, as was the unapportioned tax in *O'Conner*, or because the taxpayers were absolutely immune from the tax, as were the Indian Tribes in *Ward* and *Carpenter*, no corrective action by the State could cure the invalidity of the tax during the contested tax period. The State would have no choice but to 'undo' the unlawful deprivation by refunding the tax previously paid under duress, because allowing the State to 'collect these unlawful taxes by coercive means and not incur any obligation to pay them back ... would be in contravention of the Fourteenth Amendment.'" *Ward*, 253 US at 124; see also *Carpenter*, 280 at 369, ..."

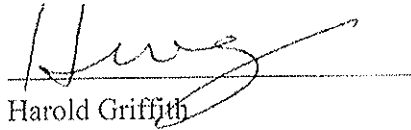
The taxpayers were absolutely immune from the *augmentation charge* because it was beyond PVWMA's power to impose those charges. Only voters in California can impose fees or charges levied as an incident of property ownership if those fees and charges conform to the other restrictions in Article XIII D. Water delivery charges, sewer charges and charges for garbage service are exempt from the voter approval requirements but are subject to all other restrictions of Article XIII D. Fees or Charges that cannot meet the restriction of the requirements of Article XIII D § 6(b)(1-5) cannot be imposed. But fees or charges that cannot meet the requirements of Article XIII D § 6(b)(1-5) can be adopted as special taxes.

A governing body is not liable for civil rights violations unless *official* action or custom amounted to a violation of a specific constitutional federal right. See: *Quintanilla v. City of Downey* (1996) 84 F3d 353 at page 355. To continue to collect charges under Ordinance 2002-02 does expose the Agency, its Board Members and its employees to suits for deprivation of civil rights because the Agency, Board members and employees have caused or participated in conduct that violates the taxpayers' rights to Due Process of Law which requires that taxes that have been declared invalid must stop being collected.

I will be at the Board Meeting on August 13, 2008 so that you or your attorney can show me your copy of the STIPULATED AGREEMENT which includes the wording stating that:

“Ordinance 2002-02 (establishing the \$80 per acre-foot augmentation charge remains in full force and effect. ...”

Sincerely,



Harold Griffith

205 Webb Road
Watsonville, CA 95076
(831)761-1578 (Home)
(831)722-1618 (Office)
johngerskamp@aol.com

Dennis Osmer Board Chair
Ad Hoc Executive Committee (Directors Osmer, Dobler, and Keggebein)
Pajaro Valley Water Management Agency
36 Brennan Street
Watsonville, CA 95076

August 11, 2008

Dear Dennis, Mike, and Dave:

Thanks Dennis for your prompt responses to my questions concerning the "Augmentation Charge Refund Information" and "Refund Claim Form" documents which were posted on the agency's website 7/31/08. Your response to my questions regarding primary authorship implied no single person but several of the staff plus consultant Lidia Gutierrez and yourself were also involved. You also identified agency counsel, Tony Condotti, as author of the legal sections of the "Refund Claim Form". You indicated that Tony, you, and Mike reviewed both documents, and that you and Mike approved public release in your capacities, I must presume, as two thirds of the agency manager by virtue of being members of the Ad Hoc Executive Committee. As you indicated, the other 1/3 of the agency manger, Dave Keggebein was unavailable. The finalized documents were never submitted to the board for review or approval prior to public release in either a public or private setting.

As I interpret the refund process, the controlling document is the "Stipulated Agreement for Entry of Judgment ("Stipulated Agreement")", approved by the agency board and the various opposing litigants in February 2008. The "Stipulated Agreement" called for the refund of augmentation charges collected under Ordinance No.'s 2003-01 and 2004-02 to be made subject to the process established by a Refund Ordinance attached as an exhibit (Ordinance No. 2008-01 approved prior to signing the stipulated agreement). This ordinance required all refund claims to be filed no later than one year after the ordinance became effective which was 60 days after entry of judgment, or April 29, 2008, and this was also the earliest date that any claim could be filed.. Both were formally discussed and approved in public session.

The refund ordinance also **required** all claims to be filed and signed on the form provided by the agency. This is the form that appeared on 7/31/08 and is found on the website. As this form, and the prefacing information document describe, the agency will fill in its determination of the refund amounts and mail the form to potential claimants for signature and submittal. Alternatively a claimant may fill in the form from their records, then sign and submit it. Although the process is not precisely consistent with the Stipulated Agreement, it is reasonably close. Nothing on the form indicates which, if any, of the requested information items are optional, so the claimant must assume all are

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required. However, you, Dennis, indicated in your response to my questions, that the SSN/FEIN is optional when I noted that, in checking the IRS instructions for Form 1099 G, I did not find anything mandating the agency file one of these forms for refunds of the charge to claimants. I also find no exemption from public disclosure of the completed claim forms in the Public Records Act. Having these numbers on file, but subject to public disclosure, could leave the agency needlessly liable for potential identity theft.

I find the text of the Refund Claim Form to be seriously flawed. It contains misleading, and deceptive, statements, and improper references to Ordinance 2002-02 which established agency authority to levy the \$80 augmentation charge. The form also contains the following statement:

“Under the terms of the Judgment, Ordinance No. 2002-02 (establishing the \$80 per acre-foot augmentation charge) remains in full force and effect (subject to possible future Agency Board action to modify or repeal the charge).”

I find nothing in the judgment that states this to be a fact and there is nothing in the text of the claim form that indicates this is simply Mr. Condotti's personal opinion. It is my personal opinion, supported by numerous experts, that the validation action decision rendered the \$80 charge to be invalid, and, presumably, the clause in the ordinance authorizing the levy of the charge, if not the entire ordinance. The Memorandum accompanying the adoption of Ordinance 2003-02 and proceeding with a validation action contains the following:

ITEM 4B: DISCUSS PROPOSED VALIDATION ACTION

The legal validity of the augmentation charge has been questioned for years by certain members of the public and by Director Fiskamp, who has expressed his views in multiple letters to the Board (most recent dated May 23 attached). Meanwhile, current counsel Nicole Tutt and agency's three prior counsel have consistently held that the charge is legal and enforceable. Ms. Tutt advises the quickest, most direct, and least costly approach to resolve this issue **once and for all** would be a validation action on the new ordinance filed in Santa Cruz County Superior Court. At today's meeting, Ms. Tutt will describe procedures, costs, and the probable timeline of such a validation action and explain why it would be the preferred course for resolving the fundamental legal question in dispute.

In the minutes of this discussion it states that Counsel and Attorney Steve Roberts “explained that by law, the validation action could not be filed until the Ordinance, which becomes effective July 1st is enacted”. My notes and recollections indicate that Ms. Tutt explained that the all prior and future augmentation charges would be validated by a favorable ruling, thus bypassing problems which might arise from litigation regarding the 2002 ordinance (Scurich et al v. PVWMA) the dismissal of which was then on appeal. The wording of the original complaint substantiates the intent of the validation action:

“WHEREFORE, Plaintiff prays for entry of judgment as follows:

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16. That judgment be entered on the First Cause of Action determining that:
 (a) All acts, actions, findings, determinations and proceedings required to be performed, made or conducted under all applicable laws, **prior to and at the time** of the passage of Ordinance 2003-01 by plaintiff have been properly and lawfully made, performed and conducted; and Ordinance 2003-01 has been duly, properly and lawfully adopted pursuant to and in accordance with law, whether statutory, constitutional, or decisional, applicable to the valid execution of an increase in the Augmentation Charge; and
 (b) Ordinance 2003-01 and the Groundwater Augmentation increase, thereunder, are legal and valid."

The decision of the appellate court on the 2003 ordinance did accomplish the intended purpose of establishing the "validity" of the augmentation charge in general, and the ordinance in particular. The final sentence of the decision is as follows:

"We thus conclude that the groundwater augmentation charge is indeed imposed as an incident of property ownership, that it is subject to the restrictions imposed on such charges by Article 13D, and that since the Agency did not conform to these restrictions the ordinance under review must be declared invalid."

The augmentation charge established by Ordinance 2002-02 thus became invalid as of the date this opinion was filed, which was 5/21/07. In my opinion, the agency has continued to levy the \$80 charge in open defiance of these findings. Ordinance 2002-02 contains the following clause:

SECTION 8. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance 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.

Mr. Condotti's statement that Ordinance 2002-02 remains in effect may be technically true, but the \$80 augmentation charge is not, in my opinion, valid. To add further complication in understanding this point is Mr. Condotti's curious statement, quoted by the Santa Cruz Sentinel of 7/03/08, that the agency "imposed a pumping fee in 2002 in violation of state law".

Notwithstanding the above, a refund claimant must either provide a list of refundable charges, or accept the agency's list, then sign and submit the completed form. Otherwise, there will be no refund. By signing, the claimant thus gives up the right to contest any charges, paid, or unpaid, levied at the \$80 rate. The agency, upon board approval of the refund amount, will then either issue a credit against future charges, or issue a refund

check, for the difference between the refundable charges and any outstanding, or unpaid charges imposed at the \$80 rate. This deprives the recipient of the right to contest any paid, or unpaid, \$80 charges, as a consequence of obtaining their refund. I believe some might consider this to be manipulative, deceptive, fraudulent, or even in contempt of court, since the appellate court did not address the question of the 2002 ordinance, and none of the Scurich et al litigants had the authority to sign on behalf of the public.

I believe that this is, to put it mildly, wrong, and done with the intent of depriving those who paid invalid augmentation charges, imposed by the agency under the color of authority, to the rightful return of their money. I remind you that the appellate court decision did not automatically require the agency to voluntarily return any of the augmentation charges. In fact it was the agency that demanded the return be included in the Stipulated Agreement. The agency is obviously in dire need of revenue, but this is not a suitable means of collecting it, or retaining funds. The public will not be fooled, and this will, in my opinion, shut the door on any future attempts to convince voters to approve additional sources of revenue.

I am frustrated and embarrassed by the actions of the Ad Hoc Executive Committee, and Agency Counsel, in allowing these refund claim documents to be released to the public, purporting to represent agency policy, without discussion and approval in public session by the entire board of directors. The statements contained within the sections composed by Agency Counsel represent policy decisions, which are solely the responsibility of the entire Board of Directors, and not the General Manager of the agency whose function the Ad Hoc Executive Committee has assumed. The Committee holds no public sessions, provides no posted notice of meetings or agendas, does not issue minutes or records of any actions taken or decided upon, and only makes a brief oral report at board meetings. I believe this is most likely in violation of Section 54952 of the Brown Act which exempts advisory committee, but not those having decision making authority. Calling a committee "Ad Hoc" does not automatically exempt it, despite Mr. Condotti's opinion that this committee is exempt.

Respectfully submitted,



John G. Eiskamp, Member
Board of Directors, PVWMA

cc: Members, Board of Directors PVWMA
A. Condotti, General Counsel PVWMA

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MEMORANDUM

DATE: August 22, 2008
MEETING OF: August 27, 2008
TO: Board of Directors
FROM: Technical Division Manager
RE: **ACTION ITEM 8B:** Consider staff recommendation of sunset provision on \$80 augmentation charge

BACKGROUND

At the July 13, 2008 PVWMA Board of Directors' meeting, the Board considered repealing the existing \$80 per acre foot augmentation charge. After consideration of the staff recommendation and significant public input, the Board approved maintaining the augmentation charge at \$80 per acre foot. Additionally, the Board directed staff to:

1. Evaluate the approach for maintaining the augmentation charge;
2. Recommend appropriate sunset provision dates for the augmentation charge; and
3. Prepare a timeline for the Ad Hoc Funding Committee process.

The decision before the Board is to:

1. Either direct staff to initiate the majority protest process or maintain the \$80 augmentation charge without a community consensus or vote process;
2. Approve a sunset provision and conditions for the \$80 augmentation charge; and
3. Approve the Ad Hoc Funding Committee timeline and milestones.

DISCUSSION

Majority Protest

Staff has evaluated the advantages, process, and schedule for implementing a majority protest vote for the \$80 augmentation charge. As approved at the July 13 Board meeting, the \$80 augmentation charge will be maintained. The Board can choose to either maintain the \$80 with no additional community approval process or can choose to implement a majority protest vote.

If the Board chooses to implement a majority protest, the basic requirements are outlined below:

- Provide a 45-day minimum written notice to property owners of proposed rate increases;
- Establish a method for customers to protest the proposed rate;
- Conduct a public protest hearing on the proposed rate; and
- Uphold the protest if more than 50% of the property owners submit protests to the proposed rate increases.

In addition to these minimum requirements, staff recommends holding two additional public hearings and increasing the notice period to sixty days to allow an opportunity to inform the community about the parallel Ad Hoc Funding Committee process and any additional PVWMA issues. The first public hearing will be held before the public comment period to solicit input from the community on the voter and ballot structure. The second and third public hearings will be held during the public comment period. Given these requirements and enhancements to the process, staff recommends the following timeline for a majority protest:

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Task	Action/Completion Date
1. Board approval of approach and timeline	August 27, 2008
2. Define voter structure (property owner vs water user)	September 26, 2008
3. Public Hearing No. 1	October 8, 2008
4. Develop ballot	October 24, 2008
5. Mail Ballot / Initiate 60-day public comment period	October 31, 2008
6. Public Hearing No. 1	November 19, 2008
7. Public Hearing No. 2	December 10, 2008
8. End of public comment period	December 29, 2008

Sunset Provision and Other Conditions

As discussed at the August 13, 2008 Board meeting, staff recommended including a sunset provision on the \$80 augmentation charge. The exact date of the provision had not been determined and the Board directed staff to evaluate the approach and timeline and to make a recommendation on a sunset date. Staff recommends establishing a sunset date that allows enough time to complete the majority protest and to set the date to coincide with the public approval or denial of the continued collection of the \$80 augmentation charge. By establishing the sunset date as the same date as the final vote date, the agency demonstrates to the public that the community is the final decision maker of the appropriateness of the \$80 augmentation charge. Assuming the end of the comment period and final vote submittal date is December 29, 2008 as defined above, the sunset date would also be December 29, 2008. The current \$80 augmentation charge would sunset on December 29, 2008 and, if the vote is successful, the newly approved \$80 charge would go into effect. If the vote is not successful, the current \$80 charge would still sunset, however, there would be no augmentation charge to replace it and the agency would not have a water charge until the Ad Hoc Funding Committee process is completed and successful.

An additional consideration for the Board is the term of the \$80 augmentation charge, if approved by the voters. As recommended by the staff and approved by the Board, the Ad Hoc Funding Committee process will occur in parallel with the majority protest and ultimately result in the long-term funding program, if successful. There are two options as described below for integrating the current \$80 augmentation charge into the ultimate augmentation charge developed through the long-term funding process:

Option 1. Maintain the \$80 regardless of the success of the long-term funding process. Under this approach, the agency relies on the approval of the charge via the majority protest vote and maintains the charge in perpetuity. If the long-term funding process is successful, the additional charge would be added to the \$80 charge for the total charge. If the long-term funding process is not successful, the augmentation charge remains at \$80 with no additional charge.

Option 2. Sunset the \$80 at the completion of the long-term funding process. Under this approach, the agency allows all charges to be evaluated and considered in the funding process. If the long-term funding process is successful, the \$80 augmentation charge would sunset and would be replaced with the newly approved charge. If the long-term funding process is not successful, the \$80 augmentation charge would still sunset, however, there would be no augmentation charge to replace it and the agency would not have a water charge.

Option 1. Maintain the \$80 regardless of the success of the long-term funding process.

Advantage: Maintains minimum revenue source regardless of success of the long-term funding process.
 Drawback: Limits the funding process from considering a charge of less than \$80 augmentation charge.

Option 2. Sunset the \$80 at the completion of the long-term funding process.

Advantage: Allows all charges to be considered and evaluated in the funding process.

Drawback: If long-term funding process is not successful, the community's approval of the \$80 charge is negated.

Ad Hoc Funding Committee Timeline

Staff has evaluated the timeline for the Ad Hoc Funding Committee process assuming the most time intensive approach that could be taken, which would be an assessment that is adopted in accordance with the weighted vote procedures of Proposition 218.

The process for adopting an assessment is spelled out in Proposition 218. First, an agency proposing to levy an assessment must identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. Next, the proportionate special benefit derived by each identified parcel must be determined in relationship to the entirety of the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. Proposition 218 prohibits the imposition of an assessment that exceeds the reasonable cost of the proportional special benefit conferred on the parcel to be assessed. Next, the Agency must provide 45 days mailed notice to each owner detailing the amount of the charge and the basis for its calculation. The notice must also contain a ballot with detailed instructions specifying the manner in which the owner may submit his or her vote, for or against, the proposed charge. The public hearing process is essentially then held to tabulate whether there is a majority in favor of or opposed to the proposed charge. If the number of votes in opposition exceeds the number of votes in favor, then the Agency is precluded from adopting the charge. Voting is weighted in accordance with the relative financial burden the charge will impose.

The agency must prepare an engineer's report that summarizes the following information:

- Project Scope
- Project Benefits
- Assessment Zone
- Assessment

The engineer's report is distributed with the ballot to those property owners that are included within the proposed assessment zone. Attachment 1 is a flow chart of the typical process for creating a new benefit assessment based on the requirements of Proposition 218.

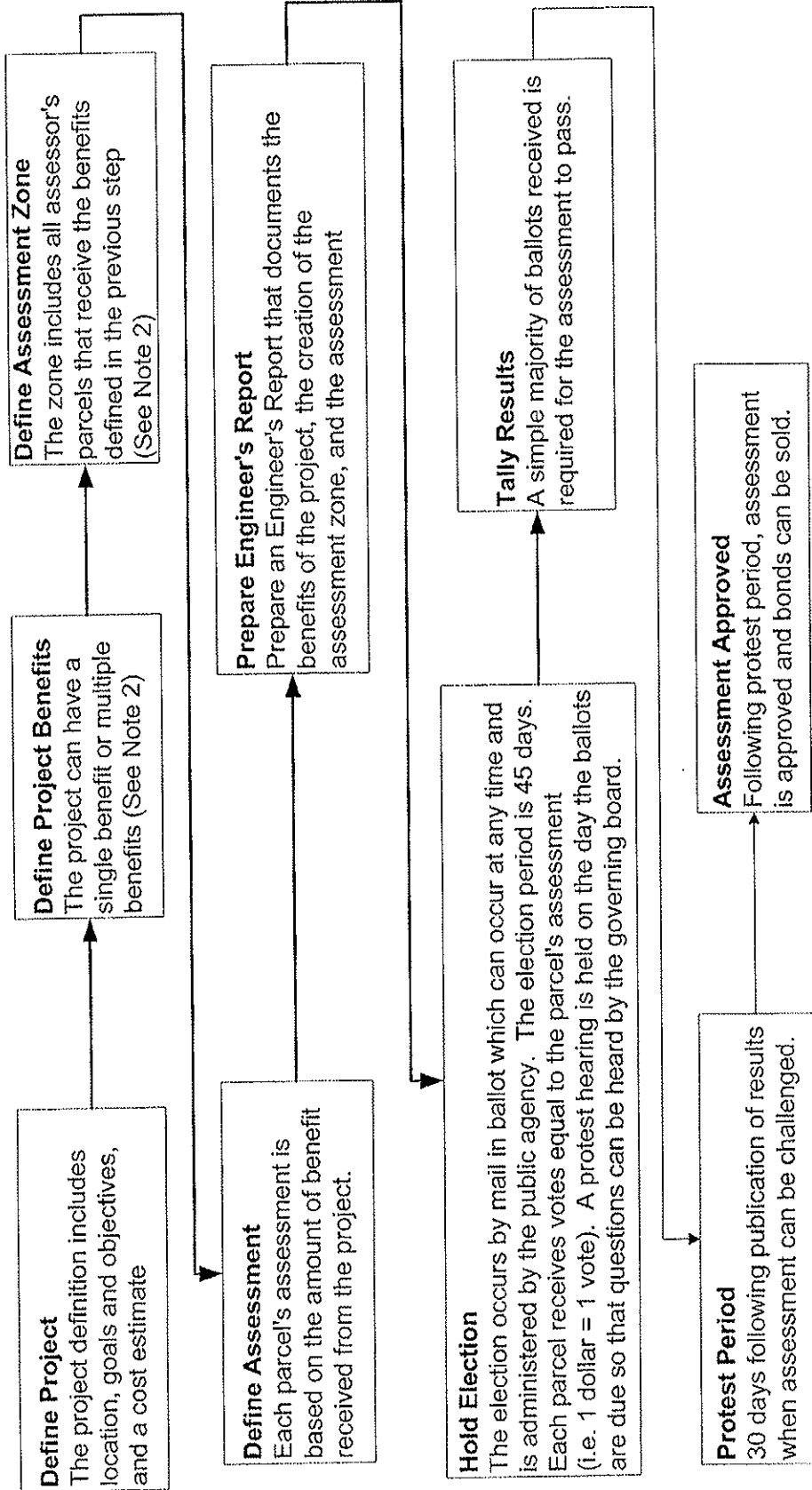
In addition to the legal requirements of Proposition 218, the agency is committed to the public consensus process being developed by the Ad Hoc Funding Committee. The consensus process is modeled after the successful 218 process implemented by the Monterey County Water Resources Agency (MCWRA). Staff has discussed the Proposition 218 process and timeline with the MCWRA staff and other technical experts who have gone through the process. Based on these discussions and recommendations, staff believes a minimum of two years is required to complete an adequate community based Proposition 218 process.

STAFF RECOMMENDATION

ATTACHMENTS

- Proposition 218 Ballot Assessment Process

Proposition 218 Ballot Assessment Process



Notes:

1. A detailed explanation of Proposition 218 can be found at http://www.lao.ca.gov/understanding_prop218_1296.html
2. Defining the project benefits and assessment zone can be an involved process that requires several iterations to ensure that the assessments are equitable and fair.
3. Although titled an engineer's report, the purpose of the report is to document the project benefits and assessments. It is not a planning document with alternatives analysis, environmental documentation, or other engineering related tasks for project development and design.
4. The public agency levying the assessment is responsible for the entire election process including ballot mail out, collection, and tallying.

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Chronicle of Incoming Letters Board Meeting

8/10/2008	Board of Directors	Doug McKinney	2008 Annual Report
8/13/2008	Former GM	Matt DeGroot DWR	Permit to use land for CIMIS Weather Station
8/15/2008	Board of Directors	Valerie J. Curley USBR	Early August and September 2008 Water Delivery Reporting
8/20/2008	IGM	Director John Eiskamp	August 26, 2008 Deposition Documents Request

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Chronicle of Out going Letters
Board Meeting

8/20/2008	Director John Eiskamp	Board Chair	Response to letter dated 8/11/08
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