

ORDINANCE NO. 2004-02

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

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The Board of Directors of the Pajaro Valley Water Management Agency 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. The PVWMA Augmentation Charge was established by Ordinance No. 93-1 for the purposes enumerated in the Act, and has been amended or supplemented from time to time by Ordinance Nos. 93-2, 95-1, 96-2, 96-3, 98-2, 2002-01, 2002-02 and 2003-01.
3. Pursuant to the Act, Section 124-502, the Board of Directors finds and determines that the protection and augmentation of groundwater supplies is necessary for the public health, safety and welfare of all people residing within the Agency, and further finds and determines that this ordinance is necessary to protect the public health, safety and welfare, in order to reduce groundwater overdraft, deter the further intrusion of seawater into the Basin and protect the quality of the groundwater, by providing a source of supplemental water that is an alternative to the extraction of groundwater.
4. In adopting this ordinance, the Board of Directors makes each of the following determinations in accordance with Section 124-1002 of the Act and Water Code Section 75574, and which are further defined in discussed in the Revised BMP, on the basis of the record of public hearing held for purposes of consideration of this Ordinance, the Pajaro Valley Integrated Ground and Surface Water Model (PVI GSM) results, engineering studies, technical reports and other technical analyses used in preparing the Revised BMP and other Agency records. For purposes of this Finding 4, the following definitions shall apply:

"Accumulated overdraft" means the amount of water necessary to be replaced in the intake areas of the ground water basins within the district or any zone or zones thereof to prevent the landward movement of salt water into the fresh ground water body, or to prevent subsidence of the land within the district or any zone or zones thereof, as determined by the Board from time to time.

"Annual Overdraft" means the amount, determined by the Board, by which the production of water from ground water supplies within the Agency or any zone or zones

thereof during the water year exceeds the natural replenishment of fresh ground water supplies in such water year.

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

A. The average Annual Overdraft of the basin for the immediate past 10 water years is approximately 44,000 acre-feet per year (“afy”).^{1,2}

B. The estimated Annual Overdraft of the basin for the current water year is approximately 32,000 af.³

C. The estimated Annual Overdraft of the basin for the ensuing water year is approximately 32,000 af.

D. The Estimated Accumulated Overdraft of the basin as of the last day of the preceding water year is approximately 1,522,000 af (estimated since 1964). (The Accumulated Overdraft is calculated by the simple addition of the Annual Overdraft since 1964.)⁴

E. The Estimated Accumulated Overdraft as of the last day of the current water year is approximately 1,567,000 af (estimated since 1964). (The Estimated Accumulated Overdraft is calculated by the simple addition of the Annual Overdraft since 1964.)

F. The estimated amount of agricultural water to be withdrawn from the groundwater supplies of the Agency for the ensuing water year is approximately 46,000 af.

¹ Note: Water Code section 75506 defines “Annual Overdraft” as “the amount, determined by the Board, by which the production of water from ground water supplies within the Agency or any zone or zones thereof during the water year exceeds the natural replenishment of such ground water supplies in such water year.” As defined, that section could be interpreted to include salt water or ocean water in the calculation of the “natural replenishment of such groundwater supplies.” Accordingly, in deference to Section 75506, the Board hereby finds that the calculation of average annual overdraft for the past ten years, the current water year and the ensuing water year when saltwater is included in the natural replenishment of groundwater supplies is 9,000 afy. The Board further finds that application of the definition of Annual Overdraft at Water Code section 75506 to the findings of Section 75574, which fails to account for the degradation of the basin caused by saltwater intrusion, is inconsistent with the Agency Act, Specifically, Section 124-312 of the Agency Act defines “Overdraft” as “the condition of the groundwater basin where the average annual amount of water extracted exceeds the average annual supply of *fresh* water to the basin, plus any temporary surplus.” [italics added].

² This figure reflects results of the groundwater modeling studies.

³ This figure reflects use of actual water use sales figures for 2003, rather than the assumed water consumption used in groundwater modeling studies.

⁴ The Board further finds and determines that, applying Water Code section 75506’s definition of “annual overdraft” (including saltwater intrusion as a source of replenishment of the ground water supply) to Findings D and E, the estimated accumulated overdraft for the preceding and current water year is 363,000 and 372,000 af, respectively.

G. The amount of water other than agricultural water to be drawn from the groundwater supplies of the Agency for the ensuing water year is approximately 10,000 af.

H. The estimated amount of water necessary for surface distribution annually is approximately 18,500 afy with implementation of the Recommended Alternative identified in the Revised BMP dated 2002.

I. The amount of water that is necessary for the replenishment of the groundwater supplies of the Agency is approximately 18,500 afy with implementation of the Recommended Alternative identified in the Revised BMP dated 2002.

J. The amount of water the Agency is obligated by contract to purchase is 0 af.

5. Based upon the findings and determinations contained in the Revised BMP, its supporting and implementing documentation, and the information presented during the public hearings on this Ordinance, the Board of Directors does hereby determine that groundwater augmentation charges shall apply throughout the entire boundary of the Agency.

6. In order to establish the necessary increase in augmentations charges in a manner that will have the most moderate economic impact on Agency groundwater users, the Board previously determined that the augmentation charge would be increased incrementally. This Ordinance provides for an increase above the current augmentation charge of one hundred twenty dollars (\$120.00) per square foot. The Board of Directors hereby finds that the current augmentation charge is significantly less than the cost of implementing the Recommended Alternative, and is therefore insufficient to fund all of the projects within the Recommended Alternative that are eligible for augmentation charge expenditures. In addition, while it is not possible to foresee the exact expenditures to be made in any one year in implementing the Revised BMP, the Board determines that the augmentation charge increase set forth in this ordinance should provide sufficient funds to implement the Recommended Alternative. Any amounts collected in any one year that may exceed the actual costs incurred for that year will be set aside as reasonable reserves for capital and operations and maintenance expenditures in connection with implementation of the Revised BMP. All amounts collected shall be used for implementation of the Revised BMP projects, which are the proper subject of expenditure of augmentation charges pursuant to Section 124-1001 of the Act.

7. The Board of Directors hereby finds and determines that the sum which will be raised by the augmentation charge will not produce funds that exceed the amount necessary for the purposes of paying the costs of purchasing, capturing, storing, and distributing supplemental water for use within the boundaries of the Agency. Should the charge authorized by this Ordinance generate revenue in excess of the cost of providing the services for which it has been imposed, such excess revenues shall be used to reduce future charges in a manner that is consistent with Government Code Section 66013 and 66016.

8. On My 19, 1999, by Resolution No. 99-05, the Board of Directors approved the Local Water Supply Project and certified that the Final EIR for the Project was complete and was prepared in compliance with the California Environmental Quality Act (“CEQA”). On February 6, 2002, by Resolution Nos. 2002-04 and 2002-05, the Board of Directors adopted the Revised BMP, including the Recommended Alternative, and certified that the Final EIR for the Revised BMP was complete and was prepared in compliance with CEQA. As so described and approved, the Revised BMP including the proposed construction of water supply projects and implementation of management strategies to reduce seawater intrusion and increase the safe yield of the groundwater basin. The present ordinance is proposed as part of the Revised BMP Recommended Alternative and is within the scope of the project described in the EIR. It will cause no new environmental effects beyond those considered in the EIR and no new mitigation measures need be considered for this ordinance; and it does not require further environmental review.

9. The Board of Directors hereby finds and determines that, unless the Agency amends or repeals this Ordinance, the augmentation charge for each year through 2040 shall be based on the calculated need to fund the activities specifically enumerated in Ordinance 2002-02.

10. The Board has conducted public hearings on this Ordinance on November 3, 2004 and November 17, 2004, with notice of the hearing given in the manner prescribed in Government Code Section 6066.

11. As provided in Government Code Section 66022, any judicial action or proceeding to attach, review, set aside, void or annul this ordinance shall be commenced within 120 days of the Effective Date of this ordinance, and any action by the Agency or interested person under Section 66022 shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

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

SECTION 1. STATEMENT OF PURPOSE

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

SECTION 2. DEFINITIONS

All definitions are as stated in Ordinance 2002-02 and 2003-01.

SECTION 3. PRIOR ORDINANCES

3.01. AUGMENTATION CHARGES

The Augmentation Charge was originally established by Ordinance 93-1. Ordinance No. 93-1 has been amended and/or supplemented by Ordinance Nos. 93-2, 96-2, 96-3, 95-1, 98-2, 2002-01, 2002-02, and 2003-01 (collectively the "Prior Ordinances").

The Prior Ordinances are amended, supplemented and revised as stated in this Ordinance No. 2004-01. To the extent that any provision of the Prior Ordinances conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall control and be operative to amend, revised and replace the conflicting provisions of the Prior Ordinances. All other provisions in the Prior Ordinances shall remain in full force and effect.

SECTION 4. SCHEDULE OF CHARGES

The Augmentation Charges authorized by Section 124-1003 of the Act are hereby increased as follows: Beginning January 1, 2005, the Augmentation Charge shall be increased forty dollars (\$40) beyond the one hundred twenty dollars (\$120.00) per acre foot established by prior ordinances including, most recently, Ordinance No. 2003-01. This ordinance pertains solely to the increase in the Augmentation Charge, and does not alter or amend the existing Augmentation Charge of \$120.00 per acre-foot currently charged and collected pursuant to the Prior Ordinances.

SECTION 5. APPLICATION OF ORDINANCE

The provisions of this ordinance shall be administered in conjunction with and complement all other Agency ordinances and resolutions, including the Prior Ordinances. Section headings used in this ordinance shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section.

SECTION 6. 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 7. EFFECTIVE DATE

This ordinance shall take effect on January 1st, 2005.

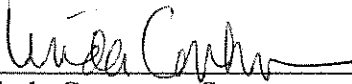
PASSED AND ADOPTED this 17th day of November, 2004, by the following votes:

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



Frank W. Capurro, Chair

ATTEST:



Linda Contreras, Secretary