ORDINANCE NO. 2010-02

AN ORDINANCE OF THE PAJARO VALLEY WATER MANAGEMENT AGENCY ADJUSTING GROUNDWATER AUGMENTATION CHARGES

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BE IT ORDAINED by the Board of Directors of the Pajaro Valley Water Management Agency as follows:

Section 1. Purpose and Authority. The purpose of this ordinance is to increase and adjust the Agency groundwater augmentation charges. The background and purpose are more thoroughly explained in the Notice of Public Hearing on Proposed Augmentation Charge Increase dated April 1, 2010. This ordinance is adopted pursuant to California Constitution article XIII D, section 6, Pajaro Valley Water Management Agency Act sections 102, 501, 703, 704, 711, 714, 1001 and 1002, and other applicable law.

Section 2. Findings. The Board of Directors finds and determines as follows:

a. Agency Act section 1001 authorizes the Agency to levy a groundwater augmentation charge on the extraction of groundwater from groundwater wells within the Agency in order to pay the costs of purchasing, capturing, storing and distributing supplemental water. Agency Act section 316 defines "supplemental water" to mean water imported into the Pajaro Valley groundwater basin, conserved floodwater, and recycled water.

b. The Agency has levied an augmentation charge since 1994. The current charge is $80/acre-foot of pumped groundwater. A 2007 court case invalidated a 2003 increase. The court determined that the augmentation charge is a property-related service charge under California Constitution article XIII D, section 6 and that the increase did not comply with the requirements of article XIII D, section 6. The proposed increase is being processed pursuant to article XIII D, section 6 in response to the 2007 case.

c. The Agency has completed three supplemental water projects that work together to provide supplemental water to reduce overdraft, retard seawater intrusion, and improve and protect the groundwater basin supply: (1) Watsonville Recycled Water Project, which provides tertiary treated recycled water for agricultural use and includes inland wells that are used to provide cleaner well water that is blended with the treated water in order to improve the water quality so that it may be used for agricultural purposes; (2) Harkins Slough Project, which diverts excess wet-weather flows from Harkins Slough to a basin that recharges the groundwater, which then is available to be extracted and delivered for agricultural use; and (3) Coastal Distribution System ("CDS"), which consists of pipelines that deliver the blended recycled water and Harkins Slough Project water for agricultural use along the coast.

d. Under the authority of Agency Act section 1001 and other Agency Act provisions, the Agency has developed a supplemental water service that is funded by Agency augmentation charges. Agency supplemental water service consists of (a) the purchase/acquisition, capture, storage and distribution of supplemental water through the supplemental water projects described above and including the planning, design, financing, construction, operation, maintenance, repair, replacement and management of these project facilities, and (b) basin management monitoring and planning to manage the existing projects and to identify and determine future supplemental water projects that would further reduce groundwater

overdraft and retard seawater intrusion. The cost of the service also includes ongoing debt payments related to the design and construction of the completed supplemental water projects.

e. The augmentation charge increase is necessary in order to cover the costs of the supplemental water service described above. The current $80/acre-foot augmentation charge and other available revenue are not sufficient to cover the costs of the service.

f. The Agency retained Carollo Engineers to analyze the augmentation charge increase. Carollo Engineers and Agency staff prepared the Agency *Proposition 218 Service Charge Report* dated March 2010 (the "Service Charge Report"), which sets forth analysis and information concerning the calculation of and reasons for the increased augmentation charges.

g. The augmentation charge rates adopted by this ordinance have been calculated and fixed in an amount sufficient to pay the costs of the supplemental water service and ongoing debt payments related to the design and construction of the completed supplemental water projects. The increased rates are reasonably related to, and do not exceed, the Agency's costs of providing the service and paying related debt service.

h. The Service Charge Report demonstrates that the revenue to be generated from the increased augmentation charges has been derived and calculated in such a manner that the revenue is based on and limited to the Agency costs of providing the supplemental water service and paying debt service on the completed supplemental water projects. Additionally, this ordinance limits the use of the augmentation charge revenue to these purposes and prohibits use of the revenue for any other purpose. The revenue derived from the increased augmentation charges therefore does not exceed the funds required to provide the supplemental water service and pay related debt service.

i. For similar reasons, revenues derived from the augmentation charge are not and will not be used for any purpose other than the purposes described in this ordinance and the Service Charge Report.

j. The Service Charge Report describes the cost apportionment and augmentation charge calculation by: (1) explaining how the increased augmentation charges have been calculated based on three appropriate landowner groups (owners of wells with meters inside the Delivered Water Zone (DWZ), which is the area able to receive water from the CDS as described and shown in the Service Charge Report; owners of wells with meters outside the DWZ; and owners of wells without meters) and how the costs of the service have been allocated to these groups; (2) evaluating the Agency's revenues and expenses required to provide the supplemental water service and pay debt service in order to determine the net revenue requirements for the service; (3) allocating the revenue requirements to the Agency's cost categories to reflect the different service levels attributable to the three landowner groups; and (4) allocating the costs based on the estimated percentage of staff time spent on various functions, costs of pumping/pressurizing the water supply in the CDS, and relative consumption of water by the various landowner groups. As demonstrated by this analysis in the Service Charge Report, the amount of the augmentation charge imposed on each landowner's parcel is reasonably related to and does not exceed the proportional cost of the service attributable to each parcel.

k. The supplemental water service (as described above and in the Service Charge Report) has a direct and significant relationship to the land in the Pajaro Valley, the groundwater underlying that land,

and the owners of that land with groundwater wells. The ongoing public service funded by the increased augmentation charges will secure the Pajaro Valley groundwater basin water supply and quality and maintain the benefit of ongoing groundwater extraction by property owners by providing for the following: reduction of groundwater overdraft; retarding of seawater intrusion; promoting water conservation; and, avoiding more draconian direct groundwater regulation by Agency-imposed or court-ordered pumping limits and thereby preserving the ability of well owners throughout the basin to continue extracting groundwater without regulatory limits.

l. In contrast, without the augmentation charge increase, the Agency will be unable to continue to pay the debt service on the completed supplemental water projects or to fully operate, maintain and manage those projects. Without the ongoing full operation, maintenance and management of the supplemental water projects, the following likely will result: the groundwater overdraft condition will be exacerbated; there will be greater seawater intrusion; there will be an increased likelihood of more draconian direct groundwater regulation by Agency-imposed or court-ordered pumping limits; and, it will be more difficult to preserve the ability of well owners throughout the basin to continue extracting groundwater without regulatory limits.

m. The landowners who pay the augmentation charges are the owners of land with groundwater wells that extract water from the basin. As such, those landowners, through their wells and the groundwater basin underlying their land, are receiving the public service described above. The supplemental water service therefore is a service that is actually used by and immediately available to the owners of the property who will be subject to the increased augmentation charges.

n. As described in the Service Charge Report, the public service funded by the augmentation charges relate to water supply and availability for landowners with wells. This type of public service is unique to landowners with wells and it is not a general governmental service. Therefore, no portion of the augmentation charge increase will be imposed for general governmental services.

o. The Agency Board makes the following findings and determinations in accordance with Agency Act section 1002 and Water Code section 75574:

(1) As part of the augmentation charge analysis, the Service Charge Report also evaluated the groundwater basin overdraft conditions, groundwater extraction amounts, and water replenishment needs. (See in particular Service Charge Report, Table 1.) The Agency water year is October 1 to September 30. The average annual overdraft for the immediate past 10 water years is 40,000 acre-feet (AF). The estimated annual overdraft for the current water year is 39,000 AF. The estimated annual overdraft for the ensuing water year is 40,000 AF. The accumulated overdraft as of the last day of the preceding water year is 1,723,000 AF. The estimated accumulated overdraft as of the last day of the current water year is 1,763,000 AF. The estimated amount of agricultural water to be withdrawn from the groundwater supplies of the Agency for the ensuing water year is 44,000 AF. The amount of water other than agricultural water to be drawn from the groundwater supplies of the Agency for the ensuing water year is 11,000 AF. The estimated amount of water necessary for surface distribution for the ensuing water year is 18,500 AF. The amount of water which is necessary for the replenishment of the groundwater supplies of the Agency is 18,500 AF/year. The Agency is not obligated by contract to purchase any water.

(2) In order to replenish and enhance the Agency groundwater supplies, the Agency needs supplemental water supplies in the amount of 18,500 AF/year. Part of that need is and will be fulfilled by the ongoing operation and maintenance of the existing supplemental water projects and the current and increased usage of supplemental water through the CDS. The remainder of that water supply need will have to come from additional supplemental water projects, water conservation and/or other actions. Potential additional projects are described in the Agency's 2002 Basin Management Plan. The money necessary to operate and maintain the existing projects and cover debt service is described in the Service Charge Report and incorporated into the calculation of the increased augmentation charges. The money necessary to develop, operate and maintain additional projects is estimated in the 2002 Basin Management Plan. The plan describes a recommended alternative (which includes the completed supplemental water projects). The estimated capital cost of the recommended alternative is $130.6 million in 2001 dollars. The Basin Management Plan also describes several other potential supplemental water supply projects and their 2001 cost estimate. The Basin Management Plan explains these cost estimates in more detail.

(3) The 2002 Basin Management Plan is out of date and includes some projects that no longer may be feasible. The Agency therefore intends to revise and update the plan and the cost estimates. As described in the Service Charge Report, an updated basin management plan is essential to identifying, planning and moving forward with additional supplemental water projects and providing ongoing and improved supplemental water service. The activities required to implement further groundwater management therefore include: (i) approval of the increased augmentation charges in order to ensure the ongoing operation and maintenance of and debt service on the existing supplemental water projects; (ii) updating and revising the basin management plan; (iii) identifying appropriate additional supplemental water projects and/or other actions to generate additional supplemental water; and (iv) identifying and securing additional funding to pay for those projects and/or actions.

p. The Agency Board of Directors has conducted a duly noticed public hearing on this proposed augmentation charge increase in accordance with California Constitution article XIII D, section 6, and Resolution Nos. 2010-03 and 2010-04, and the Board did not receive a majority protest against the proposed increase.

(For background and support for these findings, see the following: *Proposition 218 Service Charge Report* dated March 2010; other documents referenced in the Service Charge Report; Notice of Public Hearing on Proposed Augmentation Charge Increase dated April 1, 2010; Agency 2002 Basin Management Plan; minutes and tape recordings of the Agency Board meetings of January 30, February 3, February 17, March 2, March 17 and April 21, 2010; and, 2009-10 Agency budget. These documents are available for public review and/or copying during normal business hours at the Agency office at 36 Brennan Street, Watsonville, CA 95076.

Section 3. Augmentation Charge Rate Adjustment.

a. Charge Increase. The Agency augmentation charges are hereby revised as follows:

Well Owner Group	2010-11 Augmentation Charge Rate
Metered Wells - Outside DWZ	$162/acre-foot of pumped groundwater

Metered Wells - Inside DWZ	$195/acre-foot of pumped groundwater
Unmetered Wells	$156/acre-foot of pumped groundwater

b. Unmetered Wells. Because the unmetered wells lack meters, the increased augmentation charges shall be levied based on an estimate of well usage of 0.59 acre-feet/residence/year (or $92/residence/year). If an unmetered well owner would prefer to pay the augmentation charge based on actual usage, then it may install a meter at the owner's cost and thereafter be billed based on the metered pumping amount.

c. Annual Adjustment. The 2010-11 augmentation charge rates shall remain in effect until June 30, 2011. Each July 1 (commencing July 1, 2011) the augmentation charges shall be adjusted based on the previous year's change in the U.S. Consumer Price Index for the San Francisco region (all urban consumer index). The General Manager is authorized and directed to make this adjustment and keep and maintain a current schedule of applicable augmentation charges at the Agency office and posted on the Agency website.

Section 4. Amendment To Current Augmentation Charge Ordinance. The Augmentation Charge Ordinance was originally established by Ordinance 93-1, and has been amended and/or supplemented by Ordinance Nos. 93-2, 96-2, 96-3, 95-1, 98-2, 2002-01, 2002-02, 2003-01, 2004-02, 2005-01 and 2007-01(collectively the "Augmentation Charge Ordinance"). The Augmentation Charge Ordinance is hereby amended, supplemented and revised as stated in this Ordinance No. 2010-01. To the extent that any provision of the Augmentation Charge Ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall control and be operative to amend, revise and replace such conflicting provisions. In addition, the Augmentation Charge Ordinance is hereby amended as follows:

a. Section 6 of the Augmentation Charge Ordinance is amended to read as follows:

6.01 Method of Collection. Augmentation Charges shall be billed to the Owner of the Parcel on which the Extraction Facility is located. The Agency may establish administrative procedures for collection of Augmentation Charges by separate resolution, which shall be in addition to, and not in lieu of, any available legal remedy, including but not limited to those specified in the Agency Act, to collect delinquent Augmentation Charges.

6.02 Attorneys Fees. The Agency is authorized to recover any and all legal expenses incurred, including costs of suit and attorney's fees, as the prevailing party in any action filed in a court of law by the Agency to collect delinquent Augmentation Charges or any action filed in a court of law by persons challenging the Agency's authority to impose or collect Augmentation Charges, or the validity or amount of such charges.

b. The Augmentation Charges shall not be levied against any Extraction Facility in the Agency that is located east of the San Andreas Fault as determined by the General Manager.

Section 5. Use of Service Charge Revenue. The augmentation charge revenue shall be expended solely for the costs of the supplemental water service and debt service on completed supplemental water

projects as described in the Service Charge Report and for no other use. The General Manager is authorized and directed to monitor and account for expenditures of the augmentation charge revenue to ensure that its use is limited to these purposes.

Section 6. CEQA. The Board of Directors finds that this increase in the augmentation charge rates is for the purposes of meeting operating expenses of the Agency supplemental water service and obtaining funds for related capital costs. Accordingly, the Agency Board determines that this service charge increase is exempt from environmental review under the California Environmental Quality Act and CEQA Guidelines. (Public Resources Code section 21080(b)(8); CEQA Guidelines section 15273.)

Section 7. Severability. The provisions of this ordinance are severable, and the invalidity, unenforceability or unconstitutionality of any section, portion or part of this ordinance shall not affect the validity of the remainder of the ordinance.

Section 8. Election and Effective Date. An election on the proposition of levying increased augmentation charges pursuant to this ordinance shall be called and conducted in accordance with Agency Resolution Nos. 2010-03 and 2010-04. This ordinance shall become effective only if approved by a majority vote of the affected property owner voters voting on the proposition at a special mailed-ballot election conducted pursuant to Resolution Nos. 2010-03 and 2010-04. If approved by the voters, the ordinance and increased augmentation charges shall take effect on the first day of the month after the election results are declared by the Agency Board of Directors.

Section 9. Expiration. The augmentation charge increase approved by this ordinance shall expire five years after the effective date of the increase unless the augmentation charge increase is extended, increased or reduced by the Board of Directors prior to the expiration of the five-year period.

Section 10. Posting/Publication. Within 15 days after its passage, the Agency Secretary shall cause this ordinance, or a summary thereof, to be published at least once, with the names of those directors voting for and against the ordinance, in a newspaper of general circulation published and circulated in the Agency.

PASSED AND ADOPTED by the Board of Directors of the Pajaro Valley Water Management Agency on this 19th day of May 2010 by the following vote:

AYES: Imazio,Dobler,Osmer,Koenig
NOES: Eiskamp
ABSTAIN: None
ABSENT: Cavanaugh

By: Rosemarie A. Imazio
Chair

Attest:

Veronica Barbosa
Secretary