



ORDINANCE NO. 2021-02

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.

- A. 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 March 29, 2021.
- B. California Constitution Article XIII C (amended by Proposition 26) and Article XIII D (added by Proposition 218) regulate local agency taxes, fees, and charges. Proposition 218 imposes procedural and substantive limitations and requirements on property-related service charges. Proposition 26 imposes substantive limitations and requirements on other fees and charges.
- C. In 2017, the California Supreme Court ruled in *City of San Buenaventura v. United Water Conservation District* that groundwater pumping charges (such as the Agency augmentation charge) are not property-related fees subject to Proposition 218. Therefore, the augmentation charge is subject to Proposition 26.
- D. This Ordinance is adopted pursuant to Proposition 26, 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 sections 1001 and 1002 authorize 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 and pay for the activities required to prepare and implement the Agency groundwater management program. 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, adopted in 2015, is as follows for each acre-foot of pumped groundwater: \$246 for metered users outside the Delivered Water Zone (“DWZ”), which is the area able to receive water from the Coastal Distribution System (“CDS”) as described and shown in the Service Charge Report (as defined below); \$338 for metered users inside the DWZ; \$230 for unmetered users/rural

residential (or \$115 annually per residence). In a 2013 court case, *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 the Sixth Appellate District held that the augmentation charge is a property-related service charge and that the 2010 rates were valid under California Constitution article XIII D, section 6. In 2017, the California Supreme Court ruled in *City of San Buenaventura v. United Water Conservation District*¹ that groundwater pumping charges (such as the Agency augmentation charge) are not property-related fees subject to Proposition 218. Therefore, the augmentation charge is subject to Proposition 26.

c. The Agency has completed the following supplemental water supply projects identified in the Agency's 2002 Revised Basin Management Plan 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; (2) supplemental wells that are used to provide high quality well water that is blended with the treated water in order to improve the water quality so that it may be more suitable for agricultural purposes; (3) 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 (4) Coastal Distribution System ("CDS"), which consists of approximately 21 miles of pipelines that deliver the supplemental irrigation supply for agricultural use along the coast.

d. Under the authority of Agency Act sections 1001, 1002 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 design, construction, operation, maintenance, management, repair, replacement and improvement of the existing projects, facilities and water meters, and the planned projects described in the Service Charge Report, (b) ongoing debt service related to the design and construction of the projects and facilities, (c) groundwater monitoring and modeling, water quality monitoring, water resources and groundwater basin planning and management, including periodic updates of the Basin Management Plan, as appropriate to evaluate the effectiveness of the existing projects, determine improvements and enhancements, and identify future supplemental water projects that will further reduce groundwater overdraft and retard seawater intrusion, and (d) activities and actions to implement the groundwater management program as described in the 2014 Basin Management Plan Update, as may be amended from time to time ("BMP Update").

e. The BMP Update, approved by the Board of Directors on April 16, 2014, includes the following projects and programs to supplement existing water supply facilities and services: (a) Conservation, (b) Increased Recycled Water Storage, (c) Harkins Slough Recharge Facilities Upgrades, (d) College Lake with Inland Pipeline to CDS, (e) Watsonville Slough with Recharge Basins, and (f) Murphy Crossing Diversion with Recharge Basins.

f. The augmentation charge increase is necessary in order to cover the costs of the supplemental water service described above. The current augmentation charge rates and other available revenue are not sufficient to cover the costs of the service.

¹ (2017) 3 Cal. 5th 1191,

e. The Agency retained Carollo Engineers to analyze the augmentation charge increase. In consultation with Agency staff and the Agency's Ad Hoc Funding Committee, which convened several meetings to complete its review of rate alternatives, Carollo Engineers prepared the Agency *2021 Cost of Service Rate Study* dated February 2021 (the "Service Charge Report"), which sets forth analysis and information concerning the calculation of and reasons for the increased augmentation charges. On February 17, 2021, the Board of Directors held a duly noticed public hearing, considered public comment, and approved the Service Charge Report.

f. 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, including debt payments related to the design and construction of the supplemental water projects and facilities. The increased rates are reasonably related to, and do not exceed, the Agency's costs of providing the service, including paying related debt service.

g. 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, including paying debt service on the supplemental water projects and facilities. 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, including paying related debt service.

h. 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.

i. 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 DWZ; 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, including paying 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.

j. 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 burdensome pumping limits.

k. In contrast, without the augmentation charge increase, the Agency will be unable to pay the debt service on the supplemental water projects and facilities 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 burdensome pumping limits.

l. The landowners who pay the augmentation charges are the owners of land with groundwater wells that extract water from the basin. As affirmed by the court in *Griffith v. Pajaro Valley Water Management Agency*, 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.

m. As described in the Service Charge Report, the public service funded by the augmentation charges relates 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.

n. 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 1-1.) The Agency water year is October 1 to September 30. The average annual overdraft for the immediate past 10 water years is 14,350 acre-feet (AF). The estimated annual overdraft² for the current water

² “Estimated annual overdraft” is defined as the amount by which the production of water from groundwater exceeds the natural replenishment of the groundwater supplies in the water year. The Pajaro Valley Hydrologic Model report (Hanson et al, 2014) provides estimates of long-term average annual overdraft (12,500 AF over the period 1964-2009), as well as a range of groundwater inflows and outflows. Model data were used in conjunction with measured production to populate the table. The values are estimates and subject to change pending further

year is 21,600 AF. The estimated annual overdraft for the ensuing water year is 20,000 AF. The accumulated overdraft as of the last day of the preceding water year is 704,190 AF. The estimated accumulated overdraft³ as of the last day of the current water year is 718,540 AF. The estimated amount of agricultural water to be withdrawn from the groundwater supplies of the Agency for the ensuing water year is 40,000 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 8,500 AF. The estimated amount of water necessary for surface distribution for the ensuing water year is 7,100 AF. The amount of water which is necessary for the replenishment of the groundwater supplies of the Agency is 18,100 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 18,100 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 BMP Update. The funds and revenue necessary to operate and maintain the supplemental water service and cover debt service are described in the Service Charge Report and incorporated into the calculation of the increased augmentation charges. The funds and revenue necessary to develop, operate and maintain additional projects are estimated in the Basin Management Plan Update. The estimated capital cost of the projects described in the Basin Management Plan Update is \$66.9 million in 2011 dollars. The BMP Update also describes several other potential supplemental water supply projects and their 2011 cost estimate. The BMP Update explains these cost estimates in more detail.

(3) As described in the Service Charge Report, the BMP Update provides a plan for maintaining and improving supplemental water service through existing and proposed supplemental water projects and programs. The activities required to implement further groundwater management therefore include: (i) approval of the increased augmentation charges in order to ensure the operation and maintenance of and debt service on the existing and proposed supplemental water projects and programs identified in the BMP Update; and (ii) identifying and securing additional funding to pay for those projects and/or programs.

o. 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 C.

(For background and support for these findings, see the following: *2021 Cost of Service Rate Study* dated February 2021 (the "Service Charge Report"); other documents referenced in the Service Charge Report; Notice of Public Hearing on Proposed Augmentation Charge Increase dated March 29, 2021; 2002 Revised Basin Management Plan; the 2014 Basin Management Plan Update, minutes and tape recording of the Agency Board meeting of February 17, 2021;

improvements to the understanding of the hydrologic system. All values were rounded to the nearest ten acre-feet.
³ "Estimated accumulated overdraft" is defined as the total amount of water necessary to be replaced in the intake areas of the groundwater basin to prevent the landward movement of salt water into the fresh groundwater.

and the 2020-21 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. Final Approval of Service Charge Report. The Service Charge Report is hereby approved as originally approved by resolution of the Board of Directors on February 17, 2021.

Section 4. Augmentation Charge Rate Adjustment.

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

User Group	Aug. Charge Rate FY 2021/22	Aug. Charge Rate FY 2022/23	Aug. Charge Rate FY 2023/24	Aug. Charge Rate FY 2024/25	Aug. Charge Rate FY 2025/26
Aug. Charge, Metered Users – Outside DWZ	\$263/AF	\$282/AF	\$302/AF	\$323/AF	\$346/AF
Aug. Charge, Metered Users – Inside DWZ	\$363/AF	\$391/AF	\$420/AF	\$452/AF	\$486/AF
Aug. Charge, Unmetered (Rural Residents)	\$123/ Residence	\$132/ Residence	\$142/ Residence	\$152/ Residence	\$163/ Residence

b. Unmetered Wells. Because the unmetered wells lack meters, the increased augmentation charges shall be levied based on an estimate of well usage of 0.5 acre-foot/residence/year (or \$123/residence/year for 2021-22). If an unmetered well owner would prefer to pay the augmentation charge based on actual usage, then they may install a meter at the owner’s cost and thereafter be billed based on the metered pumping amount.

c. Annual Adjustment. The 2021-22 augmentation charge rates shall remain in effect until June 30, 2022. Each July 1 (commencing July 1, 2022) the augmentation charges shall be adjusted as provided in Section 3.a. of this Ordinance. 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. After June 30, 2026, the 2025-26 rates will remain in effect until amended or superseded by Agency ordinance.

Section 5. 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, 2010-01, 2010-02, 2010-03, 2010-04, 2014-01 and 2015-02 (collectively the “Augmentation Charge Ordinance”). The Augmentation Charge Ordinance is hereby amended, supplemented and revised as stated in this Ordinance No. 2021-02. 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.

Section 6. Use of Augmentation Charge Revenue. The augmentation charge revenue shall be expended solely for the costs of the supplemental water service, including debt service as described in section 2(d) and 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 7. 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 8. 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 9. Effective Date. This Ordinance and the increased augmentation charge shall become effective on December 1, 2021.

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 **21st** day of **April 2021**, by the following vote:

AYES: Newell, Culbertson, Zamora, Bannister, Rider
NOES: Broz
ABSTAIN: None
ABSENT: None

By: Original Signed by
Amy Newell, Chair

Attest:

Original Signed by
Laura R. Taay, Board Secretary