

Ordinance No. 04203

ORDINANCE OF THE BOARD OF SUPERVISORS OF MONTEREY COUNTY  
CONFIRMING APPROVAL OF THE SALINAS VALLEY WATER PROJECT  
FOR THE BENEFIT OF ZONE 2C, ESTABLISHING ZONE 2C AS THE  
BENEFIT ZONE FOR THE PROJECT, LEVYING THE ASSESSMENTS  
TO FUND THE PROJECT AND ELIMINATING THE WATER STANDBY AND  
AVAILABILITY CHARGES IN ZONES 2 AND 2A

**County Counsel Synopsis**

*This ordinance, enacted pursuant to the terms of the Monterey County Water Resources Agency Act, Sections 6, 9, 20, 24 and 24.1, confirms approval of the Salinas Valley Water Project, establishes Zone 2C as a new benefit zone for the project, approves assessments to be levied in Zone 2C for the Project, eliminates existing water standby and availability charges in Zones 2 and 2A, and establishes differential rates for assessments within Zone 2C.*

**The Board of Supervisors ("Board") of the Monterey County Water Resources Agency hereby finds and declares as follows:**

- A. The Legislature created the Monterey County Water Resources Agency ("MCWRA") through the Monterey County Water Resources Agency Act ("Agency Act") to address the problem of seawater intrusion, provide flood protection, protect and augment ground and surface water supplies and water quality within the Salinas Valley, and provide recreational benefits; and
- B. MCWRA developed the Salinas Valley Water Project ("SVWP") based on extensive stakeholder, public, regulatory, and technical input over the last decade to increase flood protection, address seawater intrusion, and assure a sufficient quantity and quality of water supplies to meet agricultural and urban needs within the Salinas Valley through the year 2030; and
- C. The SVWP includes the following components: (1) re-operation and maintenance of the existing Nacimiento and San Antonio Dams and Reservoirs to increase conservation and recharge; (2) modification of the spillway at Nacimiento Dam as necessary to meet California Department of Water Resources, Division of Safety of Dams ("DSOD") requirements to protect against a Probable Maximum Flood (as defined by DSOD) and increase conservation and recharge; and (3) construction of the Salinas River Diversion Facility to provide surface water deliveries through the Castroville Seawater Intrusion Project to reduce groundwater pumping in areas subject to seawater intrusion; and
- D. On June 4, 2002, after preparation and consideration of an Environmental Impact Report ("EIR") for the SVWP pursuant to the California Environmental Quality Act ("CEQA"), the Board certified that the EIR fully complied with CEQA and approved implementation of the SVWP subject to and contingent upon the approval of funding for the SVWP by the landowners whose properties will specially benefit from the SVWP as required by article XIID of the California

Constitution and implementing legislation, Stats. 1997, ch. 38 (S.B. 919, Rainey) ("Proposition 218"); and

E. Presently, operation and maintenance of Nacimiento and San Antonio Dams and Reservoirs are funded through water standby and availability charges levied within the MCWRA's Zones 2 and 2A pursuant to Section 12 of the Agency Act; and

F. To fund the SVWP and reservoir operations it is necessary to create a new zone of benefit, Zone 2C, and to levy new and proportional assessments within that Zone 2C ("SVWP Assessment" or "Assessment") in place of the existing Zone 2 and 2A water standby and availability charges; and

G. To begin to develop the SVWP Assessment methodology, an Assessment Committee and a Technical Sub-Committee ("Assessment Committees") were appointed by the Monterey Superior Court to review and recommend an equitable assessment methodology. When the court-appointed committee process ended, due to lack of participation by the plaintiffs, the remaining members formed the ad hoc Assessment Committee comprised of Salinas Valley citizens who continued to work towards developing an equitable assessment methodology ; and

H. By letter dated July 16, 2001 the Assessment Committees recommended the formation of Zone 2C and that the assessment criteria be based on geological and hydrological evidence identifying which properties will specially benefit from the SVWP and the operation of the reservoirs; and

I. Subsequently, a Cost Allocation Committee ("CAC") consisting of representatives from a broad spectrum of water users and supported by the Monterey County Water Resources Agency and its technical advisors was formed and held multiple public meetings to review and refine, from a scientific perspective, the technical bases for the Assessment Committees' recommendations; and

J. As a result of its technical review and evaluation, the CAC concurred with the recommendation of the Assessment Committee that the benefits of the SVWP are distributed, and thus the boundaries of Zone 2C should be fixed, based on proximity to water-bearing alluvium, and based on hydrologic and geologic evidence supported by the California Department of Public Works Bulletin 52 and other technical sources the CAC recommended the separation of Zone 2C into seven major hydrologic sub-areas within the Salinas Valley: the Extended Upper Valley -- Above Dam; Extended Upper Valley -- Below Dam; Upper Valley, Forebay, Pressure, Eastside, and Arroyo Seco; and

K. The CAC also concurred with the Assessment Committees' recommendation that the extent to which properties within each of the foregoing sub-areas will specially benefit from each component of the SVWP should be based on proximity to water bearing-alluvium, and assigned a factor of 3 where a particular subarea will receive the primary special benefits of improved control of seawater intrusion and flood control and a factor of 1 where a particular subarea will receive the secondary special benefits of improved recharge, groundwater quality, timing and location of recharge, drought protection, aquifer storage, and recreation; and

L. The CAC also submitted the "Salinas Valley Water Project Cost Allocation Committee Recommended Strategy," which further clarified the methodology for implementing the SVWP assessments and other actions, including implementation of the Castroville Seawater Intrusion Project ("CSIP") and Salinas Valley Reclamation Project ("SVRP") assessments and direction for use of revenue generated by MCWRA's hydroelectric facility; and

M. Based on the foregoing, the CAC developed a Benefit Matrix for each of the SVWP's three components indicating the rates at which each subarea within Zone 2C will benefit from each SVWP component; and

N. A Land Use Factor of 1 was assigned to property that is actively used (residential, apartments, commercial, industrial, institutional, and irrigated agricultural), and a land use factor of .1 (dry farming, grazing, vacant lot) and .01 (river channels and lands subject to frequent flooding) and 0 (native lands) to land that is passively used. These determinations are consistent with existing Monterey County Water Resources Agency assessment methodology for active and passive land use factors; and

O. Based on the data then collected for the Benefit Matrix, Land Use Factors, and the cost of assessment administration the CAC then developed for each subarea of Zone 2C a per-acre Estimated Assessment for Zone 2C which, subject to future adjustment for changed facts such as costs and land uses, will fund implementation of the SVWP; and

P. The CAC recommended that the operations and maintenance component and the administrative cost component of the SVWP Assessment include annual increases limited by the Consumer Price Index ("CPI"); and

Q. On October 28, 2002 the MCWRA Board of Directors received and recommended the CAC's Recommended Strategy; and

R. The Board of Supervisors directed a state-certified professional engineer to prepare a detailed Salinas Valley Water Project Engineer's Report ("Engineer's Report"); and

S. The Engineer's Report established the SVWP technical foundation, refined through the CAC process, and described the assessment methodology which provides for assessment of property only in proportion to the special benefits conferred by the SVWP on each acre of property and the cost of implementing the SVWP; and

T. On January 14, 2003 in Resolution No. 03-017 the Monterey County Water Resources Agency Board of Supervisors approved and adopted the Engineer's Report, attached thereto as Exhibit A and incorporated by reference, and approved creation of Zone 2C and implementation of the funding modifications set forth in the SVWP Assessment subject to and contingent upon approval by specially benefited landowners in an SVWP Assessment ballot proceeding; and

U. On January 14, 2003 in Resolution No. 03-017 the Monterey County Water Resources Agency Board of Supervisors also approved implementation of the following actions contained in the CAC "Recommended Strategy" as part of the levy of the SVWP Assessment: 1) amending Resolution No 00-172 to eliminate the CSIP and SVRP 2Y and 2Z assessments once all debt has

been retired; 2) terminating the proposed assessments for the SVWP capital costs once all debt is retired; 3) amending Resolution 85-292 to allocate the use of revenue generated by the Nacimiento Hydroelectric Plant following retirement of the Lease Revenue Bonds solely to MCWRA; 4) clarifying Resolution 95-250 regarding the use of hydroelectric revenue generated by the Nacimiento Hydroelectric Plant; 5) clarifying circumstances which would trigger increases to the operation and maintenance component of the SVWP Assessment; and 6) capping increases to the operations and maintenance and administrative components of the SVWP Assessment; and

V. During February and March 2003 MCWRA conducted an Assessment ballot proceeding pursuant to Proposition 218 in which the landowners specially benefited by the SVWP were provided by mail with notice of the proposed Assessment and the opportunity to vote as to whether MCWRA should levy the SVWP Assessment; and

W. As part of the Assessment ballot proceeding, MCWRA held a public hearing on March 25, 2003 for the purpose of receiving comments and protests to the SVWP Assessment and for accepting new or changed ballots from specially-benefited landowners; and

X. In the Assessment ballot proceeding for the SVWP, approximately 64% of the specially-benefited landowners voted via mail-in ballots with the SVWP receiving approximately 85% in favor of levying the SVWP Assessment, and

Y. Based on the foregoing, the Monterey County Water Resources Agency Board of Supervisors by this ordinance creates Zone 2C, establishes the SVWP Assessment as described herein, levies the SVWP Assessment for Fiscal Year 2003-04, provides for future annexation of properties into Zone 2C, eliminates the existing Zone 2 and 2A standby and availability charges, and directs MCWRA staff to take actions as appropriate to implement the SVWP; and

Z. Based on the foregoing, the Monterey County Water Resources Agency Board of Supervisors intends to adopt by separate resolutions the other funding modifications described above as part of the CAC "Recommended Strategy," including: (1) amending Resolution No 00-172 to eliminate the CSIP and SVRP 2Y and 2Z assessments once all debt has been retired, and (2) amending Resolution 85-292 and the Joint Powers Agreement for the Monterey County Power Authority to allocate the use of revenue generated by the Nacimiento Hydroelectric Plant following retirement of the Lease Revenue Bonds solely to MCWRA; and (3) clarifying Resolution 95-250 regarding the use of hydroelectric revenue generated by the Nacimiento Hydroelectric Plant.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MONTEREY ORDAINS AS FOLLOWS:

Section 1. Authority. This ordinance is enacted pursuant to sections 6, 9, 20, 24, and 24.1 of the Agency Act, and in compliance with Proposition 218.

Section 2. Approval of actions. The Board hereby confirms approval of the SVWP, establishes Zone 2C as the benefit zone for the SVWP, levies the SVWP Assessment within Zone 2C to fund the SVWP, eliminates the water standby and availability charges in Zones 2 and 2A and directs staff to take all actions necessary to implement the SVWP.

Section 3. Project description. The project is described as follows:

The SVWP includes the following components: (1) re-operation and maintenance of the existing Nacimiento and San Antonio Dams and Reservoirs to increase conservation and recharge; (2) modification of the spillway at Nacimiento Dam as necessary to meet California Department of Water Resources, Division of Safety of Dams (“DSOD”) requirements to protect against a Probable Maximum Flood (as defined by DSOD) and increase conservation and recharge; and (3) construction of the Salinas River Diversion Facility to provide surface water deliveries through the Castroville Seawater Intrusion Project to reduce groundwater pumping in areas subject to seawater intrusion.

Section 4. Establishment of Zone 2C. Zone 2C is hereby established in the Monterey County Water Resources Agency as the benefit zone for the SVWP. As described in the Engineer’s Report, attached as Exhibit A to Resolution No. 03-017 and on file with the Clerk of the Board, Zone 2C has been defined based on geological conditions and hydrological factors, which define for each parcel the benefits derived from the reservoirs and the proposed changes to the operations, storage, and release of water from the reservoirs that make up the SVWP. The eight criteria used to establish Zone 2C are presented in Section 3.1 of the Engineer’s Report.

Section 5. Location and extent of benefited zone.

(a) The boundaries of Zone 2C encompass the entire area within the Salinas Valley and Monterey County that overlies water-bearing alluvium, extending to the Monterey/San Luis Obispo County line and west to the area surrounding San Antonio Reservoir. As described in the Engineer’s Report at Section 3.1, the boundaries of Zone 2C exclude that portion of the upper Arroyo Seco Cone Area that is not being recharged in any appreciable manner by the Salinas River to the predominance of recharge resulting from the Arroyo Seco River. The boundaries of Zone 2C are delineated at Figure 3-1 of the Engineer’s Report attached as Exhibit A to Resolution No. 03-017, and in the map attached hereto as Exhibit A and on file with the Clerk of the Board and in the legal description on file with the clerk of the Board, hereby incorporated by reference. Zone 2C consists of approximately 421,436.91 total acreage.

(b) As described in Section 3.2.3 of the Engineer’s Report, Zone 2C is separated into seven major hydrologic sub-areas that receive differential benefits from the SVWP. These subareas include: Extended Upper Valley - Above Dam; Extended Upper Valley - Below Dam, Upper Valley; Forebay; Pressure; Eastside; and Arroyo Seco.

(c) From time to time new areas or sub-areas may be annexed into Zone 2C where such annexation is consistent with the benefits identified in the Engineer’s Report or with any supplemental analysis performed by a certified professional engineer that provides confirmation of SVWP benefits to the area proposed to be annexed. Annexation may be initiated by request of MCWRA, the Board or the area/subarea seeking annexation, and shall be carried out in conformity with all applicable laws and policies including those annexation procedures or policies that may be established by MCWRA and/or the Board from time to time. Fees for annexation shall be consistent with those annexation procedures or policies that may be established by MCWRA and/or the Board from time to time.

Section 6. Zone 2C Salinas Valley Water Project Assessment.

(a) The proposed rates at which the annual SVWP assessments will be levied in

Zone 2C for 2003-04 are set forth in the Engineer's Report at Table 3-14, which Table is attached hereto as Exhibit B and incorporated by reference.

(b) The SVWP assessments shall be levied beginning in Fiscal Year 2003-04 pursuant to this ordinance, and shall be levied annually thereafter by resolution of the Board of Supervisors.

(c) The following principles shall apply to the levy of the SVWP Assessment in Zone 2C:

(1) That portion of the SVWP Assessment levied to fund the capital costs of the SVWP shall be terminated once all capital debt for the SVWP is retired.

(2) In the years following the first full fiscal year in which the SVWP Assessment is collected, the operation and maintenance component of the SVWP Assessment is subject to increase based on the San Francisco, Oakland, San Jose Urban Consumers Price Index ("CPI") for the previous year as measured from February to February, or the nearest date for which figures are available. All increases pursuant to this section will be calculated from the base year of 2003. The base year February 2003 CPI is 197.7. Each year, any increase in the operation and maintenance component of the SVWP Assessment recommended by MCWRA to the Board of Supervisors as part of the annual MCWRA budget process shall be based on the ending fund balance for the previous fiscal year, and shall be no greater than the CPI. The MCWRA's target for ending/beginning fund balances for SVWP operation and maintenance expenses shall be approximately 50% of the total estimated SVWP operation and maintenance expenses for the succeeding fiscal year. If the ending fund balance for SVWP operation and maintenance expenses for the previous fiscal year is less than or equal to 50% of the total estimated SVWP operation and maintenance expenses for the succeeding fiscal year, then the Board shall increase the operation and maintenance component of the SVWP Assessment by the CPI. If the ending fund balance for SVWP operation and maintenance expenses for the previous fiscal year is greater than 50% of the total estimated SVWP operation and maintenance expenses for the succeeding fiscal year, the amount of any increase shall be limited by the CPI and at the discretion of the MCWRA Board of Supervisors. In all instances, the MCWRA Board of Supervisors may choose to increase the operation and maintenance component of the SVWP Assessment by the full CPI to maintain the target 50% fund balance.

(3) (i) In the years following the first full fiscal year in which SVWP Assessment is collected, the administrative component of the SVWP Assessment is subject to increase based on the San Francisco, Oakland, San Jose Urban Consumers Price Index ("CPI") for the previous year as measured from February to February, or the nearest date for which figures are available. All increases will be calculated from the base year of 2003. The base year February 2003 CPI is 197.7.

(ii) An administrative reserve with a cap of \$500,000 shall be established. The reserve shall be increased on an annual basis from: (a) revenues generated by the SVWP Assessment; and (b) by the CPI as set forth in Section 6(c)(3)(i). When the \$500,000 cap is reached, the administrative component of the SVWP Assessment shall be maintained at a level that will fully cover the estimated administrative expenses for the SVWP for the succeeding fiscal year. This maintenance will continue until such time as the reserves are reduced to \$400,000 or less (80% or less of the \$500,000 cap). Each year, any increase in the administrative component of the SVWP Assessment recommended by MCWRA to MCWRA's Board of Supervisors as part of the annual

MCWRA budget process will be no greater than the CPI. If the administrative reserve is equal to or greater than \$400,000, the CPI increase recommended by MCWRA shall be designed to fully cover the estimated administrative expenses for the SVWP for the succeeding fiscal year without increasing the administrative reserve. If the administrative reserve is less than \$400,000 the Board shall increase the administrative component of the SVWP Assessment by the full CPI. If the administrative reserve is equal to or greater than \$400,000 (up to the \$500,000 cap), the amount of any CPI increase shall be at the discretion of the Board. In all instances, the Board may choose to increase the administrative component of the SVWP Assessment by the full CPI as long as the administrative reserve does not exceed the \$500,000 cap.

Section 7. Elimination of standby and water availability charges in Zones 2 and 2A. The following ordinances and the subsequent annual re-adoption are hereby repealed:

Ordinance 2637 (May 13, 1980); and  
Ordinance 3001 (May 22, 1984).

Section 8. Effective Date. This ordinance shall take effect thirty (30) days from the date of its adoption.

On motion of Supervisor Lindley, seconded by Supervisor Potter, the foregoing Ordinance is adopted this 22 day of July, 2003 by the following vote:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen, and Potter

NOES: None

ABSENT: None

  
Fernando Armenta, Board Chair  
Monterey County Board of Supervisors

ATTEST:  
Sally R. Reed  
Clerk of the Board

  
Deputy Cynthia Juarez