

ORDINANCE NO. 43

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
SAN BENITO COUNTY WATER DISTRICT
ESTABLISHING SAN FELIPE DISTRIBUTION SYSTEM WATER CHARGES FOR
AGRICULTURAL AND NON-AGRICULTURAL WATER**

WHEREAS, on November 8, 1977, the voters of San Benito County passed Proposition B, which authorized the levy of charges sufficient to repay the United States for the District's share of the cost of construction and cost of operation and maintenance of the Federal Facilities portion of the San Felipe Division of the Central Valley Project; and

WHEREAS, Proposition B also authorized a levy of charges sufficient to repay the costs of construction and cost of operation and maintenance of the District's Distribution Facilities; and

WHEREAS, the Board of Directors has determined charges which together with other revenue sources, are sufficient to repay the United States for the construction and operation and maintenance of the Federal Facilities or for the cost of operation and maintenance and repayment of the District's Distribution Facilities; and

WHEREAS, the District mailed notices to all parcels upon which the charge is to be imposed setting forth the information required in Section 6 of Article XIII D of the California Constitution (Proposition 218) and notifying the owners thereof of a public hearing on February 20, 2007, to consider the charge; and

WHEREAS, after 45 days from the date said Notice was mailed, the Board conducted a public hearing on February 20, 2007, to determine whether or not the charge should be levied in Zone 6, and to consider the amount of any such charge; and

BE IT ORDAINED by the Board of Directors of the San Benito County Water District as follows:

1. Rates and Charges: In order to meet said costs, the rates for water delivered through the pressurized San Felipe Distribution System shall be established as follows:

Water Charge:

<u>USE</u>	<u>RATE</u>
Agricultural - Non-Full Cost	\$ 85.00 per acre foot
Full-Cost (RRA Section 205(a)(3))	\$240.00 per acre foot
Full-Cost (RRA Section 202(3))	\$235.00 per acre foot
Non-Agricultural (Municipal & Industrial)	\$160.00 per acre foot
Small Parcel Service (Parcels 10 acres or less in area)	
Agricultural	\$ 27.00 bi-monthly
Municipal & Industrial	\$ 27.00 bi-monthly

Bi-monthly charges include annual minimum quantity (Agricultural @ 2 acre feet per year and M&I @ 1 acre foot per year); water use above annual minimum charged at applicable Agricultural or Non-Agricultural water rate.

Power Charge: For all water delivered through Subsystems

<u>SUBSYSTEM</u>	<u>RATE</u>
2	\$ 23.60 per acre foot
6H	\$ 36.05 per acre foot
9L	\$ 34.70 per acre foot
9H	\$ 65.75 per acre foot
All Others	\$ 18.40 per acre foot

2. Findings:

The Board of Directors hereby finds and determines that:

- a) Revenues derived from the charge imposed herein do not exceed the funds required to pay for operation and maintenance costs associated with the delivery of San Felipe water and the power costs for pumping, transmission and distribution of San Felipe water to the District's customers, and shall not be used for any other purpose;
- b) The amount of the charge does not exceed the proportional cost of the service attributable to the parcel;
- c) The service for which the charge is imposed (see 1. above) is actually used by or is immediately available to the owner in question;
- d) The charge is not imposed for general governmental services.

3. Effective Date: The above rates and charges shall be effective March 1, 2007, and shall remain in full force and effect until changed by Ordinance of the San Benito County Water District.
4. Repeal of Prior Ordinances: All Ordinance and parts of Ordinances inconsistent herewith are hereby repealed.
5. Severability Clause: In the event that any portion or provision of this Ordinance shall be determined by a court of law or other tribunal to be invalid or unconstitutional, such findings of invalidity or unconstitutionality shall not affect the validity of the remaining provisions of this Ordinance, which shall remain in full force and effect.
6. Declaration of Urgency: This Ordinance is declared to be an urgency ordinance to take effect immediately, and is for the immediate preservation of the public peace, health, safety and welfare. The facts constituting the urgency are as follows:

In the California Supreme Court case of Bighorn-Desert View Water Agency v. Verjil, the Court held that metered and/or consumption based water charges are subject to the provisions of Proposition 218 (California Constitution, Article XIII D, Section 6(a)). Prior thereto,

the District relied on a Court of Appeals case which held that such charges are not incident to property ownership and, therefore, not governed by Proposition 218. The Supreme Court ruling required the District to implement all procedural requirements of Proposition 218 including mailing notices to all affected parcel owners informing them of a public hearing to discuss the proposed rates and conducting such hearing within specified time periods.

This Ordinance must be in effect by March 1, 2007, which is the beginning of the District's water year. Because of the time delays in implementing Proposition 218 procedures, this ordinance must become effective immediately upon its adoption.

7. Publication: Within 15 days after its passage, this Ordinance shall be published once in a newspaper of general circulation in the County of San Benito, State of California, together with the names of the members of the Board of Directors voting for and against same.

PASSED AND ADOPTED this 20th day of February, 2007, by the San Benito County Board of Directors by the following vote:

AYES:	DIRECTORS:	Swanson, Bettencourt, Tobias and Perry
NOES:	DIRECTORS:	None
ABSENT:	DIRECTORS:	Perry

/s/Robert M. Swanson
Robert M. Swanson
President

ATTEST: /s/Shelley Giancola
Shelley Giancola
District Secretary