Ivins City Staff Report
City Council Meeting 10/3/2024

Agenda Item: Discussion regarding Padre Lakes water overcharge

Submitted by: Charles R. Gillette, P.E. City Engineer

Recommended City Council Action:
None

BACKGROUND:
The Padre Lakes Subdivision is located on the block surrounded by 400 South, 400 East and Puerto Drive. This subdivision was developed more than 20 years ago and at the time the City allowed them to install twelve larger (1.5") meters to serve the 182 homes in the subdivision rather than 182 separate meters. The bills are then paid by the HOA and residents are billed through the dues paid to the HOA.

In April 2024, the board of the Padre Lakes Home Owners Association approached the City due to the fact that on a per unit basis one of their meters (Meter #9) was costing more despite the fact that the water usage was not seemingly excessive. The city reviewed the account and discovered that there was a clerical mistake made in how the account was set up.

The other accounts are charged base residential rate multiplied by the number of units attached to the meter whereas the anomalous meter was set up to charge the base rate for 2" meter multiplied by the number of units. The base rate in FY24 for a residential size meter was $20.60 per month whereas the base monthly rate for a 2" meter was $86.16 per month. Therefore with the account consisting of 23 units connected there is an overcharge of approximately $1500 per month (see attached spreadsheet for exact calculation).

FINDINGS AND ANALYSIS:
The rate was fixed back in April when the problem was first discovered. The HOA understandably requested that the City refund the overcharge plus a few late penalties that were charged back in 2023. Our Attorney, Bryan Pack, has identified in the State Statutes, Section 63-7-402, that the City is not liable for overcharges past a one-year statute of limitations. Thus, the staff has offered to the HOA a refund of $18,241 as shown in the attached calculation spreadsheet.

The HOA board has indicated that, in their opinion, they are owed all the overcharges dating back to the time of the mistake. Staff lack the authority to increase the offer beyond the legal requirement and thus have added this item to the City Council agenda for discussion.

The City Council may decide to award the Padre Lakes HOA additional money due to the overcharges. The issues to be considered if the Council decides to do this are:

(1) There is no legal reason to make additional refunds, nor are there financial reasons for refunds. The only basis for making additional refunds would be a sense of whether the Council agrees with the State statute that limits responsibilities to only one year.

(2) It may set precedent for the future requests for refunds. In the past 20 years, there has been at least one other incident where refunds were requested and the City has never refunded more than one year.
(3) Since any refund beyond one year may not be required, the City Council could enter into a settlement agreement with the HOA that sets conditions for additional refunds. It seems that such conditions could involve the requirement of grass removals or pond removals since Padre Lakes is nearly entirely landscaped with grass and ponds and any removals would certainly result in some significant water savings which would benefit both the City and the HOA.

Please be aware that the open discussion of this subject includes the potential for a future lawsuit filed by the HOA so there is cause to consider a closed meeting discussion if deemed necessary.

SUPPORT MATERIALS:

- Calculation Spreadsheet of 1 year of overcharges

FINANCIAL IMPACT:
$18,241 at a minimum

Respectfully Submitted:

Charles R. Gillette, P.E. City Engineer

Content Review:

Dale Coulam, City Manager

IVINS CITY
Billing History - 04/01/2023 to 03/31/2024
Customer: PADRE LAKES HOA
Location: METER #9 458 S CHULA VISTA

		PAID			Actual		
Date	Transaction	Base Rate (Per Unit)	Base Rate x 23		Base Rate	Base Rate x 23	Refund Amount
4/30/2023	Period Billing	$82.36	$1,894.28		$19.67	$452.41	$1,441.87
5/31/2023	Period Billing	$82.36	$1,894.28		$19.67	$452.41	$1,441.87
6/30/2023	Period Billing	$82.36	$1,894.28		$19.67	$452.41	$1,441.87
7/31/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
8/31/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
9/30/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
10/31/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
11/30/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
12/31/2023	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
1/31/2024	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
2/29/2024	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
3/31/2024	Period Billing	$86.16	$1,981.68		$20.60	$473.80	$1,507.88
							$17,896.53
						Plus Penalties Paid	$108.41
							$236.08
							$18,241.02