

San Juan Capistrano case challenges legality of tiered water rates

By Matt
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In drought-ridden California, many water bills are calculated using a basic principle: The more water a customer uses, the higher the rate. It's a strategy water districts employ to boost conservation.

But this long-standing practice is now under attack in the courts. A group of San Juan Capistrano taxpayers sued their local water provider, arguing the tiered rate structure violates state law that prohibits agencies from charging more than water actually costs — no matter how much customers use.

Tiered prices

The city of San Juan Capistrano's 2010 water rate schedule, which a group of residents is challenging in court.

(Cost per 748 gallons)

Tier 1

\$2.47

Tier 2

\$3.29

Tier 3

\$4.94

Tier 4

\$9.05

Source: city of San Juan Capistrano

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A lower court decided in their favor, and an appeals court is expected to rule soon. The outcome could change how millions of customers pay for water and eliminate a tool water agencies argue is critical to encourage conservation.

"We'd all love to drive a Mercedes or BMW. Why don't we? The price," said longtime local rate consultant Sanjay Gaur. "There are other ways to practice conservation, but price is an important tool in your toolbox."

At least two-thirds of California's water providers, including the Los Angeles Department of Water and Power, use some form of the tiered rates that are at issue in the San Juan Capistrano lawsuit, consultants and water lawyers said

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The San Juan Capistrano residents argue that tiered water pricing violates Proposition 218, the 1996 law intended to prevent local governments from gouging taxpayers. The law prohibits agencies from charging customers more than the "cost of the service" provided.

The residents argue that San Juan Capistrano charged arbitrary fees — especially in the highest tiers. The city's 2010 rate schedule charged customers \$2.47 per unit — 748 gallons — of water in the first tier and up to \$9.05 per unit in the fourth.

The city charged customers who used the most water more than the actual cost to deliver it, plaintiffs said.

"People were getting nailed," said John Perry, a 79-year-old San Juan Capistrano resident who helped create the taxpayer group. "They were having \$500 or \$600 water bills on Tier 2 and Tier 3. There were horror stories."

There are other ways to practice conservation, but price is an important tool in your toolbox. - Sanjay Gaur, rate consultant

A state superior court judge declared the city's rate structure invalid in 2013. The city has flattened its tiers and tied charges more directly to water costs while it awaits the appellate court decision.

Experts say 66% to 80% of California water providers use some type of tiered rates. A 2014 UC Riverside study estimated that tiered rate structures similar to the one used in San Juan Capistrano reduce water use over time by up to 15%.

An author of the study, Ken Baerenklau, said the effect was greatest on the heaviest water-users.

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"There is a lot of momentum in this direction because of all the benefits," he said. "If this challenge were to go through and undermine the rate structure, that would be a big deal."

When water agencies run out of water from one source, they must buy it from somewhere else, said Andrew Fahlund, deputy director of the California Water Foundation. That "last little bit" can be "very expensive," he said.

"The ones who are using the most are effectively responsible for the greatest level of cost," Fahlund said. "Tiered rates are a vital way to send a price signal. To look at it simply from a cost-of-service standpoint looks past the fact that water is a scarce resource."

Some proponents of the tiered rates also say that Proposition 218 contradicts part of the California Constitution. Article X requires water "conservation" and prevention of "waste or unreasonable use."

Courts have previously said that the goals of each must be "harmonized," meaning rate structures need to encourage conservation and show how each customer charge is related to a specific service cost, said Gaur, the rate consultant.

If the state's 4th District Court of Appeal publishes an opinion upholding the previous ruling, many Californians could see changes to their bills either immediately, or during their water agency's next rate-making cycle, lawyers said. Agencies could flatten their tiers, adopt uniform rates or simply wait to see if they get sued, they said.

The Los Angeles Department of Water and Power is in the process of formulating a rate proposal that could include a revised rate structure. A spokeswoman said the agency is closely monitoring the San Juan Capistrano case.

The lawyer who represents the Capistrano Taxpayers Assn. has already filed similar rate-related lawsuits against the Sweetwater Authority in San Diego County and the city of Glendale.

"People will definitely be looking over their shoulder," said Kelly Salt, a Proposition 218 expert based in San Diego who wrote an amicus brief defending the city of San Juan Capistrano. "Attorneys will be emboldened to go do this for other clients."

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