

Appeals court rules against higher water rates for big users

By Brian
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In this April 17, 2015 photo, Jim Reardon, who was awaiting a ruling from a California appeals court regarding his suit over tiered water rates, stands outside his home where he installed drought-tolerant landscaping in San Juan Capistrano, Calif. The appeals court has ruled that the city's tiered water-rates are unconstitutional on Monday, April 20. (AP Photo/Lenny Ignelzi)

LENNY IGNELZI — AP

An Orange County appeals court ruled Monday that San Juan Capistrano's tiered water-rates are unconstitutional, potentially dealing a blow to agencies statewide that have used the pricing structure to encourage people to save water.

The 3-0 ruling by the 4th District Court of Appeal upholds a Superior Court judge's decision that found that charging bigger water users incrementally higher rates violates a voter-passed law that prohibits government agencies from charging more than the cost of a service.

The ruling comes shortly after Gov. Jerry Brown issued drought orders that called on local water agencies to implement tiered water pricing to help save water. About two-thirds of water districts in the state use tiered water pricing, and the ruling was being closely watched to see how it might apply beyond the appellate court, which is only binding in Orange County.

San Juan Capistrano charged nearly four times as much per unit of water for the highest users to encourage conservation. Residents complained the higher rates were arbitrary and unfair.

"We feel vindicated and feel the constitution was upheld," said attorney Benjamin Benumof, who represented San

Juan Capistrano residents. “It’s one for the record books.”

Under the ruling, tiered pricing would be perfectly legal, but it would have to be tied to the cost of the water, the court said.

San Juan Capistrano’s 2010 rate schedule charged customers \$2.47 per unit — 748 gallons, or 100 cubic feet — of water in the first tier and up to \$9.05 per unit in the fourth.

The city failed to show how those costs were tied directly to more expensive sources of water, the court ruled.

“Nothing in our record tells us why, for example, they could not figure out the costs of given usage levels that require City Water to tap more expensive supplies, and then bill users in those tiers accordingly,” the court wrote.

Benumof had argued that the tiered structure violated Proposition 218, a 1996 state law, because the highest rates exceeded the cost of delivering the water.

After the state Superior Court declared San Juan Capistrano’s rate structure invalid in 2013, the city flattened its tiers and tied charges more directly to water costs while it awaited the appellate court decision.

Tiered rate structures reduce water use over time by up to 15%, according to a 2014 study at the University of California at Riverside.