

## Ruling forces California water districts to review rates

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In this April 17, 2015 photo, Jim Reardon, who is 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.

LENNY IGNELZI — AP Photo

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LOS ANGELES — An appeals court decision striking down punitive water pricing that was intended to encourage conservation had water agencies reviewing rates Tuesday and some residents exploring whether to bring similar challenges.



The ruling Monday that found San Juan Capistrano's water rates unconstitutional came amid a severe drought as agencies try to meet the governor's mandate to cut water use statewide by 25 percent.



The 4th District Court of Appeal said charging heavy users incrementally more per gallon without showing it cost more violated a 1996 voter-approved law that prohibits government agencies from overcharging for services.

The decision that Gov. Jerry Brown said puts a "straitjacket" on local government makes it harder for cities to adopt similar billings and may bring down some of the higher rates, said Ken Baerenklau, an associate professor at the University of California, Riverside who has studied tiered water rates.

Water departments are being pulled in different directions by Brown's administration that demanded hitting residents in the pocketbook to save water and the legal uncertainty of charging guzzlers higher rates.

"If you have courts telling you one thing and the governor telling you something else, maybe that's a reason to sit tight," he said.

Tim Quinn, executive director of the Association of California Water Agencies, said the ruling would be a significant concern to water managers across the state if it hampers agencies from using rates to promote conservation.

State regulators are still trying to figure how to direct local water departments to charge customers in a way that encourages saving water and is legal.

Max Gomberg, a State Water Resources Control Board scientist, said the agency will address water rates after it finishes setting mandatory water reduction targets for communities in early May.

Meanwhile, water districts were carefully going over the ruling to figure out if their rates were in jeopardy or how they could develop a pricing scheme that would encourage conservation but not violate the ruling.

Huntington Beach, for example, had been considering adding tiered water rates for years, but didn't know what would be legal until the ruling came out, said Public Works Director Travis Hopkins.

The Crescenta Valley Water District was meeting Tuesday night and was expected to discuss the ruling's impact on its four-tier pricing and future rate hikes, said attorney Thomas Bunn.

"This is going to force a number of districts to re-examine their tiered rates and make sure they're justified," Bunn said.

Two-thirds of water districts use some form of tiered water pricing. The ruling which is only binding in Orange County but could be cited in legal filings throughout the state, does not make tiered pricing illegal, but agencies or cities have to show price hikes are directly tied to the cost of the water, the court said.

Noting that Santa Barbara is reviving a desalination plant, Justice William Bedsworth wrote that providing water during a drought is pricey and nothing in the voter-approved ballot measure prevents water agencies from passing those costs on to users.

"That would seem like a good idea," he wrote.

San Juan Capistrano charged nearly four times as much per unit of water for users in the highest tier to provide an incentive to conserve, but failed to show that the water was that expensive to deliver. Residents complained the higher rates were arbitrary and unfair.

Nearby Santa Margarita Water District watched the case closely and increased its tiered rates in March with a 120-page analysis carefully documenting the link between costs and rates, spokesman Jonathan Volzke said.

Attorney Benjamin Benumof, who brought the lawsuit against San Juan Capistrano and has suits pending against Sweetwater Authority in San Diego County and Glendale Water and Power, said he thinks there are a lot places where rates are out of line with the court order.

He had already heard from people in his hometown of San Clemente interested in challenging a tiered rate structure there and had received several emails by midday Tuesday from residents in Santa Barbara, Riverside and Sacramento counties who were interested in challenging their water bills.

"I don't know where this is going to go in the future," he said, adding that he hoped other districts would comply with the ruling rather than litigate. "Everybody is looking for a more equitable split in terms of water rates."

Nirappil contributed from Sacramento.

