

California drought: Brown administration to stick with strict conservation targets, despite court ruling

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Gov. Jerry Brown is sticking to his statewide mandatory water conservation targets, his administration said Tuesday, even as a new appeals court ruling limits the ability of cities and water districts to hit people with punishing rates to encourage them to save water.

"The court's decision is bad," said Michael Lauffer, chief counsel at the State Water Resources Control Board in Sacramento of the Monday ruling by an Orange County appellate court. "It's going to frustrate some local agencies' abilities to conserve water. But the sky is not falling."

Until a possible final ruling by the state Supreme Court occurs, Lauffer said, cities and water districts will have to rely more on other tools. Those include more advertising, water audits, rebate programs for low-water appliances, restrictive rules on lawn watering and fines for violators, he said.

Leon Jung uses recycled water to irrigate his lawn on Monday, April 6, 2015, in Dublin, Calif. (Aric Crabb/Bay Area News Group) (ARIC CRABB)

"There is still a lot of low-hanging fruit out there that Californians can tackle -- lawns are the best example -- to help get to the targets," Lauffer said.

Three weeks ago, amid the most severe drought in California's 164-year history, Brown ordered urban residents to cut water use by 25 percent statewide.

The state water board plans to vote May 5 on rules that would require cities and water agencies to cut water use between 8 and 36 percent this summer, depending on their per capita use, with fines of up to \$10,000 a day for violators.

One key tool that Brown had recommended was for local governments to set rate structures with higher "surcharges, fees and penalties" for people who use large amounts of water.

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But that approach -- conserve or pay a much higher water bill -- was thrown into doubt Monday afternoon when the 4th District Court of Appeal ruled that such charges violate Proposition 218, a 1996 ballot measure that barred governments from charging more for a service than it costs to provide it.

The court did not invalidate the use of rate tiers entirely. It said, however, that cities and water agencies can only charge more if they can document that it costs them more to provide the extra water.

"Cities are going to have to show their work," said David Aladjem, a veteran Sacramento water attorney. "This is



the difference between doing a 1040-EZ tax form and a longer form."

One of California's top water leaders said the ruling will make it more difficult for cities and water districts to reach conservation targets this summer.

"The court did not declare tiered pricing illegal. But this does impose constraints that make it much harder to do," said Tim Quinn, executive director of the Association of California Water Agencies. "It's a significant blow to conservation pricing."

The ruling does not affect electric or gas rates, or privately owned water companies, like San Jose Water Co., which Proposition 218 exempts.

Water agencies on Tuesday scrambled to interpret the ruling -- and in some cases realized they would have to adapt. In Santa Cruz, which charges a \$50 per unit "penalty" for water use over 11 units per house, giving it one of the highest water conservation rates in the state, the city may have to rewrite its rules, said Santa Cruz City Attorney Anthony Condotti.

"We'll have to carefully evaluate our rates to make sure we aren't violating the law," he said.

In Palo Alto, where a new rate structure is going before the City Council in June with a proposed 12 percent water rate increase, city officials are studying the ruling but believe they are in compliance because the increase is to cover the increased costs of buying water and upgrading pipes, said city spokeswoman Catherine Elvert.

Cities that raise rates illegally could be sued, said Jon Coupal, president of the Howard Jarvis Taxpayers Association, which put Proposition 218 on the ballot.

"I have very little sympathy for some of these districts that just want to take the easy way out, which is to raise revenue -- free money -- to get more money above their cost of service," Coupal said. "They are crying crocodile tears. They have other ways to conserve. If somebody is hosing down his sidewalk, you can still fine him."

In the short term, the court ruling, because it is "published," sets statewide legal precedent that can be used in other court challenges to water district policies and at a minimum forces local water officials and lawyers to reconsider how they can legally enforce water conservation. As of now, there are two similar legal battles unfolding in early stages against the Sweetwater Authority, a San Diego area water district, and the city of Glendale's water district.

San Juan Capistrano city officials can push for an expedited review of the ruling, a move that could prompt the state's high court to temporarily put it on hold. That process could take months or longer.

If city leaders decide not to appeal, the situation becomes murkier, although the Supreme Court could still intervene, particularly if Gov. Jerry Brown and Attorney General Kamala Harris weigh in and argue resolution is critical in light of immediate statewide efforts to address the drought.

Harris' office, which presumably would represent Brown in any legal maneuvering, referred questions Tuesday to the governor. Evan Westrup, the governor's spokesman, would only say that Brown is "evaluating our options."

In addition to any legal action by the state, groups that backed San Juan Capistrano in the case could ask the state Supreme Court to "depublish" the 4th District ruling, which would strip away its statewide effect. Legal experts say they would not be surprised if the state Supreme Court acted because of the statewide policy implications.

"Given the high-profile nature of this opinion and the importance of the issue, it wouldn't shock me if the California Supreme Court gave serious consideration to granting review," said Shaun Martin, a University of San Diego law professor who follows the state's high court.

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