

California drought: High court hands setback to water conservation fight

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Rejecting the pleas of California officials worried about water conservation, the state Supreme Court on Wednesday left intact a lower court ruling that makes it tougher for cities and water districts to impose punishing higher rates on water wasters.

In its weekly closed-door conference, the Supreme Court refused to soften the statewide impact of an April appeals court ruling that found the city of San Juan Capistrano's tiered water rates -- common in the Bay Area and elsewhere in California -- were unconstitutional because they charged more for water than it cost the city to provide the service.

Low water levels can be seen at Camanche Reservoir in Wallace, Calif in this June 9 file photo. The state Supreme Court on Wednesday left intact a lower court ruling that makes it tougher for cities and water districts to impose punishing higher rates on water wasters. (Dan Rosenstrauch/Bay Area News Group archive)

The appeals court, in finding the city's approach violated voter-approved Proposition 218's restrictions on such fees, "published" the decision, giving it legal weight across the state and prompting Gov. Jerry Brown to warn it placed a "straitjacket" on his mandates to lower water use.



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Acting on behalf of the State Water Resources Control Board, Attorney General Kamala Harris in June urged the Supreme Court to "depublish" the ruling, arguing it was "unnecessary and overbroad" and hampered efforts to deal with California's ongoing drought. The move was designed to limit the force of the ruling to San Juan Capistrano's water rates. The League of California Cities also joined the state's effort to persuade the state Supreme Court to depublish the ruling.

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But in Wednesday's brief order, the state Supreme Court without comment rejected the state's request, thus forcing local and state officials elsewhere to adapt to the ruling's limitations.



Harris' office referred questions to the water resources board. Board officials said they weren't surprised at the Supreme Court's decision.

"While the court of appeal's decision makes it more difficult for local agencies to justify their water conservation rates, the decision does not foreclose conservation pricing," the board said in a statement. "The State Water Resources Control Board will continue to work on implementation of the Governor's (conservation order) and will continue to assist local agencies in developing effective and lawful conservation pricing mechanisms."

Local officials have warned the ruling from the Santa Ana-based appeals court may force cities and water districts to rely more on other tools, such as more advertising, water audits, rebate programs for low-water appliances, restrictive rules on lawn watering and fines for violators.

But legal experts and water officials also say water districts will still be able to use the tiered rates if they can demonstrate they are closely tied to the cost of providing water services.

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

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

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

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 against the Sweetwater Authority, a San Diego area water district, and the city of Glendale's water district.

Taxpayer groups have warned of other legal challenges if districts violate Proposition 218's restrictions.

Water agencies have 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 previously indicated it may have to rewrite its rules.

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