

## Court: San Juan Capistrano's tiered water rates are illegal, may hinder conservation

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Jim Reardon sued the city of San Juan Capistrano in 2012 over tiered water rates, alleging the rates were illegal under Prop 218, which requires all government fees be set in accordance with cost of service. PAUL RODRIGUEZ, , STAFF PHOTOGRAPHER

A California appeals court on Monday declared San Juan Capistrano's tiered water rate system illegal, a potential defeat for agencies that use tiered pricing to encourage people to use less water.

The closely watched ruling by the 4th District Court of Appeal emphasizes that the general idea of tiered pricing, in which customers are charged higher rates as they use more water, is "perfectly consonant" with state law as long as the prices correspond with service costs.

But the court found no financial justification for the rates implemented in San Juan Capistrano in 2010.

The 3-0 decision sets the stage for other legal challenges over how agencies set tiered rates, a key component of Gov. Jerry Brown's April 1 conservation orders.

"The practical effect of the court's decision is to put a straitjacket on local government at a time when maximum flexibility is needed," Brown said in a statement.

Under Monday's ruling, the rates must comply with Proposition 218, a 1996 voter-approved law that requires government fees be set in accordance with service costs.

That could mean trouble for rate structures implemented to promote conservation that aren't based on how much water actually costs.

Brown said Monday that state lawyers are reviewing the decision.

Jim Reardon, one of two San Juan Capistrano residents who sued the city, said the ruling doesn't jeopardize tiered rates. But it jeopardizes arbitrary tiered rates, which he said many agencies have embraced.

"That's the problem: two-thirds of the water agencies in this state have been making it up," Reardon said. "Water agencies have to be more responsible and more cost sensitive in establishing their water rates."

Under the ruling, if a city buys all its water from a single source at a set price, how can it justify charging users differently? Officials with the Mesa Water District in Costa Mesa, which wrote a brief supporting the lawsuit, decided they couldn't. They charge a uniform rate because they get all their water from the same place at the same price.

"The cost of service is uniform, so that's why we have uniform rates," Paul E. Shoenberger, Mesa's general manager, said Monday. "This court decision is going to give us good clarity on how to develop rates in the future."

Contrast that with San Juan Capistrano, where the court's 28-page ruling states that officials "did not try to calculate the cost of actually providing water at its various tier levels."

"It merely allocated all its costs among the price tier levels, based not on costs, but on pre-determined usage budgets," according to the ruling, which was written by Judge William Bedsworth and concurred with by judges Eileen Moore and David Thompson.

For homeowners in San Juan Capistrano, pricing tiers for 100 cubic feet of water in 2013 ranged from a base of \$3.18 to \$11.67.

San Juan Capistrano officials released a statement Monday that said they're "analyzing the ruling and the City Council will consider the city's options shortly."

Lawyer Ben Benumof, who sued on behalf of Reardon and the Capistrano Taxpayers Association, said he disagrees with the governor's assessment that agencies have been "strait-jacketed."

"All this really does is require agencies to dig a little deeper," Benumof said. "Justify the costs. Show that there are true incremental increases in cost. At the same time, develop rigorous conservation programs that have a cost to them, and pass that cost on to the ratepayers. But do it transparently."

The tiered-rate lawsuit was brought in August 2012 by Reardon, an aerospace executive and elected member of the Capistrano Unified School District Board of Trustees, and John Perry, a retired schools administrator who severed ties with the case after being appointed to the San Juan Capistrano City Council in February.

Michael Colantuono, a lawyer for the city of San Juan Capistrano, asked the judges to consider the governor's orders in a briefing filed with the court April 2. The judges made it clear they understood the gravity of the situation, opening Monday's ruling with a reference to Marc Reisner's 1986 book "Cadillac Desert: The American West and Its Disappearing Water."

"We hope there are future scientists, engineers and legislators with the wisdom to envision and enact water plans to keep our beloved Cadillac Desert habitable," the ruling says. "Our job, and it is daunting enough, is solely to determine what water plans the voters and legislators of the past have put in place, and to determine whether the trial court's rulings complied with those plans."

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