

SAN JUAN CAPISTRANO: IS THIS THE END OF TIERED RATES?

Presented by

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Article X, § 2 (1928)



The general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the ***waste or unreasonable use or unreasonable method of use*** of water be prevented

Water Code § 375 (1977)

- Agencies may adopt and enforce a water conservation program
- 1993 Amendment – water conservation ordinance or resolution may encourage conservation through *rate structure design*

Brydon v. E. Bay MUD (1994)

Shifting the costs of environmental degradation from the general public to those most responsible is consistent with the objectives of Proposition 13



Proposition 218 (1996)

- California Constitution, article XIII D, § 6(b) substantive limitations:
 - Fees shall not exceed the ***reasonable cost*** of providing the service
 - Fees shall not exceed the ***proportional cost*** of providing the service ***attributable to the parcel*** on which it is imposed
 - Fees may not be imposed for a service that is not actually used by or ***immediately available*** to the owner of the property in question

Independent Judgment



- Validity of property-related fees is a constitutional question
- Courts are responsible for enforcing the Constitution
- Courts must exercise their independent judgment

Water Code § § 370-374 (2008)



- Agency's Billing must be based on metered use
- Establish volumetric allotments of water
- Establish "basic charge"
- Establish "conservation charge"

CTA v. City of San Juan Capistrano (2013)

- Trial Court:

- Tiered water rates were not proportionate to the cost of providing service
- Upper tiers are not “penalties”
- Recycled water service is not “immediately available” to potable water customers

CTA v. City of San Juan Capistrano (2014)



Math phobic's nightmare

- Court of Appeal:
November 2014,
supplemental
briefing
requested on 10
questions; oral
argument
January 2015

CTA v. City of San Juan Capistrano (2015)

- Inclining block rates that go up progressively in relation to usage, ***are compatible*** with Article XIII D, § 6(b)
- ***But***, the City failed to demonstrate that the tiers correspond to the actual cost of providing service at a given level of usage

CTA v. City of San Juan Capistrano

- Upper tiers are ***not*** penalties
- Article X, § 2 does not trump Article XIII D, § 6(b)
- *Brydon v. EBMUD* is a pre-Proposition 218 case
- AWWA M1 Manual cannot be used to excuse agencies from demonstrating the cost of service

CTA v. City of San Juan Capistrano

- Proposition 218 **does** allow public water agencies to pass on to their customers the capital costs of improvements to provide additional water, including building a recycling plant
- Recycled water is a **new source** of water
- Government Code § 53750(m) – water is part of a holistic distribution system

Is the End Near?



What options are there to justify tiers?

- What are the marginal costs of water?
 - Sources of supply
 - Development of alternative supplies
 - Water conservation and efficiency programs
 - Peaking
 - Avoided costs
- Use of unrestricted funds
- Supplement your existing administrative record
- Prepare a new or update your existing study

Griffith v. Pajaro Valley Water Management Agency (2013)



- Water service means more than just supplying water; it means ensuring an ongoing supply of water

Griffith v. Pajaro Valley Water Management Agency

- Groundwater augmentation charges did not exceed the proportionate cost of providing service because ***all groundwater users benefit*** from the Agency's groundwater management activities, not just the coastal well users

Griffith v. Pajaro Valley Water Management Agency

- Property-related fees **do not** have to be established on a **parcel-by-parcel basis**
- It is appropriate to group similar users together (i.e., calculating fees on a **class-by-class basis**)
- Apportionment is not a determination that lends itself to **precise calculation**



Griffith v. Pajaro Valley Water Management Agency

- Property-related fees **may** be used to plan for future services
- Identifying and determining the future needs of an agency is part of the agency's present-day services

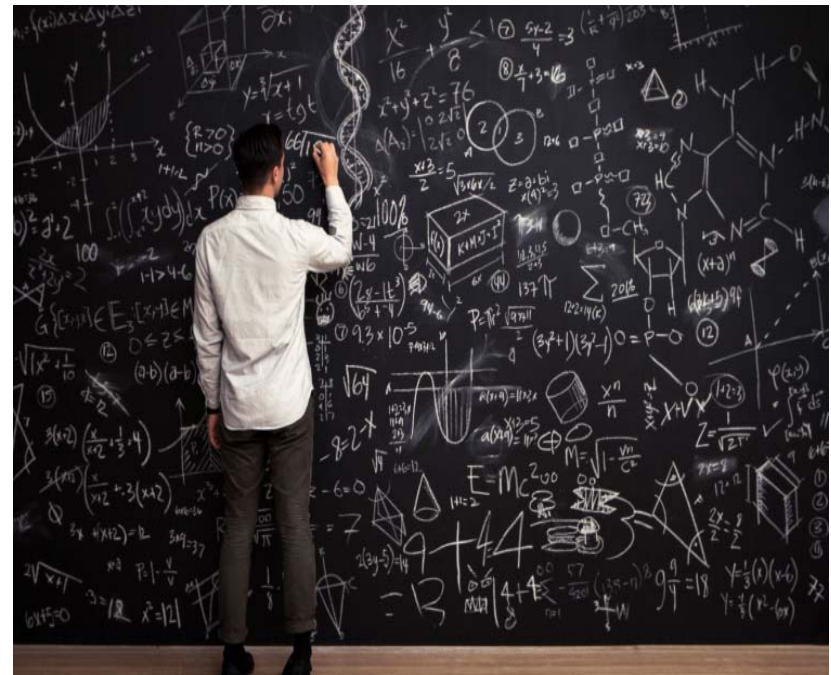


Morgan v. IID (2014)

- Establishing customer classes ***is consistent with*** the proportionality requirement of Article XIII D, § 6(b)
- Different users create different costs
- The timeframe for the calculation of the true cost of water can be, given capital improvements, quite long

Morgan v. IID

- Data used for determining rates **does not** have to be perfect
- The appellate court's review is limited to whether there is any substantial evidence, . . . , which will support the finding of fact by the trial court



Conclusion

- Agencies must **DOCUMENT** the methodology used and **JUSTIFY** the allocation of costs
- Demonstrate the marginal cost of water to justify rates within each tier
- Critically review the rate study – look for unsupported/unexplained conclusions

Conclusion

- Questions to ask your rate consultant:
 - How are the costs of service allocated – one, two, three tiers – and what is the basis for allocating the costs among the various tiers and customer classes?
 - If budget based rates are proposed, how are the water budgets determined and how do they correlate to your costs?

Thank you for attending!

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