

PROPOSAL FROM SCOTT SIMPSON

My wife and I purchased our home in 1997 (a citrus grove home built in 1892). Our first hot summer water bill was approx. \$75 per month (to irrigate a 1 acre lot). The residential metered water rate was a flat rate of \$0.64 per unit. For almost 10 years the water rate was raised very little and the summer bills reached about \$100 per month. In late 2006 the City Council raised the rates 50% over five years to fund the Renaissance Plan. Those five years have past but, we still have the excessive punitive rates. We have cut our water consumption the required 20% and still get summer water bills of \$500-600 per month. The mayor, our Councilman and the utility guy said "it wasn't supposed to happen this way." The RPU responded with "pay the bill or re-landscape". Who has \$30 grand to spend on landscaping? So I started wondering, what is going on and I spent the next several years researching the water situation in Riverside. What I found out was both interesting and disconcerting.

The city has always produced (harvested) more water than its customers use. It sells the excess production capacity (approx. 30-40,000 acre feet annually) mainly to

WMWD at cost. The latest contract says cost is \$300/acre ft. That equates to \$0.68 per metered unit (CCF) at your faucet. The city's residential tiered rate scheme starts at \$1.14 per unit and tops out at \$4.10 per unit at your faucet. \$4.10 per unit equates to \$1787.60 per acre foot of water. So, for the City that is \$1487.60 per acre foot in profit! Now by law a public water utility is not allowed to charge more than the cost of providing the water service to your meter. It must operate as a non-profit (because it is a govt. owned monopoly and federal law only allows govt. owned monopolies to operate without profiting). This is also the underlying basis for Prop. 218 restrictions on pricing water service.

The history of Water and law is unique in Riverside because several landmark decisions were made here about Riverside's water supply/service. The operation, lawful rates, conservation measures and classes of customers were established in a Calif. Supreme Court Case known as, Price v. The Riverside Land & Irrig. Co., 1880. Throughout the last 138 years this decision remains a current published case and "good law". The Price decision applies to the city today and controls how

the water utility operates, sets rates, borrows money for capital improvement and, states that the city water utility can only recover its cost of operations and maintenance from the rate, fees and charges. Capital investment expense or debt is to be recovered only by property assessment. Remarkably, it (Price, 1880) does not conflict with our contemporary Constitution and Court rulings on prop 218.

This 1880 Supreme Court decision known as The Price Decision says:

1. In Riverside the “Water is supplied to the land and is fixed to it in perpetuity in the same amount and quality as was originally delivered” to the land. This is the legal water doctrine of the right to water service known as an “Appurtenance to the land”. More recent court decisions have applied this doctrine to Gage canal co. customers (today Gage Canal Co. is the City as the City owns controlling interest in stock and shares of the company). The ownership of shares does not grant special privilege to Gage customers. All parcels served by water companies under the Price Doctrine have the right to

water service (the shares are) attached to the parcel title (an easement) by law and contract and a share in the company only represents a proportional ownership of the water infrastructure.

2. Under this doctrine the land holds an entitlement to an annual water allotment per parcel fixed in time and guaranteed in perpetuity whether delivered by ditch, canal, or piping system.
3. "The water goes with the land and is fixed to it" and the contractual obligation to supply it in the same quantity continues to all successor owners of the land and all successor owners of the original canal company including a municipality forever. (I have copies of city documents that repeats this phrasing.)
4. The Price Decision says, "All water customers pay the same flat rate for water service (as does the Prop. 218 case called Vigil v. Bighorn Desert Valley View Water District, 2010). There can be no pricing discrimination. If any customer gets service for free, all are entitled to the same deal." (also stated in "Bighorn")
5. The Price Decision says, the rate can only be calculated from the annual operating and

maintenance expenses of the water utility infrastructure via a flat rate established annually in the Water Dept. Budget.

6. The Price Decision says, punitive water rates (like our 4-tiered scheme) are prohibited as are mandatory conservation measures until you the customer exceed your water allotment for the year or the city declares a water supply emergency. “The water utility can do nothing to force you to use less water than your allotment (Price, 1880).”
7. The Price Decision formalized the Classes of Customers. Classes are defined as to when the Land & Irrig. Co. first delivered water to each parcel or when the land was sold with the promise of water delivery (not how you use the water or your parcel zoning). This means the city never had the authority to establish multiple rate schedules or contract rates for special customers at reduced/subsidized rates. There is no shortage of water supply in Riverside, hence the 4-tiered pricing is unlawful as it is currently applied to our billings as well as it does not meet the Prop 218 test (San Jaun Capistrano, 2015).

Measure A was not about losing city services or clean water. It was about misappropriating funds from the water utility and spending it on unrelated city expenses. Article 13D, sec 6 (b) of the state constitution (Prop 218) prohibits this. The state Supreme Court has upheld the GFT ban in several rulings and has said, “The act of transferring water utility funds to the general fund and spending it for non-water purposes is unconstitutional. To suggest that the voters are merely voting to “maintain what we have always done” and “maintain the status quo” is absurd. The city must follow the constitution and law.

The lawful choice was and still is voting to increase the existing UUT .75%. All tax revenue is deposited into the general fund.

Now, getting back to the subject of Ag rates for water, it is unlawful for the City Water Dept. to establish a water rate that is lower than what other water customers pay (pricing discrimination constitutional prohibition).

However, the City can subsidize the Ag rate via a budgetary ordinance that buys down the lawfully set

water rate (that all customers pay), to an Ag rate level that meets the needs of citrus and Urban Agriculture necessity. This would be accomplished by a lawful budget mechanism that transfers general fund tax revenue to the City Water Dept. in the amount calculated to cover the Ag rate subsidy expense of all the qualifying parcels.

So now I will use my property example to show how rate setting in Riverside should work.

In 1997 Prop 218 went into effect and at that time and in more recent times, the city has disclosed that the true lawful cost to supply water to a parcel within the service infrastructure (averaged over all parcels) is \$300 per acre foot or \$0.68 per metered CCU. Adjusting for 2% inflation over 20 yrs. that water rate would be close to \$0.70 per ccu today (these are flat rates). There is no lawful justification that overrides Prop. 218's requirement that everyone pays the same rate for water service or the Price 1880 decision (which says the same thing) whose details are wrapped in law and contract of land sale in perpetuity (all contracts are protected by constitutional law unless they are unlawful). The City's

contemporary practice of setting differing water rates, fees and charges by contract do not comply with law. All City Water Dept. and Gage Canal customers receive the same service at their property and are entitled in law to the same price for the same service not to exceed the cost of providing the service. This does not preclude the City from offering to Agricultural or Gage Canal customers a tax revenue subsidized water rate. It merely remains for the CC to act in a lawful manner.