



THE CALIFORNIA DROUGHT – What's in Your Rates?

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THOUGHT FOR THE DAY

***“We know the value of water
when the well runs dry.”***

Benjamin Franklin

OVERVIEW OF “WHAT’S IN YOUR RATES?”

- ✓ **Robert DeLoach – Stories from the Trenches**
 - *Trends in Local Government Elections*
 - *The Politics of Rate Setting*
 - *Train, Educate & Inform*
- ✓ **Greg Clumpner – Setting Rates in California**
 - *Drought Rates*
 - *Recycled Water – The New Supply Source*
 - *Making Your Rates Defensible*
 - *Social Justice: The New Trend in Water Rates?*
- ✓ **Martin Krieger – DWA’s Tribal Litigation**
 - *Summary, Possible Impacts, Current Status*
- ✓ **Questions**



Robert DeLoach

“Stories from the Trenches”

STORIES FROM THE TRENCHES

1. Trends in Local Government Elections

- ✓ Changing demographic of elected officials
- ✓ Issue orientation
- ✓ Steeper learning curve

2. The Politics of Rate Setting

- ✓ All politics are local
- ✓ Only justified in certain cases: emergency needs

STORIES FROM THE TRENCHES

3. Train, Educate & Inform

- ✓ **Know your board or council**
 - Understanding, 'good will' and mutual respect
- ✓ **Sustainable management practices**
 - Operations and fiscal integrity
 - Asset management strategy
 - Conduct an asset inventory and condition index
 - Programed and funded CIP
- ✓ **Your “first line of defense” when rate increases needed**
 - Leverage their political position
- ✓ **ASCE Report Card for America's infrastructure – (D)**

Greg Clumpner

- ***Drought Rates***
- ***Recycled Water***
- ***Defensible Water Rates***
- ***Social Justice – The New Trend?***



Drought Rates

OVERVIEW OF DROUGHT RATES

Possible Purposes & Uses of Drought Rates:

- ✓ Recover revenue lost due to lower water sales.
- ✓ Incentivize customers to reduce consumption in order to meet cutbacks/restriction.
- ✓ Drought rates should be “revenue neutral”:
 - *Some expenses may go down (purchased water, power costs, etc.) and the annual revenue requirements may be lower*
 - *Or...costs could go up (access to cheaper water is restricted, and purchased water costs go up)*
 - *The agency should only be trying to recover actual revenue requirements*

OVERVIEW OF DROUGHT RATES

Forms of Drought Rates:

✓ Fixed Surcharge

- *Easy to Implement and Understand.*
- *Provides no incentive to change usage & appears to penalize everyone regards of consumption levels.*

✓ Uniform or Tiered Rate Surcharges

- *Focus is on wasteful use and high consumption.*
- *Lacks the revenue stability of a fixed surcharge.*

✓ Drought Penalties

- *Focuses on changing behavior patterns.*
- *Legally it's not covered under Prop 218.*
- *Disadvantage: it requires enforcement & “water cops” may not be a popular concept.*

OVERVIEW OF DROUGHT RATES

Other Factors to Consider:

- ✓ How much conservation will occur “voluntarily”?
- ✓ How much conservation will you need to achieve through drought rates (i.e., in response to incentives)
- ✓ How much “messaging” and public outreach is planned?
- ✓ **Equity Concepts:**
 - *Customers who reduce usage should not pay more.*
 - *Try to avoid unintended messages (e.g., “Why are you telling us to use less water and then charging us more?”)*



Recycled Water – The New Supply Source

BRIEF OVERVIEW OF RECYCLED WATER

Possible Purposes & Uses of Drought Rates:

- ✓ **Benefits of Recycled Water:**
 - *Reduces need for additional Potable supplies*
 - *Replaces Potable uses that can be Supplied by RW*
 - *Highest financial benefit might be Recharge (?)*
- ✓ **What's the Cost?**
 - *Higher level of Treatment (likely required)*
 - *Distribution System to limited no. of customers*
 - *Avoided Highest New Potable Supply (a credit)*
 - *Avoided Cost of Wastewater disposal (a credit)*
- ✓ **Colorado Perspective: Use Water “To Extinction”.**



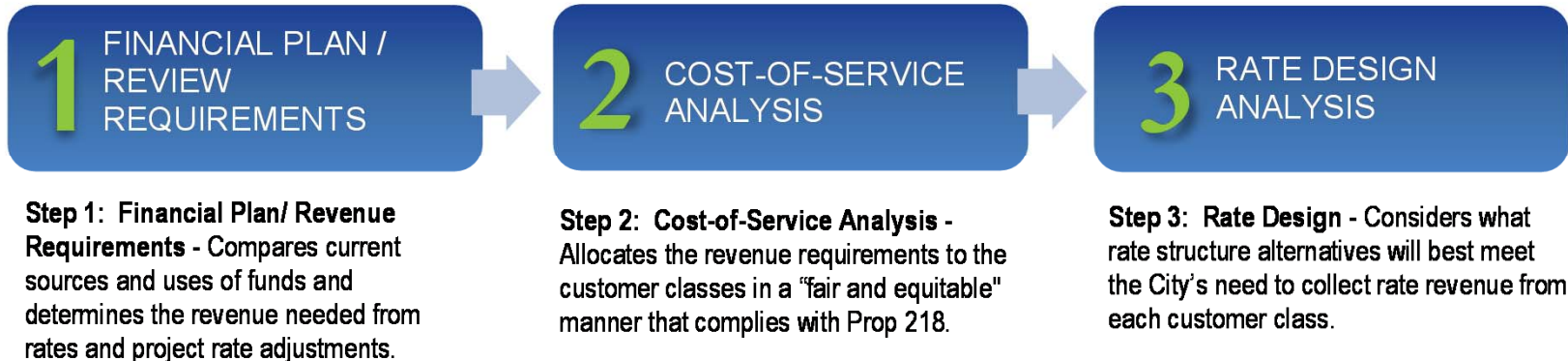
Making Your Rates “Defensible”

DEFENSIBLE RATES – INDUSTRY STANDARDS

General Industry Standards:

- ✓ Well-designed financial plan & revenue requirements
- ✓ Prepare a “cost-of-service” analysis
- ✓ Carefully consider “rate-design” issues (i.e., *legal*)

PRIMARY COMPONENTS OF A RATE STUDY



- ✓ Prepare a Comprehensive Rate Study & Build a Solid Administrative Record

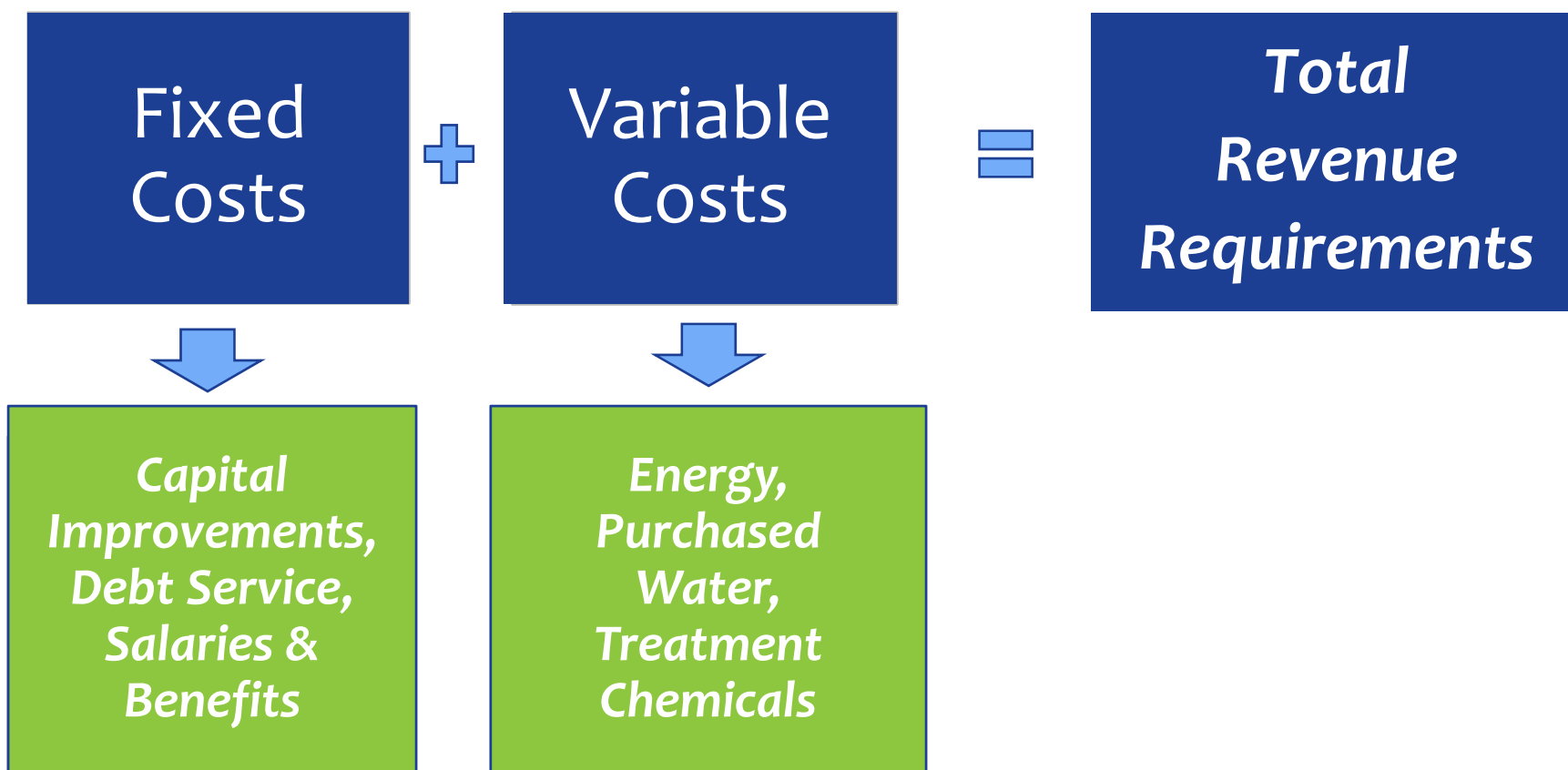
DEFENSIBLE RATES – COST ALLOCATIONS

General Thoughts on Cost-Allocations:

- ✓ **Three Basic Categories of Cost Allocations:**
 - **Allocations Between Customer Classes**
 - Needs to reflect differences in peaking requirements, total water use, etc.
 - **Allocations Within Customer Classes**
 - Rate design can significantly affect monthly bills of individual customers
 - **Allocations Between Fixed and Variable Charges**
 - These have impacts on both revenue stability and water conservation objectives

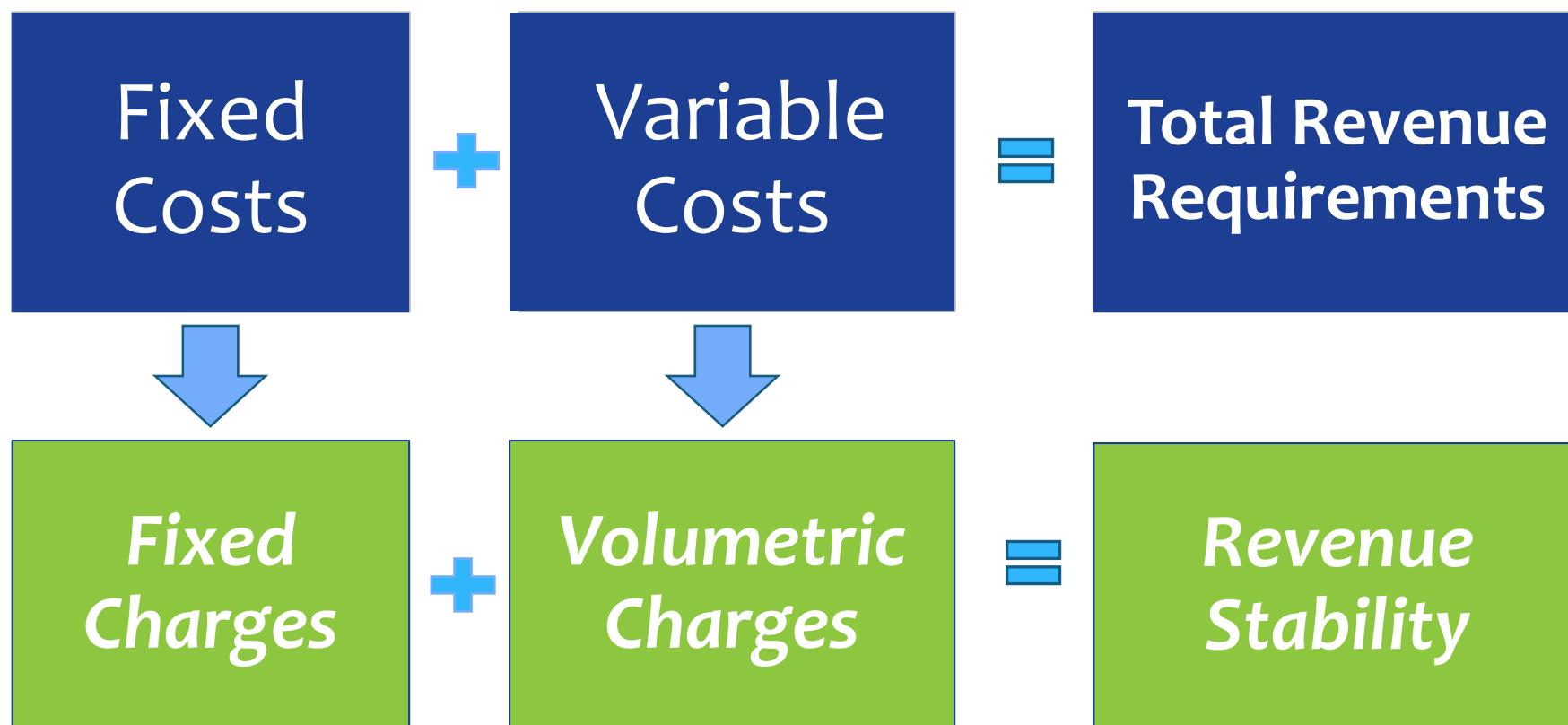
DEFENSIBLE RATES – COST ALLOCATIONS

Fixed and Variable Costs:



DEFENSIBLE RATES – COST ALLOCATIONS

How Fixed & Variable Costs Should be Collected:



DEFENSIBLE RATES – TAKEAWAYS

- ✓ **Pay attention to industry standards and recent court rulings when preparing new rates.**
- ✓ **Establish your rate objectives and policies and clearly present & communicate them to the public.**
- ✓ **Establishing a Complete Administrative Record is critical.**
- ✓ **Conservation is an increasingly important objective:**
 - You may need to meet drought restrictions.
 - General regulatory pressures mandate that your rate structure encourage efficient use.

“Social Justice” – A New Trend in Water Rates?

SOCIAL JUSTICE...

What is “Social Justice”?

- ✓ **Wikipedia:** *“Social justice is “justice in terms of the distribution of wealth, opportunities, and privileges within a society”. Classically, “justice” (especially corrective justice or distributive justice) referred to ensuring that individuals both fulfilled their societal roles, and received what was due from society.”*
- ✓ **It assumes it’s a superior approach to setting rates.**
- ✓ **It implies there are other “undefined criteria” that should be used in setting water rates.**
- ✓ **It views “societal institutions” (like water agencies) as distributors of wealth, opportunities, etc.**

SOCIAL JUSTICE...

Attitudes about Social Justice:

- ✓ **Audience question at an AWWA Conference:**
“Why should someone with money be able to buy as much water as they want just because they can afford it?”
- ✓ **Borderline Socialism?**
- ✓ **An example: Water Budget-Based Rates**
 - Those with larger lawns get more water at a lower prices (i.e., Tiers 1 & 2) than those with smaller lawns.
 - There is no penalty for high consumption levels (per se).
 - Customers are treated differently depending on their “needs” – Do you have large or small lawn?
 - Emphasis is on “Efficiency” not “Conservation”

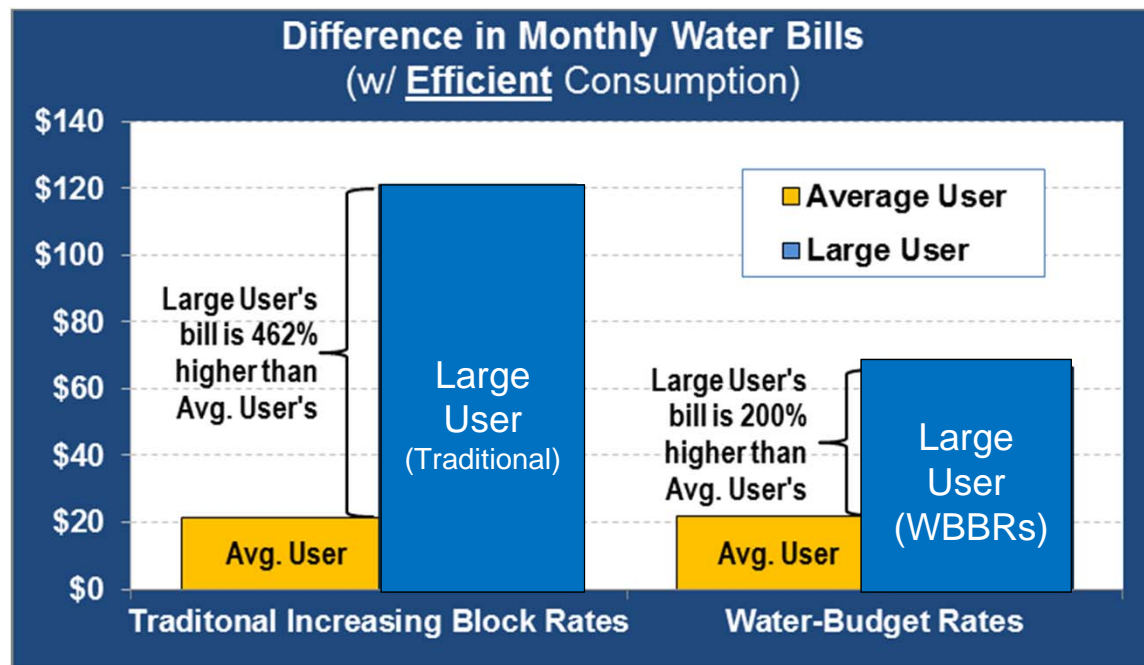
A Social Justice Example from Water Rates:

- ✓ **Water Budget-Based Rates (WBBRs):**
 - Are now the “Politically-Correct” Rate Design
 - The amount you get, and price, depends on your “Needs”
 - WBBRs Tailor 4-5 Water Tiers to Each Customer
 - Amount of Water in Each Tier depends on Your Landscaping, Household Size, etc.
 - Weather (ET) also Changes Tier sizes - So Customers Never Really know their tier size until they get their monthly bill.
 - Everyone Acknowledges that WBBR’s emphasize “Efficiency” rather than “Conservation”

SOCIAL JUSTICE...

Water Rate Comparison/ Illustration:

- ✓ Allocation-Based Rate (WBBRs) vs. Traditional 3-Tier Rates – Assuming Efficient Use:

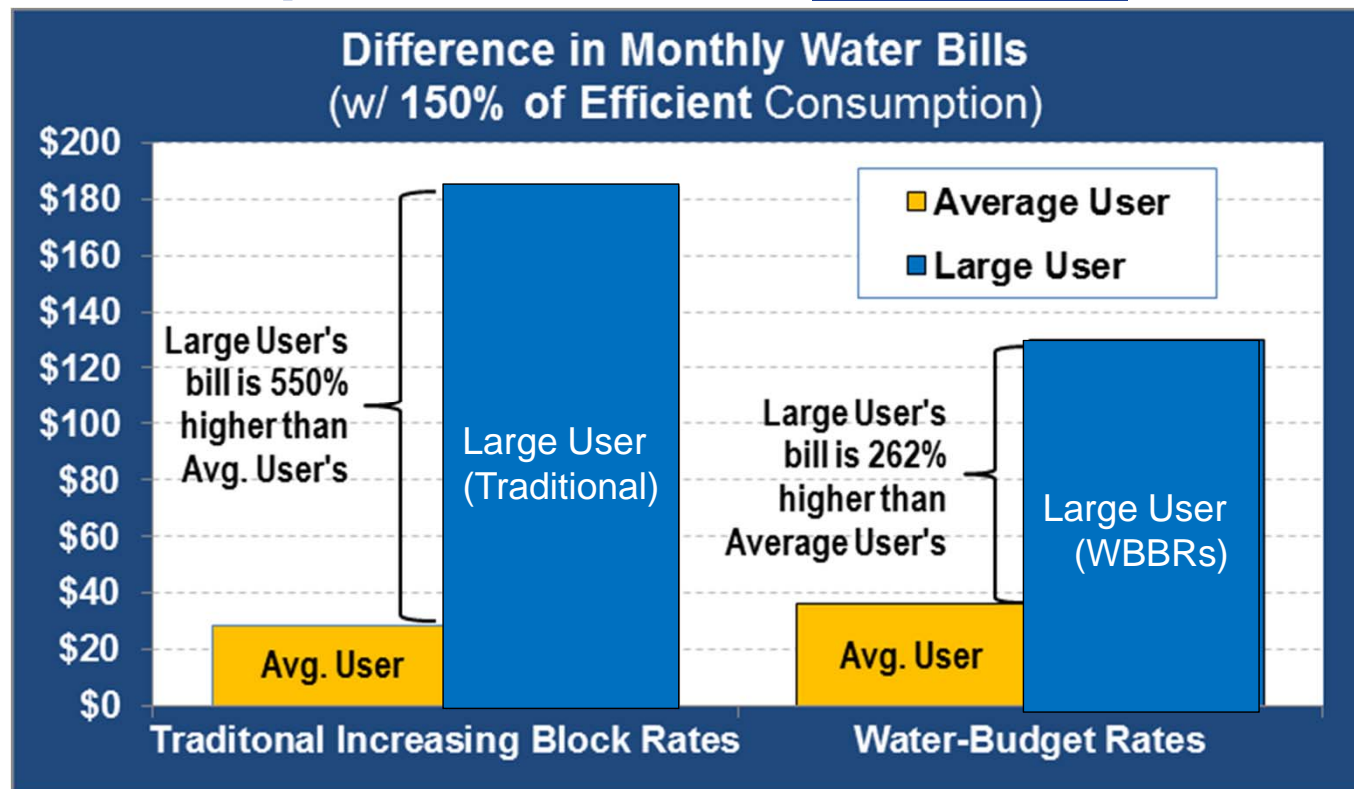


SOCIAL JUSTICE...

Water Rate

Comparison/Illustration:

- ✓ Same Comparison but with Inefficient Water Use:



Takeaways from WBBRs vs. Tier Rates:

- ✓ Customers with larger than average consumption will have smaller bills under water budget rate structures than under traditional tiered rates.
- ✓ Larger consumers pay a lower average price for their water than under traditional tiers (since more of their water is in lower tiers).
- ✓ Traditional tiers encourage more conservation than WBRs, regardless of whether you are using water efficiently or not.
- ✓ There are some basic inconsistencies between WBBRs and basic (common-sense) rate-making principles

Martin Krieger

Desert Water Agency (DWA) – Update on DWA Lawsuit Regarding a New Federal Rule

SUMMARY OF LITIGATION: WHAT'S THE ISSUE?

- ✓ **Summary of the New Federal Rule:**
 - *Federal Rule affects Special Districts, Counties, Cities, School Districts, Healthcare Districts, Flood Control Districts, other local Governmental entities & the State.*
 - *Affects ability for entities to assess taxes for services, including possessory interest tax, business tax & sales tax on Tribal lands.*
 - *If you do not have any Tribal lands in your jurisdiction, you will not be affected. If you do, you may be affected.*

SUMMARY OF LITIGATION: WHAT'S THE ISSUE?

- ✓ **Here's the New Federal Rule Affecting Leases of Indian Lands:**
 - *A new federal rule has been promulgated and published as final in the Federal Register on December 5, 2012 and go into effect on January 4, 2013.*
 - *These rules amend provisions of Chapter 25 of the Code of Federal Regulations Part 162, promulgated by the Bureau of Indian Affairs through the Department of the Interior.*
 - *These rules deal with residential, business, and wind solar resource leases on Indian Land. It is mostly innocuous from state or local government perspective with one very significant exception.*

SUMMARY OF LITIGATION: WHAT'S THE ISSUE?

- ✓ **Here's the New Federal Rule Affecting Leases of Indian Lands (cont.):**
 - *Section 162.017, a new provision, expressly prohibits state and local taxation on permanent improvements on leased Indian land, taxation of activities conducted under a lease on leased Indian lands, and taxation of possessory interests of leased Indian lands. This section appears to prohibit the levy of a possessory interest tax on leased Indian Land and the levy of business license taxes, utility user taxes, and even sales taxes on residences or businesses operating from leased premises on Indian land.*
 - *These new rules and regulations can be found at Federal Register, Vol. 77, No. 234, Pages 72440-72509. The Rule goes into effect on January 4, 2013.*

SUMMARY & TIMELINE OF LITIGATION

✓ **Genesis of the Lawsuit:**

- *July 2012 – the Bureau of Indian Affairs (BIA) and U.S. Dept. of Interior hold public meetings throughout the U.S. discussion the implementation of new Federal Rule Affecting Indian lands.*
- *These meetings were held without notice to State, County or Local agencies, thus not allowing them to comment on the proposed changes.*

SUMMARY & TIMELINE OF LITIGATION (CONT.)

✓ **Genesis of the Lawsuit (cont.):**

- *Dec. 27, 2012 – City of Palm Springs received announcement from BIA regarding new Federal Rule affecting leases of Indian lands.*
- *Dec. 28, 2012 – DWA obtained from the Federal Registry a copy of the new rule to analyze potential effects to DWA as well as other governmental entities.*
- *Jan. 4, 2013 – New Federal Rule is adopted by U.S. Dept. of Interior (without any public notice or comment).*
- *April 2013 – DWA initiated litigation against the U.S. Dept. of Interior & BIA to overturn the Federal Rule on the grounds that it violates the California Constitution.*

SUMMARY & TIMELINE OF LITIGATION (CONT.)

- ✓ **Genesis of the Lawsuit (cont.):**
 - *BIA held nationwide webinars, workshops & meetings to create their own taxing authority.*
 - *Jan. 2014 – Local Tribe in DWA service area initiates litigation against County of Riverside to Cease & Desist the taxation of possessory interests on their leased lands.*
 - *April 2014, DWA joined the lawsuit.*

POSSIBLE IMPACT OF THE FEDERAL RULE

✓ Summary of Possible Impacts of the New Federal Rule:

- *If this new Federal Rule prevails, Governmental agencies would be prohibited from collecting any form of tax revenues from possessory interest on Indian leased lands.*
- *Possessory interests would not generate tax revenues but would still be using services generated from Tax revenues (e.g., Police, Fire, Streets, Water, Sewer).*

CURRENT STATUS OF THE LAWSUIT

✓ **Current Status of the Lawsuit:**

- *Two years have passed since the new Federal Rule was adopted and the issues with both lawsuits (DWA vs. U.S. Dept. of Interior-BIA and Tribe vs. County of Riverside & DWA) are resting in the court system.*
- *Stay tuned for further updates – this could be a long journey before it is resolved.*
- *Meanwhile... current practices are unchanged & no action will be taken until the court case is resolved.*

QUESTIONS?



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