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# Board of Supervisors Memorandum

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August 10, 2021

## Historical Perspective Regarding Regional Water and Sewer Rates Established by Pima County and City of Tucson's Mayor and Council

### Introduction

It is appropriate given the action of Tucson's Mayor and Council to charge a differential water rate to residential water customers only in the unincorporated area of Pima County, to review the history of the region's attempt to establish a unified and uniform management of water resources through either water service or wastewater treatment. Examining the policies espoused by the political bodies of the City of Tucson and Pima County, it was evident the overarching goal was to establish regional water resource management, which also means uniform charges to similar classes of customers and that there should be no discrimination in water or sewer rates between residents of the City of Tucson or those in the unincorporated area of Pima County; this is diametrically opposite of recent action of the Mayor and Council on June 22, 2021 to establish differential water rates on one customer class, only in one geographic area of the County, that being the unincorporated area. This same residential class of customer will not see any increase in water rates whether they live in Marana, Oro Valley, Sahuarita or South Tucson, regardless of the cost of service to residential users in either the City of Tucson geographic boundaries or in the geographic boundaries of other cities or towns that receive water service from the City of Tucson. In short, the recent action of the City of Tucson Mayor and Council is nothing more than institutional discrimination.

### Establishment of the 1974 Metropolitan Utilities Management Agency

A joint staff report for the Tucson Mayor and Council and the Pima County Board of Supervisors dated March 21, 1974 was prepared on the basis of a January 28, 1974 Board of Supervisors and Mayor and Council joint policy statement expressing their desire that there be

"total basin-wide control over water quality; water allocation; regional and local water systems; regional and local wastewater facilities and solid waste disposal systems..."

The policy statement adopted by the two governing boards reiterated the principles behind the policy statement as

1. We endorse the concept of regional management of our water, wastewater and solid waste resources.
2. We agree in principal to equal representation of the Mayor and Council and the Board of Supervisors on a regional policy board...

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3. We support the establishment of an equitable system for funding those services on behalf of the residents of Tucson, South Tucson and Pima County." (Emphasis added)

The development of this joint policy was prompted by the Federal Water Pollution Control Act amendments of 1972, which required a single representative organization for effective region-wide resource management and the development of a plan for an equitable system of user charges.

The policy board was a nine-member board with three members appointed by the Mayor and Council, three members appointed by the Board of Supervisors, one member appointed by South Tucson and two appointed at-large; one by the Board of Supervisors and one by the Mayor and Council. Clearly, weighted voted or weighted representation was discarded in forming this regional body.

The Metropolitan Utilities Management Agency (M.U.M.) was established on July 8, 1974 by the City of Tucson Mayor and Council and Pima County Board of Supervisors who approved an Intergovernmental Agreement (IGA) establishing the M.U.M.

M.U.M. was formed primarily in response to a fragmented wastewater system operated by both the City and County, but physically connected and in response to federal enactment of the Clean Water Act in 1974 that required a single management organization to receive federal assistance for wastewater construction projects.

Establishing M.U.M. in 1974, the City of Tucson Mayor and Council recognized the need to provide some type of representation to water users outside the City limits. In a 1974 resolution, the City stated,

"Now, therefore, the City and County pursuant to the provisions of ARS §11-951, et seq., do hereby enter into the following intergovernmental agreement in order to more efficiently and economically manage and coordinate the metropolitan water and sewerage and solid waste systems; and to provide Pima County, which although it does not presently have the authority to provide water service, does represent a substantial number of persons residing in the County who are provided water by the City with a role in representing County residents in the formulation and administration of water supply, distribution and finance policies to be carried out by the City as herein designated." (Emphasis added)

Clearly, the message in the mid-1970s was regional management of water resources for both water and sewer. By adopting differential water rates, the City has taken a major step backward in regional resource management.

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Historically, the financing of both City and County systems was funded through ad valorem and sales taxes in the case of the City of Tucson and only ad valorem taxes of the County. The United States Solicitor General and the Environmental Protection Agency then "ruled that financing wastewater systems from ad valorem taxes is inequitable in Pima County since two large non-users of the sewer system (vacant land and the mines) account for over 40 percent of the assessed valuation." Hence, those paying for the system were not using the system and based on federal law, the new Clean Water Act as well as the rules regarding federal grant funding for wastewater facilities, a system that charges user fees was required to be put in place to have each user pay their fair and equitable share of the cost of operation. This concept has given rise to the present system of user fees and charges for actual service in use today.

By 1976 it was clear that M.U.M would not survive. Attachment A of an April 12, 1976 M.U.M Mayor and Council Communication on the proposed M.U.M budget, stated,

"In addition, this recommended budget incorporates the terms of the various agreements between the Board of Supervisors and the Mayor and Council concerning M.U.M. These agreements, itemized below are designed to more efficiently utilize the financial resources available and to equitably distribute the costs of operating M.U.M. to the community."  
(Emphasis added)

In a May 21, 1976 M.U.M. correspondence to City of Tucson Manager Joel Valdez, the primary reason for the establishment of the M.U.M. was stated to be,

"to establish a regional water resource management and planning agency to effectively manage and plan water use and wastewater reuse programs designed to ensure water quality and availability in the Tucson basin."

In addition, the concept of regional resource management in both wastewater and water supply was also reemphasized by stating,

"the long term need for resource management requires the development and implementation of unified wastewater reuse programs and groundwater management programs to ensure the availability of potable water for our community."

In a communication dated June 11, 1976, County Manager Kenneth S. Scharman indicated to the Board of Supervisors that upon dissolution of M.U.M.,

"Federal funds for the entire region could be in jeopardy if the user and connection fees are not calculated and expended in accordance with

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prior commitments to EPA. EPA's stand has been that the fee structure must be equitable to users within the identifiable region that is being served."

This communication discusses an equitable fee structure to users within the region. In discussing significant federal funding for wastewater treatment facilities in excess of \$30 million, the correspondence states,

"Staff feels that there are no projects or programs in jeopardy and should be no problems unless the City or County would deviate from the joint setting of an equitable fee system on a regional basis." (Emphasis added)

Again, equitable fees on a regional basis continues to be stressed even after the dissolution of M.U.M. This communication speaks directly to the fact that EPA required fee equity for the treatment facility grants. The County accepted the responsibility of taking of City sewers. The primary reason the City provided water outside its boundaries was due to the lack of enabling legislation for the County to operate a water utility.

After the dissolution of M.U.M., it was generally accepted policy that the County would be the regional wastewater provider and the City would be the regional water provider. The City continued to manage water resources in this manner until institutional memory was lost related to the original equity distribution in fees and representation required by federal wastewater grants.

#### Action to Dissolve M.U.M. by Mayor and Council Occurred on June 7, 1976

Finally, in his June 22, 1976 memorandum to the Board of Supervisors, then County Manager Kenneth Scharman cautions to the Board regarding the City Manager's recommended budget to Mayor and Council by stating,

"That recommendation would undoubtedly necessitate the future establishment of differential user fees respecting political boundaries within the metropolitan sewer system. We are fearful that differential fees would jeopardize EPA funding for any projects within the metro system, be they city or county projects." (Emphasis added)

#### City of Tucson vs. Pima County

In November 1977, the County attempted to lease or sell effluent produced by the County operated Ina Road Treatment Plant to a third party. The City then sued the County to stop the sale and claimed the effluent was the property of the City of Tucson. Since the water furnished by the City to its customers was developed from groundwater underlying lands

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owned by the City of Tucson, the City argued that it owned the water as well as the wastewater discharged or effluent.

A number of recitals in the lawsuit are of interest and instructive for the present dispute.

Paragraph II of Count One states,

“The City owns and operates a municipal water utility which serves all of the metropolitan Tucson area without respect to corporate boundaries with the exception of the areas served by franchised private water companies.” (Emphasis added)

This seems to reinforce the fact that the City, at the time of the lawsuit, fully embraced the concept of providing water service throughout all of the metropolitan Tucson area by stating, “without respect to corporate boundaries.”

Of more importance is the argument set forth by the City in Count Two, Paragraph VI stating,

“Implementation of the County position would result in the County charging the sewer users for the cost of treatment and again charging the City and the water utility water rate payers of the City for the same costs of such treatment.” (Emphasis added)

This sounds a lot like differential rates. Based on Count 2, Paragraph VI, it is clear the City was opposed to differential rates in 1977, before they were for them in 2021.

#### Settlement of Litigation and an Agreement to Resolve Immediate Differences Concerning Wastewater Treatment

On June 9, 1978, Marvin S. Cohen (a long time Outside Counsel Water Attorney for the City of Tucson) sent a memorandum to the City Mayor and Council and the Pima County Board of Supervisors recommending an IGA for Fiscal Year 1978/79 that ultimately led to the sewer merger agreement that was executed on June 26, 1979. There are a number of recommendations contained in Mr. Cohen's communication to the Mayor and Council and Board of Supervisors that are applicable to the present dispute over differential water rates.

In his June, 9, 1978 communication, Mr. Cohen stated, maintenance, conveyance, collection and treatment costs from wastewater plants

“...will be funded by a sewer user fee schedule in which there shall be no differential based upon city or county residence and no differential based upon the plant at which the wastewater is treated.” (Emphasis Added)

The recommendation goes on to further state,

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"Connection fees shall also have no differential based upon city or county residence or based upon the plant at which waste water is treated."  
(Emphasis Added)

In additional comments, Mr. Cohen stated, the threat of a continued impasse over the issue would result in losing \$28 million in EPA grants. Mr. Cohen then recommended,

"the city and county now agree that the county be the single management entity for the sewer system. While certain considerations seem to favor city management, I believe these are outweighed by the following factors favoring County management:

1. The broader tax base of the county would provide greater financial flexibility and strength for the long range capital needs of the sewer system.
2. The county Board of Supervisors is politically responsible to all of the users of the sewer system, while the Mayor and Council are politically responsible only to city residents. Power without political responsibility would be contrary to important principles of our governmental system." (Emphasis added)

At this time, because of the adoption of differential water rates, unincorporated County residents find themselves in the exact position that Mr. Cohen warned against in 1978, where the City has power without having political responsibility for their action. It should be noted the water policy board, the Citizens Water Advisory Committee appointed by the Mayor and Council to give some voice to the Tucson Water-served unincorporated residents voted against such discriminatory rates.

#### 1979 Sewer Merger Intergovernmental Agreement

On June 26, 1979, the City of Tucson and Pima County finalized the division of utility responsibility between the City and the County with the City providing water service and Pima County providing sewer service. The agreement is a culmination of a series of previous documents that have been referenced that finalized Pima County providing wastewater services and the City providing water services.

The IGA is mostly a division of assets between the City and County related to these utilities with Article VII discussing single entity management by stating on Page 13,

"Pima County, as the single management entity, is committed to the concept of equal service for all users of the metropolitan system without regard to jurisdictional location." (Emphasis added)

This stated policy objective, again reinforces the concept that service was to be equitable for all users and is specific in using the words “equal service” and importantly instructive in “without regard to jurisdictional location.” This language further reinforces the concept of traditional utility operation where a utility operates under a cost of service concept. Cost of service is an overall utility concept that is founded on the principle that utilities are essential services and should not be operated as a profit center for the operator. Cost of service is a driving principle of utility operation to ensure equal and fair access of individuals to an essential service.

Property Tax Equity Implications Regarding Water

Water delivery is usually priced as quantity delivered through a system and user fees are the traditional method of cost recovery. The only exception is the property tax now being levied by the Central Arizona Water Conservation District (CAWCD) for the delivery of Central Arizona Project (CAP) water, of which the City of Tucson is the largest recipient. The table below shows the allocation of acre-feet of water being delivered by the CAWCD to agriculture, municipal users and mines.

**Table 1  
 2021 CAP Entitlements**

<b>Recipient</b>	<b>Acre-feet/year</b>	<b>Percentage</b>
<b>Community Water of Green Valley</b>	2,858	1.55%
<b>Flowing Wells Irrigation District</b>	2,854	1.55%
<b>Freeport-McMoran</b>	2,906	1.58%
<b>Marana</b>	2,336	1.27%
<b>Metro DWID</b>	13,460	7.32%
<b>Oro Valley</b>	10,305	5.61%
<b>Spanish Trail Water Company</b>	3,037	1.65%
<b>Tucson</b>	144,191	78.45%
<b>Vail Water Company</b>	1,857	1.01%
<b>TOTAL</b>	<b>183,804</b>	<b>100.00%</b>

As you can see, the City of Tucson, through Tucson Water, receives almost all of the Pima County CAP water surface allocation. Their allocation of 144,191 acre-feet constitutes 78.5 percent of all water distributions.

CAWCD is supported by property taxes levied in the counties through which CAP delivers water, that includes Pima County. The table below indicates the property taxes collected by Pima County jurisdictions since property taxes were levied by the CAWCD.

**Table 2  
 Distribution of CAWCD ad Valorem and Water Storage Tax based on 2021  
 Net Assessed Valuation (NAV)**

<b>Jurisdiction</b>	<b>2021 NAV</b>	<b>% NAV</b>	<b>CAWCD Tax</b>
<b>Marana</b>	\$671,072,055	6.9210%	\$17,335,354
<b>Oro Valley</b>	\$758,352,130	7.8212%	\$19,590,127
<b>Sahuarita</b>	\$295,801,166	3.0507%	\$7,641,232
<b>South Tucson</b>	\$24,975,636	0.2576%	\$645,223
<b>Tucson</b>	\$3,962,584,979	40.8676%	\$102,362,997
<b>Unincorporated PC</b>	\$3,983,364,389	41.0819%	\$102,899,764
<b>Total</b>	<b>\$9,696,150,355</b>	<b>100%</b>	<b>\$250,474,696</b>

The largest class of property taxpayers come from the unincorporated area of Pima County. Given the property tax contributions by unincorporated area residents to the CAWCD and the number of users in the unincorporated area, which accounts for 29 percent of Tucson Water users, it is apparent there is a tax equity issue where unincorporated residents are paying significantly more property taxes to support the primary source of renewable supplies to Tucson Water. It is particularly noteworthy that it was the Pima County Board of Supervisors who in 1977 approved Pima County joining the CAWCD and taxing its residents to pay for CAP water. This action was not undertaken to disproportionately favor the City of Tucson to the detriment of unincorporated residents as it was instead intended to benefit the region as a whole.

Who Pays for Water Utility Infrastructure?

The City of Tucson used the fact that there were 35.6 percent of the pipes in the unincorporated area as opposed to 64.4 percent in the incorporated areas as one of the primary arguments for establishing differential water rates to unincorporated users. The analysis omits any reference to the pipes transiting the unincorporated area to serve Marana and Oro Valley as well as those used for recharge and recovery in the unincorporated area serving the City of Tucson. An important distinction that is not made by Tucson in this argument is who has paid for this water utility infrastructure. In almost all cases, developers developing property pay for all water-related infrastructure. The pipes in the street service individual homes, the transmission lines that deliver water to developing areas are all paid for by developers, which simply means that the cost of water infrastructure is paid by homeowners who buy homes from developers who have paid for this infrastructure. Hence, one of the fundamental arguments made by the City to justify differential water rates is suspect.



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#### Other Water Providers for Unincorporated Residents

Finally, it should be noted that of the many water utilities serving the unincorporated area, there are several that serve water to residents of the City of Tucson and other municipalities such as Metropolitan Domestic Water Improvement District and Flowing Wells Irrigation District. None of these water providers charge a differential water rate to unincorporated area residents or to their City of Tucson customers.

#### Recommendation

I recommend the Board of Supervisors take the following actions:

1. Respectfully ask the City of Tucson Mayor and Council to rescind their actions of June 22, 2021 adopting a discriminatory differential water rate for only customers in the unincorporated area of Pima County.
2. Request the City of Tucson Mayor and Council assume a leadership role in regional water resource management as envisioned by past Mayors and Councils of the City of Tucson, including substantial revision to their service area policy, reflecting the originally contemplated regional water entity.
3. Allow Pima County to participate in a legitimate cost of service study to determine if differential water rates for unincorporated customers meet the "just and reasonable test" for establishing differential water rates for only unincorporated area customers.
4. Commit to establishing a zone or cost of service rate structure where similarly situated users pay the same water rate for service regardless of jurisdictional boundary, including those customers within the City of Tucson. Otherwise, charge a uniform service rate for all customers regardless of their jurisdictional location.
5. Request the City of Tucson establish a Water Sustainability Fund transferring the City of Tucson overhead and service cost paid by Tucson Water customers (subject to audit); said fund to be used to supplement the water supply for the region. If committed to do so by the City of Tucson, Pima County also commits to establish a Water Sustainability Fund for those same charges applied by Pima County to our wastewater utility.
6. All funding from the City of Tucson and Pima County paid into the Water Sustainability Fund is to be used to purchase "drought insurance" by acquiring Central Arizona Project surface water supplies and recharging same in Pima County regional aquifers, making said water available in the future if necessary.

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Sincerely,



C.H. Huckelberry  
County Administrator

CHH/anc –July 27, 2021

Attachments *(A complete copy of the documents cited is available [here](#))*

c: Jan Leshner, Chief Deputy County Administrator  
Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,  
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