



MEMORANDUM

Date: November 22, 2021

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner *Jan Leshner*
Chief Deputy County Administrator

Re: Chronology and Options Regarding City of Tucson Differential Water Rates

Throughout 2021 the Mayor and Council of the City of Tucson have discussed options for the implementation of differential water rates. The Board of Supervisors first voted to formally oppose such efforts on behalf the residents of unincorporated Pima County on April 6, 2021. The City's differential water rates are now scheduled to go into effect on December 1, 2021. A separate Memorandum is being developed by the Pima County Attorney's Office that delineates legal options the Board of Supervisors might pursue. This memorandum summarizes the actions that have taken place on this topic.

In the past few years, the topic of regional taxation equity has been raised on numerous occasions by members of the City of Tucson Mayor and Council. More recently, these discussions centered around the use of County General Fund monies to repair roadways in the unincorporated County, as well as the claim that area businesses, home and land owners choosing not to incorporate existing unincorporated areas are costing the region millions of dollars in state-shared revenue loss. These discussions eventually morphed into the idea of the City collecting additional revenue from the unincorporated area through its water utility to compensate for the alleged regional tax inequity.

On January 5, 2021, the City Mayor and Council discussed options for the implementation of a differential rate structure for water customers located outside of the City, and directed staff to gather stakeholder input regarding a proposal to adjust rates for Tucson Water in unincorporated Pima County by up to 30 percent. This topic was discussed at the City of Tucson Citizens' Water Advisory Committee (CWAC) on February 3 and March 3, resulting in a letter sent to the Mayor and Council from the CWAC Chair and Vice Chair signaling concerns for the approach and stating that a majority of the members did not support the differential rate proposal.

Ignoring their advisory committee, Mayor and Council adopted on April 6, 2021 a notice of intention to implement a differential rate, and set June 8, 2021 as the date of the public hearing for adoption of the differential rate structure. Also on April 6, 2021, the Board of Supervisors adopted Resolution 2021-9 affirming support for jurisdictional rate parity for Tucson Water customers. Throughout this year the County Administrator authored numerous memoranda rebutting the ever-changing justifications for differential rates argued by City elected and appointed officials and their consultants. A summary of relevant actions and correspondence on this topic is provided as an Attachment.

Of particular relevance in this correspondence is the County's input to the City's consultant submitted through CWAC on July 30, 2021 and September 8, 2021, in which the County raised the issue of deficiencies in the City cost of service study. Some of the key points made in these documents include:

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- The City, through their consultant, has failed to demonstrate an increased cost to providing service in the unincorporated County since they have only selected factors in the analysis that support their case and ignored others that do not.
- The cost-of-service study also incorrectly allocates 100 percent of the Utility Tax to inside City customers stating, "...this tax is only assessed to customers living within city limits." However, the City tax does appear on the bills of unincorporated residents.
- Using consumption as the basis for splitting all costs between inside and outside customers when some of these costs such as director's office, billing, metering, financial and engineering are unit costs not related to volume consumed.
- City sales tax and groundwater protection fees are applied to all Tucson Water bills, benefiting solely the City of Tucson.
- There is a disproportionate payment of Central Arizona Water Conservation District taxes by unincorporated residents thereby subsidizing Central Arizona Project water for City customers.
- Costs of treating and conveying water containing contaminants such as perfluoroalkyl and polyfluoroalkyl substances (PFAS) and 1,4 Dioxane within the City limits is subsidized by unincorporated County customers.
- Reclaimed water use in the City of Tucson is subsidized by unincorporated County customers.
- The manner in which the Mayor and Council has selected to allocate Tucson Water's risk and debt does not meet the criteria set by the American Water Works Association for developing fair and equitable rates.
- The City has further corrupted the concept of utility-basis and equity ownership by including the City of South Tucson and the Towns of Marana, Oro Valley and Sahuarita, the Tohono O'odham nation, the Pascua Yaqui Tribe and Tucson Unified School District within the "ownership" group, even though these entities have no more ownership stake in the utility than the remainder of the unincorporated County. This clearly demonstrates the discriminatory approach used by the City, which politically intermingles owners and non-owners thereby invalidating the utility-based approach altogether and rendering any rate of return projections meaningless.

Had these factors and others been addressed it would likely demonstrate that unincorporated County water service costs less than City of Tucson and that unincorporated customers are already significantly subsidizing City residents at existing rates.

On October 19, 2021, the City Mayor and Council repealed their prior ordinance adoption to establish a differential rate in the unincorporated County and adopted Ordinance 11881 to accomplish same, thereby supporting their policy decision with a cost of service study. The ordinance, effective December 1, 2021, increases rates on non-exempt unincorporated County customers by 10 percent, with residential volumetric tiered rates increased up to a maximum of 40 percent.

Given the City's unwillingness to appropriately consider the input provided by the County, options available to the Board include the following:

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- Sue the City on its own behalf, or join a class of unincorporated customers in a class action lawsuit. The County Attorney's Office will provide additional privileged information regarding this option.
- Offer to the City to jointly review regional tax equity in exchange for deferring implementation of the differential water rate until such review has been conducted and recommendations generated. If the process resolves tax equity concerns, the differential rate would be eliminated.
- Offer to the City to jointly use our respective regulatory authority and influence to reduce water consumption in the unincorporated area to equivalent City per capita levels, in exchange for deferring and eventually eliminating the differential rate ordinance.
- Pursue a legislative change to broadly prohibit use of differential rates by municipalities. Success achieving relief may be limited by being unable to retroactively apply a legislative change to the City ordinance which would take effect prior to any legislative relief; and fashioning a legislative change that resolves the City rate inequity without opposition from other municipalities who implement differential fees under similar but more equitable circumstances.

JKL/mp

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Yves Khawam, PhD, Assistant County Administrator for Public Works

**Summary of Actions and Communications
Regarding City of Tucson Differential Water Rates**

On January 5, 2021, the City Mayor and Council discussed options for the implementation of a differential rate structure for water customers located outside of the City, and directed staff to gather stakeholder input regarding a proposal to adjust rates for Tucson Water in unincorporated Pima County by up to 30 percent.

On February 3, 2021 and March 3, 2021, this topic was discussed at the City of Tucson Citizens' Water Advisory Committee (CWAC), resulting in a letter sent to the Mayor and Council from the Chair and Vice Chair signaling concerns for the approach and stating that a majority of the members did not support the differential rate proposal.

On April 6, 2021 Mayor and Council adopted a notice of intention to implement a differential rate and set June 8, 2021 as the date of the public hearing for adoption of the differential rate structure.

On April 6, 2021, the Board adopted Resolution 2021-9 affirming support for jurisdictional rate parity for Tucson Water customers.

On May 10, 2021, the County Administrator provided the Board a communication rebutting justifications for the differential rate argued by City staff in terms of differential infrastructure use, resource use, conservation, equity, precedent and obligation to serve as represented in City-County IGAs as excerpted below:

1. Differential Infrastructure Use

City staff has indicated that unincorporated County customers comprise 29 percent of Tucson Water customers and that these 29 percent utilize 36 percent of Tucson Water assets based on pipe measurements. It is unclear whether this measure included renewable water assets mostly located in the unincorporated area serving all City residents. Regardless, it is not a substitute for a cost of service study and the City is yet to demonstrate that it is more costly to serve unincorporated areas.

Additionally, Tucson Water states that unincorporated County customers use 43 percent more water than City customers. Since Tucson water has a tiered rate structure based on consumption, the average County customer is generating substantially more revenue than the average City customer (much more than the 43 percent increased consumption), thereby significantly subsidizing City customers at the current rate structure despite geographic distribution of water assets.

Furthermore, City staff position regarding geographic distribution of infrastructure and customers is disingenuous in that most of the Tucson Water well pumping and recharge facilities are located in the unincorporated areas. The attached Tucson Water exhibit depicts well fields serving Tucson Water customers. Interestingly, only two of the six well fields are entirely contained within the City. Tucson Water is acting as though it has exclusive ownership and management of the Tucson Active Management Area by withdrawing water from the unincorporated areas to serve City customers all while proposing to penalize those customers located in the geographic area of water withdrawal through differential rate increases.

2. Differential Resource Use

City staff has indicated that 32 percent of unincorporated County customers are on septic systems compared to 5 percent of City customers. However, reclaimed water is not used as a potable source by the City which instead primarily uses it for landscape irrigation and recharge. Septic systems achieve the same goal at much lower cost since effluent from these systems do not need to be reclaimed and redistributed. Instead it infiltrates directly into the

ground, either reaching the aquifer (recharge) or is available for tree root irrigation and reduction of heat island effect through evapotranspiration. Due to the large reduction in energy needed for on-site recharge and irrigation, it can be argued that septic systems can be as environmentally sustainable as centralized treatment and redistribution systems. This is substantiated by the U.S. Environmental Protection Agency promotion of benefits on their septic systems overview web page:

- Public health benefits - Proper use of decentralized systems reduces the risk of disease transmission and human exposure to pathogens, which can occur through drinking water, surface water, and shellfish bed contamination.
- Environmental benefits - Wastewater treatment removes pollution from surface water, recharges groundwater, and replenishes aquifers.
- Economic benefits - Decentralized wastewater systems help communities reduce large infrastructure and energy costs to collect and treat wastewater.

No perceived penalty should therefore be directed toward water users with septic systems. Similarly, no penalty should be applied to City regulation and rebates regarding diverting grey water to irrigation.

City staff further points to water resources retained by Pima County produced at the Corona de Tucson and Avra Valley water reclamation facilities. Indeed the County retains this effluent since it is legally entitled to do so as substantiated by the Arizona Supreme Court ruling that the utility treating the wastewater controls the resulting effluent (Arizona Public Service Co. v. Long, 1989). The County bears the entire regulatory burden and financial cost of producing reclaimed water. The fact that the County granted the City rights over 90 percent of the effluent produced by the metropolitan water reclamation facilities via the 1979 City-County Agreement constitutes a gift to the City not borne out by case law, and which would be subject to reconsideration should the 1979 Agreement be placed into question.

3. Differential Conservation Results

City staff has indicated that customers in the unincorporated County use 43 percent more water on average than City customers. As demonstrated above, this additional consumption results in unincorporated customers subsidizing Tucson Water infrastructure and operations for City residents. Additionally, and as noted by the City Citizen's Water Advisory Committee, water use is complex and influenced by a number of factors including multi-family units which have much lower consumption and are more prevalent in the City.

While water conservation is a regional aspiration, utility incentives/disincentives to promote conservation should be applied regardless of geographic distribution. There are environmentally-minded extremely low water users in the unincorporated areas just as there are extreme water users in the City. An equitable sustainable water use policy should target consumption of each user and not geographically discriminate based on geographic location. The Tucson Water tiered rate structure is a good example of one method already in place that supports a sustainable water use policy.

4. Equity and Precedent

City staff continues to claim that differential rates would address alleged inequities, that City is extending a City service to non-City residents with no return-on-investment, and that the region loses \$40-\$50 million in state-shared revenues due to unincorporated County population.

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I believe that I have adequately addressed the latter issue of state-shared revenues and the large cost of annexation in my April 30, 2021 communication to you. As to the former, it has already been noted that unincorporated customers are subsidizing City customers at the current rates and despite Tucson Water groundwater withdrawals occurring primarily in the unincorporated areas. However, even more importantly is that the City selected to provide this large number of unincorporated customers with water service at a time when the City was operating as a regional provider. Had the City not provided water to these areas, property owners would have looked to other providers, such as the Metropolitan Domestic Water Improvement District (Metro Water) to establish service.

It is especially noteworthy that should these unincorporated areas have incorporated into Metro Water service, they would be paying lower water rates than currently paid to Tucson Water. Indeed, the current average Metro monthly bill, inclusive of miscellaneous changes, taxes and fees is \$50.94 per month compared to \$52.06 per month for Tucson Water users. The City has voluntarily extended service to serve the unincorporated areas and now hold these customers hostage without political recourse, by seemingly punishing them for having accepted water from the City. Had they not been provided City water, they would have secured water at lower cost in addition to not facing what could be construed as extortion under the guise of equity.

5. Obligation to Serve and City-County IGAs

It is agreed that the City has no legal obligation to serve outside City boundaries, has no legal obligation to extend service to those areas included in original CAP application and that a differential rate would not violate the 1979 City-County Agreement. However, what is at issue is the City's past intentions demonstrated through its actions whereby it extended service far beyond City limits and included representations as a regional water provider in its Central Arizona Project water allocation application and the 1979 City-County Agreement to justify reclaimed water allocations.

While the City has reassigned some of its County effluent allocation to other water providers through various agreements between the City and other entities, as reflected in the 2000 City-County Agreement, it has done so strictly at its own discretion based on the premise that the water provider controls the effluent which is contrary to law.

On May 26, 2021, the Pima County Attorney's Office provided a legal analysis to the Board regarding the proposed differential rate, which the Board released to the public on June 22. The analysis concluded that the City's proposal to adopt an ordinance that would apply differential water rates to the same class of customers based solely on whether a customer is within the jurisdictional boundaries of the City may not comply with the notice and reporting requirements of A.R.S. § 9-511.01. If the City proceeds with adopting the ordinance, a customer may have a claim that the water rate increase for unincorporated customers is neither just nor reasonable. A customer may also bring the additional challenge that the ordinance violates Arizona's equal protection clause for discriminating customers and arbitrarily and irrationally increasing rates based solely on the jurisdictional boundary.

On June 2, 2021, the CWAC sent another letter to Mayor and Council recommending deferral of fees until at least fall of 2021 to allow time for further analysis, discussion and public participation.

On June 7, 2021, a County Administrator communication provided to the Board including a comprehensive analysis and summary of issues excerpted as follows:

- City staff have yet to demonstrate that a differential rate for the unincorporated County is warranted based on a cost-of-service study. Cost-of-service is the basis for the statutory requirement that fees are just and reasonable.

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- The City of Tucson receives a disproportionately large allocation of regional Central Arizona Project (CAP) water and County effluent due to prior City representations, with geographic service areas extending far beyond projected City limits.
- All properties in the County pay Central Arizona Water Conservation District tax that funds the capital cost debt of CAP water delivery, thereby further disproportionately benefiting Tucson.
- Proposed differential rates hold unincorporated customers hostage. Had it been known in advance that City water policy would shift away from a regional approach that now includes 34 percent of customers outside City limits, development would have secured alternate water service.
- The City's own Citizens Water Advisory Committee has strongly recommended against adoption of differential rates citing a lack of legitimate basis.
- The Pima County Board of Supervisors adopted Resolution 2021-9 affirming support of jurisdictional rate parity for all Tucson Water customers.

On June 15, 2021, City Principal Attorney Chris Avery sent a letter to Interim Tucson Water Director John Kmiec, indicating that the City process for adopting a differential rate was at risk since it was not supported by a cost of service study. As a result, the City Mayor and Council contracted with a consultant to provide a cost of service study and readopted a notice of intention to implement a differential rate structure with a public hearing set for October 19, 2021.

On June 24, 2021, the County Administrator sent a letter to City Manager Michael Ortega requesting that the City be directly involved in the cost of service study.

On July 9, 2021, the City Manager responded indicating that the cost of service study vetting process will occur in public meetings of the CWAC and asked the County Administrator if he wished to include any County staff not already involved in the CWAC process.

On July 12, 2021, the County Administrator responded requesting to include the Assistant County Administrator for Public Works who had been tasked with review of any cost of service study regarding differential water rates.

On July 26, 2021, City consultant Harold Smith of Raftelis Financial Consultants, Inc. sent the first phase of a cost of service study to Interim Tucson Water Director John Kmiec to be vetted with the CWAC.

On July 30, the Assistant County Administrator for Public Works provided an analysis of the cost of service study shortcomings to CWAC.

On August 10, 2021, the County Administrator provided the Board a historical perspective regarding regional water and sewer rates to further demonstrate the inequity of the proposed City differential rate. This included excerpts from prior agreements between the City and County demonstrating the regional nature of sewer and water management and that with the differential rate, the City was shifting away from an established position of acting as a regional water provider. A few excerpts from this communications follows:

- 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:

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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...
 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."
- Establishing the Metropolitan Utilities Management Agency 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."

On August 20, 2021 the County Administrator provided the Board with additional information regarding tax equity associated with the differential fee proposal including the following excerpt:

What is now apparent is that there is a property tax and tax equity issue associated with differential water fees being charged to Tucson Water's unincorporated customers. These inequitable fees include:

- The unincorporated area paying more than half of the property tax levied by the Central Arizona Water Conservation District even though the unincorporated Tucson Water customers only makes up 29 percent of their customers and Tucson Water received 80 percent of the Central Arizona Project CAP municipal water allocation in Pima County.
- The unincorporated Tucson Water customers pay 42 percent of the CAP fees assessed by Tucson Water even though the unincorporated customers only make up 29 percent of Tucson Water customers.
- The unincorporated Tucson Water customer pays a City of Tucson 2.5 percent sales tax even though they live in the unincorporated area where there is no sales tax.

On August 30, 2021, the City consultant responded to the County CWAC letter emphasizing that the utility approach is legitimately used to set rates as supported by the manual related to water rates, fees and charges of the American Water Works Association (AWWA). Assistant County Administrator

On September 8, 2021, the Assistant County Administrator for Public Works responded to the Raftelis letter by sending follow-up correspondence to CWAC.

On September 15, 2021, the City and their consultant proceeded to release the second phase of the Raftelis cost of service study which was delivered to the CWAC without responding to the County's letter, and leaving the County identified concerns unaddressed.

On September 22, 2021, the County Administrator sent a communication to the Board of Supervisors again identifying deficiencies with the City cost of service study, and incorporating the County July 30, 2021 and September 8, 2021 responses to CWAC. A summary of the points excerpted from these two documents include:

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- The City, through their consultant, has failed to demonstrate an increased cost to providing service in the unincorporated County since they have only selected factors in the analysis that support their case and ignored others that do not. Factors included in the cost-of-service analysis are customer meter and class data, system peaking data (maximum usage by hour and month), and distribution lines (inch-miles of 8" diameter and smaller pipes). While these factors could be considered legitimate, assumptions and calculations were not provided for validation, including elements such as isolating distribution and metering infrastructure costs which are paid by property owners through the development process. The same applies to how operations and maintenance costs were allocated to inside City and unincorporated residents. Using self-serving targeted factors and questionable assumptions, the study reports an approximately five percent greater cost-based differential for the unincorporated County.
- The cost-of-service study also incorrectly allocates 100 percent of the Utility Tax to inside City customers stating, "...this tax is only assessed to customers living within city limits." However, City tax does appear on unincorporated resident bills.
- Additional factors not considered in the cost-of-service analysis include:
 - Using consumption as the basis for splitting all costs between inside and outside customers when some of these costs such as director's office, billing, metering, financial and engineering are unit costs not related to volume consumed;
 - City sales tax and groundwater protection fee applied to Tucson Water bills, benefiting solely the City of Tucson;
 - Disproportionate payment of Central Arizona Water Conservation District taxes by unincorporated residents thereby subsidizing Central Arizona Project water for City customers;
 - Costs of treating and conveying water containing contaminants such as PFAS and 1,4 Dioxane within City limits subsidized by unincorporated County customers;
 - Reclaimed water use in the City of Tucson subsidized by unincorporated County customers; and
 - Evaluation of average customer elevation data due to the significant costs associated with moving water from the Avra Valley, SAVSARP and CAVSARP well fields to the east side of the City of Tucson.

A review of these combined factors would likely demonstrate that unincorporated County water service costs less than City of Tucson and that unincorporated customers are already significantly subsidizing City residents at existing rates.

- The Raftelis study calculates a utility-basis with a differential rate of return. However, the consultant acknowledged at the September 16, 2021 Citizen's Water Advisory Committee (CWAC) Financial Subcommittee Meeting that the only real "finding" of the analysis is a five percent differential and that further selection of an outside City differential is strictly a policy decision left to Mayor and Council based on the artificial "returns" they wish to receive.
- This rate setting methodology employs an equity-based investment approach calculating a rate of return on utility investment. The methodology is designed to evaluate rates for private utilities predicated on a return paid to owners of the utility to recover costs from ratepayers and generate profits to owners. However, there is no basis to apply this private utility profit model to a municipal utility. A municipal utility has no identified owners as it is organized as an enterprise within a municipal corporation bound by Governmental Accounting Standards Board rules. In the case of Tucson Water, all customer ratepayers have contributed equally to investments made and secured against the enterprise, either directly or through developer

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funded expansions. The only exception that may warrant a differential rate for a municipal utility, aside from differential infrastructure and operational costs, is if one class of customers incurs risk beyond that of another class. This context has been raised in prior CWAC meetings where it was stated that the City of Tucson General Fund acts to “backstop” the enterprise fund in the event of a force majeure default. However, even if this eventually were to occur, an emergency expenditure exceeding the reserve capacity of the Tucson Water Enterprise Fund would result in a loan secured by the enterprise to cover the default amount. That loan, however, would be repaid to the City General Fund or other loaning entity with principal and interest by all Tucson Water ratepayers, regardless of jurisdictional location. As such, the risk to the enterprise is borne by all ratepayers of the enterprise since City residents contributing to the City General Fund through property taxes are no more owners of the system than international visitors contributing to the City General Fund through sales tax payment for goods and services.

- The equity-based utility investment approach requires inferring a rate of return based on cost of equity values. Since municipal utilities cannot be evaluated on the basis of cost of equity, the phase 1 analysis arbitrarily selects values ranging between 5 and 10 percent based on Arizona Corporation Commission rate cases for private utilities. However, these values include imbedded profit margins and applying these ranges to “outside City customers” assumes outside customers pay dividends to inside customers who somehow hold a greater risk-based ownership stake in the utility. The manner in which Mayor and Council has selected to allocate Tucson Water’s risk and debt and does not meet the criteria set by the American Water Works Association for developing fair and equitable rates.
- The City has further corrupted the concept of utility-basis and equity ownership by including other municipalities, the Tohono O’odham nation, the Pascua Yaqui Tribe and Tucson Unified School District within the “ownership” group, even though these entities have no more ownership stake in the utility than the remainder of the unincorporated County. This clearly demonstrates the discriminatory approach used by the City, which politically intermingles owners and non-owners thereby invalidating the utility-based approach altogether and rendering any rate of return projections meaningless.
- The City cost-of-service study does not stand up to scrutiny and provides no legitimate basis for a differential fee to be applied to unincorporated County residents. As stated in the July 28, 2021 County Attorney analysis regarding legal options available to challenge the differential rate, the County has standing and capacity to sue the City on its own behalf or it may join a class of unincorporated customers. The City Council did not follow statutory procedures in adopting the differential rate ordinance on June 22, 2021 and has yet to demonstrate a basis for a fee differential through a valid cost-of-service study.

On October 6, 2021, the County Administrator sent additional examples to the Board highlighting the discriminatory nature of the water rates by highlighting similarities between exempt and non-exempt Tucson Water customers.

On October 21, 2021, the County Administrator send a request to Chief Civil Deputy County Attorney Sam Brown to which was attached a CPA analysis of the City cost of service study provided to the Southern Arizona Home Builders Association, independently supporting the County’s conclusions.

On October 19, 2021, the City Mayor and Council repealed their prior ordinance adoption to establish a differential rate in the unincorporated County and adopted Ordinance 11881 to accomplish same, thereby supporting their policy decision with a cost of service study. The ordinance, effective December 1, 2021, increases rates on non-exempt unincorporated County customers by 10 percent, with residential volumetric tiered rates increased up to a maximum of 40 percent.