

Escondido shorts itself on bills, seeks \$876,000 from widow

By [Logan Jenkins \(/staff/logan-jenkins/\)](#) 6:25 p.m. May 5, 2014



Sylvia Clark, 87, stands among the avocado groves on the land she has owned for over 40 years in Escondido. Clark recently got a \$800,000.00 plus water bill from the city for water she wasn't charged from in the past. Now most of the trees are dying and have to be cut down. — *K.C. Alfred / U-T San Diego*

Escondido is suing an 87-year-old widow for up to \$876,000 for paying her avocado ranch's water bills on time and, at least on paper, in full.

You read right.

On time and in full.

"I am so upset," Sylvia Clark told me in a tremulous voice. "I'm shaking like a leaf."

A decimal point, misplaced more than 14 years ago in a utility formula, has knocked Clark off balance.

To the city, on the other hand, Clark profited from a billing error and should pay a part of the difference, the most the law allows.

The history: A year ago, Clark, a housewife who handed the management of her family ranch to her sons following the 2007 death of husband Kyle, received her routine water bill directly from Christopher McKinney, the city's director of utilities.

McKinney began by understating that his personal communication, addressed to "Mr. Clark," was an "unusual step."

For more than 14 years, he wrote, the 256-acre ranch's bill had been 90 percent less than what it should have been.

What follows is technical. Stay with me.

The ranch's meters reflected the cubic feet used to irrigate up to 15,000 trees. The city, however, billed for thousands of gallons (kgal). A conversion formula had to be used.

"Since there are approximately 7.48 gallons in one cubic foot," McKinney explained, "the correct conversion factor to use when converting from (cubic feet) to kgal is 7.48 (divided by) 1,000, or 0.00748. Instead, the factor which has been used on previous bills was 0.000748. Because this was less than what it should have been by a factor of 10, it effectively means that the water consumption charges billed to your account have only been one-tenth of the correct amount."

McKinney's conclusion was chilling: "We must address the payment of past due amounts promptly."

That's when Sylvia Clark started shaking.

In my view, a judge and jury could look at the misplaced decimal point in two very different ways:

- It could be argued that it's unfair to bill someone and boost the price later. Consider an airline ticket. What if you flew to Paris for \$500 and then, months later, American claims you must pay \$5,000 because someone dropped a zero?

Most people would say, That's no way to run an airline. Just as buyer's must beware, so should airlines in pricing tickets.

Furthermore, the Clark family contends the price they paid — and never suspected was too low — was factored into crucial business decisions made by Lyle Clark.

With dramatically higher water costs, the Clarks might have sold the property in 2004, when real-estate was hot and an offer was on the table, rather than invest in more trees.

If they were paying the true cost of water, they might very well have altered their business plan, perhaps investing in wells.

In other words, their decisions were not accurately informed if the city reneges on its price, said Lorin Clark, Sylvia Clark's attorney son.

By this logic, if Sylvia Clark is forced to pay a higher price than she was billed, she could countersue the city for damages.

- Escondido's legal position, presented to the City Council in closed session, is simple: A one-time clerical error robbed the city water utility of several millions of dollar. In recouping a fraction of the losses — the exact amount varies according to the length of the applicable statute of limitations up to four years — the city is defending the ratepayers who paid full price while the Clarks enjoyed a 90 percent discount.

Though it's unclear if "intent" will figure into legal arguments, Escondido City Attorney Jeff Epp pointed out that the Clarks are no babes in the groves. They probably knew their irrigation water was too cheap to be true.

That's a sore point.

In the city's complaint, filed in January, a passage reads: "Defendants, through their wrongful conduct described above, have reaped substantial gains."

Wrongful conduct? Paying bills on time and in full?

Lee Clark, another of Sylvia's sons, said he'd gone to City Hall several times to complain about the ranch's water bills because he thought they were too high.

If anything, the Clarks invited scrutiny, not evaded it, he said. Is that the action of someone knowingly cheating the city?

To close, consider the kicker in the teeth.

Even with a huge discount, the ranch cleared just \$18,000 a year since 2004, Lee Clark told me. If the Clarks had paid the real cost of water, they'd have stumped their trees years ago, he said.

Shortly after receiving the city's fateful letter, the Clarks started chainsawing their groves, leaving a small number of trees near Sylvia Clark's home.

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