

Water & Drought

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California curtails senior water rights

State hasn't taken this move since 1977

Practical effect of order remains to be seen

Southern California city sues over urban cutback order

By Dale Kasler and Ryan Sabalow

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In a dramatic and controversial move that reflects the severity of the drought, California water regulators Friday ordered farmers and others with some of the oldest water rights in the state to stop pulling water out of California's rivers.

The action by the State Water Resources Control Board, after weeks of warnings, affects 114 different water-rights holders in the Sacramento and San Joaquin river watersheds, as well as the Delta region. Despite recent rains, the board said it had little choice but to issue the orders, known as curtailments.

"Demand in our river systems is outstripping supply," said Caren Trgovcich, the water board's chief deputy director.

More orders are likely in the weeks to come. "It's not even summer," said the board's executive director, Tom Howard. "We're going to be doing further curtailments." It's the first time since the drought of 1977 that the state has curtailed any so-called senior water rights.

Those who violate the order could be fined \$2,500 per acre-foot. An acre-foot is nearly 326,000 gallons. Trgovcich said the affected users must halt their diversions "effective immediately."

Friday's order spares major municipalities such as the city of Sacramento, but includes several urban users, such as the Placer County Water Agency and Nevada City, and corporations such as John Hancock Life Insurance Co. and Sierra Pacific Industries.

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At least one municipal user is facing the cutoff of its entire supply. The Byron Bethany Irrigation District, one of those that



lost its water rights Friday, is the sole water source for Mountain House, a relatively new suburb west of Tracy, said the district's lawyer, Stuart Somach.

Somach said Byron Bethany won't cut off deliveries to Mountain House and will confer with state board officials about next steps.

"You can't not send water up there," Somach said, referring to Mountain House. The state has \$19 million in funding for emergency drinking water programs, as part of the \$1 billion drought package approved by the Legislature earlier this year.

Some rights holders are planning litigation instead of compliance. Somach said Byron Bethany is considering suing to protect its water, arguing that the water board doesn't have jurisdiction over such ancient water rights. The Oakdale Irrigation District in Stanislaus County threatened to sue as well.

"The water board is using a bulldozer when it needs a scalpel," said Oakdale General Manager Steve Knell in a prepared statement.

Water board officials said they're bracing for lawsuits. "They have a right to their day in court," Howard said.

The curtailment theoretically affects 1.2 million acre-feet of water. But in practical terms, Howard said it isn't clear how much water will actually be saved. Plenty of water rights holders, anticipating Friday's action, have been storing water in reservoirs, and that supply is off limits to regulators.

"Stored water is ... essentially the property of the person who stored it," Howard said.

Many of the rights that have been curtailed cover relatively small volumes of water, and the curtailment won't have a major impact on users. Placer County Water Agency, for instance, said its senior right consists of a small amount from an American River tributary. Along similar lines, Jerry Spencer, manager of the Van Vleck ranch near Rancho Murieta, said his operation's water right affects a tiny stream that already dried up.

"Telling us to stop diverting doesn't really make any difference," Spencer said. "There's nothing to divert."

Nonetheless, Howard said he believes Friday's order will bring more pain to water users, particularly farmers. "There will be some land ending up being fallowed as a result," he said.

Mike Wade of the California Farm Water Coalition said, "There's a lot more cutting that just took place. It will take some time to figure out just how deep that goes. ... It's really impossible at the moment to tell how many farms are going to be affected and what that's going to mean for food production and prices for consumers."

Customers of the federal Central Valley Project and the State Water Project, the two mammoth man-made delivery systems that bring water from north to south, have lost about one-third of their water this year. The University of California, Davis, estimates that more than 560,000 acres of farmland will sit idle.

"With every turn of the screw as water supplies shrink, more people suffer," said Paul Wenger, president of the California Farm Bureau Federation, in a prepared statement.

Generally speaking, senior rights holders are those who established a claim before California created a formal water rights system in 1914. Earlier this year, the state curtailed the rights of more than 9,000 "junior" rights holders, those who established claims after 1914.

Friday's order doesn't affect those whose rights existed before 1903. San Francisco, for instance, holds water rights that date to 1901 and is unaffected. The order also leaves untouched so-called riparian rights, considered the most ironclad of all, covering the water used by farmers and others immediately adjacent to rivers and streams.

All that could change as summer progresses. Officials said that as more curtailment orders come, the water board will likely target those with riparian and the earliest legal rights.

In yet another development, the water board has been sued over Gov. Jerry Brown's order requiring urban areas to cut water use.

The city of Riverside sued the board in Fresno Superior Court last week, demanding a court order blocking regulators' implementation of the governor's order, which took effect June 1.

Brown ordered a 25 percent reduction in urban water usage over the next nine months, when compared to 2013 consumption. As implemented by the water board, the order varies widely according to prior consumption patterns. Riverside must cut 28 percent.

The city says it has plenty of groundwater, isn't facing a shortage, and should have been placed in the 4 percent category – the lowest of the nine tiers.

In setting up the different categories, the board rejected the idea of letting cities use their groundwater to get placed in the 4 percent tier. It said those cities should hang onto their groundwater in case the drought gets even worse.

"Groundwater for many areas is the savings account available during times of drought," the agency said in a prepared statement Friday. "The limited, 4 percent reduction tier is not available for communities who are relying on that savings account to weather the drought."

Riverside's suit is being viewed sympathetically in parts of Sacramento, where some local water agencies unsuccessfully argued to be placed in lower conservation tiers because of their own ample groundwater supplies. Because of its heavy outdoor watering, the Sacramento area is among the regions in the state hardest hit by the water board's rules, with most facing cutbacks of 28 percent or more.

"It's exactly what we're saying," said Tom Gray, general manager of the Fair Oaks Water District. Fair Oaks was placed in the 36 percent category, the most stringent of all, even though it has invested more than \$5 million in the past nine years to drill new wells and enhance its water security.

Nonetheless, Gray said the district doesn't plan to sue.

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Doug Sterling

The fine of \$2500 per acre foot

works out to \$0.007 per gallon of water, which is a lot less than the water is worth.

California would benefit from a free market in water.

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Ethan Thomas

11 da

Who will get smelted next! Non native Smelt now are above senior water rights holders. 300 Billion gallons of fresh water for a non native fish or is it 400 billion! Yeah take a shorter shower that will help...Lol..

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Frank Passarelli

12 da

Gov. Brown must develop a statewide water development and distribution. Waiting for the rainy da just isn't going to happen. There must be underline efforts to keep the status quo.

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Joe Blow

12 da

Lets flood the state with 5 million more illegals, yeah that sounds like a great idea then we can shu down all farming.

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Pat Sisson-Kelley

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Whatever happened to paying farmers NOT to grow crops? Did this go away? Would not this be intrusive... I realize trees is one thing, but alfalfa, rice...or is it really about wresting control...

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Rich Bozzano

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do your homework...An acre foot of water is appr. 325,000 gallons, not 826,000.

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Alfred Cushman

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I can hardly wait till July, another 25% cut will be called for.

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Bob Johnson

I already cut my irrigation by 90% and some farmers will be cut by 100%... I really don't care much about the 2,000 acres of lawns drying up compared to nearly 750,000 acres of farmland drying up. BTW... I get NO subsidy.

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