



Media Release

State Water Board Dismisses Enforcement Actions Against Byron-Bethany and The West Side Irrigation Districts *Board Action Sustains Authority to Enforce Water Rights System When Demand Exceeds Supply in Droughts*

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SACRAMENTO – Today the State Water Resources Control Board (State Water Board) adopted an order dismissing a pair of enforcement actions brought against two water districts alleged to have taken water not available due to drought conditions. The Order follows an impartial administrative hearing where two State Water Board members concluded there was not enough evidence to support the allegations.

The Order ends the two enforcement actions started last summer by the State Water Board's Division of Water Rights (Division) against [Byron-Bethany Irrigation District \(BBID\)](#) and The [West Side Irrigation District \(WSID\)](#). While dismissing the administrative civil liability complaint and draft cease and desist order, the decision also affirms the Board's authority to prevent illegal diversions.

Responding to the drought, the Division had prepared an analysis of the naturally flowing water available in the Sacramento and San Joaquin river watersheds. The analysis included an assessment of the demands being made by water users. In the two enforcement actions, Division staff alleged that the water districts were taking water after Division staff determined water was not available for the districts' senior water rights.

After the water districts contested the allegations, the Board commenced a public hearing in March in which the Division presented its case against the districts, and two Board members, serving as impartial hearing officers, considered the evidence and arguments of the parties. The Board issued a draft order on [May 26](#), which was affirmed by the full Board today.

"The Board determined that it has the authority to enforce against senior water right holders who take water if there is not an adequate supply for them under the priority system. The Board also concluded, however, that there was not sufficient data presented in this case to show that these particular water districts violated the water rights priority system," said Felicia Marcus, chair of the State Water Board.

"Implementing the Water Rights system during drought conditions is a difficult challenge, but the Board is charged with independent review of actions initiated by the Board's staff in a fair and impartial administrative hearing," Chair Marcus added.



The Board did not find that there was in fact water available for diversion by the water districts. Rather, because these were enforcement actions, the Division had the burden of proof. The Board concluded that the evidence presented by the Division was not adequately explained and supported to carry its burden to show that there was insufficient water available.

The adopted order clarifies that the State Water Board has the authority to impose penalties for diversion or use of water by claimants of senior rights when water is unavailable under the priority of their rights. This authority allows the Board to curtail water use and enforce the water rights priority system during drought, or in other circumstances when the water supply is insufficient to satisfy all claimants. In the order, the Board found that the forecasting tool the Division used to issue curtailment notices was accurate for that purpose, and “an indispensable planning tool to forecast water availability for categories of rights when shortages are anticipated.”

In an effort to improve enforcement protocols related to water use or diversions, the State Water Board will be evaluating and refining its water availability methodologies and practices based on lessons learned. Later this year, the Board will hold a workshop on best practices for water availability analyses and other regulatory approaches related to administering water rights during shortages.

Background:

The State Water Board is responsible for issuing water right permits and licenses and enforcing many of California’s water right laws. The largest category of water rights is appropriative water rights, which are subject to the rule of priority. Under the rule of priority, the earliest, senior water rights are satisfied before more recent, junior water rights. The priority of an appropriative water right determines whether water is available to that right.

The State Water Board has established procedures to assure a fair and impartial hearing on enforcement matters. The Board members serve as impartial hearing officers, weighing the evidence and arguments of the parties. Members of the prosecution team, in this case, Division of Water Rights staff, are prohibited from communicating about the proceeding with the Board members or any member of the hearing team. The Board considers only the evidence submitted into the record when making its determination. The BBID and WSID enforcement actions were subject to these special procedures.

On March 21, 22 and 23, the State Water Board conducted the public hearing to consider evidence about the availability of water for diversion by WSID and BBID. The prosecution team primarily relied upon a forecasting analysis created by the Division to determine availability of water during the drought following the rule of priority for water rights. The analysis is a forecasting tool that predicts water availability by comparing forecasted natural supply to estimated demand. The Board found that the analysis was appropriate for that purpose, but it was not adequate without additional information to prove the specific violations alleged in the enforcement proceedings. The adopted order finds that the water availability analysis and supporting evidence was insufficient to continue the enforcement proceedings against the irrigation districts.



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To read more on the water rights system, please visit the Division's frequently asked questions [webpage](#).

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