

Central Valley, Delta water rights under scrutiny

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Hundreds of property owners across California's Central Valley and the Sacramento-San Joaquin Delta are scrambling to prove they have a right to divert water from the region's streams, the result of a state order that comes due in just four days.

The order from the State Water Resources Control Board is driven by a longstanding dispute over scarce water supplies, one that has intensified as California appears likely to face a fourth straight drought year. But proving those water rights may be difficult: In many cases, the proof lies buried in county parcel maps and other property records dating as far back as the 1850s.

Property owners who fail to submit the required proof by Friday could be ordered to stop diverting water entirely.

The dispute focuses primarily on the Sacramento-San Joaquin Delta, a troubled estuary that is the heart of California's complex water diversion system. State and federal agencies divert water from the Delta to serve about 25 million people and 3 million acres of farmland across the state. But their water rights are actually inferior to those held by property owners in the Delta itself.

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Niagara Falls State Park visitors look over masses of ice formed around the American Falls, photographed from across the Niagara River in Niagara Falls, Ontario, Canada, on Feb. 17. For many cities in the Northeast, it was the coldest February on record, and some places recorded the most days of zero or below temperatures. | Aaron Lynett The Canadian Press/AP

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"I'm angry. Why are they coming after us?" said Charlotte Gilmore, a Sacramento resident whose family has owned a large farm parcel on Ryer Island in the Delta since the 1930s. "I don't think the state is being fair coming at us to solve their problems."



The dispute stems from a complaint filed in July by the California Department of Water Resources and the U.S. Bureau of Reclamation, which operate the massive water diversion systems in the Delta as well as major upstream reservoirs. The two agencies suspect water released from their reservoirs is being inappropriately diverted by property owners in the Delta as it flows past their land.

This prompted a countercomplaint from the California Sportfishing Protection Alliance, a nonprofit group, alleging DWR and Reclamation are diverting water from the Delta and its tributary streams that belongs to property owners.

As a first step toward resolving the issue, the State Water Resources Control Board on Feb. 4 ordered 1,061 property owners with claims to water in the Central Valley to prove those claims by March 6. The order applies only to "senior" water rights, including those established before 1914 and "riparian" rights.

Geographically, the order covers territory from approximately Redding all the way south to Merced, with a major

emphasis on the Delta.

The riparian category is particularly troublesome to track because these are the oldest rights, typically attached to waterfront property. In the early days of California settlement, the federal government allowed settlers to acquire property by “reclaiming” swampland, usually by converting it to farming. In most cases, this activity included a right to draw water from an adjoining stream for crop irrigation.

Historically, state regulators required no record keeping of riparian water rights. Only five years ago did the water board order riparian water users to begin reporting how much water they divert each year. Many have never been required to provide legal proof of their water rights.

“The idea that people can gather, collate and submit this information in approximately 30 days is, frankly, pretty daunting in most cases,” said Kevin O’Brien, an attorney at Sacramento law firm Downey Brand who is helping about 30 clients respond to the order. “It’s not like people have this stuff sitting around in a shoebox.”

Gilmore provides a case in point. Her father acquired their Ryer Island property in 1939, when it was willed to him by a close family friend. That friend obtained the property through a federal land grant in the 1850s. Any proof of a water right likely will be found in property records from that Gold Rush era. Such records often are found in faded paper archives at a county recorder’s office, or in court records, and are not electronically searchable.

“We had rights and used that water before the state even had any departments,” Gilmore said. “It’s very difficult to prove it.”

Katherine Mrowka, enforcement section manager at the water board, said the order is not just a response to the dueling complaints filed with her agency. The information also will help protect senior water rights if the state orders reductions in water diversions due to the drought, as it did last year.

When such curtailments are ordered due to low stream flows, those with junior water rights are required by state law to stop diverting water to ensure enough for those with senior rights. By verifying all the senior rights and their water needs, Mrowka said, the water board can ensure curtailments are adequate to meet those needs.

“Our underlying goal here is to protect the priority system for water rights,” Mrowka said. “We need this information so we can do good modeling of supply vs. demand.”

She said water board staff met recently with several attorneys representing property owners affected by the order. To make the process easier, the board agreed to simplify the online forms it makes available for reporting the information.

The information gathered from property owners could lead to an adjudication, in which water rights are investigated and verified in a judicial proceeding, a process that can take years. The result is a finding that apportions water among the parties and has the weight of a court ruling. The California Sportfishing Protection Alliance asked for adjudication in its complaint to the board, partly because of estimates that the state has given out five times more water rights than Central Valley watersheds can produce in an average year.

“We’ve promised more water than we have,” said Bill Jennings, executive director of the sport-fishing group. “You don’t solve it by going after senior water-right holders that have had this water for years. You solve it by bringing demand into balance with supply. And the state just can’t bring itself to do that.”

Mrowka said adjudication is possible later but that it won’t happen soon because the water board can’t take on something so complicated while also managing the drought.

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