

## California accepts drought water deal with Delta farmers

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In a significant breakthrough in California's efforts to conserve water, state officials Friday agreed to a compromise measure that will reduce supplies to Delta farmers by 25 percent.

The State Water Resources Control Board approved the settlement with scores of Delta farmers, heading off a potentially lengthy legal battle over the state's ability to halt diversions from rivers and streams. State officials have been looking at issuing curtailment orders to the state's most senior water rights holders to cope with the drought; growers in the Sacramento-San Joaquin Delta have among the most senior rights of all and were thought to be immune before this year.

"It's significant. You have a group of very senior water rights holders who have not been touched historically...who are going to offer a certain amount (of water)," said Felicia Marcus, chair of the [state water board](#), which oversees water rights in California. "They're handing us some water....We really appreciated the creative approach offered to us by Delta farmers."

It's a voluntary program, and Marcus was reluctant to predict how many of the hundreds of eligible growers in the Delta will sign up by the June 1 deadline. But she said there's considerable incentive to play along: Those who participate will be assured they'll get 75 percent of their normal supplies. Those who don't could face more stringent cutbacks as the summer unfolds and the agency rolls out its curtailment orders.

"Folks who step up and take the voluntary deal will just be insulated from deeper cuts," she said.

Those familiar with the Delta's water community said they expect plenty of growers to participate. "I think major acreage is going to be involved," said George Hartmann, a Stockton lawyer who represents farmers in the Delta. He said 500 growers attended a meeting on the proposal earlier this week in Stockton, and many seemed inclined to go with the program.

The compromise is something of a landmark. Usually any change in how water is allocated in California is resolved in the courts, not by compromise. And the Delta, with its considerable environmental problems, is typically a wellspring of litigation.

"I'm happy to see people working together to find creative ways to stretch the water," said Ellen Hanak, a water expert at the Public Policy Institute of California.

Peter Gleick, head of the Pacific Institute think tank in Oakland, agreed: "If farmers are willing to take voluntary limits on how much water they use in return for more reliability and less uncertainty, the whole state benefits."

State officials said the water saved in the Delta won't necessarily be diverted to some other part of California. "It reduces pressure on the overall system," said Michael George, the state-appointed Delta "water master" who oversees water rights in the area.

The water board already has curtailed rights for several thousand junior water rights holders as the drought stretches into its fourth year. Now the state is taking [the extraordinary step](#) of going after senior water rights. For the most part, that means those whose rights were established before 1914, when California formally established its system for allocating supply. The state curtailed some pre-1914 senior rights on a limited basis during the 1977 drought, but this year's orders are likely to be far more extensive, Marcus said.

Fearing the worst, a group of Delta growers proposed the 25 percent cutback approved by the state water board. Those farmers have so-called “riparian rights,” which enables them to take water flowing past their land. In the somewhat byzantine water-rights pecking order, riparian rights are probably the best.

Hundreds of farmers have riparian rights in the Delta, the hodge-podge of sloughs, streams and other waterways that serve as the largest single source of fresh water in California, servicing about 25 million people and 3 million acres of farmland. The Delta’s 600,000 acres represent less than 10 percent of California’s irrigated farmland, George said.

He said the voluntary cutbacks would run from June to September, “the time of maximum stress on the system.”

To participate, growers can choose between reducing their water diversions by 25 percent or fallow a quarter of their land. State officials pledged to make spot checks throughout the summer, although George said he thinks “peer pressure” will keep growers honest.

Although the compromise surfaced publicly just a few days ago, lawyers for the farmers said they have been talking with state officials for months.

“Landowners started saying, ‘Let’s do our part to address the drought. Let’s see if we can do it in a way that is practical and makes sense and alleviates the need to fight about it with the State Water Resources Control Board,’” said Jennifer Spaletta, another attorney for Delta growers.

She said the written agreement makes clear that the farmers aren’t surrendering the legal rights to 100 percent of their water. “All of our clients maintain that they have these rights,” Spaletta said. “The whole point of this agreement is to rise above these disputes and do something.”

Hartmann added that many farmers prefer the certainty of a 25 percent cutback to the uncertainty of a fight. “Where’s that going to get you? The courtroom, with all of its vagaries,” he said. “No smart lawyer ever predicts litigation outcomes.”

George and Marcus said the water board is talking to senior rights holders elsewhere in the state about voluntary cutbacks. But they expect that some landowners will take the state to court rather than surrender any water. The board could begin issuing curtailment orders affecting other areas of the state as early as next week.

“There will be litigation,” Marcus said. “That’s a certainty.”

In a year in which growers are scrambling to figure out how much they can plant, the compromise lets Delta farmers know exactly how much water they’ll have at their disposal, said Dante Nomellini, an attorney for the Central Delta Water Agency.

“It got that monkey off their backs,” Nomellini said.

Experts said larger farms that have the flexibility to switch to less water-intensive crops are best suited to take the compromise. “It will be difficult but very doable,” Spaletta said.

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