

# A New Court Ruling Could Threaten California's Ability To Regulate Water Use Amid Drought

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Climate

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On Friday, a California court issued a ruling that could hinder the state's ability to issue mass water cuts amid its historic drought.

Sacramento County Superior Court Judge ShelleyAnne Chang told the State Water Board that it can't enforce water cuts without first letting farmers and irrigation districts defend their water rights at a hearing. Water rights, Chang said, are essentially property rights, and taking them away without a hearing violates due process.

"The practical implication is that the court has reminded the state board that water rights are a form of property rights, and they have to use a lot more care when they are trying to regulate them," Jennifer Spaletta, an attorney with the

Central Delta Water Agency, [told the Associated Press](#).

Four irrigation districts in California's Central Valley, including the Central Delta Water Agency, [filed a petition](#) in late June alleging that the California State Water Board violated property rights by issuing curtailment notices to farmers without first holding a public hearing. California [issued notices](#) of curtailments to senior water rights holders — those with claims to the water dating before 1914 — in mid-June. [Almost immediately](#), several affected water districts filed lawsuits challenging the curtailments.

Chang sided with the plaintiffs, issuing a temporary restraining order on the curtailments.

“The curtailment letters ... result in a taking of petitioners' property rights without a pre-deprivation hearing, in violation of petitioners' due process rights,” Chang [wrote in her ruling](#). She disagreed with the state's argument that curtailment notices were just notices, not technically orders, and therefore don't require hearings. That line of reasoning, she wrote, is “not only misguided, it is also inaccurate.”

Following the ruling, the State Water Board issued a statement calling the order “limited in scope.” The curtailment notices, the board maintains, are merely intended to alert water rights holders to the fact that there might not be enough water in the system to support all of their needs. Before issuing any fines, the board would hold hearings.

The order, the board said, does not impact the state's ability to enforce water cuts, or crack down on those who divert water illegally.

“While the order finds fault with the language of the notice, the order states: ‘To be clear, [the Water Board and its staff] are free to exercise their statutory authority to enforce the water code as to any water user, including these petitioners, if it deems them to be in violation of any provisions of the water code, so long as the bases for said action are not the Curtailment Letters,’” the board said in an emailed statement.

But lawyers for the irrigation districts — and some legal experts not involved with the case — say that the court's ruling throws curtailment notices across the state into question. While Friday's case deals with dozens of farmers in the Central Valley, California has issued [thousands of curtailment notices](#) this year. Stuart Somach, a water-law attorney not involved in the case, [told the Sacramento Bee](#) that the ruling could impact “everybody that received a curtailment order” from the State Water Board.

“I'm not suggesting that [the ruling] has a binding effect on every other letter that was issued,” Steve Herum, an attorney whose firm represented the West Side Irrigation District in the case, [told the Los Angeles Times](#). “But it should cause the state agency to pause at least. And I would not be surprised if one or more recipients may rely on this opinion to say that the letter has an unconstitutional impediment in it.”

[Nearly a dozen](#) irrigation districts have sued the State Water Board, according to the Sacramento Bee, with many arguing that the board doesn't have jurisdiction to limit pre-1914 water rights. Chang's decision on Friday did little to clarify that point of contention, though she did order further hearings on the issue of curtailment letters for the end of the month.

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