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California flexes muscles in water tussle with farmers

By  
Associated Press

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AP Photo/Rich Pedroncelli

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FRESNO, Calif. (AP) -- California water regulators flexed their muscles on Thursday by ordering a group of farmers to stop pumping from a branch of the San Joaquin River amid an escalating battle over how much power the state has to protect waterways that are drying up in the drought.

The State Water Resources Control Board issued the cease and desist order against an irrigation district in California's agriculture-rich Central Valley that it said had failed to obey a previous warning to stop pumping. Hefty fines could follow.

The action against the West Side Irrigation District in Tracy could be the first of many as farmers, cities and corporations dig in to protect water rights that were secured long before people began flooding the West and have remained all but immune from mandatory curtailments.

"I've made investments as a farmer based on the rule of law," said David Phippen, an almond grower in the South San Joaquin Irrigation District. "Now, somebody's changing the law that we depend on."

Phippen said his great-grandfather paid a premium price in the 1930s for hundreds of acres because it came with nearly ironclad senior water rights.

Phippen said he takes those rights to the bank when he needs loans to replant almond orchards or install new irrigation lines. He fears that state officials are tampering with that time-tested system.

"In the water world, the pre-1914 rights were considered to be gold," said Ed Casey, a water attorney who says the battle between the state water board and farmers "tests ... the limitations on that piece of gold."

Several irrigation districts have filed unresolved legal challenges to stop the curtailments demanded by the state.

Among them is the West Side Irrigation District, which claimed a victory in a ruling last week by a Sacramento judge who said the state's initial order to stop pumping amounted to an unconstitutional violation of due process rights by not allowing hearings on the cuts.

Superior Court Judge Shelleyanne Chang also indicated, however, that the water board can advise water rights holders to curtail use and fine them if the agency determines use exceeded the limit.

West Side is a small district with junior water rights, but the ruling also has implications for larger districts with senior rights.

West Side's attorney Steven Herum said the order issued Thursday was prompted after the judge sided with his client.

"It is clear that the cease-and-desist order is retaliatory," Herum said. "It's intended to punish the district."

Water board attorney Andrew Tauriainen disputed that contention, saying the state's investigation began months ago and was slowed by the district's recent lawsuit.

"A reasonable person could look at West Side Irrigation's lawsuit and infer that it was timed to thwart the enforcement action that West Side knew was coming," Tauriainen said.

Even if the state prevails in its push for curtailments, it would face manpower and equipment challenges trying to ensure that farmers in far-flung rural areas don't illegally divert water.

The state has just 23 inspectors who have performed 250 field visits since May, when the state started to send letters informing farmers and large water users of low flowing rivers and streams, said Kathy Mrowka, the state's water rights enforcement manager.

Meanwhile, courts must sort out whether the state has the power to tell farmers what they can do with water claimed before the government got involved.

Buzz Thompson, a water rights expert at Stanford Law School, expects California to prevail in the fight to curtail water use. He said courts have repeatedly recognized the state's authority to prevent wasteful water use.

"It's only when you get into a really serious drought that you finally face the question," he said.

California is an anomaly among Western states in the way it treats water users. Thompson said other states use widespread meters and remote sensors to measure consumption or don't provide special status to those with property next to natural waterways.

"In any other state, this wouldn't be a question," he said.

California rights holders are going to have to abide by more strict measurement requirements starting next year after fighting several attempts to overhaul the rules for decades, said Andy Sawyer, a longtime water rights attorney at the water board.

"They long thought it's nobody else's business," said Lester Snow, executive director of the California Water Foundation, which advocates for better measurement of water consumption to improve management.

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Nirappil reported from Sacramento, California.

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