

SJ water users, cut off during drought, win a round in court

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Posted Feb 21, 2018 at 6:43 PM

Updated Feb 21, 2018 at 6:43 PM

Thousands of water-right holders who were told to cease diversions during the last drought were deprived of due process, **a judge found Wednesday**, raising questions about how the state will handle future shortages.

Santa Clara Superior Court Judge Brian Walsh ruled that the water users, including some mostly agricultural districts in the Delta, were not afforded “certain minimal protections” like formal hearings in which they might have challenged the state’s claim that there wasn’t enough water available.

Instead of having such an opportunity, the water users were warned to immediately cease diversions. One water district was threatened with a hefty fine, though the state ultimately backed down.

The judge also found that water districts that enjoy senior water rights — issued more than a century ago — cannot be cut off at all under the section of state water law that previously had been cited by authorities.

“It’s a good feeling to finally be vindicated against the egregious actions of the state,” said Jeanne Zolezzi, a Stockton-based attorney representing some of the water users.

Next time, she said, the state will have to do it “the right way.”

At the center of the legal dispute was the Byron-Bethany Irrigation District near Tracy. In the summer of 2015, during the worst of the drought, the State Water Resources Control Board alleged that Byron-Bethany had been illegally diverting water from the Delta even though it had been warned that there was no longer enough water in the system to make use of its 104-year-old water right.

The water board proposed a \$1.4 million fine for 12 days of alleged illegal diversions. But the case was later dropped due to concerns over how the state arrived at its conclusion that there wasn’t enough water for Byron-Bethany and other water users.

“They were using all of this bad information and never vetted it publicly,” Zolezzi said Wednesday. “We didn’t even know what they were using.”

Even in dismissing the Byron-Bethany case, the water board continued to maintain that it has the authority to cut off senior water right holders under a certain provision of law.

That conclusion appears to be contradicted by Wednesday’s ruling, though the judge noted that there are other areas of the law that do give the state some authority over senior water users. His ruling doesn’t evaluate those areas.

In a prepared statement on Wednesday, Byron-Bethany General Manager Rick Gilmore said the judge’s decision “reaffirms and solidifies the strength of the oldest water rights in California.”

“Our legal team is currently reviewing the ruling and its implications in greater detail,” Gilmore said. “We are hopeful that the decision generates momentum for positive change.”

Water board spokesman George Kostyrko noted that the judge’s decision is just one part of a multi-phase trial, and that the litigation as a whole has not yet been fully resolved.

Said Kostyrko: “The board is reviewing the decision and evaluating next steps.”

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