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California to dismiss \$1.4M fine against irrigation district

HIGHLIGHTS

Water regulators Thursday recommend dismissing a historic \$1.4 million fine issued at the height of California's drought last summer against a group of Central Valley farmers accused of taking river water that didn't belong to them.



BY SCOTT SMITH

Associated Press

FRESNO, CALIF. — Water regulators Thursday recommend dismissing a historic \$1.4 million fine issued at the height of California's drought last summer against a group of Central Valley farmers accused of taking river water that didn't belong to them.

It marks a sharp reversal to the first of such fines against a district with claims to water that are a century old. Entities with those rights have long enjoyed immunity from cutbacks.

In a draft order, the State Water Recourses Control Board found that its prosecutors failed to prove its case against Byron-Bethany Irrigation District.

The case should not have dragged on this long, said attorney Dan Kelly, who represented Byron-Bethany, a district that serves 160 farms east of San Francisco.

"The prosecution team certainly held this out as a test case, something that would teach everyone not to ignore the state water board," Kelly said. "The fact that they didn't have sufficient evidence to prove what they were alleging is troubling."

The water board also recommended dropping a similar civil case against West Side Irrigation District, which serves farmers near Tracy. State officials had not proposed a fine for West Side.

The turn-around raises several questions, said attorney Jeanne Zolezzi, who represents West Side.

"There's a real question whether the state board is the policeman of how much water is in the river and who should be able to take it," said Zolezzi, noting that has historically been left to the courts to decide.

After the state issued its complaints, both districts asked for a hearing. The state's prosecutors put on its case in March, and two state water board officials overseeing the hearing abruptly halted it before the districts could put on their cases in defense.

The draft order dismissing the cases says the water enforcement officials couldn't explain the basis for alleging that the district took more water than they had a right to take.

State Water Board spokesman George Kostyrko said the allegations appeared to be true when they were first made at the height of California's drought, when hundreds of farmers throughout the state were being ordered to stop taking river water.

A fair and impartial hearing process showed otherwise, he said.

"This happened during a fourth and very crucially dry year in California," he said. "It appeared that some parties had been taking water that didn't belong to them."

The full State Water Resources Control Board must approve the dismissals before they become final.

Attorneys for both districts said they will seek damages and attorneys' fees from the state in court. For Byron-Bethany, Kelly said that will be more than \$1 million.



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