

THE SACRAMENTO BEE

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State moves to drop \$1.5 million fine in water rights case

HIGHLIGHTS

Byron-Bethany Irrigation District was accused of ignoring state order to stop diverting water

Case highlights difficulties in enforcing water-rights reductions

Irrigation district says state board 'finally did the right thing'



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In a case that highlights how difficult it is to enforce agricultural water reductions in California, a state panel has moved to dismiss a \$1.55 million fine it levied last year against a Delta-area agency accused of ignoring an order to stop diverting water in the drought.

State water regulators alleged last June that Byron-Bethany Irrigation District in the southern Sacramento-San Joaquin Delta defied a state order issued to dozens of senior water rights holders. The order told them to stop pulling water from streams and rivers due to extremely dry conditions.

It was the first time since 1977 that California had curtailed water used by agricultural districts with senior water rights that predate a system the Legislature put into place in 1914.

Almost immediately, about a dozen districts sued the state, challenging its authority to impose cuts and its methods of policing California's complex water rights system.

The complaint alleged that after the state issued the stop order, Byron-Bethany continued to divert 2,067 acre-feet of water over the next 13 days from an intake channel at the state-run Banks pumping station near Tracy.

The station delivers water to farms and cities south of the Delta. An acre-foot is 326,000 gallons.

At the time, the state said it could fine Byron-Bethany up to \$5.18 million, but regulators reduced the fine to \$1.55 million in part because the district delivers water to power plants “that may be deemed critical energy suppliers.” It also delivers water to Mountain House, a Tracy suburb that until recently depended completely on Byron-Bethany for its water.

On Thursday, the State Water Resources Control Board said it was moving to drop the enforcement action after several days of hearings.

In a draft ruling, board members said prosecutors failed to provide enough supporting evidence and didn’t adequately explain why there wasn’t enough water available for the district to use.

Jennifer Harder, a water law expert at University of the Pacific’s McGeorge School of Law, said the board members were smart to describe in their ruling how they’d like to see enforcers explain their methodology in future cases.

“I don’t think it will preclude future enforcement,” Harder said. “I think it will make future enforcement more fair. They’ve essentially laid out a recipe for how to do that.”

In a written statement, Byron-Bethany General Manager Rick Gilmore said the district “finally did the right thing.”

“This day is a long time coming,” Gilmore said. “We maintained all along that we were legally exercising our pre-1914 senior water right. We are thankful the state water board’s hearing team found multiple, significant discrepancies in the case against us. We will review this ruling in greater detail with our legal team and look forward to putting this chapter behind us.”

In its draft ruling, the board also said it would also drop a complaint against West Side Irrigation District, a small agricultural district in the Delta town of Tracy that also was accused of violating the state’s curtailment order.

Both actions will be voted on at the board’s June 7 meeting.

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