

State backs away from drought crackdown on two water agencies

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Water flows down a diversion canal operated by the Byron-Bethany Irrigation District, that is drawn out of a channel leading to to the William O. Banks pumping plant, near Byron in July 2015.

Two Central Valley irrigation agencies slapped with unprecedented penalties last year during the state's drought-related crackdown on illegal water users are likely to see their cases dropped.

In a dispute that has been closely watched by California's farmers and water managers, the **State Water Resources Control Board** moved to dismiss its complaints that the Tracy-area

irrigation districts were taking river water illegally. The agency acknowledged there was insufficient evidence to prove wrongdoing.

The cases were widely viewed as a test of the state's power to regulate longtime water rights holders. Last year, California's historic drought prompted state regulators to enact sweeping restrictions on pumping river water. The restrictions limited access even for those with water rights dating to 1914 and earlier — known as senior water rights and long considered ironclad.

The **Byron Bethany** Irrigation District, which serves about 160 farms and the 15,000-person community of Mountain House, faced a \$1.5 million fine for pumping water from the Sacramento-San Joaquin River Delta after state regulators told it to stop. The nearby West Side Irrigation District, which provides about 45 growers with delta water, faced potential \$10,000-a-day fines for the same reason.

The Byron Bethany district holds senior water rights on the southern end of the delta. The West Side district has slightly newer water rights on the delta's Old River.

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Both challenged the state's complaints against them, maintaining that they were entitled to take the water that the state accused them of stealing. Byron Bethany also argued that the state didn't have the authority to regulate pre-1914 water rights.

The water board held hearings in March in which state regulators and the water districts presented their arguments. Members of the agency's governing board serve as the decision maker.

In proposing Thursday to drop the cases, water board regulators acknowledged that they had used flawed methods to measure water draws and had failed to prove the districts did anything wrong.

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At the same time, however, state officials stood by their power to govern senior water rights.

“We conclude that the board has the authority to take enforcement action ... against the unauthorized diversion of water under claim of a pre-1914 water right,” state regulators wrote in a proposed decision to drop the case, which will be taken up by the five-member governing board June 7.

Byron Bethany officials, however, portrayed the proposal to drop the complaint as a validation of its claim on delta water.

“This day is a long time coming,” district officials said in a statement. “We maintained all along that we were legally exercising our pre-1914 senior water right.”

Kurtis Alexander is a San Francisco Chronicle staff writer. Email: kalexander@sfgate.com Twitter: [kurtisalexander](https://twitter.com/kurtisalexander)

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