

California drought tests strength of Gold Rush-era water rights

David Siders and Jim Miller, Sacramento Bee, 4-28-15

High above a landscape parched by unremitting drought, Meadow Valley Creek courses through the northern Sierra Nevada and pools in a stand of alders behind a tiny, concrete dam.

Robert Forbes draws water from the reservoir through an overturned smokestack and into a ditch that has run west of Quincy for more than 100 years.

He adjusted a piece of plywood at its mouth to restrict the flow one recent morning. In dry years, Forbes said, "I start rationing people along the line."

Forbes' family's access to this water derives from an 1870s claim in Plumas County; and his antiquated management of the ditch – breaking ice with a shovel in the winter, negotiating irrigation schedules among neighbors when the weather warms – has persisted for decades with little intervention.

With 12 customers, the utility Forbes manages is one of the smallest in the state.

But as California stretches into a fourth year of drought, regulators are expanding their reach and running into resistance from holders of some of California's oldest and strongest water rights.

Earlier this year, the State Water Resources Control Board ordered more than 1,000 property owners to prove their water rights. This month, the board warned claim-holders to expect curtailments of their ability to divert water from rivers and streams.

The actions are significant because they include the state's most senior water rights holders – those claimed before California established its permitting process in 1914.

"The rules are changing," Forbes said. "They're shaking us down."

Throughout California, there are more than 14,000 statements of diversion and use that reflect riparian and pre-1914 water rights, according to the most recent information in the state's public water rights database. The rights are concentrated in California's northern reaches and in counties around the Sacramento-San Joaquin Delta.

Several thousand entities – from corporations to government agencies – control the claims, sometimes dozens of them. The rights averaged at least 19.2 million acre-feet in reported annual water diversions from 2010 through 2013, according to a February water board analysis.

Altogether, the claims lay stake to a staggering amount of water. University of California researchers reported last year that California had allocated five times more surface water than is available even in a good precipitation year.

Many of California's oldest rights date to the state's settlement, when the federal government let settlers "reclaim" swampland by converting it into farmland. This arrangement often came with a right to water for irrigating crops. But record-keeping is imprecise. Owners self-report water use, which sometimes is based on readings from meters but also reflects rough estimates. Almost 4,000 of the claims in the February analysis showed zero diversions.

Corporations are the most common type of water rights entity, with almost 6,800 statements on record. Sierra Pacific Industries, Pacific Gas and Electric Co. and Diamond Lands Corp. are among the top primary owners with that designation, as are the U.S. Bureau of Land Management and the city of Los Angeles Department of Water and Power.

Some agencies leveraged their water rights decades ago to secure pacts with the state or federal governments guaranteeing access to stored water.

Sean Earley, manager of the Richvale Irrigation District in Butte County, said that because of the district's contract with the state to draw water from the Lake Oroville reservoir, "they shouldn't even be looking at us."

"We've basically shelved our water rights," Earley said. "An agreement is much more beneficial."

Next to corporations, the most common water rights holders are individuals, who have almost 5,000 statements of diversion. Robert Hilarides, a Visalia grower, is listed as the primary owner on about 40 statements of diversion and use.

A ranch owned by William Shatner has rights to water along the south fork of the Kaweah River in eastern Tulare County, according to the state's water rights database. The actor recently made headlines in an interview with Yahoo's David Pogue, when he proposed a Kickstarter campaign to build a \$30 billion pipeline from Seattle or someplace with "a lot of water."

During 2011, Shatner reported diverting 560,000 gallons to irrigate 15 acres, water 10 cows and five horses, and meet the water needs of two houses, 40 fruit trees, gardens and a sequoia grove, according to his 2012 statement of diversion, the most recent available on the water board's website.

Rights holders are required to put the water they use to beneficial use. Irrigation is the most common use cited, with more than half the statements listing it. Other oft-cited beneficial water rights uses are stockwatering, domestic purposes, fish and wildlife preservation, and dust control.

Forbes, 64, keeps ponds on his family's property in part for fire protection. Helicopters have filled up there during fires in recent years, he said.

Earlier this year, the state ordered 1,061 property owners with senior water rights in the Central Valley to prove their claims. The California Department of Water Resources and the U.S. Bureau of Reclamation, which operate the state's two massive water projects, suspected inappropriate diversions of their water.

The state said the vast majority of rights holders complied with the demand for information. But many did so under protest, accusing the state of regulatory overreach. Even the threat of curtailment orders has weighed heavily on rights holders dependent on the water.

Forbes said he fallowed 5 acres of alfalfa this year. In the Delta, Steve Mello, who farms near Walnut Grove, elected with his brother and son last fall to plant less corn. Mello said the decision was motivated by a desire to help conserve water in the drought, but also was a calculated hedge against potential water restrictions.

"Everything's at risk," he said. "Who knows what actions the governor will take?"

Like Forbes, Mello fears the state eventually will try to change its water rights system. He said "it looks like where we're heading is they're going to try to change water law."

Gov. Jerry Brown has repeatedly defended farmers and their heavy water use in recent weeks, largely exempting them from a mandatory 25 percent reduction in water use in cities and towns. But water rights holders became alarmed when the Democratic governor said this month on ABC's "This Week" that historic rights are "probably going to be examined" if the drought persists.

In Meadow Valley, Forbes' water claim goes back to 1872. In a handwritten note that year, landowner Richard Jacks claimed water from Meadow Valley Creek for "mining, milling, manufacturing and agricultural purposes."

Meadow Valley Water Works, the utility Forbes manages, was formed in the 1920s as a result of a dispute between a member of the Jacks family and a woman he suspected of stealing water, Forbes said. The man hit her with a shovel, she lived to litigate, and a utility requiring service to her land was formed, he said.

Forbes came to the ranch with his family in the 1950s. In normal years, creeks and natural springs abound, and Meadow Valley Water Works only recently raised the monthly fee for residential water from \$8 a month to \$22.50.

"When we got up here, water was nothing," Forbes said.

But the current drought is worse than any he can remember. Down the road from his family's ranch is an old store where men once bet on what day in July the snow would melt off their side of Spanish Peak.

This year, Forbes said, it disappeared in April.

"Now everyone's fighting over claims and water rights," he said. "It's just, it's just ... how much has this changed in so little time?"