

California warns of deep water rights curtailments amid drought

David Siders and Dale Kasler, Sacramento Bee, 4-8-15

In the week after issuing an unprecedented statewide water use reduction order, Gov. Jerry Brown labored to defend the measure's focus on urban water use instead of agriculture, which consumes far more water than cities and towns.

The drought has already pummeled farmers, Brown said, with diminished state and federal water allocations forcing them to uproot trees and fallow thousands of acres of fields.

But while Brown defends agriculture's heavy use of water, he is also considering water rights curtailments that could dramatically affect the industry.

The State Water Resources Control Board has warned water rights holders to expect restrictions on their right to divert water from rivers and streams.

Last year, the state curtailed the water rights of a host of junior rights holders, including 2,648 rural and urban agencies in the Sacramento Valley.

But with conditions worsening, the water board said last week that it might issue curtailment notices to the state's most senior water rights holders – those claimed before establishment of the state's water rights permitting process in 1914.

The last time water rights that old were curtailed was in the late 1970s, officials said.

“If dry conditions persist through the spring, it is anticipated that all holders of post-1914 and many holders of pre-1914 water rights in certain watersheds will receive curtailment notices soon,” the board said in a letter.

If water rights are curtailed, farmers are expected to pump more groundwater or buy water from other users – or go short. Other agencies, such as the city of Sacramento, have access to stored water.

Felicia Marcus, chairwoman of the water board, said districts in the San Joaquin Valley are likely to get hit harder by curtailments than in the Sacramento Valley.

“Because the rain has been uneven, the Sacramento (Valley) systems have been more flush than the San Joaquin River systems, so we will be going further up the seniority curve on the San Joaquin River than we are on the Sacramento River,” Marcus said.

Oakdale Irrigation District, which serves a largely agricultural area east of Manteca, is one of those districts holding pre-1914 rights that would have once seemed off-limits to the state's water authorities. Now the district is bracing for the possible loss of water.

“For us it's going to be a first-time ever summer,” said district general manager Steve Knell.

Even if the state doesn't curtail its rights, the district expects to limit its farmers to no more than 30 inches of water per acre this summer, he said.

That could leave growers in a pinch. The district's almond trees and grapevines generally take 40 to 50

inches, he said. Pasture for beef cattle can require as much as 60 inches, he said.

He said he expects growers will try to buy water from other sources to make up for the loss: “There’s going to be a lot of innovative things that are going to have to occur.”

On Wednesday, a week after ordering a 25 percent reduction statewide in urban water consumption, Brown met for several hours with water and farm officials and environmental groups at the Capitol.

“The challenge here, aside from getting the water, is to be able to collaborate together and not try to blame other people and point fingers,” Brown said. “This water system in California is extremely complex. It affects different people differently. Some people do much better than other people, and in the midst of all that to be fair, to be sustainable, and to have foresight into the future will take some wisdom and some self-restraint.”

The drought, now stretching into a fourth year, has strained California’s patchwork system of water rights, with competing interests vying for an increasingly dwindling resource.

“The state’s passed out water rights like Goldman Sachs passes out securities,” said Bill Jennings, executive director of the California Sportfishing Protection Alliance.

With the expectation that water would continue to flow forever, Jennings said, landowners “mortgaged their futures, their lives, their dreams ... without reading the small print that this was an interruptible source, that it might not always be available.”

He said the state is only now suffering the consequences of its “failure to bring the water demand and water supply into balance.”

Some districts hold a polyglot of different rights, and a state-ordered curtailment could bring legal complications. The massive Glenn-Colusa Irrigation District north of Sacramento has pre-1914 water rights. It also has a “settlement contract” with the U.S. Bureau of Reclamation that says the district can’t be cut back any more than 25 percent, said general manager Thad Bettner.

If the state seeks to curtail Glenn Colusa’s rights, “then the system just starts to dissolve pretty quickly,” Bettner said. “There will be disputes ... We’re talking about legal battles.”

Earlier this year, the water board ordered more than 1,000 property owners with claims to water in the Central Valley to prove their claims.

But Chris Scheuring, a lawyer for the California Farm Bureau Federation, said it remains a challenge for some farmers to produce proof of decades-old rights established under a procedure that was once “as simple as posting a notice on a tree by the river.”

Scheuring said, “If the state board takes an action to curtail a very senior and very large water right, I think that some party is going to be willing to litigate for the principle that the state board is not the appropriate enforcement venue.”

Marcus said the board believes it has the authority. The governor’s executive order “has given us more tools” to enforce curtailment orders, she said.

Representatives of some water districts that could see their rights curtailed said they will accept the state’s

order as long as legal protocol is followed, with junior rights holders cut off before senior rights holders.

Jeff Shields, general manager of the South San Joaquin Irrigation District, said he expects farmers to increase groundwater pumping to compensate for water rights curtailments.

Still, Shields lamented that farmers in the district have been “playing by the rules” for more than 100 years, counting on water they hold by right.

“Our farmers made investments to develop storage and to acquire those rights and invested in land accordingly,” he said. “So to have those rights challenged even under a temporary curtailment for the remainder of the season ... that does give us some concern.”

The district is already restricting water usage among its growers, said Dave Kamper, 56, a board member of the South San Joaquin Irrigation District.

Kamper raises 300 acres of almonds east of Manteca and is a partner in an almond-processing business. Because most growers got about 9 inches of rain this winter, the almond trees should survive, although the crop will probably be light.

“We may sacrifice some yield,” he said.

If the district’s water rights are curtailed by the state, some trees could conceivably be lost, Kamper said.

He said, “We’ll get by – different levels of discomfort, I guess.”