

Opinion: California's water war heating up

By Dan Walters, CALmatters

After one year of torrential respite, drought may have returned to California, and with it, a renewal of the state's perpetual conflict over water management.

State and federal water systems have told farmers not to expect more than a fifth of their paper allocations, the state Water Resources Control Board is weighing a new regime of mandatory conservation, and supporters of more reservoirs are complaining about the glacial pace of spending \$2.7 billion set aside in a water bond for more storage.

The drought that seemed to be washed away by last year's heavy rain and snow storms had spawned some water management changes that would have seemed unthinkable a few years earlier – most notably a landmark groundwater management system that's still being developed.

If, indeed, drought has returned at least semi-permanently, it will fuel another round of policy debates, and it's likely to include the mother of all water conflicts – the state's convoluted water rights structure.

It would take a book to fully explain those rights, but there are generally three varieties, to wit:

- “Riparian rights” attached to land directly fronting on rivers and other bodies of water are the most senior;
- “Appropriative rights” that were claimed prior to 1914 come next;
- Post-1914 appropriative rights bring up the rear.

Whether those rights should be overhauled, or even abolished, has been kicked around in academic, political and agricultural

circles for decades, the latter because farmers account for about three-fourths of California's human water consumption.

Two unresolved issues dominate the discussions: whether the most senior rights are absolute, or can be legally modified, and if modified whether their holders are entitled to compensation.

Had the drought not been interrupted by last winter's storms, both of those issues appeared to be headed toward showdowns.

The state Water Resources Control Board attempted to impose its conservation mandates on senior rights holders, and they worried aloud that it was a backdoor abrogation of those rights.

By law, they argued, they were exempt from such allocations, while the board said it could supersede water rights because of a provision of the state constitution barring "waste or unreasonable use."

One test of the issue involved the Byron-Bethany Irrigation District, near Tracy, which was accused of taking water from the Delta for 13 days after it and other districts with senior water rights had been told to curtail pumping.

"We are a test case," Byron-Bethany's manager, Rick Gilmore, said at the time. "I think this has become a larger issue. I think the water board wants to use this as a precedent so they can start to gain more control over senior water right users."

The district and the board stepped back from a decisive confrontation, but the issue is popping up again this year as the board works on new and permanent conservation rules.

Last week, the board delayed a vote on those rules after some water agencies again questioned its authority. "You are making an adjudicative determination without due process," said Rob Donlan, an attorney for a group of water suppliers.

Water rights seem destined to be the next big water war front as California faces what could be a semi-permanent state of drought and attempts to reallocate its finite supplies.

It could be fought out case-by-case in the courts, which would take decades, or the next governor and the Legislature could, as was done with groundwater regulation, deal with it comprehensively, including fair compensation to whose rights are curtailed.

As expensive as that obviously would be, it might be cheaper than doing nothing, or fighting it out case-by-case.

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