



Fact Sheet

Draft Order Dismissing Pending Water Right Enforcement Actions Against Two Irrigation Districts To be Considered by State Water Board June 7, 2016

On May 26, 2016, the State Water Resources Control Board (State Water Board or Board) released a draft order proposing to dismiss pending enforcement actions against Byron-Bethany Irrigation District (BBID) and The West Side Irrigation District (WSID). The Division of Water Rights (Division) initiated the enforcement actions last summer. Two members of the Board sat as impartial hearing officers to consider the evidence during a public hearing held in March. The Board will consider the [draft order](#) for possible adoption on June 7, 2016.

The State Water Board is the state agency responsible for issuing water right permits and licenses and enforcing many of California's water right laws. The largest portion of California water rights are "appropriative" water rights, which are subject to a rule of priority. Under the rule of priority, the earliest, senior water rights are satisfied before more recent, junior water rights. The priority of an appropriative water right determines whether water is available to that right. The rule of priority is especially important in times when natural flows in rivers and streams are limited, such as during a drought.

In 2015, California was in the midst of its worst drought in modern times and snow pack levels were at historic lows. On June 12, 2015, staff of the Board informed holders of appropriative water rights with a priority of 1903 or later within the Sacramento and San Joaquin River watersheds of the apparent lack of available water because of extremely dry conditions resulting in reduced surface water flows. Board staff based the notice on water demand information provided by senior water right holders and water supply information provided by state and federal agencies.

In July 2015, the Division issued an administrative civil liability complaint against BBID and a draft cease and desist order against WSID based on evidence that the irrigation districts had diverted water when water was unavailable under their priorities of right. Both districts requested hearings to respond to these allegations.

Hearings for enforcement proceedings before the Board are subject to special procedural protections to ensure a fair hearing. The Board members serve as impartial hearing officers, weighing the evidence and arguments of the parties. Staff of the Division recommending the enforcement orders - the Prosecution Team – are separated from the hearing officers and staff advising the hearing officers. Members of the Prosecution Team and other parties to the proceeding are prohibited from having *ex parte* communications about the proceeding with State Water Board members or any member of the hearing team. The Board considers only



the evidence submitted into the record when making its determination. The BBID and WSID enforcement actions were subject to these special procedures.

On March 21, 22, and 23, 2016, the State Water Board commenced the public hearing to consider evidence about the availability of water for diversion by WSID and BBID. The Prosecution Team primarily relied upon an analysis created by the Division to determine availability of water during the drought following the rule of priority for water rights. The analysis is a forecasting tool that predicts water availability by comparing forecasted natural supply to estimated demand. The draft order finds that the water availability analysis and supporting evidence in the record was insufficient to continue the enforcement proceedings against the irrigation districts.

The draft order describes the water availability analysis as “an indispensable planning tool to forecast water availability for categories of rights when shortages are anticipated,” but points to specific inconsistencies in the analysis when applied to calculate the supply of water available to the irrigation districts in 2015. Information about water availability is necessary for water right holders to voluntarily comply with the priority system. The proposed order recognizes the analysis’s value to the state, in particular to farmers, irrigation districts, and communities who must plan around water shortages and make advanced decisions about planting, conservation measures, and alternate supplies. Moreover, the draft order does not preclude a similar but revised analysis from being used to support future enforcement actions before the Board. Further work will need to be done by the State Water Board and stakeholders to refine the analysis based on improved water accounting, inconsistencies identified during the hearing, and additional tools provided by the Legislature as part of its drought response.

The draft order clarifies that the Board has the authority to impose penalties for diversion or use of water by claimants of senior appropriative rights when water is unavailable under the priority of their rights. This authority allows the Board to administer water rights and enforce the priority system during drought or in other circumstances when the water supply is insufficient to satisfy all claimants.

The period to consider written public comments on this [draft order](#) ends at noon on June 3, 2016.

The draft order is an example of the Board’s independent review of actions initiated by the Board’s staff, in a fair and impartial administrative hearing setting. The Board intends to hold a future workshop about best practices for conducting water availability analyses for purposes of administering the water rights priority system and other regulatory approaches to the administration of water rights during shortage.

For more information on the role of the State Water Board administering the water rights system, please visit a resource page found [here](#):

This fact sheet was last updated on May 26, 2016.