



MID lawsuit seeks to protect disadvantaged communities, farmers from state water orders

Statewide electric grid also harmed by orders curtailing District's local water rights

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Merced Irrigation District has filed a lawsuit challenging the emergency drought curtailments issued by the State Water Resources Control Board last month. The lawsuit intends to protect MID water rights, local growers and multiple disadvantaged communities in eastern Merced County.

“As requested by Governor Newsom, we attempted to work cooperatively and proactively with the State Water Board in order to avoid the disputes that we knew would follow these unnecessary and illegal regulations. Unfortunately, the Water Board still hasn’t agreed to meet or even discuss our proposals,” said MID General Counsel Phillip McMurray.

The lawsuit was filed on Thursday, September 2. It is among others filed by water agencies across the San Joaquin Valley last week.

Earlier this summer, months before the curtailments were adopted, MID joined with several other local water agencies and senior water rights holders in sending letters to the State Water Board. The letters proposed a variety of actions intended to address the drought, benefiting both water supplies and the environment. Without a substantive response, the State Water Board ordered curtailment of water rights for the Sacramento and San Joaquin river systems in August.

MID is one of the oldest irrigation districts and holds some of the most senior water rights in California. The District owns and operates Lake McClure on the Merced River. Water deliveries are made to about 2,200 growers farming on approximately 132,000 acres in eastern Merced County. Cities and communities within MID’s service territory include Merced, Atwater, Livingston, Winton, Le Grand,

Cressey and El Nido, as well as the Castle Airport and Aviation Development Center. Each of these communities are deemed disadvantaged by the state.

Concerned with significant impacts to disadvantaged communities and local growers, MID's lawsuit was filed to protect the District's water rights and supplies. The lawsuit states, among other things, that the State Water Board has acted arbitrarily and beyond its jurisdiction through its water right curtailments. In addition to harming disadvantaged communities, the State Water Board's actions will directly impact and substantially harm hydroelectric production from New Exchequer Dam. The clean and renewable electricity generated at New Exchequer Dam benefits the statewide grid and the California Independent System Operator.

The following violations are among more than a dozen MID is taking issue with in the State Water Board's actions:

- Failing for more than five years to show effort toward developing a methodology or process to address routine drought conditions, as ordered by a California Superior Court in 2018.
- Failure to adequately demonstrate the existence of an emergency as required by state law.
- Excessive vagueness in the regulations, lack of clarity.
- Delegating essentially unfettered control and authority over the vast majority of water rights in the Sacramento-San Joaquin Delta Watershed to a single staff member of the State Water Board, without boundaries of discretion or limitations of reasonable judgment.
- Ignoring directives of Governor Newsom, who ordered water right holders and the State Water Board to work together in good faith to fashion activities and policies to avoid the need for regulation.
- Violation of due process requirements.
- Lack of authority to regulate senior water rights on the basis of water unavailability or shortage.
- Failure to follow California's established water right priority system, which guarantees that those with senior water rights be able to beneficially use those rights before those with junior water rights.

"While there is little question about the current dry conditions in California, there is plenty questionable about how the State Water Board has gone about carrying out its response," said MID General Manager, John Sweigard.

"In the last drought, we were able to develop some significant compromises with the State Water Board that allowed us to take tangible actions for the benefit of MID, the environment and other water users in California," he added. "For whatever reasons, this time around the State Water Board seems intent on ignoring facts, science and even California's governor. It's unfortunate for MID, the Merced River and everyone in the San Joaquin Valley and Bay Delta. Moving ahead, we will continue doing all we can to protect our growers and our local community from these orders."

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