Legislature must remake water laws for a drier California

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In summary

The principles under which California water rights were assigned during the 20th century simply don't hold up in the 21st century. The Legislature must change the laws so that sinister legal decisions don't burden California's most vulnerable communities and native species with trying to survive with extremely limited water.

California's water laws are stuck in the past. The Legislature can—indeed, it must—make the changes to state law necessary to address the 21st century's complex water challenges.

A recent decision by California's Sixth District Court of Appeal highlights everything that's wrong with California water law. The ruling blocks the State Water Resources Control Board's authority to reduce water deliveries to a group of water districts amid California's ongoing drought.

The ruling pertains to the water board's authority to regulate water deliveries to holders of water rights that set aside water specifically for them and were issued prior to 1914. A group of pre-1914 water rights holders (primarily agricultural water districts) challenged the curtailment orders, hindering the state board's ability to protect California's waterways.

This, during a time when city residents are asked to let lawns go brown, whole towns are trucking in water to meet basic residential needs, and winter-run Chinook salmon are dying in the Sacramento River because of inadequate water flows.

The decision could have gone the other way, allowing the water board to protect the interests of all of the people and wildlife who depend on this precious resource.

Instead, the decision shields a class of property owners whose rights were enshrined in law at a time when the rights of citizenship, land ownership and common decency were only afforded to a privileged few. It was a time that led to the systematic and purposeful destruction of our freshwater ecosystems for the purposes of land development and the intentional redistribution of land ownership to those who held political and economic power.

A friend-of-the-court brief, submitted by the Stanford Environmental Law Clinic on behalf of the Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, Little Manila Rising and Restore the Delta, highlights the dangers of this disastrous decision.

Fortunately, the water board has other tools it can use to defend our freshwater ecosystems, such as the public trust doctrine, which "protects humanity's entitlement to air and water as a public trust." This doctrine requires the state to protect water resources for the enjoyment of all Californians, regardless of where they own property or whether they hold official water rights. The public trust doctrine ensures that everyone has access to clean drinking water, swimmable and fishable waterways, and functioning freshwater ecosystems now and for future generations.

It's essential that policymakers and regulators take steps to enhance and uphold the protections of the public trust doctrine and other relevant state laws. Those actions should include:

- More funding and staff capacity at the state water board so that enforcement of our water laws is feasible regardless of the vintage of any given water right;
- More robust drought-related planning to prepare us for our drier future;
- Rethinking our state's entire approach to water rights.

We urge the state water board to appeal the court's ruling. We are ready to work with the Legislature to enhance and increase the board's ability to regulate our public trust resources.

Everyone in California will continue to be asked to sacrifice during times of extreme drought, and possibly beyond. What we cannot do is allow sinister legal actions to place the largest burdens on California's most vulnerable communities and native species.